

Ref. A085/379

MR BUTLER

Coal Dispute: Sequestrator's Action in Dublin

The Prime Minister saw and seemed to be content with the minute which I sent to the Secretary of State for Energy after her meeting yesterday morning.

2. I was subsequently informed that Mr Justice Nicholls had ruled that at this stage the sequestrator should seek the view of the Irish Court only on the point of law involved. This would mean that only legal argument would take place in the Court and the sequestrator would not be called upon (at any rate at this stage) to give evidence.

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ROBERT ARMSTRONG

5 February 1985

SECRET AND PERSONAL

Prime Minister
A much more optimistic
report.

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PERB

S.2.



H. STEEL, CMG OBE
LEGAL SECRETARY

LAW OFFICERS' DEPARTMENT
ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

28A

5 February, 1985

Dear Robin,

NUM: SEQUESTRATORS

I am writing to report a little more fully what I have already briefly told you and Richard Hatfield about the follow-up to yesterday morning's discussions.

After Ministers had agreed on the line which is set out in the enclosure to Robert Armstrong's minute to the Secretary of State for Energy of yesterday's date, Gerald Hosker paid a personal call on Mr. Staple, the partner in Messrs. Clifford Turner who is advising the sequestrators. It so happened that the senior sequestrator himself, Mr. Larkins, was waiting to see Mr. Staple but Gerald Hosker managed to avoid meeting him. In his talk with Mr. Staple, Gerald Hosker discreetly explained the line which the Government would wish to take and to see the sequestrators take but he deliberately refrained from leaving any pieces of paper in Mr. Staple's hands. For his part Mr. Staple explained that steps had already been taken to acquaint Mr. Justice Nicholls with the sensitive facts in this case; he did not say exactly when or how this had been done or how much detail had been given. Mr. Justice Nicholls had intimated that he would not be willing to vary the direction which he had given that the sequestrators should pursue the Dublin proceedings only to the extent of contesting the issue whether or not the Sequestration Order was penal in character. In effect, therefore, the sequestrators regarded themselves as now precluded, and as likely to remain precluded, by that direction from acceding to any request from the Irish Court to give evidence of the kind that has been agitating us. Their intention is that neither Mr. Larkins nor any other witness of fact should go to Dublin. If and when the Irish Judge reverts to the issue of fact, sequestrators' counsel will first argue that it is irrelevant but, if the Judge persists, they will say that they have no witnesses available to deal with it and that the sequestrators are in any event

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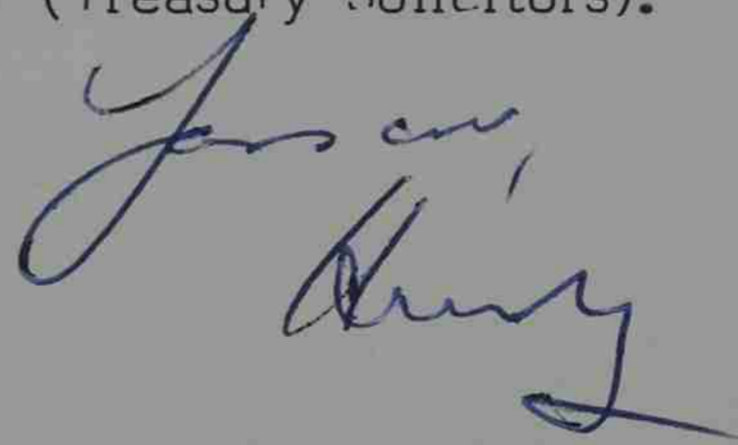
SECRET AND PERSONAL

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precluded by Mr. Justice Nicholls's direction from producing any such witnesses. If this still does not suffice to ride the Irish Judge off the point, they will ask for an adjournment to enable them to apply to Mr. Justice Nicholls to see if he will vary his direction. That application will then be made in the expectation that it will be refused. If that, too, does not discourage the Irish Judge from pursuing the point, the sequestrators will then be in a position to abandon the proceedings on the basis that the direction of the English court has made it impossible for them to comply with the requirement of the Irish court. This will no doubt lead to them being ordered to pay damages and costs to the NUM but it should reduce the risk of the sums involved being disallowed by Mr. Justice Nicholls as an eventual charge on NUM assets. If he did disallow them, the sequestrators would of course claim them from the Government under the indemnity. The withdrawal of the sequestrator's action, if that is what in the end happened, will not mean the end of proceedings to seize the NUM's funds in Dublin: the separate proceedings by the Receiver will then proceed under their own steam.

The hearing in Dublin resumes today. Messrs. Clifford Turner will no doubt keep Gerald Hosker informed.

I am copying this letter to Hugh Taylor (Home Office), Michael Reidy (Energy), Richard Hatfield (Cabinet Office) and Gerald Hosker (Treasury Solicitors).



H STEEL

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