

**DECISIONS OF THE CERTIFICATION OFFICER ON AN APPLICATION
MADE UNDER SECTION 108A(1) OF THE TRADE UNION AND LABOUR
RELATIONS (CONSOLIDATION) ACT 1992**

MR C KING

v

GMB (No. 2)

Date of Decision:

22 March 2007

DECISION

Upon application by 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 the GMB breached rule 6.2 of its rules on or about 8 March 2006 by refusing to determine an appeal, by him, under rule 6 on the basis of his written submission in lieu of his attendance at the hearing.
- (ii) I make the declaration sought by the Claimant that the GMB breached rule 6.2 of its rules on or about 26 July 2006 by refusing to determine an appeal by him under rule 6 on the basis of his written submission, in lieu of his attendance at the hearing.
- (iii) I consider it inappropriate that I make an enforcement order.

REASONS

1. Mr King is a member of the GMB (“the Union”). By an application dated 8 September 2006 Mr King (“the Claimant”) made a complaint against his Union relating to decisions taken by the GMB London Regional Committee arising from his appeal under rule 6 of the rules of the Union. Following correspondence with Mr King, the complaint that he wished to pursue was identified in the following terms:-

“On or around 8 March 2006 and 26 July 2006, the London Regional Committee of the union refused to accept Mr King’s appeal by way of a written submission in lieu of his attendance at a hearing on those dates and this was a breach of rule 6(2) of the rules of the GMB which allows the member to have the reasonable opportunity to present his case orally or in writing to the Regional Committee.”

2. I investigated the alleged breaches in correspondence and a hearing took place on 14 March 2007. The Claimant did not attend the hearing but provided a written submission. In the Claimant's absence, I had particular regard to his correspondence and submissions. The Union was represented by Mr J O'Hara of Thompsons Solicitors. Evidence for the Union was given by Mr E Blissett, GMB London Regional Secretary. A 95 page bundle of documents was prepared for the hearing by my office. The rules of the Union were in evidence. The Union provided a written submission.

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. Rule 6 of the Rules of the GMB is in effect a grievance procedure for members. It appears under the heading "Appeals Procedure for Members" and enables members to raise 'any complaint'. By this procedure a member may raise a complaint to his/her branch and if not satisfied with the decision of the branch, may appeal to the Regional Committee.
5. Mr King is a member of the Bromley East B38 branch of the Union. By a letter dated 21 April 2005, Mr King raised a rule 6 grievance with his branch. He complained that the convenor at his place of work had put on the notice board at work a letter from Mr King (in which he had made an earlier rule 6 complaint) and in so doing had disclosed Mr King's home address.
6. Mr King's branch convened a special meeting on 10 May 2005 to consider an earlier rule 6 complaint brought by Mr King. The meeting was due to begin at 7pm. At about 6.50pm a statement from Mr King was delivered in which he stated that he had decided not to attend the hearing but wished to rely on written submissions which he enclosed. The branch dealt with this matter. The Branch Secretary also informed the meeting that Mr King had made a further rule 6 complaint by letter dated 21 April, received by him on 5 May. The branch decided to consider this complaint also. On the second complaint, the branch concluded that the convenor had put Mr King's letter on the notice board but that, in doing so, he had not acted with intended malice. The convenor was asked to ensure that nothing similar happened in the future.
7. Mr King appealed against this decision to the Regional Committee by a letter dated 26 May 2005. Despite several reminders from Mr King, the Union did not process this appeal as quickly as it might have wished. In the meantime, Mr King raised the matter with the Information Commissioner.
8. By a letter dated 6 December 2005 the Regional Secretary of the London Region, Mr Blissett, informed Mr King that his rule 6 appeal hearing would take place at 2pm on 11 January 2006. By a letter dated 8 December, Mr King sought a postponement, which was granted.

9. By a letter dated 20 January 2006, the hearing was re-listed for 8 March. Mr King was informed, "*Should you be unable to attend on that date then the hearing will go ahead in your absence*".
10. The Regional Committee met on 8 March 2006, between 11am and 4pm. Mr King did not attend and the only documentation before the committee from Mr King was his brief letter of appeal dated 26 May 2005. The Regional Committee decided that Mr King's rule 6 complaint "fell".
11. After the conclusion of the Regional Committee, Mr Blissett returned to his office where he found a letter from Mr King dated 7 March 2006. The letter had been sent by special delivery to the Regional Offices, where the Regional Committee had been meeting. It was later established that the letter had been delivered at 8.25am that morning. The letter is not marked urgent and was not brought to Mr Blissett's attention before or during the meeting of the Regional Committee. Further, the letter does not state that Mr King would not be attending the meeting of the Regional Committee or that the letter should be considered as his written submission, although the latter is tolerably clear from its content.
12. Mr King wrote to Mr Blissett on 23 March 2006 asserting his right to submit his case in writing and complaining that he had not been informed of the date by which documentation should be received. He stated that he would be pursuing the complaint both internally and externally. By a letter dated 6 April, Mr Blissett explained what had happened on 8 March and informed Mr King that his appeal would be reconsidered by the Regional Committee if he wished. A further hearing date of 3 May was proposed. Mr Blissett's letter concludes, "*If however you wish for only your written submission received on 8th March 2006 to be considered then please confirm by the 21st April 2006 that this is the case*".
13. By letter dated 12 April 2006 Mr King stated that he was unable to attend the meeting on 3 May "*due to a pre-arranged engagement*". He asked for an alternative date. Mr Blissett responded on 17 May agreeing to a postponement to 26 July and stating that the Regional Committee requested that he attends his appeal in person.
14. On the morning of 26 July 2006 Mr Blissett received a letter from Mr King dated the previous day. It stated, "*I write to inform you that I am regrettably unable to attend the Rule 6 hearing on 26/07/06. Therefore, in accordance with rule 6(2), I wish to put my case in writing. My written submission was of course lodged with you back on 8 March 2006*".
15. The relevant minutes of the Regional Committee meeting of 26 July 2006 noted that Mr King had not appeared as requested and went on, "*A short debate ensued after which it was decided that as the Regional Committee had numerous questions for Mr King about his rule 6 complaint, he would be requested to attend in person. Resolved: To postpone Bro. King's hearing to a date upon which he could attend.*"

16. By a letter dated 10 August 2006, Mr Blissett provided Mr King with a list of six dates over the next 6 months for the hearing of his appeal and asked him to indicate when he would be available to attend. The letter also states, "*Whilst the Regional Committee appreciates that you wish to prosecute your Rule 6 case based solely upon the written evidence that you sent in, they would wish to be able to ask you a series of questions about your evidence The Regional Committee, therefore, took a decision on 26 July 2006 that they would not hear your case solely based upon the written evidence, instead they would invite you, in person, to attend a future Regional Committee, in order that your Rule 6 hearing could be heard*".
17. Mr King's Registration of Complaint Form to the Certification Office is dated 8 September 2006 and was delivered the same day.
18. On 18 September 2006 Mr Blissett wrote to Mr King noting his confirmation that he was refusing to attend the Regional Committee in order to put his appeal. The letter continued, "*I will inform the Regional Committee of the stance that you are taking at the next meeting and will revert to you with their decision about whether your case will be heard solely on the written evidence that you have sent in*".
19. By a letter dated 6 October 2006, Mr Blissett informed Mr King that the Regional Committee was still prepared to see him at any of its Regional Committee meetings. A further 15 dates were offered.
20. On 19 January 2007, Mr Blissett wrote to Mr King informing him that, "*...the London Regional Committee, following consideration of your Certification Officer's complaint, is prepared to hear this Rule 6 complaint and, if you choose, all of your other numerous Rule 6 complaints, in your absence*". I was informed that this letter was written after the Union had received legal advice.
21. By a letter to Mr King dated 19 February 2007, Mr Blissett proposed that the Regional Committee would hear his appeal on 7 March, "*Without prejudice to its belief that it need not proceed with a Rule 6 appeal hearing in your absence*". Mr Blissett commented that the Regional Committee would also hear four other rule 6 appeals that Mr King had outstanding. Mr King sought a postponement of this hearing which the Union granted. The rule 6 appeals were subsequently arranged for 4 April 2007, after the present hearing. Mr King was asked if he would wish his appeals to proceed in his absence.

The Relevant Statutory Provisions

22. The provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 ("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) ...*
- (c) ...*
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;*

108B Declarations and orders

(3) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements -

- (a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;*
- (b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.*

The Relevant Union Rules

23. The rules of the Union relevant to this application are as follows:-

Rule 6 Appeals Procedure for Members

- 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.*
- 2 At each hearing before the Branch or the Regional Committee (as the case may be), the member 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. He/she shall have the right to hear the contrary evidence, to answer it and to question witnesses.*
- 3 Notwithstanding the other provisions of this Rule, any complaint by a member of a staff branch shall be heard and determined by his/her own staff branch and any appeal from such branch shall lie to the Central Executive Council direct.*

Summary of the submissions

24. In his written submission, Mr King argued that it is inconceivable that his letter of 7 March 2006, which is timed as having been received at the GMB's offices at 8.25am on 8 March, did not find its way to the office of Mr Blissett by the time of the Regional Committee meeting at 11am. He submitted that in these circumstances rule 6.2 was breached by the Regional Committee having refused to consider his appeal on the basis of his written submissions, although

it clearly had the means to do so. Mr King also argued that the Union breached rule 6.2 by the decision of the Regional Committee on 26 July 2006 not to determine his complaint on the basis of his written submission, relying on the contents of Mr Blissett's letter of 10 August as to the nature of the decision made by the Regional Committee on that date.

25. Mr O'Hara, for the Union, made three main submissions. First, he submitted that there is no obligation in rule 6 for the Branch or Regional Committee to hold a hearing and that rule 6.2 only applies where there is a hearing. He argued that a complaint could be determined under rule 6.1 on the papers without a hearing. Secondly, he submitted that, if there was a general obligation to hold a hearing, the Branch or Regional Committee could decide on the facts of any particular case not to hold one on the grounds that the complaint was frivolous or vexatious or for any other good reason. By way of example, Mr O'Hara referred to complaints about disciplinary decisions, resolutions of Congress or complaints which are, in their terms, racially insulting. Thirdly, Mr O'Hara submitted that in circumstances where the Branch or Regional Committee had decided that there should be a hearing, the Branch or Regional Committee retained a residual discretion to require the attendance of a member if there were good grounds to do so. Mr O'Hara argued that rule 6 provides a grievance mechanism and should not be interpreted as if it were a disciplinary rule to which the concepts of natural justice would be applicable. He submitted that the Branch or Regional Committee must have been intended to have considerable discretion in regulating their own procedures and that this discretion extended to requiring the presence of the member who lodged the complaint. Mr O'Hara also gave examples of what he considered to be Mr King's unreasonable conduct, which, he maintained, could legitimately be the basis for the decision of the Regional Committee to insist upon Mr King's attendance to answer questions.

Conclusions

26. Rule 6 of the rules of the Union is in effect a grievance procedure. It allows members to raise "any complaint" at branch level and, if not satisfied with the decision of the Branch, to appeal to the Regional Committee. The decision of the Regional Committee is final. The Union did not dispute that this complaint falls within my jurisdiction by virtue of section 108A(2)(d) of the 1992 Act, being an alleged breach of a rule which related to "the constitution or proceedings of any executive committee or of any decision-making meeting". The Union accepted that the London Regional Committee was an executive committee of the Union and that, when sitting to determine a rule 6 appeal, it constituted a decision-making meeting, its decisions under that rule being final.
27. In considering the interpretation of rule 6, I am of course mindful that the rules of trade unions are not usually drafted with the precision of legislation or commercial contracts. I have had regard to the various authorities on the principles to be applied when interpreting trade union rules, in particular to the following passage in **Jacques v Amalgamated Union of Engineering Workers (Engineering Section) (1986) ICR 683**, per Warner J:

"The effect of the authorities may I think be summarised by saying that the rules of a trade union are not to be construed literally or like a statute, but so as to give them a reasonable interpretation which accords with what in the court's view they must have been intended to mean, bearing in mind their authorship, their purpose, and the readership to which they are addressed."

28. I accept the Union's submission that rule 6 relates to the processing of grievances and, as such, it is not to be constrained by the same implied provisions that might be appropriate if it was a rule relating to the disciplinary process. I also accept that the Regional Committee has considerable discretion in regulating its own procedure, but that discretion is subject to the minimum procedural requirements imposed by the rules. Rule 6 must be construed as a whole, including the procedural provisions in rule 6.2. Members who wish to avail themselves of the rule 6 procedure must make their complaint to their branch secretary. The branch secretary must then submit the complaint to the branch. These are the two mandatory preliminary requirements of rule 6.1. At this stage the branch has two options. First, it can decide to refuse to hear the merits of the complaint. It can do this if it considers that it is beyond its remit to offer a remedy, even if the complaint was to be upheld, or, exceptionally, if it concludes that the complaint or the terms in which it is expressed, is an abuse of process. In either case the branch must make a positive decision not to hear the complaint on its merits and that decision itself is capable of appeal to the Regional Committee. At this stage rule 6.2 is not engaged. Secondly, the branch can proceed to consider the complaint on its merits. In my judgment, having regard to the whole of rule 6, the occasion upon which a Branch considers a rule 6 complaint on its merits is "a hearing" within the meaning of rule 6.2. Accordingly, the procedural requirements of rule 6.2 are then engaged. The member must be given a reasonable opportunity to present his/her case. The member may put his/her case orally or in writing. The member shall have the right to support his/her case by written statements or to produce witnesses. The member shall have the right to hear the contrary evidence, to answer it and to question witnesses. The application of rule 6.2 at this stage enables the member to explain his/her case to the branch and enables the branch to reach an informed decision. The same analysis applies to the consideration of any appeal by the Regional Committee.
29. In my judgment, it is the clear intention of rule 6 that members should ordinarily have the option of presenting their case orally or in writing and that the Union must give them a reasonable opportunity to do so. It must be remembered that this is a grievance procedure and members may not wish to travel great distances or, possibly, to lose wages in order to state their case. In his submission, Mr King points out that some members "*may be intimidated by the prospect of being forced to make their complaint to the Regional Committee in person, especially as the complaint may be critical of some union officials. It may also be the case that members may suffer from some impediment such that attending in person is impracticable*". Further, Mr Blissett stated in evidence that the Regional Committee wished to ask Mr King questions about his general conduct in the Branch, going beyond the facts relating to his appeal. The disadvantage for members who chose to

exercise the option to make written submissions is that they disable themselves from listening to any oral evidence and from questioning any witnesses. But that is a choice which the member is entitled to make.

30. Turning to the facts of this case, the events of 8 March 2006 and 26 July 2006 must be considered separately. On 8 March, the Regional Committee met with the reasonable expectation that Mr King would be attending that day to make his case. Mr King had previously sought a postponement in order to attend and he had not informed them that he would not be attending that day. The Regional Committee determined the appeal on the information before them, principally Mr King's letter of appeal and the minute of the branch meeting of 10 May 2005. In so doing, the Regional Committee committed no breach of rule 6.2. Mr King had taken the risk that his letter of 7 March would not be available to the Regional Committee the following day. He had ample notice of the hearing and could have provided the submission earlier. He could have telephoned Mr Blissett to tell him to expect the letter. Having taken no such steps, Mr King cannot properly criticise the conduct of the Regional Committee on 8 March 2006.
31. For the above reasons I refuse to make the declaration sought by the Claimant that the GMB breached rule 6.2 of its rules on or about 8 March 2006 by refusing to determine an appeal by him under rule 6 on the basis of his written submission, in lieu of his attendance at the hearing.
32. As to the meeting of the Regional Committee on 26 July 2006, I note, as a background fact, that Mr King's appeal had then been outstanding since 26 May 2005. This was partly the fault of Mr King and partly of the Union. Mr King's letter of 25 July arrived before the Regional Committee convened on 26 July and it was duly considered. From this letter, it was clear that Mr King was not going to attend that day and that he wished the consideration of his appeal to proceed on the basis of the written submission that he had lodged on 8 March. The Regional Committee appreciated Mr King's wish that his appeal should proceed solely upon his written submissions but nevertheless decided that they would not hear his case only on written evidence. They wanted to secure Mr King's attendance at any appeal in order to question him. In my judgment, rule 6.2 provided Mr King with the right to have his appeal determined, if he so wished, on the basis of his written submission, together with such other evidence as may be before the Regional Committee. The decision of the Regional Committee not to determine his appeal on this basis on 26 July 2006 was a breach of rule 6.2.
33. For the above reasons, I make the declaration sought by the Claimant that the GMB breached rule 6.2 of its rules on or about 26 July 2006 by refusing to determine an appeal by him under rule 6 on the basis of his written submission, in lieu of his attendance at the hearing.
34. I have considered whether it would be appropriate for me to make an enforcement order on the facts of this case. I consider that it would be inappropriate for me to do so, having regard to the Union's stated intention to hear Mr King's appeal on the basis of his written submission, if he so wishes,

on 4 April 2007. The Union has further undertaken that, should this date be ineffective for any reason, Mr King's appeal, which is the subject of this application, would be heard at some future date on the basis of his written submissions, should this continue to be his wish.

David Cockburn
The Certification Officer