

# United Campaign UPDATE

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**FREE**

## UNIONS WIN HISTORIC VICTORY FOR RIGHT TO STRIKE

### RMT AND ASLEF WIN APPEAL - INJUNCTION IS OVERTURNED IN A JUDGMENT THAT WILL HAVE MASSIVE IMPLICATIONS FOR TRADE UNION LAW

In March the trade union movement won a major victory in the fight for trade union rights when the Court of Appeal overturned two injunctions granted last year against strikes by ASLEF at London Midland and RMT at Docklands Light Railway.

In this case the courts finally did what Parliament failed to do last October when they allowed the Lawful Industrial Action Bill to fall in the House of Commons at the last hurdle.

Last year we reported on many occasions how the anti trade union laws had become increasingly used by employers to undermine legitimate strike action after employers sought to obtain injunctions on the most minor of technical errors in ballot procedures.

After a tidal wave of spurious litigation, this most recent, and highly significant case has been a very



welcome reversal in trends.

ASLEF and the RMT had appealed against an injunction granted in January this year - an injunction they argue - that would have taken the anti-trade union laws in this country to within a whisker of effectively banning the right to strike.

The Court of Appeal overturned the injunctions and in the process rejected the previous ruling which stated that the ballot notices to the

employer had not been "as accurate as reasonably practicable". The judges in the Court of Appeal instead ruled the ballot notices were as accurate as possible in light of the information in the possession of the union.

This judgment will now become part of case law and must be taken into account in any further legal challenges to unions attempting to undertake strike action in disputes with employers.

## OSBORNE - UNIONS ARE "FORCES OF STAGNATION"

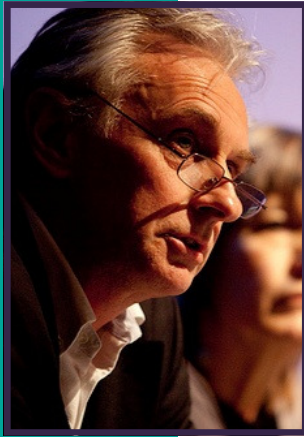
### John Usher, UC Director

In January George Osborne slammed trade unions, brandishing them "forces of stagnation" and blaming them for holding back Britain's economic recovery. With growing unrest against his aggressive austerity measures, Osborne is determined to shift the blame onto the backs of the workers and the trade unions that represent them.

With attacks on pensions, pay and conditions, not to mention redundancy notices growing by the week, unions are preparing to stand up for their members in the face of these vicious cuts.

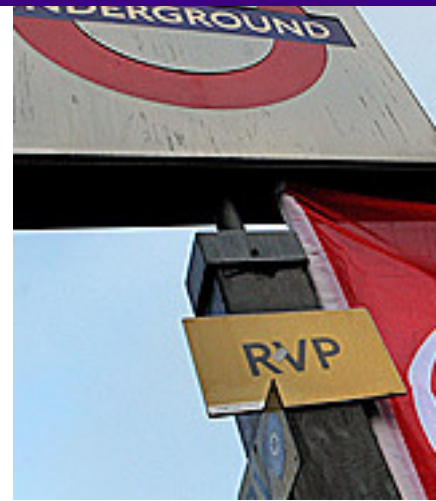
In response Osborne and his cronies have declared they will step up their fight to undermine trade unions by further restricting their right to effectively protect their members through the introduction of more anti-union legislation if trade unions begin wide-spread strike action against the cuts.

The CBI, the Policy Exchange and of course Boris Johnson have all been lobbying the Government to introduce harsher strike laws and place further restrictions on balloting procedures, making it even harder for a union to take effective strike action.



# PROF KEITH EWING - 'SAVOUR A MOMENT OF VICTORY'

## THE IMPACT OF THE ASLEF / RMT JUDGMENT



FEATURE: PROF KEITH EWING - SAVOUR A MOMENT OF VICTORY

The recent decision of the Court of Appeal on the right to strike in cases involving ASLEF and RMT is a major triumph for the British trade union movement in its battle to restore trade union rights.

As such the decision represents not only a significant achievement for the union's legal team led by John Hendy QC, but also a vindication of the strategy of some unions to use the European Convention on Human Rights to challenge the anti - union laws bequeathed by the Tories and retained by New Labour.

It is a historic decision in which the Court of Appeal at long last recognises not only the defects of English common law which 'confers no right to strike in this country', but also the importance of 'various international instruments', in which these rights are openly acknowledged.

Not only that, but the court has at long last

further acknowledged that the European Court of Human Rights in Strasbourg 'has in a number of cases confirmed that the right to strike is conferred as an element of the right to freedom of association conferred by Article 11(1) of the European Convention on Human Rights'.

According to the appeal court, this 'recognition of a right to strike' ... Let's say that again. According to the appeal court, this 'recognition of a right to strike' had a significant bearing on its decision. Not to sweep away the anti - union laws yet, but to make sure that these laws are not to be strictly applied against trade unions.

The injunctions against ASLEF were granted principally for three reasons, the first being that the union had inadvertently included in the ballot two members who were not entitled to vote. This

was a genuine mistake openly acknowledged by the union, but it did not affect the result of the ballot.

As reported by the Court of Appeal, ballot papers had been sent to 605 drivers, of whom 472 voted (a turnout of 78%), with 410 (87%) voting in favour of industrial action. The accidental inclusion of the two members not entitled to vote was said by the appeal court to be trivial and therefore excusable.

The second ground for the ASLEF injunction was that the union had provided inaccurate information in the notice which the law requires unions to give employers of their intention to hold a strike ballot. In this case (unbelievably though it may seem), the notice was said to be inaccurate for including the two disputed members.

This type of pedantry is a problem that has been encountered by unions in series of recent cases, with the High Court imposing impossible demands on trade unions in relation to the notice they must provide to employers, based on the accuracy of the records the courts have said unions should maintain.

The third ground for the injunction was that the union had failed properly to explain to the employer how it had arrived at the information





**FEATURE: PROF KEITH EWING - SAVOUR A MOMENT OF VICTORY**

# A NEW LOOK AT A CHARTER OF WORKERS RIGHTS

**FAR FROM THE IDEAL OF RIGHTS ENVISAGED IN THE 'WORKERS' CHARTER', IT IS BECOMING INCREASINGLY CLEAR THAT A CHARTER OF EMPLOYERS RIGHTS IS THE PRIORITY OF GOVERNMENT**

contained in the ballot notice. According to Charles Bear QC for London Midland the notice was fatally flawed for being a 'conclusion' rather than an 'explanation'.

But the Court of Appeal was having none of it. Having discharged the injunction against ASLEF, the appeal court also discharged the injunction against RMT, and did so for similar reasons.

True, many of the other traps and hurdles of the anti-union legislation remain. The next step will be to have the ballot notice provisions removed altogether. The obligation to require a ballot notice at all is in breach of the right to strike guarantees in the European Social Charter, and the attempt to have them removed completely is the subject of an important RMT challenge in the European Court of Human Rights.

So let us rejoice in a great decision, which represents a seismic shift in English law. Let us do so fully aware that while employers are licking their wounds, they are also preparing for their next assault on workers' rights. But any such retaliation will almost certainly be overruled by the European Court of Human Rights, the court from which the Tories want to – but cannot – withdraw.

**This article is edited from a piece that appeared in the Morning Star on 12 March 2011**

Several years ago the United Campaign worked with the Institute of Employment Rights to produce a Charter of Workers Rights. In January Vince Cable – now a Lib Dem Minister in Government announced 'the employer's charter' - an unashamed directive for employers on how to exploit your staff in the era of Government driven austerity.

Prof Keith Ewing, president of the IER has demonstrated below, the reality of workers' rights in the UK today:

- You have the right to a minimum wage, but not necessarily a living or a decent wage
- You have the right to "agree" to work more than 48 hours a week, but not to be paid an overtime rate if you do so
- Women have the right to equal pay to men, but typically to be paid less than a man
- You have the right not to be unfairly dismissed, but not to get your job back if your complaint succeeds {and if the current Government proposals come about you'll have to wait 2 years to acquire this right...}
- You have a right to a redundancy payment if made redundant, but only if you have been with your employer for at least two years
- You have a right to have your trade union recognised by your employer, but only if at least 40% of your colleagues agree
- You have a right to strike, but only if your employer does not apply

for an injunction on some spurious procedural technicality

- You have a right to use an employment tribunal to enforce your rights, but not to receive legal aid or legal representation
- You have the right to seek employment as an agency worker, but to be denied all meaningful forms of legal protection if you do so
- You have the right to agree to a "master and servant" contract, thereby allowing your employer to change the terms at will
- If you do bring legal proceedings against your employer, not only will you not receive legal aid, but you will be required to subsidise the employer's legal costs through the tax system. One reason why there is such a huge "inequality of arms" in employment disputes is that employers can write off their legal costs (and any compensation awarded against the business) against tax, leaving the rest of us to pick up the bill. Claimants gets no tax relief, and no legal aid.

As Keith Ewing said in his article in the Guardian: "Cable should be ashamed of himself: ashamed of his failure to use his office to address the government's serious and serial breach of international treaty obligations; ashamed to be issuing a licence to abuse the vulnerable and the unprotected; but above all ashamed to be George Osborne's poodle."

# BALFOUR BEATTY CAUGHT OUT



## ANOTHER SUCCESSFUL CASE AGAINST THE BLACKLIST

**John Usher, UC Director**

We reported in December 2009 about Phil Willis' success before an Employment Tribunal. More recently an Employment Tribunal has ordered Balfour Beatty to pay another construction worker in the region of £20,000 for lost earnings, an additional £2,000 for "injury to feelings" and on top of that Balfour Beatty had to pay a further £2,000 in aggravated damages.

The Tribunal found that Balfour Beatty deliberately tried to hide evidence that it had been using the firm that kept the blacklist – "The Consulting Association".

Balfour Beatty rejected the worker's application for a job in September 2008. For about three months in early 2009 he was given work by the company but then they sacked him on the grounds of redundancy. It was for the refusal to give him work in September 2008 that he was successful before the Tribunal.

The Tribunal found as a fact that if he had been appointed in September 2008, he would not have been selected for redundancy in May 2009, but would have continued until January this year when the contract ended.

The Consulting Association's records said the particular worker was "demanding of everything that's due and possibly more". Balfour Beatty lied to the Tribunal having the audacity to say they did not know The Consulting Association was operating a blacklist, but the Tribunal didn't buy that.

At a hearing in February 2011 the Tribunal concluded that the member of Unite had been unlawfully refused employment because of his trade union membership and activities.

## MESSAGE FROM JOHN HENDY QC



At a time of savage cuts and falling wages, the need for collective rights is greater now more than ever. We know that the Tory-led Government has even more anti union legislation on the stocks and we must be ready to stand up to this renewed threat.

Last year was one of the biggest years for the United Campaign since it was established in 1998. Our major campaign around John McDonnell's Lawful Industrial Action Minor Errors Bill won great support across the movement and through the United Campaign alone over 3,000 people lobbied their MPs. It was a travesty, when only 87 MPs turned up to support the Bill on it's Second Reading.

The United Campaign intends to keep up the pressure on the Government but we need your continued support to be able to do this. If you can affiliate for the coming year please complete the form below and return it to the given address as soon as possible.

Together we must continue the fight for fair rights and free unions.

In solidarity,

**John Hendy QC**  
**National Secretary**

# A NEW YEAR - SO JOIN THE CAMPAIGN FOR TRADE UNION FREEDOM!



The United Campaign is financed solely by supporters fees from trade union bodies and individuals. By becoming a supporter you or your organisation show your agreement with the call to repeal the anti trade union laws, and aid the Campaign's fight. Our affiliation year runs from 28 March - 27 March, please make cheques payable to United Campaign, and send to the **United Campaign Secretary, 39 Chalton Street, London, NW1 1JD**. Donations are gratefully received.

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