Southern Rail fails to obtain injunction to prevent strike

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Southern Rail fails to obtain injunction to prevent strike

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Southern Rail's parent company has failed in an attempt to obtain an injunction preventing strikes led by ASLEF by relying on breaches of freedom of movement principles under the Treaty for the Functioning of the EU (TFEU).

Govia GTR Railway is the franchise-holder for Southern Rail. ASLEF has disputed Govia's plans to extend the use of driver-only operated trains, arguing that the new system for closing

doors is less safe and more stressful for drivers. As a result, ASLEF announced a series of strikes in December 2016 and January 2017.

Govia applied to the High Court seeking an injunction to prevent the strikes from going ahead. Govia argued that the planned industrial action was unlawful on the basis that it interfered with the rights to freedom of establishment and freedom to provide services under the TFEU.

The Court of Appeal upheld the High Court's decision to reject the application for an injunction. The Court did not accept Govia's argument that the strikes were a deterrent to the freedom of establishment – whilst industrial action may discourage Govia's French investors from doing further business, the law is not there to protect against that. Any strike, even if legal, could arguably have the same effect.

The Court also found that Govia was "free-wheeling in the slip stream of their passengers" in arguing that the strike impeded passengers' freedom to give and receive services through Gatwick Airport and therefore breached TFEU rights. It was not possible in advance of the strike action to say that passengers' ability to travel to and from the EU would be impeded. Even if there were such an impediment, relying on such an argument could undermine the right to strike. Previous EU authorities that found industrial action unlawful because they interfere with freedom of movement principles did so on the basis that this was the purpose or intention of the action, rather than a by-product.

Govia has announced that it will be appealing to the Supreme Court.

Govia GTR Railway Ltd v The Associated Society of Locomotive Engineers and Firemen [2016] EWCA Civ 1309

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