



Neutral Citation Number: [2008] EWHC 116 (QB)

Case No: TLJ/06/0993

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/01/2008

Before :

MR JUSTICE TUGENDHAT

Between :

Steven Trumm

Claimant

- and -

Keith Norman

Defendant

Mr Adrian Davies (instructed by **Stevens solicitors**) for the the Claimant
Mr Jonathan Crystal (instructed by **Thompsons solicitors**) for the the Defendant

Hearing dates: 21st and 22nd January 2008

Approved Judgment

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

.....
MR JUSTICE TUGENDHAT

Mr Justice Tugendhat :

1. The Claimant is a train driver. He works at Cambridge. He was formerly a member of the Associated Society of Locomotive Engineers and Firemen (“ASLEF”). There is a history of disagreement between himself and officers of the union which resulted in his expulsion in November 2004. In evidence he described himself as the most loyal member which the union did not have. In this action he claims damages for libel against the Defendant who is now the General Secretary of ASLEF. At the times material to this action the Defendant (“Mr Norman”) was Acting General Secretary.
2. It is common ground that on 18 May 2005 Mr Norman published a circular to the members of ASLEF, who number some 18,000 people. Identical words were published in the June 2005 issue of Loco Journal (ASLEF’s in house magazine) and that issue was also published on the website www.aslef.org.uk (“the ASLEF website”). Mr Trumm complains of all three occasions of publication. The words complained of are addressed to “all branches and reps”, signed by Mr Norman and read as follows:

“THE “TRUEASLEF” PROJECT and Steve Trumm

Rumours abound in some areas along the lines that Mr Trumm, the self-acclaimed “webmaster”, says that ASLEF have approached him with an offer to pay £20,000 to drop his case against us and the impression given is that he is the injured party.

Let us set the record straight.

- We have not agreed to pay Mr Trumm a penny.
- There were two High Court actions against him for libel, which we expected to succeed and we understand he was told by his lawyers were going to result in him being ordered to pay damages and costs, probably over £100,000 – whereas if he had been innocent and truthful, he would not have had to pay anything.
- There were two Employment Tribunal cases that he brought against ASLEF, which we expected to win, and the Chairman of the Tribunal at a preliminary hearing asked Mr Trumm what he expected to gain from the actions even if he won.
- Mr Trumm made 12 complaints to the Certification Officer – none of those were ever clarified sufficiently to be sent to us by the CO.

It is certainly true that we reached an agreement with Mr Trumm via his lawyers. This agreement was made following EC Resolutions, including resolution 145/424 of 18 February 2004.

This agreement provides that we will withdraw the cases against Mr Trumm and not pursue him for costs and in return he will withdraw his claim against us and attend a meeting with “trueaslef” on the agenda. If he conducts his part of the bargain to the satisfaction of ASLEF we agree to pay his lawyers fees – not to him – a contribution towards his lawyers’ fees. We are told by his lawyers that these fees are almost exactly £18,000. He still has additional costs amounting to thousands of pounds and he claims his obsession has broken his marriage and lost him contact with his children. In this, at least, we are inclined to believe him.

There was a meeting on 13 April 2005 and we have received a list of names of others involved with “trueaslef”, which we are looking into. The EC Have now confirmed to Mr Trumm’s lawyers that they are not satisfied following the meeting held on 13 April 2005 and we will not pay towards his legal costs.

The decision to seek a deal was based on a number of factors, but primarily the desire to move on as a union and to separate ourselves from such an irritating individual.

Mr Trumm has gained nothing other than perhaps the wisdom that he has been misled by a small cabal of cowards, who worked to damage ASLEF, and who have run away leaving him in the lurch.

We have a number of our goals from bringing the action – most importantly stopping this dangerous, anti-democratic and uncontrolled website, and the establishment of the principle that we will not tolerate such attacks to our union and our representatives.

Please bring the contents of this circular to the attention of your members.”

3. Complaint is made in particular of three passages in the words complained of. The first passage consists of the words:

“If he had been innocent and truthful, he would not have had to pay anything”.
4. It is Mr Trumm’s case in relation to those words that they mean that he is guilty of some disreputable conduct, and secondly that he is not being truthful.
5. Mr Norman does not admit that any of the words complained of are defamatory of Mr Trumm. In relation to this passage he puts forward a meaning formulated by himself in the Defence (a so called *Lucas-Box* meaning). Mr Norman’s meaning is that Mr Trumm could be liable to pay damages and costs due to his responsibility for publishing untruthful statements.

6. The second passage relied on by Mr Trumm consists of the words:

“He claims his obsession has broken his marriage and lost him contact with his children. In this, at least we are inclined to believe him”.
7. It is Mr Trumm’s case that these words mean that he is an obsessive, whose behaviour has led to the breakdown of his marriage, and the loss of contact with his children, and what he says is not generally to be believed.
8. Both of the foregoing passages are said to bear these meanings in their natural and ordinary, alternatively inferential, meanings.
9. The third passage relied on is said to bear a defamatory meaning which refers to Mr Trumm, both in a natural and ordinary inferential meaning, and, in the alternative, by way of what is known as a true innuendo.
10. The third passage is:

“There was a meeting on 13April 2005 and we have received a list of names of others involved with “trueaslef”, which we are looking into”.
11. It is Mr Trumm’s case that the natural and ordinary inferential meaning of these words is that he has committed a breach of confidence by delivery up of the list, so exposing those named on it to further enquiry and the risk of disciplinary proceedings by ASLEF.
12. The alternative innuendo meaning that Mr Trumm advances is the same, but his case is that that is the meaning that would be reasonably understood by readers who knew a number of facts which are then set out. The facts relied on are as follows. Mr Trumm was formerly the webmaster of the website www.trueaslef.com (the “trueaslef site”) and that this was known to all, or most, or at least to many, who visited that site, and to many members of ASLEF. Registered users of that site were aware of the following assurance, given on the site by Mr Trumm as its webmaster:

“Any details taken in the registration process remain confidential. Only one of the team has the access code to this date – me, and I/we undertake that at no time either now or in the future will such information move beyond that strict ring fence”.
13. A number of individuals are identified as having read the site with the necessary knowledge of the confidentiality assurance.

MEANING

14. At the start of the proceedings both counsel invited me to hear submissions on the issue of meaning, and give my judgment on that issue before proceeding further with the case. I had had the opportunity to read the papers before the trial, and so, having heard the submissions of both counsel, I was able to state my conclusion immediately following those submissions.

15. I stated that in my judgment Mr Trumm succeeds in relation to the first and second passages quoted above. The words complained of meant that he was guilty of some disreputable conduct and that he had not been truthful. They also meant that he was an obsessive whose behaviour had led to the breakdown of his marriage and the loss of contact with his children and that he was not generally to be believed.
16. However, I decided that Mr Trumm failed in respect of the third passage, both on his case that that was the inferential meaning, and on his case based on innuendo. For this purpose I assumed that the facts he relied on would be proved to have been known by a reader. I said I would give my reasons later, which I now do.
17. This is the trial of the action. For the purposes of this action it is sufficient to take as the test of what is a defamatory imputation that it is one which tends to lower a person in the estimation of right thinking people. The imputation must be one which is conveyed to a hypothetical reasonable person in the position of those to whom the words complained of have been published. The hypothetical reader is a reasonable man, as that concept is understood in law. He is neither unusually suspicious nor unusually naïve. He is essentially fair minded and reasonable but may be guilty of a certain amount of loose thinking. The meaning must be that which is conveyed by the words complained of to someone who does not indulge in meticulous analysis, but reads the words quickly and normally, forming a first impression. He does not read the words as a lawyer. In so far as a natural and ordinary meaning is relied on the reasonable reader is assumed to be possessed of general knowledge and ordinary experience of the kind that would be possessed by the sort of person who would read the particular words complained of.
18. In relation to the first passage identified from the words complained of, I see little material difference between the meaning advanced by Mr Trumm and that advanced by Mr Norman. In my judgment it is plain that the words bear the meaning contented for by Mr Trumm.
19. In relation to the second passage identified from the words complained of, Mr Crystal submitted on behalf of Mr Norman that it is not defamatory to say of a person that they have an obsession, and obsessions are naturally damaging. I accept that there are cases where difficult questions can arise, when a defendant says of a claimant that the claimant is suffering from a medical condition. That may most appropriately be a matter in respect of which a reasonable person would have sympathy for, rather than lowering his estimation of, the claimant. However, the obsession referred to in the words complained of here is not a medical condition, but plainly behaviour that is so unreasonable that, so it is said, Mr Trumm has suffered the consequences described. The words “in this, at least, we are inclined to believe him” clearly imply that he is not generally to be believed.
20. In relation to the third passage from the words complained of, it is submitted for Mr Norman that not only are the words not defamatory, but they do not refer to Mr Trumm. It is true that he is not specifically identified as the person from whom “we have received a list of names”. Nevertheless in the context it seems to me plain that a reasonable reader would understand that the source of the list is said to be Mr Trumm. To this extent I accept the submission of Mr Davies. But no further. The words complained of do not expressly allege a breach of confidence. Unless a person is aware that there has been a promise of confidentiality, he could not reasonably

understand the words to suggest a breach of confidence at all. So the case stands or falls on the alleged innuendo.

21. Assuming, as I do, that the reader has the knowledge of the facts relied on by Mr Trumm, the question then is whether such a reader would reasonably understand the words to suggest that there had been a breach of confidence. That seems to me to be going too far, because it requires a degree of analysis which the reasonable reader would not conduct in such a case, and because it assumes a lack of general knowledge which a reasonable member of ASLEF would, in my judgment, possess. It is common knowledge that undertakings of confidentiality are not absolute, but are subject to obligations of disclosure that may arise in many different contexts. One such context is legal proceedings. A reasonable reader of the words complained of is not to be assumed to have any detailed legal knowledge. On the other hand he is not to be assumed to be unusually suspicious. Only an unduly suspicious reader would conclude that there had been a breach of confidence, rather than a disclosure properly made in the course of the dispute which is described in the words complained of.
22. This conclusion disposes finally of the claim in so far as it is based on the third passage.

THE ISSUES ON THE SECOND PASSAGE

23. By order dated 4th May 2007 Eady J declared that the publication of the second group of words from the words complained of was not a publication on an occasion of qualified privilege.
24. Following my ruling on meaning, it was common ground that in relation to the second group of words complained of the only remaining issue was damages. The main factual issues on damages in relation to that part of the publication are the extent of publication and the extent to which it affected Mr Trumm. In relation to this passage, the issue of the extent of publication is very limited. There is no dispute that the words complained of were published in the form of the circular and in the form of Loco Journal to some 18,000 members and about 200 others. In that context whether there was further publication on the website is unlikely to be material.

THE ISSUES ON THE FIRST PASSAGE

25. Following my ruling on meaning, it was common ground that the publication of the first passage from the words complained of was on an occasion of qualified privilege, insofar as it was published to members of ASLEF. The only issue on liability was as to whether publication to persons other than members was on an occasion of qualified privilege. That issue related both to Loco Journal and to the ASLEF website. There is no plea of malice. No other defence is maintained in relation to that part of the words complained of. Following my ruling on meaning Mr Crystal accepted that the plea of justification in respect of the first passage from the words complained of could no longer be pursued.
26. The only other issue on the first passage is therefore damages.
27. Little turns on these issues. Both passages include the allegation of untruthfulness. The second passage is not less defamatory than the first. Whether or not the defence

of qualified privilege succeeds in relation to those few publishees to whom it is said not to apply can have little effect on the final outcome of the action, for the reasons set out in para 38 below.

THE BACKGROUND TO THE PUBLICATION

28. As appears from the words complained of, there is a history of litigation relevant to this case. The two High Court actions were claims for damages for libel brought against Mr Trumm. On 24th August 2004 Mr Rix and eight other claimants sued him in respect of words published on the “trueaslef” website. The claimants were respectively the former General Secretary of ASLEF and eight members of the Executive Committee. There is no dispute that Mr Trumm, using the pseudonym Rogue Trooper, published on that website a number of words which the claimants alleged to be defamatory of them and false. Examples are:

“This issue is that Rix tried to get Lee sacked for no other reason than his politics..... Rix ignores ASLEF rules, rules the EC. FCG Activist contrary to rule. Lies in circulars in EC3 and Certification Officer! Uses Loco Journal... The EC have signalled to the Troops that they are worried that a nosey GS might just find out why Rixy held them in fear for so long... Sorry boys you should have done better and you should definitely have told him where to get off! ... So the circular from the GS is insufficient the statements by the GS and the AGS is insufficient etc etc all failed to create the slightest doubt in your mind that the past five years have been even at best chaotic for the finances and financial account/accountability of this union and at worst a gravy train tainted by the distinct aroma of corruption?... ASLEF funds are being used to pay £600 a month from HO tea and milk fund the money is put down as the child support of a senior ASLEF officer. There is no information at this time to conclude that the officer in question benefits from this arrangement”.

29. In an action started on 7th February 2005 Andrew Cotogno and twelve others sued Mr Trumm for damages for defamation arising out of publications made on the same website. Mr Norman was the fifth claimant in those proceedings. The words complained of cover eighteen pages of text. The first three sentences are typical of the style and content of these publications. They read:

“Well I’m appalled but not surprised. Dirty fingers in the till and handouts to keep lips sealed. All join the gravy train!...”

30. On 16th May 2005, two days before the publication of the words complained of in the present action, those two libel actions were settled in the form of a court order by consent (commonly known as a Tomlin order), substantially as described in the words complained of. Mr Trumm gave an undertaking to the court which has the same effect as an injunction, permanently to close and not reopen the website known as “trueaslef”, and not to open any other website in respect of ASLEF, and other undertakings to a similar effect. All further proceedings in the two actions were stayed. Mr Trumm also agreed to withdraw applications to the Employment Tribunal

against ASLEF, being case numbers 1502244/2004/A and 1500212/2005/A. He agreed to write to the Certification Officer withdrawing any and all complaints and criticisms of ASLEF, its current or former officials, representatives and employees. The Claimants in the two actions agreed to withdraw their claims for libel, and not to take action through the courts or under the rules of ASLEF against persons identified arising out of their involvement with “trueaslef”. ASLEF agreed to contribute to Mr Trumm’s legal costs in connection with the matters referred to in the agreement a sum of no more than £20,000. It was agreed that subject to putting into effect the agreements mentioned Mr Trumm was not to be taxed further by contact from any ASLEF officer or members of the Executive Committee once matters had been completed. Some issues arose between the parties as to the carrying into effect that agreement, but ASLEF did contribute £18,000 to Mr Trumm’s legal advisors.

31. It was not until nearly six months later, on 1st November 2005, that solicitors instructed by Mr Trumm wrote a letter before action threatening proceedings in relation to the words complained of. Mr Trumm gave evidence that he believed that he had written a letter himself considerably earlier, but no record of that letter has been found by Mr Norman and Mr Trumm was unable to produce a copy. I find that he is mistaken in his recollection as to this.

THE NUMBER AND CLASSES OF PUBLISHEES

32. The circulation of Loco Journal is mainly to ASLEF members and retired members. 18,001 copies containing the words complained of were distributed to members, including 1,332 to retired members. A further 202 copies were distributed to people who were not members, former members or retired members. These included a number of people or organisations with close links to ASLEF, such as legal and financial advisers. Some copies went to libraries and other trade unions and Members of Parliament. Nine copies were sent to journalists working for National News Media. Thirty copies were sent to individuals described as “interested in trade unions and ASLEF in particular”.
33. The extent of publication through the ASLEF website is more difficult to establish. The month of August was selected for investigation and the total number of visits during that month was found to be 18,133. It was not possible to break that figure down to show visits to that part of the site upon which the words complained of were readable. There is no direct evidence that any person read the words complained of on the website.
34. Mr Crystal invites me to conclude that there is no evidence that any person read the words complained of on the website, and in particular that I should not infer that anyone who was not a member of ASLEF did so. He submits that the website is one of interest only to a limited number of people, it is not like a general news website such as the BBC, and so, although it is accessible to the general public, it cannot be presumed that any member of the general public would in fact have accessed the relevant part of the site on which the words complained of are to be read. Mr Davies asks me to infer that there must have been some readers who were not members of the union.
35. There is no presumption in law that a claimant on an Internet libel is able to rely on to prove publication. See *Al Amoudi v. Brisard* [2006] EWHC 1062, [2007] 1 WLR 113

para 37. Whether the court is able or willing to infer that such publication has occurred will depend on all the circumstances. In the present case it is common ground that publication to a member of the union will be protected by the defence of qualified privilege, so in order to succeed the claimant has to prove on the balance of probabilities, including by inference as well as by direct evidence (if any), that there was a publication to a reader who was not a member of the union.

36. On the facts of the present case I would have no hesitation in inferring that members of the union accessed the website, and in particular that part of it where the words complained of are to be read. But that is of no significance in this case, since it is accepted that publication to such persons would be on an occasion of qualified privilege.
37. I accept the submission that this is a website of specialist interest, unlike those of newspapers or other media organisations. In my judgment I cannot infer that there was a reader of the words complained of to be found on the website who was not a member of ASLEF.
38. That conclusion is also of very little significance in the context of the present action. It is common ground that the paper edition Loco Journal was distributed to 202 publishees who were not members of the union. There may have been more readers than that, since there may be more than one reader per copy. The defence of qualified privilege is raised only in relation to the first passage and not to the second passage. In practice it would make no difference at all to the outcome of this action whether I were to infer that there were a number of readers who were not members of ASLEF who had accessed the words complained of on the internet. If I were to draw such an inference, it could not be to the effect that the circulation to non members of ASLEF was greatly extended over and above the number of non-members who read the paper edition.

QUALIFIED PRIVILIGE

39. Mr Crystal submits that the occasion of the publication of the first passage was on an occasion of qualified privilege in relation to all the readers of the 202 copies sent to non-members. He does so on the basis that Mr Norman was under a duty, or it was his proper and legitimate interest, to communicate to the membership of ASLEF, and to the others to whom the defamatory allegations on “trueaslef” were published the true facts as to the outcome of the proceedings taken against Mr Trumm by himself and others. Further, all those who would have read the words complained of had a corresponding and legitimate interest in receiving such communications. Further it is submitted that Mr Norman was reasonable in all the circumstances in disseminating the words complained of no more widely than the attacks by Mr Trumm on “trueaslef” and no wider than was necessary in order to inform those interested.
40. In his evidence Mr Norman enlarged upon his reasons for publishing the words complained of in the way he did. First he said it is important that ASLEF members know what ASLEF is spending their money on, including in relation to legal settlements such as this. He wanted to explain to the membership how much the settlement had cost them. Secondly, Mr Trumm created so much publicity about his disputes with ASLEF among its membership and others that he thought he had to set the record straight with regard to the false rumours that were circulating around the

time of the publication on 18th May 2005. He wanted the article to reach all the people who had heard the rumours. It was for this reason that he did not want ASLEF members to be the only people who read the response. He also wanted to inform RMT members, or members of any other union, or members of Mr Trumm's union, or people who were not even members of any union, about the realities of the settlement and ASLEF's disputes with Mr Trumm. He said he believed that all these people had a legitimate interest in reading the article, and he felt compelled to respond to the rumours being circulated among the railway community, as he supposed by Mr Trumm.

41. There is in fact no evidence before me that Mr Trumm had been circulating false rumours, and there is no plea of justification in this case. But neither is there any plea that Mr Norman was making statements that he did not believe to be true, or knew to be false.
42. The defence of qualified privilege reflects the law's recognition that it is in the public interest that that person should be allowed to speak freely on occasions when it is their duty to speak (whether the duty is legal, social or moral), and the person to whom they speak has a corresponding interest to receive the communication. The same is the case where the maker of the statement is acting in pursuance of an interest of his, and the person to whom he publishes the words complained of has a corresponding interest or duty in relation to the communication.
43. So far as members of the union are concerned, it is common ground that the defence applies to communications to them. It does not matter whether Mr Norman is properly to be regarded as owing a duty to members of the union to make this communication, or sharing a common interest with them. The position in relation to non members is different. It may be that in relation to some of the non members there may also be the reciprocal duty or interest that exists in relation to the members, for example publication to legal advisers, other advisers, and former or retired members. I do not need to consider the position of such publishees, because there are other publishees, most notably journalists, and people who are simply interested subscribers to Loco Journal, to whom no duty or can be said to be due, and who do not share a common or reciprocal interest in the affairs of ASLEF. Their interest is no more than any ordinary member of the public. Publication to the members of the public may be protected by qualified privilege as set out in *Reynolds v. Times Newspapers Limited* [2001] 2 AC 127. But no *Reynolds* defence is available, or has been raised in this case.
44. There may be, in some instances, cases where the General Secretary of a Union needs to communicate with all the members of the union, but has no means of doing so without, at the same time, and incidentally, communicating with non members. In such a case Mr Davies accepted that the publication to non-members may be on an occasion of qualified privilege. He referred to examples of such cases given in Gately on Libel & Slander 10th Edition para 14-75. But he submitted that whether that be so or not (and I express no view upon it), in the present case Mr Norman could have communicated only to members of the union had he wished, and, as he said in evidence, he chose to communicate to others. Moreover the publication on the ASLEF website was a publication accessible to any member of the public.

45. Mr Crystal referred to an occasion when Mr Trumm accepts that he took from an officer of ASLEF the confidential draft of a report into its financial affairs, and gave a copy, not only to the British Transport Police, but also to the Mail on Sunday newspaper. Mr Crystal submitted that it is not consistent for Mr Trumm now to complain of publication by Mr Norman to all the world of the words complained of. In my judgment this is no more than a forensic point in relation to liability. It does not relieve Mr Norman of establishing, if he can, a defence of qualified privilege. But it does have relevance to damages, considered below.
46. In my judgment it is clear that qualified privilege cannot be relied upon as a defence to publications to journalists and other subscribers to, or publishees of, Loco Journal, who cannot be shown to have any interest in the affairs of ASLEF over and above that of any ordinary member of the public. I do not need to consider the position of each of the publishees of the 200 copies separately. It is plain that there was publication of up about 100 copies to persons who had no material interest in the affairs of the union over and above that of any ordinary member of the public. There is no defence of qualified privilege available in respect of publication to such persons.

THE LAW ON DAMAGES

47. As is well known, general damages in libel actions serve three functions: to act as a consolation to the claimant for the distress he suffers from the publication of the words complained of, to repair the harm to his reputation, and as a vindication of his reputation. Two factors are particularly important: the extent of the publication and the gravity of the allegation. Allegations relating to the integrity or the truthfulness of a claimant are amongst the most serious. It is not suggested in the current case, as it may be in some cases, that there has been any feature of the conduct of the proceedings or of the trial itself which might be a basis for aggravating or increasing the damages. On the other hand, unlike cases where there has been an offer of amends or a settlement out of court, this is a case where the claimant has had to come to court and suffer, not only the unpleasantness and expense associated with that, but also the republication of the words complained of that is necessarily inherent in proceedings in open court.
48. The conduct of the Claimant and his position in relation to the dispute and life in general are also relevant. In *Burstein v Times Newspapers Ltd* [2001] 1 WLR 579, May LJ said this (with the agreement of the other members of the court):

“[24] Paragraphs 33.44 to 33.46 of *Gatley on Libel and Slander*, at pp 850-851, explain that the extent to which the claimant's own conduct is admissible in reduction of damages is limited. It is said to relate principally to activities that can be causally connected to the publication of the libel of which the plaintiff complains. A defamatory publication is not justified or excused by showing that the claimant himself has been guilty of similar conduct. But where a claimant has made a defamatory publication against the defendant which may fairly be said to have provoked the defamatory publication by the defendant of which the claimant complains, evidence of the claimant's conduct is admissible. It can sensibly be said in these circumstances that the claimant's conduct was causally

connected with the defamatory publication of which he complains and that he brought it upon himself...

[25] It seems to me that it is intrinsically just that a court assessing libel damages should receive evidence to the effect that the claimant's conduct has directly provoked the publication of which he complains. Typically, if there were a heated slanging match between claimant and defendant, and the publication complained of was in retaliation to a publication by the claimant defamatory of the defendant, there would be no sense or justice in excluding evidence of the claimant's publication. It would be part of the context in which the publication complained of was made and should normally, depending on the facts, be admitted whether or not it would be likely to reduce the claimant's award of damages. It may be supposed that a claimant who brings a defamatory publication on himself will normally receive a lower award of damages than a claimant who has been defamed without provocation. There is ample support in decided cases for admitting evidence of this kind of direct provocation: see for example [*Broome v Cassell & Co Ltd*](#) [1972] AC 1027, 1071”.

EVIDENCE AS TO DAMAGES

49. Mr Trumm gave unchallenged evidence that he had never been married or held himself out as having been married. He is the father of two daughters with whom he enjoys a very solid and good relationship. He has not lived with their mother for many years but has always maintained contact with them in person, by telephone and by email. He enjoys many family occasions with them, birthdays, Christmas, holidays and regular contact. He has maintained a good relationship with the mother of his daughters and with her husband, often being a guest in their home. The dispute subject to this litigation has taken a great deal of his time, and he has had to work overtime to meet the legal costs. But he has never, and would never, allow the dispute to destroy the relationship with his children and he is distressed that Mr Norman has made reference to his family, who have nothing whatever to do with this dispute. On the other hand he does not suggest that anyone has mentioned to him the passage from the words complained of referring to his family.
50. Mr Trumm is still a train driver and the members of ASLEF to whom the words complained of were published include very many of his colleagues. I infer that his colleagues and those to whom he reports in management will all have become aware of the content of the words complained of. Mr Trumm's relationship with ASLEF is a matter which attracted a lot of attention, unsurprisingly, amongst members of ASLEF. Indeed, that is the explanation which Mr Norman gives for publishing the circular in the first place. The pay of an ordinary train driver is about £33,000 a year. Mr Trumm is a former police officer and is a man of robust personality.
51. Mr Crystal submits, and I accept, that in assessing damages I should have in mind Mr Trumm's conduct in publishing on a website which was not restricted to members of ASLEF, allegations of the content and style which he did. It is common ground that I cannot in this action form any view one way or the other as to whether Mr Trumm's

allegations were true or false. By the consent order he undertook to close down the website, but he did not admit he had been untruthful. Nor is there any plea of justification to that effect in this action. Nevertheless, I accept Mr Crystal's submission that the tone of the postings on Mr Trumm's website is relevant. They demonstrate what he regards as an acceptable level of debate. They also led to the publication of the words complained of. It is not that the words complained of were published directly in response to anything posted on the "trueaslef" site by Mr Trumm, but the postings on the "trueaslef" site led to the two libel actions against Mr Trumm, and the words complained of were published in response to rumours relating to the settlement (albeit rumours which have not been shown to originate with Mr Trumm).

THE AMOUNT OF DAMAGES

52. In my judgment the style or tone of Mr Trumm's publications was unnecessarily provocative and offensive, and set a low level for the tone of the discussion about the affairs of ASLEF.
53. Mr Crystal submits that in the light of what Mr Trumm published on the "trueaslef" site to anyone who chose to visit the site, this is a case of a slanging match initiated by him, and so is a case for very modest damages. He submits the range is either in three figures or in the low four figure range.
54. Mr Davies submits that this is a serious libel. He emphasises that it was published to those colleagues and managers who were most important to the life and career of Mr Trumm, and particularly injurious insofar as the words referred to his family. Mr Davies submits that the appropriate measure of damages is of the order of £20,000.
55. I accept that there is force in the submissions for each party. If the words complained of had not been preceded and provoked by the publications of Mr Trumm about ASLEF and its officers, including Mr Norman, then I would have considered that an appropriate award should be of the order of £15,000. But in the light of Mr Trumm's own conduct, and considering as I do that he is so robust that he would feel the injury less than others, I award the sum of £7,500.