

D/15-27/13-14

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

**Mrs A Rutter**

**v**

**Association of Teachers and Lecturers**

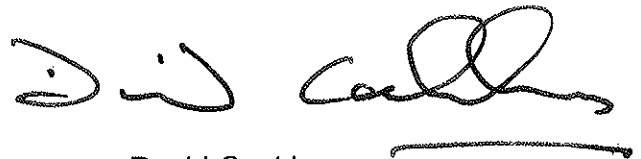
**Date of Decision**

**7 August 2013**

**DECISION**

Upon applications dated 24 August 2012, 3 January 2013 and 17 January 2013, Mrs Rutter ("the claimant") alleged that the Association of Teachers and Lecturers ("the Union") had breached its rules between March 2012 and November 2012 by having failed to follow the rules relating to disciplinary procedures in dealing with the matters that she had sought to raise with the Union. The complaints that were put to the Union are contained in the annex hereto.

The claimant's applications are dismissed upon withdrawal by her.

A handwritten signature in black ink, appearing to read 'David Cockburn', with a horizontal line underneath it.

David Cockburn  
The Certification Officer

**Mrs A Rutter**

**v**

**Association of Teachers and Lecturers**

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**Annex to decision dated 7 August 2013**

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**Application 24 August 2012**

**Complaint 1**

On or around 22 March 2012, the Association of Teachers and Lecturers ("the ATL") breached paragraph 15 of Appendix C of its rules in the following respects:-

- 1.1 The Preliminary Review Panel (PRP) decided not to pass Mrs Rutter's complaint to the Hearings Committee because:
- a) The PRP was "... unable to find issues which could be taken forward";
  - b) The PRP made a decision "... which assessed whether there were any issues which needed to be passed to the Hearings Committee of the Association"; and
  - c) The PRP was "... unable to find material reason to pass Mrs Rutter's complaint against Mr Brown to the Hearings Committee".

Under Rule 15 the PRP should have considered whether there was "... sufficient evidence that there is a case to answer"

1.2 The PRP did not consider Mrs Rutter's letter of complaint and supporting bundle of documents as "sufficient evidence" to refer any of her complaints to the Hearings Committee.

1.3 The PRP did not refer Mrs Rutter's complaints numbered 1,2,7,17 and 19 in her letter of 29 January 2012, to the Hearings Committee despite findings of the PRP apparently accepting in whole or in part the allegations made in these complaints as set out in its report

1.4 The PRP did not consider or refer the two unnumbered complaints in Mrs Rutter's letter of 24/1/12 to the Hearings Committee

1.5 The PRP failed to decide that there was sufficient evidence that there was a case to answer in relation to Mrs Rutter's complaints 1-19 and the supporting evidence

1.6 The PRP reached decisions by taking into consideration and referring to matters that were irrelevant to Mrs Rutter's complaints numbered 2,3 and 16. These considerations, contained in the document attached to the union's letter dated 22 March 2012, were ..."

- a) "that, under the circumstances, Mr Brown's reaction was acceptable"
- b) "Mr Brown wrote the email after taking advice. The Panel also noted that the Disciplinary Procedure (General Secretariat) was being used for the first time"
- c) "The Panel refers Mrs Rutter to its comments related to point 1 above. It also notes that there is no provision for appeals"

**Complaint 2**

On or around 22 May 2012, the ATL breached paragraph 11 of Appendix C of its rules by not referring Mrs Rutter's complaint about Mr Trkulja, as set out in her letter dated 8 May 2012, to the PRP no later than 14 days after receipt

### Complaint 3

On or around 10 July 2012, the ATL breached rule 6.7 of its rules when Mrs Rutter was informed that she had been suspended by the Executive committee, rather than by the president after consultation with the general secretary as required by rule 6.7.

### Complaint 4

On or around 22 March 2012 the union breached paragraph 17 of Appendix C when the chair of the PRP

a) Did not inform Mrs Rutter in writing of the PRP's decisions and the grounds upon which they were made no later than 14 days after the decision on the two unnumbered complaints in her letter of 29 January 2012; and

b) Did not inform Mrs Rutter in writing of the PRP's decisions and the grounds upon which they were made no later than 14 days after the decision in relation to the complaints numbered 1-19 in her letter of 29 January 2012.

### Complaint 5

5.1 On or around 9 March 2012 the union breached the rules of natural justice to be implied into paragraph 15 of Appendix C of its rules when the PRP by acting in breach of Rule 15 prevented Mrs Rutter from having the opportunity:

- a) to be heard on her complaints;
- b) to challenge the response to those complaints made by Mr Brown;
- c) to make submissions on the PRP's powers and terms of reference as set out in the PRP procedure and on the PRP's view and interpretation of its powers and terms of reference;
- d) to challenge prejudicial and biased statements about Mrs Rutter in Mr Trkulja's letter dated 22 March 2012 and the document attached to that letter;
- e) to challenge the findings and conclusions reached by the PRP;
- f) to challenge the PRP's findings that were irrelevant.

5.2 On or around 9 March 2012 and in Mr Trkulja's letter to Mrs Rutter dated 22 March 2012 and in the report attached to that letter the union breached the rules of natural justice to be implied into paragraph 15 of Appendix C of the Rules in that it demonstrated bias against Mrs Rutter and made a number of irrelevant and prejudiced findings against her, one of which was factually incorrect.

### Complaint 6

On or around 10 July 2012 in suspending Mrs Rutter the union breached the rules of natural justice. The rules of natural justice are referred to in Rule 6 of the ATL's Rules which requires that the procedures to be followed by the union under that Rule shall "... meet the criteria of natural justice". The union breached the rules of natural justice incorporated into Rule 6.7 of the ATL's Rules by:

- a) not informing Mrs Rutter in advance or at any stage of the union's intention to suspend her;
- b) not allowing Mrs Rutter to make a submission to the union at any stage about the union's intention to suspend her;
- c) not informing Mrs Rutter of the reason for her suspension;
- d) not informing Mrs Rutter of the meaning of, the implications of, the terms of, and the length of her suspension from membership and the circumstances in which her suspension would be lifted;

e) not allowing Mrs Rutter to see the documents considered by the union before making the decision to suspend her and denying Mrs Rutter a copy of the record of the decisions made by the union to suspend her;

f) not allowing Mrs Rutter a right of appeal against her suspension.

#### Complaint 7

The statements made by Mr Trkulja in his letter of 22 March 2012 that "Any further complaints arising from this complaint would also be out of time under rule 9 of the Complaints procedure" and "... the Panel would take a very dim view should any similar complaint be raised around these issues" amounted to a threatened breach of the rules of the union, specifically the operation of paragraph 15 of Appendix C.

#### Complaint 8

On or around the 22 March 2012, the union breached paragraph 15 of Appendix C when it decided that Mrs Rutter's complaints numbered 12 and 14 contained in her letter of 29 January 2012 were out of time

#### Complaint 9

On or around 9 March 2012 the union breached paragraph 8 of Appendix C of the Rules in that it convened a meeting under the PRP procedure when only two members had been appointed to the PRP

In relation to this complaint we have put it to Rutter that the union appear to have appointed the correct number of people to the PRP and that the quorum for the PRP (two people) when it considered her complaints had been met. We sought her comments. Mrs Rutter's representative wants to see copies of the minutes of the Defence Committee meeting which appointed the three members to the PRP, written resignation of the third PRP member etc before he responds to this point.

#### **Application 3 January 2013**

##### Complaint 1

"On or around 14 September 2012 the union's reasons for suspending Mrs Rutter were not the specific grounds permitted under rule 6.3 (a)-(e) and therefore the union breached Rules 6.7

##### Complaint 2

"Between 7 July and 14 September the union breached the principles of natural justice that inform the operation of rule 6.7 because of the delay in informing Mrs Rutter of the reasons for her suspension

#### **Application 17 January 2013**

##### Complaint 1

On or around 11 October 2012 the union breached paragraph 15 of Appendix C of its rules in the following respects:

- 1.1 The PRP did not pass Mrs Rutter's complaint against Mr Trkulja to the Hearings Committee because it decided "unanimously not to uphold" her complaint and should have decided whether she had provided "sufficient evidence that there is a case to answer"
- 1.2 the PRP did not consider Mrs Rutter's letter of complaint dated 17 April 2012 and supporting bundle of evidence as "sufficient evidence"
- 1.3 the PRP failed to decide that there was sufficient evidence that there was a case to answer in relation to Mrs Rutter's complaint against Mr Trkulja
- 1.4 the PRP reached its decision by taking into consideration and referring to matters that were irrelevant to Mrs Rutter's complaints against Mr Trkulja. These considerations were:

- a) the PRP's finding that "the decision made by the original panel was correct" and
- b) that Mrs Rutter had suffered "no material detriment as a result of the manner in which the previous PRP handled her complaint.

#### Complaint 2

On or around 17 November 2012 the union breached paragraph 15 of Appendix C of its rules in the following respects:-

2.1 The PRP passed the complaint made against Mrs Rutter by the General Purposes Council to the Hearings Committee because of "...the serious nature of the complaint and the defence to the complaint that you have furnished". The PRP should have considered whether the GPC had provided "sufficient evidence that there is a case to answer."

2.2 The PRP decided that the document submitted as evidence by the GPC was "sufficient evidence" to support its complaint that Mrs Rutter's complaints were "continued vexatious complaints"

2.3 The PRP reached its decision by taking into consideration and referring to matters that were irrelevant. These considerations were:

- a) the PRP's decision to refer the complaint to the Hearings Committee .. "in view of the serious nature of the complaint" and
- b) The defence to the complaint you have furnished