

IN THE MATTER OF COMPLAINTS AGAINST THE
IRON AND STEEL TRADES CONFEDERATION

DATE OF DECISION

21 December 1990

DECISION

Under section 5 of the Trade Union Act 1984 (the Act) I am empowered to make, or refuse to make, a declaration on the application of any person who claims that their trade union has failed to comply with one or more of the provisions of Part I of the Act. For the reasons set out below, I decline to make a declaration in this case.

The application

1. On 24 September 1990 I received a letter from a member of the Iron and Steel Trades Confederation (the union) concerning an election to the union's Executive Council of a representative for the union's Division No. 4. The member's complaint, clarified in subsequent correspondence, was that he was not given adequate notification of the nomination procedure, that the period for nominations was unreasonably short in the circumstances, and that he was thus unreasonably excluded from standing as a candidate at the election.

The facts

2. The applicant's letter enclosed a circular dated 27 July 1990 addressed to all branch secretaries in Division No. 4 which set out the allocation of seats in the election and called for nominations. Nominations were to be put before branch meetings and, if supported by the branch, were to be forwarded to the General Secretary by 1 September 1990. The applicant explained that the circular arrived at a time when his workplace was closed for annual holidays. He complained that it was not brought to his attention until 2 September. He also observed that his branch, Corby 11, did not hold meetings during August.

3. Much of what the complainant says is confirmed by the branch secretary of Corby 11 branch. The branch held meetings on 1 July and thereafter on 9 September. The Corby site was shut down from 21 July to 13 August. On return from holiday abroad on 12 August the branch secretary found two circulars dated

20 and 27 July giving information about the nomination procedure for the election. He states that he posted copies of these on the notice board when the site re-opened. The complainant disputes that the notices were posted up on 13 August and believes that they were not put up until he had himself queried the matter with the branch secretary in early September.

4. The union explained that the nomination procedure was contained in new Rule 3 of its rules. Rule 3.7(a) required the General Secretary to inform branches of the allocation of seats no later than 31 July, and required him to set a closing date for nominations no later than 1 September. The new rules had been overwhelmingly approved in a ballot of the whole membership in March 1990. Before that date drafts of the proposed new rules had been distributed to members through branch secretaries, and members had been informed of the ballot result. The union submitted that the new procedure should therefore have been known to the complainant and to members generally. They pointed out that, knowing the procedure, the branch could have approved a nomination at some earlier meeting in anticipation of the actual call for nominations. Failing this the complainant could, given sufficient support, have called for a special branch meeting to seek nomination. They added that as holidays in the steel industry are staggered through the summer months it would not have been possible to make arrangements which would suit every branch.

5. The complainant, in response to the union's statement that he could have made preparations in anticipation of the nomination procedure, explained that he had done this prior to an anticipated election in 1988. He had expended postage in writing to other branches. However, the 1988 election had been called off - for reasons which are not relevant here. The complainant stated that he had been unwilling to act on this occasion until the procedure was set in motion.

The requirements of the legislation

6. The conduct of elections for the members of a union's principal executive committee is governed by the Act as amended by the Employment Act 1988. The union have agreed that their Executive Committee is their principal executive committee. Part I of the Act provides, amongst other things:

Section 1 - "(1) Subject to the following provisions of this Part of this Act, it shall be the duty of every trade union (notwithstanding anything in its rules) to secure -

- (a) that every person who is a member of the principal executive committee of the union holds that position by virtue of having been elected as such a member at an election in relation to which section 2 of this Act has been satisfied ...".

Section 2 - "(9) No member of the trade union in question shall be unreasonably excluded from standing as a candidate at the election."

REASONS FOR REFUSING TO MAKE A DECLARATION

7. The question I have to consider is whether the union failed to do what section 2(9) of the Act required, namely to secure that no member of the trade union was unreasonably excluded from standing as a candidate at the election.

8. The terms of new Rule 3.7(a) adopted by the union in March 1990 state -

"... the General Secretary shall, no later than 31st July immediately following the qualifying date, in respect of each division, inform each branch of the qualifying and joint allocations made within their division and shall request the branches to notify their members of the same and to notify the General Secretary, on or before a date inserted in the request ("the closing date") being no later than 1st September, of their nomination of candidates for election for membership of the Executive Council ..."

9. On its face this nomination procedure appears perfectly reasonable. I do not think it could be said that a nomination period of not less than 31 days was unreasonably short, even where nominations have to be made at branch meetings. It was unfortunate for the complainant that his particular workplace was closed from 21 July to 12 August, and that his branch had no regular meeting in August. But I accept the union's assertion that plant closures are "staggered" and therefore that any particular period in the summer is bound to be inconvenient for somebody. Election dates have to be decided upon with reference to a number of factors and I do not think the union can be expected to have regard to the circumstances of every individual branch.

10. The draft rules concerning the nomination procedure were distributed to members, and all members were therefore on notice of the timing of the nomination process. The complainant appears to have had adequate notice of the new rules and therefore a sufficient opportunity to make contingency plans. For

example, a special meeting of the branch could have been requested for late August. However, he chose to wait until the union actually put the nomination procedure in motion. That may have been an understandable attitude, but he left himself relying totally on his ability to react quickly at the appropriate time.

11. There is a direct conflict of evidence on the question whether the branch secretary put the notice concerning nominations on the notice board, but I do not think this finally affects the issue. There was sufficient other indication of the procedure in the new rules to put the applicant on alert, and I have no doubt that any failure to post the notice was accidental. By itself I do not think this could amount to unreasonable exclusion from standing as a candidate.

12. A combination of the particular circumstances of his branch, his own cautious approach to the matter, and possibly an accidental failure to display the relevant notice, deprived the applicant of an opportunity of nomination. One can have considerable sympathy with him, but I do not think he was "unreasonably excluded from standing as a candidate at the election". I am therefore unable to make the declaration which the applicant sought.

Observations

13. I note that the rules of the union permit notification of the nomination procedure to be given at any time before 31 July. The union might want to consider whether earlier notification might be desirable in future elections now that the union is aware of the problems that can arise because of plant shut-downs during the summer months.