



Collective issues and industrial action

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Old Square Chambers

Ministry of Justice v POA

[2018] ICR 181

- POA issued a circular to its members calling on them to withdraw from (specified) voluntary tasks
- Mr Justice Jay held: breach of prohibition in s.127 Criminal Justice and Public Order Act 1994 on ANY industrial action by prison officers
- **Permanent** injunction to prevent any further industrial action
- Breach of implied duty of fidelity: the chink of light?

Secretary of State for Justice v POA

[2018] EWHC 2897 (QB)

- 2 assaults at Lindholme Prison
- Officers operated controlled lock-down in response - contrary to management instruction AND in consequence of discussion with union representatives
- Mr Justice Goss satisfied that it was arguable that POA had given instruction to act: continued injunction on basis that this maintained status quo
- Officers could independently refuse to work if they considered they were in immediate danger or threats to their health and safety

Virgin Atlantic v PPU

Case No: QV-2018-000528

- Section 226A(2) TULRCA 1992: must when providing notice of ballot list ‘the categories of employees’ entitled to vote and the numbers in each category
- Mr Justice Choudhury held that identifying employees as ‘pilots’ rather than ‘captains’ and ‘first officers’ not good enough: information must be ‘useful’ to the employer
- Section 234A(3)(b) TULRCA 1992: must when giving notice of IA provide intended dates of strike action
- Union has not failed to comply: fact that employees’ shift patterns may straddle the strike window did not mean that it had failed to provide intended dates

Birmingham City Council v UNITE and UNISON[2019] EWHC 478 (QB)

- Section 222 TULRCA 1992: IA not protected if the reason (or one of the reasons) for it is the belief that the employer is failing to discriminate against someone who is not a union member
- IA by Unite and Unison over refusal by BCC to make payments to members which had been made to GMB members to 'settle collective consultation claims'
- Mr Justice Freedman held that this did not breach s.222
 - Complaint about lack of parity for Unite and Unison (and others) NOT failure to discriminate against GMB
 - Section 222 is intended to be about enforcing closed shop
 - Enough for unions to show they genuinely did not believe the reasons given by BCC for making the payments to the GMB

Deliveroo

[2019] IRLR 249

- Application by IWGB for statutory recognition
- Failed **solely** because CAC decided that the bargaining unit was not made up of ‘workers’
- JR challenge on the basis that s.296 TULRCA 1992 incompatible with Article 11 ECHR (freedom of association)
- Mr Justice Supperstone rejected challenge
 - Article 11(1) right to bargain collectively does not extend beyond the employment relationship
 - Interference would have been justified under Article 11(2): restriction of protection to ‘workers’ was ‘rationally connected’ to the objective of preserving freedom of business and contract by limiting the cases in which the burden of collective bargaining should apply

BALPA v British Airways Cityflyer

[2018] EWHC 1889 (QB)

- BAC rostering pilots for duty in breach of an incorporated collective scheduling agreement
- BALPA brought claim seeking interim **declaration** that BAC was acting in breach of contract
- Mr Justice Butcher held that it would be a ‘very exceptional remedy’ in a private law dispute to take an interim view of contractual rights
- Should apply for summary judgment (if said to be no defence) and/or apply for an interim injunction (which requires giving a cross-undertaking in damages)

POA v Ministry of Justice

[2018] EWHC 3672 (QB)

- Mr Justice Kerr: union has standing to seek a declaration at a final hearing on behalf of its members as to their contractual rights
- POA sought a final declaration to restrain the Secretary of State for Justice from introducing wide-ranging changes to terms and conditions of prison officers
- National Dispute Resolution Procedure ('NDRP') imposed status quo when there was a registered failure to agree: was changing terms and conditions a breach of the status quo?
- No: collective agreement not legally binding and not apt to form part of officers' terms and conditions because not designed to protect individuals

UNITE v Birmingham City Council

[2019] 2WLUK 208

- Claim by UNITE for interim injunction
- Contended that BCC was breaching a memorandum of understanding ('MOU') by failing to send out a Waste Reduction and Collection Officer on waste collection crews
- Mr Jason Coppel QC (sitting as a deputy High Court judge) held that there was a serious issue to be tried because the MOU was being breached
- BUT claim failed on the balance of convenience
 - BCC would suffer prejudice in not being able to comply with its waste collection duties
 - Interests of the public needed to be considered and they could not be compensated
 - No irreparable prejudice to the union if there was no injunction
 - Delay in bringing claim

R (FBU) v South Yorkshire Fire and Rescue Service[2018] IRLR 717

- Claim by FBU for JR
- Fire Authority operating a duty system – close proximity crewing (‘CPC’) – in breach of WTR 1998 (firefighters working for 96 hours straight...)
- Successful challenge to decision to continue using CPC as being unlawful
- Example of getting at nub of problem through collective claim

Thank you

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