

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

**MR T LALLY**

**v**

**UNION OF CONSTRUCTION, ALLIED TRADES AND TECHNICIANS**

**Date of Decision:**

**21 October 2008**

**DECISION**

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

I refuse to make the declaration sought by the Claimant that on or around 19 February 2008 the Union of Construction, Allied Trades and Technicians breached rule 27(3) of its rules by allegedly failing to set out clearly its reasons for dismissing Mr Lally’s appeal against a decision of the Executive Council notified to him on or around 2 January 2008.

**REASONS**

1. Mr Lally is a member of the Union of Construction, Allied Trades and Technicians (“UCATT” or “the Union”). By an application dated 17 March 2008, Mr Lally made allegations against his Union arising from its notification to him that his appeal against an Executive Council decision had been rejected. Following correspondence with Mr Lally, he confirmed his complaint in the following terms:-

*“that on or about 19 February 2008, the Union of Construction, Allied Trades and Technicians breached its rule 27, Clause 3, by failing to set out clearly the reasons for its decision to dismiss Mr Lally’s appeal against the decision of the Executive Council made on or around 2 January 2008 that any members who are on managerial grades, provided they are employed in the Building or related trades and occupations are entitled to stand for or hold office within the Union.”*

2. I investigated the alleged breach in correspondence. A hearing took place on 13 October 2008. At the hearing, Mr Lally represented himself. The Union was represented by Mr Andrew Hogarth QC, instructed by Mr S Cottingham of O H Parsons and Partners, solicitors. Mr A Ritchie, General Secretary, attended and gave evidence. A 117 page bundle of papers was prepared for the hearing by my

office containing documents submitted by the parties. Mr Ritchie provided a witness statement. Mr Lally provided a written skeleton argument and a closing submission. The rules of the Union were also in evidence.

### **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 Lally joined the Union in about 1955 and has served in many capacities as a lay official and full-time employee. He has been a Regional Organiser, Regional Secretary, National Officer and member of the Executive Council (“EC”) for the Yorkshire Region. He retired from the Union’s employment in 2003. Mr Lally also sat on Employment Tribunals for over 21 years.
5. The Union holds Rules Revision Conferences every 6 years. At the Rules Revision Conference in 2006 an amendment was made to one sentence in Rule 20 Clause 1. Before the amendment this sentence read: “*Candidates for election to the Executive Council should normally be employed or seeking employment in the building or related trades and occupations.*” By virtue of the amendment, the word “will” was substituted for the words “should normally” so that the rule at the relevant time read:

*“Candidates for election to the Executive Council will be employed or seeking employment in the building or related trades and occupations.”*

The rule amendment took effect in early 2007 and formed part of the rules under which the EC elections in 2008 were conducted. The issue which lies behind Mr Lally’s complaint is whether this rule, as amended, excludes members who are employed in managerial positions from standing for election to the EC.

6. In 2007 the EC member for the Yorkshire region was Mr Dennis Doody. He worked as a depot manager in the building department for Wakefield Metropolitan District Council. In or about August 2007 Mr Doody announced that he would be seeking re-election in 2008.
7. On 14 August 2007, Mr Lally wrote to the Union’s General Secretary, Mr Ritchie. Mr Lally noted the above rule change and stated his belief that, as Mr Doody was a manager, he no longer complied with the rule as amended. Mr Lally asked the General Secretary to advise him if he accepted his interpretation of the rule and, if he disagreed, to provide reasons.
8. The General Secretary eventually responded to this letter on 20 September 2007. He informed Mr Lally that such a request needed the endorsement of his branch under Rule 3 clause 6. Mr Lally re-presented his request on 13 November, duly endorsed by his branch, and, after the Union had received legal advice, his request went to the EC for its consideration on 17 December.

9. The minutes of the meeting of the EC on 17 December 2007 include the following passage:

*“Mr Ritchie stated that he had now received legal advice to support the Union’s policy, which was enshrined in the Rule Book in that ‘the Union readily caters for all workers of all grades in a wide range of industries’. The Executive Council acknowledged that this would entitle any members who were on managerial grades, provided they were employed in the Building or related trades and occupations, to stand for or hold office within the Union. The General Secretary was asked to advise Mr Lally’s Branch accordingly.”*

Mr Ritchie’s reference to the Union’s policy is a reference to words found in the Preface to the Rule Book. The relevant sentence states, “[UCATT] is now acknowledged as the foremost Union in the Building and Civil Engineering industry and readily caters for all workers of all grades in a wide range of industries”. The Preface is not part of the rules of the Union.

10. On 2 January 2008 the General Secretary wrote to Mr Lally in the following terms:

*“As a longstanding active member and of course the former Executive Council Member of the Union you would be aware of the Union’s policy, which is enshrined in the rule book that, ‘as the foremost Union in the Building and Civil Engineering Industry, it readily caters for all workers of all grades in a wide range of industries.’*

*The Executive Council acknowledged that this would entitle any members who are on managerial grades, provided they are employed in the Building or related trades and occupations, to stand for or hold office within the Union.”*

Mr Lally accepts that this was a proper notification to him under Rule 27 Clause 3 of the EC’s decision.

11. On 8 January 2008 Mr Lally wrote to the General Secretary stating his wish to appeal to the General Council (“the GC”) against the decision of the EC that members in managerial grades and occupations are eligible to stand for office in the Union if they are employed in the Building or related trades. The GC is in effect an appellate body, which also elects from amongst its members the trustees of the Union. It meets a minimum of once a year and its decision on any appeal to it is final, subject to judicial intervention.
12. Mr Lally wrote a second letter to the General Secretary on 8 January 2008. In this letter he requested a copy of the legal advice that had been obtained for the EC. He stated that he would be prepared to withdraw his appeal to the GC, dependant on that legal advice. The General Secretary responded on 23 January rejecting Mr Lally’s request for the legal opinion.
13. Mr Lally’s appeal was heard by the GC on 19 February 2008. Mr Lally made oral representations on his own behalf. No one appeared for the EC to argue that his appeal should be rejected. The legal opinion obtained by the Union was not made known to Mr Lally. The note of the appeal hearing concludes as follows:

*“...The Executive Council had sought legal advice and based on that advice, the Executive Council had ruled that as the Union readily catered for all workers of all grades in a wide range of industries, it was quite in order for any members who were on managerial grades, provided they were employed in the Building or related trades and occupations, to stand for or hold office within the Union.*

*The General Council, having deliberated on the appeal from Mr Lally decided to uphold the decision of the Executive Council and dismiss the appeal. The General Council unanimously concurred with the Executive Council's decision that 'the Union readily caters for all workers of all grades in a wide range of industries.'*

14. On 28 February 2008 the General Secretary wrote to Mr Lally to convey the decision of the GC on his appeal. The letter states:

*"The General Council having taken full account of the presentation made by yourself on your appeal against the decision of the Executive Council unanimously decided to uphold the decision of the Executive Council and dismiss your appeal. The General Council noted the legal advice which clearly stated that there are no obstacles to Mr Doody standing for election to the Executive Council."*

15. By a letter dated 10 March 2008 Mr Lally informed the General Secretary that he believed his appeal was flawed as he was not given the opportunity to question a representative of the EC or the legal advice it had received. He also referred to the obligation in Rule 27 Clause 3 to give full reasons and stated that he looked forward to receiving full reasons for the decision of the GC. The General Secretary responded on 8 April. He informed Mr Lally that he had lost his appeal "*because you failed to convince both the Executive Council and General Council of the Union that your interpretation of the Rule in question was correct.*"

16. Mr Lally commenced his application to me by a Registration of Complaint Form dated 17 March 2008 which was received at the Certification Office on 25 March.

17. On 26 September 2008 the General Secretary wrote to Mr Lally. Amongst other things, the letter states:

*"...In light of the letter of 28 February 2008 I assumed that you would accept that the reasoning of the General Council was the same as that of the Executive Council in deciding to reject your appeal..."*

*In the circumstances I am writing to you to confirm that your appeal to the General Council was rejected on the basis that the UCATT Rulebook states that the Union's policy is that "as the foremost union in the building and civil engineering industry, it readily caters for all workers of all grades in a wide range of industries."*

*In deciding to reject your appeal the General Council acknowledged that this would entitle any member who is employed in a managerial grade to stand for or hold office within the union provided they are employed in the building or related trades and occupations. It was felt that Dennis Doody complied with this interpretation of the rule and so your appeal was rejected."*

### **The Relevant Statutory Provisions**

18. This application was considered to be within the jurisdiction of the Certification Officer by virtue of section 108A(2)(d) of the 1992 Act which provides as follows:-

#### **Section 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) - (c)
  - (d) *the constitution or proceedings of any executive committee or of any decision-making meeting;*
  - (e) -

## **The Relevant Union Rules**

19. The provisions of the rule book of Union which are relevant for the purpose of this application are as follows:-

### ***Preface***

*The Union of Construction, Allied Trades and Technicians, and those Unions which joined together to form it, throughout their long history have striven to raise the status of organised workers in the Construction and other industries*

*It is now acknowledged as the foremost Union in the Building and Civil Engineering industry and readily caters for all workers of all grades in a wide range of industries. ...*

### ***Rule 20 Election of Lay Executive Council (Post-2006 Rules Revision Conference)***

*1. The lay Executive Council shall be elected every five years and shall consist of lay members, one to be elected from each region by the Region. The EC shall elect its own President, who shall have a casting vote.*

*Each branch may nominate a member not over 6 weeks in arrears of any branch in the same Region who must have five years consecutive membership of the Union.*

*Members of the Executive Council shall retire at the age of 65 years. In the event of a vacancy for any reason a new election shall take place for that seat on the Executive Council, and the successful candidate's term of office will continue until the next round of five-yearly elections for the Executive Council as a whole.*

*Candidates for election to the Executive Council will be employed or seeking employment in the building or related trades and occupations.*

*Nominations shall take place every five years at the March Star night. Elections shall take place by postal ballot of the members within the respective regions.*

### ***Rule 27 Appeals of Members, Branches and Regional Committees***

*1. Any member or members excepting regional full-time officials or national organisers aggrieved at a decision of the Branch, Regional Council or Executive Council shall have a right of appeal against any such decision as set out hereafter. Such right of appeal shall similarly apply to the Branch or Regional Council. In the case of appeals concerning the working rules the appeal in the first instance shall be dealt with by the Regional Council. Any other appeals shall be directed to the Executive Council. Any appeal against the decision of the EC shall be to the GC whose decision shall be final and binding, subject to any power vested in any court or tribunal.*

*2. In all cases, appeals must be made in writing through the Branch Secretary or Regional Secretary in the case of Regional council appeals. The appellant or appellants in all cases shall have the right to appear at all levels of the appeals procedure if s/he so wishes and be accompanied by a member. No evidence other than that which was before the council which made the decision appealed against will be admitted or accepted by any council dealing with an appeal. Appeals must be lodged to reach the appropriate council within 28 days of receipt by the member or*

*members of the decision appealed against, failing which such decision shall be final and binding, subject to any power vested in any court or tribunal. The BS shall forward the appeal without delay.*

*3. Any council dealing with appeals shall have power to alter, amend, or modify any decision appealed against and shall set out clearly the reasons upon which a decision or decisions were based.*

*A fine which has been quashed, and any amount by which a fine has been reduced on appeal shall be repaid forthwith. Except where in cases of emergency the authority of the Union making the decision rules to the contrary, a fine, a suspension or exclusion of a member and a suspension or removal from office shall not take effect until either the appeal has been dismissed or the time for appeal has expired.*

*8. Consideration of an appeal by the General Council shall constitute the final stage of the appeals procedure of the Union, and its decisions shall be final and binding upon all members of the Union. Appeals shall be considered by consultation on timing between the GS and the Chair of the GC....*

## **A Summary of the Submissions**

20. Mr Lally submitted that he was informed of the outcome of his appeal to the GC by Mr Ritchie's letter of 28 February 2008 and that this letter did not set out clearly the reasons upon which his appeal had been rejected. He stated that it should not be necessary for him to go to other letters in order to piece together the reasons of the GC. Mr Lally stressed the requirement in Rule 27 Clause 3 that the reasons must be set out "clearly". Further, Mr Lally stated that his purpose in bringing this complaint was on a matter of principle and not to remove Mr Doody from office. Mr Lally considered that the EC had been wrong to refer to the words in the Preface to the rule book as they are not part of the rules. He further considered that the reasons for the decision of the General Council, as given the General Secretary, were deficient in that they did not set out the reasoning in the legal advice.
  
21. Mr Hogarth QC, for the Union, submitted that the General Secretary's letter to Mr Lally of 28 February did set out clearly the reason why his appeal had been dismissed by the GC. In the alternative, however, if there was any doubt about his primary submission, Mr Hogarth argued that the reason for the rejection of Mr Lally's appeal was clear from other letters from the General Secretary; namely the letter of 2 January 2008 explaining the decision of the EC, the letter of 8 April and the letter of 26 September. Mr Hogarth submitted that Rule 27 Clause 3 does not provide a time-limit within which the reasons must be given and that the rule is not breached if reasons are given in a reasonable length of time. He argued that the essential question was whether Mr Lally had been made aware why he had lost the appeal. In Mr Hogarth's submission, it was crystal clear that Mr Lally had lost his appeal because his interpretation of Rule 20 Clause 1 was rejected. Mr Hogarth submitted that Mr Lally's reference to the legal opinion obtained by the Union was a red herring in that the reason he lost his appeal was not that the Union had obtained a legal opinion, but that his interpretation of the rule was not accepted. He further maintained that this application appeared to have the purpose of attempting to re-visit the interpretation of Rule 20 Clause 1 and/or to obtain the Union's legal advice, both of which purposes were impermissible under the jurisdiction of the Certification Officer.

## Discussion and Conclusion

22. Mr Lally alleges a breach of Rule 27 Clause 3. The relevant paragraph of that sub-rule states;

*Any council dealing with appeals shall have power to alter, amend, or modify any decision appealed against and shall set out clearly the reasons upon which a decision or decisions were based.*

Mr Lally's complaint of a breach of this rule relates to the narrow issue of whether the Union "set out clearly" the reasons upon which the decision of the GC on 19 February 2008 to reject his appeal was based.

23. In construing the rules of a Union, I remind myself that they are not to be subject to the same forensic examination that would be appropriate for a statutory provision or the term of a commercial contract. They are to be given a reasonable interpretation which accords with what in the view of the Court or Tribunal they must have been intended to mean, bearing in mind their authorship, their purpose and the readership to which they are addressed (see *Jacques v AUEW* (1986) ICR 683).
24. Rule 27 Clause 3 puts a duty on councils within the Union, when making decisions on appeals, to set out not only the decision but also the reasons upon which that decision is based. The reasons must be set out clearly. It is highly desirable that such reasons are set out in a single document but this is not a requirement of the rule. In my judgment, the rule requires that the reasons are set out clearly in the sense that the parties to the appeal shall be informed in writing of the reasons in such a manner that they know why they have either won or lost. Reasons which are expressed too succinctly or which need to be ascertained by reference to other documents run the risk of being found to be in breach of Rule 27 Clause 3. On the other hand, the reasons do not need to be as extensive as those found in a judicial decision. Each case will turn on its own facts and the essential question will be whether the reasons are sufficient to inform the parties why they have won or lost in a broad sense.
25. On the facts of this case, Mr Lally was informed of the decision of the GC by the General Secretary's letter of the 28 February 2008. Having given the decision of the GC to uphold the decision of the EC and reject the appeal, the letter goes on, "...The General Council noted the legal advice which clearly stated that there are no obstacles to Mr Doody standing for election to the Executive Council." There is no doubt that the reasoning of the GC could have been expressed more fully and more clearly. However, that is not the question I must ask myself. I have to consider whether, on a reasonable reading of that letter in context, an appellant would know in broad but adequate terms why he or she had lost the appeal. In this connection I note that Mr Lally's appeal was not asking the GC to examine and reach findings on a complex factual situation or to exercise a discretion by balancing a number of different factors. The appeal was a narrow one which required the GC to decide which of two competing interpretations of a particular, and not excessively complex, rule it considered to be correct. In this

context, I find that there was no obligation on the GC to set out a legal analysis of how it arrived at its interpretation, as if it were a division of the High Court. What was conveyed in the General Secretary's letter of 28 February was that the GC, having noted the legal advice that Mr Doody was eligible to stand for election, upheld the decision of the EC. In my judgment, having regard to the limited nature of the decision to be made by the GC, this information by itself was just sufficient to satisfy the requirements of Rule 27 Clause 3. It was sufficient to inform Mr Lally why he had lost. He had failed to persuade the GC of his interpretation of Rule 20 Clause 1. This information was confirmed expressly in the General Secretary's letter to Mr Lally of 8 April, which I find was sufficiently proximate in time to be read with his letter of 28 February.

26. Further, I find on the facts of this case that the General Secretary's letter of 28 February incorporates the reasoning of the EC for rejecting Mr Lally's original reference to it. The reasoning of the EC is set out in the General Secretary's letter of 2 January and is accepted by Mr Lally as being sufficient to comply with Rule 27 Clause 3. In my judgment, on any reasonable reading of the General Secretary's letter of the 28 February taken with his letter of 2 January, Mr Lally would have known why his appeal had been rejected. It was rejected because the GC did not accept Mr Lally's interpretation of the plain words of Rule 20 Clause 1. The letters explain the grounds for having rejected his interpretation as being that the Preface to the Rule Book (used only as a guide to interpretation – not as a rule) was against him, the longstanding policy of the Union was against him and the legal opinion obtained by the Union was against him. Whilst it could be argued that the Union brought this litigation upon itself by the manner in which it set out the reasons for the decision of the GC, an examination of the facts of this case satisfies me that the Union not only set out those reasons sufficiently clearly that they were understood by Mr Lally, but that it set them out sufficiently clearly to satisfy the requirements of Rule 27 Clause 3.
27. For the above reasons I refuse to make the declaration sought by Mr Lally that on or around 19 February 2008 the Union of Construction, Allied Trades and Technicians breached rule 27(3) of its rules by allegedly failing to set out clearly its reasons for dismissing Mr Lally's appeal against a decision of the Executive Council notified to him on or around 2 January 2008.

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