# Professional Practices (SS4910)

Chapter 7

The Framework of Employee Relations law and Changing Management Practices

# 7.1 Employee Relations

- Employee relations is about the rules governing employment. Since people are employed to produce goods or services and such production requires a process, we may further say that employee relations is about the rules governing the work process.
- What sort of rules are we talking about? Little can be conditional from the individual contract of employment. It is a contract of service requiring a duty to perform that service in return for payment of wages or salary. However, because the precise form of work performance or service (including the degree of effort) cannot be specified in advance, the employment contract is certainly open-ended. On the other hand, there is a statutory obligation for the employer to provide a written statement of the main terms and conditions of employment.
- The normal state of affairs, then, is for the employer, and, by extension, the management acting as agent for the employing organization, to decide the terms and conditions—or rules—of employment. These rules include anything from pay and normal hours of work to health and safety rules. Establishing rules and procedures remains one of the main ways that management exercises responsibility for the control of the work process.

# 7.1.1 Importance of Procedures

- The basic sort of collective agreement establishes a negotiating procedure by way of standing committee and procedural rules, such as, what to do in the event of a failure to agree (for example, provision for negotiation). The procedural rules are utilized to arrive at substantive rules relating to pay and conditions, such as hours of work, holiday entitlement, shift work arrangements, overtime, bonuses and fringe benefits. Other procedures, including importantly, disciplinary procedures (to be followed in dealing with misconduct at work and infringement of work rules) and appeals or grievance procedures (that might, for example, be used to appeal against appraisal or grading decisions), are a normal part of a collective bargaining relationship between an employer and a trade union.
- In the event of a failure to agree, disputes procedures often have recourse to conciliation and arbitration by third parties.

# 7.2 The Framework of Collective Labour Law

- Apart from unilateral management decisions and collective bargaining, the other way that rules governing employment can be made is by the law. Labour law is that part of the law that deals with individuals and legal persons in their capacity as employees or employers, it is concerned with work and relationships arising from it. Labour law is concerned with both the collective and the individual aspects of the employment relationship. Collective labour law deals with collective industrial behaviour and institutions for regulation of employee relations, such as trade unions and collective bargaining.

# 7.2.1 Restraining the Unions

- The process of reining in the trade unions was begun with the 1980 Employment Act. The then Secretary of State for Employment believed that modest restraints on unions and the “right” to strike would do. Secondary action—that is action not directly against the employer but against a supplier or customer firm by “blacking” or boycotting its products or services—was outlawed except in limited circumstances. Pickets were permitted to picket only their own place of work. Trade unions were encouraged to use ballots of their members by entitlement to compensation from public funds for ballot costs, though this was withdrawn in later legislation.
- The process of narrowing trade union immunities against offence actions continued with the 1982 Employment Act which redefined the term “trade dispute” to restrict the scope of immunity. Instead of being merely “concerned with” matter such as terms of employment, a “trade dispute” now had to “relate wholly or mainly to” such matters; to be lawful a dispute must be limited to one between workers and their own employer.

- The blanket immunity from legal action previously enjoyed by the unions was repealed. There were limits on the damages that could be awarded, but several unions found themselves liable to punitive damages and costs.
- The 1984 Trade Union Act required trade unions to ballot their members before industrial action. If no ballot was held or if the ballot did not comply with stipulated rules then the immunity from legal action was removed, though it was up to the employers to initiate action.

# 7.2.2 The Legislation Consolidated

- In 1992 the Trade Union and Labour Relations (Consolidation) Act entirely replaced seven statutes and brought together many provisions of the Employment Acts of 1980, 1982, 1988 and 1990. However, it could hardly be said to simplify matters for those engaged in industrial relations since it contains 303 sections and three Schedules including 192 pages. The Act has been very well summarized by Aileen McColgan who commented that it:

- Does not change the law but it does serve to highlight the legislative changes. Trade unions are no longer immune from liability in tort for actions taken in the context of secondary and unofficial action and their freedom to indemnify members against fines imposed for offences or for contempt of court has been removed, as has their power to discipline members for refusing to take industrial action regardless of the fact that action has been called in compliance with the myriad balloting requirements imposed since 1979. Trade union members on the other hand have been granted a wealth of ammunition against unions. This ammunition includes the right to sue in respect of “unjustifiable” discipline or the unreasonable refusal of a trade union to grant them membership; the right to complain to the Certification Officer about their union’s failure to keep “so far as is reasonably practicable” up-to-date registers of membership or to comply properly with the legislative restrictions on the application of funds for political objects; and the right to apply for a court order to prevent their union inducing members to take or continue industrial action which has not been properly balloted upon.

# 7.2.3 The European Union and British Labour Law

- In one respect the British system has retained some of its “voluntary” character. Collective agreements between unions and employers are not legally binding. An alternative route might have been taken to a more closely regulated system, one that might have been perceived as more even-handed. This would have been to clearly set down and codify rights to unionize, strike and peacefully picket and to clearly define peace obligations for the duration of collective agreements, whilst defining unfair industrial relations practices. The British state does offer a system of conciliation and arbitration through the Advisory Conciliation and Arbitration Service (ACAS) but there is no scope for the European distinction between disputes of interest (about economic and substantive bargaining to renegotiate agreements) and disputes of right (about interpretation of existing agreements and contracts). To model the system further on European lines would also encompass co-determination rights that confer on workers a managerial role in the enterprise in the form of workers directors on a supervisory (second tier) board and participation through works councils. In 1994, after many false starts, a directive on the establishment of European Works Councils was finally adopted unanimously by the Labour and Social Affairs Council of the EU. Companies with more than 1,000 employees and at least 150 in two or more member states must set up European Works councils to inform and consult worker representatives on issues of transnational significance. Over 200 British registered companies with interests in the EU are affected.

# 7.3 Examples of the new Labour Laws in action

- As a result of the legislative changes, certain unions that, by accident or design, challenged the law, were repulsed / rejected or penalized. The first controversial case was when Mercury sought a ban against the National Communications Union. The union had refused to connect Mercury to the main British Telecom network as the first shot in its campaign against the privatization of BT. The High Court ruled that the dispute was a trade dispute and therefore lawful. However, the Court of Appeal ruled that the dispute was primarily aimed at preventing privatization. Sir John Donaldson, MR, thought that if the dispute was mainly about terms and conditions of employment, it was inconceivable that the union would not seek negotiations to protect its job security agreement. There was no evidence that the union had sought such negotiation. (Mercury Communications Ltd v Scott Garner).

# 7.4 The Framework of Individual Employment Law

- Basically, individual employment law regulates the individual employment relationship as it arises from the contract of employment. However, the employment contract has arguably been uninspiring for most practical purposes. Since it leaves so much unsaid, the courts have, over the years, reached verdicts by inferring terms implied in the contract but this has not necessarily improved matters. In the British tradition, the concept of subordination has been a key criterion for determining whether or not an employment relationship exists. This is particularly relevant for the computer and software industry and occupations. Although the normal situation remains one where permanent employees predominate, various forms of sub-contracted and freelance work are growing in importance. The contractual position is likely to be of most significance in relation to telework:

# 7.4.1 The Social Dimension of the European Union

- The European Community Charter of fundamental social rights of workers was approved by the eleven member states other than the UK in 1989. It was effectively a direction to the Commission to develop initiatives for the implementation of the rights listed in the Charter—using the legal instruments available under the Treaty of Rome. It is primarily intended to set a floor of minimum standards in order to contain “social dumping”, which is to say, unfair competition for investible funds by cutting wages and working conditions
- Since the EU regulation on business transfers (The Acquired Rights Directive) was transposed into UK law by the Transfer of Undertakings Protection of Employment regulations, it has been automatically unfair to dismiss an employee when a business changes hands or when a public corporation is privatized unless it can be shown that the dismissal is for economic, technical or organizational reasons. Hence it would not be lawful for a new owner of a firm to dismiss the existing manager simply to bring in someone else with whom the new owner is more familiar.

# 7.5 Equal Pay and Gender Discrimination

- It was under European Community law that the UK was obliged to amend equal pay legislation to equal pay for work of equal value and then to legislate on effective means of enforcement. Nevertheless, the gender wage gap for all occupations remains one of the widest in the European Union. How much of this is due to discrimination and resultant segregation of women into a limited range of low-paying occupations and industries is hotly debated by economists. In 1987, Miller estimated that if women's occupational distribution exactly replicated that of men, the wage gap would be reduced by only 5 per cent. Segregation has increased with the big rise in part-time and temporary working, most evident in low skill jobs taken up almost entirely by married women. "The much trumpeted rise in women's employment in Britain is found to have consisted entirely of the substitution of part-time for full time jobs in the post-World War Two period up to 1988". Research has indicated that employers do not in general discriminate directly against female part-time workers in respect of basic rates of pay. In fact, in manufacturing and retailing there are instances of female part-timers benefiting from the implementation of equal pay by increased hourly wages.

# 7.6 The Decline of the Collective Bargaining Model of Industrial Relations

- Reform of industrial relations had been an obsession of successive British governments for over thirty years before the 1980 Employment Act. It is arguable that the relentless anti-trade union legislation, deflationary economic policies and removal of public support for collective bargaining in the next thirteen years had a much greater impact than all the reform efforts. The main cause of the reconstitution of management labour practices during the 1980s were the deep recession and mass unemployment of 1979–81, the acceleration of technical change and increased emphasis on inward investment. Under the impact of intensified international competition, these factors led to a reassertion of managerial prerogatives.

# 7.6.1 The Flexible Firm

- There was assumed an apparently rather stylised theory or model of the “flexible firm”—with a core of flexibility deployed, multi-skilled permanent employees and a periphery of part-time, temporary and sub-contracted workers. It was criticized as not reflecting a more uneven reality in which core functions of certain businesses (for example, retailing) were themselves part time and risky. Nevertheless, flexibility, in the sense of adaptability and willingness to change work practices, became one of the most over-used words in the industrial relations lexicon

# 7.6.2 just-in-time Production

- An example was the just-in-time customer assembly production plan installed by ISTEL Limited for Rover's Cowley plant. Rover aimed to select orders for build in a given period some five days ahead. From this could be developed a detailed "Time Delivery Schedule" requirement on a supplier, to provide pallets of given components, at a given time, directly to the factory, as part of an agreed load. ISTEL also introduced a technique of labour allocation, TARDIS (Time and Recording Direct Input System). To use the system, each employee is issued with an identity badge bearing her photograph and signature. This badge is used to "clock in" at the specific terminals. At each transaction, the intelligent clock immediately passes the employee's details to a central computer. Information is then available for management to redeploy labour from one department to another. Any absentees can have reasons for the absence recorded and notified to a separate computerized personnel record system. At the end of the week, the computer analyses clockings against shift patterns and calculates hours to be paid. A press release claimed that ISTEL's TARDIS package "has been successful in giving Rover the required monitoring of its Rover 800 series workforce".

# 7.6.3 Precarious Types of Employment

- However, while it is true that, for middle class professionals familiar to self-employment, this new commercial world is an opportunity to carve out new careers, for those less well educated and remunerated it means powerlessness and reduced living standards.
- The growth in labour market flexibility has become another way of describing the erosion of trade union power and deregulation of employment conditions that has characterized the last 14 years, and, with it, a growing proportion of the population is finding that making a living is rough, tough and poorly-paid.

# 7.6.4 The Effect on Collective Bargaining

- According to the 1992 Workplace Industrial Relations Survey, it was quite clear that collective bargaining has declined. By 1990, key elements of the system of collective representation had faded and the reality of declining union presence was undeniable. The proportion of employees covered by collective bargaining agreements fell from over 70 per cent in 1984 to 54 per cent in 1990. The workplace survey provided hardly any evidence contrary to the view that unions and collective bargaining have ceased to be fundamental features of the British system of industrial relations. Another survey—of 98 companies—by Industrial Relations Services, reported that the goal of linking pay more closely to performance was the main reason for de-recognizing unions and switching to personal contracts. Over 25 per cent replied that they had abandoned collective bargaining in one or more areas of the company, with 15 citing performance pay as the main reason for its abandonment.

# 7.6.4 The Effect on Collective Bargaining

- The findings of the 1998 Workplace Employee Relations Survey confirmed the continuing decline of union and collective bargaining-based industrial relations. There are no unions at all in 47 per cent of workplaces, compared with 36 per cent in 1990. Union recognition is even more strongly associated with establishments employing large numbers than in 1990. The survey reported a very strong link between union membership and managerial attitudes towards unionism. Management hostility towards unionism is closely associated with low trade union membership: nearly two thirds of employees are union members in the 29 per cent of workplaces where management is in favour of union membership; in the 17 per cent where management is not in favour, union membership is very low indeed.
- The implication is that—on the reasonable assumption that at least some of the employees in these workplaces would be willing to join unions—the statutory recognition procedure introduced by the Labour government in 1999 might have considerable impact.