

DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE UNDER SECTION 5  
OF THE TRADE UNION ACT 1984

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IN THE MATTER OF A COMPLAINT AGAINST THE  
TRANSPORT AND GENERAL WORKERS' UNION

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DATE OF DECISION

4 August 1988

**DECLARATION**

Under section 5 of the Trade Union Act 1984 (the Act) I am empowered to make a declaration applied for by any person who claims that their trade union has failed to comply with one or more of the provisions of Part I of the Act. In making the declaration, I am required to specify the provisions with which the trade union has failed to comply.

For the reasons which follow I declare that in relation to the election, held between 11 January and 5 February 1988, of two representatives of the Region No. 1 (Inside - A) constituency of the Transport and General Workers' Union to serve for two years on the General Executive Council of the Union, the Union failed to comply with section 2(7) of the Act, (or with that section as it may be modified by section 3(1)), in that the Union failed to do all that was reasonably practicable to ensure that a member of Branch 1/1284 of the Union was sent or had made available to him or was supplied with a voting paper and was given an opportunity to vote in the manner required by those sections.

The Application

national trade groups. The territorial regions are in some cases broken down into smaller constituencies. This application relates to the ballot early this year to elect representatives from the Inside - A constituency of Region No. 1 (London and Home Counties). The complainant is a member of Branch 1/1284 (Oil Trades), which lies within that constituency.

3. Members of the Branch were entitled to vote in that election. The Union informed me that the Branch covers the Oil Trades membership at Heathrow Airport, and that members of the Branch are scattered over a number of sites. The Union stated that, in preparation for the ballot, they issued instructions to Branch secretaries; Branch secretaries then appointed scrutineers to inform the members about the ballot and to organise voting at the workplace where practicable. Notices were placed on all union notice boards in what are called, in and around Heathrow, "crew rooms" and these stated that members for whom a work place ballot was impracticable would be given a postal vote. The Union's journal also carried notices to the same effect.

4. It was stated by the Union that, in the event, the employer of the complainant was unwilling to grant facilities which would have enabled a work place ballot to be held on the particular site where the complainant worked. For his part the complainant does not accept this. He stated that in any case he had no knowledge of the ballot until after it was over and that accordingly he did not get an opportunity to vote.

#### Reasons for making the Declaration

5. It seems to me that this case turns on whether the Union did all that was reasonably practicable to ensure that this complainant had a proper chance to vote; which is to say, to obtain a voting paper and to vote in one of the ways specified by section 2(7) of the Act or by that section as it may be modified by section 3(1). The Union stated that they took all reasonable steps to make members of Branch 1/1284

aware of the arrangements for the ballot and, the complainant's doubts notwithstanding, this would appear to be a fair statement of the general position. However the union have acknowledged that it was known in advance to the persons organising the ballot within Branch 1/1284 that they would not be able to offer an opportunity to vote at the complainant's place of work. They have also acknowledged that in the circumstances it would have been appropriate in this instance to offer the complainant (and presumably others working at the same site) a specific postal vote. They readily accepted that responsibility for the failure to do so must lie with the Union.

#### Observations

6. I was told that the Branch has 258 members and that, as it turned out, their votes could not possibly have affected the result of the election. I have seen the declared results, and the size of the winning margin of the two elected candidates over the nearest contender appears to confirm this. However, although the lapse affecting the complainant was clearly a case of local error rather than of deliberate policy or of inherent defect in the electoral system, it nevertheless offers a lesson for the Union. In response to my enquiries into the complaint, they fully acknowledged fault in this case and expressed regrets for what happened. The complaint was justified.