

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

**MR J MORGAN**

**V**

**UNISON**

**Date of Decisions**

**22 October 2010**

**DECISIONS**

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

- (i) I refuse to make the declaration sought by the claimant that UNISON breached rule G3.1 of its rules on or around 29 March 2010 by allegedly only giving its members in Oxford only one working days notice of the AGM of the East Midlands Gas (Southern) Branch and effectively excluding them from attending the AGM.
- (ii) I refuse to make the declaration sought by the claimant that UNISON breached rule G5.1 of its rules on or around 29 March 2010 by allegedly giving only one working days notice of the AGM of the East Midlands Gas (Southern) Branch and effectively excluding them from voting to elect stewards at the AGM.
- (iii) I refuse to make the declaration sought by the claimant that UNISON breached rule G7.1 of its rules on or around 29 March 2010 by allegedly giving only one working days notice of the AGM of the East Midlands Gas (Southern) Branch and effectively excluding them from electing a health and safety representative at the AGM.
- (iv) I refuse to make the declaration sought by the claimant that UNISON breached rule G4.1.2 of its rules on or around 29 March 2010 by allegedly giving only one working days notice of the AGM of the East Midlands Gas (Southern) Branch and effectively excluding them from voting to elect branch officers at the AGM.
- (v) I refuse to make the declaration sought by the claimant that UNISON breached rule G3.4.2 of its rules on or around 29 March 2010 by allegedly giving only one working days notice of the AGM of the East Midlands Gas (Southern) Branch with the alleged consequence that no valid elections or confirmation of branch officers took place.
- (vi) I refuse to make the declaration sought by the claimant that UNISON breached rule G4.1.1 of its rules on or around 29 March 2010 by allegedly giving only one working days notice of the AGM of the East Midlands Gas (Southern) Branch with the alleged consequence that no valid elections or confirmation of branch officers took place.

## REASONS

1. Mr Morgan is a member of UNISON ("the Union"). By an application received at the Certification Office on 6 April 2010, he made a complaint of various breaches of union rules which he maintained were within my jurisdiction under section 108A(1) and (2) of the 1992 Act as they related to the appointment or election of a person to any office by the union. Following correspondence with the claimant, six complaints were confirmed by him in the following terms:-

### **Complaint 1**

*"That on or around 29 March 2010, by giving Oxford members of the East Midlands Region Branch of UNISON only one working days notice of the Branch AGM, effectively excluding them from attending the Branch AGM in breach of National Rule G3.1"*

### **Complaint 2**

*"That on or around 29 March 2010, by giving Oxford members of the East Midlands Region Branch of UNISON only one working days notice of the Branch AGM, effectively excluding them from voting to elect stewards at the Branch AGM in breach of National Rule G5.1"*

### **Complaint 3**

*"That on or around 29 March 2010, by giving Oxford members of the East Midlands Region Branch of UNISON only one working days notice of the Branch AGM, effectively excluding them from voting to elect a Health and Safety Representative at the Branch AGM in breach of National Rule G7.1"*

### **Complaint 4**

*"That on or around 29 March 2010, by giving Oxford members of the East Midlands Region Branch of UNISON only one working days notice of the Branch AGM, effectively excluding them from voting to elect Branch Officers at the Branch AGM in breach of National Rule G4.1.2"*

### **Complaint 5**

*"That on or around 29 March 2010 by giving Oxford members of the East Midlands Branch of UNISON only one working days notice of the Branch AGM the union breached National Rule G3.4.2 in that no valid elections or confirmation of Branch Officers took place"*

### **Complaint 6**

*"That on or around 29 March 2010 by not giving Oxford members of the East Midlands Branch of UNISON any notice of the Branch AGM the union breached National Rule G4.1.1 in that no valid election or confirmation of Branch Officers took place"*

2. I investigated the alleged breaches in correspondence. A hearing took place on 8 October 2010. At the hearing, the claimant represented himself and called no witnesses. Mr Morgan chose not to give evidence himself. The Union was represented by Mr Segal of Counsel. The Union called Mr Ed Bratt, Regional Organiser, UNISON East Midlands Region as a witness. A witness statement for Mr Bratt was produced. There was in evidence a 152 page bundle of documents consisting of letters and other documentation supplied by the parties for use at the hearing. Mr Morgan provided a written skeleton argument. The union did not provide a skeleton argument.

## 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 Morgan has been employed by British Gas Businesses Limited (“BGB”) for about 8 years. He is a credit controller based in Oxford, where about 350 employees of BGB are based. Of these, about 27 employees are members of UNISON. Mr Morgan joined the Union in about 2005 and is a member of the East Midlands Gas (Southern) branch. He did not hold any branch office before the recalled branch AGM in September 2010.
5. The East Midlands Region of the Union has two main branches representing its members employed in the gas industry, dealing respectively with the north and south of the region. The East Midlands Gas (Southern) branch has about 1,800 members. It covers a wide geographical area and its members are employed in a number of businesses. The majority of its members work in or around Leicester. Others work in Northampton, Hinckley and Oxford, at one of the 10 or so work places covered by the branch. The majority of the members of this branch work for BGB but others work for British Gas Services and British Gas Distribution Services, all of which businesses are part of Centrica/British Gas Trading. Others work, inter alia, for the National Grid, G4S Utilities Services and CSC computing. At the relevant time the Branch Secretary, Mr Merrell, did not have full time release from his job for his union activities.
6. By rule G3.2, each branch of the Union is to hold an AGM in the January/March quarter each year. Rule G3.4.2 provides that the business to be transacted at the AGM shall include “the election or confirmation of election of the branch officials for the coming year”. The rules further provide that the elections of stewards and health and safety representatives (who are to be elected annually for each work group or work place) are to be reported to the branch for ratification.
7. The East Midlands Gas (Southern) branch has its own rules. For the purposes of this hearing, both parties proceeded on the basis that these are in same terms of the model rules for UNISON branches, known as the Core Branch Rules. Branch rule 4(a) provides “... *the AGM may comprise one meeting or a series of aggregate meetings based on sections or geographical areas in order to maximise the active participation of members*”. Branch rule 5(c) deals with the election of branch officers. Sub-rule (ii) provides that nominations shall be invited no later than 2 weeks before the AGM and that all nominations must be received in writing at least 7 days before the AGM. Sub-rule (iii) provides that the vote will be conducted by election at the AGM. Branch rule 9 deals with the conduct of meetings and rule 9(b) provides “*All meetings will be advertised widely as far in advance as possible (in the case of the AGM, all members will be notified in writing at least 2 weeks before the meeting (or the first aggregate meeting))*”.
8. In 2010 the East Midlands Gas (Southern) branch arranged for a number of aggregate meetings to be held which together were to constitute its AGM. There was to be one on 25 March in Leicester, one on 30 March in Hinkley and one on 31 March in Leicester. It is common ground that notice of these meetings was not given to the relevant Union members who worked in Oxford until 26 March, after Mr Morgan had complained. Oxford is about 80 miles from Leicester by road and a typical car journey from Oxford to Leicester might take about 1hr 40 mins.

9. On 25 March 2010 the Branch Chairman, Mr Dewsbury, sent a circular email to those branch members employed in BGB, except for those employed in Oxford, giving notice of the AGMs to be held on 30 and 31 March. By chance, a copy of this email came into the possession of Mr Morgan on 26 March. Mr Morgan immediately complained to the Regional Organiser, Mr Bratt, and a considerable number of emails were exchanged that day between Mr Morgan and the Union. Mr Dewsbury explained that he had separate mailing lists for members with different interests and accordingly he kept separate mailing lists for those members employed by BGB at Leicester and at Oxford. Later that same day, Mr Dewsbury distributed a circular email to the members in Oxford specifically inviting them to the AGMs to be held on 30 and 31 March. He later distributed a further circular email suggesting that if any Oxford member had a problem in voting, he or she could do so by sending their votes anonymously by post to his home address or by means of one person attending the AGM with the votes of all. That evening, Mr Morgan sent complaints to the General Secretary and to the Union's Member Liaison Unit.
10. Mr Morgan contacted my office with regard to this matter on 1 April 2010 and his registration of complaint form was received on 6 April.
11. In its formal response to the complaints, the Union's solicitors did not concede any breaches of the rules cited by Mr Morgan in his complaint but indicated the Union's intention to hold a fresh 2010 AGM no later than 30 September 2010. In a further letter of 14 September, the Union's solicitors stated, "*The Union accepts that the failings of the branch were not in accordance with national or branch rules read together with the standards set out in the Union's Code of Good Branch Practice*".
12. On 28 September 2010, the Union held a fresh AGM of the East Midlands Gas (Southern) branch. It is common ground that proper notice of this meeting was given to the members in Oxford. Although the meeting took place in Leicester, the Union offered to pay not only travelling expenses but also loss of earnings to those who attended from Oxford. It also arranged for a conference call facility for those who wished to participate in the AGM remotely. At this AGM Mr Morgan was elected as a branch officer and his nomination as health & safety representative was endorsed by the AGM.

### **The Relevant Statutory Provisions**

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

***108A Right to apply to Certification Officer***

*(1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).*

*(2) The matters are –*

- (a) the appointment or election of a person to, or the removal of a person from, any office;*
- (b) disciplinary proceedings by the union (including expulsion);*
- (c) the balloting of members on any issue other than industrial action;*
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;*
- (e) such other matters as may be specified in an order made by the Secretary of State.*

## The Relevant Union Rules

14. The National Rules of the Union which are relevant to this application are as follows:-

*G3.1 – All members of the branch shall be entitled to attend branch meetings.*

*G3.2 – Branches will hold an annual meeting in the January – March quarter. Additional meetings shall be held in line with the agreed branch rules or when summoned by the Branch Committee to discuss any matter affecting the branch*

*G3.4 – At the annual meeting of the branch, the following business shall be transacted:-  
.2 – the election or confirmation of election of Branch Officers for the coming year.*

*G4.1.1– General Branch Officers shall be the Chairperson, Secretary, Treasurer, Education Co-ordinator, Lifelong Learning Co-ordinator, Equality Officer(s), Health & Safety Officer, Communications Officer, International Officer, Membership Officer, Young Members' Officer, Welfare Officer and such other officers as approved by the Branch.*

*G4.1.2 – The Branch Officers shall be elected annually.*

*G5.1 – One or more stewards shall be elected annually for each work group or workplace by the members in that work group or workplace*

*G7.1 – One or more health and safety representatives shall be elected annually for each work group or workplace by the members in that group or workplace in accordance with branch arrangements.*

15. The branch rules relevant to the application are as follows

*Branch Rule 5 (c) election of branch officers*

- (i) branch officer's may be nominated by the branch committee or any two members, with the exception of the Labour Link Officer who will be elected by the APF members only.*
- (ii) nominations will be invited no later than 2 weeks before the AGM and nomination forms will made available through the branch web-site. All nominations must be received in writing at least 7 days before the AGM.*
- (iii) ...*
- (iv) if there is more than one candidate, a vote will be held.*
- (v) the vote will be conducted by election at the AGM.*
- (vi) ...*

*Branch Rule 9 Conduct of meetings*

*(b) All meetings will be advertised widely as far in advance as possible (in the case of the AGM, all members will be notified in writing at least 2 weeks before the meeting (or first aggregate meeting).*

## Conclusions

### Complaint One

16. Mr Morgan's first complaint is as follows:-

*“That on or around 29 March 2010, by giving Oxford members of the East Midlands Region Branch of UNISON only one working days notice of the Branch AGM, effectively excluding them from attending the Branch AGM in breach of National Rule G3.1”.*

17. Rule G3.1 of the rules of the Union provides as follows:

*"All members of the branch shall be entitled to attend branch meetings".*

18. Mr Morgan argued that the notice of the AGM that the members in Oxford had received was too short. He pointed out that they had received the email invitation on Friday 26 March 2010 for AGMs to be held on Tuesday 30 and Wednesday 31 March. He submitted that this gave them insufficient opportunity to arrange their affairs to attend meetings to be held in Leicester and so effectively deprived them of their right to attend.

19. Mr Segal, for the Union, maintained that the members in Oxford had and continue to have an entitlement to attend the AGM, although he accepted that the short notice of the meeting that they had received gave them a diminished opportunity of doing so. He submitted that there had been no breach of rule G3.1.

20. In my judgment, there is a distinction to be drawn between an 'entitlement' and an 'opportunity'. Mr Morgan has established that the members in Oxford had a diminished opportunity to attend the AGMs that were held in Leicester on 30 and 31 March 2010 but he conceded that the Union had not attempted to deny them the right to attend. I find that rule G3.1 is a rule which confers an entitlement to attend branch meetings in the sense of a right to do so. It is not a rule which deals with the opportunity of doing so. The opportunity to attend branch meetings is addressed elsewhere in the branch rules. These require all members to be notified in writing at least 2 weeks before the AGM (or the first aggregate meeting), for nominations to be invited no later than 2 weeks before the meeting and for nominations to be received at least 7 days before the meeting. The Union correctly conceded that there had been a breach of these provisions so far as the members in Oxford were concerned, with the effect that they had had a diminished opportunity to attend the branch AGM. However, a breach of these branch rules does not establish a breach of rule G3.1. On the contrary, the existence of these branch rules supports the argument that I should not give a strained interpretation to the word 'entitled' in rule G3.1. I therefore find that all members of the branch were entitled to attend the AGM.

21. For the above reasons, I refuse to make the declaration sought by the claimant that UNISON breached rule G3.1 of its rules on or around 29 March 2010 by allegedly giving its members in Oxford only one working days notice of the AGM of the East Midlands Gas (Southern) Branch and effectively excluding them from attending the AGM.

## **Complaint Two**

22. Mr Morgan's second complaint is as follows:-

*"That on or around 29 March 2010, by giving Oxford members of the East Midlands Region Branch of UNISON only one working days notice of the Branch AGM, effectively excluding them from voting to elect stewards at the Branch AGM in breach of National Rule G5.1".*

23. Rule G 5.1 of the rules of the Union provides as follows:

*"One or more stewards shall be elected annually for each work group or workplace by the members in that work group or workplace".*

24. Mr Bratt gave evidence that in this branch stewards and health & safety representatives are not elected workplace by workplace. Rather, they are elected by work group and, for present purposes, the relevant work group was the members employed by BGB. Accordingly, the steward and health & safety representative for the members in Oxford were not necessarily, nor typically, employed in Oxford. The elections to these positions were conducted at the AGM by, and from amongst, branch members employed by BGB.
25. Mr Morgan maintained this complaint on what were in effect the same submissions he had made in his first complaint. He argued that the members in Oxford were not given the opportunity to nominate for the position of steward and that the stewards who were elected had not been elected by all the members in the work group, as those in Oxford had no reasonable opportunity of attending the AGM.
26. Mr Segal, for the Union, submitted that rule G5.1 had not been breached as stewards had in fact been elected annually. He asserted that, whilst a failure to notify members adequately of a branch AGM may be a breach of some rule, it did not amount to a breach of this rule. He noted, however, that the notice requirements in the branch rules related only to the election of branch officers and the holding of an AGM and that there is no specific notice requirement in relation to the election of stewards or health & safety representatives. In any event, Mr Segal argued that Mr Morgan did have an opportunity to participate in one way or another in the AGMs held on 30 and 31 March 2010.
27. Mr Morgan accepted that stewards had been elected at the AGMs held in March 2010 but he did not accept that they had been elected "*by the members in that work group*", in accordance with rule G5.1. In my judgement, however, the phrase "*by the members in the work group*" refers to and defines the constituency which is entitled to vote in that election. It does not address the issue of opportunity to vote. That issue is dealt with by the branch rules. Whilst the branch rules deal mainly with the opportunity to vote for branch officials and at the AGM, they also provide that all meetings shall be advertised as far in advance as possible. Accordingly, whether the elections for stewards and health & safety representatives are conducted at the AGM or other branch meetings, there will be a breach of rule if members are denied an adequate opportunity to participate by not having been given the notice required by the branch rules. As rule G5.1 does not deal with the opportunity to vote but the entitlement to vote, and as Mr Morgan accepts that he was entitled to vote in the relevant election, I find that there was no breach of rule G5.1.
28. For the above reasons, I decline to grant the declaration sought by Mr Morgan that UNISON breached rule G5.1 of its rules on or around 29 March 2010 by allegedly giving only one working days notice of the AGM of the East Midlands Gas (Southern) Branch and effectively excluding them from voting to elect stewards at the AGM.

### **Complaint Three**

29. Mr Morgan's third complaint is as follows:-

*"That on or around 29 March 2010, by giving Oxford members of the East Midlands Region Branch of UNISON only one working days notice of the Branch AGM, effectively excluding them from voting to elect a Health and Safety Representative at the Branch AGM in breach of National Rule G7.1".*

30. Rule G 7.1 of the rules of the Union provides as follows:

*"One or more health and safety representatives shall be elected annually for each work group or workplace by the members in that group or workplace in accordance with branch arrangement".*

31. Both Mr Morgan and the Union relied upon the same submissions as they have made in relation to Mr Morgan's second complaint.

32. For the reasons which I gave in relation to Mr Morgan's second complaint, I decline to grant the declaration sought by the Claimant that UNISON breached rule G7.1 of its rules on or around 29 March 2010 by allegedly giving only one working days notice of the AGM of the East Midlands Gas (Southern) Branch and effectively excluding them from electing a health and safety representative at the AGM.

#### **Complaint Four**

33. Mr Morgan's fourth complaint is as follows:-

*"That on or around 29 March 2010, by giving Oxford members of the East Midlands Region Branch of UNISON only one working days notice of the Branch AGM, effectively excluding them from voting to elect Branch Officers at the Branch AGM in breach of National Rule G4.1.2".*

34. Rule G4.1.2 of the rules of the Union provides as follows:

*"The Branch Officers shall be elected annually".*

35. Mr Morgan repeated his earlier submissions that the members of the Union employed at Oxford had been denied their entitlement to nominate for the branch officer positions and denied any adequate opportunity to vote for them.

36. Mr Segal, for the Union, submitted that there had been no breach of rule G4.1.2 as branch officers had in fact been elected. He argued that this rule would only be broken if no such election had been held. He further argued that the failure to notify the Oxford members of the AGM was a separate breach of rule and not an irregularity such as to vitiate the election itself.

37. The issue to which this complaint gives rise is whether the failure to give adequate notice to the members in Oxford, in breach of branch rules, was such as requires me to find that there was in law no election of branch officers at the AGM. This is not a straightforward matter and requires a consideration of the rules as a whole. In some circumstances it may be reasonably argued that a failure of the democratic process is of such a degree or nature that any subsequent election is ineffective. On the facts of this case, however, there are specific rules which deal with the problem raised by Mr Morgan in his complaint. Mr Morgan has not alleged a breach of those specific rules in his formal complaint and they are not therefore before me to determine. Had they been before me and had I upheld them, I would have gone on to consider whether it was appropriate to make an enforcement order. In that consideration, I would have had regard to all the circumstances, including the impact of the breaches on the outcome of the election. It appears to me that this approach is preferable to finding too readily that procedural breaches have the effect of nullifying an election. Accordingly, whilst it is common ground that there were breaches of the branch rules in the conduct of this election, I find that they did not vitiate the election. In my judgement, there



was an election for the branch officer positions in March 2010 and there was therefore no breach of Rule G4.1.2.

38. For the above reasons I decline to grant the declaration sought by the claimant that UNISON breached rule G4.1.2 of its rules on or around 29 March 2010 by allegedly giving only one working days notice of the AGM of the East Midlands Gas (Southern) Branch and effectively excluding them from voting to elect branch officers at the AGM.

### **Complaint Five**

39. Mr Morgan's fifth complaint is as follows:-

*"That on or around 29 March 2010 by giving Oxford members of the East Midlands Branch of UNISON only one working days notice of the Branch AGM the union breached National Rule G3.4.2 in that no valid elections or confirmation of Branch Officers took place".*

40. Rule G3.4.2 of the rules of the Union provides as follows:

*"4.2 At the annual meeting of the branch, the following business shall be transacted:-  
.2 – the election or confirmation of election of Branch Officers for the coming year".*

41. Both Mr Morgan and the Union relied upon the same submissions that they made in relation to Mr Morgan's fourth complaint.

42. For the reasons I have given in relation to Mr Morgan's fourth complaint, I find that the business conducted at the Branch AGM in March 2010 included the election of branch officers for the coming year. I therefore decline to grant the declaration sought by Mr Morgan that UNISON breached rule G3.4.2 of its rules on or around 29 March 2010 by allegedly only giving one working days notice of the AGM of the East Midlands Gas (Southern) Branch with the alleged consequence that no valid elections or confirmation of branch officers took place.

### **Complaint six**

43. Mr Morgan's sixth complaint is as follows:-

*"That on or around 29 March 2010 by not giving Oxford members of the East Midlands Branch of UNISON any notice of the Branch AGM the union breached National Rule G4.1.1 in that no valid election or confirmation of Branch Officers took place".*

44. Paragraph Rule G4.1.1 of the rules of the Union provides as follows:

*G4.1.1 "General Branch Officers shall be the Chairperson, Secretary, Treasurer, Education Co-ordinator, Lifelong Learning Co-ordinator, Equality Officer(s), Health & Safety Officer, Communications Officer, International Officer, Membership Officer, Young Members' Officer, Welfare Officer and such other officers as approved by the Branch".*

45. I find that this complaint is misconceived. Rule G4.1.1 simply lists the job titles of the branch officers to be elected in accordance with rules G3.4.2 and G4.1.2. Rule G4.1.1 in itself does not impose any obligation on the Union which is capable of being breached. It may be that rule G4.1.1 can be relied upon in conjunction with other rules which do impose

an obligation on the Union so as to establish a breach within my jurisdiction but this is not the case that Mr Morgan has brought for determination by me.

46. For the above reasons I decline to grant the declaration sought by Mr Morgan that UNISON breached rule G4.1.1 of its rules on or around 29 March 2010 by allegedly not giving its members in Oxford any notice of the AGM of the East Midlands Gas (Southern) Branch with the alleged consequence that no valid election or confirmation of branch officers took place.
47. I commend the Union for having taken action prior to this hearing to address the issues raised by Mr Morgan.

A handwritten signature in black ink, appearing to read 'David Cockburn', written over a horizontal line.

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