

LITTLETON



NON STRIKE ACTION DAVID READE QC

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Non-Strike Action

- What - legally and practically - distinguishes a demo from a picket? How far can you push the boundaries? What are the legalities of "cyber-picketing", e.g. the Rogers v Picturehouse Cinemas?

PICKET

- Picket – No clear legal definition
- QED

A person or group of people stationed outside a workplace during a strike to try to dissuade workers from entering; (in extended use) a person or group of people conducting a similar protest or demonstration outside any premises

PICKET/DEMO?

- *Thames Cleaning and Support Services Ltd v United Voices of the World* [2016]
- Public Demonstration
- ECHR
- Article 11 Peaceful Assembly
- Article 10 Freedom of Expression

PEACEFUL PICKET

- S.220 TULR(C)A 1992
- contemplation or furtherance of a trade dispute
- At or near place of work
- Union Official
- purpose only of obtaining or communicating information, or peacefully persuading any person to work or abstain from working
- Mobile/former workers

Demonstration on the Highway

- No right to access workplace
- Or Private land
- Demonstration on the Highway
- right of reasonable and peaceful demonstration
- Limitations on public order in the Highway

s.219

- Protection from tortious liabilities
- Inducing breach of contract
- Interference with performance of contract
- But picketing
 - Only if lawful picketing S.220
 - 220A union supervision of picketing
- “Picket” away from the workplace not enjoy protection

S.219

- S.224 restriction on secondary action
 - Lawful picketing under S.220 worker who is party to the dispute
- S.220A
 - Picketing which trade union organizes or encourages its members
 - _ requirements of supervision or not S.220 picket

Leverage in action

- *Thames Cleaning and Support Services Ltd v United Voices of the World* [2016] IRLR 695
- Demonstrations outside client offices protesting dismissals and pay of cleaners.
- General Secretary threatened regular, disruptive and high profile direct actions at the premises. Videos sent showing what to expect.
- Anti-picketing injunction refused: too uncertain and no evidence workers (only 9) would go beyond lawful picketing.
- But exclusion injunction granted limiting proximity of protest to client's site: real threat was of threatening noisy, intimidating, mass protest at or near the client's premises by people with no pre-existing connection with the worker who might be on strike. Liable to tip into public disorder, harassment, intimidation.

The demonstration

- *Gate Gourmet London Ltd v Transport and General Workers' Union* [\[2005\] IRLR 881](#)
- *Thames Cleaning and Support Services Ltd v United Voices of the World* [\[2016\] EWHC 1310 \(QB\)](#)
- The Lawful demonstration no need for S.220
- One aspect of activity inducement to breach of contract interference with contractual performance then need to be within S.220/220/224
- Union's potential liability

REMEDIES AGAINST THE UNION

When is the union liable for unlawful acts?

- Section 20(1) – an act will be taken as having been done by a union if that act is authorised or endorsed by the union.
- Section 20(2) provides that this condition is satisfied if endorsed or authorised by the general secretary or “...*by any other official of the union (whether employed by it or not)*”
- Section 119(1) defines official widely – an officer of the union, a branch or section of the union, and “...*a person elected or appointed in accordance with the rules of the union to be a representative of its members or some of them.*”

REPUDIATION OF UNOFFICIAL ACTION

- Section 21 gives the union the chance to get off the hook of unofficial action by written repudiation issued by executive, president or general secretary as soon as reasonably practicable.
- BUT repudiation will be ineffective if
 - not given as soon as reasonably practicable
 - After giving notice, the leadership acts in a manner inconsistent with the notice of repudiation (i.e. no nods and winks) – Express & Star Ltd v NGA [1986] ICR 589

The picket as a demonstration

- Peaceful picket not a private nuisance
- Unreasonable interference with rights access of owner of a property or invitees possible private nuisance
- Unruly protest may occasion public nuisance/ public order offences
- Lawful leverage campaign –persuading customers or suppliers to make an elective choice not involving a breach of contract

Cyber Picketing

- Picturehouse cinemas
- BECTU
- “in the basket”
- Not a Picket within S.220
- Cases on “trade union activities”
- Unlawful Act?
- No clarity in the two cases as to the alleged unlawful act
- No decision on whether fell within S.219

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