

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

**Mr B JOHNSON & Mr B DALY**

**v**

**MUSICIANS' UNION**

**Date of Decision:**

**31 October 2002**

**DECISION**

Upon applications by the Applicants under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") for declarations that the Musicians' Union ("The Union") acted in breach of the rules of the Union:

1. I refuse to make the declaration sought by Mr Johnson that on or about 13 March 2002 the Musicians' Union acted in breach of section B.1 of rule XXI of the Union by refusing to place before the relevant District Disciplinary Committee the Applicant's complaint against Mr Worsley, a member of the Executive Committee, that he had breached a rule of the Union.
2. I refuse to make the declaration sought by Mr Daly that on or about 13 March 2002 the Musicians' Union acted in breach of section B.1 of rule XXI of the Union by refusing to place before the relevant District Disciplinary Committee the Applicant's complaint against Mr Dalton, a member of the Executive Committee, that he had breached a rule of the Union.

## REASONS

1. Mr Johnson and Mr Daly have made complaints to me against their Union, the Musicians' Union, which are in substantially the same form. Mr Johnson's complaint is dated 8 April 2002 and Mr Daly's complaint 29 April 2002. Both complaints allege breaches of the rules of the Union in respect of disciplinary proceedings. These are matters which are potentially within the jurisdiction of the Certification Officer by virtue of section 108A(2)(b) of the 1992 Act. The alleged breaches are that:-
  - 1.1 In breach of section B.1 of rule XXI the Union failed to properly process Mr Johnson's application to invoke the disciplinary procedures of the Union against Mr Worsley a member of the Union's Executive Committee who allegedly voted to allow a breach of Union rule XIX section C(3).
  - 1.2 In breach of section B.1 of rule XXI the Union failed to properly process Mr Daly's application to invoke the disciplinary procedures of the Union against Mr Dalton a member of the Union's Executive Committee who allegedly voted to allow a breach of Union rule XIX section C(3).
2. I investigated these matters in correspondence. As required by section 108B(2) of the 1992 Act, the parties were offered the opportunity of a formal hearing and such a hearing took place on 11 October 2002. The Union was represented by Mr M Westgate of counsel with Ms S Escritt of Russell Jones and Walker Solicitors. Mr R Wearn, an Assistant General Secretary of the Union, was in attendance. Mr Johnson acted in person. He was accompanied by Mr D Kay. Mr Daly was neither present nor represented. In his letter to my Office advising that he would not be present at the hearing, Mr Daly stated that Mr Johnson's "*arguments will only serve to duplicate my own*". No witnesses were called by either party as the facts were largely not in dispute. A bundle of documents was prepared for the hearing by my Office which consisted of relevant exchanges of correspondence with the parties, together with their enclosures. This decision has been reached on the basis of the representations made by the Applicants and the Union, together with such documents as were provided by them.

## Findings of Fact

3. Having considered the representations made to me and the documents to which I was referred I make the following findings of fact:-
4. In 2001 the Executive Committee of the Union (“the EC”) decided to hold a Rule Change ballot in January 2002. The voting papers were dispatched to members on 10 January 2002 and were due to be returned to the independent scrutineer by 31 January.
5. On 17 January 2002, Mr Andy Knight, the then Deputy General Secretary of the Union, sent a memorandum to the members of the EC. He explained that the proposed rule changes had not been circulated to the branches before the ballot vote, as was required by rule XIX section C(3). He stated that he had considered recommending that the ballot should be declared void and run again but, after rehearsing the pros and cons of doing so, stated that he proposed, in effect, to continue with the flawed ballot and then to proceed to the election for the vacant post of General Secretary. He asked the members of the EC to complete a tear off slip at the end of the memo to indicate their approval or otherwise to his proposed course of action. The tear off slip was headed “*Executive Committee Consultative Ballot*”. On 30 January Mr Knight sent a further memo to the members of the EC in which he stated “*The result of the postal survey of EC members was 19 in support of the proposed actions and 2 opposed*”. Without making any admissions, the Union is content for these applications to proceed on the basis that Mr Worsley and Mr Dalton voted with the majority in this exercise.
6. In the Rule Change ballot itself, a majority voted for the proposed rule changes and at a meeting of the EC held between 12-14 February 2002 the EC voted by 15 votes to 2 votes to accept the report of the independent scrutineer. Without making any admissions, the Union is also content for these applications to proceed on the basis that Mr Worsley and Mr Dalton voted with the majority on the EC on this issue.

7. On 19 February 2002 Mr Daly wrote to Mr Knight in the following terms:-

*“I was surprised that a member of the EC Mitch Dalton had voted amongst others, to breach the rules on the ‘Rules change Ballot’ which I had received recently. I consider this course of action is not only outrageous, but is in direct opposition to the concept of having any rules of procedure in the first place. I therefore charge Mitch Dalton with the offense of Rule XXI section A.1(a).”*

8. On 20 February 2002 Mr Johnson wrote to Mr Knight in the following terms:-

*“Under my duty as an MU member I am charging Mr Len Worsley under rule XXI section A.1(a) with the following offence: voting to break rule XXI section C.3. Would you please use your offices (rule XXI Section B) to address this matter.”*

9. Mr Knight responded to both Mr Daly and Mr Johnson by letters dated 13 March 2002. He informed them that he was unable to process the charges against Mr Dalton and Mr Worsley for two reasons. First, he explained that one of the new rules brought in by the Rule Change ballot precluded members from making charges against officers of the Union when acting in that capacity. Secondly, he referred to my decision in the case of *Chesterman v Musicians’ Union* (D/13-14/02) in which I held that rule XXI of the rules of the Union was restricted to disciplinary proceedings against members of the Union and was not intended to be used to challenge decisions made by committees of the Union.

10. On 16 June 2002 I decided the case of *Saunders v Musicians’ Union* (D/23/02) in which I declared that the Rule Change ballot in question had been conducted in breach of rule XIX section C(3). I also issued an enforcement order which required the Union to treat the alteration of rules approved by the Rule Change ballot as being void and ineffective.

## The Relevant Statutory Provisions

11. The provisions of the 1992 Act which are relevant for the purpose of these applications are as follows:-

“108A.-(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);
- (c) the balloting of members on any issue other than industrial action;
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;
- (e) such other matters as may be specified in an order made by the Secretary of State.”

12. Section 108B(2) of the 1992 Act empowers me to make such enquiries as I think fit and, after giving the Applicant and the Union an opportunity to be heard, provides that I may make or refuse to make the declaration asked for. I am required, whether I make or refuse the declaration sought, to give reasons for my decision in writing.
13. Section 108B(3) of the 1992 Act requires that where I make a declaration I shall also, unless I consider that to do so would be inappropriate, make an enforcement order requiring, inter alia, the Union to take such steps to remedy the breach as may be specified in the order.

## The Union Rules

14. The Union rules most relevant to the Applicants’ complaints are:

### **Rule XIX: ELECTION PROCEDURES, BALLOT VOTING AND ALTERATION OF RULES**

#### *“Section C - Alteration of Rules*

3. In the case of a Rule change emanating from the EC all Branches will be circulated with proposals of the EC before a ballot vote of the membership on the proposals is taken.”

## **Rule XXI: DISCIPLINARY PROCEDURES AND AUTOMATIC PENALTIES**

### *“Section A - Offences*

1. Any member shall have the right to invoke the Union’s disciplinary procedures against any other member held to have committed any of the following actions:
  - (a) committed a breach of any of these Rules;
  - (b) .....
  - (c) .....
  - .....
  - .....
  - (k) .....

### *“Section B - Disciplinary Committee*

1. To facilitate the hearing of disputes between members amongst themselves which cannot be dealt with by any procedure provided elsewhere in these Rules as agreed by them, or when it appears that any member may be guilty of any offence under section A above, the matter shall be reported within four weeks of the offence to the General Secretary who will place the allegation before the relevant District Disciplinary Committee established under 2 below for consideration in accordance with the procedures set out for conducting Disciplinary Hearings (Appendix A to these Rules).”

## **The Applicants’ Submissions**

15. Mr Johnson did not seek to challenge my decision in the Chesterman case but to distinguish it. He argued that the charges that he and Mr Daly notified to Mr Knight concerned the acts of individuals, not the decision of a committee. In particular, he submitted that their charges related to the way in which Mr Worsley and Mr Dalton cast their votes in both ‘the consultative ballot’ in January 2002 and at the EC meeting on 12-14 February 2002.

## **The Union’s Response**

16. Mr Westgate argued that I do not have jurisdiction to hear these complaints as they relate to disciplinary procedures brought by Union members against other Union members, whereas my jurisdiction under section 108A(2)(b) of the 1992 Act is limited to “*disciplinary proceedings by the union (including expulsion)*”. Mr Westgate submitted that rules XXI.A, XXI.A.2 and XXI.B.1 and the procedure at disciplinary hearings are each consistent with his interpretation of section 108A(2)(b). In the alternative, Mr Westgate submitted that the Union was under no obligation to process the charges made by the Applicants because in reality they were complaints

about actions by a committee and that rule XXI is not apt to cover complaints about such action. Mr Westgate submitted that the case of Chesterman was correctly decided and applicable to the facts of these applications. In the further alternative, Mr Westgate argued that rule XXI section B(1) gives the person who is acting with the authority of the General Secretary the ability to refuse to process any charge which is not capable of amounting to the breach alleged. He derived this proposition from that part of the rule which states “... *when it appears that any member may be guilty of any offence under Section A....*”. On the facts of this case, Mr Westgate submitted that rule XIX section C(3) was not capable of being breached by an individual and that, in any event, the breach of rule XIX section C(3) took place before the start of the ballot process on 10 January 2002. He argued that it cannot be a breach of rule to fail to take steps to correct the consequences of a prior breach.

## **Conclusion**

17. In the case of *Taylor v Musicians’ Union* (D/26-28/02) I was required to determine whether I had jurisdiction in respect of disciplinary action brought by one member of the Musicians’ Union against another member, having regard to the precise formulation of my jurisdiction in section 108A(2)(b) of the 1992 Act. My decision in the case of Taylor was given on 15 October 2002. In the Taylor case I found that the words of section 108A(2)(b) related to disciplinary proceedings conducted by the Union even when such proceedings were initiated by a member. I have had regard to the additional argument addressed to me by Mr Westgate but I do not find that a consideration of the other provisions of the rule book to which he referred are conclusive of this matter. In my judgement those provisions are at best neutral and do not persuade me that my decision on this point in the case of Taylor is wrong. Accordingly I find that I have jurisdiction to determine the present applications.
18. I accept Mr Westgate’s submission that rule XXI section B(1) of the rules of the Union provides a mechanism whereby the person acting with the authority of the General Secretary may refuse to process any complaint which appears to him or her not to be capable of amounting to the breach alleged. This is a limited discretion. It

can only be exercised when the person acting with the authority of the General Secretary can conclude reasonably and in good faith that the complaint is not of an offence under rule XXI.A or that the complaint is not supported by any material sufficient to give rise to an arguable case under rule XXI.A against the person charged. The exercise of this discretion does not involve any consideration of whether or not the person charged is guilty.

19. In the case of both Applicants, the disciplinary proceedings were brought to the Union's attention under rule XXI section B(1) on the basis that the person charged was guilty of an offence under rule XXI section A. The Applicants' letters to the Union of 19 and 20 February 2002 both state expressly that the offence within section A which was being charged was that in sub-paragraph 1(a); namely that Mr Worsley and Mr Dalton had "*committed a breach of any of these Rules*". Mr Johnson was asked at the hearing upon which rule he had brought this charge against Mr Worsley. He responded that his charge was that Mr Worsley had breached rule XIX section C(3) and commented that the reference to rule XXI C(3) in his letter of 20 February 2002 was an error. He also referred to the preamble to the rules which states, "*Members should examine these Rules carefully. The Rules will be strictly enforced; and ignorance of them will not be accepted in mitigation of any breach of them*". In earlier correspondence, Mr Johnson had also referred to rule VI which deals with the powers and duties of the EC. Mr Daly had previously stated that he was content for his case to be dealt with on the basis of the representations made by Mr Johnson. I find that neither the rules to which Mr Johnson referred nor the preamble to the rules were capable of being breached by either Mr Worsley or Mr Dalton. Rule XIX section C(3) places a requirement on the Union which is not capable of being breached by an individual. The preamble to the rules does not form part of the rules and rule VI sets out the duties and powers of the EC acting as a committee, not the duties and powers of individual members of that committee. I accordingly find that the charges brought by Mr Johnson and Mr Daly were not charges which were capable of amounting to the breaches alleged and that in refusing to process these charges Mr Knight did not act in breach of rule XXI section B(1).



20. I further find that the distinction that Mr Johnson sought to make between a decision of the EC and the individual votes of the members of the EC in reaching that decision is without foundation. The act of a member of the EC in casting a vote is an individual act which in itself neither decides nor recommends anything. It is no more than an expression of that person's point of view, which may or may not result in a decision of the EC which has legal significance. If it had been intended that disciplinary action might result from the mere casting of a vote by a member of the EC, it is to be expected that there would have been an express rule to that effect, having regard to the likely consequences of such a provision on the openness of debate at the EC and the ability of members to vote in accordance with their conscience.
21. I accordingly find that insofar as the Applicants purported to charge Mr Worsley and Mr Dalton with a breach of rule XIX section C(3) their charges were misconceived and that they were correctly rejected by Mr Knight on the basis of my decision in *Chesterman*. Insofar as the Applicants are purporting to charge Mr Worsley and Mr Dalton with the way in which they cast their individual votes as members of the EC, their charges were similarly misconceived as there is no rule which is capable of being breached by the act of voting.
22. For the above reasons I refuse to make the declarations sought by Mr Johnson and Mr Daly that on or about 13 March 2002 the Musicians' Union acted in breach of section B(1) of rule XXI of the Union by refusing to place before the relevant District Disciplinary Committees the Applicants' complaints against Mr Worsley and Mr Dalton that, as members of the Executive Committee, they had breached a rule of the Union.

D Cockburn  
Certification Officer