

# UPDATE ON TRADE UNION VICTIMISATION

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# VICTIMISATION: A GROWING PROBLEM I

## **Conservatives in Manchester 2011: Eric Pickles declares war on town hall trade union reps**

Ministers are to wage war on town hall trade unions, Conservative delegates in Manchester have been told.

Local government secretary Eric Pickles slammed the role of paid full-time unionists as a 'non-job' and pledged to clamp down on them.

He told the Conservative Party Conference: “They cost the public sector – that's taxpayers to you and me – a quarter of a billion pounds a year.

“That's money taken away from frontline services.”

He said Labour is too in hock to unions to take any action on the issue, adding: “If unions want to raise money for Labour – do it in your own time, not on the rates.

“We're going to call time on this last closed shop.”

(Manchester Evening News, Oct 3<sup>rd</sup> 2011)

# VICTIMISATION: A GROWING PROBLEM II

- One of the train drivers at the centre of the 10-day Tube strike was unfairly sacked for his union activities, it was revealed today.
- An employment tribunal ruled that the dismissal of [Eamonn Lynch](#) could not be justified. His case was one of two that have sparked the threat of industrial action on the Underground.
- The ruling strengthens the hand of the RMT in the dispute. [Transport for London](#), which [Mayor Boris Johnson](#) chairs, is now under pressure to reinstate the Bakerloo line driver or face a possible claim for compensation.
- TfL had claimed the dismissal was for a breach of safety rules - something only partly upheld by the tribunal.
- The RMT said it would suspend the two weekday strikes - due to begin on May 16 and June 13 - when Mr Lynch was reinstated.
- It called the action this week in support of Mr Lynch and Northern line driver [Arwyn Thomas](#), both of whom, it claimed, were sacked because they were known activists. RMT leader [Bob Crow](#) demanded an "immediate meeting" with Tube bosses.
- He said: "With the clear parallel with Arwyn Thomas's case there is now an urgent need for LU to meet the RMT to set out a plan for a return to work that can avoid plunging [London](#) into two blocks of strike action that everyone knows will lead to massive disruption."

(London Evening Standard, 6<sup>th</sup> May 2011)

# VICTIMISATION: A GROWING PROBLEM III

- Recent academic research by Gall ([2009] Journal of Workplace Rights 75) lends empirical support to its characterisation as a growing problem:
  - (i) Over a 12 year period from 1998, there has been a marked increase in trade unionist victimisation cases from 2005 onwards (peaking at 56 dismissals in 2008 as compared with 11 dismissals in 1998)
  - (ii) The preferred weapon of choice is rapid dismissal rather than disciplinary suspension
  - (iii) The usual context for victimisation is during a period of industrial unrest, a response to political disputes involving 'whistle blowing', and a perception that the organisation is being brought publicly into disrepute by the activist.
  - (iv) 58% of victimisations in Gall's study occurred within the public sector

# VICTIMISATION: LEGAL RESPONSES I

- Workers and employees are protected from detriment (s 146 TULRCA 1992) and dismissal (s 152 TULRCA 1992) on two main grounds:
  - (a) ‘had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time’
    - (i) Activities given a **wide** meaning including taking part in union meetings (*British Airways v Francis* [1981] ICR 278) and recruitment activities (*Brennan v Ellward* [1976] IRLR 378)
    - (ii) The employer’s express or implied consent is necessary if ‘appropriate time’ is to include during working hours, but the courts will look sceptically on an employer’s claim that the consent was conditional (*Bass Taverns v Burgess* [1995] IRLR 596)
    - (iii) The scope of protected activities will be greater if the individual is acting under the authority or guidance of the union (*Chant v Aquaboats* [1978] 3 All ER 102)
    - (iv) Where dismissal is alleged, there is no qualifying period and interim relief may be ordered (sections 161-166 TULRCA 1992)

# VICTIMISATION: LEGAL RESPONSES II

- Workers and employees are protected from detriment (s 146 TULRCA 1992) and dismissal (s 152 TULRCA 1992) on grounds of ‘union membership’
  - (i) Avoids some of the technicalities in the ‘activities’ ground, especially as regards timing of activity
  - (ii) ‘Union membership’ has been given a broad meaning in cases such as *Harrison v Kent CC* [1995] ICR 434
  - (iii) This broad meaning is more likely to be adopted by courts and tribunals following the European Court of Human Rights decision in *Demir v Turkey* [2008] ECHR 1345

# VICTIMISATION: LEGAL RESPONSES III

- Trade union officials have a statutory right to reasonable paid time off to carry out trade union duties and undertake trade union training, and trade union members have a statutory right to take reasonable unpaid time off to take part in trade union activities (ss 168-173 TULRCA 1992)
  - (i) Combating Pickles' misinformation: see [http://www.unison.org.uk/asppresspack/pressrelease\\_view.asp?id=2466](http://www.unison.org.uk/asppresspack/pressrelease_view.asp?id=2466)
  - (ii) A wide definition of appropriate 'trade union duties' as specified in ACAS COP No 2 Time Off for Trade Union Duties and Activities
  - (iii) Using judicial review to prevent the unilateral abrogation of collectively agreed arrangements in the public sector

# VICTIMISATION: LEGAL RESPONSES ARE NOT ENOUGH

- It is very likely that the Lynch and Thomas cases would not have led to reinstatement without RMT strike action in support of the tribunal determinations upholding their unfair dismissal claims
- While it is important to ensure that strike laws are complied with, we are arguably witnessing some of the most progressive Court judgments on strike law in a generation (**National Union of Rail, Maritime and Transport Workers v Serco (t/a Serco Docklands) [2011] EWCA Civ 226**).
- **This should embolden trade unions to engage in collective action to support victimised trade unionists**



# CONTINUING THE STRUGGLE AT THE INTERNATIONAL LEVEL

- ILO CONVENTION 98
- Article 1
- 1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
  
- ILO CONVENTION 135
- Article 1
- Workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements.
  
- ILO NORMS USED TO INTERPRET ARTICLE 11 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS PROTECTING FREEDOM OF ASSOCIATION