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Prime Minister

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Prime Minister

For Monday's meeting.

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THE RAILWAYS

Today's meetings between the Railways Board and their Unions broke up without progress. The position is that the NUR have given notice to strike at midnight on 27 June. This position could change. Forces are emerging in the NUR which would prefer ASLEF to take the lead in industrial dispute with the Board a week later on flexible rostering.

This means that confrontation, one way or the other, is inevitable. This will inconvenience millions of people both going to work and going for their holidays and will inflict large damage on the railway and its future. The Board cannot draw back without wholly sacrificing their credibility, and incurring the high cost of accepting a union veto on improvements in efficiency on the railways. Once the strike starts the Board's judgement is that it could well last up to three months. But we should not assume that the rail unions will not be under considerable pressure, from their members and from elsewhere, to reach a settlement and our best prospect is for the Board and us to stand very firm indeed.

The Official Committee on Rail Policy has further reviewed several aspects of the strike. I attach at:

Annex A a somewhat woolly paper by the Board on their objectives in the strike and possible exit routes at the end;

Annex B a paper by officials on the financial and legal implications for BRB of a rail strike;

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Annex C a note by the Board on the legal implications of imposing flexible rostering against the wishes of ASLEF members.

At Monday's meeting we will need to reach conclusions on several key points.

Are BR's Objectives in the Strike and Possible Exit Routes Acceptable?

The BR strategies still need firming up. Delivery on productivity undertakings is at the heart of the dispute, and the room for fudge is limited. So this is not like a strike simply over pay, where the end result is a settlement on a figure. For this strike the end result has to be that the unions are brought to the negotiating table and settle new agreements. That is obviously more difficult and takes more time. Once the strike starts, and it is clear which unions are on strike and on which issues, we shall need more clarity from the Board on their objectives than they have so far provided. Meanwhile my colleagues will note that, so far as they can, the Board envisage less stringent settlement terms for NUR than for ASLEF.

Would a Prolonged LT Strike Make it Harder to Win a BR Strike?

Traffic conditions in London would certainly be considerably worse if a continuous Underground strike coincided with one on BR. The public's willingness to accept them would also be a good deal less. We do not have the experience to tell how bad things would be. But we should not let this possibility deflect us. The risk of a prolonged strike on LT is low. I understand that Mr Livingstone and the GLC have now taken their familiar attitude to use ratepayers money to concede Union demands on LT. This cannot be welcome in itself, but much reduces any prospect of paralysing the capital.

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Do BR Really Have to Pay all those Employees in Unions not on Strike?

This is one of the issues in Annex B. All ASLEF and NUR members have, as part of their contract of employment, the guarantee dating from 1920, that they will be paid for five days a week even if there is not work for them to do. After further consideration with their lawyers the Board can see no legal way to avoid this obligation. They recognise that in some circumstances (e.g. if NUR strike but ASLEF do not) they will have no choice but to send home without pay ASLEF men who were not on strike, and then do their best to defend whatever legal proceedings might be brought against them. But unless the Attorney General can point to a way through, I think we must conclude that these are matters on which we must leave the decisions to the Board.

If there is a total and continuing strike, do we continue to pay the social (PSO) Grant to the Railway of some £15m. a week?

The answer is clearly "No". We shall make that clear to the Board. We could not possibly defend continuing to pay this large grant when no services are being provided.

Could we then let BR go bankrupt?

If we do not pay the PSO Grant, and NUR and ASLEF are on strike but the TSSA are not, then the Board's cash position will deteriorate at £17m a week, and they will have run out of cash within about 6 or 7 weeks. It could still come about that only ASLEF are on strike. The net cash drain would then be £30m. a week. BR will have to do everything they can by short term cash management, and realisations of assets to cope with this. But at the end we could not leave a nationalised industry unable to pay its creditors, e.g. its private sector suppliers or its electricity bills or its rates, without both compromising the position of the members of the Board and undermining the creditworthiness of other nationalised industries.

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How Then Do we Finance the Continuation of a Strike?

The right way is to allow increases in the Board's temporary borrowing from the banks, enough to pay essential bills only, and with strict review of their steps to minimise their cash needs. This would not be extra money from the taxpayer. They will borrow it, with our guarantee, and will have to pay it back. The borrowing would be short-term and there would be no commitment to change the EFL.

Do We Need to Take Further Action Beyond That Already in Hand?

Emergency car parks in London will be opened, as during the previous ASLEF strikes, and my Department and the Metropolitan Police will keep under review the need for further measures, for example suspension of parking meters. We will have a major publicity campaign to encourage car sharing and staggered hours and discourage unnecessary journeys. All of us should aim to ensure both before and during the strike that the issue is kept firmly in the public mind. This is the delivery of productivity before extra pay or extra investment.

We shall need regular reporting on the effect of the strike on travel conditions and London traffic, on the effects on industry, and on the electricity position.

An NUR strike will affect some Sealink services, particularly to the Isle of Wight and possibly to Northern Ireland and the Channel Islands. We shall also need regular reports on that.

But so far as the handling of the dispute goes, we should now leave the Board to get on with it.

I am sending copies of this to those who received my minute of 16 June as well as the Attorney General.

DA

DAVID HOWELL  
17 June 1982

## S E C R E T

## RAILWAY STRIKE: PAPER BY BRITISH RAILWAYS BOARD

The Objectives of the Railways Board

1. Last year, the Unions obtained a three per cent increase in return for undertakings on productivity. The Board's objective is therefore to secure that undertakings of that kind are performed as a precedent to any pay improvement in 1982, additionally that the pay settlement reflects the critical financial position of the industry.
2. As a minimum, this must mean:
  - (i) flexible rostering for drivers is completed within the limits<sup>set</sup> by the RSNT; this concerns only ASLE&F.
  - (ii) arrangements must be made for trial schemes for operation of freight trains without Guards and provided these are successful, general application to follow. This concerns the NUR who would lose the grade of Guard and ASLE&F who have yet to indicate the level of additional pay for the greater responsibility.
  - (iii) a new agreement must be made to extend the single manning of traction units; this concerns mainly the ASLE&F but NUR also involved.
  - (iv) driver only operation of certain passenger trains (eg the St Pancras-Bedford service). Since the undertakings of last year did not commit the Union to make a new agreement on this point, this issue could go to the RSNT under a strict timetable; this concerns mainly NUR but also ASLE&F.
  - (v) trainman concept. There must be agreement between NUR and ASLE&F, which will allow negotiation of a new agreement with the Board, subject to clear commitments and timetable for the results.
3. In accordance with last year's undertakings, the Board would be willing to share the savings from productivity by negotiating specific additions to pay for those whose responsibility were directly affected by these changes.
4. The pay offer made on 28 May will be withdrawn in the event of a strike but could be reintroduced if satisfactory agreements were reached quickly.
5. If however the strike drags on with major damage to the prospects of the industry, then in the Board's view the terms of a settlement would have to change. They might seek from the Unions commitment to negotiate a wider range of changes to reflect the new situation from among those already put to the Unions for discussion on part of long term objectives, and may require new contracts of employment modifying the guaranteed week/day agreement and possibly a new procedure agreement.

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6. Thus the Board's objective is to secure changes of a dimension related to the damage suffered during the strike, and to come out of the strike in a position where it can clearly be seen that undertakings on productivity have to be performed, that management must be able to introduce changes without unreasonable obstruction, and that the Unions cannot gain through strikes.

7. It is implicit that the settlement of a strike must be preceded by some extensive and detailed negotiation, and that the Executives of both the NUR and the ASLE&F must therefore accept the need to come to the negotiating table with a willingness to negotiate. This change in attitude must depend on the pressures on the Executives from the workforce and from outside.

17 June

FINANCIAL AND LEGAL IMPLICATIONS FOR THE BRITISH RAILWAYS BOARD  
OF RAILWAY STRIKES

REPORT BY THE OFFICIAL COMMITTEE ON RAILWAY POLICY

1. This is a report by a group of officials from the Departments of Transport and Employment, Treasury, No 10 Policy Unit and CPRS.
2. Officials have reviewed advice now received from the Railways Board on certain legal consequences for the British Railways Board which may arise from a railway strike by one or more than one of the railway unions; and have examined matters Ministers may need to decide on BR finances.
3. The table below shows, for all out strikes by all the rail unions, by NUR and ASLEF, and by ASLEF or NUR alone, the estimated effect on the Board's cash requirements, and estimates how long the Board could survive before either the Government would have to ensure they had additional funds or the Board might be unable to meet their liabilities. The figures assume that the normal grant (£15.5m per week) has been suspended (this is discussed in paragraph 4) and that the Board is therefore dependent on borrowing or realisations. The estimates do not take account of possible cash management actions by the Board, for example deferral of payments to the Inland Revenue, which would extend the period before the crisis was reached.

Effect of four forms of railways strike

	Net cash drain per week on BRB	Approximate period Board could survive without breach of borrowing limit
ALL UNIONS STRIKE	£4m	25 weeks
NUR AND ASLEF STRIKE: TSSA, AUEW, BTOG PAID BASIC RATE	£17m	6 weeks
ASLEF STRIKE: NUR, TSSA, AUEW, BTOG PAID	£30m	3 weeks
NUR STRIKE: ASLEF, TSSA, AUEW, BTOG PAID	£18m	5 weeks

4. The effect on the External Financial Limit (EFL) of the 4 forms of strike is considerably less than on the cash requirements, because withdrawal of the grant does not affect the EFL. The Board can replace the grant with borrowing. Thus the weekly effect in EFL terms of what now seems the more likely scenario of NUR and ASLEF on strike, is a worsenment of some £1m per week. If all unions strike, the EFL position is improved by some £11m per week. So far as the EFL position is concerned during a strike, the Board would have 6 months of the fiscal year remaining to take remedial action.

Payment of PSO grant

5. Implicit in these calculations is the view that the Government should not pay PSO grant to the Board if railway services are completely suspended; and that the grants by PTEs of some £1.5m per week would also be suspended. The grant by Central Government to the Board is paid under EEC Regulations, for the operation of the entire passenger system. The Department of Transport has taken the view that occasional industrial disputes, including the ASLEF 3 day a week strikes, do not affect the obligation to pay grant, since they represent merely temporary interruptions in the operation of the railway.

6. It would, however, be difficult to justify a payment of grant, some £15.5m weekly, if the entire system were closed for a number of weeks. Although the legal position is not clear, legal advice is that it is unlikely in these circumstances that the courts would rule that BRB were entitled to payment. The Secretary of State for Transport would however be legally justified in making payments provided they did not exceed the total amount of grant due to the Board for the year; though to protect his position he might need to announce to Parliament a decision to continue grant payments.

7. The Secretary of State might find it difficult to justify payment of such substantial sums of money without any corresponding benefit, and the best course would seem to be to suspend grant if the railway closes down for more than a few days. There are also presentational considerations of some importance. If it were decided to continue to pay grant, it might appear that the Government were firm in their resolve to support the Board in an extended strike. To withdraw grant, thus making it clear to the Board, the workforce, to Parliament and to the public at large that the money to meet the cost of the strike would have to be borrowed and therefore repaid, should demonstrate the



Government's determination to support the Board's position that they cannot afford to increase pay without gains in productivity.

Financial effects

8. The Board's temporary borrowing limit was raised to £150m in February to accommodate the financial effects of the ASLEF 3 day a week strikes. By the beginning of July the Board should have repaid £100m of the £150m which was borrowed, and this is the amount which will be available to them, without further action by the Government, to meet the costs of the strike.

9. The most financially damaging industrial action now in prospect, an all out strike by NUR alone, would close the railway but leave BRB with the cost of basic pay for staff not on strike. Current estimates suggest that this form of strike would cost BRB £18m a week, so that they could survive only 5 weeks without further funding.

10. If this circumstance were to arise and Ministers were then to decide that the Board should be funded, the simplest means of providing them with the cash necessary to pay their way would be to increase their temporary borrowing limit and if necessary provide a Government guarantee to the lenders. Since the Board would, faced with a strike of some weeks, be virtually insolvent, it could be argued that it would be improper for the Government to allow it to borrow any further; and if Ministers took that view then there would be no option but to declare the Board bankrupt and to make cash flow deficiency grants to them, as was done in 1972/74, and take legislative cover for these grants at the earliest opportunity. But to pay cash flow deficit grant would engage Ministerial responsibility much more directly in the conduct of the business. However, it is also open to Ministers to take the opposite view that the Board can be allowed to continue to borrow and to do this on the basis that the current Butler and Serpell reviews are expected to find ways in which the Board can improve their operations, return to viability and thus finance the loans they have drawn during this critical time. On this course the appropriate way to finance the Board during a strike is by permitting temporary borrowing.

11. A decision to permit additional temporary borrowing would not imply a corresponding, or indeed any, increase in the EFL. The Board would be expected to repay the additional money borrowed over a reasonable period once normal operation had resumed, drawing on their normal sources, mainly internally guaranteed cash (after grant) and asset sales.

12. But, before agreeing to make further temporary funds available, Ministers will wish to consider whether any increase in financing for the Board over short term can be avoided eg by asset sales, or by laying off staff. These questions are now considered.

Possible asset sales

13. The 1982/83 EFL assumed property sales in the year of at least £40m, and sales currently appear to be running at that rate. The Board are already being strongly pressed to improve on this. To bring in extra cash during a strike, sales would need to be already in the pipeline, and it seems unlikely that a great acceleration of receipts could in fact be achieved. What the Board could do in a strike, would be to put much more management effort into settling all the details of property which is to be sold over the next 2 years, so that more of this could be ready for sale in 1982/83.

14. The Board are now preparing documents to offer the entire hotel chain for sale by tender in the autumn. The hotels' staff are in NUR, and it seems that on present plans the NUR do not propose to call them out on strike. An effort to sell the hotels during the rail strike might well change that, with consequent damage to sale prospects.

15. The steps necessary to make Sealink a completely separate business in advance of sale - essentially the separation of its financial management from that of the Board, the settlement of title to certain parcels of land and the completion of arms length contracts between Sealink and the Board - will not be complete before January 1983, which is therefore the earliest date on which Sealink could be sold.

16. There may be possibilities of accelerating sales of scrap, though the market is weak. All these matters could be put under tight scrutiny as part of regulating temporary borrowing, but it seems very unlikely that the Board could succeed in remaining solvent if they had to rely solely on sale proceeds.

The Board's liability to pay employees not on strike

17. The 1919 guaranteed week agreement between the Board's predecessors and the unions, which does not apply to salaried staff, provides that each employee who is available for work throughout the week shall be entitled to guaranteed standard wages (exclusive of overtime) for eight hours a day and 40 hours a week.

18. In the event of an NUR strike, the legal position in relation to other staff not on strike is:-

a. members of ASLEF cannot be laid off by the Board, even if they have no work to do, without breaching the 1919 agreement. Any staff who were laid off would thus probably be able to recover guaranteed payments through the courts. With the prospect of lay-offs in view it would be open to the Board either:-

i. to consider redundancies immediately;

ii. to attempt a negotiation to suspend or temporarily modify the guaranteed working week with ASLEF, who would certainly refuse to co-operate. The Board's view is that taking this action could be seen in any later court cases resulting from subsequent lay-offs as constituting a reasonable approach, and thus strengthening their defence. The existing agreement allows for such an attempt;

b. administrative staff, who are members of TSSA, enjoy a contract of employment which effectively prevents the Board from laying them off. If this contract should be breached, TSSA staff could recover their normal pay through the courts.

19. It seems very improbable that the Board could avoid any of these obligations. It does not follow that they have to meet them forthwith. The unions might seek injunction requiring the Board to perform their agreements. The Board might defend this - nobody knows with what prospects of success - on the grounds that they had no money.

20. The question is therefore whether Ministers could take action as described above to put the Board in the position where they could not pay wages or their creditors.

Government guarantees

21. The policy of successive Governments, which was repeated by Ministers in the Department of Transport during consideration of the 1980 Transport Bill, in relation to pension obligations, is that the Government stands behind nationalised industries and will not allow them to default on payments to their creditors, who include their employees.

22. If the Government forced the Board into the position in which default was imminent, the Chairman and the members of the Board would

have to resign unless they had sufficient assurance from Government that they were relieved of their statutory duty and any associated personal liability. They might, of course, resign in any case.

23. The legal position following the resignation of the Board members or the lifting of their statutory duty is not clear, save that it would not be possible to bring in a receiver or to put the Board into liquidation. It appears to officials unlikely that the Government would be able to avoid putting the Board in a position to meet its obligations, or that the Board would be able to avoid the obligation to pay basic wages and salaries of employees not on strike. However, the Secretary of State for Transport is asking the Law Officers to consider the legal implications of withholding the PSO compensation and of refusing to consent to the Board borrowing to meet liabilities.

24. If it proved possible for Ministers to deprive the Board of funds by withholding grant and refusing to allow further borrowing to the extent that they would not be able to pay wages (except to essential staff) or creditors, and Ministers decided to follow this course, then there would be consequential effects on the credit worthiness of other nationalised industries.

25. If this course is not possible, then officials suggest that Ministers should:-

a. decide to suspend the grant in a total strike lasting more than a few days;

b. inform the Board that they will allow additional temporary borrowing, to the extent needed to meet unavoidable expenditure. This increase in temporary borrowing would carry no commitment to change the EFL.

26. As to handling and presentation the Board might represent that a decision to withhold grant would leave them no choice but to lay off men in contravention of contracts of employment. It would need to be made clear to the Board whether (a) Ministers were assuming that they would lay off men in that way or whether on the contrary (b) Ministers were ready to allow temporary borrowing to cover salaries and wages of staff not on strike assuming the Board decide not to lay them off.

## LEGAL IMPLICATIONS OF IMPOSING FLEXIBLE ROSTERS

paper by British Rail Board

1. The British Railways Board have considered the legal implication of imposing flexible rosters on drivers and report as follows.
2. The 1919 guaranteed week agreement provides for each wage-paid employee who is available for work throughout the week to be guaranteed standard wages for 8 hours a day, 40 hours a week - ie a guaranteed 5-day week. This agreement forms part of the employees' contract of employment which cannot be altered without the consent of the employee or his union. The overall agreement was originally negotiated in 1919 by the rail unions and the Railway Executive Committee acting on behalf of the Government.
3. The Board have been advised that imposition of flexible rostering contrary to the agreement "could be deemed to be unlawful and constitute a breach of the contract of employment"; and if such action were found to be unlawful then employees who were sent home without pay for refusing to work the new rosters would be able to sue for their wages. If employees were dismissed in these circumstances, the Board could be sued for compensation for unfair dismissal (where due notice to dismiss is given) or wrongful and unfair dismissal (where no notice is given). In both cases employees could also claim reinstatement; if the Board refused to comply with an order for reinstatement then the compensation awarded would be increased.
4. The Board have considered this advice. They judge that ASLEF would not wish to encourage or support members' attempts to seek redress through the courts, because to do so would raise the pressure for amending legislation which would not be in the trade union movement's wider interest. It is worth noting that ASLEF has consistently threatened strike action rather than legal action if the Board attempt to impose flexible rosters.
5. If ASLEF members did bring the cases to the court the Board believe that they would have substantial arguments for defending their action, in that they have acted reasonably in following the original ASLEF undertaking through all the procedures up to the McCarthy Tribunal; and flexible rosters can be demonstrated to be beneficial to the employees.