

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE
UNDER SECTION 25(1) OF THE TRADE UNION AND LABOUR
RELATIONS (CONSOLIDATION) ACT 1992**

MR E BIBBY

v

AMICUS

Date of Decision:

5 September 2003

DECISION

Upon application by the Applicant under section 25 (1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

I refuse to make the declaration sought that Amicus failed to comply with the requirements of section 24 of the 1992 Act.

REASONS

1. By a letter to the Certification Office dated 7 August 2002 the Applicant complained that the AEEU section of his union, Amicus (“the Union”) had “...*failed to maintain an accurate register of members*”. The Applicant completed a Registration of Complaint form dated 20 August 2002 and, following correspondence with my Office, his complaint was identified in the following terms:-

“Amicus - AEEU section was in breach of section 24(1) of the 1992 Act in that it failed to maintain an accurate and up-to-date register of its members’ names and addresses in that the Union failed to send Mr Bibby a ballot paper to enable him to vote in the General Secretary election of 2002.”

The Applicant subsequently complained that the Union was also in breach of section 24(1) of the 1992 Act in that his name was removed from the register of members upon his expulsion from the Union on or about 24 October 2002.

2. These matters were investigated in correspondence. As required by section 25(2)(b) of the 1992 Act, the parties were offered the opportunity of a formal hearing and such a hearing took place on Wednesday 6 August 2003. The Union was represented by Ms G Hirsch the Union's Senior Legal Adviser. Ms A Mayne, head of the Union's membership department was also present. The Applicant was neither present nor represented. 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.

Application for Postponement

3. This case was originally listed for hearing on 8 May 2003. Shortly before that hearing the Applicant requested a postponement on unparticularised "*health grounds*". The Union agreed to the postponement and I granted the Applicant's request. A medical report faxed to the Certification Office on 8 May described the Applicant as suffering from Post Traumatic Stress Disorder and gave an opinion that the hearing should be adjourned for at least one month.
4. Following correspondence with the parties to ascertain their availability, the case was re-listed for 6 August 2003 and the parties were so notified by letter dated 20 May.
5. On 5 August 2003 my Office received a letter from the Applicant dated 4 August in which he stated:-

"A very close friend of mine, Mr Mike Ferguson, died a couple of days ago. His funeral takes place on or around the day of the hearing. I cannot attend. These facts can be checked. I ask that the hearing is postponed to a later date. I have sent a copy of this letter to the paid representatives of the AEEU."

My Office attempted to telephone the Applicant on a number of occasions on 5 August to find out precisely when the funeral was to take place but no contact was made with the Applicant and the messages that were left were unreturned.

6. At the hearing on 6 August 2003 Ms Hirsch, for the Union, opposed the Applicant's request for a postponement. She noted that the request was expressed in vague terms and that it was not even certain that the funeral was to take place on the day of the hearing. Ms Hirsch commented that the Applicant had failed to attend other hearings in cases he had brought against the Union and that the grounds for this application were less than compelling.
7. In deciding whether to grant a postponement I have had regard to the interests of both the Applicant and the Union. I have also had regard to the interests of justice, which include the principle of finality of litigation. I have also had regard to section 25(6) of the 1992 Act which requires that so far as reasonably practical I shall ensure that an application made to me is determined within six months of having been made. Balancing each of these considerations and not giving decisive significance to any one of them, I rejected the Applicant's request for a postponement on the brief and imprecisely expressed grounds contained in his letter of 4 August. This case had already been postponed once and it is now almost twelve months since the complaint was first made. Furthermore, I was not persuaded that the funeral to which the Applicant referred was to take place on the day of the hearing.

Findings of Fact

8. I make the following findings of fact on the basis of the oral and written representations made to me by the Union and the written material presented to me by both the Applicant and the Union. In the absence of the Applicant, I have paid particular regard to the written material submitted by him.
9. In or about late 1999 the Applicant retired from his then employment on health grounds. He subsequently brought unfair dismissal proceedings against that employer, in the course of which he made certain allegations against his shop steward and his full time officer. The unfair dismissal application was unsuccessful. The Applicant also brought a county court action against his Union for having failed to provide him with the services to which he considered he was entitled. These proceedings were withdrawn shortly before the trial date in June 2001. At or about that time the Applicant also brought employment tribunal proceedings against his Union on the grounds that it had allegedly

discriminated against him on the grounds of his disability. The Applicant failed to attend the hearing before the employment tribunal. His application was dismissed on 12 July 2002 and he was ordered to pay costs to the Union of £5,000. The Applicant appealed to the Employment Appeal Tribunal and, at a preliminary hearing on 26 March 2003, his appeal was dismissed. The Applicant did not attend the appeal hearing, having been informed by the EAT that it could be dealt with on written submissions.

10. On 11 January 2002 the Applicant's entry on the Union's membership register, which is kept on computer, was amended to record the Applicant as having resigned. The Union had no letter of resignation nor any other documentary evidence that the Applicant had in fact resigned. The Union contends that it was notified orally of the Applicant's resignation.

11. During the period of about May to July 2002 the AEEU section of the Union conducted a ballot for the position of General Secretary. The Applicant did not receive a voting paper in that election and observed that for a similar period he had not been receiving any routine Union publications. By letters dated 20 and 31 July 2002, the Applicant enquired about his membership status. The Union responded by a letter dated 6 August informing the Applicant that he was recorded as having resigned on 11 January 2002. It would appear that the Applicant had told the Union that he considered that he remained a member, as the letter from the Union advised him that he should write to the membership department informing them that he had never resigned and requesting that he be reinstated in membership. The membership department had previously confirmed that upon receipt of such a letter the Applicant's membership would indeed be reinstated. The Union's letter of 6 August concluded, "*While this mix up is very regrettable, it does not have anything whatsoever to do with your various disputes with the Union or with your disability*".

12. The Applicant wrote to the Union on 14 August 2002 and on 21 August the Union wrote to the Applicant in the following terms, "*We can only assume that the amendment made to your membership record earlier this year was an administrative error. We have therefore reinstated your membership on the same basis as before the date of the erroneous resignation.*"

13. On 24 October 2002 the Union wrote to the Applicant, giving him notice that he had been excluded from the Union. The letter states:-

“A tribunal decision dated 12 July 2002 ordered you to pay £5,000 costs to the Union. Rule 2(10) provides that, “any monies owed by a member to the Union which remain outstanding for 13 weeks shall be treated as arrears of contributions”. The Union has therefore treated the £5,000 owed since 12 July 2002, as arrears. As a result your contributions to the Union are now significantly more than six months in arrears. Under rule 2(12) a member whose contributions are recorded as more than 6 months in arrears may be excluded by posting notice to that effect. This letter therefore constitutes notice that you have been excluded from the Union.”

The Relevant Statutory Provisions

14. The provisions of the 1992 Act which are relevant for the purpose of this application are as follows:-

“24.-(1) A trade union shall compile and maintain a register of the names and addresses of its members, and shall secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date.

(2) The register may be kept by means of a computer.

(6) The remedy for failure to comply with the requirements of this section is by way of application under section 25 (to the Certification Officer) ...

25.-(1) A member of a trade union who claims that the union has failed to comply with any of the requirements of section 24 or 24A (duties with respect to register of members' names and addresses) may apply to the Certification Officer for a declaration to that effect.

(6) In exercising his functions under this section the Certification Officer shall ensure that, so far as is reasonably practicable, an application made to him is determined within six months of being made.”

The Submissions

15. It is the Applicant's case that the Union had failed to keep a register of members' names and addresses in breach of section 24 of the 1992 Act. From the letters submitted by the Applicant it emerged that he put his case in the following two ways. First, he maintained that the removal of his name from the register in January 2002 was mainly an excuse for deliberately failing to send him a ballot paper in the General Secretary election. In the Registration of Complaint form dated 20 August 2002 the Applicant stated his opinion that the Union, “...*fraudulently failed to maintain an accurate register*” and later stated that this was, “...*due to past complaints*”. In a letter of 25 September 2002 the Applicant stated, “*The details of my membership were fraudulently removed from union records to prevent me from voting in the General Secretary election in my opinion*”. The letter went

on, *“I say the voting was ‘rigged’ and obvious altering and keeping false records of membership has taken place”*. Secondly, following his exclusion from the Union in October 2002, the Applicant complained that there had been a further, *“...fraudulent manipulation”*. He argued that his exclusion required him to have been placed in arrears for 13 weeks. This meant that he had been treated as being in arrears in July 2002, whereas the Union had not regarded him as being a member between February and August 2002. The Applicant considered this to be a further failure to keep an accurate membership register. In addition, in a letter dated 18 February 2003, the Applicant stated, *“It is my opinion that the union acted in this way and abused the members register in some sort of sick revenge because I exposed the fraudulent conman... (his former shop steward) ...and the liar ... (his former full time officer) for what they are”*.

16. For the Union, Ms Hirsch submitted that the Applicant had provided no evidence of any alleged failure to keep an accurate and up to date membership register other than in relation to the Applicant himself. Ms Hirsch further submitted that I should find on the balance of probabilities that the Applicant did contact the Union in or about January 2002 and expressed his wish to resign. She argued that, with the Applicant being in dispute with the Union over various issues, he could well have told the Union in a heated telephone conversation that he was resigning and then have no recollection of having said such a thing. In Ms Hirsch’s submission, this was the more likely explanation having regard to the total absence of any evidence of fraud and, in particular, to the absence of any similar complaints from other members of the Union, even from those opposed to the then General Secretary. With regard to the Applicant’s expulsion, Ms Hirsch submitted that the Union had merely applied the rules of the Union to the Applicant’s situation and that accordingly the removal of his name from the register of members in October 2002 was not a breach of section 24 of the 1992 Act.

Conclusions

17. Section 24 of the 1992 Act provides that a trade union shall compile and maintain a register of names and addresses of its members and shall secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date. It also provides that the register may be kept by computer.

18. It will be very difficult, if not impossible, for a large membership organisation with a considerable turnover of members, such as a trade union, to have a membership register which is always accurate and up to date. The statutory duty imposed by section 24 of the 1992 Act takes this into account by making the union's duty subject to the condition of reasonable practicability. Most of the cases that have alleged a breach of section 24 have involved a consideration of what was reasonably practicable on the facts of that matter. This case is different. The Applicant has not brought forward any evidence of a general failure of the Union's system in maintaining its membership register. Rather, he has alleged a specific fraud in relation to himself. It is the Applicant's case that the Union has deliberately and cynically deleted his name from the register on two separate occasions, knowing that what it was doing was wrong. If the Applicant could establish this proposition by evidence there would indeed be a breach of section 24, as the inaccuracy of the register by reason of wrongdoing cannot be excused on the grounds of reasonable practicability.
19. An allegation of fraud is a serious matter. A person making such an allegation in court proceedings is normally required to produce evidence in advance of any hearing in order that the other side has a fair opportunity to gather evidence and prepare its argument to rebut the allegation. In this case, the Applicant neither provided any credible evidence of fraud prior to the hearing nor appeared at the hearing to give such evidence. The Union accepts that the Applicant's name was removed from the membership register between 11 January and 21 August 2002 and that the Applicant was accordingly denied an opportunity to vote in the General Secretary election. It also accepts that the Applicant was in dispute with the Union on a number of matters and had litigated against it. However, this is circumstantial evidence of a potential motive and falls a long way short of establishing fraud. The removal of the Applicant's name from the register in January 2002 does not of and by itself establish fraud. It could have been done in error (as suggested by the Union in correspondence) or the Applicant could have actually resigned orally (as submitted by Ms Hirsch at the hearing). It is not necessary for me to determine the precise reason for the Applicant's name having been removed. It is sufficient that I find that the Applicant has not adduced evidence which establishes that his name was removed from the register fraudulently. I further find that whichever of the alternative explanations is correct, neither constitutes a breach of section 24 of the 1992 Act.

20. With regard to the Applicant's exclusion from membership of the Union in October 2002, I find that his exclusion was carried out so as to accord with the rules of the Union. The Applicant did not dispute that he owed the Union £5,000 costs arising out of his failed employment tribunal application nor did he assert that this sum has since been paid. Rather, the Applicant argued that rule 2(10) of the rules of the Union had not been properly applied to him as the Union had counted a number of weeks prior to his reinstatement in August 2002 as being a period of membership. He described this as being, "...*further fraudulent manipulation*". In the Union's submission, however, reinstatement means that the Applicant had restored to him all the benefits and burdens of membership for the period January to August 2002 and that his exclusion was indeed carried out in accordance with the rule.
21. In my judgement, the Applicant has failed to establish that his exclusion from the Union was by way of "*fraudulent manipulation*". He no doubt has his own strongly held convictions as to why he was excluded from the Union but these convictions fall well short of evidence establishing fraud. I find that the Union removed the Applicant's name from the membership register in October 2002 on its reasonable belief that it was acting in accordance with the rules of the Union. Following the Applicant's exclusion from the Union for arrears of contributions, the Union did not act in breach of section 24 of the 1992 Act by removing the Applicant's name from its membership register.
22. For the above reasons I refuse to make the declaration sought by the Applicant that the Union failed to comply with the requirements of section 24 of the 1992 Act.

Observations

23. By section 25(5) of the 1992 Act, I may, when giving the reasons for a decision, make written observations on any matter arising from, or connected with, the proceedings.
24. During the course of the hearing, I was informed that the Union's procedure for dealing with resignations has been changed since January 2002. The former system involved the Union's computer merely being updated by marking a member as having resigned. The present system requires the person who is amending the record to also insert some narrative describing in brief detail the circumstances of the resignation. However, I

observe that this case might have arisen even had the present system been in operation. Where a resignation occurs it is desirable that some written record of the resignation passes between the member and the union. Ideally the member will submit his or her resignation in writing but this may frequently not be the case. In such circumstances it would help avoid future misunderstandings if the union was to confirm to the member in writing that he or she has given oral notice of resignation and that, as of a certain date, has ceased to be a member of the union. Such a written confirmation would alert a member who has not resigned that there has been an administrative error and give him or her the earliest possible opportunity of correcting the error. On the other hand, if such a letter does not evoke a response, it may serve as evidence for the Union should the oral resignation be disputed at a later stage.

D Cockburn
Certification Officer