

D/2/86

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

Applicant: MS Y REY

Trade Union: FILM ARTISTES' ASSOCIATION

DATE OF DECISION	11 April 1986
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DECISION

Under section 5 of the Trade Union Act 1984 I am empowered to make, or refuse to make, a declaration applied for by any person who claims that their trade union has failed to comply with one or more of the provisions of Part I of the Act. For the reasons set out below I am unable to make the declaration requested in this case.

The application

1. On 9 December 1985 I received a letter from Ms Y Rey complaining that the Film Artistes' Association ("the Union") had breached Part I of the Trade Union Act 1984 ("the 1984 Act") in that she was telephoned at home on 26 November 1985 by Mr Tony Castleton, a member of the Executive Committee of the Union, who she claimed attempted to influence the way she voted in a forthcoming election for voting members of that Executive Committee.
2. Ms Rey is a member of the Union and was a member at the date of the elections in question. I accepted her application as a request for a declaration that the Union was in breach of section 2(6)(a) of the 1984 Act which says:-

"Every person who is entitled to vote at the election must -

(a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees ..."

The facts

3. My enquiries of the applicant and of the Union showed that the facts of the matter were in dispute. In her letter of 9 December 1985 to my Office Ms Rey stated that she was asked by Mr Castleton over the telephone whether she had received her voting paper for the forthcoming election, and also whether she knew who to vote for as "they" wished to keep the same people on the committee. Mr S Brannigan, the Acting General Secretary of the Union, in response to a letter from my Office, stated that the election had been conducted by the Electoral Reform Society on behalf of the Union. He denied that Mr Castleton had telephoned the applicant either about the election or any other matter. This letter was copied to the applicant who re-iterated her contention that the telephone call was made. Before this direct conflict of evidence could be explored further my Office was informed by Mr Brannigan that Mr Castleton had died on 17 March.

Reasons for refusing to make a declaration

4. The applicant concedes that it is her word against Mr Castleton's, and in view of Mr Castleton's death the direct conflict of evidence cannot be resolved. However, even if the alleged telephone conversation between Mr Castleton and the applicant could be substantiated I do not believe that the words alleged to have been spoken are capable of amounting to interference or constraint within the terms of section 2(6)(a) of the 1984 Act.

5. The purpose of section 2(6)(a) is to ensure that members are not subject to any pressure which would have the effect of preventing them from freely exercising their right to vote. In the past my predecessors as Certification Officer have decided, and I agree, that the right to allow a person to vote without interference or constraint is intended to exclude such conduct as would intimidate or put a member in fear of voting, or amount to physical interference. In my view the words complained of by the applicant fall short of such conduct.

6. For these reasons I must refuse to make the declaration asked for.