

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

**Ms D Corrigan**

**v**

**GMB (No 2)**

**Date of Decision:**

**20 March 2007**

**PRELIMINARY HEARING**

**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 have decided that I have jurisdiction to determine Ms Corrigan's complaints.

**REASONS**

1. By an application 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 the appointment or election of a person to, or the removal from, any office and disciplinary proceedings by the union (including expulsion). This is a matter potentially within the jurisdiction of the Certification Officer by virtue of section 108A(2)(a) and 108A(2)(b) of the 1992 Act. The alleged breaches were that:-

**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 The Union, by its letter of 20 October 2006 contended that I did not have jurisdiction to hear these matters. It argued that both complaints related entirely to events that occurred on 7 October 2005 in Northern Ireland and cited section 301 of the 1992 Act. It was argued that section 301 of the 1992 Act excluded section 108A from applying to complaints of breaches of union rule that occur in Northern Ireland.
- 3 I decided to hold a preliminary hearing to determine whether I had jurisdiction under the 1992 Act to hear Ms Corrigan's substantive complaints of alleged breaches of GMB rules 5(7) and 5(8). As required by section 108B(2)(b) of the 1992 Act, the parties were offered the opportunity of a formal hearing and such a hearing took place on 20 February 2007. The Union was represented by Mr Galbraith-Marten of Counsel instructed by Mr J O'Hara of Thompsons, solicitors. The Claimant attended and was represented by Mr D Rafferty, a volunteer representative from the Belfast Centre for the Unemployed. A bundle of documents was prepared for the hearing by my office. The Union submitted a copy of section 301 of the 1992 Act and extracts from the Interpretation Act (Northern Ireland) 1954 and the Trade Union and Labour Relations (Northern Ireland) Order 1995. Mr Galbraith- Marten presented a skeleton argument.

### **Findings of Fact**

- 4 Having considered the oral and documentary evidence, and the representations of the parties, I find the relevant facts to be as follows:-
- 5 Ms Corrigan is a member of the GMB who worked in Northern Ireland. Her branch is in the Liverpool, North Wales and Irish region of the Union. The region does not extend to the Republic of Ireland.
- 6 The GMB has its registered Office in England.

### **The Relevant Statutory Provisions**

- 7 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);

#### **301 Extent**

- (1) This Act extends to England and Wales and [(apart from section 212A (6)) to] Scotland.

- (2) The following provisions of this Act extend to Northern Ireland –
- (a) sections 13 and 14 (provisions as to property held in trust for trade union), and section 129 (application of provisions to employers' associations) so far as it applies to those sections;
  - (b) Chapter VI of Part I (application of funds for political objects), except sections 86 to 88 (duties of employer who deducts union contributions), for the purposes of the application of that Chapter to trade unions or unincorporated employers' associations having their head or main office outside Northern Ireland;
  - (c) section 287 (offshore employment);
  - (d) section 294 (reciprocal arrangements with Northern Ireland);
  - (e) Schedule 1 (repeals) so far as it relates to enactments which extend to Northern Ireland, other than the Conspiracy and Protection of Property Act 1875;
  - (f) Schedules 2 and 3 (consequential amendments, transitional provisions and savings), so far as they relate to enactments which extend to Northern Ireland; but this Act does not otherwise extend there.

## Summary of Submissions

### The Union.

- 8 Mr Galbraith–Marten submitted that the Certification Officer has jurisdiction only in so far as it is conferred by a specific statutory provision. In relation to breach of rule complaints jurisdiction is conferred by section 108A of the 1992 Act. However, because of her location in Northern Ireland Mr Galbraith-Marten submits that I have no jurisdiction to hear Ms Corrigan's complaint under section 108A. It is his view that section 301 the 1992 Act provides that section 108A does not extend to Northern Ireland. Although other provisions of the 1992 Act extend to Northern Ireland, the section 108A of the Act "does not otherwise extend there".
- 9 Mr Galbraith-Marten brought to my attention the case of *Lawson v Serco* [2006] IRLR 289, HL. In considering the territorial extent of the right not to be unfairly dismissed conferred by section 94 of the Employment Rights Act 1996, Lord Hoffman cited Lord Wilberforce in *Clark v Oceanic Contractors Inc* [1983] 2 AC 130, stating that the question is always one of construction and "*requires an inquiry to be made as to the person with respect to whom Parliament is presumed, in the particular case, to be legislating. Who, it is to be asked, is within the legislative grasp, or intendment, of the statute under consideration.*"
- 10 Mr Galbraith-Marten submits that this approach should be adopted in respect of section 108A of the 1992 Act, and that we must therefore examine in respect of whom or what Parliament can be presumed to have legislated when it passed section 108A of the 1992 Act. In answer to this question, Mr Galbraith-Marten cites the parallel provision for that territory contained in the Trade Union and Labour Relations (Northern Ireland) Order 1995, Article 90A of which provides that the Northern Ireland Certification Officer would have jurisdiction to hear this complaint.

11 This leads him to conclude that it is plain that Parliament did not intend section 108A of the 1992 Act to apply to the circumstances of this case. Parliament provided that, under section 90A of the 1995 order, the forum for her complaint was to be the Northern Ireland Certification Officer. In the Union's view the Great Britain Certification Officer does not have jurisdiction in respect of matters occurring in Northern Ireland which are the exclusive preserve of the Northern Ireland Certification Officer.

**Claimant's argument.**

12 I did not hear any legal argument on behalf of Ms Corrigan. Her representative pointed out that the region in which Ms Corrigan was located spanned Wales Liverpool and Northern Ireland. The next most senior person to whom such matters as formed the substance of her complaints would have been addressed was not in Northern Ireland but in Great Britain.

**Conclusion.**

13 I accept that the Certification Officer has jurisdiction only over matters specifically designated by Parliament as to be in his purview. In my view one such matter is to provide union members with an alternative route for challenging their union over alleged breaches of rules falling into certain categories.

14 I find that the suggested parallels between the issues in this case, and those considered in *Lawson v Serco* to be positively misleading. That case was concerned with the territorial extent of a statutory right granted to employees, (in that case, the right not to be unfairly dismissed). The question was: upon whom had Parliament conferred that right? The issue in the case before me is not upon whom is such a statutory right conferred, but to whom can an individual go to enforce an existing right, in this case a contractual right arising under the rules of the Union.

15 What section 108A of the 1992 Act does is to provide union members with an alternative, simpler and less costly way than that provided by the courts of having their rights enforced. That way is by means of complaint to the Certification Officer. The equivalent provision in the 1996 Act is not section 94 on which Mr Galbraith-Marten depends but section 111 of the Employment Rights Act 1996, which provides that complaints of unfair dismissal may be dealt with by the Employment Tribunal. Like section 108A, this provision provides a forum to enforce a right conferred elsewhere.

16 Where Parliament is concerned with introducing new statutory rights it does think about, and seek to specify, on whom those rights are conferred. Such considerations are reflected in the 1992 Act. Recognising that members of Great Britain trade unions work in different capacities all over the world; on ships, aeroplanes, off shore and in quite distinct foreign jurisdictions, the 1992 Act made separate provision for overseas members in the context of trade union elections. Section 60 of the 1992 Act has the effect of potentially limiting the rights of overseas members, so that a trade union which has

overseas members may chose whether or not to accord any of those members entitlement to vote at an election to which Chapter IV of the 1992 Act applies. Such provision in respect of overseas members in dealing with elections, and the corresponding lack of any such provision in relation to section 108A, persuades me that Parliament did not intend to treat overseas members differently in respect of their right to apply to the Certification Officer in respect of an alleged breach of union rules.

- 17 Mr Galbraith-Marten's construction would render questionable my jurisdiction at section 108A in respect of all union members who were not physically located in Great Britain. This would include members of unions based in Great Britain who happened to work in Gibraltar and members of trade unions based in Great Britain who were traveling abroad. Again, I consider this unlikely to have been Parliament's intent. If Parliament intended to treat these people differently from their fellow trade union members within Great Britain in respect of their right to complain of a breach of rule, it would have made special provision. However, it did not.
- 18 There remains the question of what is the purpose of section 301 if it does not preclude the Certification Officer from considering complaints from union members working in Northern Ireland. In order to come within the coverage of section 108A an organisation would only have to satisfy the definition of a trade union given in section 1 of the 1992 Act. This would mean that without some territorial provision in the 1992 Act a member of such an organisation any where in the world could come to the Great Britain Certification Officer to seek to have resolved an alleged breach of that organisation's rule book in respect of the categories of rules specified in section 108A(2). The effect of section 301 in relation to section 108A is to limit the Great Britain Certification Officer's jurisdiction to alleged breaches which are justiciable in Great Britain. A person living in Northern Ireland can ordinarily bring a claim for breach of contract to a court in Great Britain for an alleged breach of contract by a Great Britain registered company. Similarly a union member in Northern Ireland can bring a claim in the Great Britain courts for an alleged breach of rule by a union based in Great Britain. Accordingly such claims are justiciable in Great Britain and the Certification Officer has jurisdiction giving members an alternative to bringing their claims in the civil courts.
- 19 Finally the Union for quite understandable reasons did not come to the hearing prepared to argue on the facts of the case. I have not therefore reached a conclusion on the matter. However it is my view that there is a strong case for the proposition that the events complained of were not solely confined to Northern Ireland.

**E G Whybrew CBE**  
**Assistant Certification Officer.**