

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

**Mr G R CHESTERMAN**

**v**

**MUSICIANS' UNION**

**Date of Decision:**

**28 February 2002**

**DECISION**

Upon application by the Applicant 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 that on or about 5 April 2001 the Musicians' Union acted in breach of Section B.1 of Rule XXI of the Union by failing to place before the relevant District Disciplinary Committee the Applicant's complaint against Mr Patrick and unnamed members of the Executive Committee concerning the decision of the Executive Committee on or about 24 February 2000 to invite Mr Scard to continue as General Secretary of the Union.
2. I declare that the Musicians' Union acted in breach of Section B.1 of Rule XXI of the Union by failing to place before the relevant District Disciplinary Committee the Applicant's complaint dated 22 March 2001 against Mr Patrick and other named members of the union's Appeals Committee arising out of Mr Kay's appeal hearing on 26 February 2001.

3. I decline to make an enforcement order pursuant to my powers under Section 108B(3) of the 1992 Act as I consider that it would be inappropriate to do so.

### **REASONS**

4. By an application dated 24 September 2001 Mr Chesterman made two complaints against his union, the Musicians' Union. The two complaints allege breaches of the rules of the Union in respect of disciplinary proceedings. These are matters within the jurisdiction of the Certification Officer by virtue of section 108A(2)(b) of the 1992 Act. The alleged breaches are that:-
  - 4.1 In breach of Section B.1 of rule XXI the union failed to properly process Mr Chesterman's application to invoke the disciplinary procedures of the union against Mr Patrick and other unnamed Executive Committee members arising out of the decision of the Executive Committee in February 2000 to authorise Mr Scard to remain as General Secretary.
  - 4.2 In breach of Section B.1 of rule XXI the union failed to properly process Mr Chesterman's application to invoke the disciplinary procedures of the Union against Mr Patrick and other named members of the Appeal Committee arising out of the hearing of Mr Kay's disciplinary appeal on 26 February 2001.
5. 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 1 February 2002. The Union was represented by Mr A Knight (Deputy General Secretary). Mr Chesterman acted in person and gave evidence. Mr I Barnett (Chair Mid-Herts Branch) also gave evidence on behalf of the Applicant. 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 Applicant and the Union, together with such documents as were provided by them.

### **Findings of Fact**

6. Having considered the representations made to me and the relevant documents I make the following findings of fact:-
7. Mr Scard was first elected as General Secretary of the Musicians' Union in 1989. He was re-elected in October 1994. In October 1999 Mr Scard stood again for re-election as General Secretary. He was unopposed and declared duly elected. The lawfulness of the October 1999 election was challenged in applications to the Certification Officer made by three members, Mr Read, Mr Irvine and Mr Johnson (Decisions D/2-3/00 and D/13-14/00). My predecessor upheld their complaints that the union had unreasonably excluded a member from standing as a candidate, had failed to send a notice to members advising them of the name of the scrutineer and had failed properly to appoint a scrutineer. An enforcement order was made which required the union to hold a fresh election for the post of General Secretary and to publish the result of that election before the 1 January 2001. The hearing of those complaints took place on the 23 March and 31 May 2000. The decisions on the first two matters were given, and an enforcement order was made, on the 27 March 2000. The decision on the third matter was given on the 1 June 2000.
8. At a meeting of the Executive Committee of the Union held between 22-24 February 2000 the Executive Committee decided, inter alia, to invite Mr Scard to continue in post as General Secretary pending any re-run for the position of General Secretary, should such an election become necessary. On 24 February 2000 Mr Patrick, as Chairperson of the Executive Committee, wrote to Mr Scard inviting him to remain as General Secretary in accordance with the resolution of the Executive Committee, which invitation Mr Scard accepted.
9. Mr Scard continued as General Secretary until the results of the further General Secretary election were declared on 13 November 2000. Although Mr Scard was unsuccessful in that election (by a margin of eight votes out of 8,040), it is recorded in the minutes of the Executive Committee of 21 November 2000 that with the agreement of the successful candidate, Mr Kay, Mr Scard would remain in the Union's employ until 22 December and Mr Kay would take up office on 2 January 2001.

10. It was clear to all interested members of the Union during 2000 that Mr Scard was continuing in the position of General Secretary notwithstanding the fact that his last election had been more than five years earlier. This was clear not only from the articles Mr Scard continued to write in the Union's journal, the "Musician", in which he wrote in his capacity as General Secretary but also from the election material he circulated in October 2000. In that material he stated, "*The Executive Committee took full legal advice on the Union's position before appointing me to act as General Secretary for a further year ...*". It was therefore not only clear to members that Mr Scard was continuing as General Secretary but that he had been authorised to do so by the Executive Committee.
  
11. Between 8-10 November 2000, prior to the publication of the results of the election, complaints were made about Mr Kay's conduct during his election campaign by a Mr Findlay. On 20 November it was decided that these complaints should be considered by a District Disciplinary Committee on 20 December. Between the 20 November and 20 December the Executive Committee sat on two occasions, once in November and once in December. At its regular quarterly meeting on the 21-23 November the Executive Committee discussed other complaints made by Mr Scard about the conduct of Mr Kay during the election campaign. The Assistant General Secretary, Mr Knight, reported that he had received legal advice that the Executive Committee was not empowered to challenge the election results on the grounds of Mr Scard's complaints and any action considered appropriate would have to be taken under the Union's disciplinary procedures. The Executive Committee voted to accept Mr Knight's report. The minutes of that meeting, as submitted in evidence, do not disclose that there was any discussion of the complaints that had been made by Mr Findlay.
  
12. On 29 November the Union's solicitor wrote to Mr Patrick to advise the Executive Committee about the circumstances in which Rule VIII.8 could be used. Rule VIII.8 provides for the removal from office of a General Secretary by a ballot of the members of the Union. The solicitor advised that Rule VIII.8 could not be used as a means of

disciplining Mr Kay for anything he may have done or said whilst campaigning in the election.

13. On 6 December 2000, there was a special meeting of the Executive Committee to further discuss the transitional arrangements to enable Mr Kay to take up the post of General Secretary. The letter from the Union's solicitors regarding the application of Rule VIII.8 was referred to at this meeting but the minutes do not record any discussion of that matter. There was also reference to certain responses that Mr Kay had made to questions put to him by the Executive Committee. The minutes go on to record that,

*"In discussion it was suggested that as a disciplinary hearing was about to take place in the London District it would not be appropriate or advisable for the EC to examine the responses and take a formal decision since it was likely that there would be an appeal to the EC when the result of the disciplinary hearing was known."*

14. The London District Disciplinary Committee heard the complaints against Mr Kay on 20 December 2000. Mr Kay did not attend. The Disciplinary Committee upheld three out of the original six charges. The hearing was adjourned to 12 January 2001 for consideration of the penalties to be imposed.
15. On 12 January 2001 the Disciplinary Committee imposed penalties in respect of the three charges that had been upheld. The penalties, which were to run concurrently, were nine months suspension from membership, three years suspension from any office and five years suspension from any office.
16. By a letter dated 19 January 2001 Mr Patrick gave effect to the decision of the District Disciplinary Committee by informing Mr Kay that he was suspended from office. Mr Patrick later sought ratification of this action by circulating a memorandum to all members of the Executive Committee asking them to vote. Mr Patrick's action was ratified by a 19-1 majority.
17. On 25 January 2001 Mr Kay appealed against the decision of the District Disciplinary

Committee and the date of his appeal was set for 26 February.

18. On 7 February 2001 the Executive Committee met and considered motions critical of Mr Kay that had been submitted by the two unions representing officials of the Union, MSF and GMB. The minutes of that meeting of the Executive Committee were not in evidence.
19. On 26 February 2001 the Appeals Committee of the Union heard Mr Kay's appeal. By Section C of Rule XXI, the Appeals Committee shall comprise five members of the Executive Committee and the Chairperson of the Executive Committee shall act as Chair of the appeals hearing. Section C.1 of Rule XXI also states "*Any member of the Appeals Committee who is directly involved in any case shall retire and shall take no part in the hearing as a member of the Committee*". On this occasion Mr Patrick chaired the Appeals Committee and the Applicant has named the other members as being Mr Piggot, Mr Bowser, Mr Garnham, Mr Worsley and Ms Spencer. The Appeals Committee revised the previous penalties as follows; the nine months suspension from membership was reduced to six months, the three years suspension from any office was quashed, the five years suspension from any office was reduced to two years.
20. By a letter to the Union dated 18 March 2001 the Applicant indicated his wish to lay disciplinary charges against the members of the Appeals Committee arising out of their failure to recuse themselves as a result of having been present at meetings of the Executive Committee at which there had been discussions critical of Mr Kay. The precise terms of those charges were later revised by the Applicant in his letter to the Union of 25 March.
21. By a letter to the Union dated 2 April 2001 the Applicant further charged Mr Patrick "*along with other EC members*" of committing various breaches of rule arising out of the decision of the Executive Committee in or about 24 February 2000 to invite Mr Scard to remain as General Secretary notwithstanding the fact that he had not been elected to that position within the preceding five years. In this letter the Applicant indicated that he was aware of the provision of Section B.1 of Rule XXI whereby any such change "*... shall be*

*reported within four weeks of the offence to the General Secretary... ”.*

22. Neither of the sets of charges laid by the Applicant were processed by the Union and the Applicant complained to the Certification Office on 24 September 2001 that the Union was in breach of Section B.1 of Rule XXI which provides, inter alia, that where an offence has been reported to the General Secretary, the General Secretary “... will place the allegation before the relevant District Disciplinary Committee ...”
23. In November 2001 an amicable agreement was entered into between Mr Kay and the Union to settle the outstanding litigation arising out of Mr Kay’s departure as General Secretary. At the date of this hearing a further election for the position of General Secretary is to be held. However, Mr Kay remains a member of the Union and subject to the disciplinary penalties imposed on him by the Appeals Committee on 26 February 2001.

### **The Relevant Statutory Provisions**

24. The provisions of the 1992 Act which are relevant for the purpose of this application 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) ...
  - (b) disciplinary proceedings by the union (including expulsion);
  - (c) ...
  - (d) ...
  - (e) ...
- (5) No application may be made regarding -
- (a) the dismissal of an employee of the union;
  - (b) disciplinary proceedings against an employee of the union.”

25. 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, to make or refuse to make the declarations asked for. I am required, whether I make or refuse the declaration sought, to give reasons for my decision in writing.

26. 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**

27. The union rules relevant to the Applicant's complaint:

### **Rule XVIII: OFFICERS AND OFFICIALS**

1. ...“Officer” and “Officer of the Union” include a Branch officer, a permanent Official, a member of the EC, the EC Chairperson, a Conference delegate, a General Trustee, a General Referee, a District Secretary, a Union Steward elected or appointed under regulations established by the EC.

### **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) committed any action detrimental to the interests of the Union or otherwise brought or attempted to bring the Union, its members or officers into disrepute;
  - (c) -
  - (d) -
  - (e) -
  - (f) -
  - (g) -
  - (h) -
  - (i) -
  - (j) in the case of an Officer (other than a permanent Official), wilfully and seriously neglected the duties of his/her office;
  - (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).

#### *Section C - Appeals Committee*



2. Either party desiring to appeal against a decision of the Disciplinary Committee may appeal to the Appeals Committee which shall comprise five members of the EC. Any member of the Appeals Committee who is directly involved in any case shall retire and shall take no part in the hearing as a member of the Committee.

## APPENDIX A

### STANDING ORDERS FOR DISCIPLINARY HEARINGS

1. Upon receipt of a complaint the General Secretary will determine the District at which the complaint shall be heard. In order to determine the relevant District the following procedure will apply:
  - (a) if both parties to the complaint are members of Branches within the same District then the complaint shall be heard by that District's Disciplinary Committee;
  - (b) if one or more parties to the complaint are not in membership of Branches within the same District, the General Secretary shall determine an adjacent neutral District at which the complaint shall be heard.

## **The Complaints**

### **Failing to Process the Charge against the Members of the Executive Committee**

#### **The Applicant's Submissions**

28. The Applicant submitted that his complaint against Mr Patrick "*along with other EC members*" that they had wrongly authorised Mr Scard to remain as General Secretary in 2000 was a valid complaint and should have been processed by the Union. He argued that there was an absolute duty to place his complaint before the relevant District Disciplinary Committee and that this duty arose both from Section B.1 of Rule XXI and from Paragraph 1 of Appendix A, which states, "*Upon receipt of a complaint the General Secretary will determine the District at which the complaint shall be heard.*".
29. The Applicant advanced three arguments why his application was not out of time. First, he submitted that time did not run against him from the date the alleged offence was committed but from when he discovered that it had been committed. As a matter of law, he maintained that this must be the correct interpretation as otherwise a person could conceal his or her offence for a period in excess of four weeks and thereby escape any challenge under the rules of the Union. The Applicant maintained that he was not in fact aware that the Executive Committee had authorised Mr Scard to remain as General

Secretary on 24 February 2000 until some time in March 2001, within the period of four weeks before he made his complaint. He accepted that his branch had raised questions about Mr Scard having continued to act as General Secretary from as early as 3 January 2001 and that he had sought clarification of the position from his district organiser Mr Clarke in February 2001 but he argued that neither of these enquiries had provided him with the information he required until some time in March 2001. Secondly, he maintained that the offence was a continuing one. He argued that it remained an offence until expunged and was therefore for an indefinite period. Thirdly, he maintained that it was only known for certain that Mr Scard had remained in office unlawfully when the Certification Officer made a declaration to that effect on 12 October 2001 and that the complaint he made on 2 April 2001 could therefore be viewed as premature, certainly not late.

### **The Union's Response**

30. For the Union, Mr Knight contended that the Union had acted correctly in not processing the Applicant's complaint for two reasons. First, it was a complaint against a decision of the Executive Committee and that Rule XXI is only appropriate for dealing with complaints by members against other members. Mr Knight commented that the rules do not provide for there to be complaints by members against decisions of such bodies as the Executive Committee. He argued that a members recourse in such circumstances is under the normal democratic processes of the Union at the time of Executive Committee elections or by invoking Rule V.11 which provides for the removal of the entire Executive Committee by a Special Delegate Conference. Secondly, Mr Knight maintained that the Applicant's complaint was out of time as it had been made more than four weeks after the date of the relevant decision of the Executive Committee. He argued that the relevant words of Section B.1 of Rule XXI should be given their plain and literal meaning and that the alleged offence must be reported "*within four weeks of the offence*". In this case, the alleged offence took place on or about 24 February 2000. Mr Knight further submitted that Rule XXI had hitherto been used mainly to resolve disputes between ordinary members and the time limit was deliberately short to ensure that such matters were speedily resolved.

## Conclusion

31. In neither of these complaints am I concerned with the substance of the alleged offences that the Applicant wishes to be determined by the District Disciplinary Committee. I am concerned solely with whether the Union acted in breach of Section B.1 of Rule XXI by failing to place them before the relevant District Committee for determination.
32. In my judgement, the Applicant's complaint about the retention of Mr Scard as General Secretary in 2000 is a complaint against a decision of the Executive Committee and not a complaint that can be properly made against individual members of that Committee under Rule XXI. Each member of the Executive Committee had a vote on the relevant motion but the vote cast by each individual member did not have the result about which the Applicant complains. The authority for Mr Scard to continue as General Secretary derived from a decision of the Executive Committee, as an entity separate from and distinct to the members of that Committee. The decision that was taken by the Executive Committee is the responsibility of the Committee and cannot be attributed to individual members of the Committee. Indeed, I am informed that no record is kept of those who vote for or against any particular motion.
33. Rule XXI is restricted to disciplinary measures invoked by members against other members. It is clear from the terms of the rule that it was not intended to provide a means of challenging decisions made by committees of the Union. For the rule to be applied in such a way would require the inclusion of an express provision to that effect. A member who is aggrieved of a decision of the Executive Committee is not without a remedy. That member has the right to seek to replace members of the Executive Committee at the next election and the ability to seek to replace the entire Executive Committee mid-term by invoking Rule V.11, should the circumstances merit such a drastic course.
34. Further, I find that the Applicant's complaint was out of time in any event, having been made on 2 April 2001, more than four weeks after the commission of the alleged offence on 24 February 2000. In my judgement there is no warrant to give the relevant words of Section B.1 of Rule XXI other than their ordinary literal meaning, which is that the matter, "*shall be reported within four weeks of the offence*". The Applicant has pointed

out the injustice that could occur if an offender conceals his or her offence for a period in excess of four weeks but the possibility of such injustice is not a conclusive argument in favour of the Applicant's interpretation. Taken in the context of complaints made by members against members, the Union, when adopting the rule, could well have accepted such a possibility but concluded that it was outweighed by the advantages of certainty and speed. In any event, on the facts of this case, I find that the Executive Committee did not conceal its decision of 24 February 2000 and that the Applicant, as an active member of the Union, was aware by October 2000 at the latest that the Executive Committee had authorised Mr Scard to remain as General Secretary beyond his five year elected term.

35. I also reject the Applicant's argument that the offence was of a continuing nature and that there was accordingly no start date for the limitation period. I find that the decision of the Executive Committee of 24 February 2000 was a single act which, in other circumstances, could have constituted the start date for a relevant limitation period. The fact that the decision of the Executive Committee had continuing consequences is irrelevant to the date of the alleged offence.
36. Finally, I reject the Applicant's submission based on the Certification Officer's determination of 12 October 2001 of the complaint regarding Mr Scard's position as General Secretary in 2000. I find the determination of the Certification Officer in this matter to be irrelevant to any question concerning the validity of the complaint made by the Applicant on 2 April 2001.
37. For the above reasons I find that the Union was not in breach of Section B.1 of Rule XXI of the Union by failing to process the Applicant's complaint against Mr Patrick and unnamed members of the Executive Committee concerning the decision of the Executive Committee on or about 24 February 2000 to invite Mr Scard to continue as General Secretary. I refuse to make the declaration sought.

## **Failing to Process the Charge against the Members of the Appeals Committee**

### **The Applicant's Submission**

38. The Applicant had sought to invoke the Union's disciplinary procedures against each member of the Appeals Committee which heard Mr Kay's appeal on 26 February 2001. The charge that he had sought to bring was that they had breached Section C.1 of Rule XXI of the rules of the Union and, in particular, that they had each breached the requirement that "*Any member of the Appeals Committee who is directly involved in any case shall retire and shall take no part in the hearing as a member of the Committee*". The Applicant argued that these complaints were not against a Committee of the Union or in respect of a decision taken by a Committee. He argued that his charges were against individual named members of the Appeals Committee for their personal failure to comply with the requirement which was imposed on them individually by the rules.

### **The Union's Response**

39. For the Union, Mr Knight argued that I did not have jurisdiction to consider this matter, having regard to an earlier complaint to the Certification Officer regarding disciplinary action taken against the former General Secretary Mr Kay. In that matter my predecessor had declined jurisdiction on the grounds that the Certification Officer has no jurisdiction to hear complaints regarding disciplinary action taken against employees of the Union. By parity of reasoning, Mr Knight argued that the Certification Officer had no jurisdiction to hear a complaint that Mr Kay's internal appeal was flawed by the failure of the members of the Appeals Committee to recuse themselves. Mr Knight also argued that the disciplinary procedure could not be interpreted as allowing a member to progress a disciplinary action against the Appeals Committee, in the same way as a member cannot progress a disciplinary action against the Executive Committee. Finally, Mr Knight submitted that it cannot be correct that an aggrieved Appellant, who had lost his appeal, could reopen his case by making a complaint against members of the Appeals Committee using the Rule XXI procedure. He commented that this would be effectively re-litigating a matter that had finally been determined using the disciplinary process.

### **Conclusions**

40. I find that the complaint that the Applicant made to the Union on 18 March 2001 was not a complaint made against a decision of the Appeals Committee itself but a complaint made against the decision of each member of the Appeals Committee not to recuse himself or herself as being a person "*directly involved*" in the case. It is not part of my function on

this application to determine whether the members of the Appeals Committee were “*directly involved*” in Mr Kay’s case. This depends upon the proper meaning of that expression in the rules of the Union and upon the facts of the case. It has been argued that there was no breach of Section C.1 of Rule XXI as no member on the Appeals Committee was involved on the District Disciplinary Committee or at any other stage of the disciplinary process and that, in any event, Mr Kay had expressly consented to his appeal proceeding with the Appeals Committee so constituted. These are not matters for me to determine. I have only to decide whether the Applicant’s charges should have been submitted to a District Disciplinary Committee for determination in accordance with Section B.1 of Rule XXI.

41. The thrust of Mr Knight’s submission was that the Rule XXI procedure is not appropriate for taking disciplinary action against members of the Executive Committee carrying out their duties either as members of the Executive Committee or as members of the Appeals Committee. This is clearly incorrect. Section A.1 of Rule XXI lists those offences for which Rule XXI procedures are appropriate and Section A.1(j) provides for disciplinary procedures to be invoked “*in the case of an Officer (other than a permanent Official), wilfully and seriously neglected the duties of his/her office*”. Further, Rule XVIII.1 defines an officer as including a member of the Executive Committee and the Executive Committee Chairperson. Accordingly the rules comprehend the Rule XXI disciplinary procedure being invoked against members of the Executive Committee for wilful or serious neglect of the duties of office.
  
42. Mr Knight’s submission regarding the jurisdiction of the Certification Officer is also incorrect. My predecessor declined jurisdiction of a complaint regarding Mr Kay on the grounds that the discipline to which the complaint related concerned Mr Kay as an employee of the Union, as General Secretary. By Section 108A(5) of the 1992 Act, no application may be made to the Certification Officer regarding disciplinary proceedings against an employee of the Union. However, this is not such an application. The members of the Executive Committee against whom the Applicant wishes to take disciplinary proceedings are not employees of the Union and the fact that their breach of rule touches upon disciplinary action involving an employee of the Union is too remote

for me to conclude that I lack jurisdiction in this matter.

43. I also reject Mr Knight's argument regarding the possible re-litigation of appeals by unsuccessful appellants. As I have found, a member cannot use Rule XXI to bring disciplinary proceedings against the Appeals Committee as such. It is only if individual members of the Appeals Committee themselves commit breaches of rule that they become susceptible to challenge.
44. I accordingly find that the Applicant made a valid complaint against the members of the Appeals Committee which was not processed in accordance with the rules of the Union and I make a declaration in the following terms:-

*"I declare that the Musicians' Union acted in breach of Section B.1 of Rule XXI of the Union by failing to place before the relevant District Disciplinary Committee the Applicant's complaint dated 22 March 2001 against Mr Patrick and other named members of the union's Appeals Committee arising out of Mr Kay's appeal hearing on 26 February 2001."*

45. I do not consider that it is appropriate for me to make an enforcement order in this matter, having regard to the procedural difficulties to which this decision may give rise for the Union. I accept that Mr Knight has attempted to deal with these matters in good faith so as to achieve a pragmatic solution and I have no doubt that he will continue to do so, paying due regard to this decision. In the circumstances I do not consider that it would be helpful to prescribe the steps that must be taken by the Union. I note in particular that there is provision within the rules for arbitration, which possibility has already been canvassed by the Applicant.

### **Observations**

46. The rules of the Union provide for the Appeals Committee to be comprised of members of the Executive Committee. In routine complaints by members against other members this will lead to no difficulty. However, when the Appeals Committee must consider a matter of significance to the Union as a whole, it is to be expected that such matters will already have been debated by the Executive Committee. This will naturally give rise to

concerns that the members of the Appeals Committee, derived as they are from the Executive Committee, will have a preconceived view about any such case. It may be that the rules were intended to deal with this potential problem by requiring members to stand down only if they are “*directly involved in any case*”. This expression may have been intended to have a narrow meaning and only exclude, for example, a member of the District Disciplinary Committee or some other participant such as a witness or representative. The correct meaning of this expression may have to be determined on another occasion. In any event, the Union may wish to consider amending its rules either to clarify what is meant by this expression or to change the way in which the Appeals Committee is constituted.

D COCKBURN  
Certification Officer