

D/1/86

DECISION OF THE CERTIFICATION OFFICER ON APPLICATIONS MADE UNDER SECTION 5 OF THE TRADE UNION ACT 1984

Applicants: P STEMP and others
L LOWES and others

Trade Union: NATIONAL UNION OF RAILWAYMEN

DATE OF DECISION 10 March 1986

DECLARATION

Under section 5 of the Trade Union Act 1984 I am empowered to make a declaration applied for by any person who claims that a trade union has failed to comply with one or more of the provisions of Part I of the Act. In making the declaration I am required to specify the provisions with which the trade union has failed to comply.

For the reasons which follow I declare that, in relation to the election, held between 12 September 1985 and 25 October 1985, of 9 members to serve for 3 years on the Executive Committee of the National Union of Railwaymen the Union failed to comply with the following provisions of Part I of the Act:-

section 2(8)(b), in that they failed to conduct the ballot so as to ensure that the election was determined solely by counting the number of votes cast directly for each candidate at the election by those voting;

section 2(8)(a), in that they failed to conduct the ballot so as to secure that so far as was reasonably practicable, those voting did so in secret; and

section 2(5), in that the method of voting was not by the marking of a voting paper by the person voting.

The applications

1. This decision concerns applications made by Mr P Stemp and others and Mr L Lowes and others, under section 5 of the Trade Union Act 1984 ("the Act"). On 4 December 1985 I received letters of complaint from those whose names are listed in the Appendix to the effect that the National Union of Railwaymen ("the Union") had followed a system of balloting commonly known as "branch block voting" in a recent election of members of their Executive Committee, and that this was not in accordance with statutory requirements. The applicants were all members of the Union at the time of the election and at the time of making their applications. In view of the fact that all the applicants were making the same complaint, I decided to consider them together.

The facts

2. My enquiries both of the applicants and of the Union showed that the facts are not in dispute. A proportion of the Union's Executive Committee is elected each year. An election for 9 members of the Union's Executive Committee was held between 12 September 1985, when ballot forms and instructions were sent out to branches, and 25 October 1985, the closing date for voting. Those elected are able to vote at Executive Committee meetings of the Union and, under the Union's rules, are due to hold office for 3 years from January 1986. The method of voting was in accordance with Rule 3(1) of the Union's Rule Book, which states that Executive Committee representatives shall be chosen by the branches of the different districts by ballot on the single transferable vote system. The Union explained that

"chosen by the branches" in practice means that the Branch Chairman and Branch Secretary count the show of hands for each candidate and record the branch's preference on a ballot form for the purposes of the single transferable vote system; they then forward the number of members in the branch and the branch's preference for candidates to the Electoral Reform Society for counting.

3. The effect of this system was as follows: though it appears that all the members in the districts involved in the election had the opportunity to express their preference, ultimately the election was not decided simply by counting the choices of the individuals who voted. Instead, the view of the majority of those who voted in each branch became the branch view and was passed forward to be counted as if it had been the unanimous view of the entire membership of that branch. This is the system commonly known as "branch block voting".

Reasons for making the declaration.

4. There is no doubt that this election should have complied with Part I of the Act. It was an election for voting members of the Union's principal executive committee as defined in the Act (section 1(5)). The last day on which votes could be cast (25 October) fell after the date on which Part I came into operation (1 October). Section 9(2) deems the date on which a contested election is taken to have been held to be, in the case of a ballot in which votes may be cast on more than one day, the last of those days.

5. The Union acknowledged that there were three respects in which the election in question had failed to comply with Part I of the Act:-

(a) section 2(8)(b) of the Act requires that the ballot be conducted so as to secure that the result of the election is determined solely by counting the number of votes cast directly for each candidate at the election by those voting. It is

evident from the Union's explanations to me that in this election the votes were counted on the basis of branch block voting, as explained in paragraph 3 above;

(b) section 2(8)(a) requires a union to secure, so far as is reasonably practicable, that those voting do so in secret. The Union acknowledged (see paragraph 2 above) that in this election voting was by show of hands at branch meetings;

(c) section 2(5) requires the method of voting to be by the marking of a voting paper by those voting. In this election voting was by show of hands.

Steps to be taken to remedy the declared failure.

6. Section 6(1) of the Act requires me, when I make a declaration, to specify any steps which have been taken, or which a union has agreed to take, with a view to remedying the declared failure or to securing that a failure of the same, or any similar kind, does not arise. The President and the General Secretary of the Union have in this regard assured me that urgent and serious consideration will be given, within a special sub-committee of the Executive Committee which has already been set up, to the necessary rule-changes required to ensure that all future Executive Committee elections comply with the requirements of Part I of the Act.

7. I put it to the Union that it would not be right for the 9 representatives who had been improperly elected last autumn to hold office for 3 years. After some discussion the President and the General Secretary of the Union indicated that, from a practical point of view, the 1985 election could be re-run at the same time as the election already due in the autumn of 1986 for a further group of seats on the Executive Committee. It would be necessary to put the required rule-changes through the Union's constitutional procedures, including the Union's Executive Committee and annual conference in June 1986.

Observations

8. As already indicated there can be no doubt that the applications in this case were fully justified. At the same time I feel it appropriate to record that throughout my enquiries I received full co-operation from the Union. As a practical matter I regard the steps which the Union have told me they will take as a not unreasonable response to the complaints which I have upheld.

Appendix

- A. P Stemp
E W Harland
D M Melhuish
L Miller
R Widdicombe
R Winter
T Rendle
J Harland
J Hart
I Warren
C I Ayers
K R Luke
E G Whittaker
P Baker
T Clynick
M S Sandys
N Miller
D Bond
C West
D Truscott
R W Seaward
A James
G Richards
K Zeinalzadeh
G M Richards
B Hunt
R Ford
G A Stevens
M Eastley
D J Newbury
R W Harvey
S Faulkner
E Wohlfauht
D Hoare
J G Cross
R Hillman

R Marsden

R Snow

C Mclaughlin

B. T W Lowes

C Smith

T Nassau

M Lote

R Lightfoot

A Bell