

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

MS B GALLAGHER

v

UNISON –The Public Service Union

Date of Decision:

8 April 2005

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 declare that on or about 22 June 2004 UNISON acted in breach of rule I:9.2 of its rules by the adoption by its National Executive Council of a policy which had the effect of endorsing a decision to exclude Ms Gallagher from attending the 2004 National Delegates Conference as a visitor.
- (ii) I order that UNISON considers any future application by Ms Gallagher to attend any union conferences without regard to the policy of exclusion adopted by the National Executive Council on 22 June 2004.

REASONS

1. By an application dated 29 September 2004 the Claimant made an allegation of breach of rule against her union, UNISON (“the Union”). The complaint was potentially within the jurisdiction of the Certification Officer by virtue of sections 108A(2)(b) and (d) of the 1992 Act. Following correspondence with my office Ms Gallagher’s complaint was identified in the following terms:

“that on or about 22 June 2004 the union breached rule I.8.4 and/or I.9.2 of its rules by imposing a disciplinary penalty on Ms Gallagher in addition to that imposed on her by the union’s Appeals Committee in March 2001 in that the NEC upheld a report entitled “members subject to disciplinary action and attendance as a visitor at National Delegate Conference and other UNISON conferences” the effect of which was to debar Ms Gallagher from attending the 2004 National Delegates Conference.”

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 11 March 2005. The Union was represented by Mr Segal of Counsel, instructed by Mr O'Hara of Thompsons, solicitors. Evidence for the Union was given by Mr Nelson, its Head of Structural Development. The Claimant acted in person and gave evidence on her own behalf. A bundle of documents was prepared for the hearing by my office. The rules of the Union were also in evidence. Mr Nelson provided a witness statement. Both parties submitted skeleton arguments.

Findings of Fact

3. Having considered the oral and documentary evidence and the representations made to me by the parties, I make the following findings of fact:-
4. In March 2001 Ms Gallagher was disciplined by the Union in accordance with its rules. The disciplinary penalty imposed was that she be debarred from holding any Union office for a period of 5 years. This decision was upheld on appeal to the Union Appeals Committee. On 15 October 2001 the then Head of Constitutional Matters wrote to Ms Gallagher's branch giving examples of the types of activity that Ms Gallagher was debarred from undertaking by this decision. Although this letter was not in the bundle, Ms Gallagher gave uncontradicted evidence that the letter included such activities as attending Union training sessions, Labour Party forums and even attending political/industrial demonstrations as a representative of her branch. The letter did not suggest that Ms Gallagher's disciplinary penalty debarred her from attending the National Delegate Conference ("NDC") as a visitor.
5. In the years 2001, 2002 and 2003 Ms Gallagher attended the Union's NDC as a visitor. In 1999, the NDC approved a policy whereby visitors to the NDC who are members of the Union had a right not to be charged for visitor credentials. Visitors to the NDC who are not members were charged £25.
6. On 8 January 2004 a meeting took place at the Union's head office in London to begin preparations for the 2004 NDC; in particular to improve co-operation between Head Office and the Regions. During the course of this meeting concern was expressed about two incidents at the 2003 Conference. One incident involved an expelled former member who had gained unauthorised access to the Conference and who had caused a disturbance. The other involved a member who had been debarred from office, who had appeared on the floor of the Conference without authority and who had also caused a disturbance. The meeting took an administrative decision that members who had been expelled or debarred from holding office should not be allowed to attend the NDC as visitors.
7. Ms Gallagher's application form to be a visitor at the 2004 NDC was received by the Union on 20 April 2004. This form states:

"Visitor credentials do not automatically guarantee admittance to the conference proceedings. UNISON reserves the right to withdraw credentials should it be deemed

necessary. A visitor's pass to the UNISON 2004 conference is free for UNISON members. There will be a charge of £25 for non-members."

8. By a letter dated 26 April 2004 the Regional Secretary for the North West Region, Frank Hont, informed Ms Gallagher that she was not eligible for a visitor pass to the 2004 NDC. In a further letter, dated 10 May, Mr Hont explained that he was implementing national policy in relation to eligibility, having regard to the fact that she was suspended from holding office in the Union.
9. By a pro-forma letter dated 25 May 2004, the General Secretary sent Ms Gallagher credentials to attend the Union's Local Government Conference which was to take place on Monday, 21 June in Bournemouth, the day before the start of the 2004 NDC in the same venue.
10. At a meeting of the National Executive Council ("NEC") on 10 June 2004, questions were asked about the administrative policy that had declared Ms Gallagher ineligible to attend the 2004 NDC as a visitor. It was agreed that the matter be reviewed and advice sought from the Union's legal officer.
11. A report was prepared by Mr Nelson which was presented to a meeting of the NEC held on Tuesday 22 June, prior to the beginning of Conference. The 2004 NDC took place between Tuesday, 22 and Friday, 25 June at Bournemouth. Following a discussion on the report, an amendment was put which would have had the effect of restricting the exclusion to future disciplinary cases. The amendment was lost. The resolution that was eventually carried was in broader terms than the administrative decision taken at the 8 January 2004 meeting. It applied a policy of exclusion not only from the NDC but all UNISON Conferences. It also applied the exclusion to a wider constituency, namely those who had been expelled, those who had been debarred from holding office, those suspended from all or any benefits of membership and those suspended from holding office either pending disciplinary process or in exceptional circumstances.
12. On 21 July 2004 the General Secretary wrote to Ms Gallagher informing her that the policy of exclusion had been upheld by the NEC. He went on to state that the NEC report did not make specific reference to any individual member, that the policy did not constitute a disciplinary sanction against any individual and that the policy in relation to the 2004 NDC was applied consistently across the Union.
13. After further correspondence with her Union, Ms Gallagher submitted a registration of complaint form to the Certification Office on 29 September 2004.

The Relevant Statutory Provisions

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

S.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 Union Rules

15. The rules of the Union that are relevant for the purposes of this application are as follows:-

Rule D: Structure of the Union at National Level

2 National Executive Council

2.1 Functions and Authority

“The general management and control of the Union between National Delegate Conferences shall be vested in the National Executive Council.....It shall, have full power and authority to act on behalf of the Union in every respect and for every purpose falling within the objects of the Union. It shall not do anything that is inconsistent with these Rules or the policy of the Union as laid down by the National Delegate Conference”.

Rule I: Disciplinary action

8 “Where a disciplinary charge is proved against a member, any of the following penalties may be imposed:

By the National Executive Council

8(4) debarring the member from holding any Union office for whatever period seems to it to be appropriate;

8(5) suspension of the member from all or any of the benefits of membership for whatever period seems to it to be appropriate;

8(6) expulsion of the member from the Union.

9.2 “The decision of the National Executive Council Disciplinary Sub-Committee or of the Union Appeals Committee as appropriate shall be final and binding upon the Union and the member concerned.”

Rule P: Standing Orders for conferences

- 4.1 *“The National Delegate Conference shall meet in public session, except that by direction of the National Executive Council or by resolution of the Conference the whole or any part of a Conference may be held in private. In addition to the elected delegates and those who under Rule D.1.7 have the right to attend and speak at Conference, the only persons permitted to attend the private session of a Conference shall be ...”*
- 7.3 *“The President shall have power to call any person to order who is causing a disturbance in any session of Conference and if that person refuses to obey the President, she/he shall be named by the President, shall forthwith leave the Conference Hall, and shall take no further part in the proceedings of the Conference.”*

A Brief Summary of the Submissions

16. Ms Gallagher commented that she had reluctantly accepted the disciplinary penalty imposed upon her in March 2001, although she considered it to have been draconian and the wide interpretation given to it in October 2001 to have been bizarre. However, she considered that the decision to exclude her as a visitor from the 2004 NDC was a step too far. Ms Gallagher argued that rule I:9.2 provided that the original disciplinary decision was final and binding, not only upon her but also upon the Union. In her submission, the administrative decision taken in January 2004, later endorsed and broadened by the NEC, was an additional disciplinary penalty and therefore a breach of rule. It was a breach of the rules relating to her disciplinary proceedings and a breach of a rule relating to the constitution of any executive committee, being a decision made outside the powers of the NEC. Ms Gallagher contended that, as a member, she had a right to attend the NDC and that her right to attend was a benefit of membership, as non-members had to pay £25. She further argued that the exclusion was a clear disadvantage to her as she had been able to attend the NDC in 2001, 2002 and 2003 but was refused permission to do so in 2004. Finally, she submitted that the action taken against her was clearly disciplinary as her period of exclusion was to be co-terminus with the period that she was debarred from holding office, expiring in March 2006.
17. For the Union, Mr Segal submitted that this complaint fell outside the jurisdiction of the Certification Officer as it was not a complaint of a breach of rule relating to either disciplinary proceedings or the constitution or proceedings of a relevant body. Mr Segal argued that the decision taken by the NEC on 22 June 2004 could not properly be categorised as a disciplinary penalty imposed on the various members and former members affected by it. He contended that the rules do not give members, as such, a right to attend the NDC as a visitor and that accordingly attendance as a visitor is not a benefit of membership. Mr. Segal distinguished the facts of this case from the Certification Officer’s decisions *Ryan v UNISON* (D/45-48/01) and *Dennison v UNISON* (D/12/03). He submitted that in both those cases action was taken against the respective claimant for the purpose of disciplining them. He argued that, in contrast, the decision of the NEC was not taken for a disciplinary purpose and that it could not properly be described as a disciplinary penalty, either in substance or in form. It was, he submitted, a decision taken to prevent the recurrence of disruption at the 2004 NDC. Counsel argued that one reason why the decision of

the NEC could not be construed as a disciplinary penalty is that it affected both members and former members.

Conclusion

18. Ms Gallagher was disciplined by the Union in March 2001 and barred from holding any Union office for a period of 5 years. Despite the wide interpretation given to the expression “any Union office” by the then Head of Constitutional Matters in October 2001, Ms. Gallagher was allowed to attend the NDC in 2001, 2002 and 2003 as a visitor. She attended each of those Conferences free of charge, unlike non-members who were required to pay £25. In January 2004 an administrative decision was taken to exclude all those who had been expelled or debarred from holding office from attending the NDC as visitors. This exclusion was endorsed and its coverage extended by the NEC at its meeting on 22 June. Mr Nelson gave evidence that the period of exclusion of someone barred from holding office for disciplinary reasons was to be co-terminus with the period that he or she was subject to that disciplinary penalty. Accordingly, Ms Gallagher was refused permission to attend the 2004 NDC as a visitor but she would once again be eligible to attend the NDC as a visitor in 2006.
19. The rules of the Union do not provide expressly that Union members have a right to attend the NDC as visitors, in their capacity as members. Indeed, Mr Segal made the point that the NDC is, by its name and constitution, a meeting of delegates, not a meeting of members, such as might be convened as an AGM. However, rule P:4.1 provides that the NDC shall ordinarily meet in public session and members may therefore attend as members of the public. Given the democratic and participative nature of the Union, it would be difficult for it to argue that members have neither an express nor implied right to seek to attend public sessions of the NDC as visitors. This does not mean to say, however, that members have an unqualified right to attend Conferences as visitors. When Conference is sitting in “public” session, the Union has a general discretion to exclude as visitors those whom it sees fit, including members. Indeed, there are many circumstances in which exclusions can and will occur. For example, the number of visitors may be limited on the grounds of health and safety; visitors may be inebriated or otherwise seeking to disrupt proceedings from the public gallery. However, the discretion exercised by the Union must be exercised in accordance with its rules and neither arbitrarily nor perversely.
20. In my judgment, the administrative decision taken in January 2004 and the policy decision taken by the NEC in June 2004 were taken in good faith to deal with the problem of disruption that had arisen not only at the 2003 NDC but also at earlier Conferences. The prime purpose of those decisions was not to further punish those who had already been subject to discipline. Nevertheless, the effect of defining the constituency of those to be excluded by reference to action taken by the Union under its disciplinary rules was to increase the sanctions already imposed on those individuals under its rules. They were to be further disadvantaged for having been found ‘guilty’ of (or being under suspicion of) having committed a disciplinary offence. This consequence was clearly foreseeable and must accordingly be taken to be the intention, if not the purpose, of those taking the decision.

21. The rules of the Union with regard to disciplinary action are prescriptive. Only certain types of disciplinary penalty can be imposed. In Ms Gallagher's case the Union Appeals Committee upheld a decision of the NEC to debar her from holding office for 5 years under rule I:8(4). By rule I:9.2 "*The decision of the National Executive Council Disciplinary Sub-Committee or of the Union Appeals Committee as appropriate shall be final and binding upon the Union and the member concerned.*" I find that this rule prohibits the imposition by the Union of any further penalty on those disciplined by reason of the acts for which the original penalties were imposed. On the facts of this case it was argued that as Ms Gallagher did not have any express right to attend Conference as a member it could not be a disciplinary penalty to exclude her. I disagree. I have already found that the Union has an express duty ordinarily to hold its Conference in public session and that members have an implied right to seek to attend as visitors, in their capacity as members of the public. Ms Gallagher herself attended as a visitor, whilst debarred from holding office, in 2001, 2002 and 2003. I find that the exclusion of her from the NDC in 2004 was in fact and in law a further penalty for the offences for which she had already been disciplined. Put another way, if she had not been disciplined in 2001, she would not have been debarred from attending the 2004 NDC as a visitor. Ms Gallagher may not have been identified by name at the discussions which led to her exclusion, but the setting of the constituency of those to be excluded by reference to those who had been disciplined had that inevitable effect. The disciplinary nature of this exclusion is supported by the fact that her exclusion was to be for the same duration as her disciplinary penalty.
22. Accordingly, I find that the Union acted in breach of rule I:9.2 of its rules by the adoption by its National Executive Council of a policy which had the effect of endorsing a decision to exclude Ms Gallagher from attending the 2004 National Delegates Conference as a visitor. Rule I:9.2 of the rules of the Union relates to disciplinary proceedings and this complaint is therefore plainly within my jurisdiction.
23. Ms Gallagher also complained of a breach of rule I:8.4. I find that on the facts of this case rule I:8.4 is not engaged, other than being the rule under which Ms Gallagher's original disciplinary penalty was imposed in 2001.

Observations

The maintenance of good order at any conference is a legitimate concern of those arranging and presiding at them. A union may exclude any member from being a visitor at its conferences if such exclusion is permitted by the rules or, if exercising an implied discretion to exclude, it exercises that discretion without breaching its rules and without acting arbitrarily or perversely.

David Cockburn
The Certification Officer