

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

Mr B Watkins

v

Amicus

Date of Decision:

18 September 2006

DECISION

Upon application by the Claimant under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”).

I refuse the Claimant’s application for a declaration that Amicus breached Rule 10(1) of its Rules by the alleged appointment of safety representatives at Cranberry Foods Ltd, Abergaveny, in or about October 2005.

REASONS

1. By an application dated 20 March 2006 Mr Watkins (“the Claimant”) made a complaint against his union, Amicus (“the Union”). The Claimant alleged a breach of the Union’s rules relating to the appointment of the Union’s safety representatives at his place of work, Cranberry Foods Ltd, Abergaveny. This is a matter potentially within the jurisdiction of the Certification Officer by virtue of section 108A(2)(a) of the 1992 Act. Mr Watkins complaint, following clarification in correspondence, was that:-

“In or around October 2005, the union appointed safety representatives at Cranberry Foods without an election having taken place in breach of Rule 10(1) of the rules of the union.”

2. I investigated this alleged breach in correspondence. 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 18 August 2006. The Union was represented by Ms S Joseph, a Legal Officer of Amicus. Evidence on behalf of the Union was given by Ms C Speight, Regional Secretary for Wales, Mr C Holmes, Regional Officer, and Mr M Cooper, the Senior Shop Steward at Cranberry Foods

Abergavenny. The Claimant acted in person and gave evidence on his own behalf. A bundle of the relevant documents was prepared for the hearing by my office, to which the Union was given leave at the hearing to add one further document. The rules of the Union were also in evidence.

Findings of Fact

3. Having heard the witnesses and having considered the relevant documents, together with the representations of the parties, I find the facts to be as follows:
4. Mr Watkins has been employed at the poultry factory now known as Cranberry Foods Ltd, Abergavenny, since about 1991, shortly after the factory opened. At that time the factory was operated by Sun Valley Foods Ltd. In about 2000 it was acquired by Brandons Limited. Brandons Limited went into receivership in 2003 and the factory was taken over by Cranberry Foods Limited. Mr Watkins was employed on the night shift with about 98 others.
5. Sun Valley Foods Limited recognised the EEPTU. The EEPTU merged to become part of the AEEU, which subsequently merged to become part of Amicus, on 1 January 2002. Until the last few years, union membership at the factory had been low and there had been no regular elections for union positions in the workplace. Mr Cooper became the senior steward in 2003 and, together with the regional officer, Mr Holmes, worked hard to increase membership and improve union organisation. By 2005, the factory had about 450 employees, of whom about 300 were members of Amicus.
6. It was not until 1998 that Mr Watkins joined any union. He joined the AEEU. However, for some years previously, he had acted as a safety representative at management's request. In this capacity he had enjoyed no official standing under the Safety Representatives and Safety Committees Regulations 1977("the 1977 Regulations"). Having joined the AEEU, Mr Watkins was elected as the safety representative for the night shift. He received a letter from the AEEU Regional Secretary dated 15 July 1999 confirming his election. He was subsequently sent on union courses for safety representatives. I find that from about July 1999 Mr Watkins was a union appointed safety representative at Sun Valley Foods Limited for the purposes of the 1977 Regulations. He was not, however, subject to periodic elections. He merely continued in that position without any questions being asked.
7. Upon being elected as senior steward in 2003, Mr Cooper endeavoured, amongst other things, to fill the vacant positions of shop steward. Originally no one came forward to represent the night shift, where, at that time, the Union had only 5 members. Eventually Mr Watkins was prevailed upon to seek election and he was elected unopposed. He then occupied the dual role as both shop steward and safety representative.

8. On the 1 January 2004 Amicus adopted a new rule book. Rule 10 is headed Workplace Representation and Rule 10(1) provides that members employed at an establishment shall elect from amongst themselves at meetings convened for the purpose one or more (a) work place representatives (or shop stewards); (b) safety representatives; and (c) learning representatives.
9. During the course of 2004 the shop stewards committee at Cranberry Foods Limited agreed that they should move to a system whereby the positions of shop steward and safety representative would be combined. In a letter from Ms Westwood, the HR manager, to the Union of 8 April 2004, the company confirmed that it would in future recognise shop stewards as safety representatives for the relevant area "*as soon as we get the majority of Union Representatives trained to be Safety Representatives*", which it was their aim to achieve by September 2005. I find that Mr Watkins was aware that this matter had been agreed with the company in 2004, even though, as a night shift worker, he seldom attended meetings of the shop stewards committee. He did, however, attend meetings of the joint consultative body, the Communications Advisory Board ("CAB") and he did speak informally with colleagues. I also accept Mr Holmes' evidence that he had discussed this matter personally with Mr Watkins. The change of system was controversial and a number of shop stewards were concerned about the extra work that might be required. In the discussions about this new arrangement Mr Watkins was used as an example of how successful the combined role could be.
10. In 2005 Mr Watkins, in his capacity as a shop steward, had a number of disagreements with Mr Cooper and Mr Holmes which he categorised as being problems of communication. These culminated in Mr Watkins resigning from his position as a shop steward and from the CAB, which he did orally immediately before a meeting of the CAB on 1 June 2005.
11. Mr Cooper immediately notified his regional officer, Mr Holmes, about the resignation and Mr Holmes instructed that an election be held as soon as possible for the combined position of shop steward and safety representative for the night shift. I accept Mr Cooper's evidence that he personally drafted the notice which sought nominations for this position and that he personally put the notice on the Union notice board at the factory. Mr Cooper stated categorically that the notice sought nominations for the combined position of shop steward and safety representative. At the end of the two week period for nominations only one person, Graham Jones, had put his name forward. On 20 June 2005 Mr Jones was declared to have been elected unopposed. Mr Watkins maintained vigorously that the notice seeking nominations for this election had only referred to the position of shop steward, not to the dual role of shop steward and safety representative. On the balance of probabilities, I prefer the evidence of the Union's witnesses on this point, although it is regrettable (and not helpful to the Union's case) that the notice in question was not produced in evidence. The recollection of Mr Cooper was extremely clear. It was also consistent with the instructions I find that he had

been given by Mr Holmes and in accordance with the change of policy agreed with the employer in 2004, for implementation in or about September 2005. Indeed, given this policy, it would have been curious had the election not been for a combined position. Mr Cooper informed the employer and his regional office that Graham Jones had been elected.

12. Prior to his election, Mr Jones had received no training as a safety representative. Accordingly, for the time being, Mr Watkins continued to carry out the functions of the appointed safety representative for the night shift. From the Union's point of view this was to be a temporary arrangement until Mr Jones had been properly trained. However, Mr Watkins considered that he was to continue as the Union appointed safety representative for the night shift, as before. I find that Mr Watkins' misunderstanding of the position was caused partly by his own wishful thinking and partly by poor communication between himself and Mr Cooper, which was itself the product of their clash of personalities and the fact that Mr Watkins worked on the night shift.
13. Mr Jones completed his training as a safety representative in October 2005. There were then a majority of shop stewards who were trained as safety representatives and the conditions for the implementation of the new arrangements were satisfied. I again find that the implementation of the new arrangement was not communicated to Mr Watkins as well or as sympathetically as it might have been. The first that Mr Watkins learned that he was no longer the Union's appointed safety representative was from a member of management. Mr Cooper later attended at the factory during the night shift to clear up any misunderstanding. Mr Cooper was accompanied by Mr Jones at this meeting. Mr Cooper explained the position which he had thought was already clear to Mr Watkins. He asked Mr Watkins to continue assisting Mr Jones but said that he expected Mr Watkins to gradually fade out of the picture as Mr Jones obtained more experience. The new arrangements were formally announced by management in a notice dated 21 November 2005. This notice named the five persons holding the dual role of shop steward/safety representative and the arrangements that would apply whilst the remaining two of them received appropriate training. Mr Watkins was not named as the shop steward/safety representative for the night shift.
14. On 30 November 2005 Mr Watkins wrote to Mr Holmes, his regional officer, asking what his position was following the recent changes regarding safety representatives. Mr Watkins suggested that the purpose behind the new arrangements had been to get rid of him as a safety representative because he was seen as a thorn in management's side. Mr Holmes replied on 10 January 2006 stating, inter alia, that Mr Jones had become the safety representative as a result of the new arrangements, following Mr Watkins resignation as shop steward and the subsequent election. Mr Watkins pursued the matter further in correspondence with both his regional secretary, Ms. C. Speight, and Mr Holmes.

15. The Amicus rules that came into effect in January 2004 provided that only elected work place representatives could attend the various industrial conferences that were to take place. Ms Speight sought to ensure compliance with this requirement in her region by instituting a system whereby all work place representatives would be elected every other January for a period of two years, beginning in January 2006. Accordingly, elections were held for the positions of shop steward/safety representative at Cranberry Foods Limited in January 2006. I accept the evidence of Mr Cooper and Mr Holmes that these elections were conducted on the basis that the positions being filled were those which carried the dual role. Mr Watkins disputed that this was the case but he was unable to give any direct evidence on the point as he was not then at work. He had commenced a three months period of sick leave for a stress related condition in late October or early November 2005. It was agreed locally that Mr Jones need not seek re-election in January 2006 as he had only been elected in June 2005.
16. Mr Watkins completed a registration of complaint form which is dated 20 March 2006 and which was received in my office on 21 March.

The Relevant Statutory Provisions

17. 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) the appointment or election of a person to, or the removal of a person from, any office;*
(b)-(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.

The Relevant Union Rules

18. The rule of the Union relevant to this application is as follows:-

10. Workplace Representation

(1) In each establishment where the Union has 3 or more members the members employed at that establishment shall elect from amongst themselves at meetings convened for the purpose or more (a) workplace representatives (or shop stewards); (b) safety representatives; and (c) learning representatives. All such elected representatives must be eligible to hold lay office. Where appropriate either the members themselves or their elected workplace representatives may elect 1 of the workplace representatives as a senior representative (or convenor). All such positions shall be subject to re-election after 2 years or such shorter period as may have been agreed by the members at the time of the election. An elected representative shall not require approval or accreditation by the employer.

A Summary of the Submissions

19. Mr Watkins submitted that the notice that was exhibited seeking nominations, following his resignation as a shop steward in June 2005, did not describe the position to be filled as shop steward/safety representative. He maintained that this is not what the electorate nor Graham Jones understood to be the position. He argued that Graham Jones was elected as a shop steward only and that he, Mr Watkins, continued to be the safety representative for the night shift. Accordingly, he argued that when he was replaced as a safety representative in or about October 2005, he was replaced by someone who had not been elected and that this constituted a breach of Rule 10(1) of the Rules of the Union. Mr Watkins did not seek to argue that the other safety representatives had not been properly elected in or about October 2005.
20. Ms Joseph, for the Union, argued firstly that Mr Watkins' complaint was out of time as it related to events in June 2005 and was not brought until 21 March 2006, more than 6 months after the event about which complaint was made. Ms Joseph went on to argue that the facts upon which Mr Watkins had brought this complaint were inaccurate. She submitted that I should prefer the witnesses for the Union wherever there was a conflict in evidence. Ms Joseph submitted that the election in June 2005 had clearly been held to elect someone to the dual role of shop steward and safety representative, that this was made clear on the notice seeking nominations and that it was understood to be such an election by both the electorate and the only candidate, Mr Jones. Accordingly, it was submitted, the replacement of Mr Watkins as the safety representative for the nightshift was by

someone who had been properly elected in accordance with Rule 10(1) of the Rules of the Union.

Conclusion

21. I deal firstly with the Union's argument that Mr Watkins' claim was brought out of time. In my judgment this argument is misconceived as it is based on a case which is not advanced by Mr Watkins. It is not permissible for a Respondent to reformulate the Claimant's case and then argue that the case as reformulated is out of time. Mr Watkins' complaint is that Mr Jones replaced him as the Union's appointed safety representative in or about October 2005 without having been elected in accordance with rule 10(1). Framed thus, Mr Watkins' claim, brought on 21 March 2006, was plainly brought in time and must be considered on its merits.
22. Turning to the substance of the complaint, Mr Watkins alleges that the Union breached Rule 10(1) of its Rules. This provides, in essence, that in each establishment the members shall elect from amongst themselves one or more work place representatives (or shop stewards), safety representatives and learning representatives). I find that, read purposely, the requirements of this rule can be satisfied by the respective positions being held by the same person having been elected in a single ballot for two or more positions. The object of the rule is to ensure that there is a person at each work place who is fixed with the designated responsibility and that such a person has secured that responsibility by virtue of an election. Such an objective can be achieved by means of a rolled up ballot to cover two or more positions. It is not, in my judgment, an essential ingredient of Rule 10(1) that separate elections are held for each position. Indeed, Mr Watkins did not seek to argue to the contrary. I reach this conclusion having regard to the context of this specific rule and the industrial reality of conducting elections at workplace level. The same result would not be inevitable were a similar rule to be construed in a different context and/or in respect of elections for other more senior positions.
23. The issue at the heart of this case is one of fact. It is whether Graham Jones had been elected as the safety representative for the night shift in accordance with Rule 10(1) at the time he assumed that role. I have already found as a fact that Mr Jones was elected in a dual role of shop steward and safety representative in June 2005. I have also found that such an election is consistent with Rule 10(1). Accordingly I find that the Union was not in breach of Rule 10(1) when Mr Jones took over the role of safety representative from Mr Watkins in or about October 2005, following the completion of his training.

24. For the above reasons I refuse the Claimant's application for a declaration that Amicus breached Rule 10(1) of its Rules by the alleged appointment of safety representatives at Cranberry Foods Ltd, Abergavenney in or about October 2005.

David Cockburn
The Certification Officer