

**DECISIONS OF THE CERTIFICATION OFFICER ON AN APPLICATION
MADE UNDER SECTION 55(1) OF THE TRADE UNION AND LABOUR
RELATIONS (CONSOLIDATION) ACT 1992**

MR A KLEE

V

ASSOCIATION OF SCHOOL AND COLLEGE LEADERS

Date of Decisions

1 July 2009

DECISIONS

Upon applications by Mr Klee (“the Claimant”) under sections 48 (4) and (5) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”)

1. I refuse to make a declaration that the Association of School and College Leaders breached section 48(4) of the 1992 Act on or about 12 November 2008 by allegedly failing to secure that no modification was made to the election address of Mr Klee in the election for Council representatives for the period 2009-2012.
2. I refuse to make a declaration that the Association of School and College Leaders breached section 48(5) of the 1992 Act on or about 12 November 2008 by including in the same envelope as Mr Klee’s election address, a letter from the General Secretary commenting on the election address of Mr Klee in the said election.

REASONS

1. Mr Klee is a member of the Association of School and College Leaders (“ASCL” or the “Union”). By an application received at the Certification Office on 18 November 2008, the Claimant made a complaint of breaches of the 1992 Act, in relation to the elections for South East regional representatives to the ASCL Council. Following correspondence with the Claimant, two complaints were confirmed by him in the following terms:-

Complaint 1

that on or around 12 November 2008 in the 2008 election for Regional Representatives South East seats on the ASCL Council, for the period 1 September 2009 to 31 August 2012, the Association breached section 48(4) of the 1992 Act by failing to secure that no modification was made to Mr Klee’s election address. Mr Klee’s election address was modified by the inclusion within the same envelope of a message to ASCL Members in the

South East Region from the Association's General Secretary which commented on and modified Mr Klee's election address."

Complaint 2

"that on or around 12 November 2008 in the 2008 election for Regional Representatives South East seats on the ASCL Council, for the period 1 September 2009 to 31 August 2012, the Association breached section 48(5) of the 1992 Act by including within the same envelope as Mr Klee's election address, a message to ASCL Members in the South East Region from the Association's General Secretary which commented on and modified Mr Klee's election address. The inclusion of the General Secretary's message modified Mr Klee's election address and therefore failed to secure that the same method of producing copies was applied to all election addresses of the candidates."

2. I investigated the alleged breaches in correspondence. A hearing took place on 16 June 2009. At the hearing, the Claimant represented himself and called no witnesses. The union was represented by Mr Tim Glover, the union's in-house solicitor. The Union provided witness statements by Dr J Dunford (General Secretary of the ASCL) and Mr I Brown (Field Officer). Although Dr Dunford and Mr Brown attended the hearing, neither was tendered for cross-examination. Both parties provided written skeleton arguments. There was a 247 page bundle of documents prepared by my office containing the documents that the parties considered relevant.

Findings of Fact

3. Having considered the oral and documentary evidence and the submissions of the parties, I find the facts to be as follows:
4. Mr Klee has been a teacher for 32 years and a Head Teacher for 15 years. Between 1994 and 2004, he was the Head Teacher at the Carterton Community College, Oxfordshire. He is now a Head Teacher in Kent. His Union was previously known as the Secondary Heads Association until it changed its name to the Association of School and College Leaders in 2005.
5. In October 2003 Mr Klee resigned from the Carterton Community College (effective 1 January 2004) following a number of potential disciplinary matters having been raised against him. Despite his resignation, the school progressed these matters to a disciplinary hearing and upheld some or all of the allegations. They referred those matters to the General Teaching Council of England ("GTCE"). The hearing before the GTCE was not concluded until April 2007 when Mr Klee was required to attend certain courses in management and leadership. Mr Klee maintains that throughout this process he did not receive the support to which he was entitled from the ASCL. The Union maintains that Mr Klee had the support of a Field Officer in 2003 but rejected her advice and that he was offered the services of the Union's in-house solicitor in July 2006 in connection with the matter before the GTCE. It is not necessary that I make any findings on these competing assertions which are not material to the present application.
6. In 2008, the Union held an election for representatives to its Council, who were to hold office between September 2009 and August 2012. Mr Klee was one of five nominees for the three seats in the Union's south east region. By 10 October, he had submitted a nomination form which included the text of his election address. This stated:

"We joined ASCL for support, guidance and protection when things get difficult. I believe that ASCL has lost its way. Too much time, energy and resources are diverted into running courses and producing glossy publications. If you face a conduct hearing at the GTC, you will be

represented by a Field Officer – the GTC have barristers. There is no guarantee you will receive legal support despite the word entitlement that appears in national adverts. Finally, if you have a complaint about ASCL it will be dealt with by the President. His word is final – this is not fair or democratic!"

At the hearing, Mr Klee said that he was standing in the election to raise the issues set out in his election address.

7. The Union considered Mr Klee's election address to be inaccurate and misleading criticism of the Union. It sought legal advice from its solicitors as to what it should do and was advised to publish a circular refuting the charges to be sent out with the election address.
8. On 12 November 2008, the voting papers were sent to members. The Union included with the voting papers the election addresses of each of the five candidates on separate pieces of A4. The election address of Mr Klee was in identical terms to that contained in his nomination form. The Union also included a letter from the General Secretary in the following terms:

"Message from the General Secretary, commenting on the election statement of Mr Alan Klee:

Dear Colleagues,

It is not correct to say that if you face a conduct hearing at the GTC you will be represented by a field officer. ASCL appointed an in-house solicitor in May 2006 and he deals with all GTCE cases. Indeed his services were offered to Mr Klee in his own case before the GTCE. However Mr Klee declined this offer because he preferred to use his own solicitors.

ASCL is committed to providing the best level of service to all its members including legal support where appropriate. In the last 2 years ASCL has issued 17 Employment Tribunal claims and has obtained awards from £5,000 to £200,000 on behalf of members. In addition, two members suspended for gross misconduct allegations were reinstated after Employment Tribunal proceedings were commenced on their behalf. In another case a dismissal was rescinded.

ASCL is also pursuing a number of personal injury and breach of contract claims on behalf of members. We have an enviable track record of negotiating and obtaining substantial settlements.

Complaints to ASCL are dealt with in the first instance by the General Secretary, but should the complaint involve the General Secretary, then the matter will be referred to the Presidential Trio for resolution.

John Dunford, General Secretary, November 2008"

9. The result of the election was declared on or about 24 November 2008. Mr Klee was not elected.
10. This application was commenced by a registration of complaint form received at the Certification Office on 18 November 2008.

The Relevant Statutory Provisions

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

Section 48. Election addresses

(4) The trade union shall secure that no modification of an election address submitted to it is made by any person in any copy of the address to be distributed except -

- (a) at the request or with the consent of the candidate, or*
- (b) where the modification is necessarily incidental to the method adopted for producing that copy.*

(5) *The trade union shall secure that the same method of producing copies is applied in the same way to every election address submitted and, so far as reasonably practicable, that no such facility or information as would enable a candidate to gain any benefit from -*

- (i) *the method by which copies of the election addresses are produced, or*
- (ii) *the modifications which are necessarily incidental to that method, is provided to any candidate without being provided equally to all the others.*

Conclusions

Complaint 1

12. Mr Klee's first complaint is as follows:

"that on or around 12 November 2008 in the 2008 election for Regional Representatives South East seats on the ASCL Council, for the period 1 September 2009 to 31 August 2012, the Association breached section 48(4) of the 1992 Act by failing to secure that no modification was made to Mr Klee's election address. Mr Klee's election address was modified by the inclusion within the same envelope of a message to ASCL Members in the South East Region from the Association's General Secretary which commented on and modified Mr Klee's election address."

Summary of Submissions

13. Mr Klee submitted that he was disadvantaged and his electoral prospects were damaged by the letter from the General Secretary having been included with the voting paper, alongside his election address, He considered that the letter made it look that his election address was untruthful and cast doubt upon his professional integrity and honesty. He stated that the approach of ASCL had caused him personal embarrassment and distress. Mr Klee submitted that section 48(4) and (5) of the 1992 Act should be interpreted to prevent any unfairness or injustice such as that caused by the disadvantage to which he had been put. He further submitted that section 48(4) prevents a Union adding supplementary material to an election address and that Dr. Dunford's letter should be seen as such an unlawful supplement. Mr Klee also commented that the Union had not approached him with a request to voluntarily modify his election address.

14. For the Union, Mr Glover noted that Mr Klee had accepted in correspondence, and at the hearing, that the wording of his actual election address had not been amended at all by the Union. He further pointed out that the letter from the General Secretary was on a separate piece of paper to Mr Klee's election address and not stapled or otherwise attached to it. Mr Glover referred to the case of **Re Association of Teachers and Lecturers (D/6/99)** decided by the Certification Officer in 1999. He adopted the passage in that decision at paragraph 25 which states:

"This (section 48(4)) provides that a "... trade union should secure that no modification of an election address submitted to it is made by any person in any copy of the address to be distributed ..." (my emphasis). I have no doubt that in this context "modification" means "change". It is quite clear that the purpose of section 48(4) is to prevent any changes or modifications being made to election addresses submitted by candidates and which subsequently are copied and distributed to members with voting papers. The President's letter did not change or modify the election addresses that were distributed with the ballot papers. A member's perception of the two candidates may have been modified by the President's letter, indeed that was the intention, but the complainant has not shown that the election address circulated with the ballot papers were not in the form submitted by the candidates."

Mr Glover further submitted that the General Secretary's letter was not supplementary to Mr Klee's election address, but a response to it. He concluded that no modification, within the meaning of section 48(4), had been made to the election address of Mr Klee.

Conclusion – Complaint 1

15. Mr Klee believes that he has been dealt with unfairly by his Union. However, whilst concepts of fairness and justice guide all judicial decision-making, the 1992 Act provides no general protection from allegedly unfair treatment. Complaints of breach of statute require a claimant to specify and make good an alleged breach of a particular provision, which must then be carefully considered. In this case, Mr Klee’s complaint requires a close examination of section 48(4), the operative words of which are as follows:

“ The Trade Union shall secure that no modification of an election address submitted to it is made by any person in any copy of the address to be distributed ...”

16. I respectfully agree with the view of my predecessor in **Re Association of Teachers and Lecturers (D/6/99)** that the document that I am required to examine by section 48(4) is the election address that has been “submitted to” the Union which is “to be distributed” and that I must decide whether that address has been modified or changed. Mr Klee frankly accepted, as he had to, that the text of his proposed election address was the same as the text of the one distributed to members. In my judgment, that is sufficient to dispose of this application. Mr Klee’s election address was not modified by the Union. The letter of the General Secretary was clearly intended to affect the voters’ understanding of Mr Klee’s election address but Parliament has not imposed any restriction on the stance that a Union takes in such an election. It has been held, for example in the case of **Re Association of Teachers and Lecturers** that a Union may expressly recommend one candidate to the voters. I further observe that Parliament has not prohibited the placing of additional documents in the envelope with the statutory balloting materials in such elections. This contrasts with the position in trade union mergers in which section 100C(5) of the 1992 Act prohibits the inclusion of additional material. I find that the letter from the General Secretary cannot be considered as part of Mr Klee’s election address, so as to modify it by way of supplementary comment. It was a separate document, albeit in the same envelope, which commented upon the election address.
17. For the above reasons, I refuse to make a declaration that the ASCL breached section 48(4) of the 1992 Act on or about 12 November 2008 by allegedly failing to secure that no modification was made to the election address of Mr Klee.

Complaint 2

18. Mr Klee’s second complaint is as follows:

“that on or around 12 November 2008 in the 2008 election for Regional Representatives South East seats on the ASCL Council, for the period 1 September 2009 to 31 August 2012, the Association breached section 48(5) of the 1992 Act by including within the same envelope as Mr Klee’s election address, a message to ASCL Members in the South East Region from the Association’s General Secretary which commented on and modified Mr Klee’s election address. The inclusion of the General Secretary’s message modified Mr Klee’s election address and therefore failed to secure that the same method of producing copies was applied to all election addresses of the candidates.”

Summary of Submissions

19. Mr Klee raised this complaint in furtherance of his belief that he had been treated unfairly by the Union and made no separate submissions with regard to this alleged breach in his skeleton argument. At the hearing, he argued that the placing of a letter in the material sent to voters which commented on his election address alone was to apply a different method of producing his election address to those of the other candidates.

20. For the Union, Mr Glover submitted that Mr Klee’s election address had been produced by the same method as the election addresses of all the other candidates in that election. He also referred to and adopted paragraph 70 of the 1996 decision of the Certification Officer in **Re TGWU (D/1/3/96)**, which states:

“70. ... I accept the Union’s argument that the requirement for equality of treatment in section 48(5) ... is confined to “facilities or information relating to the method of producing copies of election addresses.” That in my judgment is the proper interpretation of the section and the one that seems most consistent with the whole of section 48 which contains several, precisely defined and limited requirements to treat all candidate equally (eg 48(1) and 48(6)).”

Conclusion – Complaint 2

21. Mr Klee complained of a breach of section 48(5) of the 1992 Act. This provides:

“48(5) The trade union shall secure that the same method of producing copies is applied in the same way to every election address submitted and, so far as reasonably practicable, that no such facility or information as would enable a candidate to gain any benefit from -
(i) the method by which copies of the election addresses are produced, or
(ii) the modifications which are necessarily incidental to that method,
is provided to any candidate without being provided equally to all the others.”

22. Mr Klee made no submissions of any substance which link the facts of this case with section 48(5) and I find that this complaint is misconceived. On the evidence before me, the same method of producing copies of Mr Klee’s election address was applied in the same way to the election addresses of each candidate in the election. Further, in the absence of any evidence to the contrary, I find that all candidates were provided equally with the same “facility or information” about the method of producing copies of the election address. A letter from the General Secretary was included with the voting papers but this has no impact on the method used by the Union in the production of the election addresses or the “facility or information” provided to candidates about that method of producing the election addresses.
23. For the above reasons I refuse to make a declaration that the ASCL breached section 48(5) of the 1992 Act on or about 12 November 2008 by including in the same envelope as Mr Klee’s election address a letter from the General Secretary commenting on the election address of Mr Klee.

David Cockburn
The Certification Officer