

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

MR J R PASCUAL

v

GMB

Date of Decisions:

29 August 2008

DECISIONS

Upon applications by Mr Pascual (“the Claimant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

1. I refuse the Claimant’s application for a declaration that the GMB breached rule 5(10) of its rules on 27 July 2007 at a disciplinary hearing before its Northern Regional Committee into charges against the Claimant.
2. I refuse the Claimant’s application for a declaration that the GMB breached rule 5(10) of its rules on 13 November 2007 at a hearing before the Appeals Committee of the Central Executive Council to consider the recommendation of the Northern Regional Committee that the Claimant be expelled from the Union.

REASONS

1. The Claimant is a member of the GMB (“the Union”). By an application received at the Certification Office on 31 January 2008, the Claimant made a complaint of breaches of rule against the GMB, his then union, arising from his expulsion from the Union by a decision of the Appeals Committee of the Union’s Central Executive Council (“the CEC”) on 13 November 2007. Following correspondence with the Claimant, he identified two complaints which were confirmed by him in the following terms:-

Complaint 1

‘That on or around 27 July 2007, the Regional Committee of the Union at its disciplinary hearing of charges against Mr Pascual under its rule 5(6) and (7) denied Mr Pascual the right to have a reasonable opportunity to present his

case, put that case orally or in writing and to support his case with written statements or witnesses, and this was a breach of rule 5(10) of the rules of the Union.'

Complaint 2

'That on or around 13 November 2007, the Central Executive Committee (CEC) of the Union at Mr Pascual's appeal against the Regional Committee's recommendation to expel him from the union, denied Mr Pascual the right to have a reasonable opportunity to present his case, put that case orally or in writing and to support his case with written statements or witnesses, and this was a breach of rule 5(10) of the rules of the Union.'

2. I investigated the alleged breaches in correspondence. A hearing took place on 21 August 2008. At the hearing, the Claimant represented himself. A witness statement from Mr J Bell was provided by the Claimant but Mr Bell had unfortunately died prior to the hearing. The Union was represented by Mr Rohan Pirani of counsel, instructed by Mr J O'Hara of Thompsons Solicitors. Mr T Brennan (GMB Regional Secretary, Northern Region) and Mr M Sage (GMB National Vice-President) provided witness statements and gave evidence. Both parties provided written skeleton arguments. The rules of the Union were before me, together with a 265 page bundle of documents prepared by my office for use at the hearing.

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 Pascual joined the United Society of Boilermakers, Shipwrights and Structural Workers (the Boilermakers Union) in 1959 as a 16 year old apprentice pipe welder. In 1982 the Boilermakers Union merged with the National Union of General and Municipal Workers to become what is now the GMB. In 1986 Mr Pascual went to work overseas and his membership of the Union lapsed. On 18 October 1993 Mr Pascual rejoined the GMB.
5. It is a matter of considerable importance to Mr Pascual that the Regional Secretary of the Northern Region of the GMB, Mr Tom Brennan, appeared to put in doubt whether he had paid his Union subscriptions in the period between 18 October 1993 and 31 May 1995. It is not necessary for the purpose of this application that I determine Mr Pascual's actual status within the Union during that period but, at the hearing, Mr Brennan stated that he accepted that Mr Pascual had been a fully paid up member during this period. Indeed, Mr Brennan had made a statement to that effect at the hearing before the Appeals Committee of the CEC on 13 November 2007.
6. The background to this dispute is as follows. Before 1986 Mr Pascual was a member of the Gateshead TCS (Trades Craft Section) Branch of the Union. Upon rejoining in 1993, he elected to pay his subscriptions by direct debit. He was allocated to the Newcastle North Tyne General Branch but both he and others thought that he had been returned to the Gateshead TCS Branch, where the Branch Secretary was Mr Feetham and the Branch President was Mr Jones. In May 1995, Mr Pascual sustained serious injuries in an accident at work. The

Branch Officers of the Gateshead TCS Branch refused to give him a form to claim legal assistance and/or sick benefits until he had made good his alleged arrears from 1986. Mr Brennan, who was then a local official, thought he could overcome this conflict between Mr Pascual and the Gateshead Branch by transferring him to the Newcastle Holding Branch, being unaware that this was the branch to which he had actually been allocated in 1993. Mr Brennan effected this transfer as a pragmatic solution to help Mr Pascual, without checking whether his subscriptions were then up to date. Upon being refused a claim form by the Gateshead Branch, Mr Pascual ceased paying his subscriptions by direct debit and began paying manually. Mr Pascual was thereafter treated for all purposes as a full member of the Union and received its support in achieving considerable damages for his personal injury case, damages for industrial deafness and for vibration white finger. He also received sickness benefit from the Union and its support in claiming state benefits for occupational asthma.

7. In June 2006 Mr Pascual corresponded with the Union about an Employment Tribunal case and a claim he was making for total disablement benefit. It was not disputed that in this correspondence Mr Pascual was offensive and insulting to Mr Brennan, who was then the Regional Secretary, and to members of GMB staff. By a letter dated 18 December 2006, Mr Brennan asked Mr Pascual to stop making such abusive remarks and warned him that he would be disciplined if he failed to do so. Mr Pascual did not heed this warning. On 19 March 2007 Mr Brennan commenced disciplinary proceedings against Mr Pascual under rule 5(5) of the rules of the Union. This rule creates the offence of making defamatory, scurrilous or abusive attacks on any official or committee of the Union. He was charged with three offences; of sending abusive or offensive material to the Regional Secretary, to a member of staff at the Regional Office and to a member of staff at the National Administrative Unit. These charges were heard by the Regional Committee on 13 April 2007 and were found to be proved. Mr Pascual was suspended from benefit and from holding branch office.
8. During the course of the hearing on 13 April 2007, Mr Brennan told the Regional Committee that the reason why he had transferred Mr Pascual from the Gateshead branch was that, prior to his offshore accident in May 1995, he was considered to be a lapsed member by the Gateshead branch. This comment, or one to a like effect, was deeply offensive to Mr Pascual who considered that it accused him of only joining the Union in order to obtain legal assistance to claim damages for his accident. His main focus thereafter was to establish that he had been a fully paid up member of the Union between October 1993 and June 1995. In the process of establishing this proposition, however, Mr Pascual engaged in further correspondence which was considered to be 'defamatory, scurrilous or abusive'. By way of examples only, in an email dated 26 April 2007 to Mr Brennan, Mr Pascual admitted that he had called Mr Brennan "an arrogant little shit" at the hearing on 13 April. In that letter he also said of Mr Brennan "what a blundering, incompetent, vindictive, hateful person you really are". Of the Regional President's suggestion that Mr Pascual should produce his relevant bank statements, he said that it was "laughable and a

complete joke” and he later described the Regional Committee as “Muppets”, a description from which he did not resile at the hearing.

9. Mr Brennan wrote to Mr Pascual on 2 May 2007 indicating that further charges would be put to him for his continued abusive correspondence. In the same letter Mr Brennan sent Mr Pascual, at his request, all the information held on the Union’s computer regarding his membership status. The Union had installed a new computer in 2003 and accepted that its earlier records were incomplete and not always accurate.
10. On 12 July 2007 Mr Brennan put the further disciplinary charge to Mr Pascual. The charge was “*you forwarded correspondence to this office which was defamatory and insulting towards the Regional President, Regional Secretary and Regional Committee*”. Mr Pascual was informed of his rights under rule 5(10) to produce his own witnesses, question the Union witnesses and answer the evidence against him. Mr Brennan enclosed a bundle of 53 documents that he intended to rely upon at the hearing, being mainly correspondence from Mr Pascual in which he had been abusive to others. The hearing of the charge was to be by the Regional Committee on 27 July 2007.
11. At the hearing before the Regional Committee on 27 July 2007, Mr Pascual was accompanied by a colleague, Mr Bell, who did not give evidence. Mr Pascual produced further documents for the Regional Committee, namely his cash membership cards and a 2003 letter from his then Branch Secretary regarding the subscriptions he had paid. The Regional Committee did not refuse to accept any documents which Mr Pascual submitted to it. Mr Brennan explained the charges and, in doing so, informed the Regional Committee that he had spoken with Mr Feetham and Mr Jones at the Gateshead branch who remained of the view that Mr Pascual had been in arrears with his subscriptions prior to 1995. In reporting the views of Mr Feetham and Mr Jones, Mr Brennan referred to the notes that he had taken whilst speaking with them. Mr Brennan did not submit to the Regional Committee any written statement from either Mr Feetham or Mr Jones. Mr Pascual asked questions of Mr Brennan and addressed the Regional Committee. Mr Pascual did not withdraw the allegedly abusive remarks nor apologise for them. His entire focus was on establishing that he had not been in arrears between 1993 and 1995 and that Mr Brennan had been wrong to suggest otherwise at the hearing on 13 April. The Regional Committee found that the charges were proved and, in accordance with rule 5(6) made a recommendation to the CEC that Mr Pascual be expelled from the Union.
12. The hearing of cases referred to the CEC under rule 5(6) is carried out by its Appeals Committee and Mr Steve Short is responsible for the administrative arrangements. Mr Short wrote to Mr Pascual on 26 September 2007 informing him that the CEC hearing would be on 13 November 2007 by way of a complete rehearing. He also advised Mr Pascual of his procedural rights under rule 5(10). Mr Pascual wrote to the Union’s Assistant General Secretary, Ms Debbie Coulter, on 29 September asking the Union to secure the attendance of Mr Feetham and Mr Jones at the hearing before the Appeals Committee. Mr Short responded on 4 October. He noted that Mr Pascual wished to call Mr Feetham and Mr Jones as his witnesses but refused to divulge their home

addresses. He nevertheless agreed to forward Mr Feetham and Mr Jones any letters which Mr Pascual might wish to send them, inviting them to be witnesses. Mr Pascual did not avail himself of this offer and he did not secure their attendance at the subsequent hearing as witnesses on his behalf. The Appeals Committee was to consider the same 53 document bundle that had been considered by the Regional Committee. Mr Pascual wrote to Mr Short on 7 October requesting that a further 5 documents be added and again on 30 October requesting that a further 5 documents be added. These were added to the bundle. The Appeals Committee did not refuse to accept any documents which Mr Pascual wished to submit.

13. The hearing before the Appeals Committee took place on 13 November 2007 and lasted in the region of 4 hours. The Appeals Committee was chaired by Malcolm Sage, the Union's National Vice-President. Mr Pascual was again accompanied by Mr Bell, who was to give evidence on this occasion. Shortly before the hearing commenced, Mr Sage went to see Mr Pascual to inform him that the Appeals Committee was not there to determine his membership status between 1993 and 1995, but whether he had been abusive as alleged. Mr Bell's witness statement describes Mr Pascual's response. It states:

"Bob Pascual said no way ... [he] made it very clear that he was going to have his say because he was not a lapsed member of the Union prior to his offshore accident in 1995 and he would show the CEC that Tom Brennan had lied over his membership and his letters were true and correct, and at worst were only embarrassing to Tom Brennan and Regional Committee."

14. At the start of the hearing before the Appeals Committee, Mr Sage repeated that the main concern of the Committee was the allegedly abusive remarks by Mr Pascual. However, once again, Mr Pascual's main focus was on his membership status between 1993 and 1995. Mr Sage repeated his advice about the purpose of the hearing on more than one occasion but Mr Pascual would not be deflected. In the end, Mr Sage found it easier to allow Mr Pascual to say whatever he wanted about his membership. During the hearing Mr Pascual asked questions of Mr Brennan and Mr Bell gave evidence. The thrust of Mr Bell's evidence is recorded in the notes of the hearing as being "*Letters too severe. Language wrong but sentiment correct*". Mr Pascual did not deny sending the abusive correspondence, nor did he apologise for it nor promise to stop. He considered that his remarks were justified by Mr Brennan's comment to the hearing on 13 April about his membership status and that, in any event, it was not abusive in his terms - as a shipbuilding worker - merely embarrassing. In his summing up, Mr Brennan stated that he had no dispute that Mr Pascual had been a member of the Union since 1993.
15. By a letter dated 15 November 2007, the Union wrote to Mr Pascual informing him that the decision of the Appeals Committee was that he be expelled from membership of the Union with immediate effect.
16. Mr Pascual's application to the Certification Office was commenced by a registration of complaint form received on 31 January 2008.

The Relevant Statutory Provisions

17. The provisions of the 1992 Act which are relevant for the purpose of this application are 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) ...
- (b) disciplinary proceedings by the union (including expulsion);
- (c) ...
- (d) ...
- (e) ...

The Relevant Union Rules

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

Rule 5 Membership

(5) The Central Executive Council, a Regional Council, or a Regional Committee shall have the power to suspend from benefit, or prohibit from holding any Branch Office, any member who in their judgement is guilty of attempting to injure the Union or acting contrary to the rules or who makes or in any way associates himself or herself with any defamatory, scurrilous or abusive attacks whether in any journal, magazine or pamphlet or by word of mouth, on any Official of the Union or Committee of the Union, or who acts singly or in conjunction with any other members or persons in opposition to the policy of the Union as declared by its Committee or officials under these rules, or who gives encouragement to, or participates in, the activities of any organisation, faction or grouping whose policies or aims have expressed or implied promotion of racial supremacy or racial hatred at their core, or for any reason they deem good and sufficient.

(6) A Regional Council or a Regional Committee shall have the power to recommend to the Central Executive Council the expulsion from membership of any member on any of the grounds specified in clause 5 of this rule. Whether on such a recommendation or otherwise, the Central Executive Council shall have the power to expel from membership any member on any of the grounds so specified. No expelled member shall be eligible for re-entrance into membership without the consent and approval of the Central Executive Council, or a Regional Committee.

(7) The Central Executive Council, a Regional Council or a Regional Committee shall have power to debar any member from holding any office or representative position in the Union, for such period as the Council or Committee concerned shall specify or from participating in the conduct of the business of the Union where in their opinion such member is acting contrary to the policy of the Union or against the best interests of the Union, or for any other reason which they shall deem good and sufficient.

(8) If the member subject to disciplinary proceedings under clause 5 or clause 7 of this rule by a Regional Council or Regional Committee is not satisfied with the written decision, he/she may appeal in writing within one month to the General Secretary for reference of the case to the Central Executive Council, the

decision of which shall be final. In giving its decision, the Regional Council or the Regional Committee must notify the member in writing of his/her right of appeal.

(9) If the member subject to disciplinary proceedings by the Central Executive Council is not satisfied with the written decision, he/she may appeal in writing within one month to the General Secretary for reference of the case to the Appeals Tribunal, the decision of which shall be final. In giving its decision, the Central Executive Council must notify the member in writing of his/her right to appeal.

(10) At each hearing before the Regional Council, the Regional Committee, the Central Executive Council or the Appeals Tribunal (as the case may be), the member shall have the right to hear the evidence against him/her, to answer it and to question witnesses. He/she shall have a reasonable opportunity to present his/her case. He/she may put his/her case orally or in writing, and shall have the right to support his/her case by written statements, or to produce witnesses.

Complaint One

19. This complaint is in the following terms:

‘That on or around 27 July 2007, the Regional Committee of the Union at its disciplinary hearing of charges against Mr Pascual under its rule 5(6) and (7) denied Mr Pascual the right to have a reasonable opportunity to present his case, put that case orally or in writing and to support his case with written statements or witnesses, and this was a breach of rule 5(10) of the rules of the Union.’

Summary of Submissions

20. Mr Pascual submitted that he had not been given his procedural rights under rule 5(10) as Mr Brennan had read out to the Regional Committee from what appeared to be statements from Mr Feetham and Mr Jones without either of these men being present to be questioned by him. He further argued that the Regional Committee had ignored his evidence which clearly established that Mr Brennan had lied about his membership status and that, in any event, his remarks were not abusive but embarrassing.
21. Mr Pirani, for the Union, submitted that rule 5(10) does not require the Union to produce witnesses and that there was no breach of that rule by Mr Brennan by him giving evidence of his conversation with others by reference to the notes he had taken of that conversation. He further argued that the Regional Committee had listened to Mr Pascual’s arguments about his membership status and that its decision as to whether the remarks in question were abusive or merely embarrassing was a matter to be determined by it and is not a matter to be considered as an alleged breach of rule 5(10).

Conclusion

22. Rule 5(10) is in the following terms:

“At each hearing before the Regional Council, the Regional Committee, the Central Executive Council or the Appeals Tribunal (as the case may be), the member shall have the right to hear the evidence against him/her, to answer it

and to question witnesses. He/she shall have a reasonable opportunity to present his/her case. He/she may put his/her case orally or in writing, and shall have the right to support his/her case by written statements, or to produce witnesses.”

23. This rule does not require the Union to produce any witnesses. It gives the member the right to produce witnesses, should they be willing to attend, and to question witnesses who are in fact called by the Union. Mr Brennan was called as a witness by the Union and Mr Pascual did ask him questions. In his evidence, Mr Brennan referred to a conversation he had had with Mr Feetham and Mr Jones. He was accordingly giving hearsay evidence of that conversation and could be asked questions about it. As hearsay evidence, the Regional Committee would give the reported views of Mr Feetham and Mr Jones such weight as it saw fit. In my judgment, Mr Pascual was given a reasonable opportunity to present his case, namely that his abusive remarks were provoked by an allegedly untrue statement made by Mr Brennan and that they were more embarrassing than abusive. The weight to be given to these submissions was a matter for the Regional Committee in the exercise of its discretion and is not a matter to be considered as a potential breach of rule 5(10).
24. For the above reasons, I refuse Mr Pascual’s application for a declaration that the GMB breached rule 5(10) of its rules on 27 July 2007 at a disciplinary hearing before its Northern Regional Committee into charges against the Claimant.

Complaint Two

25. This complaint is in the following terms:
‘That on or around 13 November 2007, the Central Executive Committee (CEC) of the Union at Mr Pascual’s appeal against the Regional Committee’s recommendation to expel him from the union, denied Mr Pascual the right to have a reasonable opportunity to present his case, put that case orally or in writing and to support his case with written statements or witnesses, and this was a breach of rule 5(10) of the rules of the Union.’

Summary of Submissions

26. Mr Pascual submitted that the remarks made to him by Mr Sage immediately prior to the hearing before the Appeals Committee and the interventions by Mr Sage during the hearing did not allow him a reasonable opportunity to present his case. He also considered that he had not been given a reasonable opportunity to present his case by reason of Mr Feetham and Mr Jones not being called as witnesses. He contended that the Appeals Committee had made its mind up before the hearing and did not give his arguments proper consideration.
27. Mr Pirani, for the Union, repeated his submissions with regards to the absence of Mr Feetham and Mr Jones as witnesses. As to the argument that Mr Pascual had not been allowed to put his case, Mr Pirani noted that in correspondence sent by Mr Pascual to the Certification Office on 17 November 2007 and to Ms Coulter on 20 November, he seemed to be under the impression that his evidence in relation to the payment of subscriptions had not only been

considered but accepted. Mr Pirani submitted that this fundamentally undermined Mr Pascual's argument that he had been prevented from raising that issue. Mr Pirani also referred to the documentary evidence before the Appeals Committee on the membership issue, the passages in the notes of the hearing that dealt with this issue and the evidence of Mr Bell. Mr Pirani invited me to prefer the evidence of Mr Sage that the membership point was made by Mr Pascual and that the Appeals Committee did approach its decision with an open mind.

Conclusion

28. I reject Mr Pascual's submission with regard to the absence of Mr Feetham and Mr Jones from the hearing before the Appeals Committee for the same reasons I gave in the previous complaint. Whereas Mr Pascual may have been taken by surprise at the hearing on 27 July 2007 by Mr Brennan's reference to Mr Feetham and Mr Jones, he had ample opportunity to secure their attendance at the 13 November hearing had he wished to do so and had they been willing to attend. As to whether Mr Pascual had an opportunity to present his case, I accept the evidence of Mr Sage. I find that Mr Sage did not prevent Mr Pascual from putting the arguments that he wished to advance and that Mr Sage's interventions were intended to remind Mr Pascual of the purpose of the hearing; namely to consider Mr Pascual's abusive remarks, not to conclusively determine his membership status some 14 years previously. Having experienced Mr Pascual's advocacy before me, I have no doubt that he got his point across to the Appeals Committee. Indeed, this is demonstrated by Mr Brennan having agreed with him at the end of the hearing that he had been a member since 1993. The weight that the Appeals Committee gave to the alleged provocation by Mr Brennan was a matter within the discretion of the Appeals Committee and is not an issue to be considered by me as an alleged breach of rule 5(10). Mr Pascual accepted that he had heard the evidence that was called against him, he had been allowed to produce his own witnesses and he had been able to question the witness called by the Union.
29. For the above reasons I refuse Mr Pascual's application for a declaration that the GMB breached rule 5(10) of its rules on 13 November 2007 at a hearing before the Appeals Committee of the Central Executive Council to consider the recommendation of the Northern Regional Committee that the Claimant be expelled from the Union.

David Cockburn
The Certification Officer