Evidence of the evils of blacklisting

Haldane members are familiar from previous issues of Socialist Lawyer with the scandal of the blacklist in the construction industry. In 2009 the Information Commissioner’s Office raided the offices of the Consulting Association, which held details on 3,213 construction workers and traded their personal details for profit. The database was used by over 40 construction companies and included information about construction workers’ personal relationships, trade union activity and employment history.

But how does the blacklist and spectre of unemployment affect a real family? What was at stake for these workers as a result of the blacklisting because of their union activity and how is it affecting their lives now? A very real example of the evils of the blacklisting operation can be evidenced in the present circumstances faced by Steve Acheson and his family.

Mr Acheson’s blacklist file included his name, address, date of birth, National Insurance number, mobile telephone number and the fact he was ‘probably EPIU’ – referring to his union membership. There were scores of entries from sources and clippings from the left-wing press. It monitored where he was working and included some places he had never been employed. Among the entries were: ‘Is behaving himself, now a foreman… Lads don’t pay as much attention since he’s not on the shop floor’ and ‘Stephen (sic) Acheson is known to be currently visiting agencies looking for employment in the Liverpool area’.

Mr Acheson had a successful career as an electrician, supervising other workers and working on major construction projects worldwide. His union activity started in 1996, after the death of a 21-year-old colleague at a site on which he was working. Like so many other blacklisted workers, suddenly the phone stopped ringing and he could not find work in the middle of the construction boom. He suspected that there was a blacklist and he was on it, but he had no proof.

Since 2000 Mr Acheson has been unable to secure any work. He was thrown out of work on several occasions on sites across England between 2000 and 2008. He is still continuing his protest at Fiddlers Ferry power station where he was sacked in December 2008 as a result of being on a blacklist as a ‘troublemaker’. For all that time, he has been standing outside the giant plant – one of the North West’s most well-known landmarks with its huge cooling towers looming over the outskirts of Warrington – accompanied by dozens of banners. Through his determination to expose this conspiracy, Mr Acheson has campaigned to ensure that the public is aware of what has occurred.

Mr Acheson would prefer to work and return to a normal life but he suspects that he will never step through the gates of a construction site again. However, he continues to protest to bear witness to the conspiracy on behalf of himself and his family, but also for all the workers and their families who have been caught up in the blacklisting conspiracy. His enthusiasm for trade union work has not diminished and he remains more involved in union work than ever before.

March

2: The Daily Mail reports that Theresa May, the Home Secretary, is to soon announce that the Conservatives will pledge to pull out of the ‘discredited’ European Convention on Human Rights at the next election. The announcement has yet to transpire but the Daily Mail lives in hope.

26: Bosco Ntaganda, a Congolese warlord, denies charges of murder, rape and pillaging and using child soldiers at his first appearance in front of the International Criminal Court. Ntaganda had been wanted until handing himself in to the US embassy in Rwanda the previous week.
A year of **Struck Out**

On the picket line

Some 12 months ago, I published a book, *Struck Out*, analysing the Employment Tribunal system that the Coalition Government had inherited, and which has since been subject to dramatic change. My argument was, in brief, that the supposed flaws on which the press focused and which in turn have justified the changes we all know about were in fact mythical. Rather than foisting employers with a proliferation of speculative claims, a majority of Tribunal claimants succeeded in proving that there had been unfair dismissal, unlawful deductions of wages, etc. Rather than paying huge sums, the values of Tribunal victories were by any standard trivial. Workers who succeeded routinely leave the Tribunals with awards amounting to a tiny fraction of their actual loss. These flaws, I suggested, could be traced back to the policy discussions within the Donovan Commission, from which the Tribunal system draws its root. Or, they illustrated a tension in the earliest years of the Tribunal, between its relatively benign, statutory context, and the deeper common law traditions to which the Tribunal’s jurisprudence was quickly assimilated.

The *Industrial Law Journal* termed my proposals to increase the prevalence of reinstatement orders ‘controversial’, while otherwise welcoming the book. The book had a positive review in *International Socialism, Labour Briefing, Tribune, and Socialist Review*. The *New Law Journal* was a little more sceptical, suggesting that my desire for the de-normalisation of the system was ‘deliberately provocative’: ‘times have changed and are not likely to change back’. On their analysis of the future direction of change, sadly, the NLJ reviewers were most certainly right.

The most analytical review appeared on a website Review 31, where I was criticised for blaming the system’s ills on certain default practices of the common law tradition. The reviewer, Simon Behrman, replied: ‘the relative flexibility of the common law allows pressure more easily to be brought to bear from outside the law to achieve change, a process that is often much harder in countries where altering the constitution or the civil code is a laborious and lengthy process. It is at least arguable, therefore, that the common law offers a far less juridified set-up than that of civil law.’ Behrman rejected any hint that the civil law tradition practised in Europe might be inherently more susceptible to workers’ rights: ‘While I hold no brief for the common law, the argument that rights enshrined in a constitution in themselves offer greater equality is a liberal fiction that in practice serves only to obscure the existing gross inequalities that exist in society.’ It certainly hadn’t been my intention to suggest that the legal system of say France or Germany or even constitutional South Africa were naturally more socialist than our precedent-based system.

Rather, by focussing on the common law, my purpose was to try to get at something which I find missing in most legal analysis. In other words, an explanation for how it is that the law feels like it does, how it is that judges can make bad decisions. I wanted to explain how it is for example that a claimant (a worker) who puts in their claim form late can expect the most robust refusal of their Claim, whereas a respondent (an employer) who engages with proceedings for the first time only months after they were required to will inevitably be allowed in to defend the case.

I was interested in other words in the subtle class privileges of the law, and I focussed on the common law as this is the actual point, I believed, rather than anything asymmetrical about the statutory provisions, where the unequal treatment of workers and employers came in.

Of course, since 2010, the Coalition Government had been busy disturbing the formal symmetry of employment law, requiring one side only (impecunious workers) to pay fees, introducing one-sided privilege of employer’s dismissal conversations, and so on. But these principles offend deep against the warp and weft of ordinary law. There is no need to persuade any reader of this magazine they are wrong.

The ‘big point’ I was making was that subtle class privilege is a feature of litigation. There is no reason why this argument should be relevant only to employment lawyers. It is just as pressing when you ask a judge to suspend an eviction, and the judge refuses to do so because the family has been wasting its income on a satellite television subscription; or when care proceedings begin with social services’ reports of the parents’ chaotic and untidy homes.

David Renton

Readers of *Socialist Lawyer* can buy *Struck Out* with a 30 per cent discount and free UK P&P by entering the code ‘PLUSTUCK’ at www.plutobooks.com/page/promo

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27: The Home Office’s latest attempt to deport the Jordanian cleric Abu Qatada fails. Three judges in the Court of Appeal unanimously dismissed Theresa May’s appeal despite her legal team including three QCs and remind the Home Secretary that ‘torture is universally abhorred as an evil’.

9: Margaret Thatcher dies. ‘This pensioner chased me up the road brandishing his stick singing “Ding dong! The witch is dead”’—Tony in Cambridge lends sympathy on the county council election trail the following week.

9: The Ministry of Justice publishes its consultation proposing further cuts to the legal aid budget – barely a week after a previous round of cuts came into force. The weeks since have seen protests and calls for the Government to abandon the plans. A petition against the proposals had reached 84,000 signatures at the time of writing.

10: In Bogotá, Colombia tens of thousands of people demonstrate in support of peace talks designed to bring an end to the long running conflict with the Farc. The crowds wore white and chanted that they wanted peace. The Government has reached some agreement over land reforms and will consider political participation of the Farc.