

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

MR J E TAYLOR

v

MUSICIANS' UNION (No 2)

Date of Decision:

13 July 2007

DECISION

Upon application by Mr Taylor ("the Claimant") under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"):

I refuse to make the declaration sought by the Claimant that on 23 October 2006 the Musicians' Union breached Rule VI(2)(b) of the Rules of the Union by the Union's North of England Regional Committee failing to consider a motion proposed by the Claimant and others.

REASONS

1. The Claimant is a member of the Musicians' Union ("the Union" or "the MU"). By an application dated 8 February 2007 the Claimant complained to me about the refusal of the North of England Regional Committee of his Union to accept a motion that he and others had submitted to it. Following correspondence with the Claimant, he confirmed the complaint he wished to pursue in the following terms:-

"That on 23 October 2006 in breach of rule VI(2)(b) of the rules of the Union, the Regional Committee for the North of England failed to consider a motion submitted by the Claimant and others"

2. I investigated the alleged breach in correspondence and a hearing took place on 5 July 2007. The Claimant was not present at the hearing but was represented by Mr S Moore a friend and fellow member of the Union. A witness statement made by the Claimant was in evidence. The Union was represented by Mr Segal of counsel instructed by Thompsons, solicitors. Evidence for the Union was given by its General Secretary, Mr J Smith, who also submitted a witness statement. Mr Moore and Mr Segal provided written submissions. A 114 page bundle of documents was prepared for the hearing by my office. At the hearing, this was supplemented by a letter dated 11 October 2006 submitted by the Union.

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. The Claimant has been a member of the MU for about 58 years and has served on its Executive Committee (“EC”) at various times since about 1975. He is a member in the North of England Region of the Union.
5. At its Biennial Delegate Conference in 2005, the MU amended its rules relating to retired members. Prior to this amendment, retired members were not required to pay any subscriptions but remained entitled to all the rights of a full member. I was informed that there were two main reasons for this rule change. First, the increase in the number of retired members was making it increasingly costly to service them. Second, there was a feeling amongst some members that it was wrong for those who did not pay any subscriptions to participate in the Union equally with those who did pay subscriptions. The amendment came into effect on 1 January 2006. The effect of the amendment was to provide for those who met the qualifying conditions to have the right to apply to their regional committee to be accepted into one of two special categories of membership. They could apply for either “*retired member status*” or “*concessionary member status*”. Retired member status was a means of remaining a member whilst not paying any subscription. Concessionary member status was a means of remaining a member and paying a reduced subscription of about half the standard rate, currently about £60 per annum. The amended rules also dealt with the rights to which each of these categories of membership gave rise. The issue in this case concerns the membership rights of those who had retired member status and therefore paid no subscriptions. As a musician who has retired from the profession can choose between different categories of membership, I shall refer to this category as retired members (free).
6. In a letter sent to all members in the week commencing 29 August 2005, the General Secretary, Mr Smith, explained the rule changes as they related to retired members (free). He stated that members in this category would continue to benefit from free membership and would continue to have access to the Union’s Benevolent Fund and certain other specified services but that retired members who wished to continue participating fully and in the democratic processes of the Union would need to transfer to the new concessionary rate category. As examples of full participation the General Secretary, referred to the right to nominate colleagues for office, vote in Union ballots, sit on Union committees/delegations and represent fellow members. In or about August 2006, the Claimant transferred to the new concessionary rate category.
7. At the meeting of the Executive Committee (EC) in September 2005, it was agreed that members in the retired (free) category would also have access to the Union’s legal services and public liability insurance.
8. At the meeting of the EC in November 2005, an issue arose as to whether retired members (free) would be able to propose motions at Annual General Meetings (AGMs) or add their names to petitioned motions to Regional

Committees or to the EC. The discussion on this issue was suspended to enable the General Secretary to obtain legal advice. The General Secretary spoke with the Union's in-house solicitor, Mr Fenton. He then sent a memo to EC members on 11 November. This memo states:

"Retired Members

I have discussed the issued of 'free' retired members proposing motions to the RC and EC with David Fenton. Nothing in the new rule precludes members proposing a motion as this is not a service or benefit. However, free members cannot vote on any motion even if they move or amend it. To take this right away would require another rule change."

9. Subsequently a number of other concerns were raised about these new categories of membership. In particular, there was concern that it might be unlawful under the 1992 Act to exclude retired members (free) from voting in statutory elections/ballots and that the rule changes might be considered unlawful discrimination on the grounds of age. The General Secretary sought advice on these issues from its solicitors, Thompsons. The advice from Thompsons is contained in a letter dated 17 January 2006. They advised that the amended rules did not put the Union in legal difficulties as far as the 1992 Act or the law on age discrimination were concerned. Further, they advised that, under the amended Rules, retired members (free) are not entitled to move motions at AGMs or to add their names to petitioned motions to Regional Committees or the EC. The General Secretary circulated copies of this letter to members of the EC who discussed it at length at their meeting in February 2006. The EC decided that the letter from Thompsons should also be circulated to officials so that they could better respond to any enquiries they received from members.
10. In August 2006, the North of England Region of the Union issued its summer newsletter, giving notice of its AGM in Newcastle on 10 September. The newsletter also called for motions for the next meeting of the Regional Committee to be held on 23 October. The newsletter stated that such motions must contain the names and membership numbers of at least five members, *"together with their signatures"*. It is now accepted by the Union that the newsletter was incorrect to require signatures.
11. By an undated letter sent on 4 October 2006, the Claimant and five other members submitted a motion to be discussed at the meeting of the North of England Regional Committee on 23 October. The motion called for the practice of requiring signatures for proposed motions to cease forthwith. Of the six members named as proposers of the motion, two (including the Claimant) were concessionary members and four were in the category of retired members (free).
12. At the meeting of the Regional Committee on 23 October 2006, a member of the Regional Committee queried why the Claimant's motion had not been tabled. After a short adjournment, the Regional Organiser, Elaine Rogers, reported that the motion in question had been received but that it had *"insufficient eligible supporters"*. Accordingly, the motion was not debated. Ms Rogers wrote to the Claimant on 27 October explaining why the motion had

not been put to the meeting and assured him that the error in the regional newsletter, requiring the signatures of supporters, would not be repeated.

13. The Claimant subsequently asked Ms Rogers and the General Secretary for the grounds upon which it had been decided that some of the movers of the motion had been ineligible. The General Secretary responded by a letter dated 27 November 2006, with which he included an extract from the draft 2007 Members Handbook. This extract stated that retired members (free) shall not move, second or support motions to Regional or the Executive Committees. The Claimant took issue with this statement in a letter to the General Secretary of 8 December on the grounds that he considered it to be an unwarranted restriction on the rights of retired members and a breach of rule.
14. The Claimant made this complaint to me under cover of a letter dated 9 February 2007, received at the Certification Office on 13 February.

The Relevant Statutory Provisions

15. 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) ...;
 - (b) ...;
 - (c) ...;
 - (d) *the constitution or proceedings of any executive committee or of any decision-making meeting;*
 - (e) ...

The Relevant Union Rules

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

II: MEMBERSHIP

- 9 *The EC may appoint any person to be a member, a temporary member, or honorary member of the MU on such conditions and for such period as the EC decides.*

The members of the MU shall therefore be

- (a) *Members*
- (b) *Temporary members*
- (c) *Honorary members*
- (d) *Retired members (Rule XII.2)*
- (e) *Concessionary members (Rule XII.3)*

Save where the context otherwise requires or admits, references in these rules to a member or members include all members of the MU.

VI: MOTIONS TO EC AND TO REGIONAL COMMITTEES

2 *Motions from members may be submitted to a Regional AGM or Regional Committee in the following ways:*

- (a) *At the Regional AGM or a specially convened meeting of the Region, motions may be moved and seconded for consideration by that meeting. The motion may be amended or withdrawn after it has been moved and seconded. The motion may be accepted, rejected or amended.*
- (b) *A motion may be submitted in writing for consideration by a Regional Committee. Such a motion must be supported by at least 5 members of the Region who must provide their names and membership numbers. The motion may be accepted, rejected or referred back to its supporters with a recommendation for amendment or other change.*

XII: SUBSCRIPTIONS

2 *A member who at the time of application is not in arrears with subscriptions or levies and*

- (a) *has been a member continuously for 20 years or more and is permanently unable to follow any employment or*
- (b) *has been a member continuously for 35 years or more and has retired from following the profession of music and has reached the age of 65 may apply to their Regional Committee for retired member status. Should such status be granted, the member will be excused subscriptions and levies but shall be denied all benefits, services and privileges save for access to the Union's Benevolent Fund and such other services as the EC may afford to retired members from time to time. For the avoidance of doubt, retired members will not be eligible to hold any office in the Union or to nominate or vote in Union elections or ballots and any reference to the entitlement of a member to stand or nominate or vote in an election or hold office shall be interpreted as excluding retired members.*

In exceptional circumstances, the EC may waive the first condition in sub-clause (b) above.

3 *A member who at the time of application is not in arrears with subscriptions or levies and has been a member continuously for 25 years or more and has retired from following the profession of music may apply to their Regional Committee for concessionary member status. Concessionary member status shall also apply for so long as a member is aged under 21 years or (having first notified the Union in writing to that effect) is in full-time education.*

A concessionary member shall be liable to pay a subscription of an amount according to a scale determined by the EC and shall be entitled only to such benefits, services or privileges of membership and to hold such offices or to nominate or vote in such Union elections or ballots as the EC from time to time in its absolute discretion may determine. The EC may exercise its discretion differently in respect of the three categories of concessionary members.

A Brief Summary of the Submissions

17. Mr Moore, for the Claimant, submitted that the motion submitted by the Claimant and his colleagues on 4 October 2006 was a valid motion and should therefore have been placed before the Regional Committee on 23 October for them to accept, reject or refer back. He further argued that a retired member was

still a member for the purposes of Rule VI(2)(b) notwithstanding the provision in rule XII(2) which states that a retired member “*shall be denied all benefits, services and privileges ...*”. In Mr Moore’s submission the benefits, services and privileges which are denied to retired members are set out exhaustively in the list which appears after the expression “*for the avoidance of doubt*” in that sub-rule. He maintained that as that list does not refer to the moving of motions to the Regional Committee, the right of retired members (free) to move such motions has been retained. Mr Moore supported that argument by reference to the memo sent by the General Secretary to EC members on 11 November 2006. Mr Moore went on to argue that the Union (through Ms Rogers, the Regional Organiser) had been obliged to place the Claimant’s motion before the Regional Committee for it to determine whether it was a valid motion.

18. Mr Segal, for the Union, submitted that, on a correct interpretation of the rules, retired members (free) did not have the right to move or propose motions to the Regional Committee. In his submission, rule XII(2) withdrew all rights from retired members, save as expressly preserved by the rule. He argued that the right to move or propose motions had therefore been removed from such members. Mr Segal rejected the argument that the list of activities which appears after the words “*for the avoidance of doubt*” in rule XII(2) should be read as an exhaustive list of those rights denied to retired members (free). He submitted that something which is “*for the avoidance of doubt*” must explain what goes before and that rule XII(2) would have the same meaning without the sentence beginning “*for the avoidance of doubt*”. Mr Segal argued that it is irrelevant to the correct construction of rule XII(2) whether the Biennial Delegate Conference gave its mind directly to the right of retired members to propose motions. In his submission, a rule may have consequences beyond the precise purpose for which it was introduced. Mr Segal further submitted that the right to propose a motion is clearly comprehended within the expression “*benefits, services and privileges*” in rule XII(2) and that this is illustrated by the list of activities after the words “*for the avoidance of doubt*” which are similar rights. He relied particularly on the right to nominate, which he maintained was *ejusden generis* (of the same or similar kind) with the right to propose a motion.

Conclusion

19. On 4 October 2006 the Claimant and five colleagues submitted a motion which they wished to be considered at the Regional Committee meeting on 23 October 2006. The Regional Organiser, Ms Rogers, did not table the motion for consideration by the Regional Committee on the basis that it had “*insufficient eligible supporters*”. It is alleged that this is a breach of rule VI(2)(b).
20. Rule VI(2)(b) of the Rules of the Union is in the following terms:
 - (b) *A motion may be submitted in writing for consideration by a Regional Committee. Such a motion must be supported by at least 5 members of the Region who must provide their names and membership numbers. The motion may be accepted, rejected or referred back to its supporters with a recommendation for amendment or other change.*

21. It is noteworthy that rule VI(2)(b) states that a motion “*may*” be submitted for consideration by a Regional Committee, not that it must be submitted. It is also noteworthy that the rule sets out in mandatory terms the support which such a motion must have. The issue in this case is whether the motion submitted by the Claimant and his colleagues met those mandatory requirements and, in particular, whether it was supported by five members, as defined by the rules.
22. Membership of the MU is dealt with in rule II(9) of its rules. There are five categories of membership, including retired members and concessionary members. This rule concludes with the sentence, “*Save where the context otherwise requires or admits, references in these rules to a member or members include all members of the MU*”.
23. The issue to be addressed therefore is whether there is provision in any other Rule or Rules providing the context which requires or admits that retired members (free) do not have the right to support motions for the purposes of Rule VI(2)(b). It was agreed by the parties that, for this purpose, the relevant rule to be examined is Rule XII(2).
24. Rule XII(2) provides as follows:

XII: SUBSCRIPTIONS

2. *A member who at the time of application is not in arrears with subscriptions or levies and*

- (a) *has been a member continuously for 20 years or more and is permanently unable to follow any employment or*
- (b) *has been a member continuously for 35 years or more and has retired from following the profession of music and has reached the age of 65 may apply to their Regional Committee for retired member status. Should such status be granted, the member will be excused subscriptions and levies but shall be denied all benefits, services and privileges save for access to the Union’s Benevolent Fund and such other services as the EC may afford to retired members from time to time. For the avoidance of doubt, retired members will not be eligible to hold any office in the Union or to nominate or vote in Union elections or ballots and any reference to the entitlement of a member to stand or nominate or vote in an election or hold office shall be interpreted as excluding retired members.*

In exceptional circumstances, the EC may waive the first condition in sub-clause (b) above.

25. The expression within rule XII(2) which I am called upon to interpret is that retired members (free) “*shall be denied all benefits, services and privileges ...*”. In my judgment this expression has the effect of removing from retired members (free) all the incidences of membership provided under or in accordance with the rules save for those which are expressly preserved, namely “*access to the Union’s Benevolent Fund and such other services as the EC may afford to retired members from time to time*”. I find that the use of the phrase “*benefits, services and privileges*” was intended to be as compendious as possible and that the word “*privilege*” comprehends those rights provided by the rules. I find support for this in the definition of the word *privilege* in the Shorter English Dictionary, which refers to “*A right, advantage or immunity granted to*

or enjoyed by a person or class of persons ... ". I reject Mr Moore's submission that the "*benefits, services and privileges*" which are denied by this rule are to be found exhaustively in the list of activities that appear after the words "*For the avoidance of doubt*". In my judgment, that list of activities does not expand or restrict the meaning of the expression "*all benefits, services and privileges*", which are expressly denied to retired members (free). That list merely gives examples of those rights or privileges which the Biennial Delegate Conference, in agreeing the amendment, might have thought to be most controversial or important. Accordingly, in my judgment, retired members (free) are not comprehended within the meaning of 'members' for the purposes of rule VI(2)(b) and accordingly a motion which relies upon the support of retired members (free) does not qualify for submission to the Regional Committee under the mandatory requirement of that rule.

26. Further, I reject Mr Moore's argument that the motion submitted by the Claimant and his colleagues should have been presented to the Regional Committee for it to rule on its validity. I find that only motions which are submitted in accordance with the rules are to be considered by the Regional Committee for them to "*accept, reject or refer back*". It is initially a matter for the administration to determine whether a motion is valid under the rules. In many cases the issue will be clear. For example, there may be less than the required number of supporters or some supporters may no longer be members of the Union because they have not paid their subscriptions. The burden on the administration in this regard is that the unreasonable exclusion of a valid motion would indeed be an actionable breach of rule. On the facts of this case, however, the motion submitted by the Claimant and his colleagues was defective and the Union was not in breach of rule VI(2)(b) in not presenting it to the Regional Committee.
27. For the above reasons, I refuse to make the declaration sought by Mr Taylor that on 23 October 2006 the Musicians' Union breached Rule VI(2)(b) of the Rules of the Union by the Union's North of England Regional Committee failing to consider a motion proposed by the Claimant and others.

David Cockburn
The Certification Officer