

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

Mr R Bentham

v

Union of Construction, Allied Trades and Technicians

(No. 2)

Date of Decision:

20 August 2013

DECISION

Upon application by Mr Roy Bentham ("the claimant") under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").

Pursuant to section 256ZA of the 1992 Act, I strike out the claimant's application on the grounds of his excessive delay in proceeding with the application and/or that the manner in which the proceedings have been conducted by the claimant has been unreasonable.

REASONS

1. Mr Bentham brought this application as a member of the Union of Construction, Allied Trades and Technicians Union ("UCATT" or "the Union"). He did so by a Registration of Complaint Form which was received, with attachments, at my office on 4 January 2013.
2. In his Registration of Complaint Form, Mr Bentham appeared to be making two separate complaints of breach of rules relating to disciplinary matters. One complaint concerned disciplinary action which the Union had taken against Mr Bentham in October/November 2011 and the other was in relation to a disciplinary charge which Mr Bentham had sought to make against another member of the Union, which had been rejected by the Union.
3. My office entered into correspondence with Mr Bentham in order to clarify precisely what his complaints were about, when they occurred and, in particular, whether they came within my jurisdiction under section 108A(1) of the 1992 Act. The first such letter from my office was dated 24 January 2013.
4. Mr Bentham responded by an email dated 29 January 2013 in which he made a point about the Union's charge against him being out of time and attached correspondence between himself and the Union relating to that charge. The

email also sought to raise an additional complaint. A further email that day contained a string of email correspondence which Mr Bentham described as evidence pertaining to the third complaint

5. My office wrote again to Mr Bentham on 31 January 2013. It set out its understanding of the complaints that he appeared to be making, asked him to specify the dates of the alleged breaches and to confirm or amend its understanding of the wording of the complaints. The letter emphasised the importance of Mr Bentham's complaints being clearly expressed. The case manager informed Mr Bentham that *"it is your responsibility as the claimant to ensure that your complaints accurately reflect the matters which you seek to complain about. Once agreed, your complaints will be put to the Union"*. In the same letter, Mr Bentham was informed of the information he would need to provide if he wished to proceed with his additional complaint. In essence, he was told that he should set out exactly which union rule had been breached, when it was breached and how it was breached.
6. Mr Bentham replied by a short email of 6 February 2013 which attached a further email string. He provided the dates requested in relation to the initial two complaints but did not confirm or comment on the suggested wording of the complaints as set out in the letter from the Certification Office of 31 January.
7. My office responded to Mr Bentham by a letter dated 8 February, which stated, inter alia, *"In my letter of 31 January 2013 I asked you to provide confirmation of what your complaints are. To try to be helpful, I suggested wording for two complaints. I asked you to either confirm that this wording correctly stated your complaints or to provide alternative words. However your email does not contain confirmation of your complaints. Until you provide this information I can take no further action in relation to the application you have submitted."* The letter also dealt with the potential third complaint Mr Bentham had raised ("Complaint Three") and stated, *"I would emphasise again that in bringing a complaint to the Certification Officer it is your responsibility to state your complaint and provide the evidence and argument to support your complaint. This office cannot infer or pursue complaints on your behalf"*.
8. Mr Bentham replied by email on 9 February 2013. He stated, *"The wording in complaints 1 & 2 are fine"* and provided further documents in relation to them. He then went on to provide a brief further explanation of Complaint Three.
9. My office responded substantively by letter dated 22 February 2013. In relation to the first two complaints, Mr Bentham was informed that he was still required to state the dates of the alleged breaches. In relation to Complaint Three Mr Bentham was asked for further particulars in order to understand the specific allegation that he sought to bring.
10. By an email of 26 February 2013 Mr Bentham provided the missing dates for complaints 1 and 2 and provided some further information about Complaint Three. In a brief further email of 28 February, Mr Bentham again commented upon the Third Complaint

11. My office replied to Mr Bentham on 6 March 2013. He was asked to confirm the complete text of his first and second complaints which now contained the dates notified to this office. The letter goes on to discuss the unresolved questions about his Complaint Three. Mr Bentham was asked to provide specific information in relation to this complaint.
12. In his emailed response of 14 March 2013, Mr Bentham addressed some, but not all, of the matters that had been raised about his third complaint. This is the last correspondence my office received from Mr Bentham in relation to his application.
13. My office wrote again to Mr Bentham on 19 March, dealing specifically with outstanding information that had been sought in relation to Complaint Three. This letter was sent by post and email and required a response by 2 April.
14. Having received no response to that letter by 2 April 2013, the case manager sent a brief email on 3 April pointing out to the claimant that no response had been received and saying, *"Please let me know when you expect to be able to reply. Alternatively, if anything in my letter was unclear or there is any aspect you wish to discuss please feel free to give me a call"*.
15. Having received no response to that email, the case manager wrote again to Mr Bentham on 11 April (sent by post and email). The letter set out complaints 1 and 2 and stated, *"You will recall that you previously agreed the wording of these complaints and then provided the relevant dates, you simply need to formally confirm that the above are your complaints. Once you do so, the Assistant Certification Officer will give consideration to sending these complaints, together with all the correspondence between you and this office to date on your application to bring the complaints, to the Union in order to obtain its comments. Whilst it is obviously desirable to deal with all three complaints at the same time, the Assistant Certification Officer is concerned that there should not be any undue delay in proceeding to the determination of the above complaints which have already been agreed. Accordingly, if you are able to provide that required information for your complaint 3 at this stage please do so, so that the matter can be progressed. Alternatively if you do not intend to pursue the third complaint please confirm this in writing"*. Mr Bentham was required to respond by 26 April.
16. Having received no response to that letter by 26 April 2013, my office wrote to Mr Bentham by a letter wrongly dated as 13 June. It was in fact posted and sent by email on 12 June. The letter informed Mr Bentham that he was required by no later than 27 June to confirm complaints 1 and 2 and state whether he wished to pursue his other allegations and if so to address the issues set out in previous correspondence. The letter concluded by informing Mr Bentham *"On receipt of your response the Certification Officer will consider what action to take in relation to the issues which you have raised. In the absence of a response he will consider the options available to him which could include striking out your complaints under section 256ZA of the 1992 Act"*.
17. Having received no response to that letter by 27 June 2013, I reviewed the application and the correspondence to date and required a show cause letter to

be sent to Mr Bentham pursuant to section 256ZA(4) of the 1992 Act giving him an opportunity to explain why his applications should not be struck out.

18. My office sent such a show cause letter to Mr Bentham by recorded delivery and email on 18 July 2013. The letter enclosed the text of section 256ZA of the 1992 Act and explained its provisions. Mr Bentham was informed that an application could be struck out on the grounds that "the manner in which the proceedings had been conducted by the applicant has been unreasonable" or for "excessive delay in proceeding with the application". Mr Bentham was reminded that he had not finally confirmed the text of any complaint nor responded to any communication from this office since 14 March. He was invited to explain why I should not order his application to be struck out and told that he should do so by 2 August, after which date I would consider whether the complaint should be struck out. He was also advised that if he did not wish to continue with his application he could formally withdraw it, which would negate the need for a strike out decision to be issued.
19. Having received no response to the show cause letter by 2 August 2013, my office ascertained from Royal Mail that it was delivered to Mr Bentham's address on 24 July and receipt was acknowledged by signature.

The Relevant Statutory Provisions

20. The provisions of the 1992 Act which are relevant for the purposes 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.*

108B Declarations and orders

- (1) *If he accepts an application under section 108A the Certification Officer -*
 - (a) *shall make such enquiries as he thinks fit,*
 - (b) *shall give the applicant and the union an opportunity to be heard,*
 - (c) *shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,*
 - (d) *may make or refuse the declaration asked for, and*

- (e) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.
- (5) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

256ZA Strike 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) ...
 - (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.
- (2) The Certification Officer may order an application or complaint made to him to be struck out for excessive delay in proceeding with it.
- (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

Conclusions

21. Section 108(B)(2)(a) of the 1992 provides that, upon an application being made, I shall make such enquiries as I think fit. It is usual that an application by a union member requires some clarification before it can be put to the union in a form which enables the union to understand the case that is being put against it and prepare its defence. There may also be issues related to my jurisdiction which require explanation by the claimant. As the information required from a claimant is usually straightforward, it is extremely rare for this process not to result in a clear complaint being quickly identified and for that complaint to proceed to a hearing.
22. The issues raised by Mr Bentham in his Registration of Complaint Form were not expressed with sufficient clarity to enable the Union to understand the case that it had to meet and to prepare its defence, including, if appropriate, arguments on whether the complaints had been brought in time. Nor was it sufficiently clear that the complaints were matters upon which I could adjudicate in accordance with section 108A of the 1992 Act.
23. As is my usual practice, I caused enquiries to be made of Mr Bentham to clarify the issues and/or alleged breaches so that the complaints might be put to the Union, its response obtained and the application proceed to an oral hearing.

24. Until Mr Bentham's last email to my office, sent on 14 March 2013, he had shown himself to be actively engaged with his application, responding promptly to correspondence. His communications ceased from 14 March without explanation. He has failed to respond at all to correspondence from my office dated 19 March, 2 April, 11 April and 13 June and failed to respond to the show cause letter dated 18 July. Mr Bentham has, in my judgement, been given adequate opportunity to progress his complaints but he has failed to avail himself of those opportunities. Further I have been given no reason to consider that there is any impediment to Mr Bentham responding to this correspondence.
25. It is not in the interests of justice for applications to remain open indefinitely. Claimants must pursue their applications diligently. Section 256ZA(2) of the 1992 Act provides me with a power to ensure that claimants do not cause excessive delay in the processing of their complaints. An application may be struck out in the event of excessive delay in proceeding with it or for unreasonable conduct in the manner in which proceedings have been conducted. On the facts of this case, I find that there has been excessive delay on the part of Mr Bentham in the processing of his complaint and that his conduct of the proceedings has been unreasonable.
26. For the above reasons, I order that the claimant's application be struck out on the grounds of his excessive delay in proceeding with it and/or that the manner in which the proceedings have been conducted by him has been unreasonable.



David Cockburn
The Certification Officer