

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION  
MADE UNDER SECTION 108A(1) OF THE TRADE UNION AND LABOUR  
RELATIONS (CONSOLIDATION) ACT 1992**

**Mr E Clarke**

**v**

**Unison**

**Date of Decision:**

**12 June 2009**

**DECISION**

Upon application by Mr Clarke (“the Claimant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992.

Pursuant to section 256ZA of the Trade Union and Labour Relations (Consolidation) Act 1992, I strike out the Claimant’s complaints made by applications dated 1 and 9 May 2008 on the grounds of excessive delay in his proceeding with them.

**REASONS**

1. At all material times the Claimant was a member of Unison. He described himself as formerly Union Steward for Information Services (Stafford). He was employed by Staffordshire University.
2. The Claimant commenced this application by two registration of complaint forms, received at the Certification Office on 1 and 9 May 2008. The two applications were consolidated and proceeded as a single application. Another application by Mr Clarke against Unison was outstanding at the date of this decision.
3. The application of 1 May 2008 consisted of some 65 pages. It included the Union’s rule book, its Code of Good Branch Practice, the relevant branch rules and the standing orders for meetings. Paragraph 12 of the application provided a general description and the circumstances about which he was complaining. He then set out three complaints of breach of statute and 26 complaints of breach of rule.
4. The application of 9 May 2008 consisted of some 52 pages. It reproduced a similar general description of the circumstances of Mr Clarke’s complaint to that set out in the first application and then added 15 new complaints of breach of rule. In his covering letter, Mr Clarke asked that his second application be

considered in conjunction with his first and, indeed, he had numbered his complaints from both applications sequentially; 1 to 41.

5. The complaints were of such volume and complexity that it was not until 29 May 2008 that my office was in a position to respond substantively to Mr Clarke. It did so in an eight page letter in which it confirmed that his two applications had been consolidated and in which each of Mr Clarke's complaints was addressed individually. Mr Clarke was informed that each of his breach of statute complaints was outside my jurisdiction. Indeed, Mr Clarke stated in his first application, "*I think these breaches may be outside the remit of the Certification Officer and, if so, the information in this section is provided as further background information*". As for the breach of rule complaints, the letter set out the heading of each complaint and asked for individual clarification about each complaint. The questions that were asked were to determine whether the complaints were within my jurisdiction and whether they had been brought in time. The letter began by stating that these matters needed to be addressed before his complaint could be given further consideration. A reply was required by 20 June 2008. Section 108B(5) of the 1992 Act requires that such letters specify a date for the required information to be furnished.
6. On 3 June 2008 Mr Clarke responded, stating that he would reply in due course. My office replied on 5 June stating that a full reply was not required before 20 June but that it was required by then at the latest.
7. On 13 June 2008 Mr Clarke informed my office that he was signed off work with a stress-related illness and that he would reply to the letter of 29 May at the earliest opportunity and "probably early July". My office responded the same day informing Mr Clarke that no further action would be taken in respect of his complaints until his substantive reply was received.
8. On 8 July 20078 Mr Clarke informed my office that he expected to be able to respond on his claims "towards the end of the month". My office replied on the same day repeating that no further action will be taken on his complaints until a response had been received.
9. By an email dated 22 July 2008 Mr Clarke alluded for the first time to claims he was pursuing in the Employment Tribunal. In a further email dated 25 July Mr Clarke stated that he would not be able to reply by the end of the month and that he regarded the matters before the Certificate Officer as "stayed pro tem". My office responded to both these letters on 29 July. It informed Mr Clarke that section 108B(2)(c) of the 1992 Act provided that I "shall ensure that so far as reasonably practicable the application is determined within six months of being made". The letter stated that a complaint may not remain "in holding mode" indefinitely and that whilst I may allow a reasonable period of delay I would ultimately be obliged to consider imposing strict deadlines and possibly using my power to strike out for excessive delay. That said, the letter informed Mr Clarke that I was prepared to treat the matter as stayed in view of the constraints placed upon him by his other commitments but that any prolonged delay would result in a consideration of my powers to strike out.

10. In an email dated 30 July 2008 Mr Clarke stated that he would respond to the letter of 29 May “as soon as possible”. He informed my office that he had recently been expelled from his Union and dismissed from his employment. He also stated that he remained signed off work until 11 August but expected to be fit for work before long.
11. In an email dated 29 August 2008 Mr Clarke informed my office that his Employment Tribunal claim for unjustifiable discipline against his Union had been “accepted” on 12 August and requested a stay in the proceedings before me for a further three months. In a response dated 5 September, my office informed Mr Clarke that his response should be submitted as soon as possible but that, in the meantime, no action would be taken on his complaint.
12. In an email of 7 September 2008 Mr Clarke informed my office that he would reply to the letter of 29 May as soon as he was able but that he continued to be signed off work for a stress-related illness and asked for some reasonable adjustment in that regard. He also stated that he was working on his other cases against his Union and his employer.
13. On 11 September 2008 Mr Clarke submitted a further complaint to me against Unison, which remains ongoing at the date of this Decision.
14. By an email dated 15 September 2008 Mr Clarke informed my office that he had made some progress replying to its letter of 29 May and was hoping to reply along with other papers pertaining to his most recent application in the next week or so.
15. On 9 December 2008 my office wrote to Mr Clarke confirming that his application was stayed but asked for an update on his current situation and when he would reply to the letter of 29 May. Mr Clarke responded on 10 December stating that he had made Employment Tribunal claims in August and November, which had now been consolidated and were due to be heard at the end of March or beginning of April. He stated that he had a very busy schedule until April.
16. By letter dated 18 December 2008, my office informed Mr Clarke that, whilst mindful of his “very busy schedule”, I was also mindful that trade unions should be made aware of complaints against them as soon as possible in order that they may consider them and respond whilst the matters were still fresh. Mr Clarke was informed that I required his full response to the letter of 29 May by no later than 30 January 2009 and that, if no substantive reply was received by then, he would be given notice under section 256ZA of the 1992 Act requiring him to show cause why his application should not be struck out for excessive delay in proceeding with it.
17. By an email dated 29 January 2009, Mr Clarke informed my office that his appeal against expulsion by the Union had been heard between 12 and 14 January but had been unsuccessful. He stated that he would review the papers again as soon as he was able but that he was engaged currently in preparing Employment Tribunal claims against Staffordshire University, his former

employer, scheduled for a hearing between 9 and 27 February and against his Union, scheduled for a hearing between 31 March and 3 April. He stated that he did not think it was in the interests of justice or efficiency to require a further reply from him at that stage. He referred to the two box files of papers he had presented to my office in May 2008 in connection with an alleged financial irregularity and commented that he believed most of the particulars were included within those papers. He further stated his belief that his claimed breaches of rule fell within my remit but that he had not had time “to review the provisions of the Donovan Report or updates thereto”.

18. On 10 February 2009 my office replied to Mr Clarke reviewing the situation and explaining again why it was important that he responded substantively to the letter of 29 May 2008. The letter concluded by setting a further deadline of 23 February 2009 for his response. By an email dated 23 February, Mr Clarke stated that he did not think it reasonable that a response should have been requested by that date. He asked for an extension until 27 February.
19. By an email dated 26 February 2009, Mr Clarke stated that his appeal to the EAT was scheduled for 11 March and that he was still engaged in his Tribunal case against his Union. He stated that he would not now be able to provide a substantive response by the date he had proposed, 27 February, and requested that he be allowed to respond “as soon as I am able”. My office replied on 12 March. It informed Mr Clarke that I was not prepared to grant any further extensions of time in which to respond to the letter of 29 May and asked him to show cause why his application should not be struck out for excessive delay pursuant to Section 256ZA of the 1992 Act. Mr Clarke was given until 23 March to reply.
20. By an email dated 23 March 2009, Mr Clarke stated that it would not be in the interests of justice or the overriding objective to strike out his claims as “*they have considerable importance impacting on the Union branch of a public body and the issues relate to fraud, that for 15 years the Union have apparently deceived members that it is a recognised trade union when in fact there is no lawful recognition agreement, leading to a culture of abuse, as reported, and further fraud in the introduction of a new pay and working arrangements*”. He also referred to his case against Unison which was to be heard the following week and asked for a further extension of 14 days. Mr Clarke informed my office that he had lodged a breach of contract claim against his Union. In an email dated 27 March my office granted an extension of time to 6 April.
21. On 6 April 2009 Mr Clarke submitted a six page email to my office, which addressed the various different issues which he had raised with my office. He asked for further time to reply to the enquiries as he would like to be sure that “there is no misunderstanding regarding the jurisdiction of the Certification Officer pertaining to the complaints made”. Nevertheless, after commenting generally on the other issues, he purported to reply to the letter of 29 May 2008. He stated that he would prefer “*to have (component) complaints struck out rather than withdraw them (though some likely should be withdrawn anyway as having been somewhat misconceived or ill-defined)*. Assuming pro tem that no further time will be granted to respond re jurisdiction and as I have been

*overtaken with other commitments, I reply on the following (component) complaints for consideration of the CO which are of most concern to me and/or are most egregious". Mr Clarke then purported to answer the letter of 29 May 2008 in respect of 9 of his 41 complaints.*

## **The law**

22. The power for me to strike out a complaint is contained in section 256ZA of the 1992 Act, which provides:
- (1) At any stage of the proceedings on an application or complaint made to the Certification Officer, he may -
    - (a) order the application or complaint, or any response, to be struck out on the grounds that it is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived,
    - (b) order anything in the application or complaint, or in any response, to be amended or struck out on those grounds, or
    - (c) order the application or complaint, or any response, to be struck out on the grounds that the manner in which the proceedings have been conducted by or on behalf of the applicant or complainant or (as the case may be) respondent has been scandalous, vexatious or unreasonable.
  - (2) The Certification Officer may order an application or complaint made to him to be struck out for excessive delay in proceeding with it.
  - (3) An order under this section may be made on the Certification Officer's own initiative and may also be made -
    - (a) if the order sought is to strike out an application or complaint, or to amend or strike out anything in an application or complaint, on an application by the respondent, or
    - (b) if the order sought is to strike out any response, or to amend or strike out anything in any response, on an application by the person who made the application or complaint mentioned in subsection (1).
  - (4) Before making an order under this section, the Certification Officer shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made.

## **Conclusions**

23. It is axiomatic that any legal proceedings should be proceeded with as promptly as is consistent with the interests of justice. In the statutory jurisdiction of the Certification Officer this is promoted by the requirement in section 108B(5) of the 1992 Act for me to set a date for the response to any relevant enquiry I make and by the requirement in section 108B(2)(c) that insofar as reasonably practicable, any application is to be determined within six months of being made.
24. The present complaints were made by registration of complaint forms received at my office on 1 and 9 May 2008. The complaints were not obviously within my jurisdiction and/or within time. My office made enquiries of the Claimant regarding these matters by letter dated 29 May 2008, which required a response by 20 June 2008. The Claimant requested various extensions of time to respond to this letter. On 13 June 2008, my office gave Mr Clarke, in effect, a general

extension of time on being told of his stress-related illness and on being told that a response would probably be received by early July. By 29 July 2008, my office informed Mr Clarke that his response could not remain “in holding mode” indefinitely and that, whilst the stay would continue for the time being, there would be a time when I would consider my powers to strike out for excessive delay. Following further correspondence between my office and Mr Clarke in which he indicated that he would reply as soon as he was able, my office wrote to him on 18 December 2008 stating that his response was required by 30 January 2009 and that, in the absence of a reply, his claim could be struck out. No substantive response was received by 30 January. By an email of 29 January, Mr Clarke stated that he would respond as soon as he was able. My office replied on 10 February, setting 23 February as the new deadline by which Mr Clarke must respond substantively to the letter of 29 May 2008. No substantive response was received by then. By an email of 23 February 2009 Mr Clarke requested an extension until 27 February. Before my office could reply, Mr Clarke wrote in to state that he could not respond by that date and asked if he could respond as soon as he was able. My office informed him on 12 March 2009 that no further extensions would be granted and he was invited to show cause why his complaint should not be struck out for excessive delay. Mr Clark was given until 23 March to show cause. No substantive response to the show cause letter was received by 23 March. Instead, on 23 March, Mr Clarke requested a further 14 days in which to respond to the show cause letter. My office granted an extension until 6 April. On 6 April, Mr Clarke provided a lengthy email in which, amongst other things, he purported to give a substantive reply to the letter of 29 May 2008 in respect of 9 out of his original 41 complaints. This email did not respond expressly to the invitation to show cause why his application should not be struck out, other than in a passage under the heading “Prefacing remarks” in which he states, “*it is in the interests of justice and the overriding objective for the CO to accept my complaints/application not least because the complaints (depending on which one) relate to many hundreds or very many tens of thousands of workplace colleagues or members of the Union, that these should not be defrauded or subject to rules which appear to give licence for systematic harassment*”.

25. I find that Mr Clarke was aware from the letter from my office of 29 July 2008 that complaints before me are to be determined within six months of being made, so far as reasonably practicable, and that I have the power to strike out for excessive delay. Although Mr Clarke was in effect given general extensions of time in which to respond to the letter of 29 May 2008, having regard in particular to his stress-related illness, he was made aware that his complaints could not be progressed until he had responded and he was encouraged to reply as soon as he was able. The general extension of time was brought to an end by the letter from my office of 18 December 2008. Mr Clarke was then required to respond to the letter of 29 May by 30 January 2009 and reminded of my power to strike out for excessive delay.
26. Although Mr Clarke’s failed to respond to my enquiries by 30 January 2009, it does not automatically follow that his complaint should be struck out for excessive delay in proceeding with it. In making that judgment I must have regard to the entirety of his conduct since he made his application. Although Mr

Clarke had a general extension of time until receipt of the letter from my office of 18 December 2008, he was aware that his complaints would not be progressed in the absence of a response and he was in correspondence with my office in which the issue of his response was regularly canvassed. It is against this background that I must consider Mr Clarke's failure to respond by 30 January. My office set a further deadline of 23 February but Mr Clarke failed to provide a substantive response by that date also. He also failed to respond substantively to the further date that he himself had proposed of 27 February, stating that he would respond as soon as he was able. Thereafter, Mr Clarke was asked to show cause why his complaints should not be struck out for excessive delay and he was required to respond by 23 March. He did not do so but requested an extension of 14 days, which was granted. On the last day of this extension Mr Clarke purported to give a partial response to the letter of 29 May 2008 but he did not give any substantial reasons why his claim should not be struck out for excessive delay. I find that, by that date, there had already been excessive delay.

27. Having examined the correspondence, it appears that, in part, Mr Clarke's reason for delaying his response to the letter of 29 May was his stress-related condition. However, it also appears that this did not prevent him commencing Employment Tribunal claims against both his Union and his former employer and pursuing those to hearings. I therefore give little weight to his stress-related condition as a reasonable and sufficient cause for the delay. It also appears that part of his reason for not responding was the time required by the litigation that he engaged in with his Union and former employer in the Employment Tribunal. However, this litigation was commenced after he made his complaint to me and I find that his preference to further that litigation over a period of many months is no reasonable or sufficient cause for not proceeding with his complaint before me within the required timetable. I find that no reasonable grounds have been advanced to justify Mr Clarke's excessive delay and that he has provided no, or no satisfactory, response to the letter to show cause of 12 March 2009.
28. Accordingly, I find that Mr Clarke's failure to respond substantively to the letter from my office of 29 May 2008 requesting further information regarding jurisdiction and time limits until his partial response by an email of 6 April 2009 constituted excessive delay in proceeding with his complaints for which no satisfactory explanation has been given and I therefore strike out his complaints pursuant to section 256ZA(2) of the 1992 Act.

**David Cockburn**  
**The Certification Officer**