British High Court blocks rail strike

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The High Court injunction granted to Network Rail (NWR) to block strike action by members of the Rail Maritime and Transport (RMT) union constitutes a pre-emptive attack on the developing opposition in the working class to sweeping austerity measures.

The state-owned NWR maintains the track and signalling system on which private train operating companies run train services. It hires out track engineering and replacement contracts to private contractors, such as Jarvis.

In September it threatened to sack the entire rail maintenance workforce of 13,000 and re-employ a reduced number on new terms and conditions, triggering the recent ballot for strike action. Rail signalmen and track maintenance workers returned a 77 percent majority in favour of industrial action. Supervisors in the Transport Salaried Staff Association (TSSA) also voted to strike.

The strike would have been the first nationwide stoppage in 16 years.

The aim of NWR is to impose 1,500 job cuts. The RMT leadership has advocated job losses via voluntary redundancies, but oppositional sentiment demanded a strike ballot was organised.

With the strike planned for the busy Easter period, NWR sought and won a ban on the action on April 1. The High Court decision means that, under the anti-union laws, no strike can be held in the run-up to the anticipated General Election on May 6.

Britain has some of the most restrictive union legislation in Europe as a result of measures introduced under the Conservative governments of Thatcher and Major in the 1980s and 1990s and maintained by Labour since 1997.

The specific piece of legislation currently being enforced against rail workers was introduced by the Conservatives in the 1980s, and then amended by Labour in 2004, stipulating for the first time that unions are required to provide detailed information on exactly who has been balloted for industrial action. Unions have to supply details of how many workers are involved at each workplace and their specific roles.

This merely gives employers a valuable time-frame to best deal with the dispute on their own terms. It has become an employer's charter for preventing official strike action from taking place. The *Financial Times* cited a trade union lawyer describing the legislation as "the easiest way for employers to attack industrial action." Analysts viewed the injunction as "a favoured weapon as executives increasingly use the courts to head off strikes."

The *FT* said that "industrial relations experts say the number of injunctions brought by employers to prevent strike action has been growing since the mid-2000s, and every so often they find a new method. The 'list argument' is, they say, a potential trump card for employers pondering the injunction route."

One lawyer who advises unions on the matter described the task of providing an up-to-date list as "Kafkaesque."

The High Court injunction against the RMT follows a December court ruling against cabin crew at British Airways, where the judge ruled that "a strike of this kind over 12 days of Christmas is in my view fundamentally more damaging to BA and the wider public than a strike taking place at almost any other time."

The injunction necessitated a second ballot and delayed strikes until last month.

In addition, injunctions have been successfully won barring a strike by harbour pilots at Milford Haven, preventing an electricians strike on the London Underground, and stopping walkouts over pay and conditions at Metrobus.

In the last five years, of the last 36 injunctions applied for, almost all were granted.

Gregor Gall noted in the *Guardian*, "The law currently stands obliges a union to furnish the employer with a huge array of detail about the members being balloted and the members going on strike.... In the case of the RMT, with thousands of signal boxes (defined as individual workplaces) and workers compelled to move between these when the employer wants, it is always going to be nigh on impossible to approach 100% accuracy."

Last month, the London-based law firm, Herbert Smith LLP, released a briefing paper advising companies facing an increase in industrial action.

It notes that "2009 saw more employers facing threatened industrial action, and the trend looks likely to continue in 2010," before offering "some practical tips for employers."

After approvingly noting the hard line being taken by the courts in relation to union ballot procedures, the law paper advised:

"Companies faced with the prospect of a strike would be wise to examine the union's conduct of the ballot with a fine tooth comb."

It then cites "One word of caution—some commentators have questioned whether the UK courts are correct in their view that the complexity of UK balloting law does not contravene human rights. An application to the European Court of Human Rights is not out of the question."

The right to strike has been severely curtailed by this legal requirement. But some sections of the ruling class, along with the trade union bureaucracy, are warning that this will have the effect of promoting unofficial, wildcat action.

Postal workers across the UK carried out a series of unofficial strikes last year in the face of the union's refusal to coordinate a national stoppage. And similar action has been taken recently by train drivers, signalling staff, machinists and technicians on Belgium's rail network, and by Spanish air traffic controllers and Finnish dock workers.

Sounding the alarm during the recent rail dispute, Sarah Veale, head of equality and employment rights at the Trades Union Congress (TUC), warned that unofficial, "wildcat" strikes were rising, indicating that legal injunctions would not prevent workers from taking action.

The self designated "left" Labour MP for Hayes and Harlington, John McDonnell, wrote a piece in the *Guardian* April 3, attacking the papers' position on the ruling against the RMT. "On at least four occasions in the last three years," he wrote, "I have tried in parliament on behalf of RMT and other TUC-affiliated unions to amend employment law to require employers to cooperate with unions in the balloting process so these problems can be overcome. Employers' organisations, the Conservatives and the government have all opposed this reform.

"The result," he then warns, "is not fewer strikes but a deteriorating industrial relations climate as people become increasingly angry that their democratic wishes are frustrated by one-sided anti-trade-union laws."

This is a plea to the employers not to make the role of the trade union bureaucracy in policing social and industrial discontent more difficult by forcing workers to break out of the official structures and regulations.

But that is precisely what is necessary if any struggle is to be waged against the employers and the state and legal apparatus that serves their interests.