

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

Ms Rodriguez-Noza

v

UNISON

Date of Decision:

11 December 2013

DECISION

Upon application by Ms Rodriguez-Noza ("the Claimant") under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").

I strike out the Claimant's application pursuant to section 256ZA of the Trade Union and Labour Relations (Consolidation) Act 1992, on the grounds that the complaints advanced by the Claimant have no reasonable prospect of success and/or are otherwise misconceived.

REASONS

1. Ms Rodriguez-Noza entered the employment of the Abertawe Bro Morgannwg University Health Board on 9 August 2001, having been recruited in the Philippines. She worked as a nurse at the Princess of Wales Hospital, Bridgend. She gave notice of resignation on 31 July 2009 and her employment terminated on 3 September 2009. Ms Rodriguez-Noza, brought claims to the Employment Tribunal alleging unlawful discrimination on the grounds of race and disability and unfair constructive dismissal. The disability that was alleged was work related stress and depression. Following a five day hearing in November 2010, all her claims were dismissed. Ms Rodriguez-Noza appealed to the EAT. Her appeal was eventually allowed to proceed on limited grounds and her appeal against the dismissal of the complaint of disability discrimination was allowed on 16 March 2013. That complaint was remitted to a differently constituted Tribunal to be considered afresh. On 10 July, Ms Rodriguez-Noza sought permission of the Court of Appeal to appeal
2. Ms Rodriguez-Noza first contacted my office by a letter dated 21 February 2013. She sought to make a complaint to me about the General Secretary of UNISON, Mr Prentis, but also referred to complaints about six named UNISON representatives. She alleged that UNISON had denied her rights as a member and refused to represent her from the start of her formal grievance process. It was alleged that there had been a breach of rule and a breach of the 1992 Act. Ms Rodriguez-Noza enclosed an extensive bundle of correspondence. However, it was not clear from the terms of this letter which rules of the union or which provisions of the 1992 Act

had allegedly been breached or when. It is not for my office to attempt to deduce or formulate a complaint from a bundle of documents submitted by a putative claimant, nor would it be appropriate for a union to attempt to deduce the complaint it must meet from such material. In these circumstances it is my general practise to request answers to specific questions in correspondence so as to identify the rule or statutory provision allegedly breached, when it was breached and a brief description of the circumstances in which it was breached. It is rare that this process does not result in a clear complaint being identified and for that complaint to proceed to a hearing. My office entered into such correspondence with Ms Rodriguez-Noza.

3. I do not propose to detail the correspondence that followed, which involved further bundles of documents being submitted by Ms Rodriguez-Noza. I summarize the background facts that emerged in the correspondence as follows. Ms Rodriguez-Noza raised an informal grievance with her employer in 2008 and was accompanied at informal grievance meetings by Mr Forsythe, the assistant secretary of her branch. Her case was later reviewed by her branch secretary, Mr McDyer, who met with her on 29 May 2008 and wrote to her the same day enclosing a form on which to submit a formal grievance. On or about 30 May 2008 Ms Rodriguez-Noza submitted a formal grievance to her employer, alleging bullying, harassment and discrimination by six named colleagues. On 4 June 2008, her employer responded, requesting more details of the alleged conduct including dates, times and any witnesses. On 6 June 2008, Ms Rodriguez-Noza made a request for a stage two grievance hearing, indicating that she was not satisfied with the response to her stage one grievance. Upon receipt of a 'case form' from Ms Rodriguez-Noza on 4 June 2008, Mr Gabrielsen, her union Regional Organiser, wrote to her on 10 June 2008. He informed her that the union would only support her if she supplied sufficient evidence to support such serious allegations. On 11 June 2008 Ms Rodriguez-Noza wrote to her union's Head Office asking if Mr Gabrielsen had the right to pull out of her complaint on the grounds that he did not think it was justified apart from one incident which he said had been fully investigated. Subsequently, on 27 June 2008, Mr Gabrielson and others met with Ms Rodriguez-Noza, her husband and a friend. By a letter dated 2 July 2008, Mr Gabrielson noted that Ms Rodriguez-Noza's complaints extended over a 7 years period and that she had neither supportive evidence nor dates of the events. He concluded that on the information before him UNISON could not support her in her grievances nor in a complaint to an Employment Tribunal, which, if pursued, could be found to be frivolous or vexatious. By a letter dated 19 August 2008 the union's Head Office supplied Ms Rodriguez-Noza with a copy of the UNISON complaints procedure and informed her that in the first instance she should write to her Regional Secretary. Following a meeting with her employers on 27 August 2008, Ms Rodriguez-Noza's level two grievance was dismissed. She appealed this decision by a letter of 8 September 2008. By letters of 8 September and 31 October 2008 Ms Rodriguez-Noza made written requests to her union Regional Secretary in Wales, Mr O'Shea, to review her case and the refusal of support by Mr Gabrielsen. On 1 February 2009 Ms Rodriguez-Noza wrote to the Union's Head Office to file a formal grievance against Mr O'Shea, Mr Gabrielson and the two local officials, Mr McDyer and Mr Forsyth. By a letter to Ms Rodriguez-Noza of 13 March 2009, Mr O'Shea noted that she had been interviewed by Mr Gabrielson and the union's Regional Equalities Officer, Lynne Hackett and that the hospital's internal grievance with the hospital was concluded. Mr O'Shea stated that he was satisfied that all her concerns had been fully dealt with and that a proper decision had been made by the union that her case had little or no prospect of success were it to have been pursued. He concluded that he and the Regional

Equalities Officer would be happy to meet with her if there were fresh matters to be considered. By a letter dated 25 March 2009, the union's Membership Liaison Unit (which handles internal complaints) replied to Ms Rodriguez-Noza's grievance letter of 1 February by stating that the points she had raised had been responded to by Mr O'Shea's letter of 13 March and that any further queries should be directed to him, as he had suggested.

4. UNISON has confirmed that Ms Rodriguez-Noza is no longer a member of the Union, her membership having lapsed on or about 31 December 2009. Ms Rodriguez-Noza states that she changed unions to the RCN. By section 108A(3) of the 1992 Act it is a requirement that a person making an application to me of a breach of the rules of the union must be a member of the union at the time of the application or have been a member at the time of the alleged breach.
5. On 8 October 2012 Ms Rodriguez-Noza wrote to the General Secretary of UNISON complaining about the discriminatory treatment of her by the union. Specifically, she complained about the failure of six named people to support her with her grievance in or about 2008 on the grounds that they did not think she had a case. These were the four people about whom she had complained by her letter of 1 February 2009, together with the Lynne Hackett, the Regional Equality Officer, and the Head of the Membership Liaison Unit at Head Office. She requested that the named people be held accountable for their actions and that she be compensated accordingly. She noted that she had lost her licence to practise as a nurse as she had been sick for a long time and that the UNISON reps had contributed to her emotional torture. There followed an extensive exchange of correspondence. UNISON wrote to Ms Rodriguez-Noza on 12, 19 and 30 October and 20 November 2012. The union's position was that if she clearly set out her complaints against each individual, it would be able to establish if it could investigate those complaints. Ms Rodriguez-Noza's response of 24 November 2012 states, inter alia, *'The bases of my complaints are the Indexed Documents I submitted to your office. Now, it is for you to inspect the relevant documents'*. Ms Rodriguez-Noza continued to write to the union on a regular basis before the union's substantive response to her on 21 February 2013. In that letter, the union commented that Mr O'Shea had responded to her original complaints on 13 March 2009 and that her complaint to Head Office of 1 February 2009 had been responded to on 25 March 2009, confirming that her complaint had been addressed by Mr O'Shea's letter of 13 March 2009. The union's letter concludes, *'The complaints you made about the representation you received in 2008/2009 were dealt with in 2009. Nearly four years has passed since then. Given this lapse of time we cannot take any action in relation to your complaint. The matter was concluded in 2009'*. Ms Rodriguez-Noza's made further representations to her union by a letter dated 24 February 2013. She asserted that her complaint against the hospital may have been concluded in 2009 but not her complaint against the union. She argued that the union *'still has to address my complaint properly this time'*, that the matter is unresolved and *'continues to this day until you address it properly'*. There followed two further exchanges of correspondence, which concluded with the union's letter to Ms Rodriguez-Noza of 12 March 2013, the final paragraph of which states, *'As confirmed in my previous letters to you, your complaint was concluded in 2009. Your case will not be reopened'*.
6. Ms Rodriguez-Noza's complaint to me is dated 21 February 2013.
7. My office sought clarification from Ms Rodriguez-Noza about her complaints on 27

February, 12 March, 22 April, 14 May, 21 June, 10 July, 1 August and 16 August 2013. On 29 August 2013 Ms Rodriguez-Noza provided a 24 page letter and enclosure in which she set out her case. On 17 September 2013, I caused a 'show cause' letter to be sent to Ms Rodriguez-Noza pursuant to section 256ZA(4) of the 1992 Act requiring her to show cause why her complaint should not be struck out. Ms Rodriguez-Noza replied on 23 September 2013, referring, inter alia, to her letter of 29 August.

The relevant statutory provisions

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

108A. Right to apply to Certification Officer

(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) *the appointment or election of a person to, or the removal of a person from, any office;*
- (b) *disciplinary proceedings by the union (including expulsion);*
- (c) *the balloting of members on any issue other than industrial action;*
- (d) *the constitution or proceedings of any executive committee or of any decision-making meeting;*
- (e) *such other matters as may be specified in an order made by the Secretary of State.*

(3) *The applicant must be a member of the union, or have been one at the time of the alleged breach or threatened breach.*

(6) *An application must be made -*

- (a) *within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or*
- (b) *if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in subsection (7).*

(7) *Those days are -*

- (a) *the day on which the procedure is concluded, and*
- (b) *the last day of the period of one year beginning with the day on which the procedure is invoked.*

256ZA. Striking out

(1) *At any stage of proceedings on an application or complaint made to the Certification Officer, he may-*

- (a) *order the application or complaint, or any response, to be struck out on the grounds that it is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived,*
- (b) *order anything in the application or complaint, or in any response, to be amended or struck out on those grounds, or*
- (c) *order the application or complaint, or any response, to be struck out on the grounds that the manner in which the proceedings have been*

conducted by or on behalf of the applicant or complaint or (as the case may be) respondent has been scandalous, vexatious, or unreasonable.

(4) Before making an order under this section, the Certification Officer shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made.

(5) Subsection (4) shall not be taken to require the Certification Officer to send a notice under that subsection if the party against whom it is proposed that the order under this section should be made has been given an opportunity to show cause orally why the order should not be made.

(6) Nothing in this section prevents the Certification Officer from making further provision under section 256 (1) about the striking out of proceedings on any application or complaint made to him.

(7) An appeal lies to the Employment Appeal Tribunal on any question of law arising from a decision of the Certification Officer under this section.

Conclusions

9. In considering whether Ms Rodriguez-Noza's complaint should be struck out in accordance with section 256ZA(1) of the 1992 Act I must examine whether it was made in time (in accordance with section 108A(6) and (7) of the 1992 Act) and/or whether it has no reasonable prospect of success or is otherwise misconceived.
10. The standard limitation period in applications of breach of the rules of a union is provided for in section 108A(6)(a) of the 1992 Act. This requires that any such application is to be made within six months of the alleged breach. Sections 108A(6)(b) and 108A(7) provide for an extended limitation period, which I describe below.
11. Ms Rodriguez-Noza's application to me was made by her letter of 21 February 2013 which was received at my office on 25 February. She complains that her then union was in breach of its obligations to her under its rules and/or its statutory obligations by not having supported her when she was allegedly subjected to bullying, harassment and discrimination by certain colleagues in 2008.
12. The initial rejection of Ms Rodriguez-Noza's application for union assistance was in 2008 but this rejection was finally confirmed in Mr O'Shea's letter of 13 March 2009 and in the letter to her from Head Office of 25 March 2009. This is the latest date upon which it is alleged the breaches of the rules of the union or any statutory provision occurred.
13. By section 108A(6)(a) of the 1992 Act, this complaint must have been made within six months of the date on which the alleged breach occurred. The alleged breach in this case occurred at the latest on 25 March 2009. A complaint in relation to any such breach should ordinarily have been made within six months, that is by 24 August 2009. Ms Rodriguez-Noza's application was received at my office on 25 February 2013. Accordingly, I find that the alleged breach has been brought out of time in accordance with section 108A(6)(a) of the 1992 Act.
14. I turn now to consider whether Ms Rodriguez-Noza's complaint was brought in time in accordance with the extended limitation period in sections 108A(6)(b) and 108A(7) of the 1992 Act. This requires an examination of whether Ms Rodriguez-

Noza invoked any internal complaints procedure of the union within six months of the date of the alleged breach and, if so, whether her complaint was brought within a further period of six months beginning with either (a) the date upon which that complaint was concluded or (b) the last day of the period of one year beginning with the day on which the procedure was invoked, whichever is the earlier (my underlining).

15. On 1 February 2009 Ms Rodriguez-Noza's wrote to the Head of the Members Liaison Unit at Head Office with a 'Formal Grievance' that Mr O'Shea was ignoring her correspondence and three other officials had abandoned her pleas for help. I will assume, in Ms Rodriguez-Noza's favour, that this letter constituted the invocation of the UNISON internal complaints procedure for the purposes of section 108A(6)(b) of the 1992 Act.
16. If an internal complaints procedure of the union is invoked, sections 108A(6)(b) sets the limitation period as being six months after the earlier of the two events provided for in 108A(7)(a) and (b). Ms Rodriguez-Noza relies on section 108A(7)(a) in submitting that her complaint was brought in time. She argues that the internal complaints procedure of the union is still not concluded in that the union has yet to address her complaint 'properly'. The logic of this argument is that the six months limitation period in section 108A(6)(b) has not yet even started to run. I deal with this submission in two ways. Firstly, the union disputes that the complaints procedure is ongoing. In its letter to Ms Rodriguez-Noza of 12 March 2013, it states that her complaint was concluded in 2009. Nevertheless, even if it were to be assumed in Ms Rodriguez-Noza's favour that her union internal complaint was continuing, she must still overcome the hurdle in section 108A(6)(b). This provides that the limitation period expires "...within the period of six months starting with the earlier of the days specified in subsection (7)". (my underlining). On Ms Rodriguez-Noza's submission that her complaint is ongoing, the earlier of the dates specified in subsection (7) must be that provided by section 108A(7)(b), given that the events in question occurred in 2008 and 2009. Ms Rodriguez-Noza's submission is therefore misconceived.
17. Turning to the application of section 108A(7)(b) of the 1992 Act, I observe that the six months limitation period within which Ms Rodriguez-Noza must have made her complaint to me commenced no later than 'the last day of the period of one year beginning with the day on which the procedure was invoked'. The date the internal procedure was invoked was 1 February 2009 and so the last day of the period of one year beginning with that day is 31 January 2010. Accordingly, by an application of section 108A(7)(b), the latest date for the expiration of the limitation period calculated by reference to section 108A(6)(b) is six months after 31 January 2010, namely 30 July 2010. As the complaint was presented to me on 25 February 2013, I find that it was presented out of time.
18. Should it be argued that Ms Rodriguez-Noza invoked the union's complaints procedure by her letter to the General Secretary of 8 October 2012, she would still be unable to take advantage of the extended limitation period in section 108A(6)(b). It is a requirement that any such complaints procedure must be invoked within 6 months of the day of the alleged breach or breaches. The alleged breaches in this case appear to have occurred in either July 2008 when Ms Rodriguez-Noza's request for union assistance was originally rejected or in March 2009 when that rejection was confirmed. In any event, the breaches could not have occurred after

Ms Rodriguez- Noza left the union in or about December 2009. Accordingly, Ms Rodriguez-Noza cannot rely on her letter to the union of 8 October 2012 as being the invocation of the union's complaints procedure for the purposes of section 108A(6)(b).

19. An alternative approach to this question is to examine the longest period within which a complaint to me must be made after an alleged breach or rule. A member has six months from the date of an alleged breach to either make a complaint to me or invoke any internal complaints procedure of the union. Assuming the member invokes the union's internal complaints procedure at the end of this period of six months, the member has a period of up to 12 months in which the limitation period is effectively suspended, with the effect that the limitation period expires six months after the 12 months period of suspension. The effect of these provisions is that the longest period within which a complaint can be made is 24 months from the date of the alleged breach. Ms Rodriguez-Noza's submission that the limitation period is open ended if the union's internal complaints procedure is not concluded is misconceived.
20. Applying this alternative approach to the facts of this case, Ms Rodriguez-Noza made her complaint to me on 25 February 2013. I must therefore ask myself if the date on which the alleged breach occurred was within 24 months of this date, namely on or after 26 February 2011. On any version of the facts before me, the alleged breach occurred before 26 February 2011 and accordingly the application is out of time. It therefore has no reasonable prospect of success.
21. Had Ms Rodriguez-Noza's application been in time, I would have had to consider whether it should be struck out in any event. In this connection, I have had regard to the whole of the responses submitted by Ms Rodriguez- Noza in correspondence (including their enclosures). I have had particular regard to her 24 page letter of 29 August 2013 with enclosure (to which she refers in her response to the 'show cause' letter of 23 September and in which she sets out her case most fully).
22. In Ms Rodriguez-Noza's communication of 29 August 2013, she does not set out a basis for claiming any breach of the 1992 Act. She refers to section 108A(2)(d) of that Act but misunderstands its effect. Section 108A(2)(d) does not establish a free-standing statutory obligation for which a trade union can be found in breach. Rather, it describes one of the categories of rules over which I have jurisdiction. Accordingly, I find that any complaint of breach of statute that Ms Rodriguez-Noza may appear to have made has no reasonable prospect of success and/or is misconceived.
23. Ms Rodriguez-Noza sets out the rules that the union allegedly breached in the enclosure to her letter of 29 August 2013. In that enclosure she has reproduced about 33 rules, without particularising why or how each has been breached. The enclosure gives the appearance of her having gone through the rules and selected any rule with possible relevance to her case, without reference to section 108A of the 1992 Act. Revealingly, however, under the heading 'When The Rule Was Breached', Ms Rodriguez-Noza states that they were breached during the informal grievance meeting between her employer and Mr George Forsyth, which was in or about May 2008, and 'right through to my last contact with Unison'. Her last known contact with the union in relation to the breaches themselves (as opposed to her internal union complaint) was on 25 March 2009. This places the date of the alleged

breaches well before the termination of her employment in September 2009 and therefore supports my finding on whether the complaint as a whole was brought in time. Having considered the rules allegedly breached, as reproduced in the enclosure with Ms Rodriguez-Noza's letter of 29 August 2013, I find that none of them give rise to a case which has a reasonable prospect of success on the facts disclosed by the applicant. Indeed, I find that they disclose a complaint which is misconceived.

24. For the above reasons I strike out Ms Rodriguez-Noza application pursuant to section 256ZA of the 1992 Act. I do so on the grounds that the complaints have no reasonable prospect of success and/or are misconceived.
25. Ms Rodriguez-Noza has requested on oral hearing before I determine whether her complaint should be struck out. In this connection, I note that section 108B(2)(b) of the 1992 Act provides that an applicant and the union must be given an opportunity to be heard if I have accepted an application under section 108A. In this case, it was unclear from the outset whether Ms Rodriguez-Noza's was in time and/or had any reasonable prospect of success and/or was misconceived and my enquiries of her did not proceed beyond that point to accepting her application. In any event, my jurisdiction to strike out an application is contained in section 256ZA, which does not reproduce an equivalent provision. Indeed, the rights of an applicant to make representations on a potential strike out are dealt with expressly in section 256ZA(4) and (5), which provide as follows:

"(4) Before making an order under this section, the Certification Officer shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made.

(5) Subsection (4) shall not be taken to require the Certification Officer to send a notice under that subsection if the party against whom it is proposed that the order under this section should be made has been given an opportunity to show cause orally why the order should not be made."

Whilst I have regard to the importance of an oral hearing in the disposal of a substantive matter, the same considerations do not apply if, upon careful examination, a complaint is found to have no reasonable prospect of success or to be misconceived. In such a case, regard may also be had to the cost and inconvenience to be incurred to other parties and to the public purse. In any strike out proceedings, the interests of justice require that a party has an opportunity to put its case, as is expressly provided for in section 256ZA(4). Ms Rodriguez-Noza has had such an opportunity. In exercising my discretion not to convene an oral hearing I have had regard to the voluminous documentation submitted by Ms Rodriguez-Noza and to the submissions she has made.



David Cockburn
The Certification Officer