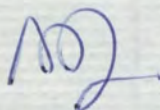


PRIME MINISTER

EMPLOYMENT BILL: LAY-OFF PROVISION

1. You queried whether paragraph 2 of the draft letter represented the point at paragraph 3(a) below.
2. The letter was intended to raise a different point. Michael Scholar's earlier letter (see Flag A) has already made the distinction in paragraph 3 between lay-offs to combat selective action and lay-offs in response to "national emergencies".
3. I was trying to suggest that there was another way of tackling the selective strike problem - which could be pursued either in addition to changes in lay-off arrangements, or instead of such changes. I have redrafted the letter to make it clearer that the "freedom to dismiss" option is intended to be an alternative approach.
4. Paragraphs 5, 6 and 7 below outline this alternative approach.
5. Several months ago, the Department of Employment thought the "freedom to dismiss" approach was too radical. But now the climate has changed and we are seriously considering the lay-off provisions, which were also thought too radical at first. The purpose of the letter is - if you agree - to encourage the Department of Employment to consider whether "freedom to dismiss" might not be a better way forward. If employees knew that selective strike action might be met by selective dismissals, they might think twice about volunteering to participate in selective strikes.
6. Can Michael send the amended version of the letter?



ANDREW DUGUID

DRAFT PRIVATE SECRETARY LETTER

GR / M type bc AD

EMPLOYMENT BILL: LAY-OFF PROVISION

1. The Prime Minister has seen your letter of 22 February and your Secretary of State's letter of 23 February to the Chancellor on the same subject.
2. Subject to any views the Chancellor may have, she is inclined to accept your Secretary of State's view that the power to lay-off employees during selective strike action should not be pursued for the time being. But she has asked whether an alternative approach to the problem of selective strike action might be for employers to be given a freer hand to dismiss some or all of their employees who are taking selective strike action, without any risk of unfair dismissal proceedings. This would mean removing the constraints in the present Bill which require employers to give notice of intention to dismiss and then to dismiss everyone who is still on strike on the due day. Instead, there would be no question of any individual who was dismissed during a strike (when he is in breach of contract) being able to claim unfair dismissal. She fears that the ~~the~~ ^{proposed} constraints will make it too easy for unions to implicate large numbers of people - or especially key personnel - in strike action on the day when notice falls due. She recalls that ^{the EEF and} Lord Weinstock drew attention to some aspects of this problem in ~~his~~ ^{their} submissions to Mr. Tebbit on the latest proposals.
3. On the face of it, the knowledge that employers were free to act in this way should discourage selective strike action. This change would not, however, be subject to the criticism - as the lay-off provision certainly would be - that it seeks to override contracts which are freely arrived at. The Prime Minister would be grateful if your Secretary of State could consider whether further changes on dismissals during industrial action might offer an alternative approach to the problem.
4. The Prime Minister welcomes the further work that your Secretary of State has commissioned on the possibility of legislation covering lay-off during national emergencies.
5. I am copying this letter to John Kerr and David Wright.

MR SCHOLAR

Prime Minister

①

19 February 1982

Agree that I will as
proposed? M/S 19/2

cc Mr Hoskyns
Mr Vereker

EMPLOYMENT BILL: LAY-OFF PROVISION

do it through the
beginning of para 2 of the letter
properly represents 3(a) below.
could you
re draft.
nr

1. You wrote on 8 February to Mr Tebbit's office recording the Prime Minister's brief discussion with him at which it was agreed that he should not rule out amendments to provide for lay-offs during strikes. Your letter also asked for an urgent look at the legislation proposed on a contingency basis a year ago.
2. The Chancellor has now written to Mr Tebbit suggesting that the Government should pre-empt the SDP by introducing lay-off provisions itself.
3. It is important to recognise that the EEF has made two lay-off proposals, designed to meet two rather different sets of circumstances:
 - (a) to enable employers to lay off employees prevented from effective working by selective action by some of their own colleagues; and
 - (b) to enable lay-offs during "national emergencies" caused by strikes in key sectors of the economy.
4. It seems to us that there is a stronger case for lay-off powers of the first kind than the second. Selective action is insidious, effective and growing. The present legal framework is almost tailor-made to encourage selective action by small and indispensable groups, like computer operators. (During the Civil Service strike, some of the handful of strikers actually received more take-home pay than when they were working - because although strike pay was 85% of normal pay, it is not taxable.) Ideally, companies should reach collective agreements about the circumstances in which lay-offs were possible. In practice, it is very hard to negotiate sensible arrangements with unions who are already used to large amounts of protection under existing contracts - explicit and implied.
5. But there is another way of combatting selective action which is worth considering, and could still be introduced as an amendment to the present legislation. This would be to remove any constraints on employers' right to dismiss strikers (who are, of course, in breach of their employment contracts). This would enable employers to fight fire with fire - ie selective dismissal as a possible response to selective action.

6. The present legal position means that if anyone is dismissed during a strike, everyone who struck must be dismissed. If this is not done, those dismissed can claim unfair dismissal. This could be highly inconvenient, especially if a one-day all-out strike was quickly called to implicate everyone in a large organisation. Mr Tebbit's Bill will improve matters a little. In future, employers will be able to give notice of their intention to dismiss everyone who remains on strike at a certain time, with no obligation to treat earlier strikers in the same way. But we think that even this could be thwarted by a quick all-out strike to implicate more people on the day dismissals were due. In any event, the employer may not want to dismiss everyone at a certain date - some key personnel may have a particularly high value. But he will be obliged to dismiss them if they are persuaded to strike, and he will be unable to re-engage them later. (Lord Weinstock drew attention to this restriction in his response to Norman Tebbit's proposals.)
7. A simple solution exists. That is to say that anyone dismissed during a strike - when he is in breach of his contract - has no claim to unfair dismissal. The employer would then have carte blanche to respond to selective strike action. This has the advantage over the lay-off provision that it does not involve legislation which, in effect, overrides contractual arrangements.
8. If the Prime Minister agrees that this idea is worth further consideration, we suggest that you should write to Norman Tebbit's office along the lines of the attached draft.
9. There remains the question of the wider lay-off provision, to prevent innocent companies being "bled to death" by strike action in key sectors of the economy. The best answer to this may be for companies to make provision for such circumstances in their collective agreements, or through negotiation when the situation arises. To give employers power to suspend contracts, or to give Government the power to trigger the right to lay off, perhaps with the safeguard of an affirmative resolution, would be open to strong criticism. It would involve power to override freely-negotiated contracts, which sets a dangerous precedent. The Department of Employment should be reporting shortly on the pros and cons.