

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

**IN THE MATTER OF A COMPLAINT MADE AGAINST THE
TRANSPORT AND GENERAL WORKERS' UNION (TGWU)**

APPLICANT MR J SCOULLER

Date of Decision:

21 December 2000

DECISION

- 1.1 Under section 108A(1) of Part I of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") 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 me for a declaration to that effect.
- 1.2 Section 108B of the 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 declaration asked for. Whether or not I make the declaration sought, I am required to give the reasons for my decision in writing.
- 1.3 Where I make a declaration under section 108B I am required, unless I consider to do so would be inappropriate, to make an enforcement order on the union. My enforcement order is required to impose on the union one or both of the following requirements -

- (a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;
- (b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.

1.4 Following correspondence with my office, first by Mr Scouller a member of the Transport and General Workers Union (TGWU) and then his representative Mr B Finch between March and May this year, on the 8 June 2000 I accepted an application from Mr Scouller. In his application Mr Scouller made two complaints, these were both related to disciplinary action against him by the union. He alleged that the union had breached its rules in respect of two matters. These were:

- (1) that he was barred from holding office in the TGWU contrary to the union's rules and
- (2) that the manner in which he had been disciplined was contrary to the union's rules.

1.5 Mr Scouller's allegations were accepted, by me, as complaints under section 108A(1) of the 1992 Act that the rules of the union had been breached relating to matters mentioned in subsection 108A(2)(b) of the Act namely disciplinary proceedings by the union.

1.6 I investigated the complaints in correspondence and, on 7 November 2000, held a formal hearing of argument on the complaints. The union was represented by Mr R Collins its Assistant General Secretary with responsibility for Administration and Services. He was assisted by Mr D Cockburn of Pattinson and Brewer Solicitors. Mr Scouller attended the hearing and was represented by Mr Finch. Mr Finch called Mr G Taylor as a witness. Mr

Taylor had accompanied Mr Scouller at his appeal to the union's Finance and General Purposes Committee (FGPC) of the General Executive Council (GEC) against a decision of a Regional Committee (RC) (of the union) to remove his Shop Steward credentials. Mr Taylor, I was told, had been present throughout the FGPC GEC appeal hearing.

Decision

1.7 After careful consideration of the documents, evidence and arguments put to me I refuse to make the declaration sought by Mr Scouller. The reasons for my decision are set out below.

Requirements of the Legislation and the relevant union rule.

1.8 It may be helpful, at this point, if I set out the relevant statutory requirements of the Act to which I have referred in this decision and the union rules which have a bearing on this application. 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) ...;

(b) disciplinary proceedings by the union (including expulsion);

(c) ...

(d) ...”

1.9 In referring to the union rules, throughout this decision I have referred to the union's rule book as printed in April 2000. Although this rule book was in force at the time of the events recorded, it was not available in print. The version available in print was dated from 1994. Although this caused some confusion both during my investigation (and at the hearing), I and the parties were satisfied that the content of the relevant clauses had remained the same in both editions though some renumbering had occurred. The relevant union rules relating to complaints against members (and disciplining such members) are found in Rule 11 of the TGWU rule book. Under the rule heading "Branches", rule 11:21 provided:

“(a) Complaints against the conduct of members may be dealt with by the Branch, Branch Committee (where so determined by the Branch), Divisional Committee, Regional Committee or the General Executive Council. A member whose conduct is the subject of inquiry shall be given notice of the complaint in writing with an intimation of the member's right to be present at the hearing.

(b) If a Branch, Branch Committee or Divisional Committee, as the case may be, imposes a fine for misconduct, or for any of the offences specified in clause 20, the member shall have a right of appeal to the Regional Committee, whose decision shall be final. Notwithstanding the foregoing provision a Regional Committee shall have power to impose fines for misconduct provided that in the event of a fine being imposed by a Regional Committee, a member shall have a right of appeal to the General Executive Council, whose decision shall be final.

(c) *Notice of appeal under preceding Clause (b) must be made in writing and sent to the Regional Secretary or the General Secretary, as the case may be, with fourteen days from the date of receipt of notification of the fine, and the appeal shall be heard at the first meeting of the Regional Committee or the General Executive Council, as the case may be, held following receipt of such notice.*

(d) *Where a question of expulsion arises for misconduct, or for any of the offences specified in clause 20, the investigation shall be conducted by the Regional Committee who shall make recommendations to the General Executive Council. A member whose conduct is the subject of complaint, shall be given notice of the investigation in writing and afforded an opportunity of appearing before the Regional Committee. The General Executive Council may act upon the recommendation of the Regional Committee or make further investigation or take such steps, as, in the opinion of the General Executive Council, seem just”*

1.10 Rule 11:20 provided that:

“Any member violating any working rules, rules, registration, or bylaws, disseminating false statements or any rumour which tends to depreciate the organisation, its officers, or any section appertaining to the Union, or circulating any business of the Union to unauthorised persons without authority, or who has incited, assisted in, or committed any act of discrimination including harassment, on

the grounds referred to in rule 2, clause2 (d), or who is guilty of other forms of misconduct, shall be fined a sum not exceeding £50, or otherwise dealt with by the Branch or authorised committee of the Union as may be deemed fit.”

1.11 That then is the background, relevant legislation and union rules. I now set out the facts and arguments put by the parties and the reasons for my decision.

The Complaint was that the union had breached its rules in respect of two matters. These were (a) that he was barred from holding office in the TGWU contrary to the union’s rules and (b) that the manner in which he had been disciplined was contrary to the union’s rules.

Facts

2.1 Following a telephone conversation with Mr Scouller, on the 19 February 1999 the TGWU Scotland Regional Industrial Organiser wrote to Mr Scouller. The letter informed him that complaints had been raised against him concerning his conduct and behaviour. The letter referred to a parcel of correspondence and minutes forwarded to Mr Scouller and stated “ ... *there are some other issues which are of concern. Issues’ include the unofficial organising of a ballot which has caused complaints within the Glasgow Passenger District Committee and, b) the allegation that you applied for redundancy payments during wage negotiations you were directly involved in, c) complaint raised within the Glasgow Passenger District Committee about the inordinate amount of time taken to deal business concerning yourself. Finally, the concerns raised by your Employer with the Convenor of Shop Stewards, Brother Pat Docherty contained in correspondence dated 15 December 1998 concerning Depot Ballot, Possilpark.”.*

2.2 The letter indicated that a Committee of Enquiry would be held on the 2 March (1999) at which the intention was not to apportion blame nor to adjudicate on matters but merely to ascertain whether there was foundation to the allegations. The letter indicated that Mr Scouller could submit a statement of case and that the Regional Industrial Organiser would suggest to the Chair of the Sub Committee that he (Mr Scouller) should be present throughout the whole of the Committee of Enquiry which would allow him to listen to the statements made by the other parties. The letter also indicated that no cross examination should take place by either party.

2.3 Mr Scouller was present throughout the Committee of Enquiry which found that the allegations and complaints made against him under union rule were well founded. The decision of the Committee of Enquiry was to recommend to the Finance and General Purposes Committee (F&GPC (of the Region)) that the allegations of misconduct and complaints made against him should be further investigated by the Regional Committee.

2.4 The Regional F&GPC convened a special meeting on the 7 April 1999 to deal solely with the matter and Mr Scouller was present throughout the meeting. He was accompanied by his Branch Secretary.

2.5 The minutes of the meeting indicate that Mr Scouller was advised that five allegations had been made against him. These allegations were shown in the minutes as:

1. A pattern of misbehaviour by Brother Scouller including the disruption of the Glasgow Passenger District Committee Meetings.

2. The use of threatening and abusive behaviour at branch meetings by Brother Scouller.
3. The conduct of Brother Scouller in relation to the negotiation of a redundancy package for himself via the management of the Company.
4. The organisation and conducting of a ballot of members within his branch without authorisation or permission with the intention of undermining the Negotiating Committee and the Glasgow Passenger District Committee in relation to their policy on a wage offer.
5. His conduct in relation to meeting and discussing with an Officer of the GMB, the matter of T&G members in his branch joining the GMB, including arrangements to transfer all of the 7/12 T&G Branch Membership into the GMB.

2.6 The minutes show that a lengthy discussion took place during which Mr Scouller responded to the allegations. Also, that after a recess, the Chair of the Committee advised Mr Scouller that the decision of the Regional F&GPC was that the allegations made against him were well-founded and that he was unfit to hold office in the TGWU and, as a result, it was resolved *“that under Rule 11:20, the Shop Steward’s credentials be removed from Brother Scouller with immediate effect.”*

2.7 The minutes continue by showing that Mr Scouller was advised of his right of appeal, in writing, to the union's General Secretary for submission to the union's General Executive Council(GEC). The minutes further show that the Regional F&GPC resolved "*that the Committee would give full consideration to the possibility of expelling Brother Scouller from the union as a result of his unacceptable behaviour and that Brother Scouller be invited to attend a further hearing at 9.00 am on Tuesday, 13 April 1999 to present his defence against the case for expulsion including any witnesses, documents or tape recordings available, under Rule 11, Section 20, Sub-section (d).*" (now rule 11:21(d)).

2.8 Following the Regional F&GPC, the Regional Secretary wrote, on the 8 April 1999, to Mr Scouller the letter stated:

"Further to your attendance at the Disciplinary Hearing of the Regional Finance & General Purposes Committee, the following charges were laid against you:

1 You engaged in a pattern of misbehaviour including the disruption of the Glasgow Passenger District Committee.

2 You used threatening and abusive behaviour at branch meetings.

3 Your conduct in relation to the negotiation of a redundancy package for yourself via the Management of the Company.

4 *You organised and conducted a ballot of members within your Branch without authorisation or permission with the intention of undermining the Negotiating Committee and the Glasgow Passenger District Committee in relation to their policy on a wage offer.*

5 *Your conduct in relation to meeting and discussing with an Officer of the GMB, the matter of T&G members in your branch joining the GMB, including arrangements to transfer all of the 7/12 T&G Branch membership into the GMB.”*

2.9 The letter continued by confirming the Committee decision, to remove his Shop Steward’s credentials with immediate effect, confirming his right of appeal under rule 11:21(d) and that the Committee had resolved to give full consideration to the possibility of expelling him from the union and invited Mr Scouller to attend a further hearing on the 13 April to present his defence against the case for expulsion.

2.10 The letter concluded by stating that in the event of the (Regional) F&GPC deciding to recommend expulsion, he would be given the opportunity in accordance with Rule to make a statement to the Regional Committee.

2.11 Mr Scouller attended this further disciplinary hearing of the Regional F&GPC on the 13 April 1999 to present his case. After the hearing the Committee wrote to Mr Scouller, on the 20 April, stating that the Committee had resolved that he be debarred from holding office in the union for a period of five years, during which time his behaviour was expected to be of a high

standard. The letter added that this decision had been endorsed by the Regional Committee at its meeting and that he now had the right of appeal which should be made in writing to the General Secretary for consideration by the GEC.

2.12 Mr Scouller wrote to the union's General Secretary stating he wished to appeal against the F&GPC decision of the 7 April 1999 that his Shop Steward's credentials be removed. This letter was received by Mr Morris the union's General Secretary on the 6 May 1999. Mr Morris replied on the 19 May indicating that he (Mr Scouller) had the right of appeal to the GEC against the decision of the Regional Committee to remove his credentials under rule 11(5) and that the F&GPC (of the GEC) would also consider the Regional Committee recommendation that he be barred from holding office in the union for a period of five years.

2.13 For reasons that do not effect my determination of Mr Scouller complaints, the appeal hearing by the F&GPC of the GEC was delayed until the 9 November 1999. Mr Scouller attended the hearing. The following day, the 10 November, Mr Morris wrote to Mr Scouller stating that as the Regional Committee, under the terms of the Rulebook, were not empowered to determine that he be barred from holding any office, his appeal in that respect was upheld. The letter continued by stating:

“Nevertheless the Committee concluded from your verbal statements to them, together with all the documentation, that you were not prepared to act in accordance with the Policies and Rules of the Union. In view of the seriousness in which they considered this admitted conduct, they decided to uphold the decision of the Regional Committee that your Credentials as a Shop Steward be withdrawn for this specified period. Your appeal therefore in this respect is disallowed.”

The Applicant's Case

- 2.14 In correspondence with my Office, Mr Scouller complained that he had rubbished all the charges at the (original) hearing and that that hearing had no power to remove his credentials as a shop steward. He further stated that on appeal to the General Executive Council, having listened to his appeal they upheld the decision. He stated that he found this appalling and totally unjust.
- 2.15 He argued that as he had been nominated and accepted by his branch, in October 1999, for the position of Shop Steward, the decision of the General Executive to bar him from holding office for five years amounted to a breach of contract between the union and himself.
- 2.16 Mr Finch, in representing Mr Scouller argued a number of points; that no written notice of the complaints, as required under rule were provided to Mr Scouller before he attended the disciplinary hearing on 7 April 1999; that the Regional Committee under rule 11: 20 could not remove Mr Scouller's credentials as a Shop Steward: that under rule 11:20 the Regional Committee did not have the power to bar Mr Scouller from holding office within the union for five years; that the Regional Committee having removed Mr Scouller's credentials under rule 11:20, the appeal to the F&GPC of the GEC was heard as an appeal under rule 11:5 and that it referred to the recommendation that he be barred from holding office for a period of five years; that the appeal hearing, having heard the appeal by way of a re-hearing and upholding Mr Scouller's appeal against being barred from holding office, then instituted a new action against him and withdrew his credentials as a Shop Steward for five years; that the union could not remove credentials for a five-year period when the period of office, under rule, was two

years and that having, at the appeal instituted a new disciplinary action against him, he was not afforded a right of appeal against the appeal hearing decision that his credentials as a Shop Steward be withdrawn for this specified period.

2.17 Mr Finch explained that Mr Scouller did not receive, as required under union rule, written notice of the complaints made against him or notification of his right to be present at the hearing. He stated that the only written notification received prior to the disciplinary hearing was the Regional Industrial Organiser's letter to Mr Scouller of the 19 February (see para 2.1) and that this letter did not list the complaints made. He argued that the first written notice detailing the complaints against Mr Scouller was in the letter dated 8 April 1999 from Mr Elsby the Regional Secretary and that this letter (see para 2.8) notified Mr Scouller that he had been found guilty and that his credentials were to be removed.

2.18 He further argued that the Regional Committee, under rule 11:20 (see para 1.10), was not empowered to remove Mr Scouller's Shop Steward's credentials and that therefore the appeal to the F&GPC of the GEC should have upheld the appeal in this respect. He commented that the Regional Committee's power to withdraw credentials was in rule 11:5 and that this rule was not used.

2.19 Further, referring to the Regional Committee's decision of the 13 April, notified to Mr Scouller on the 20 April (see para 2.11) barring him from holding office in the union for a five-year period, he argued that the Regional Committee had no such power under rule and the extent of its power was to make recommendation to the GEC. It could not bar Mr Scouller from holding office for any period let alone a period of five years.

2.20 Mr Finch also argued that, the Regional Committee having removed Mr Scouller's credentials (under rule 11:20) the appeal against this decision to the F&GPC of the GEC was heard as an appeal against the Regional Committee decision to remove Mr Scouller's credentials under rule 11:5. Further, Mr Finch referred me to Mr Morris' letter of 10 November 1999 to Mr Scouller in which it stated that the appeal committee "... *consider your appeal against the decision of the Regional Committee to debar you from holding any office within the Union, including the withdrawal of your Credentials as a Shop Steward, for a period of five years.*". Thus Mr Finch argued the appeal was misdirected and considered, as an appeal, against a non-existent decision of the Regional Committee. He further argued that having done so, the decision of the Appeal Committee " *to uphold the decision of the Regional Committee that your [Mr Scouller's] credentials as a Shop Steward be withdrawn for this specified period [of five years]*", must be classed as a new action taken against Mr Scouller by the F&GPC of the GEC on the 9 November.

2.21 Mr Finch also felt that the appeal committee, having heard the appeal, by way of a re hearing, and upholding Mr Scouller's appeal against being barred from holding office, then instituted a new action against Mr Scouller and withdrew his credentials as a Shop Steward for five years. This was an incorrect procedure, he argued, as once the action of the Regional Committee fell the "*status quo ante*" was restored ie Mr Scouller's credentials were restored and the ban lifted forthwith. Moreover, the decision to remove his credentials made no reference whatsoever to a five-year period. That period only appeared in the Regional Committee's decision to bar him from office and it was that decision which the GEC ruled was ultra vires. Against that background he argued that any subsequent disciplinary action must be construed as a new action against Mr Scouller and that the comment by Mr Morris in the letter of 10 November 1999 that " *Nevertheless the Committee concluded from your verbal*

statements to them, together with all the documentation, that you were not prepared to act in accordance with the Policies and Rules of the Union.” amounted to a new (disciplinary) action against Mr Scouller by the F&GPC of the GEC and that he should have been given prior notice (of this action) and informed of his right of appeal (against the decision of the F&GPC of the GEC). In fact, he argued Mr Scouller was not given notice of this new disciplinary action taken, by the F&GPC of the GEC, nor was he afforded a right of appeal against this new complaint (and decision) made against him. Mr Finch stated that at the hearing by the F&GPC (of the GEC), Mr Morris stated that any decision taken by the F&GPC was final and could not be appealed. At the hearing of this complaint before me, Mr Taylor, who was present during the F&GPC of the GEC hearing, was called as a witness by Mr Finch and confirmed that this was so. Mr Finch therefore argued that Mr Scouller had effectively been deprived of his right of appeal in breach of union rule.

2.22 Mr Finch also commented that the union could not remove a members’ credentials for a five-year period. He argued that under rule 11:5 elections for shop stewards take place once every two years and that therefore no Shop Stewards’ credentials can last longer than this period and thus any decision to withdraw the credentials for a five-year period could not be authorised under the terms of the union’s rule book.

2.23 In response to the union’s argument, that the GEC operated under the wide powers given to it by rule 6, Mr Finch said those powers, should be qualified by rule 6:21. Rule 6:21 he commented explicitly stated “*Except as may be otherwise provided for in these rules, the General Executive Council shall in all things act for and in the name of the Union ...*”. This Mr Finch, argued, enshrined the supremacy of the rule book over the GEC.

2.24 To reinforce this point, Mr Finch referred me to the Court of Appeal judgement in the case of

Breen v Amalgamated Engineering Union and Others [1971] 2Q.B.175 in which Lord Denning stated (in relation to a trade union) *“Often their rules are framed so as to give them a discretion. They then claim that it is an “unfettered” discretion with which the courts have no right to interfere. They go to far. They claim too much. The Minister made the same claim in the Padfield case and was roundly rebuked by the House of Lords for his impudence. So should we treat this claim by trade unions. They are not above the law, but subject to it. Their rules are said to be a contract between the members and the union. So be it. If they are a contract, then it is an implied term that the discretion should be exercised fairly. But the rules are in reality more than a contract. They are a legislative code laid down by the council of the union to be obeyed by the members. This code should be subject to control by the courts just as much as a code laid down by Parliament itself. If the rules set up a domestic body and give it a discretion, it is to be implied that that body must exercise its discretion fairly.”* Thus Mr Finch informed me neither the F&GPC of the GEC nor the GEC itself have the power to ignore or alter the rules, but are bound by the rules contained in the rule book and are servants to it, not masters of it.

2.25 In summary, Mr Finch argued that there was not a scintilla of justification for either the withdrawal of Mr Scouller’s credentials as a Shop Steward or for the continued bar on his standing for the same office. That the ban was disguised as a withdrawal of the credentials for the unconstitutional period of five years. And that the only conclusions to be drawn, he stated, were that Mr Scouller was barred from holding office contrary to union rules and that the manner in which Mr Scouller was disciplined was also contrary to the union’s rules.

2.26 Mr Finch argued that the F&GPC decision was a new punishment on an offence for which Mr

Scouller had never been charged and that this action was against the rules of the union and natural justice. In support of this argument Mr Finch referred me to a decision of the Privy Council *Annamunthodo v Oilfield Workers' Trade Union* [1961]W.L.R.650. In this case Mr Annamunthodo had been charged before the General Council of the union with offences against certain of the union rules. Under those rules there was no power to expel him. The union, having found him to be in breach of the rules, then used another rule of the union (under which he had not been charged) to expel him. The Privy Council found that no charge had been laid in respect of the rule under which he was expelled and that he should have been given notice of a charge under that rule. Not to do so they concluded was a breach of the rule of natural justice and that he was entitled to have the decision set aside as it led to far more serious penalties.

The Union's Response

2.27 In correspondence the union stated that in late 1998 the Regional Secretary in Scotland received complaints about the conduct of Mr Scouller from a number of branches and from the Glasgow District Passenger Committee. That by letter dated 27 January 1999 the Regional Secretary had informed Mr Scouller that a Regional Committee of enquiry was to be set up to investigate the complaints. The Committee was set up and the Regional Industrial Organiser wrote to Mr Scouller on 19 February 1999 (see para 2.1). The Committee, the union stated, gathered together relevant papers and met for a full day on 2 March 1999. Mr Scouller was present throughout. The Committee concluded that there was sufficient merit in the complaints for them to be considered by the Regional Committee or (under its delegated authority) by the Regional Finance and General Purposes Committee.

2.28 On the 7 April 1999 the Regional F&GPC, I was informed, conducted a disciplinary hearing

at which Mr Scouller and his representative were present. The Regional F&GPC decided “*that under Rule 11: Section 20, the Shop Stewards credentials be removed from brother John Scouller with immediate effect*”. The Committee also resolved that there should be a further hearing to consider the possible expulsion of Mr Scouller.

2.29 The further hearing took place on 13 April 1999. The union informed me that Mr Scouller was again present and made representations. The F&GPC concluded that Mr Scouller be “*debarred from holding office in the Transport & General Workers Union for a period of 5 years during which time his behaviour is expected to be of the highest standard*”.

2.30 The union stated that Mr Scouller appealed to the GEC and the appeal was heard by the F&GPC of the GEC, after several adjournments, on the 9 November 1999. The F&GPC of the GEC concluded that the Regional Committee was not empowered under the union’s rules to debar Mr Scouller from holding any office within the union and so upheld the appeal in that regard. However, I was told, that the F&GPC of the GEC went on to conclude that Mr Scouller was guilty of not being prepared to act in accordance with the policies and rules of the union and that, in view of the seriousness of this admitted misconduct, the Committee decided that Mr Scouller’s credentials as a Shop Steward should be withdrawn for 5 years.

2.31 In correspondence, and at the hearing, the union argued that, given the commencement date of my powers in such matters was 27 July 1999 and that having regard to the limitation period for bringing such complaints, it was clear that the scope of Mr Scouller’s complaint could not extend to the actions of the Regional Committee or the Regional F&GPC. The complaint, the union argued, could only relate to a determination as to whether the F&GPC of the GEC acted

in breach of rule in deciding that Mr Scouller's credentials as a Shop Steward be removed for a period of five years,

2.32 It was the union's view, I was informed, that the F&GPC of the GEC clearly exercised its power quite properly under Rule 11 Clause 21 sub section (c). The union's opinion, it was stated, was that the F&GPC (of the GEC) has wide discretion when hearing such an appeal and was not restricted to either allowing the appeal in full or dismissing it entirely. The union argued that Rule 11 Clause 21 must be read in the context of the Rules as a whole. Rule 6, I was informed, dealt with the general powers of the GEC and, the union felt, it was apparent, from this rule, that the GEC was intended to have wide powers. The union therefore argued that the F&GPC of the GEC had the power to vary the sanction imposed by the Regional Committee and that, in this case, the GEC found that there had been misconduct and reduced the penalty to one that it considered appropriate in the circumstances.

2.33 At the hearing, Mr Collins for the union gave details of the structure of the union, explaining that the GEC was the body, within the union, that had responsibility for the general administration of the union's business. I was told that the GEC had many express powers under the Rule book, but that Rule 6:18 provided that "*In addition to any express powers in these rules provided, the General Executive Council shall have power generally to carry on the business of the Union,*". In matters of discipline, I was told, the GEC had specific power to "*suspend, expel or impose any penalty on any member*" subject to the right of appeal to the Appeals Committee (Rule 6:18) (which is a body elected, every two years at the union's Annual Delegate's Conference). Mr Collins further explained that the GEC, also having disciplinary powers under rule 11:20 and rule 11:21, was given considerable disciplinary

powers under the rules.

2.34 He stated that any disciplinary power in the rules is subject to a right of appeal but that there is one level of such appeal from any decision. For example, he explained that a decision of a branch or equivalent body could be appealed to the Regional Committee, while a decision of a Regional Committee could be appealed to the GEC who, as in this case, would usually delegate the matter to its F&GP Committee.

2.35 Mr Collins continued his submission by outlining the facts of the disciplinary action taken against Mr Scouller which led to the appeal hearing at which he (Mr Collins) had been present. He stated that a bundle of documents had been prepared and a copy sent to Mr Scouller before the hearing. At the hearing, Mr Collins stated, Mr Scouller began by addressing the members of the Appeals Committee and introduced an additional letter and a tape recording. Questions were then asked of Mr Scouller and the Regional Secretary also addressed the Appeals Committee. The Regional Secretary was then questioned by both the Committee and Mr Scouller. Finally Mr Scouller made a closing address.

2.36 Mr Collins continued by informing me that as the Secretary to the F&GPC of the GEC he had remained in the room throughout the hearing and during the Committee's consideration of its decision. However, he added, apart from advising the Committee on procedures or the rules, he had no part in the decision making process and did not participate in the discussions on the merit of the appeal.

2.37 The F&GPC's decision, Mr Collins stated, was that Mr Scouller was found guilty of

misconduct. However, the Committee, having been advised, by Mr Collins, that the Region did not have the authority to debar Mr Scouller from holding office, upheld Mr Scouller's appeal in this respect. Regarding the removal of Mr Scouller's Shop Steward credentials, Mr Collins stated he had advised the F&GPC that the Regional Committee had such a power and that in these circumstances it was usual for credentials to be removed sine die, with the "Shop Steward" applying, after an appropriate period, for permission to stand as a Shop Steward again. In Mr Scouller's case, Mr Collins stated, the Regional Committee had not expressly stated his credentials were to be removed sine die but that this was the interpretation put upon the Regional Committee decision by the F&GPC of the GEC. Having considered the appropriateness of this punishment, the Appeals Committee decided that Mr Scouller's credentials should only be removed for a period of five years.

2.38 Mr Collins stated that he had advised the F&GPC of the GEC that the Regional Committee had made a mistake in purporting to withdraw Mr Scouller's credentials as a Shop Steward under union rule 11:20. He told the F&GPC of the GEC, that it was inappropriate for the Regional Committee to use the general powers in rule 11:20 when there was a specific power relating to the withdrawal of a Shop Steward's credentials in rule 11:5 but added that he did not consider this to be a fundamental flaw in the disciplinary process. The F&GPC of the GEC, Mr Collins added, found there was misconduct and that the region did have the power to withdraw Mr Scouller's credentials.

2.39 Mr Collins argued that, it was common ground between the parties that the relevant rules were not as clear as they might be, but that this was not unusual in trade union rule books. He referred me to the observations of Lord Wilberforce in *Heatons Transport v TGWU*

(1972)ICR308. His Lordship had observed:

“Trade union rule books are not drafted by parliamentary draftsmen. Courts of law must resist the temptation to construe them as if they were; for that is not how they would be understood by the members who are the parties to the agreement of which the terms, or some of them, are set out in the rule book...”

2.40 Mr Collins argued that it was significant that at both the Regional and National level, Mr Scouller was found to have committed acts of misconduct some of which, in the union’s view were extremely serious. He stated that the basic rule in the TGWU rule book relating to the disciplining of members is rule 11:20 (see para 1.10), and that there were two distinct aspects to that rule. First that it not only relates to specific forms of misconduct but also relates to “... *other forms of misconduct ...*” and secondly that the sanctions which it authorises are two-fold. It provided for either a fine not exceeding £50 or that the member may be “... *otherwise dealt with by ... the authorised committee of the union as may be deemed fit.*”.

2.41 Rule 11:21(a) (see para1.9), Mr Collins explained, provides details of by whom complaints against the members may be dealt with. It was therefore these rules, he argued, that established that Mr Scouller could be disciplined by the union and that the Regional Committee was an authorised committee for this purpose.

2.42 In Mr Scouller’s case, Mr Collins explained, the Region took action against him under rule 11:20 and that the specific provision dealing with the withdrawal of a Shop Stewards credentials was in rule 11:5. Mr Collins argued that while the overlap between the use of rule

11:20 and other rules of the union may be untidy, it did not, and had not so far, given rise to any significant problems in practice. Mr Collins added that the General Secretary's letter to Mr Scouller of 19 May 1999 referred to the Regional Committee decision to remove his credentials under rule 11:5, while the appeal, he stated was conducted under Rule 11:21.

2.43 Mr Collins argued that the F&GPC of the GEC heard Mr Scouller's appeal by way of a full re-hearing and not by merely reviewing the evidence given to the Region and that the F&GPC analysed the two decisions of the region on the 7 April 1999 (para 2.6) and 13 April 1999 (para 2.11). The F&GPC of the GEC decided that the decision of 7 April 1999, that Mr Scouller's Shop Stewards credentials be removed with immediate effect, was made under the authority of the rules but decided that his credentials should be removed for a five-year period rather than indefinitely. The F&GPC of the GEC also decided that the region's decision of 13 April 1999, that Mr Scouller be barred from holding office for a five-year period, was not made under any authority within the rule book and should not therefore be upheld.

2.44 Regarding the rules of natural justice, Mr Collins referred to Mr Cockburn. Mr Cockburn put forward the view that a distinction must be made as to whether there is a breach of the rules of the union or of the principles of natural justice. He argued that a rule (of the union) might require specific charges to be laid, in which case the details of the rule must be complied with. The rules of natural justice, however, did not require specific charges to be laid with the particularity that a set of rules might. It requires, he put forward, that the person accused should know the gist of the charges against them to such an extent that they can meet them when they go in front of the disciplinary body hearing the charges. In this case, Mr Cockburn argued, given the letter from Mr Sharp, the nature of the bundle of documents sent to Mr

Scouller in advance of the hearing and Mr Scouller's attendance at that hearing, the gist of the arguments he had to meet were sufficiently known to Mr Scouller when he appeared before the Regional Committee for the requirements of natural justice to be met.

2.45 Mr Cockburn continued by stating that Mr Scouller did not go into the disciplinary hearing totally unaware. He was in possession of the bundle of documents and correspondence and he had the letter of the 19 February 1999 which, Mr Cockburn argued, gave the direction of the mind of the committee. Mr Cockburn therefore felt that the rules of natural justice had been complied with. He argued that, under the terms of natural justice, you do not need notification of the complaints. In terms of the rule book, he argued, there was no reference to charges. The reference in rule 11:21 is to complaints. He (Mr Scouller), was given details of the complaints against him in the letter of 19 February, together with the letters of complaint, minutes and evidence itemised by the Region. Mr Scouller, Mr Cockburn therefore argued, was well aware of the nature of the complaints against him.

2.46 In summary, Mr Collins submitted that the union's rules provided for the removal of Mr Scouller's credentials as a Shop Steward and that his appeal was properly conducted within the rules of the union.

Reasons for my Decision

2.47 I was grateful to both Mr Finch and Mr Collins for their submissions and also to Mr Cockburn for his contribution on behalf of the union.

- 2.48 I found I had no difficulty with the union's view that my jurisdiction in this application was restricted to the determination of a breach of the union rules relating to disciplinary action taken against Mr Scouller on or after the 27 July 1999. Indeed Mr Scouller originally wrote to my Office on the 27 March 2000, complaining about the April 1999 disciplinary action and the union's appeal process. My Office replied on the 4 April stating that I did not have the jurisdiction under the Act to consider alleged breaches of the rules that had occurred prior to the 27 July 1999.
- 2.49 My jurisdiction to determine certain breach of union rule complaints was brought about by the Employment Act 1999 amendment to the Trade Union and Labour Relations (Consolidation) Act 1992. One of the effects of the 1999 Act was to amend the 1992 Act by the insertion of sections 108A to 108C (Section 29 and schedule 6 of the 1999 Act). This amendment to the 1992 Act was introduced on the 27 October 1999. The commencement order for those sections of the 1999 Act relating to the extension of my powers gave the date for the commencement of my jurisdiction, to determine such matters, as the 27 July 1999.
- 2.50 In this case, however, I took the view (as I expressed at the hearing) that I had to look at the procedure the union followed in disciplining Mr Scouller prior to the 27 July 1999 (when the Act gave me jurisdiction in such matters). I stressed that I could not, and did not, consider the substance of the complaints against Mr Scouller. It was not for me to say whether the complaints (as listed in para 2.8) against Mr Scouller were well founded or not. Indeed Mr Scouller vehemently denied the charges. What I had to consider was, were the procedures followed by the Regional Committee in disciplining Mr Scouller in April 1999 in accordance with the union's rules, thus ensuring that the Appeals Committee had valid decisions (and

appeal) to consider on the 7 November 1999 and that the appeal (as Mr Cockburn had put it at the hearing) had properly got off the blocks.

2.51 My starting point in the determination of this complaint was to look at the events leading up to, and the holding of, the original disciplinary hearings on the 7 and 13 April 1999, and to decide whether those Regional hearings, that took away Mr Scouller's credentials were conducted within rule.

2.52 I am satisfied that union Rule 11:21(a) does not require details of the charges before a member, to be given to the member in advance of the disciplinary hearing. What 11:21(a) requires, is that the member "*... whose conduct is the subject of inquiry shall be given notice of the complaint in writing with an intimation of the member's right to be present at the hearing.*". This the union did by its letter of 19 February 1999, which set out the concerns which would be considered by the Committee of Enquiry.

2.53 The Committee of Enquiry, which Mr Scouller attended throughout, found there was a case to answer by Mr Scouller and a disciplinary hearing was arranged for the 7 April 1999. Although Mr Sharpe on behalf of the Committee of Enquiry wrote to the Regional Secretary (Mr J Elsby)- that the Committee had found the "*allegations and complaints... well founded.*"- the union did not write to Mr Scouller between the 20 February and the 6 April 1999.

2.54 Mr Scouller attended the disciplinary hearing on the 7 April 1999 at which the charges were put and discussed with him. Mr Scouller responded fully to the allegations made. After a recess, Mr Scouller was advised that the complaints were well founded and advised that his

credentials would be removed. He was advised of his right of appeal and also advised “ *that the Committee would give full consideration to the possibility of expelling Brother Scouller from the Union as a result of his unacceptable behaviour and that Brother Scouller be invited to a further hearing at 9.00 am on Tuesday, 13 April 1999 ...*”. The charges, hearing result, right of appeal and reasons for, and notice of, the further disciplinary hearing were notified to Mr Scouller by letter on the 8 April 1999.

2.55 I am satisfied the letter of 8 April 1999 met the requirements of Rule 11:21(d) (in relation to the consideration by the Regional Committee of further penalties) in that in considering Mr Scouller’s expulsion, he was given notice of the investigation in writing and afforded an opportunity of appearing (which he did) before the Regional Committee. I also agree, with the union’s view that, although the Regional Committee, at the first disciplinary hearing, may have misdirected itself as to under which clause, within rule 11, they could withdraw Mr Scouller’s credentials, rule books are not written in stone and that the Regional Committee, even though it quoted the wrong clause, had the power to apply the penalty it did. I am satisfied that the Committee, within rule 11 had the power, which they exercised, and that the notice of the appeal hearing, sent by the union’s General Secretary on the 19 May 1999 corrected the error in the clause used.

2.56 Having satisfied myself that the actions and decisions of the union leading up to and at the hearings in April 1999 were within rule, I next turned to the question of natural justice.

2.57 In the ideal world, the Regional Committee of Enquiry having produced its report, would have put the charges in writing, in advance of the disciplinary hearing, to Mr Scouller. That they

did not do so was not a breach of union rule and, I also believe, the failure to meet this ideal did not necessarily fall foul of the rules of natural justice.

2.58 The union, before the Committee of Enquiry, produced and provided Mr Scouller with copies of correspondence and minutes that gave details of the areas of concern. The letter of 19 February listed, at least, four areas of complaint. Mr Scouller attended the Committee of Enquiry and was able to listen to the statements made.

2.59 I am therefore satisfied that Mr Scouller was well aware of the complaints against him when he attended the disciplinary hearing on the 7 April and that he, as an active Shop Steward, would also have been well aware of the possible outcomes such as the possibility that his credentials could be withdrawn. The union also claim, and the minutes of the hearing on 7 April show, that at the hearing the complaints were put to Mr Scouller, that he responded to all the allegations made against him and that he did not seek an adjournment on any of the complaints.

2.60 It seems to me therefore that the point at issue, was whether the letter of 19 February 1999, the correspondence and minutes sent to Mr Scouller, and his attendance and participation in the Committee of Enquiry provided Mr Scouller with sufficient prior knowledge of the charges he was to face at the disciplinary hearing on the 7 April. I think it did, and that therefore both the union rules and the principles of the rules of natural justice were satisfied. However, I feel this was a case that was perhaps on the border line of the principles of natural justice and a situation the union could easily have avoided, and might seek to do so in the future, by giving charges, in writing, in advance of a disciplinary hearing.

2.61 Having satisfied myself, that the original hearings of the 7 and 13 April were properly established and carried out both under the union's rules and within the requirements of natural justice, I turn now to the conduct of the appeal heard by the F&GP Committee of the GEC. The union's letter of 19 May 1999 to Mr Scouller set out two issues which would be considered by the hearing before the F&GPC on 1 July. These were "... *Region No. 7 Committee's decision to remove your Shop Steward's credentials under Rule 11, Clause 4.* "(now Rule 11:5) and the Regional Committee's recommendation that "... *you be "barred from holding office in the Union for a period of five years ..."*". This letter not only corrected the rule reference under which the credentials had been withdrawn (see para 2.55 above) it also made clear that the F&GP Committee would consider two separate matters.

2.62 On one of these matters, the second, they concluded that the Regional Committee did not have the power to ban Mr Scouller from holding any office (which I take to mean "all" offices rather than any particular one). Mr Scouller's appeal on that issue was upheld.

2.63 On the first issue they concluded, after a full re hearing, both that the Regional Committee did have the power to remove Mr Scouller's credentials as a Shop Steward and that they were justified in so doing. In setting a period during which this ban would operate the F&GPC adopted the five-year period mentioned in the decision they had overturned. I regard this as unfortunate because it tends to blur the distinction between the two matters with which they were concerned. However, I do not believe this in anyway invalidates their decision to allow the appeal against banning Mr Scouller from all office for five years and to dismiss the appeal against the withdrawal of Mr Scouller's credentials as a Shop Steward and to set a time limit on that withdrawal.

2.64 Viewed in this way the issue of a new action requiring new notification, a new hearing and a new right of appeal does not arise. In effect the F&GPC heard two appeals from decisions of the Regional Committee, they upheld one and dismissed the other. It was not disputed that under the union's rules disciplinary issues may be appealed once and then to a level above which the original decision was taken. That in my view is what happened in this case.

2.65 Finally, I am satisfied that the union had the authority to remove Mr Scouller's credentials for the five-year period stated. To remove a member's credentials, merely for the period of office remaining (in effect as claimed by Mr Finch) would not make sense. The relevant part of Rule 11.5 states:

“The Regional Committee or its authorised sub-committee may have authority to withdraw credentials of a shop steward or equivalent representative in circumstances where it is considered that the representative is not acting in accordance with Union Rules and Policy, subject to the right of appeal as provided for in these rules.”.

2.66 If, as Mr Finch claimed, a member's credentials should be removed for a maximum period of two years or to the end of the period of office (whichever came first) this could lead to the situation of a member, perhaps with only weeks left of a two-year period of office, having been found guilty under rule, then being barred from office for just those remaining few weeks and then being eligible to stand, be nominated and, if elected, to serve a further two-year term. This cannot be right and I am satisfied that Rule 11:5 cannot be read in the way suggested by Mr Finch on behalf of Mr Scouller.

2.67 In summary, I find that the procedures of the Regional Committee in disciplining Mr Scouller were properly carried out according to union rules and the principles of natural justice. That two issues were appealed to the F&GPC who, having followed the proper procedures, upheld one and dismissed the other. Their decision on the penalty to be imposed was made within the union rules and Mr Scouller was not denied any appeal to which he had a right.

2.68 It is for these reasons that I dismiss the complaints by Mr Scouller.

E G WHYBREW
Certification Officer