

**DECISION 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**

**Date of Decision:**

**15 February 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) I dismiss the complaint that on 3 August 2004 the GMB was in breach of its rule 37.3 by Bromley East B38 Branch holding a meeting without the quorum number of five members of the branch committee being present.
- (ii) I dismiss the complaint that on 7 February 2005 that the GMB was in breach of its rule 37.3 by Bromley East B38 Branch holding a meeting without the quorum number of five members of the branch committee being present.
- (iii) I declare that the GMB was in breach of its rule 37.20 by the meeting of the Bromley East B38 Branch on 7 February 2005 suspending Mr King from benefit and prohibiting him from holding office without first obtaining authority from the Regional Secretary.
- (iv) I dismiss the complaint that on 27 June 2005 the GMB was in breach of its rule 22.3 when the Regional Committee of the Union which heard Mr King’s rule 6 appeal was without a quorum in that the appeal was heard by a sub committee only of the Regional Committee and not by the Regional Committee with at least half of its members present.
- (v) I do not consider it appropriate to issue an enforcement order.

## REASONS

1. By an application dated 9 June 2005 the Mr King (“the Claimant”) made a complaint against his union, the GMB (“the Union”). The Claimant alleged a breach of the Union’s rules relating to the disciplinary proceedings by the Union and the constitution of the Regional Committee. These are potentially matters within the jurisdiction of the Certification Officer by virtue of sections 108A(2)(b) and (d) of the 1992 Act. The alleged breaches were that:-

### **Complaint 1**

*“That on 3 August 2004 in breach of union rule 37.3 a meeting of the Bromley East B38 Branch was held without the quorum number of five members of the branch committee being present.”*

### **Complaint 2**

*“That on 7 February 2005 in breach of union rule 37.3 a special branch meeting of the Bromley East B38 Branch was held without the quorum number of five members of the branch committee being present.”*

### **Complaint 3**

*“That on 7 February 2005 in breach of rule 37.20 the branch committee of the Bromley East B38 Branch by suspending Mr King from benefit and prohibited him from holding branch office imposed a sanction on Mr King, without first obtaining authority from the Regional Secretary.”*

### **Complaint 4**

*“That on 27 June 2005 in breach of rule 22.3 the Regional Committee of the union which heard Mr King’s rule 6 appeal was without a quorum in that the appeal was heard by a sub-committee only of the Regional Committee and not by the Regional Committee with at least half of its members present.”*

2. I investigated these alleged breaches 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 24 January 2006. The Union was represented by Mr J O’Hara of Thompsons Solicitors. Mr E Blissett, GMB London Regional Secretary, gave evidence on the Union’s behalf. The Claimant did not attend, having informed the Assistant Certification Officer by letters of 11 and 30 November 2005 respectively that *‘I therefore reluctantly request that the Assistant Certification Officer determines the complaints on the basis of the paperwork provided’* and *‘I am unlikely to attend, and I will therefore leave the arrangement of the hearing to your office.’* A bundle of the relevant documents was prepared for the hearing by my office. The rules of the Union were also in evidence. The Union and the Claimant presented skeleton arguments.

## **Findings of Fact**

3. The Claimant is a member of the Bromley East B38 Branch of the Union. This is a branch of some 250 members. In May 2004 the Claimant raised an Employment Tribunal complaint against his employer relating to his claim for flexible working. Mr Challener, the convenor at the Claimant's workplace, did not think the claim was in the best interests of the workforce. The Tribunal dismissed the complaint after a hearing on 6 May 2004.
4. On 19 May the Claimant posted a notice on the board at his workplace accusing Mr Challener of assisting the Company in this matter. Mr Challener's response pointed out that the Claimant had unsuccessfully challenged him for the post of branch convenor.
5. There followed an exchange of abusive notices on the board.
6. Mr Challener complained about the Claimant to the Bromley East B38 Branch under the Union's rule 6 cross referencing to rule 5 which deals with disciplinary matters.
7. The Branch considered this complaint at its meeting on 3 August 2004. The minutes of that meeting which named four people as being present, covered a range of issues and, on Mr Challener's complaint, record agreement to arrange a special meeting at the workplace of Mr Challener and the Claimant on 12 October 2004.
8. No such meeting took place, nor did the branch itself meet again until a special branch meeting was held on 7 February 2005 to consider Mr Challener's rule 6 complaint against the Claimant.
9. That meeting was chaired by Mr Badlan a Senior Organiser in the union. At the start of the meeting it seems that 12 other people were present. The Claimant and a supporter left after they failed to convince the meeting that it was inquorate and/or not a branch committee. Mr Challener left after he presented his case and eight voting members and the chair remained.
10. The minutes show that Mr Badlan explained that if the meeting upheld the complaint one of the options open to them was to recommend suspension from benefit.
11. The minutes also record the conclusion that the clear majority decision of the Branch was to suspend the Claimant from benefit.
12. On 14 February 2005 Mr Badlan wrote to the Claimant informing him that the branch had decided to suspend him from benefit - i.e. to prohibit him from holding Branch Office position. The letter informed the Claimant of his right to appeal.

13. On 17 February the Claimant lodged an appeal with the then London Regional Secretary, Mr Kenny. On the same day the Claimant sought clarification from Mr Badlan on a number of issues.
14. Mr Badlan's response said that the period of suspension had not been set; that the Claimant was not entitled to stand for any representational position in his workplace nor as a branch committee member, and that the sanction imposed was that referred to in Rule 5.5 and mentioned in Mr Challenger's complaint.
15. On 21 February 2005, following the Claimant's appeal, Mr Kenny wrote to the Claimant setting out the procedures that would be followed in handling his appeal and stating that the Regional Committee was made up of 15 people. He indicated that the date for the appeal to be heard would not be set until after 2 March.
16. On 5 April Bromley East B38 Branch held elections from which the Claimant had been told he was debarred from standing.
17. On 12 May Mr Kenny, as Regional Secretary, wrote to the Claimant confirming procedures relating to the Claimant's appeal. In that letter he said that the recommended sanction "*is not applied by the union until such time as the branch's recommendation on the appeal has been dealt with*".
18. On 3 June Mr Kenny wrote to the Claimant giving the date of 27 June 2005 for the appeal hearing and giving more details on procedure. That letter also referred to the hearing being in front of a sub-committee of the London Regional Committee.
19. The minutes of the meeting on 27 June are headed "*Special Full Regional Committee*". They list seven members of the Regional Committee as being present and detail apologies from seven other members. They show the Regional Committee as upholding the recommendation under rule 5 of the Union that the Claimant be suspended from benefit.
20. On 29 June the Regional President wrote to the Claimant informing him that the Regional Committee had upheld the recommendation from the Bromley East B38 Branch and that the Claimant's suspension from benefit would run for two years from 28 June 2005.
21. Meanwhile on 9 June 2005 the Claimant had lodged his complaints with the Certification Office.

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

(11) For the purposes of subsection (2)(d) a decision-making meeting is -

- (a) a meeting of members of the union concerned (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union, is final as regards the union or which, under the rules of the union or a constituent body, is final as regards that body, or
- (b) a meeting of members of a major constituent body (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union or the body, is final as regards that body.

(12) For the purposes of subsections (10) and (11), in relation to the trade union concerned -

- (a) a constituent body is any body which forms part of the union, including a branch, group, section or region;
- (b) a major constituent body is such a body which has more than 1,000 members.

**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 5 Membership**

2 The membership of the Union shall comprise of the members of the Sections of the Union.

5 The Central Executive Council, a Regional Council, or a Regional Committee shall have the power to suspend from benefit, or expel from membership, or prohibit from holding any Branch Office, any member who in their judgment is guilty of attempting to injure the

*Union or acting contrary to the rules or who makes or in any way associates himself or herself with any defamatory, scurrilous or abusive attacks whether in any journal, magazine or pamphlet or by word of mouth, on any Official of the Union or Committee of the Union, or who acts singly or in conjunction with any other members or persons in opposition to the policy of the Union as declared by its Committee or Officials under the rules, or for any reason they deem good and sufficient. No expelled member shall be eligible for re-entrance into membership without the consent and approval of the Central Executive, or a Regional Committee.*

- 6 *The Central Executive Council, a Regional Council or a Regional Committee shall have power to debar any member from holding any office or representative position in the Union, for such period as the Council or Committee concerned shall specify or from participating in the conduct of the business of the Union where in their opinion such member is acting contrary to the policy of the Union or against the best interests of the Union, or for any other reason which they shall deem good and sufficient.*

**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.*

**Rule 22 Regional Committees**

- 3 *The Regional Committee shall perform all the duties allotted to it by these Rules, deal with all financial matters of the Region, and such business may be assigned to it by the Regional Council. Its decision shall be on behalf of the Regional Council. Half of the Committee shall form a Quorum.*

**Rule 37 Branches**

- 3 *Each Branch shall have a President, Secretary, Equality Officer, Youth Officer and two Auditors (except in Branches of less than 100 members, in which case one Auditor shall be appointed), and a Committee of not less than nine members, including President and Secretary, Equality Officer and Youth Officer who shall act within the powers stated in these rules. Five shall form a quorum.*

...

- 20 *Branch Committees or meetings of Branch members shall not have authority to decide anything not expressed as being within their powers as stated in the various Rules of the Union. Meetings of either members or Committees must not authorise payments for any purpose or sanction any action in connection with disputes, delegations, wage claims, or benefits for members without first communicating with and obtaining authority from the Regional Secretary.*

## **Complaints 1 and 2**

### Jurisdiction Issues

24. The Union submitted that I did not have jurisdiction to hear these complaints. The Claimant's grievance was, the Union argued, that the Bromley East branch had twice met without a quorum. This was a matter covered by section 108(A)(2)(d) of the Act - i.e. an alleged breach of a rule relating to the constitution or proceedings of an executive committee or decision-making body. But the Bromley East B38 branch does not satisfy the statutory definitions of such bodies and, moreover, it is common ground that the branch contains many fewer than the 1000 members required by section 108(A)12 - if the complaint is to be covered by section 108(A)(2)(d).
25. The Union further argued that the Claimant's complaints cannot be considered under section 108(A)(2)(b) - i.e. as breaches of a rule relating to disciplinary proceedings by the union. The rule cited by the Claimant, rule 37.3, the Union argued, makes no mention of disciplinary proceedings. Rule 5, in parts 5 to 9, the Union stated, is the Union's rule relating to disciplinary matters and proceedings. Rule 37.3 it was argued by the Union is not in any, or in a sufficiently close, relationship to "*disciplinary proceedings*" to fall within the jurisdiction granted to the Certification Officer under section 108(A)(2)(b).
26. The Claimant in correspondence recognised the difficulties posed to his complaints by the limitations imposed by section 108(A)(12). It was for that reason that he expressly brought them under section 108(A)(2)(b) as, in his view, the disciplinary process applied to him was not correctly carried out.

### **Conclusion on jurisdiction on Complaints 1 and 2**

27. Like the Claimant, I accept the Union's argument that these complaints cannot be brought to me for decision under section 108(A)(2)(d) of the 1992 Act. I agree with the Union's reasoning on this matter and on the facts of this case.
28. On its face, rule 37.3 is not a rule which relates to disciplinary proceedings by the Union. In my judgment, on the facts of this case, this is not a matter within my jurisdiction by virtue of section 108A(2)(b) of the 1992 Act
29. Should I be wrong about the issue of jurisdiction, I have considered whether the Union was in fact in breach of rule 37.3 as alleged in these two complaints.

### **Complaint 1**

30. The Claimant argued in correspondence that the meeting of the Bromley East branch which took place on 3 August 2004 and which decided to proceed to investigate Mr Challener's complaint against him was inquorate. There were, he stated, only four members present whereas rule 37.3 requires a quorum of five committee members. He claimed that the Branch Committee accepted this view which was why nothing happened on the investigation until February 2005.

31. The Union argued that the wording of rule 37.3 is quite clear in that the reference to a quorum of five comes immediately after a reference to a committee of nine members or more. The quorum requirement therefore relates to the Branch Committee. Five present may represent good practice but it is not a requirement for a branch meeting. Because branches vary so much in size there is no quorum for a branch meeting.

### **Conclusion**

32. The meeting on 3 August 2004 was a branch meeting and rule 37.3 does not require the presence of five people at such a meeting.
33. For these reasons, I dismiss the Claimant's complaint that rule 37.3 of the rules of the Union was breached on 3 August 2004 by the Bromley East B38 branch.

### **Complaint 2**

34. The Claimant argued that on 7 February 2005 a special branch disciplinary meeting was held as a direct result of which he was suspended from Union benefit.
35. At that meeting the Claimant had pointed out to the Acting Chair Mr Badlan that, as only one member of the Branch Committee was present, rule 37.3 was being breached. The meeting went ahead and the Claimant left as he thought the meeting was inquorate.
36. The Union repeated the argument it advanced on complaint 1. It added that it would be bizarre if rule 37.3 were to be held to require a minimum number of Branch Committee members to form a quorum at Branch meetings. It would mean no matter how many members attended a Branch meeting that meeting could be made inquorate by a boycott by Branch Committee members.

### **Conclusion**

37. The meeting on 7 February 2005 was a special branch meeting. Rule 37.3 does not set a quorum for such a meeting. Nor on any commonsense interpretation does it require five committee members to attend a branch meeting before that meeting is quorate. If it did and a committee collapsed through lack of interest, sickness etc, the branch could not meet even if only to form a new committee.
38. For these reasons, I dismiss the Claimant's complaint that rule 37.3 of the rules of the Union was breached on 7 February 2005 by the Bromley East B38 branch.

### **Complaint 3**

#### Jurisdiction

39. The Union repeated its submissions in relation to complaints 1 and 2 arguing that the Certification Officer did not have jurisdiction to hear this complaint.
40. The Union conceded however that there was a stronger case for the Claimant in that rule 37.20 did refer to restrictions on the Branch Committees in the context of the sanctioning of benefits and it saw there was a closer link between this rule and the disciplinary rule 5.

#### **Conclusion**

41. Rule 5 is the main rule of the union dealing with discipline but rule 37.20 talks about meetings of neither the branch nor of branch committees being able to sanction any action in connection with benefits for members without first obtaining authority from the Regional Secretary. The withdrawal of benefit, or the recommendation so to act, is a disciplinary sanction and therefore rule 37.20 is a rule relating to disciplinary proceedings for the purpose of section 108(A)(2)(b) of the 1992 Act. I therefore find I do have jurisdiction in this matter.

#### **Complaint 3 substantive issues**

42. The Claimant stated that as a result of the disciplinary meeting on 7 February 2005 he was suspended from office with immediate effect. He argued that it was not within the branch's power to do that, but that this was not confirmed by Mr Kenny, the Regional Secretary, to him until 8 April which was then too late for the Claimant to stand for Branch Office on 5 April.
43. The Union denied that the Bromley East B38 Branch imposed a disciplinary sanction on the Claimant. It pointed out that the minutes of the meeting on 7 February 2005 showed that Mr Badlan had explained it could recommend (their emphasis) disciplinary action. The Union acknowledged that Mr Badlan's subsequent letter to the Claimant had indicated otherwise. However the Union further argued that the correct position was set out in Mr Kenny's letter of 12 May; confirmed by the minutes of the Regional Committee hearing and by the letter of 29 June from the Regional President to the Claimant explaining that the suspension took effect from 28 June 2005.

#### **Conclusion**

44. I find that the decision of the special branch meeting of the Bromley East B38 Branch on 7 February 2005 was recorded as a suspension from benefit; was communicated to the Claimant as a suspension from benefit; was confirmed as such in correspondence from Mr Badlan and was acted on as a suspension from benefit.

45. In deciding to suspend the Claimant from benefit the Branch had acted beyond any powers provided under rule 5 (which reserves such matters to the Regional Committee) and contrary to the limitations imposed by rule 37.20 of the rules of the Union.
46. It is for these reasons that I declare GMB to be in breach of its rule 37.20 in that Bromley East Branch suspended the Claimant from benefit and from holding branch office without the authority to do so.

#### **Complaint 4**

47. The Claimant argued that he was told by Mr Kenny in a letter dated 3 June 2005 that his appeal hearing on 27 June would be before a sub-committee of the Regional Committee. In the Claimant's view this constituted a breach of the Union's rule 22.3.
48. Moreover he had been told on three separate occasions that the Regional Committee was made up of 15 members. The rule change in 2003 means that rule 22.3 now required a quorum of half for the Regional Committee to conduct its business. That meant, he argued, that at least eight full members of the Committee should have been present at his appeal hearing but only seven were recorded as present.
49. The Union acknowledged that in correspondence they had, wrongly, argued that there was no requirement for a quorum at meetings of the Regional Committee. Since a rule change at the Union's 2003 Congress the requirement was for half of the members to be present.
50. The Union argued that the meeting on 27 June 2005 was not a sub-committee meeting and that all members and observers were invited. Seven full members attended and apologies were received and detailed from seven other full members.
51. In spite of Mr Kenny's statements to the contrary, the Union stated that until October 2005 the Regional Committee consisted of 14 members. In October an additional member - representing the Union's gas members - had been elected. That explained the reference to a committee of 15 by Mr Blissett.
52. On 27 June 2005, the Union argued, the full council consisted of 14 members of whom seven attended the appeal hearing such that the quorum requirement set by the rules was met.

#### **Conclusion**

53. There was considerable confusion in the Union about the size of the Regional Committee and the existence or not of a quorum for its meetings. However it is clear to me that half the members of the Regional Committee constitute a quorum and that seven were present at the hearing of the Claimant's appeal. That means that the meeting was quorate if, at the time, the Regional Committee consisted of 14 members or less. There were written notes to the

effect that there were 15 members and also differing explanations of why there were only 14 in June. I therefore examined the minutes of the four meetings held around the time of the 27 June 2005 hearing. At none of those meetings did the number of members entitled to vote who were listed as being in attendance plus those members listed as apologising exceed 14. Moreover taking all 4 meetings together among those members entitled to vote there were only 14 individuals who were named as being in attendance or as sending their apologies.

54. On the balance of probabilities I therefore conclude that at 27 June 2005 the Regional Committee consisted of 14 members, seven of whom heard the Claimant's appeal.
55. It is for that reason that I dismiss this complaint.

### **Remedy**

56. Where I make a declaration I am required, unless I consider it inappropriate to do so, to issue an enforcement order on the Union to remedy the breach or to secure that a similar breach does not occur in the future. The Union argued that so long as I did not find against them on complaint 4 the effect of any other breaches were ended when the Regional Committee suspended the Claimant from benefit on 27 June 2005 and that there was therefore no continuing breach. I accept this argument.
57. The Union recognised my concern that some branches might be tempted to interpret the rule book as the Bromley East B38 branch had done and to suspend certain members from benefit to prevent them standing for election. The Union undertook to write to all branches in the London Region to remind them that branches had no power to suspend members from benefit. This letter would be copied to the Claimant. The Union also said it would draw this action to the attention of the Union headquarters staff with a view to a wider circulation of the message within the Union.
58. In the circumstances I do not consider it would be appropriate to issue an enforcement order in this case.

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