

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

MR P HARRINGTON

v

NATIONAL UNION OF RAIL, MARITIME AND TRANSPORT WORKERS

Date of Decisions:

3 August 2006

PRELIMINARY HEARING

DECISIONS

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

- (i) I dismiss for having been brought out of time the Claimant’s application that in breach of rule 2 clause 2 of the rules of the Union on or about 27 June 2003, he was excluded from membership of the Union on political grounds.
- (ii) I dismiss for having been brought out of time the Claimant’s application that in breach of rule 2 clause 20 of the rules of the Union, on or about 17 June 2003 the Union failed to give notice to the Claimant of the correct grounds on which the Union intended to proceed with disciplinary action against him and that the grounds on which he was expelled from the Union, by the Union’s letter of 27 June 2003 were not put to him by the Union in its letter of 17 June 2003.
- (iii) I dismiss for having been brought out of time the Claimant’s application that in breach of rule 3 clause 5 of the rules of the Union on or about 27 June 2004 the Union failed to place the Claimant’s appeal against his expulsion, contained in his letter of 8 July 2003, before the Union’s Annual General Meeting.

REASONS

1. By application dated 21 November 2005 Mr Harrington (“the Claimant”) made allegations against his former union, the National Union of Rail Maritime and Transport Workers (“the RMT” or “the Union”). The Claimant’s allegations were subsequently clarified and identified as complaints in the following terms:-

Complaint 1

“in breach of rule 2 clause 2 of the rules of the union on or about 27 June 2003, Mr Harrington was excluded from membership of the union on political grounds”

Complaint 2

“that in breach of rule 2 clause 20 of the rules of the union, on or about 17 June 2003 the union failed to give notice to Mr Harrington of the correct grounds on which the union intended to proceed with disciplinary action against him and that the grounds on which he was expelled from the union, by the union’s letter of 27 June 2003 were not put to him by the union in its letter of 17 June 2003”

Complaint 3

“that in breach of rule 3 clause 5 of the rules of the union on or about 27 June 2004 the union failed to place Mr Harrington’s appeal against his expulsion, contained in his letter of 8 July 2003, before the union’s Annual General Meeting”

2. I investigated the alleged breaches in correspondence during which a preliminary issue was raised as to whether the complaints were made within the time-limits proscribed by subsections (6) and (7) of section 108A of the 1992 Act. I directed that there be a preliminary hearing to determine whether these complaints had been brought in time and, as required by section 108B(2)(b) of the 1992 Act, the parties were offered the opportunity to be heard and a formal hearing took place on 13 July 2006. At the preliminary hearing the Union was represented by Mr Ford of counsel, instructed by Ms Phillips of Thompsons solicitors. Mr Crow, (General Secretary), attended on behalf of the Union and gave evidence. Mr Harrington represented himself. Two bundles of documents were prepared for the hearing by my office one of which contained relevant exchanges of correspondence and related documentation, the other contained relevant legal authorities. At the hearing the bundle was supplemented by a revised chronology from the Union, Mr Harrington submitted a written skeleton argument and Mr Crow a detailed witness statement. The rules of the Union were also in evidence.

Findings of Fact

3. Having considered the representations made to me and the relevant documents I found the facts to be as follows:-
4. Sometime in 2000 the Claimant applied for membership of the Union. He did so in the name of Sharp (his wife’s maiden name) but I did not at this stage

attempt to determine whether he also mentioned the name of Harrington. He was accepted as a member of the Edinburgh No. 1 and Portobello branch in December 2000.

5. Subsequently some members of the branch became aware that the Claimant, in his birth name of Harrington, was a prominent member of an organisation called the “The Third Way”. The branch regarded this organisation as espousing views inconsistent with the Union’s rule of opposing “*actively all forms of harassment, prejudice and unfair discrimination*”. On 21 December 2002 the branch passed an emergency motion instructing the General Secretary to carry out an investigation into the activities of the Claimant on the grounds that he was in breach of Union rules and his conduct was “*inconsistent with membership*” of the Union.
6. Subsequently a Sub-Committee of the Union’s Council of Executives considered this branch complaint, heard the Claimant and on 17 June 2003 instructed the General Secretary to hold a disciplinary hearing.
7. A letter of 17 June 2003 notified the Claimant of the disciplinary hearing and referred to his activities with The Third Way as being in breach of the objects of the Union.
8. The disciplinary hearing took place on 27 June 2003. The record of the hearing shows that the hearing covered not only the activities of The Third Way but also the issue of the name in which the Claimant had applied to join the Union. At the conclusion of the hearing the Claimant was told it had been decided to expel him from the Union.
9. By letter dated 27 June 2003, the General Secretary wrote to the Claimant notifying him that he had been expelled for an unacceptable breach of conduct, intended to mislead the Union in that his application to join the Union was not made in his correct name. The Claimant was told of his right to appeal to the Union’s Annual General Meeting (“AGM”).
10. On 8 July 2003 the Claimant wrote to the General Secretary about his expulsion. The letter stated “*I wish to register an appeal to the RMT AGM against my expulsion from the Union*”. He argued that the true grounds for his expulsion were his past membership of the National Front and present membership of The Third Way. He asked for particular documents and advice on the procedure to follow for the appeal.
11. On 4 August 2003 the General Secretary responded quite fully saying that the Claimant should submit, in writing, his grounds for appeal which would be heard by the next AGM to be held at the end of June 2004. The General Secretary also said that the Council of Executives would submit their report to the AGM giving their reasons for the Claimant’s expulsion and that the Claimant would have an opportunity to make any further comment on any new matters they may raise.

12. On 13 June 2004 the Claimant submitted a written appeal setting out, on 10 pages plus annexes, the grounds of his appeal. He apologised for not attending the AGM stating that he had “... *decided that it is best, having regard to all the circumstances and following advice, that my appeal is put to you in writing.*”.
13. On 21 June 2004 the General Secretary wrote acknowledging receipt of the appeal, on 16 June, and explained that appeals could only be made to the AGM in person. The Claimant, who says he did not receive this letter, was not present when the relevant business item was reached at the AGM. The item was not taken and the appeal was not heard. By letter dated 5 August 2004 the Claimant was informed of this.
14. In a letter received by the Union on 13 August 2004 the Claimant reported non-receipt of the letter of 21 June and stated that he felt the General Secretary had “...*again acted in bad faith and contrary to natural justice in your handling of my appeal.*” and that he could find “*nothing in the Rulebook that states that an appeal has to be made in person rather than in writing.*”
15. On 18 October 2004 the General Secretary wrote giving the Claimant the opportunity to present his appeal at the AGM in 2005 adding that if he did not attend, the appeal would be dealt with in his absence.
16. On 26 November 2004 the Claimant wrote to the General Secretary with about eight questions relating to the rules under which he was charged and expelled and the procedure of appeal. After one of the questions he said “*You will appreciate it is difficult to frame an appeal given this confusion*”.
17. On 18 January 2005 the General Secretary confirmed the rules under which the Claimant had been expelled and after explaining there was no provision for dealing with written appeals against expulsion at the AGM, set out the procedure that would be adopted in relation to the Claimant’s appeal to be heard at the 2005 AGM. The General Secretary also stated that if the Claimant did not attend the AGM the appeal would be heard in his absence.
18. On 4 March 2005 the Claimant responded with detailed comments on the substantive and procedural matters and offering informal talks to resolve the issue.
19. On 30 June 2005 the AGM considered the Claimant’s appeal, and unanimously decided to uphold the decision of the Council of Executives to expel him from the Union.
20. On 22 November 2005 the Claimant’s application to the Certification Officer was received by the Certification Office.

The Relevant Statutory Provisions

21. The provisions of 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) disciplinary proceedings by the union (including expulsion);
- (c) ...;
- (d) the constitution or proceedings of any executive committee or of any decision making meeting
- (e) ...

(3) The applicant must be a member of the union, or have been one at the time of the alleged breach or threatened breach.

(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.

Section 108B Declarations and orders

(1) The Certification Officer may refuse to accept an application under section 108A unless he is satisfied that the applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union.

The Relevant Union Rules

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

Rule 2 – CONDITIONS OF MEMBERSHIP

18. The Council of Executives may expel from the Union any member or members who in its opinion has or have:-

- (a) conducted themselves in a manner deemed to be inconsistent with membership of the Union;
- (b) injured or discredited the Union or otherwise acted contrary to the interests of the Union and its members;
- (c) refused to undertake or to comply with the duties imposed by these Rules;
- (d) refused to comply with, or acted contrary to any decision or instruction issued in pursuit of any movement or proceeding authorised by the provisions of Rule 22, or with any decision or instruction issued by any committee having jurisdiction under these Rules over the member or members concerned;
- (e) knowingly participated in or been party to misrepresentation, misappropriation, misapplication or fraud in respect of any of the funds or benefits to which these Rules apply;
- (f) attempted to bring about the dissolution of the Union other than in accordance with the provision of Rule 25.

19. *Every expelled member shall cease to have any claim on the funds and benefits of the Union, and shall forfeit all right to participate in the privileges thereof.*

20. *It shall be necessary to give notice to any member of the intention to proceed under this Rule and of the grounds or matters the Council of Executives are proposing to consider. Every expelled member shall afterwards receive notice of expulsion and the grounds thereof, and thereupon have the right to appeal to the Annual General Meeting. This appeal shall, as provided by Rule 4 Clause 7(h), be the sole method by which every or any decision given in purported exercise of the powers conferred by the Rule shall be questioned, controlled, reversed, or suspended.*

Rule 4 – COUNCIL OF EXECUTIVES AND GENERAL AND SHIPPING COMMITTEES

(7) *The Council shall:-*

(h) *cause the General Secretary to place before it for consideration and decision all appeals from members, Branches and Regional Councils, and the decisions of Grades Conferences and have power to suspend its decisions pending appeal*

The Claimant's Submissions

23. The Claimant argued that as required by Statute he had followed the internal procedures of the Union in attempting to resolve his dispute with it.
24. He argued the Union was itself responsible for the delay in hearing his appeal and that the initial decision to expel him was taken on the eve of the AGM in 2003 which meant that the earliest his appeal could be heard was June 2004. Also that the Union then failed to clarify issues of substance and procedure and misled him into believing a written appeal was all that was required, even though there was nothing in the rule book to that effect. This meant that he could not complete the internal complaints procedure until 30 June 2005 and that he had submitted his application to the Certification Officer within six months of that date.
25. The Claimant believed he should not be penalised for staying with that internal procedure. Indeed it was his view that the Act required him to exhaust the Union's procedures before complaining to the Certification Officer.
26. He argued that to strike out his complaint would be contrary to the principles of Natural Justice and infringe his rights under article 6(1) of the European Convention on Human Rights.
27. He further argued that the Certification Officer has a duty to interpret Statute in such a way as to be consistent with the Convention.
28. His complaints, he argued, should be given a fair hearing as they fall within six months of the date on which the internal complaints procedure of the Union was concluded.

The Union's Submissions

29. The Union drew a distinction between complaints 1 and 2 on the one hand and complaint 3 on the other. But in its view all three failed to meet the time limits provisions of subsections (6) and (7) of section 108A of the 1992 Act.
30. The alleged offences covered by Complaints 1 and 2 the Union stated, occurred on 27 June 2003. They related to the decision taken by the Council of Executives on that day to expel the Claimant from the Union. Rules 5.20 and 4.7(h) it was stated make it clear that decisions of the Council of Executives can be appealed but only to the Union's AGM.
31. On 8 July 2003 the Claimant registered such an appeal. It was, the Union argued, from the point of view of subsection (6) of section 108A of the 1992 Act, 8 July 2003 when the Claimant invoked the Union's internal appeals procedure. It regarded the Claimant's written submission of 13 June 2004 as part of the procedure which had been invoked nearly a year earlier.
32. The complaints were not determined by the Union's AGM until June 2005 and it was at that stage that for the purposes of subsection (7) of section 108A of the 1992 Act the internal complaints procedure was concluded.
33. It is the Union's contention on complaints 1 and 2 that the Claimant invoked the Union's internal complaints procedure on 8 July 2003 which was within 6 months of the alleged breaches of Union rule. However, the Union argued that having invoked that procedure his complaints should have been lodged with the Certification Officer within six months of the earlier of the dates set out in subsection (7) of section 108A of the 1992 Act. The internal procedure was concluded on 30 June 2005. The period of one year beginning with the day on which the procedure was invoked was 8 July 2004. The earlier of the two dates is therefore 8 July 2004 and the complaint to the Certification Officer should have been within six months of that date i.e. by 7 January 2005, whereas it was actually lodged in November 2005.
34. Complaints 1 and 2 the Union argued were therefore clearly out of time.
35. On complaint 3 the Union stated the issue was different. The act complained of was a decision taken at the AGM in 2004 that the appeal against the decision of the Council of Executives could not be considered in the absence of the Claimant. That decision was not one of the Council and therefore there was no internal procedure for dealing with it.
36. Even if there had been a procedure, the Claimant's letter of 26 November 2004 could not be regarded as invoking such a procedure. In these circumstances any complaint to the Certification Officer about the failure of the AGM in June 2004 to consider his appeal would have to be lodged within six months of the AGM's action i.e. in 2004 rather than November 2005.
37. The Union stressed that the Certification Officer had no discretion to determine complaints that failed to meet the time-limits set out in the Act. It

was irrelevant that the Claimant may have used the internal appeals procedure, at least on complaints 1 and 2, and may have been generally co-operative in the Union's enquiries.

38. It was the Union's view that the statutory time limits provided for in subsections (6) and (7) of section 108A of the 1992 Act were compatible with the European Convention on Human Rights.
39. The Union argued therefore that the Certification Officer had no jurisdiction to consider these complaints.

Conclusions

40. As the Certification Officer stated in *Brady v ASLEF* (D/24-26/06), applications to the Certification Officer must be received within the period prescribed by subsection (6) of section 108A of the 1992 Act. Subsection (6)(a) of section 108A of the 1992 Act provides that an application must be made "*within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place*". Subsection (6)(b) of section 108A is a saving provision which allows an application to be made at a later time in restricted circumstances namely that "*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 sub-section (7)*". Subsection (7) provides that 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*".
41. Subsection (6) of section 108A of the 1992 Act is clearly designed to encourage the use of internal procedures. However, perhaps in recognition that either the Union or the Claimant might seek to prolong the internal procedures, it protects the Claimant by allowing an application to the Certification Officer within 18 months of the appeal process being invoked and it protects the Union by disallowing an application made after that period.
42. The Claimant thought he had to allow the completion of the internal procedure before lodging a complaint with the Certification Officer. Section 108(B)(1) of the 1992 Act does indeed provide that the Certification Officer may refuse to accept an application "... *unless he is satisfied that the applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union.*" However, that is a discretionary power and in deciding whether to exercise it the Certification Officer would in practise have regard to the precise and mandatory time-limits imposed by subsections (6) and (7) of section 108A of the 1992 Act.
43. Against that background I have five issues to decide. First, when did the matter complained of allegedly take place; second, was there an internal complaints procedure for resolving it; third, if so was it invoked, and if so when; fourth, when was it concluded; and finally, how do all these dates tie in with the requirements of subsection (6) of section 108A of the 1992 Act and the application received by the Certification Officer on 22 November 2005.

44. As far as complaints 1 and 2 are concerned, my considerations on these five issues are:
- (i) the allegations relate to decisions taken by the Council of Executives on 27 June 2003;
 - (ii) the Union rule book allows for individuals (and others) to appeal to the Union's AGM about decisions of the Council of Executives;
 - (iii) the Claimant invoked these procedures by his letter of 8 July 2003. If I am wrong on this and the Claimant is right, that he invoked the procedures only in his letter of 13 June 2004 his application would fall out of time as he would not have the protection of subsection (6)(b) of section 108A of the 1992 Act which requires him to have invoked the procedures within six months of the events complained of i.e. by sometime in December 2003;
 - (iv) the internal complaints procedure was completed in June 2005.
45. On this basis the earlier of the two days specified in subsection (7) of section 108A of the 1992 Act was 8 July 2004 and Complaints 1 and 2 had to have been lodged with the Certification Officer within six months of that date. They were in fact lodged some 16 months later and I have no option but to dismiss them as being out of time.
46. As far as complaint 3 is concerned, my conclusions on the five issues are:
- (i) The allegation relates to actions taken at the Union's AGM in June 2004.
 - (ii) I heard in evidence from the Union's General Secretary that there are no provisions for dealing with complaints about the conduct of business at the AGM. I was unable to find any procedure the invocation of which would trigger the saving provisions in subsection (6) of section 108A of the 1992 Act. However, if I am wrong on this and there is a relevant procedure, the following point would be important.
 - (iii) I do not believe the Claimant's letter of 26 November 2004 (see para 16) could be regarded as invoking any internal complaints procedure of the union that may have existed. It was a series of questions.
 - (iv) As no procedure satisfying subsection (6) of section 108A of the 1992 Act was invoked, none was concluded.
47. On this basis the saving provision of subsection (6) of section 108A of the 1992 Act is not available to the Claimant and his application should have been made to the Certification Officer within six months of the event complained of i.e. by December 2004 not November 2005. I have no option but to dismiss this complaint as being out of time.

48. On the issue of the European Convention on Human Rights, It is my view that the time limits provisions of subsection (6) and (7) of section 108A of the 1992 Act do not infringe Convention Rights.

E.G. WHYBREW CBE
Assistant Certification Officer