

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

MR G DOWNING

v

THE TRANSPORT AND GENERAL WORKERS UNION

Date of Decision:

15 November 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 Transport and General Workers Union (“the Union”) acted in breach of the rules of the Union.

1. I refuse to make the declaration sought that the Union was in breach of its rule 11.5 in that the Applicant was denied the right to stand for the position of Unit Chair/Convenor of Metroline Travel.
2. I refuse to make the declaration sought that the Union was in breach of its rule 9 because no nominations ballot or show of hands vote took place and hence no nominations were made at the biennial nominations meeting of 25 September 2001 for the positions of Transport Sector and London Advisory Committee representatives, Cricklewood 1/342 Branch.

REASONS

1. By an application dated 1 November 2001 the Applicant made a number of complaints against his Union, the Transport and General Workers Union (“the Union”). Following correspondence with my office two complaints of alleged breaches of the rules of the Union were pursued. These are:

1.1 The Union on 25 September 2001 breached its rule 11.5 in that the Applicant was denied the right to stand for the position of Unit Chair/Convenor of Metroline Travel.

1.2 Contrary to union rule 9 no nominations ballot or show of hands vote took place and hence no nominations were made at the biennial nominations meeting of 25 September 2001 for the positions of Transport Sector and London Advisory Committee representatives, Cricklewood 1/342 Branch.

These are matters within the jurisdiction of the Certification Officer by virtue of section 108A(2)(a) of the 1992 Act.

2. These matters were investigated 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 Monday 21 October 2002. The Union was represented by Mr Collins (Assistant General Secretary). Mr McDermott (Regional Secretary for the Union’s London and South East Region) and Mr Scanlon (a Regional Industrial Organiser for the Union) gave evidence on behalf of the Union. The Applicant acted in person and gave evidence. A bundle of documents was prepared for the hearing by my Office. This consisted of the 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.
3. I determined these complaints according to the powers delegated to me by the Certification Officer under Section 254(3) and (4) of the 1992 Act.

Procedural Issues

4. On 17 October 2002 the Applicant approached my office seeking a postponement of the hearing to a later date. The Union was informed of the Applicant's request and both sides were told that I would hear them on this issue at the outset of the hearing but that they should also come to the hearing prepared to proceed with argument on the substantive issues.
5. The Applicant's argument was that he had brought an Employment Tribunal claim against his employer in which he alleged collusion with certain union representatives in having dismissed him unfairly. The Applicant's barrister, in his Tribunal application, had advised the Applicant that he should also be represented at the hearing before the Certification Officer as the two cases were related. As that barrister was not available to represent him before me, the Applicant wished the case to be postponed.
6. The Union opposed this request as the issues before me had been known for a long time and, in its view, was a simple matter as the central issue had nothing to do with unfair dismissal but was whether Union rules had been broken.
7. After a short adjournment I decided to proceed and explained to the parties that in the absence of any written request or advice from the barrister I could not see sufficient inter relationship between the Applicant's Tribunal case and the complaints that he had put to me to determine. Moreover under section 108B(2)(c) I was under an obligation to endeavour to determine complaints, so far as is reasonably practicable, within 6 months of them being lodged. For various reasons that period would be exceeded in this case and further delay could not be justified.

Findings of Fact

8. Having considered the representation made to me and the documents to which I was referred I make the following findings of fact.
9. The Applicant is a member of the Cricklewood 1/342 Branch of the Union ("the

Branch”). At the relevant time he worked in one of several bus garages operated by Metroline Travel. At the biennial nominations meeting of his Branch on 25 September 2001, the Applicant, who had been previously nominated for the position of Garage Representative, was told by the current Unit Chair/Convenor of Metroline Travel, Mr Harry Foley, that as he had been nominated for the Garage Representative position, the Constitution of the Central Bus Committee (“the CBC”) prevented the Applicant from also standing for the position of Unit Chair/Convenor of Metroline Travel.

10. The minutes of the meeting state *"Bro Downing was then asked which job he wanted to run for as he could not stand for the reps job and the Unit Chairs job. He would have to choose which one. Bro Downing elected to run for the reps job and declined the nomination for the Unit Chair."*
11. At the same meeting, the positions of Transport Sector and London Advisory Committee representatives also came up for nomination. The Applicant and Mr Foley were both nominated for these two positions. There was considerable confusion. The Applicant and the Branch Officers were in disagreement as to how the nominations vote should be taken and whether more than one nomination could go forward. At the conclusion of the meeting of 25 September 2001, no nominations went forward for the election to those two posts.
12. The Applicant wrote to the General Secretary of the Union on 26 September 2001 complaining among other things that the Unit Chair/Convenor, Harry Foley, had informed him that as he (the Applicant) had already been nominated as a garage representative he could not, according to the CBC Constitution, also stand as a Unit Chair/Convenor. The Applicant alleged that he had never seen the CBC Constitution and that in his opinion it must contravene his democratic rights. He also notified the General Secretary of some confusion as regards the Branch procedure in advising Branch members about the Unit Chair/Convenor nominations. The Applicant referred to the General Secretary's letter of 12 December 1998 which purported to deal with a similar situation in the previous round of nominations and involved the advice of the Regional Secretary in the matter. At the same time (26 September 2001), the Applicant complained to the General Secretary that (in his opinion), through an erroneous ruling

of the Branch Chairman, no vote had been taken at the Branch Biennial Nominations meeting of 25 September 2001 for the positions of London Advisory Committee and Transport Sector representatives.

13. The General Secretary acknowledged the Applicant's letter on 30 September 2001 and advised him that the matters he complained of had been referred to the Regional Secretary and once he had reported back, the General Secretary would write to the Applicant again on these issues.
14. The Applicant first raised his complaints with the Certification Office on 1 November 2001. After making enquiries of the Union and the Applicant into two other matters raised by the Applicant, which my office considered were not within my jurisdiction, my office recognised that the Applicant had endeavored to resolve his complaints through internal procedures of the Union and my office accepted the two complaints of breaches of rules 11.5 and rule 9. These were put to the Union on 25 April 2002 for its formal response.
15. There is no single coherent set of rules covering the operation of the Transport and General Workers Union in the London bus area. Before privatisation in the late 1980s there was a Union booklet called "Procedure and By Laws to Govern the Central London Area Bus Section". With the establishment of numerous separate bus operating companies the Union structures changed too. In 1988 the Union held London Bus Conferences to consider proposals for restructuring. Although the minutes of those conferences show that a series of reports were made, amended and accepted they did not seem to give rise to a comprehensive replacement for the previous booklet. Subsequently branches adopted their own standing orders. As a result of all this the Union accepts there is a distinct absence of any clarity in the rules and procedures governing the operation of the Union in the London bus area.

The Relevant Statutory Provisions

16. 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 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 sections (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) ...
- (c) ...
- (d) ...
- (e) ... ”

17. 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.

18. 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.

19. Section 254(3) *“The Certification Officer may appoint one or more assistant certification officers...”*

20. Section 254(4) *“The Certification Officer may delegate to an assistant certification officer such functions as he thinks appropriate,...”*

The Union Rules

21. The Union rules relevant to the Applicant’s complaints are as follows: -

RULE 9 REGIONAL INDUSTRIAL SECTOR, TRADE GROUP AND DISTRICT COMMITTEES

9.1 For the purpose of conducting the industrial business of the Union there shall be Regional Industrial Sector Committee for each of the industrial sectors in each region which shall hold office for the same period as the General Executive Council as provided for in rule 6, clauses 3 to 6.

- 9.2 Each Regional Industrial Sector Committee shall be composed of one or more members from each Regional Trade Group or District as specified in Rule 3, clause 6.
- 9.3 The size of the Regional Industrial Sector Committee shall be determined by the General Executive Council after consultation with the Regional Committee. Women's representation shall be proportionate to the respective membership of the Regional Industrial Sector. By the end of the biennial period 2002/2003 black and Asian ethnic minority representation shall be proportionate to the respective membership of the Regional Industrial Sector.
- 9.4 The Regional Industrial Sector Committee shall meet at least once every six months. Special meetings may be convened in consultation with the Regional Secretary.
- 9.5 The Regional Industrial Sector Committee shall be consulted upon and advise as to all matters directly affecting the interests of the sector.
- 9.6 Officials of the sector shall attend committee meetings and submit reports on questions of organisation, wage movements, and other matters connected with the industries covered by the Committee.
- 9.7 For the purpose of conducting trade group business of the Union there shall be a Regional Trade Group or District Committee for each of the trade groups in each region which shall hold office for the same period as the General Executive Council as provided in Rule 6, clauses 3 to 6.
- 9.8 For the Regional Trade Group or District Committee the method of election shall be organised and conducted in accordance with the directions from time to time of the General Executive Council.
- 9.9 The size of the Regional Trade Group or District Committee shall be determined by the General Executive Council after consultation with the Regional Committee. Women's representation shall be proportionate to the respective membership of the Regional Trade Group or District. By the end of the biennial period 2002/2003 black and Asian ethnic minority representation shall be proportionate to the respective membership of the Regional Trade Group or District.
- 9.10 The Regional Trade Group or District Committee shall meet at least once every six months. Special meetings may be convened in consultation with the Regional Secretary.
- 9.11 The Regional Trade Group or District Committee shall be consulted upon and advise as to all matters directly affecting the interests of the group.
- 9.12 Officials of the group shall attend committee meetings and submit reports on questions of organisation, wage movements, and other matters connected with the industries covered by the Committee.
- 9.13 Each member of the Regional Industrial Sector, Regional Trade Group or District Committee shall receive payment in accordance with the schedule laid down by the General Executive Council.

Rule 11 Branches

- 11.5 Collectors and/or Shop Stewards may be appointed by a Branch subject to the right of members to elect shop stewards in the following paragraph and subject to the approval of the General Executive Council, whose duty shall be to record payments made in the book provided, and pay into the Branch the actual amounts collected at least once a week.

For the purpose of representing membership on matters affecting their employment, a shop steward or equivalent representative shall be elected by the membership in a defined working area, or at a Branch meeting, by a show of hands or ballot as may from time to time be determined.

Elections shall take place at least once every two years and the membership concerned may require to have special elections or elections at defined periods within this period. The representative so elected shall be in compliance and act in accordance with the Union Rules and Policies. Details of elected representatives shall be submitted to the District Officer of the Union who will be required to notify the employer concerned and report the details to the appropriate District Committee and Regional Committee for its ratification.

Rule 13 Ballot Voting

- (3) In all ballots of the Union to which this rule applies the election shall be organised and conducted with the directions from time to time of the General Executive Council.

COMPLAINT 1

That the Union on 25 September 2001 breached its rule 11.5 in that the Applicant was denied the right to stand for the position of Unit Chair/Convenor of Metroline Travel.

The Applicant's Submission

22. The Applicant stated that at the Cricklewood 1/342 Biennial nominations meeting held on 25 September 2001, Harry Foley, who was the current Unit Chair/Convenor, informed the Applicant that as he ("the Applicant") had been nominated to stand as Garage Representative he could not also stand for nomination as the Unit Chair/Convenor. Mr Foley is alleged to have said that this was because the constitution of the CBC stipulated that Garage Representatives could not also stand as Unit Chair/Convenors. The Applicant felt that this undermined his democratic right and that of other representatives to contest elections.

23. The Applicant stated that the relevant section of TGWU Rule 11.5 was that:

"For the purpose of representing membership on matters affecting their employment, a shop steward or equivalent representative shall be elected by the membership in a defined working area, or at a Branch meeting, by a show of hands or ballot as may from time to time be determined."

24. The Applicant argued that although the position of Unit Chair/Convenor was not expressly covered by name in the rules, the position of Unit Chair was in his view electable under rule 11.5 and that in asking for nominations, the Branch and Region had acknowledged this fact. As it was neither a Branch Officer nor an Official's position it had to be a representative's position. It was the Applicant's view that in the London Bus region, the position of Unit Chair/Convenor was the equivalent of workplace representative. In so far as the Unit Chair/Convenor was elected to deal with the affairs of a number of Metroliner Garages, this meant that the Unit Chair/Convenor had been elected as a representative operating in 'a defined working area' as specified in rule 11.5.
25. Thus, in the Applicant's view, the position of Unit Chair/Convenor came within the scope of rule 11.5. This gave him the right to complain that he had been denied the right to stand for nomination as a Unit Chair/Convenor. This he argued was supported by the London Special Bus Conference of 6 December 1988 which made it clear that 'the Unit Chairperson be elected from and by the membership', and that a Branch Representative would be eligible to stand as a Unit Chairperson. The Applicant went on to say that a document 'Negotiating and Consultative machinery of Drivers/operators' stipulated that the Unit Chairperson must be a lay representative elected from and by driver/operators. The Applicant further maintained that as he had only been nominated as garage representative and not elected to that post, he was not ineligible to stand for the nomination of Unit Chair/Convenor, as ruled by the Branch Chairman. This unconstitutional ruling forced him to make a choice he was not required to make.

The Union's Response

26. The Union argued that the position of Unit Chair/Convenor was an anomalous position not covered in the Union rule book. The Union maintained that the Metroliner Unit Chair/Convenor was not a workplace representative. The position was in fact a representative of the whole constituency of Metroliner garages and was elected by the whole membership within Metroliner to represent its interests. As such, in order to be independent of the local issues which were solely the garage representative's concern, the Unit Chair could not also be a garage representative. The Chairman of the Special

London Bus Conference on 6 December 1988 had pointed out, in response to a question, that Branch Representatives would be eligible to stand for the Unit Chairperson position but if elected would have to resign the Garage Representative's position.

27. The Regional Secretary, Mr McDermott gave evidence for the Union to the effect that Garage or Branch Representatives were workplace representatives operating solely in the interests of matters of concern to the Branch *per se*. No Branch or garage could elect a representative whose responsibilities encompassed more than those at a particular Branch. Moreover, the Unit Chair position was, according to Mr McDermott, not a constitutional post subject to rule as was the Branch Representative, but an industrial post which performed more of an overseeing role. There was no obligation on a branch to make a nomination for the Unit Chair position. In Mr McDermott's experience it was not unknown for a Branch not to make a nomination for the Unit Chair/Convenor post.
28. The substance of the Union's case, it said, turned on the events of the Cricklewood 1/342 Branch Biennial nominations meeting of 25 September 2001. The Union said that if the Branch had actually nominated the Applicant for the Unit Chair/Convenor position he would have had the right to stand but in fact the Branch had not nominated him. The Union admitted that the Applicant had been nominated by an individual previously but that had not had the Branch's endorsement. The minutes of the 25 September meeting, the Union contended, clearly showed that after some discussion about the nomination and debate about whether a vote should take place on the matter, the Branch made no nomination and the meeting closed on that note.
29. The minutes of the 25 September 2001 meeting record that towards the end of the meeting the Applicant was asked which job he wanted to run for because he could not stand for the (garage) representative job and the Unit Chair job at the same time. The Applicant elected to run for the garage representative's job and declined to stand for the nomination for the Unit Chair job.

Conclusion

30. The Applicant has argued that he was denied the right to stand for the position of Unit Chair/Convenor of Metroline travel. He was told this was because the constitution of the CBC stipulates that as a candidate for the garage representative, the Applicant may not also stand for the Unit Chair/Convenor's position. He therefore claimed that the Union was in breach of its rule 11.5. The Union have argued that rule 11.5 does not apply to this post, which as an industrial function rather than a constitutional one, is outside the scope of the rule book in general and rule 11.5 in particular.
31. Although I heard considerable argument about whether Rule 11.5 applies to the post of the Unit Chair/Convenor I do not believe I have to decide this issue. Even if Rule 11.5 does apply, I note that unlike Rule 11.4 it relates entirely to posts which a branch or members in a defined working area may fill. There is no requirement on the Branch to see that such posts are filled. Moreover given that any responsibilities of the post go beyond the workplace covered by the Branch, the key role for the Branch in filling the post must be to nominate candidates. The relevant part of Rule 11.5 concerns how voting in any elections shall be conducted. Nothing in it refers to the way in which nominations for any post should be sought and or decided.
32. It is a matter of fact that nothing was put before me as having been circulated to Branches regarding the nominations and appropriate procedures relating to the Unit Chair/Convenors's position. Indeed although Rule 9.8 stipulates that "*the method of election shall be organised and conducted in accordance with the directions from time to time of the General Executive Council*" nowhere do those directions say anything about nominations. I have to conclude that there was nothing in rule or in Union policy that compelled individual Branches to nominate.
33. Further, I agree with the Union that the evidence relating to the 25 September 2001 meeting points to a conclusion that the branch did not advance a nomination for this post. Before reaching my final conclusion on this complaint I should consider how this matter was dealt with at the nominations meeting on 25 September 2001.

34. In my reading of the events as recorded in the Branch's Biennial Nominations meeting on that date, the Applicant was told he could not stand for both the Garage Representative and Unit Chair/Convenor position.
35. I do not believe this is a correct interpretation of the Union's rules or policy on this matter. At the London Bus Conference meeting in December 1988 the Chairman is reported as saying that "Branch representatives would be eligible to stand for Unit Chairperson, but if elected, he/she would have to resign the Representatives position." Leaving aside the question of whether such a statement is, or accurately reflects, a Union rule or policy, that statement leaves it open to someone to stand for both posts. Certainly in my view there is nothing here to stop the Applicant being nominated for two posts but if he had been successful in elections for both he could not have held both. In so far as the Applicant was asked to choose which post he stood for the Applicant was asked an improper question. Therefore too much weight cannot be given to his choice to stand as Garage representative and not as Unit Chair/Convenor.
36. The reasons given for not allowing the Applicant to have his name put forward for the post of Unit Chair/Convenor were not strictly in accord with Union policy. I do not know if this constituted a breach of any other rule of the Union. But I am clear that not allowing his nomination to go forward was not a breach of Rule 11.5. This rule did not require the branch to put forward a nomination nor did it constrain the branch in how it reached that decision.

COMPLAINT 2

That contrary to rule 9 no nominations ballot or show of hands vote took place and hence no nominations were made at the biennial nominations meeting of 25 September 2001 for the positions of Transport Sector and London Advisory Committee Representatives, Cricklewood 1/342 Branch.

The Applicant's Submission

37. The Applicant has complained that contrary to rule 9, no nominations ballot or show of hands vote took place at the biennial nominations meeting of 25 September 2001 for

the positions of Transport Sector and London Advisory Committee representatives, Cricklewood 1/342 Branch. The Branch Chairman refused to allow a vote on the nominations and as such contravened the requirements of rule 9, which in the Applicant's opinion stipulated that a vote should take place.

38. In the Applicant's view the branch Chairman's refusal, at the request of Mr Foley, to allow a vote either on how to proceed or on which nomination should go forward (on the grounds that it would be undemocratic not to involve the whole branch membership and that lack of time prevented a separate vote of the membership), was not justified or within the rules. In the Applicant's view this contravened the requirements of Rule 9 which he claimed stipulated that a vote should have taken place and a nomination put forward.

The Union's Response

39. The Union responded that nominations may be made on a whole range of Union positions but in its view, there was no compulsion in Rule for the Branch to make nominations other than for example, the key positions of Branch Chairman and Branch Secretary. Certainly there was no obligation on the Branch to put forward a nomination for the positions referred to in the Applicant's complaint. Thus, in the Union's view the Branch was left with a choice either to nominate or not nominate for the Transport Sector and London Advisory Committee Representatives, which were not Branch posts.

The only reference in rule 9 to either nomination or election to these two posts occurred in rule 9.8 which states:

“...the method of election shall be organised and conducted in accordance with the directions from time to time of the General Executive Council.”

40. Rule 9 was therefore silent as to any requirements to nominate. The Union contended that the transcript of the Cricklewood 1/342 Branch Biennial Nominations meeting was clear that there was a failure to agree a nomination and that in deciding not to nominate, the Union had not breached rule 9 or any other rule.

41. The Union also pointed out that had the Applicant thought that the Chairman of the Branch meeting on 25 September 2001 was proceeding in a way that was out of line with the feeling of the meeting he could have moved a vote of no confidence in the Chair. He did not appear to have attempted this and the Union suggested that this meant that the failure to nominate anyone to these posts was at least acceptable to the majority present at the meeting.

Conclusion

42. Having heard the arguments of both the Applicant and the Union, I accept the Union's view that the failure to agree on a nomination for the posts of Transport Sector and London Advisory Committee Representatives at the Biennial Nominations meeting of 25 September 2001 did not breach its rule 9.
43. In my view, because rule 9 is silent in the matter of nominations for these positions, and as I was not made aware of any other guidance, for example by way of circular, or other communication from the Union to assist the Branch in the nomination process, the Branch was under no compulsion to make a nomination. I accept the Union's evidence that the failure to agree was in effect a decision not to nominate and that this was not a breach of rule 9.

Observation

44. Whilst I find for the Union in both complaints, it seems to me that there is a great deal of confusion about how the Union structures work, post-privatisation, with regard to the above positions. This is not assisted by the lack of general guidance available at Branch level as to how these various Union positions fit into the Union's hierarchy and hence what position is, or is not covered by what rule or Union regulation.
45. I do not expect union rule books and regulations to cover every eventuality - particularly in a union such as the Transport and General Workers Union which covers so many diverse situations. However the lack of clarity in this situation makes the

position very difficult for ordinary members to know and exercise their rights and duties. It also provides scope for unscrupulous members and office holders to exploit the situation for their own ends. In the circumstances I am relieved to note the Union's undertaking to review the constitutional structures governing the regulation of various posts within the London Bus Area with the aim of making arrangements to ensure that members are made aware of the arrangements which regulate the conduct of its affairs in relation to all of these positions.

E G Whybrew
Assistant Certification Officer