

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

Mr J McGinnes

v

Unite the Union (Amicus Section)

Date of Decision:

12 March 2009

DECISION

Upon application by Mr McGinnes (“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 complaint that on or around 14 May 2008 Unite the Union (Amicus section) breached rules 38(1)(d) and 38(1)(e) of its rules on the grounds that it has no reasonable prospect of success or is otherwise misconceived.

REASONS

1. The Claimant is a member of Unite the Union (Amicus section) in the Union’s Scottish Region.
2. The Claimant commenced his application by a registration of complaint form received at the Certification Office on 21 October 2008. After correspondence with my office, he identified his complaint in the following terms:-

“That on or around 14 May 2008, Unite the Union (Amicus section) breached rules 38(1)(d) and 38(1)(e) by refusing to charge a member of the union who incited, espoused and practised discrimination or intolerance amongst members on grounds of disability and who by her actions brought about injury to, and discredit upon, the union and Mr McGinnes as a member of the union.”

3. By a letter dated 18 December 2008, the Claimant was given notice pursuant to section 256ZA(4) of the 1992 Act that I proposed making an order striking out his claim on the grounds that it had no reasonable prospect of success or was otherwise misconceived. The Claimant was given an opportunity to show cause why such an order should not be made. He responded by a letter received in my office on 12 January 2009.

4. There has been no hearing in this matter but the Claimant has set out his position in his Registration of Complaint Form and in correspondence. He has also supplied a number of supporting documents.

The law

5. 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.
 - (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.

Background

6. Mr McGinnes complained that his Union had failed to discipline a lay representative for alleged bullying and harassment in the work place. Both Mr McGinnes and the lay representative were employed by Glasgow City Council. Mr McGinnes alleged that the Union's failure to discipline her is a breach of rule 38(1)(d) and (e) of the Rules of the Union. These provide as follows:

“Rule 38(1)

A member may be charged by the National Executive Council with:-

- (a) - (c) ...
 - (d) Inciting, espousing or practising discrimination or intolerance amongst members on grounds of race, ethnic origin, creed, gender, disability or sexual orientation.
 - (e) Bringing about injury to or discredit upon the Union or any member of the Union.”
7. Mr McGinnes has stated in correspondence that the lay representative in question had previously been disciplined by her employer for bullying and harassment in 2006. At that time Mr McGinnes had attempted to pursue similar

complaints against her through his Union but had been informed by the Scottish Regional Secretary of the Union, Mr Quigley, by a letter dated 1 December 2006 that it would be inappropriate to do so as he had already pursued them through the employers' procedures and she had been disciplined by the authority.

8. Mr McGinnes' present complaint is that the same lay representative has committed "*new, continued harassment ... both verbally and in written form*" but that the Union has failed to discipline her under its rules. He raised the matter within the Union at branch, regional and national level. By a letter dated 14 May 2008, Mr McGinnes's Regional Secretary, Mr Quigley, informed him that the Union's grievance procedure did not cover the situation as the lay representative was not an employee of the Union. Mr Quigley advised that any grievance would have to be pursued with the employer. By a letter dated 1 July 2008, Mr McGinnes raised this matter with the Union's Joint General Secretary, Mr Simpson but says that his only response was an acknowledgement from Mr Simpson's office. Mr McGinnes complained about the Union's failure to discipline this lay representative, or even investigate her actions, despite being aware that she had been found guilty of bullying and harassment.
9. Mr McGinnes commenced this complaint to me by a registration of complaint form dated 20 October 2008.
10. Having carried out some enquiries, I caused a letter dated 18 December 2008 to be sent to Mr McGinnes, pursuant to Section 256ZA(4) of the 1992 Act requiring him to "show cause" why his claim should not be struck out on the grounds that it had no reasonable prospect of success or was otherwise misconceived. The letter explained that rule 38(1) did not appear to impose an obligation on the Union to bring charges against a member against whom allegations are made and that it did not therefore appear there had been a breach of that rule.
11. Mr McGinnes responded by a letter received on 12 January 2009 in which he stated:

"I am confused as to why my complaint may be "misconceived" as the matter is clear – an AMICUS representative brought discredit upon myself and the Union itself by bullying and harassment in the workplace. AMICUS have in their possession a discriminatory, defamatory and slanderous letter written by an AMICUS representative. This letter was circulated and made public for all to see and yet AMICUS have still failed to investigate their members' actions. AMICUS were also made aware on numerous occasions that the same representative was found guilty of bullying and harassment in the workplace by Glasgow City Council, an offence which AMICUS strives to abolish in the work place. Yet, still, AMICUS have failed to investigate their representatives' discriminatory actions."

Conclusions

12. Rule 38(1) of the Rules of the Union is a permissive rule. It gives the NEC the power to bring a charge against a member. It does not require a charge to be brought. In my judgment, this rule is not breached by the NEC simply not bringing a charge in circumstances where the complainant considers that it

should do so. Rule 38(1) provides the NEC with discretion in deciding whether to bring a charge against a member and, although such discretion may not be exercised corruptly or perversely, it is a wide discretion with which I should not readily interfere. Having regard to the Union's rejection of Mr McGinnes's request for disciplinary action to be taken on the grounds that he has an alternative remedy through the procedures of their mutual employer, I find that Mr McGinnes' claim has no reasonable prospect of success.

13. For the above reasons, I order that the Claimant's complaint be struck out.

David Cockburn
The Certification Officer