

**DECISIONS OF THE CERTIFICATION OFFICER ON APPLICATIONS MADE
UNDER SECTION 25 AND SECTION 108A OF THE TRADE UNION AND
LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

MR J BARKER

v

**NATIONAL ASSOCIATION OF COLLIERY OVERMEN, DEPUTIES AND
SHOTFIRERS**

Date of Decisions:

29 February 2008

DECISIONS

1. Upon application by Mr Barker (“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 the National Association of Colliery Overmen, Deputies and Shotfirers breached Rule 6.2.2 of the Rules of the Union by the decision of its Executive Committee on 14 February 2007 to uphold the practice of requiring those Honorary Members who became Honorary Members before 29 March 2003 to pay an annual subscription of £25. The claim made by the Claimant is outside my jurisdiction.

2. Upon application by Mr Barker (“the Claimant”) under section 25(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

I dismiss, upon withdrawal by the Claimant, his complaint that the National Association of Colliery Overmen, Deputies and Shotfirers breached section 24(1) of the 1992 Act by having failed to compile and maintain a register of the names and addresses of its members, and to secure, so far as reasonably practicable, that the entries in the register are accurate and have been kept up-to-date.

REASONS

1. The Claimant is an Honorary Member of his trade union the National Association of Colliery Overmen, Deputies and Shotfirers (“NACODS (National)”, “the Union”, or “the National Union”). By an application received at my office on 27 February 2007, and subsequently amended by letter of 15 August 2007, the Claimant made two complaints against his Union. Following correspondence, Mr Barker confirmed his complaints in the following terms:-

Complaint 1

“that NACODS breached Rule 6.2.2 by its Executive Committee decision on 14 February 2007 which upheld the practice of charging Honorary Member subscriptions for members who became honorary members before 29 March 2003”

Complaint 2

“that in breach of section 24(1) of the 1992 Trade Union and Labour Relations Act 1992, NACODS has failed to compile and maintain a register of the names and addresses of its members, and to secure, so far as reasonably practicable, that the entries in the register are accurate and have been kept up-to-date”

2. I investigated the alleged breaches in correspondence. A hearing took place on 30 January 2008. At the hearing, the Claimant represented himself. The Union was represented by Mr Carr of Raleys solicitors. Mr Soar, the Union’s General Secretary and Mr Fox, its President, attended but did not give formal evidence. A 220 page bundle of papers was prepared for the hearing by my office, which contained the Yorkshire Area Rules as amended in 2000. Also in evidence were the Yorkshire Area Rules as amended in 1997 and 2003 and the NACODS (National) Rules as amended in 2003 and 2005. At the hearing, the bundle was supplemented by 10 pages of witness statements/letters submitted by the Claimant. Both parties submitted skeleton arguments.

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. In 1979, the Claimant joined NACODS (Yorkshire Area) (“the Yorkshire Area”). The Yorkshire Area was a separate union and one of about 8 or 9 NACODS Area Unions, each of which was affiliated to the National Union, the Respondent. Working members of the Area Unions were also members of the National Union. The National Union did not have any Honorary Members.
5. In 1992 the Claimant was elected to the Executive Committee (“the EC”) of the Yorkshire Area and he remained on that EC until he retired in 2002. At that time, any member of the Yorkshire Area who had retired from the coal industry and who had been a member for ten years in aggregate could apply for Honorary Membership. Such a member paid no subscriptions. He or she had no right to vote or be nominated for office but was otherwise entitled to all the benefits of ordinary membership. Those made redundant could pay 29p a week between age 50 and 60 in order to qualify for the full benefits of membership.
6. In about 1993 the NACODS (North Western Area) transferred its engagements to the Yorkshire Area.
7. By 1999 Mr Ian Parker held office as not only General Secretary and President of the Yorkshire Area but also General Secretary of NACODS (National).

8. At some time between 1998 and 2000 the Yorkshire Area changed its rules relating to Honorary Members to those which are contained in the rules as amended in January 2000. The effect of that rule change was to retain the general position regarding Honorary Membership but to include as Honorary Members those with ten years service who had “been ill health retired”. The subscription to be paid by those members who had been ill health retired was to be £25 a year up to the age of 60.
9. On 30 June 2002 the Claimant applied for honorary membership of the Yorkshire Area, having been ill-health retired. He signed a form agreeing that if he defaulted with his subscriptions his membership would terminate immediately. He was then almost 50 years of age.
10. In 2003 the Yorkshire Area and the Midlands Area Association of Colliery Officials (“the Midland Area”) agreed to merge with NACODS (National). In anticipation of this merger, all three unions amended their rules so as to bring them into line. The rules of the Yorkshire Area were amended with effect from 1 March 2003 and those of NACODS (National) with effect from 29 March 2003. The effect of these amendments was that each union then had the same rules on Honorary Membership. The merger became effective on 12 August 2003 when the Yorkshire Area and the Midlands Area transferred their engagements to NACODS (National).
11. The amended rules of NACODS (National) provide for ordinary (contributing) members, non-contributing members and Honorary Members. Specifically, Rule 6.1.2 provides that persons accepted for membership shall include Honorary Members “*as classified by Rule 6.2*”. Rule 6.2.1(i) provides that “*Any Member of the Association who has left employment in the coal industry will become an Honorary Member of the Association, provided he is not a member of any other trade union*”. Honorary Members have no voting powers and cannot be nominated for office but they have access to such benefits as convalescent care, some legal assistance and death benefit. The rule allegedly breached in this case is Rule 6.2.2. It provides that, “*An Honorary Member is not required to pay to the Association any subscriptions or levy*”. There is also provision for a member who has left employment in the industry to retain entitlement to all benefits by continuing to pay full subscriptions.
12. Since taking ill health retirement in 2002, the Claimant has continued to pay his subscriptions at £25 per annum in accordance with the rules of the Yorkshire Area at the time he became an Honorary Member. The Claimant gave evidence that, since retiring, he has not received any communication from either the Yorkshire Area or NACODS (National) and so was unaware of the changes of rule or even the transfers of engagement. He stated that he only became aware that Honorary Members were no longer required to pay subscriptions in late January 2007.
13. The Claimant wrote to the Union on 1 February 2007. He complained that, when he had sent in his subscription cheques for £25 in 2004, 2005 and 2006, he had not been informed of the rule change relating to the non-payment of subscriptions by Honorary Members. He requested a refund of £75.
14. The Claimant’s request was considered by the Union’s Executive Committee on 14 February 2007. It agreed that the General Secretary should write to him stating that “*He was subject to the Rules in place at the time of his leaving and would*

therefore have to continue to pay an annual subscription". The General Secretary wrote to the Claimant on 19 February stating that the rules agreed in 2003 "*do not affect ... the members who retired earlier. The Rule is not retrospective.*" He informed the Claimant that it was only members who retired after the merger who are governed by the new rules and are not required to make a payment.

15. The Claimant made this complaint to me by a Registration of Complaint Form which was received at my office on 27 February 2007.
16. As the Claimant's complaint was being processed, he brought to the attention of my office a potential discrepancy in its annual returns, which are made on form AR21. He could see no reference in those annual returns to the subscriptions received from Honorary Members. My office investigated this as a separate issue relating to the Union's statutory duty to submit an Annual Return to me. It was discovered that the 421 members reported in the Union's AR21 for 2005 were all ordinary members. Honorary Members were not included amongst the 421. However, the Union had included in the total figure of subscription income received in the sum of £165,419, the subscriptions received from Honorary Members in the sum of £331.08. My office required the Union to include in its next annual return the membership figure for all those who are members under the rules and the Union confirmed in writing that it would do so. The Claimant was advised of the outcome of this investigation. By a letter dated 25 May 2007 the Claimant sought to amend his original application to include a complaint that the Union had breached section 24 of the 1992 Act by having failed to compile and maintain an accurate register of members. I gave permission for the complaint to be so amended.

The Relevant Statutory Provisions

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

Section 24 Duty to maintain register of members' names and addresses

- (1) *A trade union shall compile and maintain a register of the names and addresses of its members, and shall secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date.*

Section 25 Remedy for failure: application to Certification Officer

- (1) *A member of a trade union who claims that the union has failed to comply with any of the requirements of section 24 (duties with respect to register of members' names and addresses) may apply to the Certification Officer for a declaration to that effect.*

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) *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.*

(6) *An application must be made -*

- (a) *within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or*
- (b) *if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in subsection (7).*

(7) *Those days are -*

- (a) *the day on which the procedure is concluded, and*
- (b) *the last day of the period of one year beginning with the day on which the procedure is invoked.*

(10) *For the purposes of subsection (2)(d) a committee is an executive committee if -*

- (a) *it is a committee of the union concerned and has power to make executive decisions on behalf of the union or on behalf of a constituent body,*
- (b) *it is a committee of a major constituent body and has power to make executive decisions on behalf of that body, or*
- (c) *it is a sub-committee of a committee falling within paragraph (a) or (b).*

(11) *For the purposes of subsection (2)(d) a decision-making meeting is -*

- (a) *a meeting of members of the union concerned (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union, is final as regards the union or which, under the rules of the union or a constituent body, is final as regards that body, or*
- (b) *a meeting of members of a major constituent body (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union or the body, is final as regards that body.*

(12) *For the purposes of subsections (10) and (11) in relation to the trade union concerned -*

- (a) *a constituent body is any body which forms part of the union, including a branch, group, section or region;*
- (b) *a major constituent body is such a body which has more than 1,000 members.*

The Relevant Union Rules

18. The Rules of the Union which are relevant for the purpose of this application are as follows:-

Yorkshire Area Rules 2000

Honorary Members

8 Any Member of the Association who has been a member thereof for at least ten years in the aggregate and who has retired from employment in the coal industry may apply to become an honorary member...the Council or Executive Committee shall have the right to reject any such application...

9 *An Honorary Member shall be under no obligation to pay to the Association any subscriptions or levy, but he shall have no voting powers nor shall he be eligible for nomination to any office in the Association. Subject to the foregoing he shall be entitled to receive all the benefits of ordinary membership of the Association.*

12(i) *Any Member of the Association, who has been a member thereof for at least 10 years in the aggregate and who has been ill health retired from his employment in the coal industry may apply to continue his membership of the Association but the Executive Committee shall have the right to reject such application. If the application for membership is accepted then any such person will be required to pay a membership fee of £25 per annum up to the age of 60...*

Yorkshire Area Rules 2003/National Rules 2003

6 Membership

6.1.2. *Persons accepted for membership shall include Honorary Members as classified by Rule 6.2 and non-contributory Members as classified by Rule 6.3.1.5(i), (ii) and (iii). Only those persons who are not classified as Honorary Members or non-contributory Members shall have full rights and benefits of the Association. Those persons shall be classified as members and are referred to as 'Members'.*

6.2 Honorary Members

6.2.1 (i) *Any Member of the Association who has left employment in the coal industry will become an Honorary Member of the Association, provided he is not a member of any other trade union.*

(ii) *Any Member who has left employment within the coal industry may continue to pay full subscriptions to be entitled to all of the benefits of the Association.*

6.2.2 *An Honorary Member is not required to pay to the Association any subscriptions or levy.*

6.2.5 *He shall have all the benefits of ordinary membership of the Association as set out in Rules 4.4, 4.5 and 4.8*

Complaint One

Summary of Submissions

19. The Claimant submitted that I had jurisdiction to hear his complaint of a breach of Rule 6.2.2 by virtue of section 108A(2) of the 1992 Act. He maintained that the rule was within my jurisdiction as it was a rule relating to “*disciplinary proceedings by the Union*” (section 108A(2)(b)) and/or a rule relating to “*the constitution or proceedings of any Executive Committee or of any decision making meeting*” (section 108A(2)(d)). As to it being a rule relating to disciplinary proceedings, the Claimant argued that the EC, at its meeting on 14 February 2007, had disadvantaged or disciplined all Honorary Members who became Honorary Members prior to 29 March 2003 by not applying to them Rule 6.2.2, which had removed the obligation on Honorary Members to pay subscriptions. He asserted that they had been discriminated against when compared to people who became Honorary Members after 29 March 2003. As to Rule 6.2.2 being a rule relating to the constitution or proceedings of the Executive Committee, the Claimant argued that the constitution of Rule 6.2.2 was changed on 14 February 2007 when the EC decided that the Rule would not apply to those people who became Honorary Members before 29 March 2003. On the substance of his case, the Claimant submitted that there was a clear breach of Rule 6.2.2 as he had been required, and

was still being required, to pay a subscription of £25 per annum when the rules plainly provided that Honorary Members are not required to pay any subscriptions.

20. For the Union, Mr Carr submitted that I did not have jurisdiction to hear this complaint as it related to a rule which is outside any of the categories listed in section 108A(2) of the 1992 Act. He noted that Rule 6.2.2 concerns the levying of subscriptions and argued that such a rule cannot relate to discipline for the purposes of the 1992 Act. He referred to the case of **Fenton v GMB** (Certification Officer D/16-20/04) as establishing that a rule is not a rule relating to discipline simply because its operation can result in a decision which is contrary to the wishes of a particular member or is in some way detrimental to that member. He also referred to **Irving v GMB** (UKEAT 0277/07) as establishing that a rule relating to discipline must confer, as a minimum characteristic, the power to impose sanctions. He also pointed out that the Union has a specific rule dealing with discipline which is quite distinct from Rule 6.2.2. Mr Carr further submitted that Rule 6.2.2. cannot relate to the constitution or proceedings of the EC for the purposes of the 1992 Act. He argued that the EC, at its meeting on 14 February 2007, did not purport to amend the rules, but merely gave its opinion on their interpretation. He further argued that the Claimant was in effect challenging the decision made at the EC and was not challenging either the constitution of the EC or alleging that the decision was made following a defective procedure. Mr Carr went on to submit that this complaint was out of time as it relates to an amendment of rule which was agreed in 2003. As to the substance of the complaint, Mr Carr argued that there was no breach of Rule 6.2.2 as the Claimant had agreed, in applying for Honorary Membership, to be bound by the rules as they then stood and Rule 6.2.1 of the rules as amended in 2003 contains the future tense in referring to “*members ... will become an Honorary Member*”. He submitted that these words supported the interpretation of the Executive Committee that the amendment only applied to future members.

Conclusion

21. The Claimant’s complaint is in the following terms:-

“that NACODS breached Rule 6.2.2 by its Executive Committee decision on 14 February 2007 which upheld the practice of charging Honorary Member subscriptions for members who became honorary members before 29 March 2003”

22. Rule 6.2.2 is in the following terms:

6.2.2 An Honorary Member is not required to pay to the Association any subscriptions or levy.

23. In order for me to consider the substance of this complaint it must be one which falls within my jurisdiction. Parliament has given me a limited jurisdiction to consider complaints made by union members about alleged breaches of union rules. I can only determine complaints about breaches of certain types of rule. This is dealt with in section 108A(1) and (2) of the 1992 Act, which provide:-

Section 108(A) (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.*

24. Rule 6.2.2 does not appear, on its face, to be a rule relating to any of the matters listed in section 108A(2). However, the Claimant submitted that, properly construed on the facts of this case, it did relate to disciplinary procedures (section 108A(2)(b)) and/or the constitution or proceedings of the EC (section 108A(2)(d)).
25. In my judgment, Rule 6.2.2 is not a rule which relates to disciplinary proceedings by the Union. It is an administrative rule which relates to the requirement of Honorary Members to pay, or not to pay, subscriptions or a levy. I accept the Claimant's argument that the interpretation of this rule by the EC put a group of members at a disadvantage compared to those who became Honorary Members after 29 March 2003. However, that is not sufficient to convert a rule on subscriptions into a rule relating to disciplinary proceedings. There are many decisions taken by a union under its rules which may be to the detriment of a particular member or group of members but that does not have the automatic effect of making the rule under which the decision was taken one which relates to disciplinary proceedings. Section 108A(1) and (2) require an examination of the nature of the rule alleged to be breached, not the consequences of that breach. Examined in this way, I find that Rule 6.2.2 is not a rule that falls within section 108A(2)(b).
26. Further, Rule 6.2.2 is not, in my judgment, a rule which relates to the constitution or proceedings of any Executive Committee or of any decision-making meeting. Rule 6.2.2, on its face, does not deal with how the EC is constituted, nor does it touch upon its manner of proceeding. The EC did not, nor did it purport to, amend Rule 6.2.2 at its meeting on 14 February 2007. It applied an interpretation of that rule which may or may not have been correct. I was told that it did so having regard to Rule 6.2.1. The effect of the EC applying an incorrect interpretation of a rule would be that the Union would have acted in breach of rule. The effect would not be an amendment to the constitution of the Union by the EC. The Claimant has not advanced any argument that the EC that met on 14 February 2007 was improperly constituted or that there was any procedural irregularity in its decision-making process. Indeed, Rule 6.2.2 is not a rule which relates to such matters.
27. For the above reasons I find that this complaint is not within my jurisdiction under Section 108A(1) of the 1992 Act and I refuse to make the declaration sought by the Claimant.
28. Had the complaint been within my jurisdiction, the argument advanced by the Claimant relating to the correct interpretation of Rule 6.2.2 was attractive and the

Union may wish to reconsider its position in this regard with such legal advice as it considers appropriate.

Complaint 2

29. The Claimant's second complaint is in the following terms

“that in breach of section 24(1) of the 1992 Trade Union and Labour Relations Act 1992, NACODS has failed to compile and maintain a register of the names and addresses of its members, and to secure, so far as reasonably practicable, that the entries in the register are accurate and have been kept up-to-date”

30. During the course of the hearing, the Claimant acknowledged that the Union had a difficult task in maintaining an accurate and up-to-date register of Honorary Members, given the lack of direct contact such members had with the Union. I allowed an adjournment for the Claimant and the Union to discuss the steps that the Union had already taken, and was continuing to take, in this regard. Following the adjournment, the Claimant withdrew this complaint. The Union may, however, wish to consider the steps that other unions have taken to ensure compliance with section 24(1) of the 1992 Act, as canvassed in previous decisions of the Certification Officer.

David Cockburn
The Certification Officer