Neutral Citation Number: [2020] EWHC 842 (QB)

Case No: QB-2019-003567

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/04/2020

Before :

MASTER COOK

- -

Between :

ROYAL MAIL GROUP LIMITED	**Claimant**
- and -	
COMMUNICATION WORKERS UNION	**Defendant**

- -
- -

Bruce Carr QC (instructed by **DAC Beachcroft LLP**) for the **Claimant**
Stuart Brittenden (instructed by **Penningtons Manches Cooper LLP**) for the **Defendant**

Hearing date: 30 March 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MASTER COOK

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be at 14:00 on Wednesday 7 April 2020.

MASTER COOK: :

1. On the 30 March 2020 I heard the Claimant's application for summary judgment by video link. At the conclusion of the hearing I indicated to the parties that I would provide a written judgment. This is my judgment on the Claimant's application.

A brief background to the application

2. The Defendant is an independent trade union which is recognised by the Claimant for collective bargaining purposes in respect of members of the Defendant employed in Operational Postal Grades (OPGs).

3. It is the Claimant's case that on 2 October 2019, members of the Defendant employed by the Claimant in OPGs based at the Bootle Delivery Office began a period of strike action which came to an end only as a result of an injunction application made by the Defendant on 8 October 2019. The basis of the injunction application was that no ballot for industrial action was conducted prior to the strike action. It is common ground between the parties that without such a ballot the Defendant would have no immunity from being sued in relation to the tort of inducement to breach of contract.

4. The parties are also signatories to a legally binding collective agreement which contains certain provisions that are to be complied with in the event of industrial relations problems arising. It is the Claimant's case that the Defendant did not comply with these procedures when the strike action took place at the Bootle Delivery Office.

5. As a consequence of the alleged unlawful strike action, the Claimant issued proceedings on 8 October 2019 asserting claims in tort and breach of contract for;

   i) inducement to breach of contract,

   ii) breach of contract

   iii) failure to follow the dispute resolution procedures set out in the collective agreement.

   The Claimant claims an injunction and damages arising as a consequence of the Defendant's breach of contract and/or inducement.

6. For the purpose of this summary judgment application, the Claimant seeks judgment on liability only in relation to its claims based on inducement to breach of contract in respect of the strike action at the Bootle Delivery Office. Whilst the Claimant has suffered substantial losses as a consequence of that action, it accepts that the assessment of such losses is not suitable for determination as part of the present application. Additionally, there are a number of other issues set out in the particulars of claim which are not within the scope of this application. These were identified by Mr Brittenden as follows;

i) The allegation of breach of contract (Agenda for Growth) in respect of the same alleged industrial action occurring between 2 and 9 October 2019 at Bootle as set out at paragraph 15 of the particulars of claim;

ii) The alleged coordinated "go-slow" at Bootle on 10 October 2019 as set out at paragraph 19 of the particulars of claim;

iii) Events at Warrington Mail Centre as set out at paragraphs 22 to 23 of the particulars of claim;

iv) Events at Crosby Delivery Office as set out at paragraph 24 of the particulars of claim.

The relevant law

Industrial action

7. The statutory framework in relation to industrial action is derived from Part V Trade Union & Labour Relations (Consolidation Act 1992) (TULRCA) and is not in dispute. I adopt the helpful summary of the relevant provisions set out by Mr Carr QC in his skeleton argument:

i) Section 219 provides an immunity in relation to actions in tort, including inducement to breach of contract, where the act which is said to constitute the tort was done in contemplation or furtherance of a trade dispute;

ii) Section 226 provides in the case of a trade union, that the immunity is subject to compliance with the requirement to conduct a ballot in accordance with the provisions of section 226B and sections 227 to 231;

iii) Section 20 provides a framework for determining whether an act can be said to have been done by a trade union. Section 20(2)(c) makes in clear that an act will be taken to have been authorised or endorsed by a trade union if it is done by any official of the union, whether employed by it or not;

iv) Section 21 provides that where an act is taken to have been done by a trade union as a consequence of it have been "done, authorised or endorsed" by an official of the union (within section 20(2)(c)), the union has the option of repudiating that act, (and thus relieving itself of liability), if it does so in writing to the official and the members who are taking part in industrial action. If it is going to repudiate the action of its official, it must do so "as soon as reasonably practicable" after the act has come to the attention of the executive, president or general secretary of the union.

Summary Judgment

8. The principles to be applied on an application for summary judgment are well known and are not in dispute. Mr Brittenden did however emphasise that the discretion to enter summary judgment against a defendant on a particular issue under CPR r24.2 (a)(ii) involved the court being satisfied both that the defendant *"has no real prospect of successfully defending the claim or issue"* and *"there is no other compelling reason why the case or issue should be disposed of at a trial"*. He pointed out that

the Court should refuse an application for summary judgment where the defendant establishes some prospect of success and that the prospect of success must be real as opposed to one which is false, fanciful or imaginary. As the commentary in the White Book at [24.2.3] explains *"a case may be held to have a "real prospect" of success even if it is improbable…"*

9. In this regard Mr Brittenden made reference to the judgement of Lord Woolf MR in *Swain v Hillman* [2001] 1 All ER 91. CA (Civ Div):

> "94. The words 'no real prospect of being successful or succeeding' do not need any amplification, they speak for themselves. The word 'real' distinguishes fanciful prospects of success or, as Mr Bidder QC submits, they direct the court to the need to see whether there is a 'realistic' as opposed to a 'fanciful' prospect of success."
>
> "95. Useful though the power is under Part 24, it is important that it is kept to its proper role. It is not meant to dispense with the need for a trial where there are issues which should be investigated at the trial. As Mr Bidder put it in his submissions, the proper disposal of an issue under Part 24 does not involve the judge conducting a mini trial, that is not the object of the provisions; it is to enable cases, where there is no real prospect of success either way, to be disposed of summarily."

10. Lastly, Mr Brittenden drew my attention to several passages from the case of *Three Rivers DC v Bank of England (No. 3)* [2003] 2 A.C. 1. Firstly in relation to the general test:

> "94. For the reasons which I have just given, I think that the question is whether the claim has no real prospect of succeeding at trial and that it has to be answered having regard to the overriding objective of dealing with the case justly. But the point which is of crucial importance lies in the answer to the further question that then needs to be asked, which is — what is to be the scope of that inquiry?
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> "95. I would approach that further question in this way. The method by which issues of fact are tried in our courts is well settled. After the normal processes of discovery and interrogatories have been completed, the parties are allowed to lead their evidence so that the trial judge can determine where the truth lies in the light of that evidence. To that rule there are some well-recognised exceptions. For example, it may be clear as a matter of law at the outset that even if a party were to succeed in proving all the facts that he offers to prove he will not be entitled to the remedy that he seeks. In that event a trial of the facts would be a waste of time and money, and it is proper that the action should be taken out of court as soon as possible. In other cases it may be possible to say with confidence before trial that the factual basis for the claim is

> fanciful because it is entirely without substance. It may be clear beyond question that the statement of facts is contradicted by all the documents or other material on which it is based. The simpler the case the easier it is likely to be take that view and resort to what is properly called summary judgment. But more complex cases are unlikely to be capable of being resolved in that way without conducting a mini-trial on the documents without discovery and without oral evidence. As Lord Woolf said in Swain v Hillman , at p 95, that is not the object of the rule. It is designed to deal with cases that are not fit for trial at all."

Secondly in relation to reliance upon contemporaneous documents and the drawing of inferences:

> "94… The issues of law are also complex, as the claim depends on an assessment of the state of mind of the Bank's officials at each of the various stages in the history. Much of what was passing through their minds can be discovered by examining the documents. But the court is normally reluctant to draw inferences of the kind that need to be drawn in this case without seeing and hearing the witnesses…"

11. Finally, Mr Brittenden emphasised that the criterion which the judge has to apply under Part 24 is not one of probability; it is absence of reality.

The Claimant's pleaded case

12. I take the following summary of the Claimant's case from the skeleton argument of Mr Carr QC:

    i) At around 7.50 am on 2 October 2019, a meeting took place between the Delivery Office Manager at Bootle Delivery Office (Ann-Marie Topping) and 2 of the Defendant's officials (Mr Stott and Mr Hasan). At that meeting, a dispute arose between Ms Topping and Mr Hasan following which Mr Stott left saying that he was seeking advice from others within the Defendant: Particulars of Claim paragraph 11;

    ii) About 40 minutes later, Mr Hasan stated that he was taking sick leave. Mr Stott told Ms Topping that OPGs were unhappy about the work practice of 'lapsing' – taking on other duties once they had finished their own delivery round: Particulars of Claim paragraph 12;

    iii) Thereafter, OPG's remained in the canteen at Bootle after the end of their morning break. When told by Ms Topping that they should either return to work or leave the premises, Mr Stott walked out of the office and the OPG's followed him out. From about 9.30 am on 2 October, there was a stoppage of work which only came to an end after the Claimant had obtained an injunction on 8 October: Particulars of Claim paragraphs 13 14 and 17 (b);

iv) On 2 October, the Claimant's Head of Industrial Relations, Dale Lang, wrote to the Defendant requesting that it use its best endeavours to secure a return to work. He then wrote again on 4 October. No substantive response was received to his correspondence: Particulars of Claim paragraphs 17 (d) and (f);

v) Through most of the entire period in which strike action was taking place at Bootle, the Defendant, principally through Mr Stott and Mr Hasan, communicated through a "WhatsApp" group. The messages provide the clearest evidence of the Defendant's authorisation or endorsement of the strike action: Particulars of Claim paragraphs 17 (e) (g), (j) and (i);

vi) Further evidence of the Defendant's support for the strike action is shown by the presence of pickets at the gates to the Bootle Delivery Office. Mr Stott was a frequent visitor to the picket line and the Defendant's banners and logo were prominently on display: Particulars of Claim paragraph 17 (k);

vii) In addition to the WhatsApp group and the pickets at the Delivery Office, the Defendant authorised and endorsed the strike action by posting messages of support on its Twitter account: Particulars of Claim paragraphs 17 (l), (m), (n) and (o) .

13. It is therefore the Claimant's case that officials of the Defendant have been responsible for and have encouraged the industrial action which took place at the Bootle Delivery Office between 2-9 October 2019.

The Defendant's pleaded case

14. I take the following summary of the Defendant's defence from the skeleton argument of Mr Brittenden:

i) No officer or official induced members to withhold their labour or act in breach of their contracts of employment. Accordingly, the Defendant cannot be vicariously liable under section 20 of the 1992 Act: Defence paragraphs 8, 18, 19(a)-(b);

ii) Before Mr Yarwood arrived to resolve the situation, Ms Topping issued an ultimatum to the OPGs, informing them that they had two options, to either *"get back to work or get out"* or words to similar effect. Subsequently, Ms Topping then proceeded to instruct the OPGs to get out and leave the DO. This was a clear and unambiguous instruction. Ms Topping did not allow them to wait for Mr Yarwood to resolve the situation. Accordingly, Ms Topping's actions prevented or otherwise impeded the Defendant's ability to utilise the de-escalation provisions: Defence paragraph 17;

iii) In the premises, it is denied that there was a concerted withdrawal of labour, or that this was induced by the Defendant, or any of its officials as alleged at paragraph 14 P/C. Ms Topping instructed the workforce to leave and they heeded that instruction. By the time that Mr Yarwood arrived at the DO the workers had already left the premises: Defence paragraph 18;

iv) It is denied that this was a "concerted stoppage of work" initiated or otherwise induced by the Defendant or its officers as averred at paragraphs 14 and 17 P/C: Defence paragraph 19(a);

v) Ms Topping acted precipitately in instructing the workers to leave site before Mr Yarwood arrived to resolve the situation. The operative reason why the workers left site was not because any official of the Defendant issued a "call" for strike action as averred: Defence paragraph 19(b);

vi) The instruction issued by Ms Topping was not rescinded at any time prior to 9 October 2019: Defence paragraph 19(d);

vii) Accordingly, the Claimant acted in breach of the contractually binding de-escalation provisions, and that this was the operative reason for any loss alleged to have been sustained: Defence paragraphs 19(e) to (f);

viii) In relation to the Claimant's reliance upon any social media postings, this does not alter what factually happened on 2 October 2019. Further, *"... any mis-description or misunderstanding of the situation by others who were not present does not alter the factual analysis of what happened."*: Defence paragraph 21(b).

The evidence

For the Claimant

15. The Claimant relies upon the witness statements of Corey Kitchen, who is the Service Delivery Manager for Cheshire and Merseyside, and Wendy Sommerville, the Legal Director Employment of the Claimant. Taken together these statements support the Claimant's pleaded case.

16. Mr Carr QC places heavy reliance on the evidence given by Mr Kitchen concerning various social media postings concerning events at the Bootle Delivery Office which were brought to his attention. At paragraph 23 of his witness statement Mr Kitchen states:

> "23. I have been provided with What's App messages for a group described as "Bootle & Seaforth DO" ("the Delivery Office"). I only received them yesterday. This is clearly a What's App group of PGGs working at the Delivery Office. The messages show a completely different picture to that presented by the CWU. Given the focus of this application is to show this is official CWU strike action I have concentrated on messages which are sent by CWU representatives to describe the CWU's ongoing support, including at national level. These messages appear at pages 59 to 82 of CK1."

17. In his skeleton argument Mr Carr QC set out the following summary of the relevant WhatsApp messages in order to demonstrate that Mr Stott was inducing members of the Defendant to take part in and continue with unballoted action:

"i. He tells the members, within minutes of the walkout on 2 October that the Claimant was "stopping all overtime" and that a meeting with all reps would be called as soon as possible. He also instructs the members not to post anything on social media;

ii. The next day, 3 October, he tells his members that there will be a gate meeting "in support of our brother's and sister's in Bootle" (sic). A few seconds later he tells them to "Keep fighting, we've got your back" – the "we" can sensibly only be a reference to the Defendant and was sending a message to the strikers that the Defendant was there to protect them;

iii. Later on that day he writes "Stay strong Bootle, we had years of this and it took Crosby 8 days on the gate…but it's like a different office now and we'll worth the fight" (sic). Thus, he provides the clearest encouragement for the strike to continue and does so by reference to a previous 8-day strike at Crosby Delivery Office;

iv. That same evening, he confirms his understanding the issue has "gone to London" before telling the members that it is "back on the gate in the morning" – in other words exhorting those concerned to re-join the picket line;

v. On 4 October, Mr Stott informs the members that "Warrington is out" and that "this may become a national issue now". Later that day, he tells them to "Keep calm everyone we are in a strong position…Just turn up tomo morning the people who have said they will I'll be there with you."

vi. Again, on 4 October, he instructs the members in the following terms – "Anyone who is planning on going tomo. Do so when you can and want to except macca and maguire 6:30 start.

vii. On 5 October, he reports back as follows: "We've called it a day everyone still no deal agreed. See ya on the picket line Monday 7 am unless you hear any different from me.

viii. On 7 October, Mr Stott writes:

"Just to keep you up to date Bootle are still out we are hoping for a resolution today if not I would like you to ask all your members for a collection for our members in Bootle, send all donations into the Branch for us to collate and send on to individuals *also can we have a big push on gate meetings the more we have this week the better it may make RM [understand] that we are going out in support of Bootle.*"

18. Mr Carr QC also points out that the Defendant has not served evidence from any person who heard and acted upon the alleged instruction given by Ms Topping to the effect that the OPGs should get out and leave the Delivery Office. Nor has the Defendant served any evidence that anybody sought a rescission of Ms Toppings alleged instruction.

For the Defendant

19. The Defendant relies upon the witness statements of Mr Webb, the North West Regional Secretary of the Defendant, Mr Hassan, an OPG and Sub Representative for the Bootle and Seaforth Delivery Office, Mr Stott the OPG Unit Representative for the Bootle and Seaforth Delivery Office and Mr Yarwood the Defendant's Liverpool and Wirral Area Representative. Taken together these statements support the Defendant's pleaded case.

20. Mr Stott's evidence concerning the WhatsApp group messages is set out at paragraphs 18 to 23 of his witness statement:

> "18. Following the decision to leave the premises, the OPGs began to communicate about the day's events on a WhatsApp group called Bootle and Seaforth DO. I believe that this is the WhatsApp group referred to at paragraphs 17(g) to 17(j) of the PoC. It is worth clarifying at this stage that the WhatsApp group was not created (by me or any other member) in relation to the walk out, as stated in the PoC. Rather, it had been established by the former Unit Representative, Ian Corrin, about two years ago as a way for employees at the Bootle DO to exchange ideas and information. I was then provided with administrator functions when I took over the role of Unit Representative. This allowed me to add and remove group members.
>
> 19. From the period of 2 October 2019 until our return to work on 9 October 2019, the WhatsApp group had approximately 55 members, all of which were employees at the Bootle DO. These members continued to use the group as a forum by which they could exchange their thoughts and keep others updated. I primarily used the WhatsApp group to share messages from support from other offices and keep the members updated with the information that I had received from other groups. It was not used to rally the troops or encourage the OPGs not to work in any way.
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> 20. As a lot of the conversations were happening at more senior levels of the CWU, we weren't receiving many official updates. This unfortunately meant that the information shared on the WhatsApp group was often based on rumours or speculation. For example, there were many rumours being passed about regarding potential walk outs at other offices. Much of the time, I was receiving 'information' from members that I wasn't aware of, even as a Unit Representative. I therefore don't

accept Royal Mail's allegation, at paragraph 17(i) of the PoC, that I was attempting to induce breach of contract by the members by way of the WhatsApp group.

21. In relation to the message sent by one individual on 2 October that the CWU was backing the OPGs "[a]ll the way, it's gone to London", referred to at paragraph 17(j)(ii) of the PoC, I am not sure what is being referred to here. My understanding is that, at the time that message was sent, a lot of high-level conversations were taking place within the CWU as to how to deal with the issue. We had certainly not received any indication of support or endorsement from the CWU at a national level and I had not informed any member that this was the case. My guess is therefore that the particular individual had assumed that if the matter wasn't resolved by Mr Yarwood, it would be escalated to the next levels (being the divisional level and then Headquarters) and, in the face of uncertainty, they were trying to establish the impression that we were strong and unified as CWU members.

22. The request that I posted in the WhatsApp group, on 2 October, for "Nobody under any circumstances please post anything on social media about today thanks" was also made in light of the uncertainty we faced. I was concerned that we weren't involved in the conversations taking place to resolve the issue and that matters would be made worse by the OPGs posting about those conversations when they weren't fully informed. The intention of the message was not to prevent it from becoming "public knowledge that [the CWU] had been in any way responsible for the strike action", as the Defendant has alleged at paragraph 17(j) of the PoC. This was because, in my view, no responsibility could be attributed to the CWU. If anything, I viewed Ms Topping as the one responsible for the events of that day by giving the OPGs no choice but to leave prior to Mr Yarwood's arrival.

Over the course of the next few days, many of the messages in the WhatsApp group focussed upon giving support to Mr Hassan. We also exchanged the times that we would be attending the picket line. I attended the picket line on a number of occasions, however, this was not at the instruction of the CWU. I simply felt as though I should attend in order to get an appropriate resolution for my colleague, Mr Hassan."

21. Mr Stott's evidence in relation to the suggestion that he was responsible for instigating the walk out is set out at paragraphs 16, 27 and 28 of his witness statement:

" 16. I decided to follow my colleagues and leave the building. I did not leave the premises and take the OPGs with me in a concerted stoppage of work, as has been asserted by Royal

> Mail at paragraphs 14 and 17(c) of the PoC. Rather, the decision to leave had already been made by the time I returned to the canteen. I am confused as to why Royal Mail has accused me of leading a walkout. If I had been in the canteen when Ms Topping had given the ultimatum to return to work or leave, I would like to think that I would have attempted to defuse the situation and told the OPGs to hold fire until Mr Yarwood arrived. This is because the role of a Unit Representative is to act as a mediator in times of conflict. Further, I had never been involved in an incident like this before, and was therefore very much minded to delay matters until Mr Yarwood had a chance to seek resolution. I can only conclude that Royal Mail has identified me as an instigator as a way to tie the decision to stop work back to the CWU.
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> 27. Ultimately, my view is that the decision to leave the Bootle DO on 2 October 2019 was made by OPGs as a knee-jerk reaction to Ms Topping's mistreatment of Mr Hassan. In my role as Unit Representative, I had tried to defuse the situation by delaying any decision making until Mr Yarwood's arrival. However, this was taken out of my hands when Ms Topping instructed the OPGs that they were required to either return to work or leave.
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> 28. I deny being responsible for encouraging the OPGs to remain in the canteen rather than return back to work. I was not even present when they decided not to return. There is clearly a dispute around what actually happened at the relevant moment."

Submissions and Discussion

22. Mr Carr QC's position was unambiguous, he submitted that the defence to the claim of inducement to breach of contract was fanciful. He put forward seven propositions which the court would have to accept in order to conclude that the defence stood a real chance of success;

    i) There was a spontaneous walk out of OPG's decided without any union intervention – even though it has adduced no direct evidence from anyone who was said to be a party to that decision;

    ii) There was then a spontaneous 7-day stoppage of work, again nothing to do with the Defendant, but as a result of decisions made solely by OPGs and that all of this resulted from Ms Topping giving a lawful instruction to return to work;

    iii) None of the secret WhatsApp messages evidence any inducement by the Defendant;

iv) The fact that the Defendant's banners were present on the picket line is (presumably, as the evidence does not address this) not evidence of any support by the Defendant for the spontaneous actions of the OPGs;

v) Similarly, the presence of officials of the Defendant in the form of Mr Stott, Mr Webb and Mr Yarwood, was not for the purpose of encouraging OPGs to take strike action but was in order to help find a solution;

vi) Mr Stott's attendance was on the picket line was in a personal capacity only."

23. Mr Carr QC accepted that while there were many factual issues to be resolved relating to the strike at the Bootle Delivery Office the Defendant had, in view of the above, no real prospect of establishing its versions of events. In a slightly mixed metaphor, he urged me not to be distracted by the "fleet of red herrings" deployed by the Defendant and submitted that this was obviously a classic case of unballoted strike action done at the instigation and with support of local officials.

24. In the circumstances Mr Carr QC submitted Mr Stott's explanation that the walk out was caused by Ms Topping's instruction and that he did nothing to encourage it is clearly contradicted by the contemporaneous social media material and therefore so fanciful and implausible that there can be no realistic prospect of successfully defending this aspect of the claim.

25. Mr Brittenden submitted that it was manifestly inappropriate to determine the issue summarily where there were fundamental disputes of fact and that if the court were to follow the approach urged by Mr Carr QC it would inevitably be conducting the sort of mini trial that CPR r 24 was not intended or designed for.

26. In the alternative Mr Brittenden submitted there were compelling reasons not to enter summary judgment on the basis that the trial judge will have to hear the same evidence and decide precisely the same factual issues in relation those parts of the claim which were not covered by the summary judgment application.

27. The issue I am required to resolve on this application in relation to the claim for inducement to breach of contract clearly involves the resolution of disputed issues of fact.

28. The Claimant asks me to find as a fact that Mr Stott induced members of the Defendant to walk out. I must give proper weight to the fact that Mr Stott has made a witness statement supported by a statement of truth in which he denies being responsible for encouraging the OPGs to remain in the canteen rather than return to work, see paragraphs 10 and 28.

29. The Claimant asks me to discount the evidence of Mr Stott on the basis of inferences to be drawn from the WhatsApp messages. In this regard I accept the submission of Mr Brittenden that there is no clear evidence of what was alleged said or done to amount to the inducement necessary to establish the tort. I also take into account that no evidence has been tendered by Ms Topping.

30. The Claimant is on much firmer ground when one comes to consider the allegation that Mr Stott and others encouraged the continuation of the walk out. The WhatsApp

messages when read in isolation paint a damning picture. I take into account the fact that Mr Hassan, Mr Yarwood and Mr Webb have all made statements denying that they encouraged the walk out and promoting the case that the cause of the dispute was the instruction given by Ms Topping in the canteen on 2 October. On the face of it those assertions are flatly contradicted by the WhatsApp messages. For the purpose of this application I am prepared to accept that the Defendant's case on this issue can be properly described as "improbable".

31. However, the fact that I find the Defendant's case on this issue to be improbable does not automatically lead to the conclusion that summary judgment should be entered for the Claimant. As Mr Brittenden has pointed out such a case may still be held to have a "real prospect of success".

32. I am highly conscious that this claim involves an industrial dispute. There are varying competing factors raised in the evidence such as the ongoing issues Mr Hassan was having with Ms Topping and referred to in his witness statement at paragraph 2 or the Claimant's belief that this action was related to a similar incident at the Crosby Delivery Office and referred to in the evidence of Mr Kitchen. I have concluded, not without some hesitation that that the inferences I am being asked to make by the Claimant should be explored at a full trial when the court will have the benefit of seeing the witnesses and hearing them cross-examined. The current case in my judgment is a very different type of case to those which raise issues such as the interpretation of contractual terms such as *ED&F Man Liquid Products Ltd v Patel* [2003] EWCA Civ 472. I find the guidance given by Lord Hope in *Three Rivers* set at paragraph 10 above to have particular resonance here.

33. This also leads into Mr Brittenden's alternative submission. In my judgment it will be necessary for this claim to go to trial on the remaining issues set out at paragraph 6 above. Despite Mr Carr QC's best efforts to persuade me otherwise this application cannot be dispositive of the claim even if it were to succeed. In particular I accept the submission that the trial judge would need to consider the evidence relating to the background of the dispute to consider whether the Defendant's actions caused loss and if so what loss.

34. In the circumstances I am persuaded that it is highly doubtful whether entering judgment on the "inducement claim" would save time at the final hearing or reduce the number of witness to be called as such I am not persuaded that there is no other compelling reason why the claim should not proceed to trial.

35. In the circumstances the application for summary judgment will be refused.