

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE
UNDER SECTION 82 OF THE TRADE UNION AND LABOUR RELATIONS
(CONSOLIDATION) ACT 1992**

**IN THE MATTER OF A COMPLAINT
AGAINST THE IRON AND STEEL TRADES CONFEDERATION**

Date of Decision: 12 September 1994
Date Reasons for Decision Published: 13 October 1994

Under Section 82 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the Act) if a member of a trade union is aggrieved by a breach of the union's political fund rules made in pursuance of Part I Chapter VI of the Act, he may complain to the Certification Officer. If, after giving the member and the union an opportunity to be heard, I consider a breach has been committed I may make such order for remedying the breach as I think just in the circumstances.

The application

1. On 28 August 1993 I received a formal complaint from a member of the Iron and Steel Trades Confederation (the union) alleging that certain payments in furtherance of political objects of the union had been made out of the general rather than the political fund of the union in contravention of statute. In the course of subsequent correspondence the initial complaint was developed to a total of four alleged breaches of the Act's requirements.

2. These related to expenditure from the general fund:-
 1. On the salary and expenses of the complainant (an employee of the union) while working for the return of the Labour Party candidate in Darlington in the 1992 General Election;
 2. Of £25 to buy an advertisement in a brochure for a Constituency Gala Evening;
 3. On the salary and expenses of the complainant when attending meetings of Trade Unions for Labour and the Northern Regional Executive Council of the Labour Party;
 4. Covering the work of a Mr Paterson (another employee of the union) in another constituency during the 1992 General Election.

I shall refer to these as Counts 1-4.

3. On Count 2 the union conceded in correspondence that the payment should have been from the Political Fund. The other three Counts were the subject of a hearing on 2 September. At that hearing the union was represented by Mr Gavin Millar of Counsel instructed by Mr A F Whitehead of Russell Jones and Walker. The complainant represented himself and was accompanied by a friend who was a member of the union.

The requirements of the legislation

4. The provisions of the 1992 Act relevant to this complaint are found in sections 82, 71, 72 and 73.

5. Section 82 of the Act provides a requirement for a union wishing to engage in political activities to have rules providing for payment to be made out of a political fund and also an avenue of complaint if these rules are broken. It reads:

"(1) The trade union's rules must provide:-

(a) that payments in the furtherance of the political objects to which this Chapter applies shall be made out of a separate fund (the "political fund" of the union);

(2) A member of a trade union who claims that he is aggrieved by a breach of any rule made in pursuance of this section may complain to the Certification Officer.

(3) Where, after giving the member and a representative of the union an opportunity of being heard, the Certification Officer considers that a breach has been committed, he may make such order for remedying the breach as he thinks just under the circumstances.

(4) Any such order, on being recorded in the county court or, in Scotland, the sheriff court, may be enforced in the same way as an order of that court".

6. Section 71 establishes a further requirement on unions wishing to pursue political objects to have in force both a 'political resolution' approving those objects and a rule for making payments in furtherance of those objects from a separate fund.

7. Section 71 states:

"(1) The funds of a trade union shall not be applied in the furtherance of the political objects to which this Chapter applies unless -

(a) there is in force in accordance with this Chapter a resolution (a "political resolution") approving the furtherance of those objects as an object of the union (see sections 73 to 81), and

(b) there are in force rules of the union as to -

(i) the making of payments in furtherance of those objects out of a separate fund, and

which comply with this Chapter (see sections 82, 84 and 85) and have been approved by the Certification Officer.

(2) This applies whether the funds are so applied directly, or in conjunction with another trade union, association or body, or otherwise indirectly".

8. Section 72 of the Act details the political objects to which the restriction given in section 71 applies.

9. Section 72 states:-

"(1) The political objects to which this Chapter applies are the expenditure of money -

- (a) on any contribution to the funds of, or on the payment of expenses incurred directly or indirectly by, a political party;
- (b) on the provision of any service or property for use by or on behalf of any political party;
- (c) in connection with the registration of electors, the candidature of any person, the selection of any candidate or the holding of any ballot by the union in connection with any election to a political office;
- (d) on the maintenance of any holder of a political office;
- (e) on the holding of any conference or meeting by or on behalf of a political party or of any other meeting the main purpose of which is the transaction of business in connection with a political party;
- (f) on the production, publication or distribution of any literature, document, film, sound recording or advertisement the main purpose of which is to persuade people to vote for a political party or candidate or to persuade them not to vote for a political party or candidate.

(2) Where a person attends a conference or meeting as a delegate or otherwise as a participator in the proceedings, any expenditure incurred in connection with his attendance as such shall, for the purposes of subsection (1)(e), be taken to be expenditure incurred on the holding of the conference or meeting.

(3) In determining for the purposes of subsection (1) whether a trade union has incurred expenditure of a kind mentioned in that subsection, no account shall be taken of the ordinary administrative expenses of the union".

10. By means of Schedule 3 paragraph 8 of the 1992 Act in effect these political objects are deemed to be part of the rules of a union with a political fund whatever the actual words in the union rule book.

Jurisdiction

11. At the start of the hearing the union was reluctant to give its defence on Counts 3 and 4 until I had heard them on the question of whether in these two disputed instances the complainant was a member who was entitled to make a complaint to me under the Act.

12. Counsel referred me to subsection 82(2) of the Act which provides that only "a member" of a trade union may complain to the Certification Officer. He pointed out that when the initial complaint was made on 28 August 1993 it was in respect of two alleged breaches of the Act (which became Counts 1 and 2). Subsequently, in and after January 1994, in correspondence two further breaches (Counts 3 and 4) were raised by the complainant.

13. However by the time the two later allegations were made the complainant had been dismissed from his position as an official of the union. His membership of the union was only by virtue of his position as an official and he was thus by then no longer a member of the union. Although the union accepted that the complainant was a member when the initial allegations were made, he was not a member after November 1993 when the two later allegations (which were completely separate instances from those originally raised) were made. Counsel submitted that the two later complaints should therefore not be heard as the complainant was not eligible to bring these complaints to the Certification Officer:

14. The complainant responded that he accepted that he was not a member of the union after 18 November 1993 but argued that all four elements of his allegations were simply examples of the initial basic complaint. He pointed out that his initial letter made the complaint that the general funds of his union had been used for political purposes and went on to refer to "one example of such an abuse". That example became Count 1. Subsequently other examples came to his notice and these became Counts 2, 3 and 4. They were however no more than developments of his original complaint made when he was a member. He went on to say that if I did not accept this submission his colleague, accompanying him at the hearing, was a current member and would formally lodge the identical complaints constituting Counts 3 and 4 as soon as he was allowed to.

15. Recognising that I would reserve my judgement on whether the original complainant was in a position to pursue Counts 3 and 4 the union gave the following undertaking:

"Complaints 3 and 4 in the Certification Officer's letter of 11th August 1994.

The ISTC by its Counsel undertakes that upon:

- (i) ["The second complainant] entering a signed complaint in writing adopting in identical terms the above-mentioned complaints by ... [the first complainant] on or after the date of this hearing and before the decisions of the Certification Officer in this matter are issued and;
- (ii) the ISTC establishing that ... [the second complainant] is at today's date a member of the ISTC;

The ISTC will consent to the Certification Officer giving his decision in relation to the above-mentioned complaints, as if they had been made in ... [the second complainant's] name as at today's date".

On this basis I was able to consider all the Counts without further delay.

16. To settle the issue of jurisdiction I have to decide whether I am here dealing with one complaint which has four separate angles to it or with four separate complaints. Most complainants to me (quite understandably) act without the benefit of legal advice and their initial complaints are often wide ranging and somewhat diffuse. In this form they are difficult for unions to respond to and for me to decide. For that reason as a matter of policy I, and I believe my predecessors in this post, have endeavoured to make complainants clarify their case by focusing on specific complaints relating specific actions to specific legal requirements. So long as sufficient notice is given I have also accepted additional complaints as my investigation has proceeded. Inherent in this policy and reflected in the way decisions have been presented is the view that one investigation will often involve a series of separate but linked complaints. In this case there were two distinct complaints on which evidence was received by November 1993 and a letter from me dated 12 January 1994 proposed a hearing to consider these two complaints. Subsequently on 13 January what can properly be characterised as two further complaints - about different but related issues were lodged. On

that basis I conclude that the four Counts listed in paragraph 2 - each constitutes a separate complaint.

17. Against that background the original complainant not being a member at the time he raised them was not in a position to bring the complaints referred to as Counts 3 and 4. However both the conditions mentioned by the union, and detailed in its undertaking in paragraph 15, were met so I do have valid complaints covering Counts 3 and 4.

The complainants' case

18. The initial complainant was a former senior regional official of the union. He asserted that during the 1992 General Election he was instructed to assist the Darlington Constituency Labour Party and that he spent some considerable time in so doing. The days he spent doing this were booked as normal working time and travel and subsistence costs were paid. He provided copies of his weekly expense sheets to substantiate this, correspondence effectively authorising his attendance in Darlington and a schedule showing he was available there with a car for 7½ days between 26 March and 9 April 1992. There was no evidence that any of the costs of this work had been charged to the political fund. These matters form the substance of Count 1.

19. Count 2 related to the fact that in April 1993 on the authorisation of the union's Assistant General Secretary a quarter page advertisement costing £25 had been taken in a brochure for a fund raising gala evening organised by a Constituency Labour Party. The purpose of which could not be taken as to recruit members but only to support a political party. The authorising letter which was produced in evidence said the money should come out of petty cash rather than "The Labour Party Fund".

20. Count 3 related to the fact that the original complainant, with the knowledge and support of his employers (the union) was the union's representative at a great many meetings of a body known as Trade Unions for Labour and of the Northern Regional Executive Council of the Labour Party. He listed more than 75 such meetings he attended and for which he was paid travel and/or subsistence expenses. There was no evidence of any charge on the political fund for his time and expenses on these occasions which dealt virtually

entirely with political matters - such as how to secure victory for Labour Party candidates in European, national and local elections.

21. Count 4 related to an assertion that in the four to five weeks prior to the 1992 General Election the ISTC organiser from the Sutton Coldfield office (Mr Paterson) spent almost all of his working hours assisting an ISTC National Officer who was the Labour Party candidate in a Midlands Constituency. Again there was no evidence that the costs of this work had been charged to the political fund.

22. The complainants' case was that all of the activities which are the subject of Counts 1 to 4 were in furtherance of political objects and should have been charged to the union's political fund. In questioning they made clear that in their view all of the expenses involved in the activities listed in the four Counts should fall on the political fund. Similarly the time spent on the activities in Counts 1, 3 and 4 should be expressed as a proportion of the annual working time of the officials concerned and an equivalent proportion of their salaries should now be transferred from the political to the general fund.

The Union's case

23. In correspondence and in the course of the hearing the union made a number of formal admissions as follows:

1. None of the expenditure which is in question in the four Counts was drawn from the political fund;
2. The union was aware of the activities of the first complainant and of Mr Paterson which form the substance of Counts 1, 3 and 4;
3. Although they still see grounds for doubt they accept that the advertisement which is the subject of Count 2 was probably one which ought to have been paid from its Political Fund.

Having made those admissions they then argued that all of the expenditure on salaries or expenses involved in Counts 1, 3 and 4 had been a proper use of the union's general fund and that none of it was required to have been met from its political fund.

24. The first strand of their argument was that the expenditure involved in all of the disputed Counts formed part of the union's ordinary administrative expenditure. As such, even if it might otherwise have been classified as on political objects, it did not form a charge on the political fund. In this submission they relied on section 72(3) which states "In determining for the purpose of sub-section (1) whether a trade union has incurred expenditure of a kind mentioned in that sub-section, no account shall be taken of the ordinary administrative expenses of the union". (My emphasis).

25. Both the original complainant and Mr Paterson were full-time employees of the union and the union submitted that expenditure on their salaries and expenses was plainly expenditure of a type which on any ordinary meaning of the term constituted "ordinary administrative expenses of the union" and therefore not chargeable to the political fund.

26. In the union's view that conclusion from section 72(3) was the only one consistent with the words in it and with its purpose. They saw the intention behind the sub-section as recognising that unions cannot easily separate out from within the substantial body of ordinary administrative expenses, paid as a matter of routine out of the general fund, some small items (possibly requiring an apportionment exercise - as with salary) when the expenditure might technically (on very close consideration) be caught by the political fund rules.

27. It was argued that if I accepted this interpretation Counts 1, 3 and 4 must be dismissed. If I did not accept it their alternative case required a more detailed consideration of the Counts separately.

28. In practice the same arguments applied in relation to Counts 1 and 4. The union argued that neither the expenditure of salary nor the travel and subsistence expenses involved in the work of the original complainant and of Mr Paterson in the 1992 general election were of a kind mentioned in section 72(1). They contended that there was no contribution to the

funds of the Labour Party and that it would be stretching the language of section 72(1)(b) to absurdity to describe the two officials' attendance to electioneer as the provision of "a service". The only possible "political object" of this expenditure was that covered by 72(1)(c) "in connection with ... the candidature of any person ... in connection with any election to political office".

29. For the union the issue I have to decide is whether the apportioned salary and expenses paid in connection with the two instances of electioneering constitute:

"the application of the funds of the union in direct or indirect furtherance" of something in section 71 - namely "the candidature of any person ...".

That they identify as a question of fact and degree - an issue of proximity.

30. The difficulties implicit in the question of proximity raised by these provisions was graphically demonstrated by the Association of Scientific, Technical and Managerial Staff v Parkin to the Employment Appeal Tribunal [1983] IRLR 448, in which Counsel for ASTMS postulated the case of a lady who likes giving tea parties "Do I" he asked "further the holding of tea parties if I lend her money to buy a house?". In the view of the union in the present case the payment of salary to the two officials was in furtherance of their employment not in furtherance of what they may have been permitted or asked to do on a particular day. It was equivalent to the purchase of the house not the holding of the tea party.

31. The union accepted that at first sight there was a greater proximity between the payment of expenses and the candidatures in question. But these expenses were paid precisely because the two officers were officers of the union not because of what they were doing on the days in question. What was connected with the candidature was the official's election work not the expenses. It was, they further argued, because there was a doubt about the proximity between travel expenses and the expenditure on political objects that a specific provision was made in respect of the sub-section relating to the holding of meetings to the effect that expenses involved in travelling to a political meeting shall be taken as expenditure incurred on the holding of such an meeting. In the absence of a similar specific provision

about expenses in travelling to work "in connection with a candidature" doubt, to put it at its lowest, still exists.

32. Turning to Count 3 - expenses incurred in attending meetings of Trade Unions for Labour and the Northern Regional Executive Council of the Labour Party - the union repeated the argument about ordinary administrative expenses (see paragraphs 24 to 26). It then argued that the relevant political object could only be 72(1)(e) viz expenditure:

"on the holding of any conference or meeting by or on behalf of a political party or of any other meeting the main purpose of which is the transaction of business in connection with a political party".

The payment of salary to the two officers had nothing to do with the holding of the meeting and no express provision suggest it can be deemed to be part of the holding. Similarly subsistence payments cannot be so deemed. However if the main purpose of the meetings was political in the sense of 72(1)(e) then the union accepted that travel expenses should have been paid from the political fund.

Reasons for reaching my decision

33. On Count 2 I have reached my decision because the union conceded that the payment in question should have been made from the political fund and by the date of the hearing had transferred funds to that effect. I am convinced that it was right to do so as the purchase of the advertising space in the gala brochure represented "a contribution to the funds of, or the payment of expenses incurred directly or indirectly by, a political party", and there was no other transparent purpose.

34. On the other Counts there was little or no dispute about the basic facts. The payments were made out of the general fund by the union which was aware, (in the case of Counts 1 and 4 specifically and in Count 3 generally) of the activities on which the two union officials were engaged. I heard evidence, not contested by the union that Trade Unions for Labour meetings were to discuss tactics associated with giving support to Labour Party candidates in elections both local and national, and that the Northern Regional Executive Council of the Labour Party discussed the working and organisation of the Labour Party in

that Region. Clearly as a matter of fact these meetings fall within the definition of political objects in 72(1)(e).

35. The issues therefore turn on the interpretation of the legal requirements. In this context I have little difficulty in accepting of Mr Millar's starting point. Certainly any expenditure which can be legitimately labelled "ordinary administrative expenditure" does not have to be charged to the political fund even if in the absence of section 72(3) it would clearly have been found to be in furtherance of political objects.

36. The first question for me to consider then is whether the salaries and or the travel and subsistence expenses mentioned by the complainants constitute "ordinary administrative expenditure".

37. Taking salaries first. I heard from the original complainant that he had been employed on an annual salary in return for which he was expected to be at the union's beck and call 365 days a year, that he frequently worked evenings and week-ends on union business, usually in addition to, but sometimes instead of, a normal working day. Against that background I have to conclude that the union paid a salary to employ him and Mr Paterson on union business and that these salary payments were part of the ordinary administrative expenditure of the union. 'Ordinary' in the sense that they would have been incurred had the two employees not been despatched on political business.

38. No evidence was presented to show that the union was employing more people than it needed to carry out its normal business because some staff were heavily engaged in political activities. The original complainant and Mr Paterson were ordinary officers of the union, paid to carry out normal union duties. Expenditure on their salary constituted ordinary administrative expenses of the union, so in considering their salaries I do not have to consider whether or not they spent some of their time, voluntarily or otherwise, on political activities.

39. The issue of expenses is different. Certainly union officials are entitled to travel and subsistence expenses if their union's rules so provide. But in my judgement where those expenses arise solely out of 'political' activities and would not otherwise have been incurred

they cease to be ordinary administrative expenses of the union. They become expenses that are incurred as a direct result of political activity. As the expenses complaints do not fall at the first hurdle of "general administrative expenditure" I have to consider the Counts individually in so far as they relate to expenses.

40. In the case of Counts 1 and 4 I have to decide if the payment of travel and subsistence to the original complainant and to Mr Paterson in connection with their electioneering at the 1992 general election were payments made in furtherance of political objects.

41. Mr Millar argued that the only 'political object' listed in section 72 of which these payments might be related was "in connection with the candidature of any person ... in connection with any election to political office". I am not convinced that is the only object in question but am prepared to proceed on the basis that it is the only one I need consider.

42. I am not convinced by the union's argument that the travel expenses and subsistence payments were made to the two officials just because they were officials and that what they were doing on the days in question was irrelevant. Moreover whatever the intention of the union in making the payments their effect was the furtherance of candidatures, in that the two officials received reimbursement of expenses for making their services available to secure the return of two particular parliamentary candidates. But for their engagement in these activities those expenses would not have been incurred. It is for these reasons that I find that the union should have used its political fund to pay the travel and subsistence expenses of the original complainant and Mr Paterson in respect of their electioneering in March/April 1992.

43. On the issue of travel expenses in relation to Count 3. The union conceded (see paragraph 23) that if the main purpose of the meetings of Trade Unions for Labour and the Northern Regional Executive Council of the Labour Party was political - and I have found it was (see paragraph 34) then travel expenses should have been met from the political fund.

44. Subsistence payments made to union officers attending such meetings were seen as different. Certainly by the tests applied above they were not part of the ordinary administrative costs of the union but the issue then becomes were they part of the costs of holding the conference or meeting? The wording of section 72(2) though possibly stemming

from a case where travel expenses were the issue does not limit it to travelling expenses, as Mr Millar seemed to imply, but relates to "any expenditure incurred in connection with his attendance" - and says it "shall be taken to be expenditure incurred on the holding of the conference or meeting". On any ordinary reading of those words subsistence payments are part of the costs of holding the conference or meeting in much the same way as travel expenses are. These payments should have come from the political fund.

Decision

45. For the reasons set out above on 12 September I issued the following decision.

The union was in breach of the statutory requirements on four Counts as follows:

Count 1. The 1992 General Election campaign - in respect of subsistence and expense costs incurred by the first complainant;

Count 2. In respect of the £25 spent on an advertisement in a Labour Party Constituency Gala Evening brochure;

Count 3. Trade Unions for Labour and Northern Regional Executive Council of the Labour Party meetings - in respect of subsistence and expenses costs incurred by the complainant;

Count 4. In respect of expenses incurred as a result of the secondment of Mr Paterson prior to the 1992 General Election.

Remedial Action

46. The union have already rectified the breach in respect of Count 2. In respect of the other Counts, and in the light of detailed financial information supplied to me, and agreed by the union and the complainants, I issue the following order:

"The Iron and Steel Trades Confederation shall transfer from its political fund to its general fund the sum:-

of £347.32 in respect of the expenses incurred by, and paid to, the first complainant (an employee of the union) whilst he was working for the return of the Labour Party candidate in Darlington in the 1992 General Election;

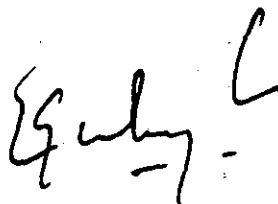
of £1,378.41 in respect of travelling and subsistence expenses incurred by, and paid to, the same complainant as a result of his attendance at meetings of Trade Unions for Labour and of the Northern Regional Executive Council of the Labour Party;

and of £349.96 in respect of expenses incurred by, and paid to, Mr Paterson (another employee of the union) whilst working for the return of the Labour Party candidate in another constituency in the 1992 General Election.

These transfers to be made within 28 days of this order and shown on the union's annual financial return to me".

Observations

During the course of this investigation it became clear that the political objects listed in the union's rule book did not match the expanded version which have been operative since 1984. This is of no legal significance because the 1984 political objectives, now contained in section 72 of the 1992 Act, are deemed to be part of the union's rules whatever their published rule book may say. However it is of wider significance because it means that many union officials responsible for spending money do not have ready access to the rules effectively governing that expenditure. Similarly few union members will have access to the rules determining what their subscription money may be spent on. This is undesirable and I shall be seeking a remedy with all unions which have political funds.



E G WHYBREW

Certification Officer