



**Case study:
The agreement to establish an
European Works Council for
Dubai Ports World**



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BACKGROUND

The Arabian company *Dubai Ports World (DP World or DPW)* was formally established in 2005 as a branch of *Dubai World*, a holding company owned by the Dubai Government. DP World emerged from the corporate integration between Dubai Ports Authority (DPA) - which was formed in 1991 - and DPI Terminals.

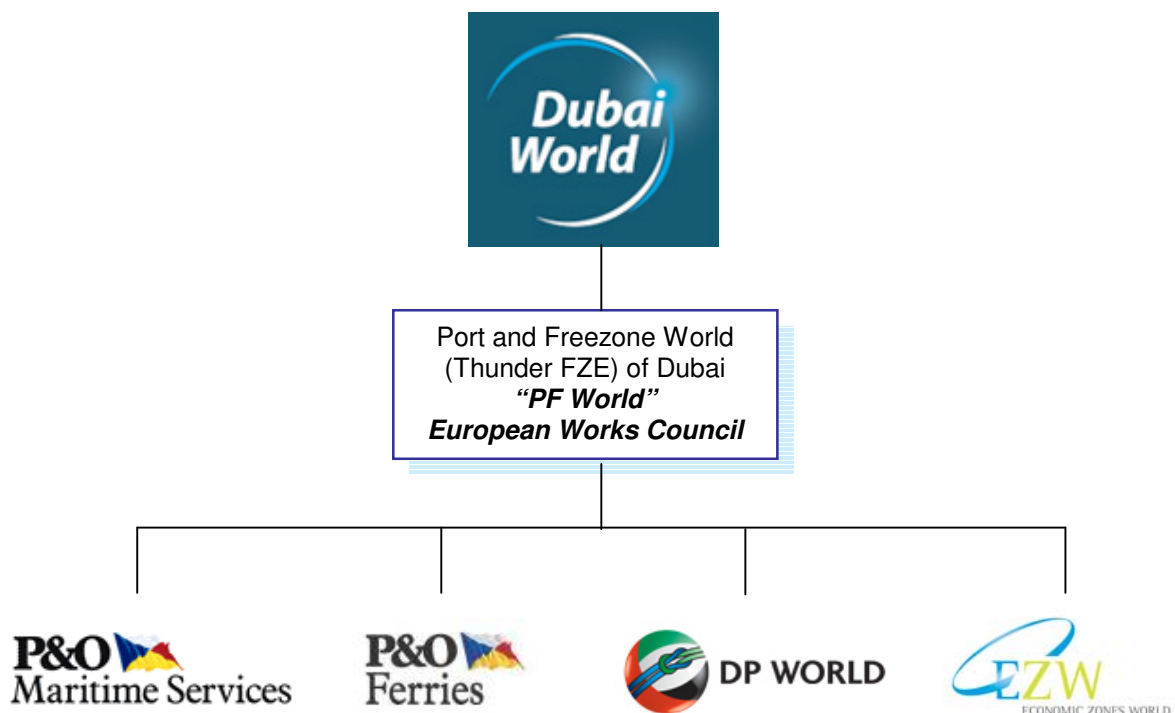
DPW today is the biggest port and terminal operator of the UAE and one of the largest in the world. At the end of 2007 the IPO of DPW took place.

This study and the assessment of aspects regarding the EWC agreement and practice are based on information in written form (article, internet, two EWC agreements) and on two interviews with UK Trade Union representatives.

Take Over of P&O

The traditional Peninsular & Oriental Steam Navigation Co. Ltd. (P&O) was a British ocean carrier based in London. P&O is one of the most famous names in British business and was once the largest shipping operator in the world. From October 2000 on all business areas were outsourced or sold with the exception of the ferry service to UK (P&O Ferries Ltd.) and to Ireland (P&O Irish Sea). In 2005 only P&O Ferries and the activities as port operator (P&O Ports) were left. In 2006 P&O was acquired by DPW. This takeover signified the end of 168 years of independence for the P&O ports group.

Group structure and scope of the new EWC agreement



Some Data on DPW

In 2006 DPW operated at 42 terminals in 27 countries with 36,8 million TEU (Zamponi 2007). Compared to this, EUROGATE, the number one in Europe, handled 12,5 million TEU in the same year.

Currently 6500 employees are working in European countries:

Country	Number of Employees
UK	4500
Netherlands	600
Romania	450
Belgium	400
France	400
Germany	100
Ireland	100
Italy	35
Spain	30



THE EUROPEAN WORKS COUNCIL AT DPW

The EWC practice in the European port sector is limited to the London based European branch of DPW. The former agreement at P&O was used as a starting point for the negotiations. There was no EWC within DPW, but at P&O from the year 2000 on. After the take over it was necessary to establish an EWC at DPW. The agreement of DPW was signed in January 2007 by the central management on one side and by seven out of twelve members from the EWC on the other side. The agreement should have been signed by all twelve members of the EWC, but this proved impossible due to temporal and personal reasons in connexion with election results. One member didn't agree because the EWC was not endowed with a strict budget and because a representative of the management was designated as chairman of the Council.

According to statements of EWC members the management didn't impede the establishing of the Council and there were no serious problems during the negotiations. The British management combined the new Dubai Style with the former London Style. Consultations in the run-up were an important contribution to the negotiations. During the first meeting of the Council the members were provided with a training.

There was no debate about involving all employee-groups before and during the negotiations, e.g. of the Dockers. On the part of the employees, the UK branch with its large workforce in need of representation played the most important role.



THE CONTENT OF THE AGREEMENT

General Information

Council Membership

According to the agreement each Member State in which DPW has employees appoints one member to the Council plus one for every additional 1000 employees in that state. The following countries are represented by 12 EWC members:

Country	Members	Function	Select Committee
UK	4	Trade Union Reps: GMB, Nautilus, RMT, T&G,	2 (secretary of the EWC and spokesperson)
Belgium	1		
France	1		1 (P&O Ferries)
Germany	1		1 (P&O Properties)
Italy	1		
Ireland	1		
Netherlands	1		
Rumania	1	port sector	
Spain	1		

* GMB is a general trade union with members fairly evenly spread between the public and private sectors. GMB is amongst others responsible for the shipbuilders. Nautilus was formed recently out of a UK and Dutch union who represented officers of merchant ships. RMT - the National Union of Rail, Maritime and Transport Workers – is Britain's fastest growing trade union, representing more than 75,000 members in almost every sector of the transport industry, from mainline and underground rail to shipping, buses and road-freight. T&G in the meantime has merged with Amicus to form Unite. Unite is now the UK's largest union with almost 2 million members.

The EWC is an employees' and workers' representative body. All employees with at least one year of continuous service within the Company shall be eligible. The only exception are the Deep sea ("Long Haul") merchant navy crew members.

Appointing representatives from the Trade Unions to the EWC does not go back on legal regulations. The aim was to represent different branches or industries on the one hand, e.g. the areas shore (ferries), sea (ship ratings) and office. On the other hand – and this was more important - the Trade Unions should be represented; all four large UK Trade Unions, to be precise. This was done to avoid conflicts.

In the opinion of a UK Trade Union representative "all things considered the composition of the EWC represents a good balance".

Chairmanship

Chairman of the Council is the Senior Vice President Human Resources or any Executive nominated by him. The Council Administrator is a senior manager appointed by the Chairman. As mentioned above one critical issue during the negotiations was the Chairmanship of the EWC. From the viewpoint of the British Trade Unionists it wouldn't necessarily constitute a problem per se if the chairman is part of the management as the success or failure of the EWC activities would also depend on the style of the management.

Information and Consultation (Scope)

The Scope of the DPW agreement complies with the legislation. The Council is not regarded as a group of persons who may negotiate with the management. According to the agreement it is “purely an information and consultation body”. The EWC shall be informed “in good time” about:

- the structure, the economic and financial situation;
- the probable development of the business, of production and sales;
- the situation and probable trend of employment, investments, and substantial changes concerning organisation, the introduction of new working methods or production processes;
- transfers of production, mergers, cutbacks or closures of undertakings;
- establishments or important parts thereof;
- collective redundancies.

The scope includes consideration of education and training, health and safety, the environment, equal opportunities, and changes in EU employment law.

Consultation, as the EWC views it, means to be informed “in advance”. In practice the information is often given to late.

Meetings and Communications

The EWC will meet twice a year. The Steering Committee will have two more meetings a year. Additional meetings are possible. The Council administrator will be responsible for operational and administrative aspects of the Council in consultation with the Steering Committee. In addition to the meetings of the complete Council the employee members may hold a preparatory meeting which can take up to one day and a post-Council meeting of no more than a half-day. During the Council meetings the employee members shall have the opportunity to discuss among themselves about information given during plenary sessions.

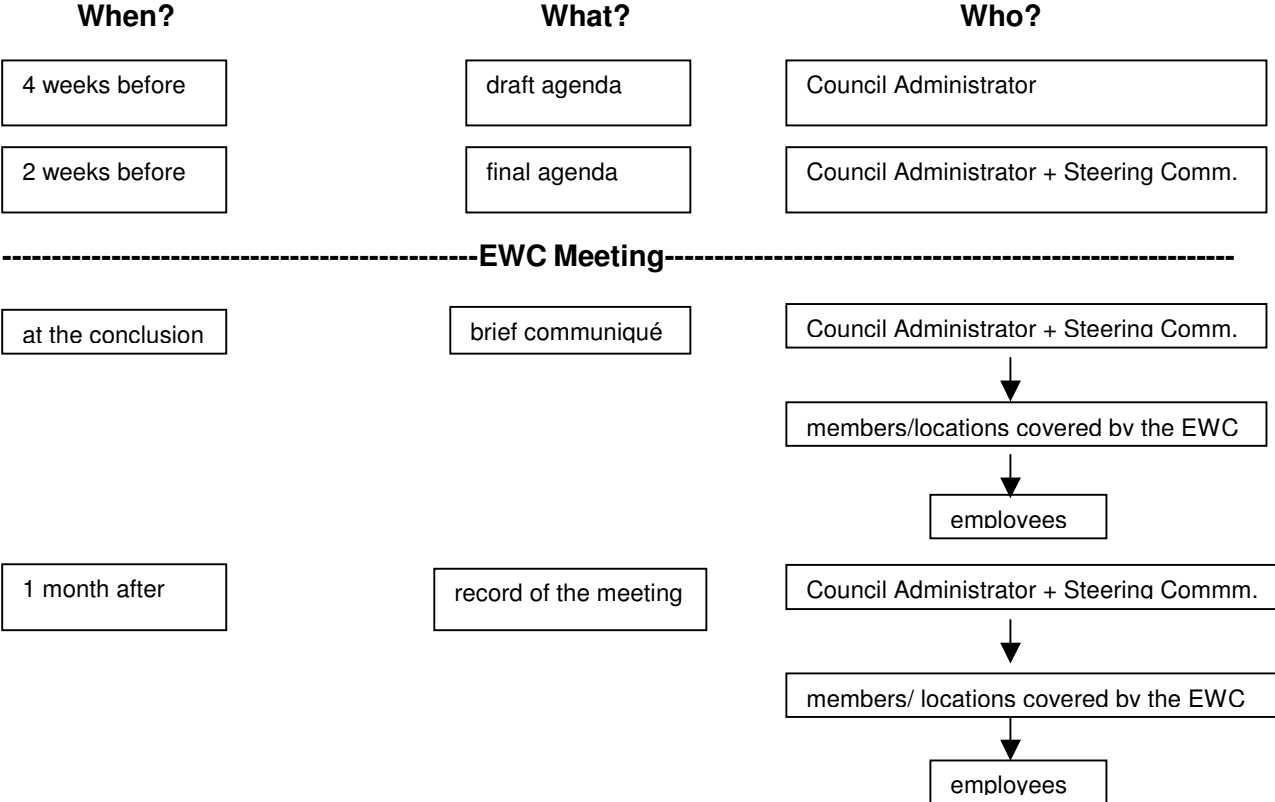
Special meetings are possible and may be held relating to significant transnational issues. Such a meeting can be requested by the Chairman or by a simple majority of employee members. With the consent of the Steering Committee the employee members attending the meeting may be limited to the relevant countries.

The communication is organised as follows: Agenda items shall be sent to the Council Administrator who will transfer a draft agenda no later than four weeks before each meeting. No later than two weeks before each meeting the final agenda, drawn up by the Council Administrator in consultation with the Steering Committee, will be circulated.

At the conclusion of each meeting a brief communiqué shall be prepared by the Council Administrator in consultation with the Steering Committee. This paper shall be distributed at the locations covered by the Council. The local management is responsible for forwarding it to the local employees.

Within one month after each meeting the Council Administrator shall produce a record of the meeting in English in consultation with the Steering Committee. This record shall be transmitted to the members of the EWC and to local operating company management at the locations covered by the Council. The local management is responsible for forwarding these results and records to the local employees.

The following simplified draft illustrates the way of communication:



Language

The meetings are to be held in English. Translation and interpretation are to be provided in the languages of the EU/EEA countries represented on the Council – also in writing for the results or records of the EWC meetings.

Experts

The members of the EWC and/or the Steering Committee may refer to experts by their choice to help them carry out their tasks. If an expert is needed, the management has to refund the costs of no more than one expert per meeting of the Council and/or the Steering Committee. The costs must be approved in advance by the Council Administrator.

Facilities

The employee members get time off and paid travelling time to attend meetings and to achieve their assignments in the EWC. While in the Council, employee members will have the same employment protection rights as any representatives of employees under the laws of the country of their employment.

Training

Apart from the promise of appropriate training regarding the necessary knowledge and skills to carry out the Council responsibilities the agreement does not comprise details about training. The requested training must be approved in advance by the Council Administrator.

Costs

According to the agreement “all reasonable costs and expenses in respect of Council meetings and matters directly related to Council business will be paid by the Company in accordance with the respective policies of the relevant operating company. The costs of setting-up and running meetings of the Council shall be borne by central management. The costs of members’ time and their travel arrangements shall be borne by the division or operating company concerned.”



Differences Between the Former and the Current Agreement

The new agreement is fairly similar to the former one at P&O. The main changes are:

- at P&O every member state was allowed to send one member to the council plus one member for every 2250 employees - at DPW this was raised to one member for every additional 1000 employees;
- in the UK does not exist a legal right to visit sites represented in the EWC. This is governed by the national transposition of the EWC Directive and by local custom. But nevertheless at DPW it is possible to visit employees of other sites and all costs are covered by the management.

ASSESSMENT OF THE FIRST TIME IN PRACTICE

Since the signing of the agreement two meetings were held, one in May and one in October 2007. Although the practice of the EWC is still in early days the following aspects can be pointed out:

- the main topic discussed in the EWC is the extensive restructuring process in the ferry industry;
- the management does not disclose its strategy plans, information comes often to late;
- there is a lack in consultation which characterises the weakness of the definition of the term “consultation” in the European Directive;
- sometimes the management restricts information by declaring an issue as a national (e.g. regarding ferry business) topic, thus trying to avoid the involvement of the EWC in transnational issues;
- the fact that the management takes part in all EWC meetings makes it difficult to develop strategies for the employees
- finding experts, particularly experts from the Trade Unions, is difficult due to small resources (personal and financial).

As the interview partners remarked among the most important consequences of the agreement is the establishment of a dialogue, the possibility to meet each other and to exchange information on a daily basis. On top of that a useful know-how by transnational industrial relations will arise so that the management will not be able to play employees off against employees. The necessity of the EWC depends also on the attitude of the management. The EWC at DPW can be characterised as a symbolic EWC with a marginal and inconspicuous role (Kotthoff 2006, p. 94 et seq.). The interests of the representatives of one country have priority. The EWC exists because there is a legal obligation to establish such a body.



THE INVOLVEMENT OF TRADE UNIONS AND THE ROLE OF THE TUC

One of the most important assignments to ensure an effective EWC will be the organisation of transnational activities. Currently at DPW nobody takes responsibility for this function. The issue of the role of the industry federations is always relevant in transnational meetings with Trade Unionists and employee representatives. Who will be responsible for the further coordination of the usually different interests? Who will be the negotiating partner for the global management? How could common activities of employees in different countries prevent specific transnational measures of the management? These are topics which will surely play a major role in the further practice of the EWC at DPW. Currently the TUC has the mandate to ensure the cooperation among the employee representatives. This was necessary because none of the four British Trade Unions involved in the EWC would have been able to achieve this challenge. One of the most important role of the TUC will be the providing of resources, in financial and personal respect.

For the national Trade Unions the situation of the employees in their own country will be predominant. On the other hand the interest for trade union aspects on the side of the employees should be very different. In order to understand and reflect this better a link between the EWC members, the national Trade Unions and employees would be helpful. At DPW this link exists more or less, depending on the delegates in the EWC and on the different situations and laws in the involved countries. In Eastern European countries the trade union standing is more fragile.

CONCLUSION

The responses given in other case studies (Biehler/Hahn 2007) allow us to state the following: The practices of EWCs vary greatly from one company to another. This is apparent not only if we consider the *purely quantitative* factors (e.g. the number of meetings held), but also if we look at the *structure of work* (e.g. how meetings are conducted, how the key issues for discussion are defined) and the *conditions* under which the EWC carries out its activities (e.g. funding, budgetary rules). The work of EWCs can be impeded by legal obstacles or the absence of a legal framework. Furthermore, the existing modes of cooperation within the company and any conflicts between the Works Councils, the trade unions, industry federations and management will also influence the activities of the EWC. One result of other analysis was, that certain issues which are not the subject of an explicit agreement, or for which no regulatory framework exists, are nevertheless addressed in practice. Conversely, it is also apparent that, in practice, and in the absence of appropriate conditions, some established rights are not (or not sufficiently) exercised.

The “clout”, influence and cooperation opportunities of management should not be underestimated. If it were possible to avoid conflicts being stirred up between the various national workforces and their interest representatives, this would enable EWC to engage effectively in common action and in increased cooperation with the unions. Cooperation with the unions, however, is only possible where unions show mutual respect, are willing to work together and do not compete with each other. In this respect, industry federations have an important mediating role to play.

SHORT DIGRESSION CONCERNING A LEGAL DECISION IN THE UK

There is a unique case in the UK regarding a legal decision: In April 2002, employee members of the P&O EWC initiated a complaint to the Employment Appeal Tribunal in London under the Transnational Information and Consultation of Employees Regulations (TICER) 1999, which implement the EWCs Directive in the UK. The complaint concerning the company’s alleged failure to inform and consult the EWC properly over the plan to close the ferry routes into Zeebrugge was subsequently withdrawn, because the employee side of the P&O EWC had no resources of its own and it proved impossible to raise the necessary funding.

To pursue the case of P&O, the representatives are reliant on the trade unions within the company. Since this is a transnational matter, trade unions in a number of countries represented on the EWC have to be consulted via the European Transport Workers’ Federation (ETF) based in Brussels. There are considerable logistical problems and all of this makes the process more complex, says the TUC in a letter to the tribunal.

At a preliminary hearing of the case on 28 June 2002 (see transcript of proceedings in the appendix) it was also questioned whether the employee side, as opposed to the full EWC, had the legal standing to be able to pursue a complaint. Due to the fact that the management is also part of the EWC an enforcement is not possible because “you can not take a legal act against yourself”. For this reason sanctions against the management could not be taken. It would cost a horrendous sum to start another (legal) attempt.

Where the EWC includes representatives of management (which is the case in the great majority of UK-based companies), it is unlikely that the whole EWC (as opposed to the employee side) will agree to pursue such a case. This is a potentially significant problem that is likely to arise again in the future. The issue was highlighted in the UK government’s July 2003 discussion paper on the UK experience of EWCs (Hall 2003). Although a number of respondents commented on this aspect of the TICER, the government has not indicated that it is prepared to change the law on this point (Hall 2004).

LITERATURE

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PORT AND FREEZONE WORLD (THUNDER FZE)

AGREEMENT TO ESTABLISH A EUROPEAN COUNCIL FOR PORT AND FREEZONE WORLD (THUNDER FZE)

1. THE PARTIES

- 1.1. The parties to this Agreement are the Executive Management of Port and Freezone World (Thunder FZE) and representative employees of the Company properly appointed/elected as members of the Preparatory Body formed specifically for the purpose of making this Agreement.
- 1.2. Port and Freezone World (Thunder FZE) of Dubai, United Arab Emirates, is the Controlling Undertaking referred to in this Agreement. The Peninsular and Oriental Steam Navigation Company of London is nominated as the Representative Agent, per Regulation 5(1)(6) of TICER 1999.

2. DEFINITIONS

2.1. In this Agreement the following expressions shall have the following meanings: -

- 'the Company' means Port and Freezone World (Thunder FZE) ('PF World') and its subsidiary companies in the Member States of the EU/EEA i.e DP World, P&O Ferries, and P&O Maritime Services, EZ World;
- 'Central Management' means the Group Chairman of 'PF World' and any member of the management of 'PF World', as may be nominated at any time by the Group Chairman, to be a member of the Council;
- 'Chairman' means the Chairman of the Council and shall be the Senior Vice President, Human Resources or any Executive of 'PF World' nominated by him at any time to act in that capacity;
- 'consultation' means the exchange of views and the establishment of dialogue;
- 'member' means member of the Council either appointed by the Group Chairman or appointed or elected by or on behalf of the eligible employees under the applicable national law or in the absence of national law, the accepted practice of the Member State in which the member's employment is based;
- 'employees' means those individuals who have entered into, or work within the Member States, under a contract of employment with 'PF World' or its subsidiary companies covered by this Agreement;
- 'transnational issues' means issues that affect operating companies in two or more Member States or in 'PF World' as a whole within the Member States.

3. INTENTION OF THE PARTIES

- 3.1. The Parties wish to ensure that employees are well informed in good time about activities that relate to them and can communicate their views directly to Central Management. Accordingly it is agreed that a body to be known as the European Council for 'PF World' (the 'Council') shall be established to provide for the exchange of information and establishment of consultation on transnational issues.
- 3.2. The parties to this Agreement intend that it meets the requirements of an Article 6 Agreement and the European Directive 94/45/EC of 22nd September 1994, the European Works Council Directive.

4. SCOPE

- 4.1. The information and consultation meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cutbacks or closures of undertakings, establishments or important parts thereof, and collective redundancies. This will also include consideration of education and training, health and safety, the environment, equal opportunities, and changes in EU employment law.
- 4.2. The Council being purely an information and consultation body has no competence to involve itself in negotiations.

5. COUNCIL MEMBERSHIP

- 5.1. The Council shall comprise Central Management including the Chairman together with employee members elected/appointed as set out below.

5.2. Central Management Members

- 5.2.1. The Senior Vice President, Human Resources shall be Chairman of the Council. The Chairman of the Council may invite other members of Central Management to attend specific meetings where their knowledge or expertise is needed. The Council Administrator shall be a senior manager appointed by the Chairman, normally the London Human Resources Manager.

5.3. Employee Members

- 5.3.1. Members and substitute members shall be elected/appointed according to the procedure laid down in national laws or established by accepted practice in each Member State. Where no such procedure or accepted practice exists, an independently run secret postal ballot of all employees in the Member State concerned shall elect a member/members.

- 5.3.2. Unless the laws of a particular Member State dictate otherwise, all employees with at least one year's continuous service with the Company (other than deep sea ('Long Haul') Merchant Seamen) shall be eligible to stand for nomination for election/appointment to the Council, unless under notice of dismissal or resignation. Employees may nominate themselves or may be nominated in accordance with the laws or established practices of the Member State in which they are employed. The signatures of at least two fellow employees must be obtained in support of all self-nominations.
- 5.3.3. Deep sea ('Long Haul') merchant navy crew members may not stand for election or be nominated as a member of the Council.
- 5.4. Employee members of the Council shall normally serve for a period of four years to provide continuity and depth of understanding. An employee member who retires after completing four years' service shall be eligible for re-election.
- 5.5. When the business of 'PF World' changes whether through acquisition, disposal or re-organisation, the numbers of employee members of the Council will be adjusted by reference to the formula in 5.6.1 below.
- 5.6. The Council shall have employee members in accordance with the following formula:
- 5.6.1. One member for each Member State, where 'PF World' has employees, plus one for every additional 1000 employees in that state:
- 1 - 1000 Employees = 1 member
1001 - 2000 Employees = 2 members (1 + 1)
2001 - 3000 Employees = 3 members (1 + 2)
3001 - 5000 Employees = 4 members (1 + 3)
Over 5000 Employees = 5 members (1 + 4)
- 5.6.2. Where a majority of employees in a country covered by this Agreement indicate in writing that they do not want their own country representative(s), the Steering Committee will determine which country will represent them having consulted with the employees concerned.
- 5.6.3. An employee member who ceases to be employed by the Company shall cease to be a Council member. In such cases, the member shall be replaced in accordance with the procedures outlined in Paragraph 5.3. However, where the member was elected under an independently run secret postal ballot, the Council Administrator shall ascertain if the candidate who polled the next highest number of votes in the original election remains willing to join the Council. If so, the candidate may join the Council without an election being held. A replacement member joining the Council in this way will remain in office until the expiry of the original member's period of office and may stand for re-election thereafter.

6. OPERATION & ADMINISTRATION

- 6.1. The Council will meet twice a year, normally in Spring and Autumn.
- 6.2. The Employee Representatives may elect a Steering Committee of up to four employee members.
- 6.3. The Council Administrator will be responsible for operational and administrative aspects of the Council in consultation with the Steering Committee. Members of Central Management may assist the Council Administrator.
- 6.4. Immediately before the Council meets, the employee members may hold a preparatory meeting of up to one day. A post-Council meeting of no more than a half-day may also be held. The Steering Committee should in addition meet twice a year.
- 6.5. Working papers to be tabled at the Council meeting will normally be circulated with the agenda, subject as necessary to the rules of confidentiality as set out below.

6.6. Attendance of an expert

- 6.6.1. The European Council and/or the Steering Committee may be assisted by experts of its choice, in so far as this is necessary for it to carry out its tasks.
 - 6.6.2. The Steering Committee will consult in advance with the Council Administrator on those items for which they wish the expert to attend the meeting.
 - 6.6.3. The employee members may invite an expert to attend pre- and/or post-Council meetings.
 - 6.6.4. An expert is not authorised to reveal at any time any information that has been expressly provided in confidence.
 - 6.6.5. If an expert is needed, the Company shall be liable to refund the expenses of no more than one per meeting of the Council and/or the Steering Committee. Expenses must be submitted on a basis approved in advance by the Council Administrator.
- 6.7. The date and location of Council meetings shall be determined in consultation between the Chairman or Council Administrator and the Steering Committee.

6.8. Language

Meetings shall be conducted in English. The Company will provide appropriate translation/interpretation facilities in the languages of the EU/EEA countries represented on the Council. The English versions of documents shall be the definitive versions.

6.9. Agenda

Agenda items shall be sent to the Council Administrator in writing. A draft agenda shall be circulated no later than four weeks before each meeting of the Council. The final agenda shall be drawn up by the Council Administrator in consultation with the Steering Committee and circulated not later than two weeks before each Council meeting.

6.10. Communications

6.10.1. At the conclusion of each meeting, a brief communiqué shall be prepared by the Council Administrator in consultation with the Steering Committee, for distribution at the locations covered by the Council. Local operating company management is responsible for ensuring that the communiqué is communicated to employees.

6.10.2. Not later than one month following each meeting, the Council Administrator shall produce notes of the meeting in English in consultation with the Steering Committee. The notes shall be circulated to members and to local operating company management at the locations covered by the Council. Translations shall be made available, in the languages of the EU/EEA countries represented on the Council. Local operating company management is responsible for ensuring that the notes are communicated to employees.

6.10.3. Confidential access will be provided to telephone, fax and email facilities at the Company's expense for the purpose of internal European Council communications.

7. Facilities

7.1. Employee members shall be granted time off with pay to attend meetings of the Council and matters directly related to Council business, together with the necessary travelling time. All arrangements for time off and travel must be arranged with and agreed by the member's local management in advance of the meeting taking place, except where national laws specify otherwise.

7.2. During the course of the Council meetings, employee members shall have the opportunity to meet amongst themselves to debate the issues raised by the information provided during plenary sessions.

7.3. In the exercise of their role in the Council, employee members will have the same employment protection rights as those given to representatives of employees under the laws of the country of their employment.

8. Special Meetings

8.1. Special meetings may be arranged where a significant transnational issue arises which is so urgent that it must be discussed before the next regular meeting of the Council. These will be arranged at the request of the Chairman or at the request of a simple majority of employee members, confirmed in writing to the Council Administrator.

8.2. Where the issue that has given rise to the necessity for the special meeting affects only some of the countries represented on the Council, the employee members attending the meeting may be limited to the relevant countries, with the consent of the Steering Committee.

9. Training

9.1. Appropriate training shall be provided for members to ensure they have the necessary knowledge and skills to carry out their Council responsibilities.

9.2. Training requested by members of the Council must be approved in advance by the Council Administrator.

9.3. Approved training costs shall be borne by the Company.

10. Costs

10.1. All reasonable costs and expenses in respect of Council meetings and matters directly related to Council business will be paid by the Company in accordance with the respective policies of the relevant operating company.

10.2. The costs of setting-up and running meetings of the Council shall be borne by Central Management. The costs of members' time and their travel arrangements shall be borne by the division or operating company concerned.

11. CONFIDENTIALITY

11.1. It is intended that the information provided to the Council and the dialogue within the Council shall be as free and open as possible. However, there may be occasions when for good business reasons the information/dialogue cannot be disclosed outside of the members of the Council.

11.2. The Chairman is responsible for informing members of the Council when an item is confidential and when it is no longer confidential. Under the terms of this Agreement, members and substitute members of the Council are bound by a duty of confidentiality not to disclose those proceedings in Council designated as confidential. Any breaches of this duty shall permanently disqualify the member from participation in the Council and shall render the member liable to disciplinary action in accordance with the applicable local procedures and the law of the member's country of employment, in addition to any liability which may arise under relevant legislation.

11.3. It is accepted by the parties to this Agreement that the Company has a responsibility not to transmit information the disclosure of which, according to objective criteria, could be seriously harmful or prejudicial to the Company or any of its undertakings, or which would contravene national laws or regulations. The parties to this Agreement acknowledge their responsibilities under Regulation 24 of Statutory Instrument 1999 No. 3323 (Withholding of information by central management).

12. STATUS AND LEGALITY

12.1. The English language version of this Agreement shall be the authoritative version in determining any issues that arise concerning its interpretation and implementation.

12.2. This Agreement is governed by and concluded under the laws of the United Kingdom.

DURATION

12.3. This Agreement shall commence on the date of signature and continue until replaced by another Agreement, or until terminated by 180 days notice given in writing by the Chairman, or by a simple majority of the Council employee members giving 180 days notice in writing to the Council Administrator.

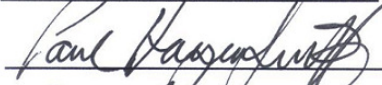
12.4. The terms of this Agreement may be amended following its commencement only by Agreement with the Chairman and representatives of Central Management and a simple majority of the employee members of the Council.

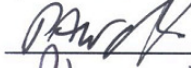
SIGNATORIES

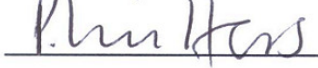
12.5. The management signatories to this Agreement represent 'PF World'.

12.6. The employee signatories to this Agreement represent the employees of 'PF World' in the Member States who have been elected/appointed specifically for the purpose of concluding this Agreement.



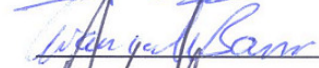



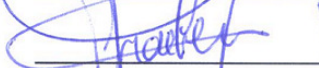
For Port and Freezone World







For the Employees

 DAVID CLEMENT
PRO FRANCIS DOWELL
 OSCAR RODENAS
PRO FERRYMASTERS
 GIANCARLO RAVOSI
 PRO FERRYMASTERS SRL
 Umberto Andreani, Pro Estates
 Teo Ferraris
Europort
 Pro Ferraris
Zeelbrugge

Date: 10th May 2007

Appeal No. EAT/0459/02

EMPLOYMENT APPEAL TRIBUNAL
58 VICTORIA EMBANKMENT, LONDON EC4Y 0DS



At the Tribunal
On 28 June 2002

Before

THE HONOURABLE MR JUSTICE LINDSAY (PRESIDENT)

(AS IN CHAMBERS)

P & O EUROPEAN FORUM (EUROPEAN WORKS COUNCIL)

APPELLANT

THE PENINSULAR & ORIENTAL STEAM NAVIGATION COMPANY

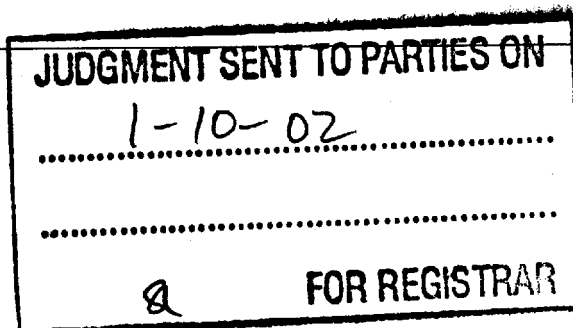
RESPONDENT

Transcript of Proceedings

JUDGMENT

MEETING FOR DIRECTIONS

Revised



APPEARANCES

For the Appellant

MR N CLARK
(TUC Representative)
Trade Union Congress
Congress House
Great Russell Street
London WC1B 3LS

For the Respondent

MR SWIFT
(of Counsel)
Ashurst Morris Crisp
Solicitors
Broadwalk House
London
EC2A 2HA

A
THE HONOURABLE MR JUSTICE LINDSAY (PRESIDENT)

B
1 Before me, the parties and the Employment Appeal Tribunal move into what is
uncharted territory, that of the **Transnational Information & Consultation of Employees
Regulation 1999**, sometimes abbreviated to **TICER**. The application is as to costs, as I shall
C later explain, but one has to begin by looking at the Regulations that entitle complaint to be
made and the nature of the complaint that here was made.

D
2 Regulation 21 of **TICER** is headed:

“Disputes about operation of European Works Council or information and consultation
procedure”

It provides, as far as is relevant as follows:

E
“(1) Where –

(a) a European Works Council or information and consultation procedure [has]
been established under regulation 17; or

(b) a European Works Council has been established by virtue of regulation 18, a
complaint may be presented to the Appeal Tribunal [*and that is defined as the Employment
Appeal Tribunal*] by a relevant applicant who considers that, because of the failure of a
F defaulter, the terms of the agreement under regulation 17 or, as the case may be, the
provisions of the Schedule, have not been complied with.

(2) In this regulation “failure” means an act or omission and a failure by the local
management shall be treated as a failure by the central management.”

Just pausing there, those are defined terms.

G
“3 In this regulation “relevant applicant” means –

(a) in the case of a failure concerning a European Works Council, either the central
management or the European Works Council; or

(b) in the case of a failure concerning an information and consultation procedure,
H either the central management or any one or more of the information and consultation
representatives,

and “defaulter” means the persons mentioned in sub-paragraph (a) or (b) against whom the
complaint is presented.”

I think that is all I need for immediate purposes.

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A

3 Mr Swift, who appears on behalf of what would have been the Respondent had the case gone forward, but which is, on this application for costs, the Applicant, P&O, (more fully the Peninsula and Oriental Steam Navigation Company) claims that this is a case which falls with 21(1)(a). I am bound to say I have doubts whether that is the case - it might be instead, a (1)(b) case - but for the moment that does not matter. He claims that the complaint is as to a failure within 21(2) and that hence one looks to see who is to be a relevant Applicant under (3)(a) or (b). There is no case made before me that this is a (3)(b) case. It therefore seems to me to be a (3)(a) case or nothing. On the face of it therefore, it seems to me, that the Applicant needs to be either the European Works Council or Central Management. Well, it plainly is not a claim by Central Management and therefore, as it seems to me, needs to be a claim, if there was any relevant appropriate complaint at all, by the European Works Council. So far that is merely background.

B

C

D

E

4 On 25 April 2002, what purported to be an application, falling purportedly within TICER, was made. Papers were sent to the Employment Appeal Tribunal. Because it is the first case of its kind, no form had been prescribed for it and the complaint was made by way of an adaptation of the conventional Form 1A Notice of Appeal. It is not an appeal, because, in this particular area, the jurisdiction of the Employment Appeal Tribunal is an original jurisdiction.

F

G

5 The completed form says. 'the Appellant is P & O European Forum (EWC), Mike Gibbons' then an address is given for Mr Mike Gibbons. What was required there to be completed in the form was not only the name of the Appellant but the address of the Appellant. The way it is set out, with the name Mike Gibbons underneath P & O European Forum (EWC), suggests to my mind that the complainant is intended to be P & O European Forum (EWC) but

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H

A that its address for contact is by way of Mr Mike Gibbons of the given address. I do not think
in the ordinary way one would read that and take it that Mr Gibbons was personally a claimant.
B No address was given for the P & O European Forum (EWC), which would have had to have
been done had P & O European Forum not been represented as at the address given for Mike
Gibbons. It then says at paragraphs 2 and 3:

C "2 Any communication relating to this appeal may be sent to the appellant at (appellant's
address for service, including telephone number if any)

Nick Clarke, TUC, Congress House, Great Russell Street, London, WC18 3LS.

D 3 The appellant appeals from ... *[and of course all along this is inappropriate because it is not
an appeal, but what has been typed in there is -]* Complaining under Clause 21, of the
Transnational Information and Consultation of Employees Regulations 1999 (TICER).

At paragraph 4 there are some crossings out and it appears to read:

E "The parties to the proceedings other than the applicant are

P & O

Peter Smith, 79 Pall Mall, London, SW1Y 5EJ."

F Presumably, Peter Smith is intended to be a contact at P & O rather than a separate party, to that
extent reflecting the way in which P & O European Forum (EWC) and Mike Gibbons had been
completed in paragraph 1. Then in paragraph 5 it says:

G "A copy of the CAC's decision, declaration or order appealed from ... *[and, of course, that is
entirely inappropriate, but what has been typed in is -]*

In cases under these regulations the EAT are the court of first instance, with no requirement
to apply to the CAC first."

H The grounds on which the appeal is brought - again, of course, inappropriate - is typed in as
follows:

"P & O failed to adequately consult and inform the P & O European Forum, as set out in the
agreement establishing a European Works Council under Clause 17 of TICER, regarding the
transnational restructuring of the ferry operations."

A

6 So, the appeal grounds, or complaint grounds more properly, are set out in just a little less than three lines of typing. It is dated 25 April 2002, and against the printed word 'Signed' it says – 'Mike Gibbon on behalf of P & O European Works Council – as Chairman'. That was accompanied by, and to some extent explained by, a letter from the TUC to the Employment Appeal Tribunal of 26 April 2002, but which apparently was sent to P & O with the application form which I have been describing. It says:

B

C

"On behalf of the P & O European Works Council (employees side) we [that is the TUC] would like to make a complaint to the Employment Appeal Tribunal on the ground that the company is not consulting adequately with the European Works Council over the plans to close the ferry routes into Zeebrugge.

D

To this effect [in other words, presumably, making a complaint on behalf of the P & O Works Council employees side] please find enclosed the signed Form 1A, Notice of Appeal made pursuant to regulation 21 of the Transnational Information and Consultation of Employees Regulations 1999.

The grounds upon which this appeal is brought are that P & O failed to adequately consult and inform the P & O European Forum as set out in the agreement establishing a European Works Council under Clause 17 of the TICER, regarding the transnational restructuring of the ferry operations. [There, the letter simply repeats paragraph 4 of the form of application].

E

In cases under these regulations, the EAT is the court of first instance, with no requirement to apply to the CAC.

Should you need further information, please let us know as soon as possible given the urgency of the situation"

F

7 That generated a Notice of Appearance of 17 May 2002 signed by Mr Smith, as Director, Communications and Strategy, at P & O, so he would, as it would seem, have understood that he was not intended personally to be a party but merely was a contact name at P & O. It sets out, in just short of six pages of typing, a description of the Respondent as the Peninsular and Oriental Steam Navigation Company. It indicates that it intends to resist the application. It gives grounds for resistance. It begins by saying:

G

H

"The Applicant has given no particulars of the grounds upon which it is alleged that the Respondent has failed adequately to consult and inform the Forum regarding the transnational restructuring of the ferry operations."

A

It goes on to say:

B

“The Respondent is applying for a Meeting for Directions in this case, pursuant to reg. 24(1) of the Employment Appeal Tribunal Rules, at which the Respondent will apply for an order that the Applicant adequately particularises its complaint.

Until the Applicant gives particulars of its complaint, it is not possible for the Respondent properly to set out its grounds of resistance...”

C

But, for all that, it attempts an explanation and a denial that no doubt would have been more fully particularised had particulars come from the Applicant.

D

8 There were then a couple of letters from Mr Gibbons indicating that he wished to amend his original complaint to include a further complaint. On 17 May 2002, Ashurst Morris Crisp, as solicitors to the Respondent P & O Company, wrote to the Employment Appeal Tribunal asking that there should be a Meeting for Directions in the case. The case had been fixed for hearing on or about 28 June 2002. That was plainly an appropriate step, given that this was the first type of case ever falling within this description.

E

F

9 There was then an application on 24 June 2002 appearing to be by the European Works Council. It is a letter from the TUC signed by “Nick Clark, Policy Officer, European Union and International Relations Department” asking that the hearing fixed for 28 June should be postponed. The letter says:

G

“As you are aware, under TICER, a complaint regarding an alleged failure to fulfil the terms of an agreement on transnational information and consultation may only be made by the European Works Council itself. However, this body of lay representatives has no resources of its own, and is therefore reliant on the representative trade unions within the company. In the case of P&O, there are four representing UK-based workers, but since this is a transnational matter, trade unions based in a number of other countries are also involved. Ireland, Germany, France, Belgium, Netherlands, Spain and Italy are all represented on the EWC, and the relevant unions in these countries have therefore to be consulted, via the European Transport Workers Federation (the ETF) based in Brussels.

H

All of this makes the process of seeking instructions more complex than would normally be the case, particularly since we are proceeding without prior precedent. I would, therefore, request that the hearing be postponed for at least two weeks in order for the process of instructing counsel to be completed.”

A That request for an adjournment was declined. There is a letter of 24 June from the
Employment Appeal Tribunal to Mr Clark at the Trade Union Congress saying that the matter
B had been referred to the Registrar; the matter was to remain in the list for hearing on 28 June
and no provision was made for any form of adjournment or postponement.

10 C However, at a late stage (and it was a late stage) a letter was written to the Employment
Appeal Tribunal on 26 June 2002 from the TUC. It is signed by Nick Clark, Policy Officer. It
says:

D **"As I pointed out in my letter of 24 June, there are considerable logistical problems in
coordinating so many parties in order to support a body which would otherwise have no
resources (the P&O EWC, or European Forum). It has not proved possible for this
coordination to [be] completed in order to ensure that the EWC would be represented at the
meeting for directions on 28 June, so I will be advising the EWC that they must withdraw
their complaint.**

**Please take this letter as confirmation of that withdrawal of complaint. Should you need a
formal confirmation of this from the Chair of the EWC, please let me know."**

E There has, as yet, I think, been no formal dismissal on withdrawal. Notice of that letter to the
Employment Appeal Tribunal was given to Ashurst Morris Crisp, as P & O's solicitors, and
F that generated another letter of 26 June that said:

**"We are writing further to the fax dated 26 June 2002 from the TUC, as representatives of the
P&O European Forum (European Works Council) withdrawing the Applicant's complaint in
the above matter."**

G Pausing there, it is plain that Ashurst were understanding the TUC to be representatives "of the
P&O European Forum (European Works Council)".

H **"We anticipate, in the circumstances, that the Employment Appeal Tribunal will move to
dismiss the Applicant's complaint upon withdrawal by the Applicant.**

**We are writing to confirm, and to put the Applicant's representative upon notice, that the
Respondent will be seeking an order that the Applicant pays the Respondent's costs incurred
in connection with this matter and/or, in the alternative, the TUC will be ordered to meet the
costs incurred by the Respondent in this matter.**

A
The Respondent will be proposing to make its application for costs at a meeting for directions scheduled. for 10:30 a.m. on 28 June 2002. The Respondent's time estimate is 30 minutes."

B
Given that the beginning of the letter indicates that the understanding of Ashurst is that the TUC was acting as representatives of the European Works Council, their later reference to their seeking an order that the Applicant pays the Respondent's costs would seem therefore to have as a natural intendment that it was to be an order for costs against the European Works Council.

C
11 Today, all that I have had in front of me is the application for costs which that letter indicates is intended to be made. It does, as it seems to me, give rise to real problems. The first of the problems is whether there ever was a proper complaint capable of being accepted by the D
Employment Appeal Tribunal and needing therefore properly to be answered by P & O. That the European Works Council itself is a relevant applicant has been seen from Regulation 21(3) of TICER, but here, as I mentioned earlier, Mr Mike Gibbons signs "on behalf of P & O E
European Works Council – as Chairman" and yet the claim is described in the accompanying letter as being on behalf of the P & O European Works Council employees' side. I have real doubt about whether there ever was a proper complaint. There seems to an element of doubt about whether Mr Mike Gibbons is indeed Chairman of the European Works Council as such, F
or merely an officer or Chairman of the "employees' side". The employees' side as such would, first of all, not seem to be a legal entity of any recognised character, but in any event would not be a relevant applicant within Regulation 21(3) of TICER. Faced with doubts as to G
whether there was a proper complaint and exactly who the complainant was, Mr Swift argues that the form which I read out was a valid complaint by Mr Gibbons on behalf of the employees' side and that that entitled him - because he recognises that it is only against a party H
that there is jurisdiction to award costs in the Employment Appeal Tribunal - to lay claim as to costs against Mr Gibbons personally, and secondly, if it is a difference, against Mr Gibbons in his capacity as Chairman of the employees' side in a representative role. If the claim for costs

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A is against Mr Gibbons personally, or indeed, against him but in some particular capacity, then the question arises about whether notice has adequately been given to Mr Gibbons.

B 12 Mr Clark has attended today. He is not a lawyer, but, as the description of him I read
C out earlier indicates, is an officer of the TUC. He attended solely in order to cope with the
D alternative form of claim which P & O solicitors had indicated, namely, a claim for costs
E against the TUC. It was only after hearing Mr Swift acknowledge that there could be no order
for costs against the TUC as such that he found that, in a sense, he need not have come. He
says that he has not caused any notice to be given to Mr Gibbons and does not feel that he was
today representing Mr Gibbons. Moreover, as I mentioned earlier, on a fair reading of the letter
indicating the nature of the application for costs, it would not seem to contemplate within it an
award against Mr Gibbons in any capacity. The letter from Ashurst of 26 June 2002 makes no
mention of Mr Gibbons. They wrote to the TUC as representatives not of Mr Gibbons but of
the European Works Council.

F 13 It seems to me that it would be quite improper to make an order for costs against Mr
G Gibbons, either personally or in some representative capacity, without proper notice having
H been given to him. Even if there was an application for adjournment, which there has not been,
in order more fully to give notice to Mr Gibbons, the question would still remain whether there
was a proper application in the first place, and, if there was not, whether any order for costs,
certainly beyond the elementary costs of a letter simply saying there is no relevant claim, would
be here appropriate. One might be able to see a case for the modest costs of a letter saying
there no valid claim had been made. However, I would apprehend, although we have not got
the figures, that Mr Swift would be asking for something a good deal more comprehensive than
that.

A 14 In the circumstances I have explained, and given the doubts I have set out in relation to
the position of the true nature of the claim, if any, and of the claimant, and of the failure to give
B notice to Mr Gibbons personally, or in any capacity, it seems to me that it would not be
appropriate for me to make any Order under the jurisdiction which I do have, which is in Rule
34 of the **Employment Appeal Tribunal Rules**. Accordingly I make no Order for costs.

C
Mr Swift

D *Sir, could I just confirm that the Order on the Hearing for Directions will confirm that the
application is dismissed upon withdrawal?*

Mr Justice Lindsay

E *Well, the difficulty about that is that, if the complaint was made by Mr Gibbons, I really need
something from Mr Gibbons before I withdraw it. If the TUC can get instructions from Mr
Gibbons simply to withdraw it, that would seem to be a sensible thing to do. There is absolutely
no point in pursuing a case that no one wants to pursue, or at least a case which the Applicant,
F whoever the Applicant is, does not wish to pursue.*

Mr Swift

G *Sir, I'm sorry to raise it, but as Mr Clark is here it would seem to be an appropriate moment, I
am now completely confused as to who is representing who. Throughout these proceedings the
TUC have claimed to be acting on behalf of someone, whoever it is or whatever it is. They
write a letter bringing a claim. They write a letter withdrawing a claim. Sir, what does my
H client need in order to be able to be satisfied that this claim is withdrawn, beyond Mr Clark's
letter of 26 June?*

A

Mr Justice Lindsay

I think the answer must be that it would be appropriate for Mr Clark, on going back to his office, to get instructions from Mr Gibbons, such as entitle him, on Mr Gibbons behalf – because you say it is a complaint by Mr Gibbons – so that notice of its withdrawal can be given and it can then be dismissed on that withdrawal.

B

C

Mr Swift

Sir, again, I can see that, but clearly there is a further problem here, in that you rightfully raise in your judgment the question of who can actually make the application under these Regulations. Sir, I got the impression from your judgment that although you did not express a final view that in fact you were erring towards the view that only the Works Council itself

D

.....

E

Mr Justice Lindsay

Well, simply because that is what the Regulation says.

F

Mr Swift

Sir, if that is right, the only reason I raise this... I am keen from my client's point of view for there finally to be a line drawn under this application, either today or as soon as possible.

G

Mr Justice Lindsay

I agree.

H

Mr Swift

Sir, in that situation it seems

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Mr Justice Lindsay

I suppose it does not have to be Mr Clark and the TUC. If a letter, or fax was received from Mr Gibbons purporting to be in the same capacity as he started, namely on behalf of the P & O European Works Council - as Chairman, saying that he wished to withdraw the claim and would be content for it to be dismissed on withdrawal, that would suffice would it not? I could then dismiss it on that indication and you would then have no further possibility of having to answer anything under that claim.

B

C

Mr Swift

Sir, I am wondering whether there is an alternative possibility? If it is the case that in fact the European Works Council means the European Works Council employees' side of it, so, on that basis, clearly the claim itself would fall within the ruling of abusive process. So would you dismiss it on that basis this morning, because if Mr Gibbons has no entitlement to bring the claim one could simply dismiss it on that basis now and one has a clear line drawn under it ...

D

E

Mr Justice Lindsay

Well, I don't think I'd be very happy about describing it as an abusive process without hearing what Mr Gibbons had to say on the subject.

F

Mr Swift

Sir, an abusive process in the sense that he had no capacity in which to bring the claim, not an abuse in any sense, but in the sense that he had no standing to bring the claim.

G

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Mr Justice Lindsay

Well, given that you argue that that is not the case and that he might want to argue that that is not the case, it would not be right for me.... Why make it complicated? If he wants to have it dismissed on a withdrawal and does withdraw, why not simply dismiss it on withdrawal?

B

Mr Swift

I only make the point in light of the points made in your judgment, which plainly I accept, and I also accept that the submission I made to you this morning on this point did not find favour, so in those circumstances it would appear that it would be possible to draw a line under the proceedings now, rather than have them in whatever form they will, until such time as Mr Gibbons chooses to send the fax. Sir, the difficulty is that my client's understandably, it seems to me properly, from the outset have been of the view that the TUC were effectively acting as representatives. It now turns out that that may or may not be the case, we don't know, but my client is put in a difficult position, is it

C

D

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Mr Justice Lindsay

I'm not sure it is in a difficult position. Certainly, it won't be in a difficult position if either the TUC authorised by Mr Gibbons direct, or Mr Gibbons direct, indicates that as "on behalf of the P & O European Works Council - as Chairman" he withdraws the complaint laid on 25 April 2002 and invites its dismissal on withdrawal.

G

Mr Swift

Sir, can I suggest this then? Mr Clark's letter of 26 June - the final paragraph does say, "please take this letter as confirmation of that withdrawal of complaint". He then goes on to say, "should you need a formal confirmation of this from the Chair of the EWC please let me

H

A

know". Sir, I take it from what you said that you do require a formal confirmation from the Chair of the EWC?

B

Mr Justice Lindsay

Well, I don't know about Chair of the EWC, I think I need one on behalf of Mr Gibbons in the capacity in which he lodged it in the first place which is "on behalf of the P & O European Works Council – as Chairman". Whether he is Chairman of the EWC or whether he's

C

Chairman of the employees' side, and if so, what that is, I'm not at all sure, I just don't know.

D

Mr Swift

Sir, given that Mr Clark plainly, and I presume still today, as at 26 June was happy to provide that, and I have no reason to think he is not still happy to provide that, may I ask that effectively he undertake to the Tribunal that that confirmation will be forthcoming, say within three

E

working days?

Mr Justice Lindsay

Well, Mr Clark does not recognise himself as acting for Mr Gibbons, so he can't give an undertaking, but I'm sure he can get in contact and we can see whether, undertaking or not, there is in fact a fax that comes in from Mr Gibbons in the capacity in which he describes himself on the application form withdrawing it and being content for it being dismissed on withdrawal. What I could do, is put it the other way round, Mr Swift. If by next Friday the EAT has not received a notice from Mr Gibbons in the capacity describing himself exactly as he described himself on the application form indicating a wish to withdraw and a contentment with the dismissal on withdrawal, well then by all means restore it next Friday.

G

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Mr Swift

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I'm sorry Sir – restore what?

B

Mr Justice Lindsay

Whatever application you want. That you need clarity to establish whether there is a claim withdrawn or not.

C

Mr Swift

Sir, with respect, in the circumstances I don't see why my client should be put to that expense.

D

Mr Lindsay

Very well then, don't have it.

E

Mr Swift

The point I am making is this, is that it seems to me that in the circumstances the confirmation should be required by order with the consequence that if nothing to the contrary is said the claim will stand as dismissed upon withdrawal. So effectively Sir, what I'm asking you to do today is dismiss the claim on withdrawal, effectively with liberty to apply to Mr Gibbons for a very short period and plainly Sir, if Mr Gibbons does apply, at that stage one would have to wrestle with the very difficult issues of whether he has any basis to make this claim at all.

G

Mr Justice Lindsay

I think that would be a fair way of doing it. What I could say is that, here and now, as of this moment, the claim is dismissed on an understood withdrawal but that that Order will lie in office until 4.30pm next Wednesday to give Mr Gibbons, or anyone else on the part or purported part of the EWC an opportunity to move to have that Order discharged or varied.

H

A

That subject to any such application being made, come 4.30pm on Wednesday, it will automatically issue as an Order without further ado.

B

Mr Swift

Sir, I'm very grateful.

C

Mr Justice Lindsay

Mr Clark, I know you don't represent Mr Gibbons, but that would seem to be a not inconvenient way of dealing with it. If you've got any thoughts that you would like to add, let me have them.

D

Mr Clark

Sir, I feel sure that he will understand what is required of him. I'll make sure that he hears what you said and understands that he should make such a confirmation regarding the complaint that was lodged on 25 April.

E

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