

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

MS D CORRIGAN

v

GMB

(No. 2)

Date of Decision:

23 November 2007

DECISION

Upon application by Ms D Corrigan ('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 on or around 7 October 2005, by the unilateral action of Mr W McCreight, GMB NI Regional Officer, acting without the authority of the Central Executive Council, the Regional Council or the Regional Committee, the Union breached rule 5(7) of the rules of the Union by allegedly removing and therefore debarring Ms D Corrigan from an office of the Union.
- (ii) I refuse to make the declaration sought by the Claimant that on or around 7 October 2005, by allegedly removing Ms D Corrigan from an office of the Union without her being subject to disciplinary proceeding, Ms Corrigan was denied a right of appeal to the General Secretary, in breach of rule 5(8) of the rules of the Union.

REASONS

1. By an application to the Certification Officer dated 24 August 2006 the Claimant made complaints against her Union, the GMB ("the Union"). The Claimant alleged breaches of the Union's rules relating to both the appointment or election of a person to, or the removal from, any office and to disciplinary proceedings by the union (including expulsion). These are matters potentially within the jurisdiction of the Certification Officer by virtue of subsection (2)(a) and (b) of section 108A of the 1992 Act. Following correspondence with the Claimant she identified the alleged breaches in the following terms:-

Complaint 1 *“that on or around 7 October 2005, by the unilateral action of Mr W McCreight, GMB NI Regional Officer, acting without the authority of the Central Executive Council, the Regional Council or the Regional Committee, the union breached rule 5(7) of the rules of the union by removing and therefore debarring Ms D Corrigan from an office of the union.”*

Complaint 2 *“that on or around 7 October 2005, in removing Ms D Corrigan from an office of the union without her being subject to disciplinary proceeding, Ms Corrigan was denied a right of appeal to the General Secretary, in breach of rule 5(8) of the rules of the union”.*

2. I investigated the alleged breaches in correspondence. A preliminary hearing was held on 20 March 2007 when I found I had the jurisdiction to determine these complaints (**Corrigan v GMB (No.2) – D/11-12/07**). The substantive hearing took place on 8 November 2007. The Claimant attended and was represented by Mr D Rafferty, a volunteer representative from the Belfast Centre for the Unemployed. The Claimant and Mr A Elliott gave evidence. Mr W Hanna submitted a witness statement but did not attend the hearing. The Union was represented by Mr J Galbraith-Marten of Counsel instructed by Mr J O’Hara of Thompsons, solicitors. Mr C Leonard, GMB Senior Regional Organiser, provided a witness statement and gave evidence. A bundle of the relevant documents was prepared for the hearing by my office. The Union presented a skeleton argument. On the morning of the hearing additional documents submitted by the Claimant’s representative were admitted. My view was that there was no good reason for the late submission of the documents. However, they were admitted when the Union raised no objections to their inclusion.

Findings of fact

3. Having considered the oral and documentary evidence, and the representations of the parties, I find the facts to be as follows:-
4. The Claimant is a member of branch 242 of the GMB within a region which includes Liverpool, North Wales and the Irish Region.
5. Day to day issues within the GMB in Northern Ireland are dealt with by senior organisers. At the relevant time Mr McCreight was the senior organiser who dealt with the Claimant.
6. Until May 2002 the Claimant worked as a catering assistant for 16.5 hours a week for the Belfast Education and Library Board (BELB). She was also a shop steward. In May 2002 the Claimant first became a secondee to the Union from the BELB. There appears to have been no documents covering the terms of this secondment. But, although the Union paid her expenses and some additional fees, her employment contract remained with BELB and when, in July 2002, her duties with the Union expanded to a full-time post she received full-time pay (36 hours a week) from BELB.

7. It is clear that while on secondment to this post the Claimant was involved in important negotiations for the Union throughout Northern Ireland. She was on the Joint National Council (JNC) for Education for a number of years.
8. In June 2004 an agreement was reached through the JNC for Education and Library Boards providing for the secondment of trade union representatives. GMB Shop Stewards and Staff Representatives were invited to apply for these posts.
9. One post was to Assist Full Time Officers in a range of duties covering school meals, caretaking and cleaning staff as well as classroom assistants, secretarial and clerical staff.
10. The notice to members said that '*A secondee who decides that they do not wish to continue in post or who are found to be unsuitable will revert back to their original substantive post.*' It also said the post would attract the same rate of pay as the successful applicant's substantive post.
11. The Claimant applied for and obtained one of the posts. On 19 August 2004 the Management Side of the JNC were informed of this and of the name of another successful applicant. Again I have seen no documents from the employer setting out the terms of the secondment and certainly no indication that the secondment was time limited.
12. In June 2005 the Claimant started a period of sick leave.
13. In August 2005 a facilities agreement that had been under negotiation between the Union and the Northern Ireland Education and Library Boards for four or five years was signed. The Claimant, though on sick leave, continued as a secondee.
14. On 7 October 2005, following a series of discussions with the BELB, Mr McCreight informed the Board that, in order to secure the secondment of Ms Joanne Evans, he was suspending the request for the Claimant's secondment under the new facility agreement. He said the position would be reviewed when she returned to work. He had not discussed this action with Regional Officers or with the Claimant.
15. The Claimant first heard of Mr McCreight's approach to the BELB on 1 November 2005. On 4 and 5 November 2005 the Claimant received two letters from BELB which she says told her that Mr McCreight had instructed them to suspend her from her seconded post.
16. On 4 November 2005 the Claimant telephoned Mr McCreight to say he had acted improperly and had breached Union rules.
17. On 5 November the Claimant wrote to Mr McCreight lodging an official complaint against him for, among other things, breaches of the GMB rule book. She copied this letter to her Regional Secretary and the Acting General Secretary of the Union.

18. On 7 November 2005 the Claimant's secondment was suspended and she reverted back to her part-time post as Catering Assistant on 16.5 hours a week and 'retainer pay'. She remained on sick leave.
19. On 9 November 2005 the BELB formally confirmed to Ms Evans that the Union's request for her secondment had been approved to take effect from 14 November.
20. Also on 9 November 2005, Mr McCreight replied to the Claimant suggesting a meeting. Subsequently the Regional Secretary and Acting General Secretary endorsed this approach.
21. On 18 November 2005 the Claimant met with Mr McCreight. In a letter of 21 November 2005 reporting her views of this meeting, Ms Corrigan objected to Mr McCreight's approach, said that she would be, at least £120 a week worse off because of his actions, and stated that Mr McCreight admitted that he had not had the permission of the Regional Secretary for his action in suspending her secondment. She noted that Mr McCreight had said he would seek her reinstatement in her seconded position. She said she wanted a full written apology and would await the outcome of Mr McCreight's approach to BELB. She alleged unprofessional conduct by Mr McCreight and lack of representation by the GMB.
22. By a letter dated 6 December 2005 to the BELB, the Claimant resigned her employment with the BELB as of 16 December 2005. She again alleged unprofessional conduct by Mr McCreight and lack of representation by the GMB.
23. On 17 January 2006 the Claimant wrote to the Acting Regional Secretary setting out the background, alleging Mr McCreight had breached the Union's rules in a number of ways – including those referred to in the current complaint. She asked that, as the Union had asserted that there was no branch structure through which she could pursue her grievances, the Regional Committee should investigate them.
24. Between the end of November 2005 and February 2006 the Acting Regional Secretary sought clarification from Mr McCreight about arrangements for secondment and about whether or not Ms Corrigan suffered financial loss by the ending of her secondment.
25. On 6 March 2006 the Acting Regional Secretary wrote to the Claimant setting out the Union's view on secondment, denying that the Union had suspended her, stating that the financial implication of her change in hours had been addressed and denying all allegations of breaches of rule or statute. He concluded that the matter was not apt for the Regional Committee and was now closed.
26. On 15 March 2006 the Claimant lodged a complaint with the Industrial Tribunal in Belfast alleging unjustifiable discipline, sex discrimination and constructive dismissal.

27. On 23 March 2006 the Claimant replied to the Acting Regional Secretary's letter of 6 March repeating and expanding on her breach of rules complaint. This letter prompted a holding reply on 3 April 2006, but no reply of substance was ever sent.
28. On 4 August 2006 the Certification Officer received a letter from the Claimant dated 1 August alleging breaches of the Union's rules relating to her removal from office and to disciplinary proceedings by the Union.

The Relevant Statutory Provisions

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

108A Right to apply to the 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. ...;
 - d. ...:

The Relevant Union Rules

Rule 5 – Membership

- 5.7 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.
- 5.8 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 to appeal.
- 5.9 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 of appeal.

- 5.10 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.

Rule 6 – Appeals Procedure for Members

- 6.1 Should any member have any complaint to make he/she must do so to his/her Branch Secretary, who must submit the matter to the Branch. If any member is not satisfied with the decision of the Branch or the Branch decides it is beyond its remit to offer a remedy, he/she may appeal in writing within one month of the Branch meeting to the Regional Committee, the decision of which shall be final.

Summary of the submissions

The Claimant's submission.

30. The Claimant argues that for three and a half years she held an appointed Union office as a full time staff representative. She negotiated on behalf of the Union and its members with a range of employers throughout Northern Ireland.
31. The Claimant believed her situation changed when Mr McCreight removed her from an appointed office while she was on sick leave. In her eyes this action, which he did not discuss with her beforehand or until she complained to him and others afterwards, was contrary to Union rules 5.7 and 5.8.
32. The Claimant argued that under rule 5.7 she could only be removed, or debarred, from holding office or a representative position with the agreement of regional officers. If such a decision had been taken then rule 5.8 would have provided her with a right of appeal. However, as she was suspended without the correct procedures being followed she lost her right of appeal.
33. The Claimant contends that Mr McCreight's actions clearly breached her rights under these two rules. Moreover she asserted Mr McCreight had said that he did not realise the consequences of his actions on her, and nor did he take the rapid follow up action required when he promised to rectify her position once he became aware of it.
34. For the Claimant, Mr Rafferty submitted that the Claimant had a prospect of a good career in the trade union movement until Mr McCreight unilaterally suspended her from office. This action resulted in the Claimant being paid not for the 36 hours a week she worked for the Union but for just the 16.5 hours in her contract with BELB. It also inflicted on her a significant loss of status and associated hurt feelings particularly given the lack of professionalism demonstrated by Mr McCreight in his handling of her suspension and the promised remedial action. In Mr Rafferty's view the effects of Mr McCreight's actions (which lead to the Claimant's resignation from BELB) constituted substantial detriment amounting to punishment or discipline.

35. He contended that Mr McCreight had no grounds for removing her from office nor had he authority to do so. The Union was in breach of rules 5.7 and 5.8. The Claimant was seeking no remedy beyond a declaration to that effect.

The Union's submission

36. In correspondence the Union had questioned whether the Claimant's application to the Certification Officer had been made in time. However, at the hearing before me the Union stated that it did not wish to pursue that issue in these proceedings.
37. The Union accepted that the Education and Library Boards for Northern Ireland agreed to release the equivalent of three full-time employees to carry out trade union duties. The Claimant was on such full-time release for over three years before going on long term sick leave.
38. The Union contended that there was a need for someone to carry out Union activities. In the Claimant's absence on sick leave Mr McCreight had attempted to negotiate the release of another employee but BELB were not prepared to pay for two seconded employees. It was for this reason that Mr McCreight had suspended the request for the Claimant's secondment and had offered to review the situation when the Claimant was fit to return to work.
39. The Union accepted that Mr McCreight's handling of the situation left a great deal to be desired and that consultation at an early stage could have led to many subsequent problems being avoided. However, the Union did not accept that Union rules had been broken.
40. The Union argued that rule 5.7 did not apply to the circumstances of this case. Rule 5.7 was a disciplinary rule granting a power to the Central or Regional Authorities to debar a member from holding an office or representative position within the Union for acting in certain ways against the Union or for any other reason they deem good and sufficient.
41. The Union contended that the additional phrase "*for any other reason*" did not extend the scope of rule 5.7 beyond disciplinary issues. Such an extension would be inconsistent in the context of Rule 5 as a whole. Rule 5.7 is in a group of sub rules 5.7, 5.8, 5.9, 5.10 all dealing with disciplinary matters. The extension would also be inconsistent with the common understanding of the rule by the Union and its members. Moreover, the Union argued that if 5.7 did have impact on non disciplinary matters it would have the effect of putting this complaint outside the scope of Section 108A(2)(b) and also of 108A(2)(a) of the 1992 Act and therefore outwith the jurisdiction of the Certification Officer. The Union argued that, to be covered by subsection (2)(a) of section 108A of the 1992 Act, the post from which the Claimant was suspended would need to be an office of the Union and the Claimant's secondment to the Union was not such an office.

42. The Union did not accept Mr Rafferty's contention that as a secondee the Claimant was an office holder in the Union. It argued that the facilities agreement was clear in that to secure secondment a person had to be an office holder in the Union. The Claimant, as a shop steward, was a representative of the Union and as such an office holder. That qualified her to be a secondee, but it did not mean that a secondee was an office holder. Rule 5.7 related to office holders and representatives of the Union but there was no suggestion that the Claimant had been suspended, let alone debarred, from her role of shop steward. She had been suspended from her secondment but had been a shop steward before her secondment and remained one at least until her resignation from BELB.
43. The Union contended that the secondment arrangements in Northern Ireland were unique in the GMB; were non rule book arrangements and stemmed from an agreement between the Union and the employer locally. In certain circumstances the employer would have power to terminate the secondment and in that situation it cannot be right that the termination would have to be processed through the arrangements set out in rule 5.7 of the Union's rule.
44. Against this background the Union argues that no disciplinary action had been taken against the Claimant. At most she was temporarily suspended from a representative role to allow another person to take over that function while the Claimant was on sick leave. It was made clear to the Claimant that the position would be reviewed when she recovered.
45. In support of this view, that no disciplinary action had been taken against the Claimant, the Union asserts that the Claimant accepted that rule 5.7 was not invoked against her. She alleges that the "*practical impact*" of Mr McCreight's actions was that she was subjected to a punitive measure and penalty. Elsewhere she asserts that Mr McCreight's reasons for deciding to remove her from office were for a disciplinary purpose whilst at the same time commenting that Mr McCreight did not realise the detriment that would flow from his actions. In the Union's view there was no evidence that any action taken was disciplinary in nature or purpose.
46. The Union asked me to accept that no disciplinary action had been taken against the Claimant and to dismiss the complaint that Mr McCreight's actions amounted to a breach of rule 5.7. It would follow, the Union argued, that if I so found that there would have been neither the need, nor the right, to appeal under rule 5.8 and that that complaint should also be dismissed.

Conclusion

47. At the commencement of the hearing the Union indicated that it did not intend to pursue the argument that the application had been lodged out of time in these proceedings. In the circumstances of this case, I find the Union was correct not to pursue this issue before me.
48. I have no doubt that the Claimant suffered considerable deprivation as a result of Mr McCreight's actions. She was faced with a reduction in her income of

some £120 a week and with the prospect of returning to work which she and others would see as of distinctly lower status than the more high profile work she was doing for the Union. Mr McCreight was apologetic, once he realised the consequences of his actions, but before matters had been put right, the Claimant had resigned from her employment. It is my view that if Mr McCreight had considered his actions more carefully, and the Claimant had not resigned precipitately, much of what has followed before the Industrial Tribunal and the Certification Officer could have been avoided.

49. The questions for me were essentially, did the detriment she suffered amount to disciplinary action by the Union and, if so, was rule 5.7 broken by Mr McCreight's actions.
50. In the appeal to the Employment Appeal Tribunal (EAT) in **Gallagher v UNISON (UKEAT/0280/05/MAA)**, counsel for the Union set out the three situations which, he submitted, fell within the scope of section 108A(2)(b) of the 1992 Act on the basis of the decisions in *Ryan v UNISON* (CO. D/45-48/01) and *Dennison v UNISON* (CO. D/12/03). These situations were:
- (a) Where a union purported to discipline a member, but did not observe its rules in terms of procedural safeguards and/or the range of permissible sanctions.
 - (b) Where a union in effect disciplined a member – by imposing a disciplinary sanction within its rules – but without purporting to invoke its rules concerning disciplinary action at all.
 - (c) Where a union subjected a member to a significant detriment by depriving him/her of a significant entitlement under its rules (albeit not a disciplinary penalty within its rules) for a deliberately disciplinary purpose.

In *Gallagher*, the EAT refused to accept that actions with a detrimental impact were disciplinary in the absence of disciplinary intent. This is the position which I, respectfully, adopt.

51. In the present case, the situation posited in paragraph 50(a) above does not apply as the Union did not invoke its disciplinary rules.
52. The Claimant would seem to argue that the situation posited in paragraph 50(b) applied in that she was debarred from office or a representative position in the Union (a penalty available under the rules) without the disciplinary rules being invoked. I do not accept this view. Accepting the submission of Mr Galbraith-Marten I find that, while a shop steward is a Union representative and qualified to be a secondee, the person who holds the post of secondee does not hold an office within the rules of the Union. The Claimant was in effect suspended from the post of secondee but not suspended or debarred from the office of shop steward or any other representative position she may have had in the Union.
53. With regard to the situation posited in paragraph 50(c) above, it is my view that Mr McCreight, in withdrawing the request for the Claimant to be

seconded, was taking administrative action to secure what he saw as the better deployment of resources at the Union's disposal. There may have been many other options open to him which someone more experienced in the ways of the Northern Ireland Education and Library Boards would have explored. But I have seen no evidence that persuades me that disciplining the Claimant was the motivation for Mr McCreight's actions. The substantial detriment that the Claimant suffered was not an intentional penalty for a deliberately disciplinary purpose. Nor was continuing to hold the post of secondee a significant entitlement under rule. Part of the difficulty faced by the Union and by the Claimant is that the rule book does not deal with the issue of secondees.

54. I find therefore, that the Claimant was not disciplined by the Union.
55. I also considered , and raised at the hearing, whether the phrase in rule 5.7 "*for any other reason*" extended that rule's significance beyond disciplinary matters and thereby required the Union to follow the procedures set out in that rule in circumstances of job moves brought about for purely administrative reasons. However, adopting the standard approach to interpreting trade union rule books, I concluded that neither the Union nor ordinary Union members would see it as having that effect. I was reinforced in that view by the fact that the point was not argued by the Claimant's representative.
56. I find that rule 5.7 was not breached by Mr McCreight's actions in relation to the Claimant and therefore refuse to make the declaration sought by the Claimant.
57. Rule 5.8 is a rule concerned with appeals from disciplinary proceedings, it follows that, as I have found the Claimant was not disciplined by the Union under Rule 5.7, the Union did not breach Rule 5.8 and accordingly I refuse to make the declaration sought by the Claimant.

E G Whybrew CBE
Assistant Certification Officer