

ENGLAND AND WALES / JUDGMENT

BAE Systems (Operations) Limited v Unite the Union

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Neutral Citation Number: [2025] EWHC 3106 (KB) IN THE HIGH COURT OF JUSTICE KING'S BENCH DIVISION Case No: KB-2025-004015 Royal Courts of Justice Strand, London, WC2A 2LL Date: 25/11/2025 Before: MR JUSTICE SOOLE

- ----- Between: BAE SYSTEMS (OPERATIONS) LIMITED

- and - UNITE THE UNION

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- ----- Claimant Defendant Bruce Carr KC and Georgina Hirsch (instructed by DAC Beachcroft LLP) for the Claimant Oliver Segal KC and Madeline Stanley (instructed by Thompsons Solicitors LLP) for the Defendant Hearing dates: 4, 6 November 2025

- ----- Approved Judgment This judgment was handed down in court at 2.00pm on Tuesday 25 November 2025 by circulation to the parties or their representatives and by release to the National Archives. Approved Judgment BAE SYSTEMS V UNITE MR JUSTICE SOOLE: 1. 2. 3. 4. 5. 6. 7. 8. This is an application dated 30 October 2025 by the Claimant company (BAE) for an interim injunction to restrain the Defendant trade union (Unite) from calling its members employed by BAE to take industrial action based on the results of a ballot dated 22 October 2025. BAE contends that the proposed call does not enjoy the statutory protection from liability in tort provided by s. 219 Trade Union & Labour Relations (Consolidation) Act 1992 (the 1992 Act) because Unite has in breach of s.233(1)(b) made a prior call to take part in industrial action. Unite denies that it has done so. On 6 November, following the hearing two days before, I dismissed the application, with reasons to follow. These are my reasons. The legal framework By s.219(1) of the Act 'An act done by a person in contemplation or furtherance of a trade dispute is not actionable in tort on the ground only – (a) that it induces another person to break a contract or interferes or induces another person to interfere with its performance...'. By s.219(4), this protection is subject to satisfaction of a number of conditions. These include the provisions of s.226 whereby the industrial action must have the support of a ballot. By s.226(2)(c) there must be compliance with the provisions of s.233. By s.233: '(1) Industrial action shall be regarded as having the support of a ballot only if ... (b) there was no call by the trade union to take part or continue to take part in industrial action ballot relates, or any authorisation or endorsement by the union of any such industrial action, before the date of the ballot.' This is generally

referred to as the 'prior call' provision. By s.246, the date of the ballot is the last day on which votes may be cast, which was 22 October 2025. By s.229(2B), the voting paper must include a summary of the matter or matters in issue in the trade dispute to which the proposed industrial action relates. By sub-section (2C), 'Where the voting paper contains a question about taking part in industrial action short of a strike, the type or types of industrial action must be specified (either in the question itself or elsewhere on the voting paper).' In this case the voting paper is described in the documents and evidence as the 'ballot paper'. I will follow that usage in this judgment. In *Argos Limited v. Unite the Union* [2017] EWHC 1959 (QB), Dingemans J (as he then was) noted at [33]: 'As to the approach to section 229(2B) of TULCA, it was common ground that the summary in s.229(2B) had to be a reasonable summary of the dispute but needed to be no more than that. The meaning of the summary was to be determined by reference to the hypothetical reasonable member of the union who receives a ballot, who might be compared to the hypothetical reasonable reader of a Approved Judgment BAE SYSTEMS V UNITE 9. 10. 11. publication in *James v. News Magazines* [2008] EWCA Civ 130 at paragraph 14, who will be reading the ballot paper against the factual matrix of any publications to him by Unite and Argos.' In the present case there is no dispute to that approach to construction, whether in respect of sub-sections (2B) or (2C). For the purpose of this hearing, the parties agree that it is '...at the very least arguable that the proper interpretation of the word "call", read in the context of the material statutory provisions as a whole, is that the prior call does have to amount to the tort of inducing breach of contract': *Govia Thameslink Railway Ltd. v. The Associated Society of Locomotive Engineers and Firemen* [2016] IRLR 686 per Supperstone J at [45]. The ingredients of the tort of inducing a breach of contract are likewise uncontroversial. In this case the focus is on the element of knowledge. In order to commit the tort, the tortfeasor must 'know' that he is doing so. As stated by Lord Hoffmann in *OBG Ltd v. Allan* [2008] 1 AC 1: '39. To be liable for inducing breach of contract, you must know that you are inducing a breach of contract. It is not enough that you know that you are procuring an act which, as a matter of law or construction of the contract, is a breach. You must actually realise that it will have this effect...40. The question of what counts as knowledge for the purposes of liability for inducing a breach of contract has also been the subject of a consistent line of decisions. In *Emerald Construction Company Ltd v. Lowthian* [1966] 1 WLR 691... Lord Denning MR said, at pp.700-701: 'Even if they did not know the actual terms of the contract, but had the means of knowledge – which they deliberately disregarded – that would be enough. Like the man who turns a blind eye. So here, if the officers deliberately sought to get this contract terminated, heedless of its terms, regardless whether it was terminated by breach or not, they would do wrong. For it is unlawful for a third person to procure a breach of contract knowingly, or recklessly, indifferent whether it is a breach or not.' 41. This statement of the law has since been followed in many cases and, so far as I am aware, has not given rise to any difficulty. It is in accordance with the general principle of law that a conscious decision not to enquire into the existence of a fact is in many cases treated as equivalent to knowledge of that fact: see *Manifest Shipping Co. Ltd. v. Uni-Polaris Shipping Co Ltd* [2003] 1 AC 469...' In *Manifest Shipping*, Lord Scott stated at [16]: 'In summary, blind-eye knowledge

requires, in my opinion, a suspicion that the relevant facts do exist and a deliberate decision to avoid confirming that they exist. But a warning should be sounded. Suspicion is a word that can be used to describe a state of mind that may, at one extreme, be no more than a vague feeling of unease and, at the other extreme, reflect a firm belief in the existence of the relevant facts. In my opinion, in order for there to be blind-eye knowledge, the suspicion must be firmly grounded and targeted on specific facts. The deliberate decision must be a decision to avoid obtaining confirmation of facts in whose existence the individual has good reason to believe. To allow blind-eye knowledge to be constituted by a decision not to enquire into an untargeted or speculative suspicion would be to allow negligence, albeit gross, to be the basis of a finding of privity...’ 12. As to causation, there is of course no dispute that the tort is not complete unless the tortfeasor’s inducement did cause a breach of contract. But it would be sufficient if Approved Judgment BAE SYSTEMS V UNITE 13. 14. 15. 16. 17. only one of the relevant employees was induced to breach his contract by his union’s prior call: see e.g. Govia Thameslink at [49]. As to the grant of injunctions in this context, s.221(2) provides the following restriction: ‘Where - (a) an application for an interlocutory injunction is made to a court pending the trial of an action, and (b) the party against whom it is sought claims that he acted in contemplation or furtherance of a trade dispute, the court shall, in exercising its discretion whether or not to grant the injunction, have regard to the likelihood of that party’s succeeding at the trial of the action in establishing any matter which would afford a defence to the action under section 219...’ This provision qualifies the general American Cyanamid principles in respect of applications for the grant of interlocutory injunctions. As a matter of law, it does not follow that the application for an interim injunction has to be refused if the court finds that it is more likely than not that the union will succeed at trial in showing that the immunity applies. However, it will have to be a very exceptional case indeed for that not to be the consequence: London & Birmingham Railway Ltd v. ASLEF [2011] EWCA Crim 848; [2011] ICR 848 per Elias LJ at [13]. Unite do not suggest that this is a case where damages would be an adequate remedy nor question the strength of a cross-undertaking in damages. Accordingly, the focus of the application is on the ‘likelihood’ issue to which the Court shall have regard pursuant to s.221(2). The background BAE is a part of a group of companies whose parent company is BAE Systems UK plc. BAE Air Sector (‘Air’) is a division of the BAE group and employs about 15,000 people. This case concerns selected members within BAE’s Warton and Samlesbury Sector sites, collectively known as its Warton Unite Professional Staff (‘WUPS’) Business. Air designs, develops and manufactures aircraft; and provides ongoing services and maintenance of those aircraft to its customers and partners around the world. Its work is highly complex and involves developing and delivering cutting-edge technologies. Its client contracts are long-term and often multi-billion dollar in value.

18. WUPS is part of Air. It covers all functional capabilities from commercial, procurement, finance, quality, logistics, communications and every engineering discipline. 19. 20. Unite is a trade union recognised by BAE for the purpose of collective bargaining. It is recognised for all non-managerial employees (referred to at BAE as ‘professionals’) of whom just under

8000 work across the two sites which form WUPS. About 4500 of those employees are Unite members. BAE and Unite are in dispute over the terms of the 2025 pay award for the WUPS business. In consequence Unite, pursuant to s.226 of the 1992 Act, has balloted some 520 of its WUPS members for industrial action in respect of the dispute. Unite Approved Judgment BAE SYSTEMS V UNITE notified BAE of the ballot on 24 September 2025. The opening date of the ballot was 1 October 2025. The closing date was 22 October 2025. 21. The 'Ballot Paper' asked two questions on the front page: "Are you prepared to take part in strike action? Yes/no" and "Are you prepared to take part in industrial action short of a strike? Yes/no". On the reverse the 'summary of the matters in issue in the trade dispute' stated: "The employer's failure to table a pay offer for (sic) that is acceptable to Unite members". 22. This was followed by the statement: "The types of industrial action will be:

1. Strike Action

2. Insofar as Action Short of Strike is concerned:- A ban on overtime (i.e. hours in excess of 37 per week, pro-rated for part time workers) A ban on working at sites other than home site (including ban on national and international travel) A ban on performing duties outside of substantive post (e.g. Logistics Planners not manual handling materials, members not performing voluntary roles including... A ban on providing buddying up training/coaching to inductees or others (e.g. new BAE starters, Early Careers, OSSC)' It is agreed that OSSC means 'On-Site Sub-Contractors'. 23. The final section of this page identified 'The period(s) within which each type of industrial action is expected to take place:

1. Strike Action is expected to take place within the period from early November 2025 to late April 2026
2. Overtime Ban, Travel Ban, Ban on performing duties outside substantive post and ban on buddying uptraining/coaching expected to take place within the period from early November 2025 to late April 2026.' 23. Upon the completion of voting on 22 October 2025, the result showed that 424 of the 502 who were balloted had cast their vote. On the first question "Are you prepared to take part in strike action" the result was Yes 395 93.38%; No 28 6.62%; spoiled or invalid 1. On the second question "Are you prepared to take part in industrial action short of a strike" the result was Yes 416 98.58%; No 6 1.42%; spoiled or invalid 2. Approved Judgment BAE SYSTEMS V UNITE 24. On 22 October 2025, pursuant to s.234A, Unite gave BAE the requisite notice that industrial action pursuant to the ballot would commence at 06.45 hours on 5 November 2025. BAE case 24. 25. BAE's essential case is that, prior to the date of the ballot (i.e. 22 October), Unite had by its officials on or about 10 and/or 14 October called on its members employed by BAE as 'quality professionals' working in Hangar 358 to cease providing training to quality executives also employed by BAE; and that this constituted a prior call to take part in industrial action to which the ballot related, within the meaning of s.233(1)(b). The call on 10 October resulted in a refusal by quality professionals on 13 October to train an executive, Mr Rob Bennett. In consequence, Unite was not protected by s.219 from liability in the tort of inducing a breach of contract by one or more of the employees in question. Hangar 358 is an aircraft hangar where flight test

development and preparation for customer delivery and flight testing take place. It is the final place where assembled aircraft are tested before handing them over to the customer. When an aircraft returns from a flight, a series of tests are run to identify and rectify any faults. Quality professionals carry out a range of checks and tasks so as to assure and authorise systems test, clearance for flight and engine ground run. The approval for these activities are known as Flight Authorisation Certificate Elements of Competency (FAC) and Engine Ground Runs (EGRC). These approvals are required to comply with the requirements of the UK Military Aviation Authority. Without the approval signature of these professionals, these aircraft cannot engine ground run or fly. BAE witness evidence Mr Richard Bond Hamilton

26. Mr Hamilton, Managing Director Europe and International for BAE, states that the exhibited employment contracts of the quality professionals provide that they are required to act in the best interests of the company to carry out such duties in respect of their appointment as they may reasonably be called upon to undertake; and that their job profiles (agreed with Unite) provide that interpersonal skills include providing formal training. Further, the quality professionals have never suggested that training executives for FAC and EGRC approval was outside their normal duties. They have done so in the past; and the requirement in their job profiles to train others is 'role agnostic'. 27. He continues that on 17 September 2025 Hangar 358 quality professionals approached Mr Adam Whittaker, Head of Quality Production Delivery UK, stating that for various reasons they were struggling to meet the workload. This coincided with BAE considering its business continuity plans in the event of industrial action and concluding that Mr Whittaker and his managerial colleague Mr Rob Bennett needed to be quality trained 'to give greater resilience and capacity to the business in Approved Judgment BAE SYSTEMS V UNITE 28. 29. the event of industrial action.' Quality professionals had previously trained quality executives, in particular Mr Whittaker and Mr Bennett, and Mr Whittaker had been through this process in 2017. Until the subject intervention by Unite officials, it had never been suggested that this type of training was outside the duties of quality professionals. At a meeting on 22 September 2025 it was mutually agreed by Mr Whittaker and the quality professionals that he and Mr Bennett should be trained for their certificates. Mr Whittaker was so trained between that date and 9 October when he received his FAC and EGRC approval. On the morning of 10 October, information was received from a member of the operations management team in Hangar 358 that Mr Andy Dean, Unite's WUPS Staff Chair had met quality professional union members in the hangar. He continues at [52]: 'After that meeting, the quality professionals informed Mr Bennett on 13 October 2025 they had been told by Mr Dean to stop training executives. As a result, they declined to sit with him during an engine ground run clearance process on 13 October 2025 to start his training. That meant he lost an opportunity to gather his evidence to obtain his certificate to clear aircraft. The next opportunity for Mr Bennett to receive this training as aircraft clearances were scheduled was 15 October 2025.' 30. The issue was referred to Air's Employee Relations team. Ms Lindsey Walsh (LW) of that team spoke by phone on 14 October to Mr Dean (AD) and separately to his Unite colleague Mr

Ross Quinn (RQ). He exhibits Ms Walsh's note of these conversations. 31. The notes of the conversation with Mr Dean include: 'LW: asked what instruction the TU had made into 358 as an agreement made between the employees and management a number of weeks ago has now stopped in relation to a flight clearance as at the current time everyone should be working normally as the TU do not have a mandate to legally take action AD: we haven't instructed anyone we have advised that if anyone is asked to undertake work that is out of the ordinary that they should ask for the specifics, email it to the TU who will then ask RQ to take legal advice LW: the work that the team are being asked to undertake was in response to their request for help and agreed AD: professional do not train execs LW: where is that captured in any agreements as there are occasions where the training/knowledge transfer happens across grades and across teams Approved Judgment BAE SYSTEMS V UNITE AD: I don't believe it should be happening as the Company is training execs to undertake the work of employees who will take lawful strike action... LW...[Unite] should not be instructing employees to stop any work that would potentially create a risk for them for not fulfilling their contractual obligations AD: that is not the case and that he would phone GT [Guy Tomlinson, Unite colleague] as he is on a train and GT is at site, to go and provide clarity to the employees on the position and that we need to get RQ on a call.' 32. The note of the call with Mr Quinn records Ms Walsh stating her understanding that Unite had instructed employees '...to stop training one individual which was agreed weeks ago by both the employees in response to a request from the employees'. Then RQ: 'the TU have not instructed they have asked employees to raise when the business is asking them to undertake work that they don't feel comfortable doing and that I will seek legal advice which is what I am doing or we will raise a FTA [Failure to agree].'

33. When Ms Walsh returned to the allegation that Unite had instructed members 'to stop undertaking reasonable management request which was agreed with them weeks ago', Mr Quinn is recorded as saying 'we have only advised them'. Ms Walsh responded that that was not what the employees/members were stating and that the instruction was putting them under high levels of pressure. She then asked if it is true that he has used the word 'scab' to them. His reply is recorded as 'yes I have as that is what they will be called if they choose to continue to work or do the work of striking employees, so it is a reality. Those that took action 30 years ago are still called scabs and ostracised today'. He later reaffirmed that he had not given instructions to the employees; that it was not collective action; and that he had sought legal advice which might take 2 or 3 days to receive.
34. Mr Hamilton continues that on 15 October 2025 the quality professionals decided to start training Mr Bennett again; and, as far as BAE knew, without the intervention of Unite representatives. On 17 October Unite registered a purported FTA (failure to agree) under the dispute process in respect of the training of executives. 35. In consequence of these matters, BAE undertook what they considered to be reasonable and proportionate searches of email exchanges between Unite and quality professionals to see if they demonstrated unlawful inducement to breach their employment contracts. Including the results of those searches, extracts from some of the documents are set out in the Appendix to this judgment. Mr

Hamilton states that Unite's subsequent formal position as to the advice which it says it gave its members was at odds with the evidence of what was said at the time.

36. Mr Hamilton states that if the refusal to train Mr Bennett had continued, this could have jeopardised BAE's ability to deliver the aircraft in Hangar 358 to its customer on time. Further he believes that the timing of Unite's prior call to do this was deliberate. Approved Judgment BAE SYSTEMS V UNITE With the ballot closing on 22 October, the first day on which protected action could begin was 5 November. That was after the date when the aircraft ferry was due to leave the UK for its ultimate destination; so the prior call was the only way in which Unite could disrupt its delivery on time. If BAE had been unable to deliver these aircraft on time, there would have been significant reputational risk. That would have been particularly harmful at this stage because Air hopes to bid for and win more export opportunities from the customer. Mr Adam Whittaker
37. Mr Adam Whittaker, Head of Quality Air Sector PD UK, states that in September 2025 he and the quality professionals in Hanger 358 had a 'constructive dialogue' which resulted in an agreement that they would train him and Rob Bennett to receive their FAC and EGRC; and that he was trained and approved between 22 September and 9 October. He had previously been so approved for years in the past and had considerable familiarity with the relevant aircraft. This was not new learning for him. None of the quality professionals suggested that there was anything unusual in this training of executives or that it was outside their normal duties. One of them, Mr Tunn, had previously trained him in 2017. 38. 39. The first time that he was aware of any problem was on 13 October when Mr Bennett alerted him to the concern of quality professionals about doing this type of training. Some of these, including Mr Martin Alden, told him that they were being advised not to train executives. They said that Mr Bennett had not put the request to train them in writing, despite being asked to do so. Mr Whittaker refers in particular to Mr Alden's email to him dated 13 October, timed at 11.16, about 'being stuck in the middle'. He expresses surprise that Mr Alden has subsequently suggested that no such instruction was given by Unite. Having referred to some of the further emails, Mr Whittaker states: 'As a result of the exchanges on 13 October 2025, I asked Mr Bennett not to pursue the point about his training with the quality professionals until the issue was resolved. As such, he did not do so. The result was Mr Bennett lost the opportunity to take part in a scheduled FAC on 14 October 2025 which denied him the chance of shadowing a quality professional and gaining further on the job training for his FAC accreditation.' He confirms that several quality professionals, including Mr Alden, did subsequently decide to train Mr Bennett. Unite witness evidence Mr Martin Alden
40. Mr Alden states that, as an experienced Senior Quality Controller, carrying out training is part of his role. In normal circumstances, if a new Quality Controller joins the team, then he would participate in providing training for that person. There is both Approved Judgment BAE SYSTEMS V UNITE formal training and a lot of on-the-job training. He has only ever trained his peers, i.e. the professional grades E and F. Up until September 2025 he had never

been asked to provide training for anyone in an Executive role. 41. In early September 2025 the quality professional team were under pressure with the workload and had to 'push back on demands'. They gave the Operations Team a list of priorities to which they intended to work. In a team meeting on 22 September, Mr Whittaker asked them to help him and Rob Bennett to gain flight clearance and approval. This was to help with resourcing issues, in that it would give a fallback position if people were off sick or on holiday etc. He continues 'Adam did not present this to us as an instruction, just a request to help out.' They agreed to do so. This was not the first time the team had resourcing issues; but it was the first time an executive had asked to be trained so as to help out. He was not aware of either Mr Whittaker or Mr Bennett having previously undergone an accreditation process. 42. As to the union meeting in Hanger 358 on 10 October, the issue of quality professionals being asked to train executives was brought up. People wanted advice from the union as to what they should do. From his team's point of view they were more than willing to provide the training but wanted the union's guidance.

43. Mr Andy Dean said that the union was aware of various functions being asked to train executives in different roles. He said that if they were asked to do this, they should ask their manager to provide some form of justification in writing; and then to forward it to the union for advice. Mr Dean did not say anything about what they should do in the meantime if they had to wait for advice. Nobody asked about that and the question did not occur to him. He was absolutely clear in his mind that there was no instruction from Mr Dean or anyone else on behalf of Unite, either at the meeting on 10 October, or subsequently, to stop carrying out the training.
44. Mr Alden continues that his team never refused to provide training to Mr Whittaker or to Mr Bennett. None of the team would have felt comfortable in refusing to provide training when asked; and certainly not if instructed to do it: 'We knew that the union had not yet called on us to take industrial action'. 45. 46. As to Mr Hamilton's statement at [52] as to what the quality professionals had informed Mr Bennett on 13 October, that was not correct. On that date they advised Mr Bennett that Unite's advice was to seek justification in writing from either Mr Whittaker or Mr Bennett. Mr Bennett refused to put the justification in writing. In the meantime he, Mr Alden, had emailed Mr Whittaker and received his response. Having reviewed the clearance paperwork for the week commencing 13 October, Mr Alden states that, as of that date, they were not in receipt of full clearance paperwork (i.e. a military permit to fly) to carry out the engine ground run. The necessary paperwork was not received until 22 October, at which point the opportunity arose for Mr Bennett to be involved. They did not refuse to allow him to be involved in the engine ground run on 13 October; and in the absence of the necessary paperwork it was not possible for him to be involved on that date. Mr Andy Dean Approved Judgment BAE SYSTEMS V UNITE
47. Mr Dean is a full-time trade union official and has been staff-side Chair of the WUPS Negotiating Committee since March 2020. He states that 'professional' staff refers to all members of staff who are not executives or shopfloor workers and includes quality

professionals. He and Ross Quinn have had significant involvement in the organising and coordination of this trade dispute and the proposed industrial action. 48. 49. 50. 51. 52. 53. He continues that the wording on the ballot paper reflects what had been agreed by the Strike Committee. The fourth bullet point on proposed industrial action reflected the fact that in recent years there had been a significant increase in the amount of training which its members had been required to do for new and experienced colleagues; and the substantial new recruitment at the relevant site. A ban on the training seemed likely to put significant pressure on BAE. Conversely, at no point did it occur to him that the action short of strike would include not training executive managers. If he had thought about that (which he did not) he would have considered that there was no obligation on members to train executive managers, so there would have been no need to ballot for that purpose. No members receiving the ballot would have understood the fourth bullet point implicitly to include not training executive managers. Around the time that Unite notified BAE that it intended to call on its members to take industrial action, BAE began making preparations to minimise the disruption of any industrial action. This included requesting members to train management executives to undertake their duties; as well as other requests for staff to work in a different area than usual during periods of industrial action. In consequence from September onwards he received an increasing number of queries from members across the two sites about such requests. His standard practice when management asked an employee to do something which that employee considered unusual or maybe outside their contract of employment was to advise that the member should ask for the instruction in writing and then pass the request to Unite for it to take legal advice. However, where a manager insisted on compliance by the employee without waiting for legal advice, he always advised the member to follow the instruction. This was to avoid the risk of the member employee being subjected to a disciplinary process. He continues that, given the adverse consequences of making a 'prior call', it was of the utmost importance to Unite and everybody involved in the dispute that nobody be instructed to take any industrial action whilst the ballot remained open. Hence the care which was taken to ensure that advice was sought at an appropriate level as to whether or not any unusual requests made by management fell within any individual's job description. Guidance to this effect was given at a branch meeting on 25 September: see the minutes which included (275) 'Members are kindly reminded if you are asked to carry out tasks that you normally don't do or feel uncomfortable then please ask your line manager to put it in writing and you will seek advice from a local/senior rep; see also the branch meeting minutes of 19 August whose post-meeting addendum states (288): 'A general principle to protect yourselves from allegations of unofficial industrial action is to not do anything differently in your job unless balloted for action and Approved Judgment BAE SYSTEMS V UNITE 54. 55. 56. 57. 58. 59. 60. 61. notice of said action has been provided to the company. Equally, being in dispute does not undermine any of your T's and C's either.' Unite's Industrial Action Bulletin dated 1 October 2025 give guidance to the same effect. Whilst this told members to seek advice from one of Unite's representatives, this was to allow the relevant representative to take legal advice. Turning to the allegations in respect of 10-14 October, he had never heard of quality professionals being asked to train executives

and did not think that compliance with instructions to do so fell within the contractual obligations of those quality professionals. This was a very unusual request. However he was also conscious that he did not have the requisite legal knowledge to provide a definitive view on this. He was invited to attend the Unite meeting which had been arranged at Hangar 358 on 10 October. At that meeting a member employed as a quality professional raised the issue of the request made to train executives. He expressed his view that management seeking to train themselves to replace striking workers was reprehensible. He said that members faced with such requests should ask the person making the request to do so in writing; and that they should forward this to Unite who would seek advice as to whether the member was required to comply with the request. Members should explain to the manager that they were seeking advice from their union. This advice reflected both his belief that the quality professionals did not have such contractual obligation and his knowledge that he was not qualified to provide a definitive view. He was not asked about what members should do while advice was being taken and did not say anything about this. He did not instruct members to refuse to comply with instructions pending obtaining advice. That would have been contrary to his normal practice, in particular having regard to the serious risk for members in such a refusal. Turning to the email correspondence of 13 and 14 October, on 13 October at 15.41 he had forwarded Mr Hardicker's email, timed at 13.50, to Mr Quinn and asked for some 'formal advice'. This was seeking advice not from Mr Quinn but from a third party, e.g. from the region or from Unite's legal team. On 14 October at 08.28, his email reply to Mr Hardicker and other quality professionals advised that pending receipt of advice from Unite region, 'status quo should prevail, i.e. the request to provide training to Exec's should be put on hold until the Unite advice is received'. In making this reference to the status quo, he had had in mind clause 7 of the long-standing collective agreement between BAE and Unite. This agreement is headed 'BAE Systems Warton and Professional Staff Trade Union - Professional Staff Agreements Reference Document 1968-2024. Clause 7 is headed 'Settlement of disputes'. Clause 7.1 sets out the Avoidance of Disputes procedure. Clause 7.2 provides: 'Until these procedures have been exhausted, work shall continue in the normal manner, status quo prevails and no industrial action shall be taken by either party.' As to his phone call on the afternoon of 14 October with Lindsey Walsh, he did not entirely agree with the account in her notes. His main points to her were (i) that it was not part of the contractual duties or the normal work of quality professionals to train Approved Judgment BAE SYSTEMS V UNITE management executives; and (ii) Unite had issued no instruction that they should not do this. He said something along the lines that he believed the company was asking members to provide this training in order to undermine the strike. 62. As to training quality professionals between 10 and 15 October, he disagrees with Mr Hamilton's evidence that the quality professionals stopped training Mr Bennett on 13 October. Mr Ross Quinn

63. Mr Quinn has been a Unite Regional Officer since February 2016 and took over responsibility for Unite members employed by BAE in the North West in April 2018. He first became aware of the specific issue of quality professionals being asked to train executives

through the email from Andy Dean on 13 October at 15.41. He did not think this was something that management could ask the quality professionals to do within their contract of employment and considered the request to be out of the ordinary and unreasonable. However he knew it was a legal issue and accordingly, having received the job profile for a Quality Controller from Mr Dean at 06.59 on the following morning (14 October), at 08.22 contacted Mr Michael Tighe, who is the only Unite legal officer in the North West. Mr Tighe said that he was very busy and would get back to him as soon as possible. 64. 65. 66. 67. Following his prior request for a quick call, Ms Walsh called him that afternoon. He does not agree that a note is an entirely accurate record of the call. In particular, he did not say that he had only been made aware of the issue that day; rather that he had only received the job profile early that morning and had then forwarded it for legal advice. He did not say that Unite had advised members not to follow a reasonable management request. He said that a number of members had raised concerns that they were being asked to do things which they did not believe to be part of their contract and Unite advised these members to put their concerns in writing so that it could take legal advice. He had agreed that he had used the word 'scab' and had proceeded to explain the context. He said that, if union members have successfully gone through the difficult process to get a mandate to take industrial action and people in that workforce came in and undermined the industrial action by covering the work of those taking part, they were often called scabs. He said that a question had come up in a mass meeting and he had answered it honestly. On 15 October 2025 he had spoken to Mr Tighe. Having done so, he had sent Ms Walsh the email timed at 17.05 which included 'Our initial view on this, having reviewed employment contracts and job profiles, is there is no contractual obligation on members to train Execs to carry out parts of their role. This request is out of the ordinary. If you maintain that there is such an obligation can you please confirm the Approved Judgment BAE SYSTEMS V UNITE 68. 69. 70. 71. basis for this and we will consider further.' There was no response to that email; nor to his chasing email of 28 October. If any of the quality professionals had contacted him to say that their manager had said that they must carry out the training because it was a reasonable management instruction, he would, whilst disagreeing with that position, have advised them to comply. As an experienced Regional Official, he would not advise a member to do something which put them at risk of being subject to disciplinary proceedings and potentially dismissal. On 17 October 2025 a Unite representative had submitted a Failure to Agree (FTA) headed 'Training and cover provision' with BAE pursuant to the Avoidance of Disputes Procedure under the Collective Agreement. This stated that it was Unite's position that such demands were outside of the terms of their contract of employment, potentially dangerous/reckless and therefore unreasonable. In accordance with clause 7 of that procedure, the notice stated that 'Until this matter is resolved the status quo prevails which means these requests should stop.' On 23 October at 13.55 Ms Walsh replied to the FTA, stating 'The agreement to train execs came out of a constructive and positive discussion with professional quality colleagues as it helped them given absences and workloads ...Them doing this training is clearly within their employment contracts and job descriptions.' Mr Quinn points to Ms Walsh's reference in the same email to the Union's 'unsuccessful attempt to require these professional

colleagues not to support the training of execs'. He disputes the contention that quality professionals stopped training Mr Bennett and in particular did not train him on 13 October 2025; and exhibits an email from Mr David Hardicker, a Senior Quality Controller, dated 30 October 2025 which states: 'All Quality controllers within 358H flightline have been continuing to train the EXEC line managers as requested by Adam and throughout the period before and since his request, with regard to obtaining an FAC or QPS053.'

72. Mr Quinn concludes that Unite never had the slightest intention of calling on members to be in breach of their contractual obligations: 'On the contrary, we tried to be scrupulous in advising our members that they should continue performing all of their normal contractual duties, and we acted as promptly as possible to get legal advice on whether we were right that those members being asked to train executive managers amounted to being asked to perform a duty outside of those contractual duties – as well as trying to get clarification from BAE itself as to why they thought differently (which clarification was never provided)'. Further he contends that BA has used the potential industrial action over pay to, in effect, create another different dispute about the contractual issue on the training of executives. Mr Guy Tomlinson
73. Mr Tomlinson has been employed by BAE for 35 years and has been a full-time trade union official for over five years as the staff-side Deputy Chair of the WUPS Negotiating Committee. He is the deputy to Mr Dean. Approved Judgment BAE SYSTEMS V UNITE 74. 75. As to the ballot paper, he states that the fourth bullet point on industrial action was clearly a reference to the increase in demands on members to train starters and apprentices. In his 30 years as a union official at BAE, he has never heard of any occasion where a quality professional was being asked to train an executive. He had not previously been aware of the training of Mr Whittaker in 2017. As to his telephone call from Chelsea Robertson on 15 October, he repeated the position that he had been told by Mr Quinn the previous evening. The advice to members was that, if asked to carry out a task that was out of the ordinary, they should not do it; and that quality professionals training executives should be out of the ordinary. He would never have said that if members were given a direct instruction to do this work they should refuse. In such circumstances the union's was always that the member in question should do what they were instructed to do and Unite would take it up with BAE. BAE submissions 76. On behalf of BAE, Mr Bruce Carr KC submits that the evidence shows that:
- (1) between 22 September and 10 October, quality professionals in accordance with their contractual obligation following a reasonable request from management, carried out training of executives: ('contractual obligation').
 - (2) at the meeting in Hangar 358 on 10 October, Unite, through Mr Andy Dean told the quality professionals not to provide such training: ('Unite's instruction/advice');

- (3) He did so with the requisite knowledge, in the form of wilful blindness of, and/or reckless indifference to, the contractual obligations of the quality professionals ('knowledge'). Unite's subsequent emails, albeit not causative, demonstrated the same wilful blindness/reckless indifference to the contractual terms.
- (4) Mr Dean's instruction was complied with, to the extent that quality professionals refused to train Mr Rob Bennett on 13 or 14 October: ('inducement in fact');
- (5) The call was to take part in industrial action to which the ballot related, within the meaning of s.233(1)(b) and (4): ('to which the ballot related'). Contractual obligation 77. Under the terms of their contracts of employment, the quality professionals are required to act in the best interests of the Company to carry out such duties in respect of their appointment as they may reasonably be required to undertake. Their job profiles (agreed with Unite) provide that interpersonal skills include 'providing formal training'. Such training of executives had taken place in the past, including Mr Whittaker; and the quality professionals had likewise, and without objection, agreed to do so between 22 September and 10 October. Approved Judgment BAE SYSTEMS V UNITE 78. The evidence shows that, as in the past, the quality professionals had no contractual objections in October 2025 to compliance with the request to train executives. On the contrary they were concerned that refusal to do so would constitute unprotected industrial action: see e.g. the emails from Mr Alden on 13 October at 11.16 and 15 October at 16.22 and from Mr Spiers on 14 October at 10.36. BAE thus had a strong case that compliance with such requests was a contractual obligation. Unite's instruction/advice
79. Mr Carr first emphasises that the statutory language is 'call' not 'instruct'. Contrary to the evidence of Mr Dean and his fellow Unite officials, the emails subsequent to the meeting in Hangar 358 on 10 October show that he and Mr Tomlinson, at the very lowest, encouraged and advised members not to carry out the training. In consequence members, including Mr Alden and Mr Gaz Spiers, felt troubled and compromised by what was being asked of them. 80. 81. 82. 83. 84. 85. Further, and whether or not subsequently dressed up in the language of 'advice', what was said on 10 October went beyond the terms of the Industrial Action Bulletin dated 1 October 2025. Thus it was clear from Mr Alden's email on 13 October at 11.16 that he regarded himself and his fellow quality professionals as being called on by Unite to take industrial action that had not been mandated by a ballot and therefore was not legal. He was making no suggestion that he was being asked to do work outside his contractual obligation. To like effect was Mr Spiers' email on 14 October at 10.36. Mr Tomlinson's response at 15.07 demonstrated that Unite's advice was not confined to the message in the 1 October bulletin and provided the clearest evidence of what the Unite had been telling the members; and that it was doing so without regard to the legal position. As to the phone call of 14 October between Ms Walsh and Mr Quinn, he was in substance accepting that Unite members had been told to desist from training executives; and this was before legal advice had been taken. His suggestion that it was mere advice and was not collective action did not withstand scrutiny. The message from Steve Cameron on 15 October 2025 at 14.49 was a rallying cry to

the effect that, whilst the union would be taking legal advice, members should continue to 'take a stand', stick to their defined roles and not take on any duties outside that role. Mr Alden in his reply at 16.22 tried to resist that pressure and referred again to the absence of a protective ballot. At that stage, Mr Quinn began to recognise the dangers in what Unite (and in particular Mr Dean on 10 October) had done; and thus wrote in the terms of this email to members dated 15 October at 16.23, including the reference to taking legal advice. As Mr Hamilton believed, Unite had acted as it did on 10 October because it knew that the relevant delivery was due to leave the UK for its ultimate destination before the first possible date (5 November) for the commencement of protected industrial Approved Judgment BAE SYSTEMS V UNITE action. There had been no response to this comment on motivation in Unite's witness statements. 86. 87. 88. 89. 90. 91. Knowledge There was nothing to show that Unite had made any attempt to consider the contractual position before the meeting on 10 October or until after the refusal to train Mr Bennett on 13 October. By telling members not to do any work that was 'out of the ordinary' (see e.g. Ms Walsh's note of the 14 October call to Mr Dean), Unite officials must have appreciated that this was likely to involve a breach of contract or at the very least they were entirely indifferent as to whether it would be so. On 13 October at 11.10 Mr Whittaker was stating that the 'fair normal and reasonable working request' to train executives should be complied with. At 11.16 Mr Alden was stating that he was being put in a position where he was being called on to take unlawful industrial action. At 11.32 Mr Whittaker was responding to the effect that the purpose of the training was to address the industrial action which may take place; and he was requesting the training to be provided. On 14 October at 08.28, Mr Dean was in substance telling members not to train executives. At 10.36, Mr Gaz Spiers was stating that he saw refusal to train as constituting industrial action prior to the ballot result being announced. At 15.07, Mr Tomlinson's email provided the clearest evidence that the union's instructions or advice to its members had gone beyond the terms of the industrial action bulletin of 10 October and was in substance instructing members not to train executives. Whilst that advice gave assurance that the member would not be in breach of contract ('therefore being reprimanded for unlawful action would not stand'), this was before any advice had been taken or received as to whether there would be a breach of contract. Thus the view was expressed without regard, and with indifference to, the true legal position. The advice went beyond saying to members that they should ask for the request to be put in writing and then send it to the union for advice. In substance it was giving the green light to desist from training. As to the calls with Lindsay Walsh on 14 October, the substance of what Mr Quinn said was that members had been told to desist from training – albeit phrased as advice – and that this was before legal advice had been taken. In his email on 15 October at 17.05, Mr Quinn then stated that he had requested legal advice and that his initial view 'having reviewed employment contracts and job profiles' was that there was no contractual obligation to train executives and that the request to do so was 'out of the ordinary'. Thus no attempt had been made to analyse the contract until about this stage, long after the initial call of 10 October, let alone to take legal advice. Turning to the documents obtained from the IT searches, Mr Alden's email of 15 October at 16.22 was to the effect that the quality professionals understood that they were

being asked to carry out unprotected industrial action prior to the ballot. There was no suggestion that they thought they were being asked to do non-contractual work. Approved Judgment BAE SYSTEMS V UNITE 92. 93. 94. One minute later, at 16.23, Mr Quinn emailed the members in terms that the union had reviewed the employment contracts within 24 hours of the reports of members being asked to train executives. Set against this, Mr Quinn's witness statement referred to legal advice being sought in the early morning of 14 October; and expected this to be received in a maximum 2 days. The calls between Chelsea Robertson and Guy Tomlinson on 15 October gave evidence consistent with these emails, namely that there was a positive call not to do the training. The union was not limiting itself to the advice to 'get it in writing and send to us for advice.' In contrast to its Industrial Action bulletins of 1 and 10 October, the union went further and told members that they should not comply with such requests. This was the clearest evidence of wilful blindness or reckless indifference to contractual terms.

95. Mr Carr submitted that, if Unite did have regard to the contractual position, the instruction would have been 'Do it for now, until we have taken proper advice on the terms of the contract'. They did not do so, because that would have allowed Mr Bennett's training to proceed and the aircraft delivery to take place before the industrial action commenced on 5 November. 96. Unite having made no attempt to consider the contractual position, let alone take legal advice, until 14 October (see Mr Quinn's email at 16.23), the argument as to the scope of contractual obligations effectively disappeared on or about 15 October when training resumed; only to be resurrected once Unite faced legal action. 97. In all the circumstances, the evidence demonstrated a strong case of knowledge by wilful blindness and/or reckless indifference to the contractual position. Inducement in fact 98. 99. The instruction or request to train executives was further evidenced by Mr Whittaker's emails of 13 October at 11.10 ('Fair, normal and reasonable working request that comply with process, should still be undertaken') and 11.32 ('To that end myself and rob request the team's ongoing support to achieve this'). As to breach of the instruction or request, the witness evidence on this issue consisted of (i) Mr Hamilton's statement at paragraph 52 that, following the meeting of 10 October, the quality professionals declined to start Mr Bennett's training for an engine ground run clearance process on 13 October; and (ii) Mr Whittaker's account. Having referred to the oral and written exchanges between him and the quality professionals including Mr Alden on 13 October, Mr Whittaker states that in consequence he '... asked Mr Bennett not to pursue the point about his training with the quality professionals until the issue was resolved. As such, he did not do so'; see also his email of 14 October at 09.46: 'This has now stopped the remaining exec BCM training from completing.' To which the ballot related Approved Judgment BAE SYSTEMS V UNITE
100. Mr Carr submits that the alleged call to quality professionals on 10 October to refuse to train executives was industrial action to which the ballot related, and in particular to the fourth bullet point concerning training. By its language, that type of industrial action was not confined to the training of individuals in specific groups; hence its reference to 'or others' and its use of 'e.g.' rather than 'i.e.'. Further, and given Unite's strong opposition to the

training of executives to do such work, it was fanciful to suggest that it would have permitted such training to be conducted in the period after its notice of action short of a strike came into effect on 5 November. 101. In any event the question whether there was a prior call within the meaning of s.233(1)(b) did not depend on the niceties of whether the industrial action within that call matched the terms of the proposed action. The requirements of s.229(2B) and (2C) as to the contents of the ballot paper had been introduced by the Trade Union Act 2016. It cannot have been intended as a measure which determined the application of the prior call condition in s.233. If that were so, it would be too easy for a union to evade the effect of s.233 by ‘tweaking’ the form of the action which was the subject of the prior call. As was held in *Govia Thameslink* (a decision pre-dating the 2016 Act), ‘If there was a requirement that the industrial action which is the subject of the ballot be exactly co-extensive with the industrial action which was the subject of the prior call, it would be very easy for a union to side-step it.’: [65]. It cannot have been the intention of the introduction of s.229(2C) to make it even easier to side-step these provisions.

102. Mr Carr concludes that there is a serious issue to be tried and indeed that BAE has a strong arguable case; Unite cannot show that it is likely to succeed on any aspect of its defence; that damages would not be an adequate remedy; that BAE can give the necessary cross-undertaking; and that the balance of convenience is firmly in favour of the grant of an interim injunction. Unite’s submissions 103. The relevant rival submissions on behalf of Unite are sufficiently identified in my discussion and conclusion. Discussion and conclusion 104. I start with four preliminary observations. 105. First, I think it clear from the evidence, and entirely to be expected, that the Unite and its officials, were fully aware of the ‘prior call’ provisions of the legislation and of the consequent importance of ensuring that the statutory protection provided by the ballot for industrial action be not lost by that means. The union had every incentive to avoid such a consequence. Accordingly any breach of the ‘prior call’ provisions would either be accidental/careless or because of a deliberate decision to do so covertly and in the hope that it would not be discovered. Approved Judgment *BAE SYSTEMS V UNITE* 106. 107. 108. Secondly, it is also clear from the evidence that Unite’s practice in such situations where a member was called upon to do something unusual or out of the ordinary was to advise them to ask for the instruction to be put in writing and then to forward the written request to the Union for advice. The further and associated advice was that if then instructed to do the task, the member should comply, so as to avoid the risk of disciplinary action against the member. Consistently with that practice, Mr Tomlinson’s email of 14 October at 15.07 reflects the union’s underlying and inherently likely keen concern to ensure that members were not placed in breach of their contractual obligations. Thirdly, it is important to recognise that these events over the period 10-15 October were part of a fast-moving situation of a pending ballot for industrial action and with a rapid flow and exchange of emails and calls between the various participants. In these circumstances considerable caution must be taken to avoid over-close textual analysis of emails, notes of calls and other contemporary documents. Fourthly, the evidence suggests that as between quality professionals and executives/management there was an established good and co-

operative working relationship, including a willingness by the quality professionals to accommodate requests from management for assistance. At the same time the quality professionals evidently felt loyalty to their union, Unite. Thus they were caught in the middle. This is all of potential relevance when considering the implications and inferences to be drawn from the messages and exchanges in the course of this fast-moving episode.

109. I will consider the issues as follows:

- (i) whether the quality professionals were under a contractual obligation to train executives if requested/instructed to do so; (ii) whether the quality professionals were in fact requested/instructed to do so; (iii) whether Unite told the quality professionals to refuse to comply with such requests; (iv) whether Unite through its officials had the requisite 'knowledge' that this was an inducement to a breach of contract;
- (v) whether the quality professionals in fact refused to carry out training; (vi) whether any 'call' was to take industrial action 'to which the ballot related': cf. s.233(1)(b). Contractual obligation 110. I accept that there is a serious issue as to whether quality professionals were under a contractual obligation to train executives if requested alternatively instructed to do so. I am not in a position to reach a view as to which party has the likelihood of success on that issue. That said, I consider that there was a reasonable basis for Unite's officials to have believed there to be no such contractual obligation, subject to legal advice. I have in mind the distinctly limited assistance from the Approved Judgment *BAE SYSTEMS V UNITE* language of the contracts and job profiles, including the latter's broad reference to training; the evidence that the focus of training was on new starters, inductees etc.; the evidence that Unite officials were not aware that the training of executives (including Mr Whittaker in 2017) had happened in the past; and the fact of the request being made and pressed by management in the context of the developing industrial dispute. I also consider that BAE's submissions on the contractual obligations seek to draw too much from the terms of the emails from Mr Alden and Mr Spiers, given the context of the generally co-operative approach to requests from management and their matching concern to be loyal to their union. Whether the quality professionals were requested/instructed to train executives 111. It is evident that the quality professionals were requested to train executives. That was how this particular issue started. On the evidence of Mr Dean and Mr Alden, the issue of such requests was then raised at the Hangar 358 meeting on 10 October. The request was renewed in e.g. Mr Whittaker's emails of 13 October at 11.10 and 11.32. By contrast, the evidence does not show any instruction to provide such training. However, for the purpose of this application I must proceed on the basis that there is a serious issue as to whether the quality professionals had a contractual obligation to comply with the request falling short of an instruction. Whether Unite told the quality professionals to refuse to comply with the request to train executives In my judgment Unite is likely to establish that it did not, whether by Mr Dean on 10 October or otherwise, tell the quality professionals to refuse to comply with the request to train executives. There having been no instruction by management, this alternative does not arise. First, the evidence from the witness statements points in favour of Unite's case as to the advice given at the Hangar 358

meeting on 10 October. Set against the clear evidence of Mr Dean and Mr Alden, the evidence of Mr Hamilton and Mr Whittaker is distinctly limited. 112. 113. 114.

115. Mr Hamilton's witness statement contains the usual statement (paragraph 3) that sources of information on matters of fact outside his own knowledge are identified in the statement. However the sole relevant paragraph (paragraph 52) contains no clear identification of the relevant source of information. The paragraph asserts information given to Mr Bennett by 'the quality professionals' that they had been told by Mr Dean to stop training executives. Mr Bennett is not identified as the direct source of the information, whether expressly or by implication. There is no identification of 'the quality professionals' who gave the alleged information to Mr Bennett. There is no witness evidence from Mr Bennett; nor is it suggested that he is for some reason unavailable to give evidence. Approved Judgment BAE SYSTEMS V UNITE
116. Mr Whittaker's evidence does identify Mr Alden as one of the quality professionals who had spoken to and emailed him. He then cites in particular the email from Mr Alden on 13 October at 11.16. In my judgment the account in that email is consistent with the evidence of both Mr Dean and Mr Alden. 117. I also consider that the accounts given by Mr Dean and Mr Alden are inherently more plausible. As already noted, the importance of not jeopardising the proposed industrial action by a 'prior call' would have been obvious and paramount. Further the advice to which these witnesses attest was consistent with standing practice in such circumstances. In agreement with Mr Segal's submission, I do not consider that any weight can be given to Mr Hamilton's belief as to Unite's motivation. This amounts to a case that there was a deliberate decision to make a covert 'prior call', which is both inherently unlikely and contrary to the weight of the evidence. Knowledge
118. Having reviewed the material and all the arguments advanced, I am quite unpersuaded by BAE's case that Unite officials, whether on 10 October or subsequently, turned a blind eye to and/or were recklessly indifferent as to whether or not the quality professionals were contractually obliged, if so requested, to train executives. I conclude that Unite is very likely to succeed on this issue. 119. 120. 121. First, there was, at the very least, reason for the Unite in good faith to doubt whether the quality professionals were contractually obliged to train executives. I refer to my observations above on the issue of contractual obligation. Secondly, I am not persuaded that the narrative of the emails and notes of calls in this fast-moving situation provides any real basis to challenge or undermine the accounts given by the various Unite officials and Mr Alden in their witness statements. Those accounts in particular show Mr Dean at the meeting in Hangar 358 on 10 October responding to members' requests for advice on the request to train executives; and responding in the terms that they should ask their manager to provide some form of justification in writing; and that this should be forwarded to the union for advice. This matched the advice in the industrial action bulletin of 10 October; Mr Cameron's e-mail of the same date at 14.11; and as recorded in Mr Alden's email of 13 October at 11.16. Mr Alden then makes clear that neither Mr Dean on 10 October nor any other Unite official subsequently gave an instruction

to refuse to train executives.

122. Consistently with such advice from Mr Dean, the members then sought the written justification which came in Mr Whittaker's email of 13 October at 11.32. This gave the reason and renewed that request.
123. At 13.50 Mr Hardicker forwarded the request to Mr Cameron and Mr Dean and sought their advice. At 15.41 Mr Dean then forwarded that request to Mr Ross Quinn Approved Judgment BAE SYSTEMS V UNITE and asked for formal advice. At 08.28 the next morning, Mr Dean advised members that the status quo should prevail, 'i.e. the request to provide training should be put on hold until the Unite advice is received'. Mr Tomlinson's response to Mr Spiers' concerns sent at 10.36, reflected the standing approach when an request was made to carry out a task which was out of the ordinary. This email is also consistent with the union's standing concern that members should not be placed in a position where they might face disciplinary action – hence the observation 'therefore being reprimanded for unlawful action would not stand',
124. On 15 October at 16.23, the email from Ross Quinn shows that within 24 hours of receiving the reports from members they had reviewed the contracts and job specifications and were seeking clarity from BAE as to its case that there was a contractual obligation to train executives. This internal email, between the Union and its members, concluded with the statement that 'In the meantime, we cannot call any industrial action...' and that the ballot continued. 125. 126. I am quite unpersuaded by the suggestion that by this stage Mr Quinn had begun to think that Unite (in particular through Mr Dean on 10 October) had made a 'prior call' and was trying retrospectively to repair the situation by taking steps to obtain legal advice and by the language which he used in this email to members. In my judgment, on a fair reading of the document trail and supplemented by the witness statements, there is a consistency in the stance taken by Unite throughout this period. The authorities demonstrate the substantial hurdle which has to be overcome in order to establish a case of knowledge by wilful blindness/reckless indifference: see e.g. the statement of Lord Scott in *Manifest Shipping* that wilful blindness requires a deliberate decision to avoid obtaining confirmation of facts in whose existence the individual has good reason to believe. In my judgment the evidence shows no real basis for the case that Unite showed wilful blindness or reckless indifference to the contractual obligations of their members in respect of the training of executives. I conclude that Unite is very likely to succeed on this issue. Whether the quality professionals on 13 October refused to train Mr Bennett
127. On this issue, BAE's evidence is strikingly frail. I refer again to the limited terms of Mr Hamilton's witness statement and paragraph 52 in particular. Having asserted that 'the quality professionals' had told Mr Bennett that they had been told by Mr Dean to stop training executives, the paragraph continues that they declined to train Mr Bennett on 13 October, with a resulting loss of opportunity on that day. The next scheduled opportunity for him to be trained was 15 October. There is no witness evidence from Mr Bennett. 128. In his witness statement Mr Whittaker says that, as a result of his exchanges with Mr Alden and

others on 13 October, he asked Mr Bennett not to pursue the matter until the issue was resolved. Mr Bennett did not do so; and in consequence lost the opportunity to take part in FAC training on 14 October. However, Mr Whittaker does not state that any quality professional, on 13 October or at any time, went so far as to refuse to train Mr Bennett. Approved Judgment BAE SYSTEMS V UNITE 129. Turning to Mr Alden's witness statement, dated 3 November, he states that 'our team' has never refused to provide training to Mr Whittaker or to Mr Bennett. Mr Alden then gives an unchallenged account to the effect that, in any event, the clearance paperwork for the engine ground run was not in place on 13 October or until 22 October. 130. In my judgment, Mr Alden's denial of any such refusal by the quality professionals is entirely consistent with the e-mail evidence of the distinct caution which they showed as they found themselves 'piggy in the middle'.

131. Consistently with the absence of any such refusal, Ms Walsh's email to Mr Dean dated 23 October includes: 'I note this FTA follows from your unsuccessful attempt to require these professional colleagues not to support the training of execs.' 132. In the light of all this evidence, I conclude that Unite would be likely to establish that – even assuming a contractual obligation to comply with such a request – there was no refusal by the quality professionals to train Mr Bennett, nor any resulting loss of training opportunity. If so, BAE's claim would fail to establish completion of the tort of inducing a breach of contract. Call to take industrial action 'to which the ballot relates' 133. 134. 135. 136. The question is whether the industrial action which is the subject of the alleged 'call', i.e. refusal of quality professionals to train executives, is industrial action 'to which the ballot relates': s.233(1)(b). In my judgment the starting point for that enquiry is the type(s) of industrial action, short of a strike, specified on the voting/ballot paper pursuant to s.229(2C). Contrary to BAE's argument, I do not consider that the fact of its insertion into TULR(C)A by the Trade Union Act 2016 (s.5) provides any basis for debarring s.229(2C) from having any application to s.233(1)(b), a provision which was itself amended by the 2016 Act: s.22, Sched.4, para.13. It is common ground that the only potentially relevant type specified on the ballot paper is the fourth bullet, namely: 'A ban on providing buddying up training/coaching to inductees or others (e.g. new BAE starters, Early Careers, OSSC)'. The third bullet point has no application because 'A ban on performing duties outside of substantive post...' would be a ban on extra-contractual work, which therefore could not give rise to the tort of inducing breach of contract. In my judgment Unite is likely to succeed in its argument that the industrial action comprising a ban on training executives does not 'relate to' the industrial action specified in the fourth bullet point. I acknowledge that the latter includes the words 'or others' and says 'e.g.' not 'i.e.' However interpretation of the specified information in the ballot paper must be determined by reference to the hypothetical reasonable member of the union who receives the ballot paper and against the relevant factual matrix: *Argos Ltd v. Unite the Union*. Approved Judgment BAE SYSTEMS V UNITE 137. Setting the language of the specified industrial action against the evidence of the training that is typically provided, I consider that the hypothetical reasonable union member would read the fourth bullet as relating to the training of new starters, inductees and the like; and not to the training of executives. I do

not accept that either this approach to interpretation or the interpretation itself provide an opportunity for a union to side-step the effect of the prior call provisions. The observations to that effect in Govia Thameslink were made in a very different context, namely the union's argument that the industrial action which was the subject of the ballot had to be exactly co-extensive with the industrial action which was the subject of the call: see per Supperstone J at [65].

138. Mr Segal advanced a further argument that the dispute which has developed in September/October 2025 in respect of the training of executives is a trade dispute distinct from the trade dispute on pay which is the subject of the ballot. Thus, he argues, the industrial action which is alleged to be the subject of a 'prior call' is 'separate and distinct' from the industrial action to which the ballot relates: cf. *Newham London Borough v. NALGO* [1993] IRLR 83. This is a point which would need a good deal more argument than was possible in the time available and I reach no conclusion on it. Procedural objection 139. In the circumstances it is unnecessary to consider Unite's procedural argument that the application should be refused simpliciter on the basis that BAE had wrongfully applied for the injunction without notice alternatively without adequate notice: cf. *Argos Ltd v Unite the Union* [2017] EWHC 2046 (QB).

Conclusion

140. For the reasons given above, I conclude that Unite would be likely to succeed at full trial. BAE understandably did not submit that this was one of those rare cases where the Court should nonetheless exercise its discretion in favour of the grant of an interim injunction. Accordingly, and having regard to the likelihood which I have found, the application is dismissed. Approved Judgment *BAE SYSTEMS V UNITE* APPENDIX 1 October (280): Unite Industrial Action bulletin: 'We are aware the business are trying to use our members to train others to undertake our roles. During any dispute, if you find yourself in such a situation please ask your Manager to send you an e-mail clearly stating what they are requesting you to do and state that you will be seeking Union advice and then contact us.' 10 October (289) : Unite Industrial Action bulletin: 'The Union has a position that members should not undertake any work outside of their contractual duties, nor should they take over the work normally conducted by those members taking part in any industrial action' 'If Management demands that our members do take over the work of those targeted for industrial action, the full 'might' of Unite will lawfully resist such demands – we encourage our members to provide any such examples of their Local Rep, in the first instance or a Senior Rep (as necessary).' 'The Industrial Action ballot for all the affected groups is happening NOW, between 1st and 22nd October...' 'We are aware the business are trying to use our members to train others to undertake our roles. During any dispute, if you find yourself in such a situation please ask your Manager to send you an e-mail clearly stating what they are requesting you to do and state that you will be seeking Union advice and then contact us.' Approved Judgment *BAE SYSTEMS V UNITE* 10 October @ 14.11 (302): Steve Cameron-members, attaching bulletin: highlights above passage starting 'We are aware...' 13 October

@ 11.00 (302): Martin Alden to Rob Bennett and Adam Whittaker and others, attaching above Cameron e-mail: 'Rob/Adam, Please see below Union advice to members regarding training others to carry out targeted group roles & seeking justification from their manager.' 13 October @ 11.03: (294): Whittaker – Alden/Bennett: 'I will seek clarity for us all and advise' 13 October @ 11.10 (301): Whittaker-various: 'My position is clear, we are not in an IA position so this is not something that we should be doing. Fair, normal and reasonable working request that comply with process, should still be undertaken. 13 October @ 11.16 (293): Martin Alden – Whittaker/Bennett: 'For context we have just had a conversation with Rob over in 358 about our reluctance to comply. This was verbally conveyed to us during a union meeting last week & confirmed in writing via a union industrial action bulletin. As a group we want to know where we stand with regards to the training we are being asked to provide to yourself & Rob with regards to FAC approval. This puts us in a difficult position being stuck in the middle of the company's position & what the union are advising. We are however aware that the results of the ballot will not be known until closure & therefore we are not yet bound by any legal industrial action.' 13 October @ 11.32: (292): Whittaker – Alden, Bennett and others: 'Fully appreciate the difficulty and the sensitivity and I am seeking some advice now so that we all have a clear view and position on how best to deal with this. In the meantime, you are aware that we are asking you to provide support and oversight for myself and Rob to re-gain our approvals. The primary reason for this is to ensure that we have sufficient time to safely regain our approvals, such that we could, without compromising product or flight safety, support critical business clearances in the event of any actions that may be taken in due course. To that end myself and Rob request the team's ongoing support to achieve this. Please don't hesitate to reach out to chat however. I appreciate this is difficult for us all, but one of my primary concerns personally, is to ensure our collective wellbeing during this difficult time.' [emphasis in the original]. 13 October @ 11.36 (300): Whittaker – various: 'Just on a WUPS BCM status call with Darren and team, advise similar in that call, that we are not in IA and this should not be being requested time now.' 13 October @ 13.50 (292): Hardicker-Cameron/Dean and others - forwarding 11.32 email: 'Please see below, we have done as advised and our manager has requested. With some urgency could you please advise what's next as this is putting us in a really bad position, we are not comfortable having these conversations with our managers whom we normally have a good relationship with.' 13 October @ 15.41 (291): Dean – Quinn, Alden, Hardicker and others: 'Ross – please can you provide some formal advice...' Approved Judgment BAE SYSTEMS V UNITE 14 October @ 08.28 (291): Dean reply: 'Whilst our Unite region compile some advice, status quo should prevail, i.e. the request to provide training to Exec's should be put on hold until the Unite advice is received.' 14 October @ 10.36 (309): Gaz Spiers – Dean: reply to 08.28: 'So, are you saying, as a collective, we should not currently be training Exec's to clear aircraft for flight/engine ground run? The way I see it, if we are to refuse to help train them, we would be carrying out industrial action prior to the ballot result being announced and further guidance given. There has been an instance today where one of our highly experienced SQC's was clearing an aircraft for flight, but had to re-visit the documents set due to the current working scenarios playing on his mind. We just

need some clarity please as we have been officially told by Adam Whittaker that it's business as usual and we are to continue with the training etc. A full further thought, would it be better for the union to be talking to the company in the first instance (i.e. the Execs) instead of us feeling like the proverbial piggy in the middle.' 14 October @ 15.07 (308): Tomlinson – Spiers and others: 'Andy is not in work this afternoon, hence why I have picked this up. Clearly the advice we have rolled out to our members is not to carry out tasks that out of the ordinary, and training execs in our roles should be out of the ordinary, therefore being reprimanded for unlawful action would not stand. Recognising the comment "feeling like the proverbial piggy in the middle", we are picking up your concerns with the senior leadership team.' In meantime: 14 October @ 09.46 (298): Whittaker – various including Bennett: 'Sorry to report, this has unravelled somewhat this morning. The TU have written to my team, stating that "the status quo remains" but they appear to have clarified that by stating "no Exec training is to be undertaken until the regional Unite office provide some clarity". This has now stopped the remaining exec BCM training from completing. Furthermore, the TU have sent this directly to my staff, creating an impossible situation for them. At 1-1 sessions with my team, they have all previously articulated the nature of this difficult position, and they have expressed their continue desire to do the right thing, but are conscious of the TU standpoint. They now find themselves in the middle of this position, and it has now caused safety issues. A set of flight clearances this morning had to be re-conducted as the background position and conscience difficulties the team were having, meant that one of the team fortunately recognised this and took it upon themselves to re-check the flight clearance, as they were concerned that issues may have been missed.' 14 October @ 11.22 (291): Alden – Whittaker and others: forwarding Unite advice in e-mail @ 08.28: 'Please see below Union advice stating the training of execs should be put on hold until Unite regional office advice is received...' 14 October – mid-afternoon phone call – Walsh-Dean 14 October – subsequent call – Walsh-Quinn 15 October @ 11.50: phone call Chelsea Robertson (CR)-Guy Tomlinson (GT): Approved Judgment BAE SYSTEMS V UNITE From note of Jo Leach (337): 'Guy confirmed that the TU had not given an instruction, but had provided advice to their members that if the activity was outside of their day job that they shouldn't do it' 'Chelsea re-iterated this activity was nothing to do with the dispute – it was BAU regarding ferry activity and therefore part of normal duties' From note of CR, first call at 11.03 (338): GT: 'Not an instruction from TU, but advice was "if you're asked to do something out of the ordinary, don't do it' From note of CR, second call at 11.52 (338): GT: 'we have told them that when it's outside of the day to day they don't have to do it'. 15 October @ 14.49 (308): Cameron – Tomlinson, Spiers and others: 'It is still considered that this type of request Gaz highlighted is deemed out of the ordinary. This notion of 'business as usual' is not shared by the union. The Unite legal team are urgently looking into this matter on your behalf... ... Equally, it would be totally remiss of the rest of us to treat this period as "business as usual" while our colleagues make that stand. During this time, we must stick firmly to our defined roles and not take on any duties outside them.' 15 October @ 16.22 (320): Alden – Cameron and others: 'We understand what we are fighting for & are fully behind the course however, as a collective we feel that without a mandate agreed by the

outcome of the ongoing ballot we are not legally protected to commence any form of industrial action. Your comments of support aside surely we must continue “business as usual” until such a point in time that we are protected by the outcome of the ballot & the process that follows?’ 15 October @ 16.23 (320): Quinn – members: ‘I have been made aware that some members are being asked to train Execs to do their job. We have, within in 24 hours of these reports, considered the examples of this we have been given, reviewed employment contracts and job specifications, and we are presently seeking clarity from the employer as to where they believe members are contractually obliged to train Execs... ... We will, of course, update you on the Union’s advice on this matter when we have received and had time to consider the employer’s response. I imagine this won’t take long. In the meantime, we cannot call any industrial action, the ballot continues, and we ask that if you haven’t already done so, you cast and return your vote urgently..’ 15 October @ 17.05: Quinn-Walsh (335): ‘When we spoke, I informed you that I had already requested urgent legal advice on behalf of our members. Our initial view on this, having reviewed employment contracts and job profiles, is there is no contractual obligation on members to train Execs to carry out parts of their role. This request is out of the ordinary. If you maintain that there is such an obligation can you please confirm the basis for this and we will consider further.’

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