

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

IN THE MATTER OF COMPLAINTS AGAINST THE

GMB

APPLICANT: MRS N M GILES

Date of Decisions:

15 June 2001

DECISIONS

- 1.1 Under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992(as amended) (“the Act”) any member of a trade union aggrieved by an alleged breach of the union’s rules relating to any of the matters mentioned in subsection (2) may apply to me for a declaration to that effect. The matters in subsection (2) include “*the constitution or proceedings of any executive committee or of any decision making meeting*” and “*disciplinary proceedings by the union(including expulsion).*” If, after giving the member and the union an opportunity to be heard, I consider such a breach has occurred I may make such order for remedying the breach as I think just in the circumstances.

1.2 On 22nd January 2001 I received an application from Mrs Giles, a member of the GMB union, in which she made two complaints of alleged breaches relating to certain decisions made by her local branch and regional office of the union. The background to the complaint appears to be that Mrs Giles had a disagreement with some of her work colleagues about the necessity of a plinth to stand on when operating the lottery machine in the Home and Leisure department of an ASDA store. The plinth featured in an industrial injury claim by Mrs Giles. One of her colleagues, Mrs Coslett, wrote a letter to the store's personnel manager. This letter was signed by others and essentially said that the lack of the plinth caused no problems. Mrs Giles saw this letter as undermining her industrial injury claim and sought to raise the matter through her union. Mrs Coslett, the author of the letter, was her branch secretary. Having tried to pursue her complaint against Mrs Coslett through the union Mrs Giles was not satisfied with the outcome or the means by which it was arrived at, and made two complaints to me. These were that:

The union failed to hold a branch meeting to consider Mrs Giles' complaint, about the involvement in her affairs of a GMB Shop Steward, Mrs B Coslett. This was in breach of its Rule 6 Section(1)

and that:

The GMB at its hearing on 17 October of Mrs Giles' complaint, did not allow her to hear contrary evidence, or to question it, in breach of its Rule 6 Section (2).

1.3 I made enquiries of Mrs Giles and the union, after which I was ready to make a decision but, as required by section 108B(2)(b) of the Act, I offered the parties the opportunity of a formal hearing. Both parties agreed that such a hearing was unnecessary.

1.4 For the reasons set out below I cannot determine the first complaint and I dismiss the second.

Requirements of the legislation

1.5 It may be helpful, at this point, if I set out the relevant statutory requirements of the Act to which I have referred to in this decision. The relevant statutory requirements 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.*

(3) ...”

108A(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.*

108A(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.”*

1.6 The union rules relevant to the complaints are set out below under the relevant complaint.

Complaint One. That the GMB had breached its rule 6 section (1) in that the union failed to hold a branch meeting to consider Mrs Giles' complaint about the involvement of a GMB Shop Steward, Mrs B Coslett.

Jurisdiction

2.1 GMB rule 6 section(1) states that:

“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.”

2.2 At the outset, in correspondence, the union gave its response to the substance of the complaint, but also questioned whether I was empowered to determine it. I had to consider the jurisdictional issue before I could turn to matters of substance.

2.3 The union contended that I did not have the jurisdiction to hear this complaint, which was brought under section 108A(1) of the Act, concerning matters under section 108A(2)(d) involving breaches(or alleged breaches)in relation to *‘the constitution or proceedings of an executive Committee or of any decision-making meeting’* of the union. The union argued that a meeting of the branch convened for the purpose of hearing a member’s grievance under GMB Rule 6 was neither an executive committee nor a decision- making meeting within section 108A(2)(d) of the Act.

2.4 The union argued that a meeting of a branch was not a committee, whether within the meaning of section 108A of the Act, or in any other sense. Next, it was argued that it was a requirement of section 108(12)(b) of the Act that for the branch to be regarded as a major constituent body, it must have more than 1,000 members. This branch had approximately 200 members and could not therefore be regarded as a major constituent body within the meaning of section 108A(12)(b) which requires that:

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

..... ‘a major constituent body is such a body which has more than 1,000 members.’

2.5 Finally, the union said that the branch (not being a major constituent body), was not a decision-making body as defined in the Act. Section 108A(11)(b) states that a decision-making meeting is, for the purposes of subsection 2(d):

“a meeting of members of a major constituted body(or 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.”

The union argued that the branch could not make a decision that was final as regards the branch because a regional committee could overturn a decision of a branch under Rule 6.1 and render such a decision null and void. Accordingly, by this reasoning, a decision of a branch under Rule 6.1 could not be final as regards that branch.

2.6 Mrs Giles argued that section 108A(8) makes it clear that rules covered include rules of “*any branch or section of the union*” and that this implies that a branch meeting is a decision-making meeting. Further, as a branch is a “constituent body of the union” referred to in 108A(12)(a) and its rules are final as regards to the branch it satisfies the definition of a decision-making meeting in section 108A(11)(a). On this basis she contended that I did have the jurisdiction to hear her complaint as it was a matter referred to in section 108A(2)(d).

Reasons for my decision

2.7 The interpretation of the phrase “*the constitution and proceedings of any executive committee or of any decision-making meeting*” (section 108A(2) (d)) even with the elaborations given in the subsequent sections 10, 11 and 12 is neither easy nor uncontentious.

2.8 I was impressed by the clarity of Mrs Giles’ presentation of her argument. It was much greater than what one might have expected from a lay member of the union faced with complex legislation. The union also made some good points. By concentrating on different parts of the definition, the union and Mrs Giles come to opposite conclusions. I have to judge between them.

2.9 The first point to make is that neither party had argued that a branch meeting was an executive committee nor that my jurisdiction did not extend to branch rules. I believe they were right to adopt this position.

- 2.10 The central issue was, does a branch meeting constitute a decision-making meeting within the meaning of section 108A(11) as elaborated on by the following section 108A(12) ? The union, correctly in my view, point out that to be a major constituent body covered by section 11(b) the branch must have more than 1,000 members (see section 108A(12)(b)). It was not disputed that the branch to which Mrs Giles' complaint relates does not approach that number. The branch was not therefore a major constituent body.
- 2.11 Under section 11(a) the branch could still be a decision-making meeting if it had power to make a decision on any matter which, under the rules of the union, was final as regards the union, or which under the rules of the union or a constituent body was final as regards that body.
- 2.12 The question arises as to whether the branch meeting, irrespective of its having or not having power to make a decision which was final as regards the branch, was 'a meeting of members of the union'. I find subsection 11 an extremely difficult passage to interpret. Section 11(a), if read as a freestanding provision, admits to a certain degree of ambiguity. Is the 'meeting of members of the union', a meeting of members of the whole union, such as a general or delegate meeting of the union (definition (a)), or a meeting of members of any constituent body of the union, such as a branch (definition (b))? If definition (b) were correct, a branch meeting could be a decision making meeting for the purposes of section 11(a). My view is this is not a correct reading of the statute and I am assisted in coming to this view by section 11(b). This sub-section would be superfluous if definition (b) of 'meeting of members of the union' was followed. For section 11(b) to serve a purpose, it can only be read as an extension of the definition of a decision

making meeting by adding to the definition in section 11(a) constituent bodies such as branches with a membership of more than 1,000. Therefore, I believe it was Parliament's intention to limit the application of section 11(a) to meetings such as general or delegate meetings of the union which had power under the rules of the union to make a decision that was final as regards the union, or under the rules of the union or the branch, final as regards the union or branch. On that basis I have concluded that a meeting of the GMB branch in question is not a decision-making meeting within the meaning of section 108A(2)(d) of the Act and that therefore I do not have jurisdiction to determine this complaint from Mrs Giles.

Complaint Two. That contrary to GMB Rule 6 section(2) the GMB at its hearing on 17 October of Mrs Giles complaint, did not allow her to hear contrary evidence, or to question it.

3.1 Union Rule 6.2 under the heading "Appeals Procedure" states:

"At each hearing before the Branch or Regional Committee(as the case may be), the member shall have the reasonable opportunity to present his/her case. He/she may put his/her case orally or in writing, and shall have the right to support his/her case by written statements, or to produce witnesses. He/she shall have the right to hear contrary evidence, to answer it and to question witnesses."

Further background

- 3.2 Mrs Giles felt that Mrs Coslett's letter of 8 November 1999 constituted an action contrary to the aims of the union as specified in National Rule 45(which relates to the condition of appointment of Shop Stewards) and National Rule 2(which stipulates what the union should do to promote the best interests of its members). Mrs Giles, for a variety of reasons did not take the matter up with her branch secretary,(Mrs Coslett) as under Rule 6.1 she should have done. She did, though, discuss it with Mrs Monger whom she believed was her branch secretary. Mrs Monger passed the matter to the Union's Regional Office in Cardiff. When nothing happened Mrs Giles on 8 January 2000 wrote to Mr C James, a Regional Organiser at the Cardiff office to make a formal complaint against Mrs Coslett *'to the Regional Council or Central Executive Committee.'*
- 3.3 In subsequent correspondence, Mrs Giles complained to John Phillips, a GMB Senior Organiser, that her complaint had not been acknowledged and that she wished to know how her complaint was being dealt with by the Cardiff office. Mr Phillips arranged for Mrs Giles to meet Mrs Marilyn Brown(the Regional Legal Officer) and himself on 5 April 2000, to discuss the matter. As a result of this, Mrs Coslett was also invited to discuss Mrs Giles' complaint with Clive James, Regional Organiser. On 2 May 2000, Mrs Giles wrote to the Regional Office to ask what had transpired at the meeting with Mrs Coslett. Mr John Phillips replied on 5 June 2000 by saying that discussion with Mrs Coslett had revealed that, in the union's view Mrs Coslett had generally been acting in the interests of her colleagues as an employee of the company and not as a GMB representative. Further, that in doing so she had not jeopardised Mrs Giles' personal injury claim. The Region's findings were that Mrs Coslett had not acted in breach of the union's core rules 2 and 45 and Mrs Giles' complaint was not therefore upheld.

- 3.4 On 5 July, Mrs Giles responded to the Region's decision contained in Mr Phillips' letter of 5 June, by appealing to the Area Committee. This was on two grounds: firstly, that a union rule had not been complied with, in so far as *'I shall have the right to hear contrary evidence, to answer it and to question witnesses.'* Secondly, that the conclusions of the Region in its findings were based on incorrect and flawed information. In response to this letter, Mr Phillips advised Mrs Giles of her right of appeal to the Regional Committee under GMB rule 6.1. Mrs Giles' appeal was heard by the Regional Committee on 17 October 2000 and its decision to dismiss the appeal was communicated to Mrs Giles in writing by the Regional Secretary on 20 October 2000.
- 3.5 In subsequent correspondence with the Regional Office, Mrs Giles challenged the validity of its decision. On being dissatisfied with the union's response, Mrs Giles made a formal complaint to me on 22 January 2001 alleging that the appeal hearing on 17 October had not been conducted according to union rule 6.2.

The Applicant's case

- 3.6 Mrs Giles argued that she believed GMB Rule 6.2 had been breached because, at the appeal hearing on 17 October 2000, she had not been allowed to hear contrary evidence or to question it. Mrs Giles said that a letter of 19 June 2000 from the store's personnel manager called into question the validity and truthfulness of Mrs Coslett's answers to Mr Phillip's enquiry on which the Region's decision had been based. She thought that this should have triggered a fresh enquiry by Mr Phillips into Mrs Coslett's conduct. Mrs Giles had appealed against the GMB officer's decision of 5 June 2000 on the grounds that she had not been able to hear this contrary evidence to answer it, or to question Mr

Philips about the truthfulness of Mrs Coslett's evidence. In Mrs Giles view, Mrs Coslett should have been present both at the 5 April meeting and 17 October appeal hearing to enable questions to be put to Mrs Coslett about her original statements. At any rate, Mrs Giles had expected Mrs Coslett to be present at 17 October hearing to enable Mrs Coslett's statements, which in Mrs Giles' view constituted the true contrary evidence, to be heard and for Mrs Giles to answer them, in accordance with her interpretation of rule 6.2.

The Union's response

3.7 The union argued that the only contrary evidence presented to the Regional Committee on 17 October was that of Mr Phillips. He reported on the conduct and conclusions of the investigation he and his colleagues had undertaken into Mrs Giles' complaints about Mrs Coslett. Mr Phillips was the only witness to give contrary evidence to the Regional Committee and it was the union's view that Mrs Giles heard all that evidence. Thus, in its view, Mrs Giles had heard all the contrary evidence presented at the 17 October appeal hearing.

3.8 In presenting all the contrary evidence, the union said that the Regional Committee gave Mrs Giles the opportunity to answer Mr Phillips and to question him. Mrs Giles allegedly availed herself of this right and according to the union, none of Mrs Giles' questions, comments or observations to Mr Phillips were disallowed by the Committee. Thus, the Union argued that it had fulfilled its duty under rule 6.2 to Mrs Giles and no breach of rule 6.2 had occurred. Moreover, in its letter of 3 November 2000 to Mrs Giles, the Regional Secretary, Mr Garley, asserted that Mrs Giles had acknowledged and agreed

with the Regional President that she had been given every opportunity to present and support her case and that she was (despite later denials) content with the manner in which her appeal had been conducted.

Reasons for my decision

3.9 At the outset, there was a conflict of view between Mrs Giles and the Union as to the soundness of the 17 October hearing. Mrs Giles claimed that the procedure at that appeal was flawed because Mrs Coslett's original testimony to the Regional Officers, which formed part of the Union's evidence, had been shown to be untrue in one main aspect. That was, the question of whether the letter written by Mrs Coslett had been requested by the ASDA Personnel manager or whether as Mrs Giles claimed, Mrs Coslett had written it of her own volition. Because Mrs Giles could not question Mrs Coslett on this at the original complaint stage or at the appeal hearing, Mrs Giles believed she had not therefore actually heard contrary evidence, let alone been able to answer it. The union's view was that Mr Phillips presented the only contrary evidence on the day and that it was this contrary evidence that Mrs Giles heard, answered and then confirmed to the Regional President that she was satisfied with the conduct of the appeal hearing.

3.10 My view is that Mrs Giles' complaint to me concerns the events at the 17 October 2000 appeal hearing and I am not therefore required to take into account the events leading up to that hearing. That said, I must consider this complaint in the light of what Rule 6.2 actually requires of the union. The wording of this rule is precise in saying that the complainant shall have the right to hear contrary evidence and to answer it. This is what Mrs Giles has complained of and hence what I have based my decision on.

3.11 GMB Rule 6.2 is silent as to what constitutes ‘contrary evidence.’ It simply says that the member has the right to hear it and to answer it. It is common ground that Mr Phillips presented such contrary evidence and that Mrs Giles was afforded the opportunity to answer it, albeit that that evidence did not emanate from Mrs Coslett in person, as Mrs Giles believes it should have done. In my view, though perhaps desirable, there is no presumption that Mrs Coslett should have been invited to the appeal hearing. The source of the contrary evidence is not alluded to in Rule 6.2, nor is it prescriptive in terms of who should present it. I am therefore of the opinion that it was quite legitimate and within the terms of Rule 6.2 for Mr Phillips to present the contrary evidence and that Mrs Giles was not denied the opportunity to hear and answer it.

3.12 For these reasons I found that no breach had occurred and accordingly I dismissed this complaint.

E G WHYBREW

Certification Officer