

**DECISION OF THE CERTIFICATION OFFICER ON APPLICATIONS MADE UNDER
SECTION 31(1) OF THE TRADE UNION AND LABOUR RELATIONS
(CONSOLIDATION) ACT 1992**

Mr C Maguire & Mr M Carey

v

GMB

Date of Decision

29 March 2012

DECISION

Upon application by Mr Maguire and Mr Carey ("the claimants") under section 31(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").

1. I uphold the claimants' complaints that the GMB ("the Union") breached section 30(2) of the 1992 Act by failing to make arrangements with the claimants for them to be allowed to inspect the accounting records of their branch as requested by the claimants, within 28 days of those requests.
2. I do not consider it appropriate to make an order for the claimants to inspect the accounting records of their branch as requested by them, having regard to the subsequent inspection of their branch's relevant accounting records by the claimants.

REASONS

1. Mr Maguire and Mr Carey are members of Branch N31 of the GMB. By a letter dated 22 August 2012 they made a complaint to me alleging a breach of section 30 of the 1992 Act by their Union in respect of requests they had made to access the accounting records of their branch.
2. Mr Maguire had made his request orally on or around 2 August 2011 and Mr Carey had made his in writing on 5 August 2011. Both claimants complained that the Union had failed to comply with their requests in accordance with section 30. The complaints were confirmed by the claimants in the following terms:

Mr Maguire's complaint

That on or around 2 August 2011, the GMB breached section 30(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 by failing to comply with Mr Maguire's request to access the accounting records of the N31 Branch of the Union, which request he made to the Branch Secretary.

Mr Carey's complaint

That on 5 August 2011 the N31 Branch of the GMB trade union breached section 30(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 by failing to comply with Mr Carey's request for him and Mr Maguire to inspect the Branch accounting records as set out in section 30(2) of the 1992 Act, consequently committing an offence as set out in section 45(1).

3. It was agreed by the parties at the hearing that both complaints be amended to replace "breached section 30(1)" with "breached section 30(2)(a)".
4. By agreement between the parties the complaints were heard together. It was agreed that the evidence and submissions in one case were to be considered as evidence and submissions in the other and that any enforcement order, if I decided such was appropriate, would be applicable in respect of both claimants.
5. I investigated the alleged breaches in correspondence. A hearing took place on 15 March 2012. At the hearing, Mr Carey made representations on behalf of himself and Mr Maguire, although Mr Maguire was given an opportunity to add any observations. Mr Carey and Mr Maguire gave evidence in accordance with their written witness statements and presented themselves for cross-examination. The Union was represented by Mr Neil Johnson of Thompsons Solicitors. Evidence for the Union was given by Mr Tom Brennan, regional secretary of GMB Northern Region and Mr Michael Moran, finance officer of GMB Northern Region, in accordance with their written witness statements. They also presented themselves for cross-examination. Mr Maguire, Mr Carey and the Union each provided skeleton arguments. There was also in evidence a 247 page bundle of documents consisting of letters and other documentation supplied by the parties, which included the 2011 rules of the Union. In addition, a second, 52 page, bundle of documents was introduced into evidence during the hearing. This included all those accounting records which the Union maintained had been inspected by the claimants on 2 December 2011.

The Issues

6. In August 2011 the claimants each made an application to their Union for access to inspect the accounting records of their branch, Branch N31. It is now conceded by the Union that it did not make arrangements with the claimants for them to be allowed to inspect those records within 28 days of their respective requests and that this constituted a breach of section 30(2)(a) of the 1992 Act. Accordingly, I find that the complaints of the claimants that the GMB failed to comply with a request made to it under section 30 of the 1992 Act are well founded.
7. Section 31(2B) of the 1992 Act provides as follows:
 - (2B) Where the Certification Officer is satisfied that the claim is well-founded he shall make such order as he considers appropriate for ensuring that the applicant –
 - (a) is allowed to inspect the records requested,
 - (b) is allowed to be accompanied by an accountant when making the inspection of those records, and
 - (c) is allowed to take, or is supplied with, such copies of, or of extracts from, the records as he may require

Given that liability is conceded, I must therefore consider whether to make an order under section 30(2B) and, if so, in what terms.

Findings of Fact

8. Having considered the oral and documentary evidence and the representations of the parties, I find the facts to be as follows:
9. Mr Carey is employed by nPower as a team manager in customer services. The customer services department has four offices in the north east of England which together serve most of the UK. These offices are known as Phoenix House, Wear House, Tees House and Rainton House and are within a 45 minute car journey of each other. Mr Carey works at Phoenix House, Thornaby, Teesside. He joined the Union on 16 April 2010 and became a member of the N31 Branch. This is a workplace branch which contains members employed by nPower at the four premises described above. It has about 1,100 members and, at the relevant time, its branch secretary was Mr Gilhespy. Mr Carey held office as a shop steward in Phoenix House and became the deputy branch secretary in March 2011, a position from which he resigned in early September 2011. There were a number of shop stewards in Phoenix House, one of whom is designated as the lead representative or convenor. At the relevant time the lead representative in Phoenix House was Mr Mike Pearce.
10. Mr Maguire is also employed by nPower and works at Phoenix House. He joined the Union on 5 January 2011 and was soon elected as a shop steward, a position from which he resigned in early August 2011.
11. Branch N31 is situated in the Northern Region of the GMB. Since 2003 the regional secretary of the Northern Region has been Mr Brennan. Since January 2012 Mr Moran has been the regional finance officer but he had been covering the duties of the then finance officer since July 2011. Mr Brennan gave evidence that regional organisers are responsible for recruitment and industrial matters and the Regional Office is responsible for branch administration, together with the National Administration Unit ("the NAU"). Mr Moran gave evidence that a new system for branch accounting and procedure was introduced in March 2011.
12. On 2 August 2011 Mr Maguire made an informal oral request to Mr Gilhespy for access to the accounting records of Branch N31. He made this request in order to find out whether the branch had implemented a proposed change in its allocation of funds. Previously, there had been payments of honoraria made to workplace representatives. In or about March 2011 it had been agreed to remove these payments in order to provide "Funding Pots" to the four "Houses", for recruitment and other local purposes. Mr Maguire was not aware that any additional funding had been made available to the "Houses" and wanted to find out what had happened to the funds that were no longer being spent on honoraria. He also wanted to have a better understanding of how the branch funds were spent.
13. On 5 August 2011 Mr Carey wrote to his lead representative, Mr Pearce, as follows:

"Hi Mike

In line with current reporting procedures and you being our Lead rep I am writing to you to formally request access to inspect the branch accounts (inclusive of receipts, invoices, and any other means of branch account reporting as set out in legislation) as per the request recently made by Craig Maguire.

Craig has outlined his disappointment to me that his recent request was denied and we have had discussions around this. In looking into this further following these discussions, it seemed the official process is to request them in line with GMB Rulebook and the Trade Union and Labour Relations (Consolidation) Act 1992.

Craig's purpose of inspecting the books was to look at the recent implementation by the Branch Secretary to remove Rep Subs and Honorarium payments in order to provide 'Funding Pots' to houses for recruitment, young members, etc. The subs and honorarium payments were removed some time ago now, which would deduce a larger pot for reinvestment into the branch, but so far no additional monies have been made available. Craig also wished to have a greater understanding of how branch funds are spent.

In discussing this with Craig I too would be interested in seeing the branch accounts; as Deputy Branch Secretary it would be in my best interests to understand how branch funds are spent and understand the accounting systems in place in the event I should have to act as Branch Secretary and also as members as well this would be of great interest.

Kind regards."

14. Mr Carey gave evidence that he considered his letter of 5 August 2011 to be a joint application from himself and Mr Maguire for access to the relevant accounting records. I find that, read objectively, the Union was entitled to consider it as being an application by just Mr Carey. Nevertheless, Mr Carey informed the Union by email on 9 August that his letter had been "a dual request" from both himself and Mr Maguire.
15. The requests of the claimants were considered first by the Branch Secretary, Mr Gilhespy, and then escalated by him to a senior regional organiser based in the Sunderland GMB office, Ms Joan Anderson. Ms Anderson tried unsuccessfully to arrange a meeting with Mr Carey but then sent emails to him in which she stated "*Craig resigned as a shop steward one week ago so will not be involved in any trade union activity*" and "*With regard to Craig, I have already explained that as he is not active he cannot see the branch accounts*".
16. Mr Carey persisted with his request for access to the accounting records and informed Ms Anderson that the right to inspect was not restricted to officials but was a right enjoyed by all members. Ms Anderson informed Mr Carey that his request would have to be considered at the next meeting of the N31 Branch. It was also reported to Mr Carey that Ms Anderson would be taking advice from the GMB legal team.

17. On 22 August 2011 Mr Carey and Mr Maguire commenced this application to me by an email to the Certification Office.
18. The next meeting of the N31 Branch was due to take place on 30 September 2011 but was brought forward to 7 September. In the days preceding this meeting Mr Gilhespy asked Mr Carey to put his request in writing with reasons and referred to Mr Carey's request as being a complaint. Mr Carey informed Mr Gilhespy that he considered that he did not need to put his request in writing, did not need to state reasons and that his request was not a complaint. Mr Carey circulated to the invitees to this meeting a copy of rule 32 of the GMB rules (dealing with the inspection of books and accounts) and a copy of sections 28-31 of the 1992 Act. Mr Gilhespy informed the invitees that at the meeting he would be "presenting his side of the information with supporting documents". The minute of the meeting of 7 September 2011 is headed "Branch Shop Stewards Meeting". Mr Carey was not present. The minute records, "Motion rejected, access refused to the Branch Accounts".
19. On 26 September 2011 my office put the complaints of Mr Carey and Mr Maguire to the head office of the Union.
20. On 10 October 2011, Mr Brennan wrote to Mr Carey. He stated that he would be obliged if Mr Carey and Mr Maguire would attend the GMB Northern Regional office in Newcastle upon Tyne on 19 October 2011 when the N31 Branch accounts would be available for inspection. He invited them to offer alternative dates if 19 October was unsuitable.
21. There ensued a fairly considerable exchange of emails between the Union and Mr Carey. Mr Carey stated that 19 October was not feasible and requested that the inspection takes place in either Phoenix House or at the Middlesbrough office of the GMB. Mr Brennan refused to have the inspection at any other venue. On 19 October, Mr Carey reminded Mr Brennan that section 30(3) of the 1992 Act requires the inspection to be at the place where the records are normally kept unless the parties agree otherwise. Nevertheless, Mr Brennan informed Mr Carey on 21 October "I'm not prepared to change my position any further on this matter". After yet further exchanges, Mr Brennan explained on 26 October that, "The branch secretary ... normally keeps them at the branch secretary's home address and it is therefore inappropriate that you ... intrude into people's homes ...".
22. On 10 November 2011 the national finance officer of the Union, Mr Wylie, wrote to my office proposing that the inspection takes place at the Middlesbrough office of the GMB. Mr Wylie stated, "*The GMB absolutely denies any breach of the regulations governing access to accounting records.*".
23. On 2 December 2011, Mr Carey and Mr Maguire examined accounting records of Branch N31 at the Middlesbrough office of the Union in the presence of Mr Moran. The precise records that were examined on that occasion are in dispute but Mr Carey stated in evidence that he and Mr Maguire took away from the meeting copies of the branch ledger sheets and bank statements for the period February – October 2011.

24. On 5 December 2011 Mr Carey sent an email to Mr Brennan in which he asked for the receipts and invoices relating to the branch ledgers they had inspected. This request was refused by Mr Brennan in an email of 7 December.
25. Prior to this hearing, my office wrote to Mr Carey asking him to identify the documents to which he considered the claimants had not been given access. In his reply of 20 January 2012 Mr Carey identified the following documents:
- “(a) Accounting records previous to the 1/2/11: both of us have been members longer than this however the quarterly income and expenditure balance sheets we have been presented with start at 1/2/11. Section 30(1) allows for the right to access the accounting records inclusive of duration of membership to the trade union.
 - (b) Accounting records post 24/10/11, our inspection took place on 2/12/11 but no records were presented representing anything after the 24/10/11 ...
 - (c) All Invoices and Receipts of the N31 Branch for the time-period we wish to inspect.
 - (d) Quite possibly, none of the accounting records of the branch.”

GMB Branch accounts

26. Mr Moran gave evidence that the principal accounting record of branches of the GMB is a branch ledger. He described it as being a hard-backed book containing pre-printed carbonated pages. Each page contains a section for income and a larger section for expenditure. The expenditure section contains 18 columns. The headings for these columns are date, paid to, description, cheque number, total, and 13 columns headed by different types of expenditure. There are also smaller sections for 'Fund Summary' and 'Bank balance at quarter end'. The pages are carbonated so that at the end of each quarter a copy of the relevant page can be torn out and submitted to the NAU. Mr Moran stated that it is the job of the branch secretary to complete these ledgers. Whilst best practice is for the ledger to be completed as the expenditure is incurred, Mr Moran explained that the practices of different branch secretaries might differ. Some might complete them at the weekends, at the end of the month or on other occasions.
27. Mr Moran explained that branches must report to the NAU on a quarterly basis for the periods ending 31 January, 30 April, 31 July and 31 October. He stated that within about two weeks after the end of a quarterly period, the NAU sends each branch secretary a branch financial report, which must be completed by the branch secretary and returned to the NAU together with the relevant pages from the branch ledger and relevant bank statements. By way of example, for the period ending 31 July 2011 (quarter 2) the branch financial report for Branch N31 consisted of a certificate of branch audit, a report on the road traffic fund, a report on the sick fund, a report on branch officers honoraria, a bank reconciliation report and a report on contributions and commissions. The NAU also sent the branch other documents for its information. These included a breakdown of the branch's membership and a contribution summary. The certificate of branch audit is signed by the branch secretary, branch president and two lay auditors. They certify, amongst other things, that "the books and records held are regularly and properly kept in

accordance with the rules and instructions” and that “valid vouchers/receipts are kept in respect of all expenditure items”.

28. The branch financial reports, the copy branch ledger and the copy bank statements are to be sent to the NAU within two months of the end of the relevant quarter. They are checked by the NAU and copies are sent to the regional finance officer. Should the branch secretary fail to submit these reports to the NAU no funds will be released by the Union to the branch to fund its activities for the coming quarter.

The Relevant Statutory Provisions

29. The provisions of the 1992 Act which are relevant for the purposes of this application are as follows:-

30 Right of access to accounting records

- (1) A member of a trade union has a right to request access to any accounting records of the union which are available for inspection and relate to periods including a time when he was a member of the union.
In the case of records relating to a branch or section of the union, it is immaterial whether he was a member of that branch or section.
- (2) Where such access is requested the union shall -
- (a) make arrangements with the member for him to be allowed to inspect the records requested before the end of the period of twenty-eight days beginning with the day the request was made.
 - (b) allow him and any accountant accompanying him for the purpose to inspect the records at the time and place arranged, and
 - (c) secure that at the time of the inspection he is allowed to take, or is supplied with, any copies of, or of extracts from, records inspected by him which he requires.
- (3) The inspection shall be at a reasonable hour and at the place where the records are normally kept, unless the parties to the arrangements agree otherwise.

...

31 Remedy for failure to comply with request for access

- (1) A person who claims that a trade union has failed in any respect to comply with a request made by him under section 30 may apply to the court or to the Certification Officer.
- (3B) Where the Certification Officer is satisfied that the claim is well-founded he shall make such order as he considers appropriate for ensuring that the applicant –
- (a) is allowed to inspect the records requested,
 - (b) is allowed to be accompanied by an accountant when making the inspection of those records, and
 - (c) is allowed to take, or is supplied with, such copies of, or of extracts from, the records as he may require

Consideration and Conclusions

Mr Maguire's complaint

30. Mr Maguire's complaint as amended (see paragraph 3 above) is as follows:
"That on or around 2 August 2011, the GMB breached section 30(2)(a) of the Trade Union and Labour Relations (Consolidation) Act 1992 by failing to comply with Mr Maguire's request to access the accounting records of the N31 Branch of the Union, which request he made to the Branch Secretary."

Mr Carey's complaint

31. Mr Carey's complaint as amended (see paragraph 3 above) is as follows:
"That on 5 August 2011 the N31 Branch of the GMB trade union breached section 30(2)(a) of the Trade Union and Labour Relations (Consolidation) Act 1992 by failing to comply with Mr Carey's request for him and Mr Maguire to inspect the Branch accounting records as set out in section 30(2) of the 1992 Act, consequently committing an offence as set out in section 45(1)."

Summary of submissions

32. Mr Carey, on behalf of himself and Mr Maguire, accepted that the documents contained in bundle 2 were the accounting records of the branch to which they sought access, subject to three qualifications. First, the claimants considered that they should have been given access to the accounting records going back to the date they joined the Union. Mr Carey joined on 16 April 2010 and Mr Maguire joined on 5 January 2011. Secondly, they considered they should have been given access to the accounting records up to the date of their inspection on 2 December 2011, whereas the documents they inspected only went up to 24 October 2011. Thirdly, they considered that they should have been given access to all relevant invoices and receipts. Mr Carey submitted that it seemed to the claimants that Mr Gilhespy had not completed the branch ledgers as and when each payment was made but had brought them up to date for the purposes of their inspection. He argued that before the ledger was made up the invoices and receipts were part of the accounting records. He further argued that the invoices and receipts were also accounting records for the period after 24 October 2011 to the time of the claimants' inspection. Mr Carey also questioned why the Union had disclosed the bank statements of the branch, as to have done so was inconsistent with their argument as to what constitutes accounting records. In Mr Carey's submissions, the invoices and receipts of the branch formed a part of the Union's accounting records.
33. Mr Johnson, for the Union, conceded that there had been a breach of section 30(2)(a) of the 1992 Act in that the Union had failed to make arrangements with the claimants for them to be allowed to inspect the records requested within 28 days of their respective requests. However, Mr Johnson submitted that I should not make an order under section 31(2B) for a further inspection as the claimants had already been given access to all the accounting records that they were entitled to inspect pursuant to their requests. He argued that my jurisdiction to make such an order is restricted to an order that "The applicant is allowed to inspect the records requested", and maintained that I should carefully consider what records the claimants had requested. Mr Johnson further argued that the Union was only required to give inspection of those documents that were available at the date of the

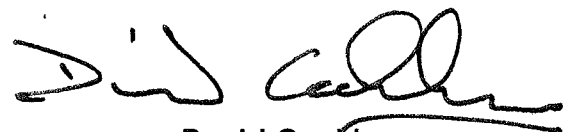
request and so there had been no breach by the Union not making available any records for the period after 24 October 2011, having regard to the fact that their requests had been made in August. Mr Johnson also submitted that the invoices and receipts of the branch did not form a part of the accounting records of the Union and relied upon my decisions in the case of **Mortimer v Amicus 2003 (D/1/03)** and **Foster v Musicians Union 2003 (D/13/17/03)**. He argued that the facts in the Mortimer case were similar to those in the present case as both involved large unions with a systemised accounting system. He contrasted this with the exceptional case discussed in the Foster decision where a small union might have virtually no accounting system at local level, merely keeping invoices and receipts in a shoebox to be given to its accountants periodically. In these circumstances, Mr Johnson submitted that the invoices and receipts of Branch N31 were primary or source documents, not accounting records of the Union.

Conclusion

34. The Union concedes liability, as it must. Following receipt of the claimants' request for access to the accounting records of Branch N31 on 2 and 5 August 2011, the Union had until 29 August or 1 September to comply within the required 28 days. An inspection took place on 2 December 2011. In these circumstances it is difficult to understand how the Union could have stated in an email to my office of 10 November 2011 "GMB absolutely denies any breach of the regulations governing access to our accounting records".
35. In order for me to consider whether to make an order for inspection under section 31 (2B) of the 1992 Act, I must first consider the nature of the request made by the claimants, as set out at paragraphs 12 and 13 above. I note that these requests do not state that the claimants sought inspection of all accounting records from the dates they joined the Union. The requests are silent as to the date from which the accounting records were required. In these circumstances, regard must be had to the content and context of the requests. I observe that two reasons were given for seeking inspection. One was to test whether the payments of honoraria had ceased and what had happened to the funds that were saved thereby. The other was to better understand how branch funds are spent. Having regard to these reasons, I find that the claimants' requests, on their correct construction, sought access to those accounting records which would reveal what happened to the honoraria payments and which would reveal the normal pattern of branch expenditure. The branch accounts to which the claimants were given access were those of the quarters ending 30 April, 31 July and 31 October 2011. The first of these quarterly reports contains details of the honoraria paid. The second and third reports do not. All three contain details of routine branch expenditure. In these circumstances, I find that the branch accounting records, to which the claimants were given access were for a period which was consistent with their requests. I am supported in this finding by the emails from Mr Carey to the Union immediately following the claimants' inspection on 2 December 2011. Whilst Mr Carey protests about the Union's failure to have given access to invoices and receipts, he does not protest about not being given access to accounting records going back to the date of his joining the Union on 16 April 2010.
36. The claimants argued that they also had a statutory right to be given access to relevant accounting records up to the date of their inspection on 2 December 2011.

If the claimants' construction of the Union's statutory obligation is correct, the Union would be required to give inspection of transactions up to and including the day of the inspection. This could give rise to practical difficulties which might cause a union to be in inadvertent breach of its statutory obligations. In my judgement, the correct construction of section 30 of the 1992 Act is that a union can only be required to give inspection of the relevant records as at, or up to, the date of the request. This is consistent with the requirement in section 30(2)(a) that the inspection should take place within 28 days of the request. That is a reasonable period for the records to be assembled, if necessary, and for the practical arrangements for an inspection to take place. Further, this construction does not prejudice the member who has made the request for, if subsequent accounting records become relevant, a further request for them can always be made.

37. As to the claimants' request to be given access to invoices and receipts, I have considered this difficult matter previously in the cases of Mortimer and Foster (see above). The claimants presented no arguments which were intended to persuade me that my conclusions in these cases were wrong, should be revisited and changed. Accordingly I proceed on the analysis of the relevant provisions and the meaning of 'accounting records' as determined in Mortimer and Foster. I refer in particular to paragraphs 29 to 32 of the Mortimer decision and to paragraphs 31 and 32 of the Foster decision. I find that the accounting system of Branch N31 is a part of a relatively sophisticated and systematic accounting system adopted by the GMB, a major trade union. Even so, at its lowest level, like most voluntary associations, the Union relies upon the goodwill and conscientiousness of lay officials. Some will no doubt transfer the information from its invoices and receipts (or other primary or source documents) to the branch ledger quicker than others. Nevertheless, the system operated by the Union places a substantial sanction on any branch which fails to follow its procedures and, operated in accordance with best practice, the branch ledger will always enable the financial position of the branch to be ascertained at any point in time. In these circumstances, I do not find that the accounting records of Branch N31 fall into that exceptional category of cases that I described in the Foster decision. In my judgement, on the facts of this case, the invoices and receipts of Branch N31 do not form a part of the Union's accounting records. Accordingly there was no obligation on the Union to give the claimants access to inspect them.
38. For the above reasons, I find that the Claimants have now been able to inspect all those accounting records of the Union to which they sought access in their requests of August 2011 and which they were entitled to inspect. Accordingly, I do not consider it appropriate to make an order for further inspection pursuant to section 31(2B) of the 1992 Act.



David Cockburn
The Certification Officer