

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

**MR E FINLAY**

**v**

**Unite the Union (TGWU Section)**

**Date of Decisions:**

**30 October 2007**

**DECISIONS**

Upon application by Mr Finlay (“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 in 2006 Unite the Union (TGWU Section) breached Rule 9.2 of the Rules of the Union in respect of election procedures for casual vacancies within Branch 1/944.
- (ii) I refuse to make the declaration sought by the Claimant that subsequent to 25 April 2006 Unite the Union (TGWU Section) breached Rule 10.2 of the Rules of the Union by failing to call regular meetings of Branch 1/944.
- (iii) I refuse to make the declaration sought by the Claimant that subsequent to the Annual General Meeting of Branch 1/944 held on 5 December 2005 Unite the Union (TGWU Section) breached Rule 10.4(b) of the Rules of the Union by failing to allow elected officials of Branch 1/944 to take office.

**REASONS**

1. The Claimant is a member of Unite the Union (TGWU Section) (“the Union” or “Unite”). Until the Transport and General Workers Union amalgamated with Amicus on 27 April 2007 he was a member of the Transport and General Workers Union. By an application dated 8 December 2006 the Claimant made complaints against the Union arising from the conduct and proceedings in respect of its Branch 1/944. Following correspondence with the Claimant the complaints he wished to pursue were confirmed by him in the following terms:-

### **Complaint 1**

*“that in 2006, by the failure of Mr K Hall, Pro-tem Secretary of Branch 1/944 to call Branch meetings to organise elections for the casual vacancies occurring on the relevant Trade Group, in accordance with directions from the General Executive Council, the Union breached rule 9.2 of the rules of the Union.”*

### **Complaint 2**

*“following the appointment of a Full Time Officer, Mr Hall, as Pro-tem Secretary of Branch 1/944 on 14 February 2006 the Branch, in breach of rule 10.2 of the rules of the Union has failed to call regular Branch meetings in that only one such meeting, on 25 April 2006, has been held.”*

### **Complaint 3**

*“by its refusal to allow two fully paid-up members, elected as Branch Chairperson and Branch Secretary at the properly constituted Annual General Meeting of Branch 1/944 held on 5 December 2005, to take up office from January 2006, the Union breached rule 10.4(b) of the rules of the Union.”*

2. I investigated the alleged breaches in correspondence and a hearing took place on 9 October 2007. At the hearing, the Claimant represented himself and called Mr K Flynn, Mr J O’Hare and Mr D Wilson to give evidence. The Claimant did not provide a skeleton argument. The Union was represented by Mr R Collins, Assistant General Secretary, Administration and Services, of Unite the Union (TGWU Section). Mr S Hart, Regional Secretary, Unite the Union (TGWU Section) gave evidence for the Union. A 176 page bundle of papers consisting of relevant documents was prepared for the hearing by my office. At the hearing this was supplemented by four additional pages submitted by the Union and 22 by the Claimant.

### **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. On 27 April 2007 the Transport and General Worker’s Union and Amicus merged to form Unite the Union. At that point Mr Woodley, General Secretary of The Transport and General Workers’ Union and Mr Simpson, General Secretary of Amicus became Joint General Secretaries of Unite the Union (TGWU Section and Amicus Section respectively), positions they still hold.
5. Branch 1/944 of Unite (TGWU Section) was formed in the early 1990s. It covered manual and clerical workers within Aer Lingus, based predominantly at Heathrow Airport. There were around 1,000 members in the branch when formed.
6. In November 1999 these Aer Lingus operations were transferred to Swissport. 850 workers based at Heathrow were affected.
7. On 16 November 2004 Swissport went into voluntary administration. 750 workers lost their jobs. At that time there were some 850 members in Branch 1/944.

8. At the time the Claimant lodged his application with the Certification Officer, on 13 December 2006, the Branch had around 500 members.
9. Branch meetings were held on 6 December 2004 and 10 January 2005. These concentrated on the Swissport issue. At the second meeting six individuals were nominated to form a committee to investigate the issues and report to a meeting on 7 February 2005. It is not clear whether or not that February meeting took place.
10. Custom and practice until 2005, following standing orders, was for Branch 1/944 to meet monthly.
11. On 17 May 2005, Mr P O’Keeffe (Deputy Regional Secretary of the Union) replying to a letter from Mr O’Hare questioned whether Mr O’Hare had been properly appointed as Branch Secretary of Branch 1/944 in the absence on sick leave of the then current Branch Secretary.
12. On 8 June 2005, Mr K P Hall, a Regional Industrial Organiser of the Union, wrote to all members of Branch 1/944 informing them that the Regional Secretary had asked him to take the position of Pro-tem Branch Secretary of the Branch 1/944 due to illness of the incumbent. I heard no evidence on when this appointment ended but the parties appear to agree that it was a short-term appointment. Mr Hall also said in that letter that the Branch would pay the union subscriptions at the reduced rate for all members who identified themselves to his office as unemployed. Those wishing to make use of this facility were given until 7 July 2005 to contact his office.
13. The Union has no record of anyone availing themselves of this offer and no payments went from the Branch to the Region for this purpose. Mr O’Hare and Mr Wilson both said in evidence that they had requested that such payments should be made on their behalf.
14. Branch 1/944 is part of the Union’s Civil Aviation Transport Trade Group and within that Group it falls within the International Airlines & Contractors and Misc. Aviation constituency. On 19 August 2005 nominations were sought from branches for the two seats available to that constituency (one of which must be filled by a woman). Nominations closed on 30 September and the result was declared on 24 November. The scrutineer’s report on that election shows that Jasvinder Gill, nominated by Branch 1/1186, was elected unopposed and that no nominations were received for the woman’s seat.
15. On either 29 August 2005 or 5 September (the exact date is unclear from the documents); there was a meeting of Branch 1/944.
16. On 5 December 2005, the Annual General Meeting (AGM) of Branch 1/944 elected Mr D Wilson and Mr J O’Hare as Chair and Secretary of the Branch to take up office on 1 January 2006 for 2 years.

17. When these elections, in line with usual practice, were reported to the Union's Regional Office the two individuals were held not to have the necessary contribution history to be eligible to hold the posts in question. Under the Union's rules the Branch Chair and the Branch Secretary must have been financial members of the Union for at least two years preceding the date of their nomination. The Union's records showed that neither Mr Wilson nor Mr O'Hare satisfied this requirement. Mr Wilson had paid no subscriptions at all between September 2004 and September 2005. Mr O'Hare was shown to have paid none since October 2004. Although this was the information on which they were held not to be in financial compliance, neither Mr Wilson nor Mr O'Hare or so far as I can see, was anyone else, notified of this until 10 May 2005.
18. On 14 February 2006, the Union's Acting Regional Secretary again appointed Mr K Hall to act as Pro-tem Secretary for Branch 1/944. This time, until a new Branch Secretary had been elected.
19. On 11 April 2006, the Acting Regional Secretary wrote to all members of Branch 1/944 explaining that the Branch's commitment to pay unemployed members' subscriptions at the reduced rate had not been honoured but, in the light of the pledge given, he was bringing their "*membership position up to date to 25 April 2006*", after which, members would be responsible for maintaining their membership in financial compliance. In effect, this meant all members of Branch 1/944 were free to attend, vote and stand for office in new elections to be held at the Branch meeting on 25 April 2006.
20. On 25 April 2006, a meeting of Branch 1/944 was held. Among the items on the agenda was the "*summarisation of accounts*" and "*Election of Branch Committee*". There appear to have been no minutes of that or the previous Branch meeting. However, it seems that some important issues were raised about financial propriety (which is the subject of a separate issue before the Certification Officer). Fresh elections were not held because the members wished to retain the Officers previously elected.
21. On 10 May 2006, individual letters were sent by the Acting Regional Secretary to Mr Wilson and Mr O'Hare setting out their contribution record and explaining that they had not been in compliance at the time of the December 2005 AGM but, in line with his decision to honour an earlier commitment from the Branch, their position had been brought up to date to 25 April 2006.
22. A further Branch meeting was called by the Pro-tem Branch Secretary for 17 May 2006. However, this meeting was cancelled at the last minute. A notice to this effect was posted on the door of the meeting room. It said this was on account of illness.
23. Since 25 April 2006, there has been no meeting of Branch 1/944. Membership of the Branch fell from 424 in March 2006 to 125 in February 2007. In August 2007, the remaining members were transferred to other branches except for 42 for whom the Union had been unable to determine their current employer.

24. From June 2005 to August 2007, the Claimant approached, by letter and e-mail, various Officers of the Union at Regional and National level on some 25 occasions. Many of these communications were about the Union's handling of the transfer of Aer Lingus to Swissport, the consequences of the closure of Swissport and allegations of financial irregularity within the Branch. He received many holding replies but few of substance.
25. On 29 August 2006, the Claimant formally invoked the Union's internal grievance procedures on four matters including the failure to call Branch meetings and the invalidating of the Branch elections in December 2005. Although in raising his grievance he mentioned issues of democracy, he made no reference to elections or vacancies on the Regional Trade Group Committees.

### **The Relevant Statutory Provisions**

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

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

*(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.*

*(8) The reference in subsection (1) to the rules of a union includes references to the rules of any branch or section of the union.*

*(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).

(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**

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

### **Rule 9 Regional Trade Group and District Committees**

1 For the purpose of conducting the trade group business of the Union there shall be a Regional Trade Group or District Committee for each of the trade groups in each region which shall hold office for the same period as the General Executive Council as provided in Rule 6, Clauses 3 to 6.

2 For the Regional Trade Group or District Committee the method of election shall be organised and conducted in accordance with the directions from time to time of the General Executive Council.

### **Rule 10 Branches**

2 The Regional Committee shall be required to ensure that each branch meets at regular intervals and fulfils its obligations under Rule. Where a branch fails to convene an Annual General Meeting of all members that branch will be suspended and members of the branch shall be allocated to a branch which meets the requirements of rule subject to the right of the branch to appeal to the General Executive Council.

4(a) Each Branch subject as hereinafter mentioned shall have for its management a Chair and Secretary, and a committee. Branches requiring additional officers shall submit their requests to the Regional and/or Trade Group or District Committee, which shall make recommendations to the General Executive Council for authorisation. Except in the case of a new Branch, or with the consent of the Regional Committee, the Chair, Secretary and committee members respectively, shall have been financial members of the Union for a period of not less than two years immediately preceding the date of nomination, and each of them shall be nominated at least four weeks before the date of election. Every officer must at all times be a financial member. If, in the case of any Branch, the General Executive Council shall arrange for the secretarial duties of such Branch to be performed by a permanent or full-time officer, the Branch shall not, so long as such arrangement continues be entitled to elect a Branch Secretary.

4(b) Branch officers (other than permanent or full-time officers, who shall be appointed by the General Executive Council only, and who shall hold office in accordance with the terms of such appointment) and committees shall hold office for two years. They, (other than such permanent or full-time officers as aforesaid) shall be elected at a Branch meeting by show of hands, or by ballot, if so decided by the meeting. The election shall take place and be completed not later than December 31 in each alternate year, and the elected candidates shall take office the following January for two years. Casual vacancies may be filled at an ordinary Branch meeting, but notice of the impending election must be given to members of the Branch on the notice convening the meeting.

**Rule11 Branch Secretary**

*The Branch Secretary shall notify all members in arrears in the manner prescribed by the General Executive Council.*

**Rule19 Membership**

*7 It shall be the personal responsibility of the member to maintain contributions and avoid arrears in all circumstances, including sickness and industrial action, when paying manual or direct debit contribution. When a member is paying Direct from Wages and a payment is set up between the employer and the Union, the member is only responsible for checking deductions from their wages – not ensuring the employer makes the payment. Thus ensuring the member remains in compliance. The General Executive Council shall nevertheless have discretion to allow payment of benefits or to confirm candidature for office should it be satisfied that the member is not in deliberate or culpable default.*

**Complaint 1**

*“that in 2006, by the failure of Mr K Hall, Pro-tem Secretary of Branch 1/944 to call Branch meetings to organise elections for the casual vacancies occurring on the relevant Trade Group, in accordance with directions from the General Executive Council, the Union breached rule 9.2 of the rules of the Union”*

**Summary of the Claimant’s submission**

28. The Claimant argued that members of Branch 1/944 were disenfranchised in respect of the elections for the representatives on the Regional Trade Group in the period between 19 August 2005 when nominations opened and the declaration of the result on 24 November 2005. He pointed out that the fact that the Branch met on only one occasion in 2006 disenfranchised the members from participating in the filling of any casual vacancies which may have occurred.
29. In respect of the Union’s contention that his complaint was out of time, the Claimant argued that it was custom and practice within the Union to raise such matters initially at branch meetings. After the conclusion of the Trade Group elections he resolved to raise the matter at the next available Branch meeting. However, he had no chance to raise the matter at the AGM on 5 December 2005 as the meeting ran out of time before it could move to any other business. There was then no further meeting until 26 April 2006 and, at that meeting, the issue of financial irregularities meant that it was impossible to raise his grievance as the members were focussed on other issues. The Claimant stated he would have raised the matter at the May meeting but that meeting was cancelled.
30. In the light of all this the Claimant argued that I should declare the Union to be in breach of its rule 9.2. The Claimant was not seeking any enforcement order in relation to this breach of rule.

## **Summary of the Union's submission**

31. The Union argued that the Guidelines issued by the Union's General Executive Council (GEC) under rule 9.2 and referred to in the complaint related to the conduct of the ballot. There was no provision in the Guidelines or in the Union's rules for casual vacancies on Regional Trade Group Committees to be filled.
32. On 19 August 2005, all branches in the constituency in question were invited to make nominations by 30 September. The Claimant had produced evidence which showed that there had been a meeting of Branch 1/944 in late August or early September 2005. No nominations had been submitted by the Branch following that meeting. The Branch had therefore not taken advantage of the opportunity it had to make nominations. On these points alone, the Union argued the claim should fail.
33. In addition, Mr Collins argued that the only election referred to by the Complainant had concluded on 24 November 2005 and that recourse to the Union's internal grievance procedures had not been made until 29 August 2006. The complaint to the Certification Officer was therefore out of time.

## **Conclusion: Complaint 1**

34. The first point I have to decide is whether or not the complaint to the Certification Officer was made in time. Section 108A subsection 6 is clear that a complaint must be lodged with the Certification Officer within six months of the date of the alleged breach unless, within that six month period, any internal complaints procedure of the Union has been invoked to resolve the claim. In the latter case the time-limit is extended for up to 18 months from the date the procedure is invoked.
35. I saw no evidence that any election to which branch 1/944 might have made nominations was held during 2006 (the period referred to in the complaint) At the hearing the Claimant focussed on the election to the Regional Trade Group Committee. The latest date on which an alleged breach of rule in relation to this election could have occurred was either 30 September 2005 when nominations closed, or 24 November 2005, when the results were announced. Taking the later of these two dates would mean that, for the complaint to be in time, 23 May 2006 is the latest date by which an application to the Certification Officer would have to have been made or raised through the Union's internal grievance procedure. In fact, it was not raised through the Union's grievance procedure until 29 August 2006 and the complaint to the Certification Officer was not lodged until 13 December 2006.
36. The Claimant gave his reasons for not raising the matter through the Union's grievance procedure but, whatever the merit or otherwise of those reasons, the

1992 Act gives me no discretion to allow applications to the Certification Officer which are not submitted within the statutory time-limits.

37. The Union argued that apart from the election to the Regional Trade Group Committees in August to November 2005 there were no other elections for which the Claimant's Branch would have been asked to make nominations. Also, that the Claimant had reported he had information that on more than one occasion in 2006, branches had been requested to organise elections to the relevant Trade Group to fill casual vacancies. However, the Union had argued that had one such request been made in the six months preceding the Claimant using the Union's grievance procedure, that is, after 28 February 2006, his complaint might have been in time. However, the Claimant had been asked, both in writing and at the hearing, to specify just one such occasion. He had not done so and the complaint was therefore out of time.
38. It seems that the only election to which the Claimant referred and which might have been influenced by the lack of meetings of Branch 1/944 in fact ended on 24 November 2005. To meet the time-limits set by subsections (6) and (7) of section 108A of the 1992 Act any complaint about that election would have to have been made to the Certification Officer or put into the union's internal grievance procedure by 29 May 2006. In fact, neither of these actions had occurred by this date and I dismiss this complaint on the grounds that it was made out of time.

## **Complaint 2**

*"following the appointment of a Full Time Officer, Mr Hall, as Pro-tem Secretary of Branch 1/944 on 14 February 2006 the Branch, in breach of rule 10.2 of the rules of the Union has failed to call regular Branch meetings in that only one such meeting, on 25 April 2006, has been held"*

## **Summary of the Claimant's submission**

39. The Claimant pointed out that no Branch meeting had been held since 25 April 2006. A meeting had been scheduled for 17 May 2006, but had been cancelled by means of a notice on the Union's office window on that day. The Claimant recognised that Rule 10.2 did not specify the frequency of branch meetings but stressed that it did stipulate that they should be held at regular intervals. Since its formation in the early 1990s, the Branch had, the Claimant argued, operated according to its own Standing Orders. These included that the Branch would meet every third Tuesday in the month at 19.00 hours in the Union's Hillingdon Office. In the Claimant's view, branch meetings were one of the main decision-making forums of a branch and branches were given a duty to meet regularly. The Union's argument that frequent meetings did not fit well where the work involved long absences from home or the workplace were, the Claimant argued, extraneous as the entire membership of Branch 1/944 worked in Ground Handling at Heathrow Airport.

40. The Claimant argued that the Pro-tem Secretary was at fault in not calling a Branch meeting immediately he was appointed on 14 February 2006. Instead, he waited until 26 April before holding a meeting.
41. The Claimant further argued that Officials sought to obfuscate the issues by saying they were not holding Branch meetings while investigations were ongoing into the financial concerns at the Branch. In fact, in the Claimant's view, the Union's full-time officials had decided to close the Branch by stealth in an effort to avoid answering members' legitimate questions in relation to both the Branch finances and issues relating to the TUPE transfers from Aer Lingus to Swissport. All this, the Claimant argued, resulted in a clear breach of Union's Rule 10(2).

### **Summary of the Union's submission**

42. The Union accepted that the collapse of Swissport's operations at Heathrow had caused immense hardship for members of Branch 1/944. The Union continued to fight cases on behalf of members to help secure their pension and other rights following this collapse.
43. Mr Collins argued that although the rules contained a specific requirement for an AGM they did not specify the frequency of branch meetings. This was because branches are voluntary organisations that can be composed of a wide range of workers. In Civil Air Transport the nature of the work requires long absences from home and the workplace.
44. When the Branch failed to elect officers in compliance with rule the Regional Committee allocated a full-time officer, Mr K Hall a Regional Industrial Organiser responsible for Civil Air Transport, to act as Pro-tem Secretary. Mr Hall called a meeting of the Branch on 25 April 2006 in part to elect new officers in compliance with rule. No such election occurred. A further meeting was called for 17 May but it did not take place as Mr Hall was unwell. Given the reluctance of Branch members to follow accepted procedures the Regional Officers decided that no Branch meeting could be convened until the investigation into the alleged financial irregularities in the Branch had been concluded. This was still the case at the time the Claimant lodged his complaint with the Certification Officer.
45. Mr Collins further argued that, as well as the facts not supporting the allegation, he could not see how the complaint could be treated as being concerned with a rule relating to "*the appointment or election of a person to..... any office.*" It might relate to "*the constitution or proceedings of any executive committee or of any decision-making meeting*", but such an application could only be made to the Certification Officer in respect of a body having more than 1,000 members. Branch 1/944 has never had that many members. He requested that I dismiss the complaint.

## Conclusion: Complaint 2

46. While I have considerable sympathy with many of the Claimant's arguments, the first question I have to decide is whether I have jurisdiction to determine this complaint.
47. The Certification Officer does not have a general jurisdiction over all breaches of union rules. Section 108A of the 1992 Act gives the Certification Officer jurisdiction to determine complaints from union members about alleged breaches of four specific categories of union rules. Rules not falling into these four specific categories remain to be enforced through the Courts. One of the categories for which the Certification Officer has jurisdiction is rules relating to "*the constitution or proceedings of any executive committee or of any decision-making meeting*". I am in little doubt that rule 10.2 is a rule about the constitution or proceedings of a committee. But subsections (10), (11) and (12) of section 108A of the 1992 Act defines "*executive committee*" and "*decision-making meeting*" in such a way as to exclude most branch meetings and certainly all where the branch (as in this case) has less than 1000 members. It may be that this was why the Claimant did not seek to bring this complaint under Section 108A(2)(d) of the 1992 Act.
48. Section 108A(2)(a) of the 1992 Act, on which the Claimant seeks to rely, brings into the Certification Officer's jurisdiction breach of union rule complaints relating to "*the appointment or election of a person to or the removal of a person from, any office*". On the face of it, rule 10.2 is about the need for a branch committee to meet regularly. It makes no reference to appointments, elections or removal from office. However, it has been established in cases relating to a third category of rules - namely rules relating to disciplinary proceedings by a union that the Certification Officer's jurisdiction is not confined to rules which are on their face concerned with the matters set out in Section 108A(2), (see **Hill v Unison (D/11/00)**, **Ryan v Unison (D/45-48/01)**, and **Dennison v Unison (D/12/03)**). Those cases have also established that the mere fact that the application of a rule may have a detrimental effect on an individual member does not automatically make that a rule relating to discipline for the purpose of Section 108A (2) of the 1992 Act.
49. In my view, both of these points apply in relation to rules on appointments. First, the Certification Officer's jurisdiction is not confined to rules which specifically mention appointments or elections. Secondly, a variety of a union's rules may have an impact on the appointment, election or removal of a person from office but that does not automatically make them rules relating to such matters for the purpose of Section 108A (2) of the 1992 Act. Some rules, perhaps specifically relating to periods of office, might be regarded as relating to appointments or elections. Other more general rules about, for example, retirement ages, may have an impact on certain appointments but that would not in my view necessarily make them rules relating to appointments and therefore within the Certification Officer's jurisdiction. Similarly, rules dealing with the number of trade groups or constituencies, or the allocation of branches to particular constituencies, might also impact on appointments without being rules relating to appointments. As such they would not be issues

for the Certification Officer to determine. There is clearly a continuum of rules impacting on appointments and elections, some of which are rules relating to appointments, and some of which are not. The decision on where the line is to be drawn falls to be decided in the context of the union rule book as a whole and custom and practice in the union.

50. In the present case, it is my view that rule 10.2, although possibly having an indirect affect on appointments, is too wide ranging and far removed from the issue of appointments, elections or removal from office. These issues are dealt with more directly elsewhere in the Union's rule book. Rule 10.2 is not a rule relating to appointments and elections and there has been no suggestion that rule 10.2 was breached by the Union in an effort to thwart anyone's appointment or election. This complaint falls outside the Certification Officer's jurisdiction provided by Section 108A (2) (a) of the 1992 Act. Accordingly, I dismiss it.

### **Complaint 3**

*“by its refusal to allow two fully paid-up members, elected as Branch Chairperson and Branch Secretary at the properly constituted Annual General Meeting of Branch 1/944 held on 5 December 2005, to take up office from January 2006, the Union breached rule 10.4(b) of the rules of the Union”*

### **Summary of the Claimant's submission**

51. The Claimant stated that following the collapse of Swissport at Heathrow over 800 members of Branch 1/944 were made redundant. In late 2004, resolutions were passed in the Branch to the effect that the Branch would pay the subscriptions of those members remaining unemployed following that collapse. The Claimant pointed out that a similar resolution was passed at a Branch meeting on 8 May 2005 when a full-time officer of the Union, Mr K Hall, was acting as the Pro-tem Branch Secretary in the absence of the elected Secretary who was on long-term sick leave.
52. When Mr Wilson and Mr O'Hare went to the Branch AGM in December 2005 they believed, correctly in the Claimant's view, that they were fully paid up members of the Union. Although Rule 11.6 requires the Branch Secretary to notify all members in arrears neither Mr Wilson nor Mr O'Hare had been so notified. Both believed the Branch had paid their subscriptions in line with the Branch resolution.
53. The Claimant argued that Mr Wilson and Mr O'Hare were correctly elected as Branch Chair and Secretary at the meeting on 5 December 2005 and, in the Claimant's view, the full-time officers, rather than relying on their own records, should have approached Mr Wilson and Mr O'Hare to ascertain their membership status. This had not been done. Had it been done, the Claimant argued, the Union would have discovered that the Branch had authorised payment of the members' subscriptions. However, no approach to either Mr Wilson or Mr O'Hare had been made.

54. The Claimant argued that the failure of the Branch Secretary to remit membership subscriptions to the Regional Office was hardly the fault of the members concerned. In reality, it was a shortcoming on the part of Mr Hall who was standing in as Branch Secretary and who was fully aware of the Branch's resolutions to pay the subscriptions of unemployed members.
55. The Claimant pointed out that the failure to honour promises made in Branch resolutions had been recognised, on 11 April 2006, by the Union's then Acting Regional Secretary, who had written to all members of the Branch confirming this and adding that their membership position had been brought up to date to 25 April 2006.
56. The Claimant did not accept that the Union had properly applied rule 19.7 in declaring Mr Wilson and Mr O'Hare to be ineligible to hold office. In his view, that rule gave the Union discretion to ignore lapses in financial membership where, as in this instance, the member was not in deliberate or culpable default.
57. The Claimant argued that a lack of communication between Union officials meant that some believed, incorrectly, that Mr Wilson and Mr O'Hare were out of compliance when in fact that was not the case. The Claimant concluded that the Certification Officer should uphold the complaint that the Union had breached its rule 10.4(b).
58. The Claimant did not seeking an enforcement order should I uphold this complaint.

#### **Summary of the Union's submission**

59. Mr Collins, for the Union drew my attention to the Union's rule 10.4(a) which relates to Branches and which states that the Chair, Secretary and committee members respectively, shall have been financial members of the Union for a period of not less than two years immediately preceding the date of nomination. In that context he stated that all branches are required to notify their respective Regional Office of the election of Branch Officers in order to ensure that such elections are conducted in compliance with rule.
60. In evidence Mr Hart explained that when the names of those who have been elected to a branch office are received in Regional Office, those names are forwarded to the Union's Finance Department to check whether the candidates have a contribution record satisfying rule 10.4(a). Branch elections have to be held in alternate Decembers. In Region one, of which Branch 1/944 is part, that means that some two to three thousand records have to be checked.
61. Mr Collins further explained that when the records for Mr Wilson and Mr O'Hare were checked it was found that they were out of compliance and therefore ineligible to take up office. He explained that the compliance rule is strictly applied on the principle that it is the responsibility of the individual member to maintain their contributions.

62. Mr Collins stated that the Union recognised that in the case of Branch 1/944 it was alleged that a commitment had been given at some point to pay the subscriptions of those members who were unemployed. However, he said the Union had no record of any payment from the Branch to the Regional Administration to cover this commitment, nor did the Region have a record of any indication from Mr Wilson or Mr O'Hare to the Branch indicating their unemployed status in this period.
63. Mr Collins acknowledged that in April 2006 the Acting Regional Secretary accepted that a commitment had been made by the Branch and that that commitment had not been kept. The Acting Regional Secretary therefore decided to meet that commitment and waived the members' contributions up to 25 April 2006. This meant that Mr Wilson and Mr O'Hare were eligible to stand for the election arranged for 25 April. The Branch did not in the event hold such an election. In Mr Collins' view, the waiving of past subscriptions did not mean that Mr Wilson and Mr O'Hare were in compliance in December 2005 at the time of the Branch AGM. They were not. There had been no breach of rule 10.4(b) and the complaint should be dismissed.

### **Conclusion: Complaint 3**

64. This case falls to be determined by me under Section 108A(2)(a) of the 1992 Act. There is little dispute about the facts. Pledges were given that subscriptions due from unemployed members of Branch 1/944 following the collapse of Swissport would be paid by the Branch. This did not happen. As a result, when the normal checks were carried out at Regional Office following the Branch election, the records showed that neither Mr Wilson nor Mr O'Hare had a contribution record which satisfied the requirement of rule 10.4(a) for holders of the posts of Branch Chair or Secretary.
65. This situation seems to have come about as a result of poor communication. Much of the problem would have been avoided if the two members, or their Branch, had been told sooner that they were ineligible to hold Branch office and why that was so. There was also poor follow-up of the resolution of Branch 1/944 but I accept that the collapse of Swissport caused much disruption to the Branch and its members.
66. The Union's GEC does have power under rule 19.7 to allow candidature for office where it is satisfied that the member is not in deliberate or culpable default in relation to their subscriptions. It is clear to me that neither Mr Wilson nor Mr O'Hare were in deliberate or culpable default in relation to their subscriptions in December 2005. However, this is a discretionary power which the Union is not required to exercise.
67. In my view, in December 2005 neither Mr Wilson nor Mr O'Hare had the contribution record necessary, under rule to hold the offices to which they were elected. It might be argued as, I think, the Claimant suggested, that the Acting Regional Secretary's letter of 11 April 2006 to all members of the Branch bringing "*your membership position up to date to the 25 April 2006*" meant that Mr Wilson and Mr O'Hare should be regarded as being in

compliance on 5 December 2005, the date they were elected. I do not accept that interpretation for two reasons. First, the letter of 11 April, in saying that members of Branch 1/944 could participate in elections on 26 April 2006, clearly envisaged that new elections were required. That would not have been necessary if Mr Wilson and Mr O'Hare were to be regarded by the Union retrospectively, as being declared in compliance on 5 December 2005. Secondly, the Acting Regional Secretary's letters of 10 May 2006 to both Mr Wilson and Mr O'Hare made it clear that both were regarded by the Union as "*out of compliance*" at the time of the election on 5 December 2005.

68. For these reasons I find that the Union did not breach its rule 10.4(b) by its refusal to allow Mr Wilson and Mr O'Hare to take up office as the Branch Chairperson and Branch Secretary of Branch 1/944 from January 2006 following the Branch elections held on 5 December 2005. I therefore dismiss this complaint.

**E G WHYBREW CBE**  
**Assistant Certification Officer**