

In this week's issue:

- **UK:** P&O Ferries Dismissals - No way to do things
- **EWC:** No consensus on meetings
- **Ukraine:** Labour law changes
- **Future Work:** Employees are still hesitant about returning in person full-time
- **GDPR:** The creeping bid to end the one-stop-shop continues
- **HR Policy Online:** New HR Policy website, archive, and online community
- **Brexit:** *Negotiating Impossible Things* – a book by Tom Hayes

UK: P&O Ferries Dismissals - No way to do things



I am old enough to remember when strikes and labour stories dominated the daily headlines of UK newspapers.

The seamen's strike of 1966, denounced by Prime Minister Harold Wilson as the work of a "small group of politically motivated men". The miners' strike in 1973 which brought down the Heath government. The 1979 "Winter of Discontent", which opened the door to the Thatcher government. The miners' strike of 1984/5, the beginning of the end of trade union power in the UK. "Wapping" which broke the hold of the print unions in the newspaper industry.

To borrow from Star wars, all of these events happened in a "universe far, far away." It is a long time since a labour dispute was spread across the front pages of practically every UK newspaper. But last week, the way the management of the Dubai-owned company P&O Ferries dismissed and made redundant some 800 workers, dominated the headlines, and drew criticism from across the political spectrum, from right to left. (P&O Ferries is a totally separate company from P&O Cruises).

The union that represents the ordinary seafarers, the RMT, has a reputation for militancy, as many a London commuter knows when the Tube stops running. The officers' union, Nautilus International, is no pushover either. P&O Ferries could well have a strong case for restructuring the cost base of its ferries. That appears to be its argument, as it says that without the changes it is pushing through it would go into administration.

But because you believe you have a strong case and you further believe that the unions you must negotiate with will be obstinate and obdurate, does not justify tearing up the rulebook. Because negotiations may be bloody, long, and difficult does not mean that they should be short circuited.

At the time of writing we are not privy to all the facts of the matter. In the manner of the dismissals the company may or may not have broken the law. From newspaper reports it seems that the ships were foreign flagged, meaning they were not registered in the UK. In simple terms, they were “foreign workplaces.” It also seems that many, if not all, of the dismissed workers were on employment contracts drawn up under the law of the island of Jersey. To what extent UK collective redundancy laws applies is questionable. (See [BEERG Perspectives](#) by Vince Toman, circulated with this newsletter).

One argument can be quickly dismissed. The sackings were not the result of Brexit. UK collective redundancy laws are still based on EU Directives. There has been no material changes in these laws since the UK finally left the EU on December 31, 2020, when the transition period came to an end. UK collective redundancy laws have always been much “lighter” than the domestic laws to be found in many European countries. But this was the case when the UK was an EU member. What happened last week could have happened when the UK was still an EU member.

What happened is this. Last Thursday, March 17, P&O ordered all its ships to return to port. The company operates ferry services between the UK and Ireland, and the UK and France. Once docked, the management, through a pre-recorded Zoom message, told all the on-board employees that they were being dismissed with immediate effect and being replaced by agency-sourced, cheaper, foreign crews. They were all to be given enhanced severance terms. It would appear that the company was “pricing-in” possibly penalties for breaches of information and consultation obligations.

As the crews were being informed of their dismissals, buses with the cheaper replacement crews were parked dockside, along with teams of private security agents. The firm said it did not consult staff or unions on the “fundamentally changed crewing arrangements” before Thursday’s mass sackings, because the “process itself would be highly disruptive, not just for the business but for UK trade and tourism.”

In a world of 24/7 rolling TV news and instantaneous social media, the company’s actions provoked an immediate backlash. The cabinet minister for business, Kwasi Kwarteng wrote to the company saying it could face an unlimited fine if its summary sackings were found to have breached the law. In a letter on Friday last, Kwarteng said he wanted to express, “in the strongest possible terms, the UK government’s anger and disappointment.”

He highlighted the taxpayer support received by the firm, including through the furlough scheme, and suggested it did not appear to have followed the procedure required for large-scale redundancies.

“It cannot be right that the company feels tied closely enough to the UK to receive significant amounts of taxpayer money but does not appear willing to abide by the rules that we have put in place to protect British workers.”

In his letter, Kwarteng said failure to give sufficient notice of large-scale redundancies, via the Insolvency Service and the Redundancy Payment Service, “is a criminal offence and can lead to an unlimited fine.”

A red speech bubble containing the text 'BEERG COMMENT' in white, bold, sans-serif font.

The law on collective dismissals information and consultation may, or may not, have been broken. That depends on complex legal issues around the flagging of the ships and the employment contract of the seafarers, as Vince Toman points out in a [BEERG Perspectives](#) analysis to accompany this article.

But what has clearly been broken is the “social contract” between P&O and its employees. The implicit bargain of mutuality, the sense of fairness and honest dealing that must underpin the employment relationship, a relationship that will always have moments of difficulties because of conflicting interests, has been shredded.

The actions of the management of P&O are difficult to justify. Many years ago, as a young trade union official I represented officers on Irish ships in collective bargaining negotiations. I know full well how difficult such negotiations can be. Because of the nature of the job, which can see sailors away at sea for weeks, if not months, ships’ crews have a unique sense of solidarity and togetherness. They are a tough bunch.

Just because talks are going to be tough does not mean they can be short-circuited. And there is nothing as difficult as talks on restructuring, which normally involve job losses, or changes in terms and conditions. Of course, such talks will always be fraught. Peoples' jobs and livelihoods are on the line. European laws are designed to protect employees and make firing them difficult, but not impossible. Preparation and patience are required. There is no quick dash to the finishing line.

Business reputations are hard won. They are years in the making. They can be lost in seconds. Never to be recovered. A quick cost saving can result in years of revenue decline.

Good people management is not a macho game. Yes, there are times when firmness and toughness and the ability to say "no" is required. But for the most part it is working with your people, not against them. Talking softly and walking slowly may be frustrating. But it generally gets you there in the end.

EWCs: No consensus on meetings



Thanks to all of you who have responded to our information request about your plans for EWC meetings. We have had 30 responses so far. There is no clear pattern emerging from these responses. Many companies plan to continue with virtual meetings. Others want to return to in-person meetings but will probably not do so before the latter half of this year. Some have already held in-person meetings, but these are very much a minority. Many companies are looking at hybrid options, with some attending in-person and others virtually.

We will pull all the responses together and circulate within the next week.

Ukraine: Labour law changes



We came across this piece from [CMS Cameron McKenna Nabarro Olswang LLP](#) On 15 March 2022, the Ukrainian Parliament adopted a new law de-regulating some of the key aspects of labour relations for the duration of martial law.

The key amendments introduced by the new law are as follows:

1. Engagement and transfer

- Fixed-term employment agreements can be concluded with new employees for the period of martial law or for the period of replacing a temporarily absent employee.
- An employee can be transferred to another job for the period of martial law without his or her consent and without two months' prior notice (except for a transfer to an area of active military conflict, which is prohibited) if such transfer is required to prevent or eliminate the consequences of hostile actions or other health or life-threatening circumstances.

2. Work time and vacation

- The standard maximum working hours are increased during martial law up to 60 hours per week (instead of 40 hours that normally apply). The start and end time of daily work is established by the employer.
- The articles regarding public holidays and non-working days are suspended for the duration of martial law.

- An employer can refuse to grant any leave to an employee, except for maternity and child care leave, if such employee is involved in work at critical infrastructure sites.
- An employee can be granted, at his or her request, unpaid leave for a longer duration than the standard maximum of 15 calendar days per year.

3. Remuneration

- If remuneration cannot be paid on time due to active military conflict, the payment of remuneration may be suspended until the company resumes its core business activity.

4. Termination and suspension

- An employee can be dismissed in the event of the physical liquidation of the company, if all of its production, organisational and technical capacities or assets are destroyed.
- An employee can be dismissed during his or her temporary disability or leave, except for maternity or child care leave.
- An employee who is working in an area of active military conflict can terminate his or her employment on his or her own initiative without the standard two weeks' notice period (except for employees engaged in community service or at critical infrastructure sites).
- A new mechanism of suspending the employment agreement is introduced: temporary termination by the parties to provide and perform of work, which does not entail the termination of the employment agreement. In this case, the unpaid remuneration due to the employee will be reimbursed by the aggressor state (however, the mechanics of such reimbursement remain unclear at this stage).

Among other things, the new law also allows employers to suspend certain provisions of collective agreements for the duration of martial law, to engage women in certain cases to work in heavy work and work in harmful or dangerous working conditions. Among other important provisions, during martial law the management of HR documents and their archival storage is maintained at the employer's discretion.

The new law will be officially published after it has been signed by the President of Ukraine.

This note is based on the text of the draft law as it is available on the Parliamentary website, which may differ from the final version. Source: draft Law of Ukraine On Regulation of the Labour Relations during Martial Law No. 7160.

Future Work: Employees still hesitant about returning in person full-time



Microsoft's second annual [Worker Trend Index](#) shows an increase in respondents who said they are somewhat or extremely likely to consider a job change in the coming year. The overall number increased to 43% of respondents, up from 41% in last year's examination of global employee attitudes. Just over half (52%) of workers under the age of 41 said they might switch jobs in this year's poll, while only 35% of the older Gen Xers and baby boomers said they were thinking of leaving their workplaces.

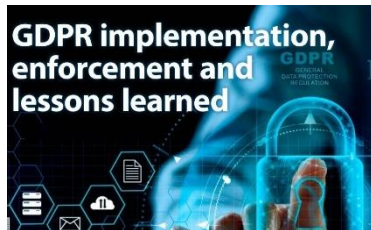
Meanwhile, workers across all sectors who have been doing their jobs remotely some or all of the time remain hesitant about returning to the office. Among hybrid workers, 51% said they may want to switch to fully remote, while 57% of those who are working from home said they're willing to consider returning to the office at least part of the time. "The people who are coming back into the office now are not the same people who left," said Jared Spataro, Microsoft's vice president for modern work. Elsewhere, more than half of the respondents to the survey said they are prioritising health and well-being over work. Microsoft

surveyed 31,000 people across 31 countries and combined those results with data from LinkedIn and Microsoft's Office programs.

The EU-based thinktank, Bruegel, has set up a "Transatlantic Expert Group on the Future of Work." It has just released the first research paper from the group [Covid19 and shift to technology enabled WFH](#).



GDPR: The creeping bid to end the one-stop-shop continues



Derek Mooney writes: Last Thursday the European Parliament's Civil Liberties and Home Affairs (LIBE) Committee held a [Public Hearing](#) on "GDPR implementation, enforcement and lessons learned". It is almost four years since GDPR was fully implemented across the EU (May 25th, 2018).

[BEUC](#), the Brussels based umbrella group for some 46 national consumer organisations across Europe was invited to make a presentation. To no one's surprise it focused strongly on ending the GDPR's one-stop-shop, claiming that the mechanism was not flexible enough. BEUC called for [reforms to the GDPR](#) which it claimed would (a) improve handling of cross border complaints (b) allow more assistance from the national DPA for data subjects and (c) permit more protection by design.

It referenced the delays it had experienced in processing a complaint location tracking practices that it had taken via the Irish DPC back in November 2018 as an example of why the one-stop-shop should be replaced with a new mechanism that allowed authorities to decide themselves who takes the lead, along the lines of the EU's existing [consumer protection](#) investigation and enforcement mechanism. It also proposed that the EU introduce a new Directive allowing member states to make collective redress actions a "realistic option" including guidance on non-material damages.

The BEERG Newsletter has commented many times [before](#) on the gradual but steadily growing threat to the one-stop-shop mechanism being touted by privacy activists and others and referred to it.

"...a creeping attempt by member state data protection authorities across the EU to unpick Ms Reding's one big blanket approach and return to the loose patchwork quilt which she rightly criticised as inefficient and costly."

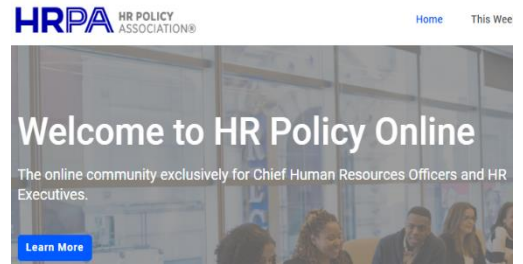
MEANWHILE the EU's Data Protection Board has published its [guidelines](#) on the application of GDPR's Art 60 provision on the one-stop-shop mechanism and the interactions of the supervisory authorities with each other, with the EDPB. The guidance is being seen by some, particularly Max Schrems NOYB: Centre for Digital Rights, as criticising the Irish DPC with [Schrems tweeting](#) that paragraphs 23 and 26 of the guidelines "throw sooo much shade" at the Irish DPC that it will not need any sunscreen until its holidays.

Online Community: Available for BEERG + HR Policy Global members

As many of you will have seen from last week's newsletter, the new HR Policy Global website is now online. Members can now access the BEERG newsletter archive as well as accessing the HR Policy Global community of current online discussions: – [available here](#).

Click on “My Communities” on the menu, then navigate to HR Policy Global. Recently posted topics include: [Covid vaccination Requirements](#) -- [Closing Russian Operations](#)

[You can also download our iPad/iPhone app here](#). It allows all members to network and engage each other and the members of the HR Policy Global staff in a single and easy to access location available across all time zones. If you need help accessing the forum, please contact [Henry Eickelberg](#).



Brexit: *Negotiating Impossible Things* – a new book by Tom Hayes



Two weeks back Tom Hayes launched: **Brexit: *Negotiating Impossible Things***, a book about negotiations as much as it is about Brexit. Tom says he primarily wrote the book for colleagues in the labour relations community and uses Brexit to make some important points about good negotiating practice. The book is not meant as an academic text about negotiation models, but rather as a practical guide drawing on the hard lessons of over 50 years in the business.

You can download it as a PDF [FROM THIS LINK](#) Feel free to share with others.

THE BEERG AGENDA:

HR Policy Global's 2022 Global Outlook Series:

Webinars up to March 31

HR Policy Global is running a series of regional employment and 2022 labour policy webinars.

You can see the full timetable [HERE](#)

The next two events are:

- [Canada: Employment & Labor Policy Outlook](#) on March 29 at 11:00am EST/ 1700h CET
- [Latin America: Employment & Labor Policy Outlook](#) on March 31 at 3:00pm EST/2100h CET

[Canada Labor Outlook](#)

[Latin America Outlook](#)

BEERG Training: "Managing European ER in Post-Covid Times" Hotel Estela, Sitges, Spain April 5 - 8

Less than two weeks away... there are three spaces still available at the April 2022

BEERG/HRPA Global training program: **Managing European Employee Relations In Post-Covid Times**. The program examines the architecture of EU-level employee relations and issues of current concern and also does a deep dive into European Works Councils (EWCs)

Program details in this [brochure](#)

[Book April Training](#)

BEERG/CMS Labor Relations Workshop

CMS office in Frankfurt, May 25 @ 1000H

The rescheduled annual CMS/BEERG Global Labor Relations Seminar will be on Wed, May 25th from 10am to 4pm, at a face-to-face meeting at the CMS office at Neue Mainzer Str. 2-4, 60311 Frankfurt. There is no cost to attend. Email Tom for details.

[EMAIL Tom Hayes](#)

Fundamentals of Global LR for Global HR Executives

Training Webinar: June 28-30

This 3-session online course explores the strategic mindset and thought process of a successful global labor relations executive. This is not an introduction programme; it examines the strategic awareness for successfully leading the global labor relations function.

[Book Global Training](#)

*BEERG/HR Policy Global Members can self-register online for these events via the links supplied. Members who get the "No Tickets Available for Purchase" message online should contact [Derek](#).

BEERG Dates for your Diary:

Date	Event	Booking Links	Venue
April 5 – 8	BEERG Training: "Managing European Employee Relations in Post-Covid Times"	Book April Training	Hotel Estela, Port d'Aiguadolc, Sitges, Barcelona, Spain
May 25	BEERG/CMS Labor Relations Workshop	Email for Info	CMS, Neue Mainzer Str. 2-4, 60311 Frankfurt, Germany
Jun 15 – 17	BEERG Members' Annual Network Summit	Book June Summit	Sitges/Barcelona, Spain
June 28 – 30	BEERG Training: Fundamentals of Global Labor Relations: A Training Program for HR Executives	Book June Webinar	Webinar on Zoom
Sept 29/30	BEERG Members' Network Meeting		Brussels, Belgium
Oct 18 - 21	BEERG Training: "Managing European Employee Relations in Post-Covid Times"		Sitges/Barcelona, Spain

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