

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

Mr S Trumm

v

National Union of Rail Maritime and Transport Workers

Date of Decision

17 December 2012

DECISION

Upon an application by Mr Steven Trumm (“the claimant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”).

I refuse Mr Trumm’s application for a declaration that on or around 13 February 2012 the National Union of Rail Maritime and Transport Workers breached rule 2.20 of its rules by allegedly expelling Mr Trumm without following the procedures for expulsion as set out in rule 2.20.

REASONS

1. Mr Trumm brought this complaint as a member of the National Union of Rail Maritime and Transport Workers (“the Union” or “the RMT”). His application was received at the Certification Office on 15 April 2012 and alleged a breach of the rules of the Union in relation to his removal from membership of the Union.
2. Following correspondence, Mr Trumm confirmed the complaint he sought to pursue in the following terms:

“On or around 13 February 2012 the RMT breached its rule 2.20 by effectively expelling Mr Steven Trumm from the Union without following the procedures for expulsion of a member as set out in rule 2.20”

3. I investigated the alleged breach in correspondence and a hearing took place on 27 November 2012. At the hearing, Mr Trumm represented himself. He produced a written witness statement and gave oral evidence. The Union was represented by Mr Peter Edwards of counsel, who was instructed by Mr Neil Johnson of Thompsons Solicitors. The Union submitted a written witness statement from Mr Bob Crow, General Secretary, who also gave oral evidence. Mr Trumm and Mr Edwards each provided skeleton arguments. There was in evidence an 88 page bundle of documents consisting of letters and other documentation supplied by the parties, together with the rules of the Union.

Findings of Fact

4. Having considered the oral and documentary evidence and the representations of the parties, I find the facts to be as follows:
5. Mr Trumm entered the employment of West Anglia Great Northern ("WAGN"), now a subsidiary of National Express, in 1999 as a trainee train driver based at its Cambridge depot. He is still employed as a train driver at that depot working for National Express East Anglia ("NXEA"). Upon entering the employment of WAGN, Mr Trumm also joined the Amalgamated Society of Locomotive Engineers and Firemen ("ASLEF") from which he was expelled in 2004. At about that time, ASLEF had a number of internal difficulties. Mr Trumm set up and ran a website known as TrueAself.com which commented upon those difficulties and was seen by some as exacerbating them. At about the same time, Mr Trumm brought the 'dot com' domain names for most of the major unions, prefaced by the word 'True', including TrueRMT.com. He gave evidence that he did not do anything with them other than to hold their domain names.
6. In 2004 Mr Trumm and three others set up a trade union called the Associated Train Crew Union ("the ATCU"). It was entered into my list of trade unions on 16 December 2004 and was granted a certificate of independence on 18 February 2011. Mr Trumm was the chair of its formation committee and its unpaid organiser in East Anglia. The ATCU succeeded in attracting members not only from ASLEF but also from the RMT. Mr Trumm accepted that the ATCU was seeking to recruit in the same space as the RMT as a direct competitor. He looked to a time when there would only be one union in the industry and that it would be the ATCU. By the end of 2009, the ATCU had about 728 members. Mr Trumm left the ATCU in mid 2010, on a date he could not further particularise and has had no formal connection with that union since.
7. Mr Trumm considers it important to be a member of a trade union but he knew in 2010 that he would be unable to rejoin ASLEF and was given to believe that an immediate application to the join the RMT would not be viewed favourably. He therefore decided to wait before making such an application.
8. In the first few days of May 2011 Mr Trumm made an online application to join the RMT. He chose to pay his contributions by direct debit and so gave the Union his bank details.
9. By a letter from the Union dated 4 May 2011 Mr Trumm was thanked for his membership of the RMT and told that his contributions would be collected from his nominated bank account; £34.24 to be deducted on 1 June 2011 and £17.12 on the first of each succeeding months to the end of 2011. This letter also contains the following sentence upon which the Union relies "*Whilst Direct Debits are a simple hassle free method of payment it is important that you check your bank/building society statements to ensure that your RMT subs are being debited from your account*". The letter is ostensibly signed by Mr Crow but he gave evidence that all letters from the Union's head office, Unity House, go out under his name as General Secretary but he might only see or sign about 5% of them. Mr Crow also gave evidence that the sort of letters sent to Mr Trumm on 4 May are automatically generated upon receipt of an application for membership.

10. Shortly afterwards Mr Trumm received a similarly signed letter from the Union dated 17 May 2011. It begins "*Welcome to the RMT*" and with it were enclosed Mr Trumm's lifetime membership card, upon which was printed his membership number, together with an RMT diary and a lapel badge. He was thanked for joining the RMT and given the contact details of his local branch. At or about the same time, Mr Trumm received the May edition of the Union's monthly magazine.
11. From at least 12 May 2011 Mr Trumm began receiving email notifications from the Union about information and events that may have been of interest to him. The last such email of which he has evidence is dated 23 June 2011.
12. There were other events in May and June 2011 which are in dispute but for which neither party could provide accurate dates. Given the reliance placed upon these events, it is both surprising and regrettable that no documentary record of them was made or that any such documentary evidence was not made available to me. The findings that I make about the chronology of the following events are therefore made on a balance of probabilities, having regard to such evidence about them as was adduced.
13. Mr Trumm stated that about two weeks after he received his membership card, on or about 31 May 2011, he telephoned the regional organiser at Unity House, responsible for his area, Mr Steve Smart. Mr Trumm stated that he did so as a matter of courtesy, to both introduce himself and to ensure that any issues arising out of his history with ASLEF and the ATCU could be raised and answered. I accept Mr Trumm's evidence that Mr Smart invited him to a meeting at Unity House at which this and other issues could be explored.
14. Mr Trumm gave evidence that this meeting took place about 2 weeks before he received a letter from the Union dated 23 June, ie on or about 10 June 2011. The Union could date this meeting no more precisely than May or June. I am surprised that Mr Trumm has no more precise recollection or diary entry for this meeting, given its importance to him, and I am surprised the Union could not provide better evidence of it, be it from Mr Smart's diary or the signing-in book at Unity House. On the available evidence, I find that the meeting occurred on or about 10 June.
15. This meeting was preceded by a chance encounter between Mr Trumm and Mr Crow in a cafe opposite Unity House at lunch time. Mr Trumm approached Mr Crow to introduce himself but the substance of their brief exchange is in dispute. Mr Trumm maintains that he advised Mr Crow that he had joined the RMT and of his aspirations for the future and that Mr Crow responded by saying that he had no problems with Mr Trumm's membership as long as he abided by the rules. Mr Crow maintains that Mr Trumm told him he was thinking of joining the Union and that he told Mr Trumm that he would have to apply, without debating the issue. During the course of this conversation, which Mr Crow thought lasted some six or seven minutes, Mr Trumm asked Mr Crow to consider employing a person who had since gone to work for the ATCU. Mr Crow considered that this demonstrated that Mr Trumm still had some involvement with that union. Having regard to the above chronology, I find that Mr Trumm did refer to the fact of his membership in this conversation but that Mr Crow's response was less supportive than Mr Trumm asserts.

16. Mr Trumm proceeded to his meeting with Mr Smart the same afternoon. Also present at the meeting was an administrative assistant from that department, Mr Craig Stewart. Although the Union states that no minute was taken of this meeting, I accept Mr Trumm's evidence that Mr Stewart made notes. Neither Mr Smart nor Mr Stewart were called to give evidence and Mr Stewart's notes were not in evidence. Mr Trumm stated that the topics raised at the meeting by Mr Smart and Mr Stewart related mainly to his history with ASLEF and the ATCU and his aims within the RMT. Mr Trumm intimated that he might obtain new members for the RMT and indeed application forms were later sent to him by Mr Smart. Mr Crow gave a different account of the discussion. He gave hearsay evidence that Mr Trumm used the meeting to discuss the possibility of recruiting more train drivers at National Express East Anglia and to explain the general disillusionment amongst that grade with ASLEF. Mr Crow stated that Mr Trumm had not referred at that meeting to his period as a founding member of ATCU. I accept Mr Trumm's account of the substance of this meeting.
17. By a letter dated 23 June 2011, Mr Smart wrote to National Express East Anglia to formally advise that the RMT's nomination for the West Anglia Company Council representative was Mr Trumm. By a letter of the same date to Mr Trumm, Mr Smart referred to their recent conversations and enclosed a copy of his letter to the employers together with 'the requested RMT application forms'. Mr Smart concluded the letter by stating "*Wishing you every success in the election*".
18. On the following day, 24 June 2011, Mr Smart wrote to Mr Trumm informing him that the RMT's nomination for him to the Company Council was now withdrawn. He went on to explain "*This is because due to an oversight, my Union's own internal procedure for nomination has not been completed at this time and my letter to you and NXEA yesterday was premature.*"
19. Mr Crow gave evidence that in the period May/June 2011 he decided to reject Mr Trumm's application for membership of the Union in accordance with rule 2(3) of the rules of the Union. He was unable to state more precisely when he made this decision but did give evidence that it was after his encounter with Mr Trumm in the cafe, which I have found to be on or about 10 June. Mr Crow gave evidence that he knew of no other person whose application had been rejected under rule 2(3) and he knew of only three members who had ever been expelled. He stated that he became aware that Mr Trumm had joined the Union when an administrative assistant, probably Craig Stewart, had approached him to say that Mr Trumm was attempting to stand as a local representative but that Mr Trumm's subscriptions were not in order. He was not a paying member. I was also told that Mr Craig had informed Mr Crow that Mr Trumm was the person who had been expelled from ASLEF. Mr Crow stated that this rang alarm bells. He recalled the TrueAself.com website, knowing that Mr Trumm also 'held the keys' to the TrueRMT.com website. Rather surprisingly, Mr Crow stated that he did not at that time know about Mr Trumm's connection with the ATCU. Mr Crow went on to give evidence that he took 24 hours to think about the situation and look at the relevant rules. He then decided to reject Mr Trumm's application for membership and that the matter was so clear that he did not see any need to consult with his President. He then spoke with the Union's membership manager, Mr Walters, and told him of his decision to reject Mr Trumm's application.

This account of how the decision was arrived at differs from the account in Mr Crow's written statement. That account is as follows: "*An ASLEF officer told me later (i.e after the conversation in the cafe) that Mr Trumm had rejoined the union online. I checked with membership and found that he had not paid any subscriptions but had just filled the form in. Given his track record with the ATCU I did not want him to be a member of our union. I therefore exercised my power under rule 2(3) to reject his application for membership and to put a stop on his contributions ...*". Mr Crow's recollection of these matters has not been assisted by the absence of any written record of his decision or his instruction to Mr Walters. I find that it is curious that there is no written record of these events having regard to the fact that no previous application for membership had ever been rejected under rule 2(3).

20. Mr Trumm does not dispute that Mr Crow exercised his discretion under rule 2(3) at some time in May/June 2011 and stressed that he did not question Mr Crow's good faith or honesty. He also accepted that no direct debit payments were ever taken from his bank by the Union, which suggested that the Union had acted upon Mr Crow's decision before the due date of the first payment, 1 June. Nevertheless, Mr Crow gave evidence that it sometimes takes up to 6 weeks to set up a direct debit and the factors that point to Mr Crow's decision having been made in May are, in my judgement, outweighed by those that point to the decision having been made in June. Doing the best I can on the evidence before me, I find on the balance of probabilities, that Mr Crow decided to reject Mr Trumm's application for membership on or about 23 June 2011. I note in particular the change of heart between the letters from Mr Smart of 23 and 24 June.
21. Consistent with the rejection of Mr Trumm's application for membership, he ceased receiving any general email notifications from the Union after 23 June and he received no further copies of the Union's monthly magazine, after the May issue. However, the Union did not notify Mr Trumm that it had rejected his application for membership and he proceeded on the basis that he was still a member. Mr Crow offered no satisfactory explanation as to why Mr Trumm was not notified. When asked at the hearing, Mr Crow stated that there was no requirement in the rules for him to do so and that, if he had written to Mr Trumm, he might have been criticised for doing something that was not required by the rules.
22. There were no further relevant events until about 22 November 2011 when Mr Trumm had cause to visit his bank. He discovered that the Union had set up the direct debit arrangement with his bank but that it had subsequently cancelled it before any money was transferred. He did not, at that time or later, find out the date that the cancellation was requested by the Union.
23. Mr Trumm raised this development with Mr Smart as evidenced by an exchange of text messages. On 23 November 2011 Mr Smart stated in a text message that he had raised the matter with head office (which was within the same building) and that they would respond to Mr Trumm direct. Mr Trumm chased the matter in text messages to Mr Smart of 9 and 14 December but without any success. On 8 December Mr Trumm wrote to Mr Crow. He set out a brief history of his engagement with the Union since May and asked for Mr Crow's intervention to ensure a rapid identification and resolution of whatever issue had arisen. Mr Trumm stated that he expected to pay any uncollected dues.

24. On 5 January 2012 Mr Trumm spoke to someone in the membership department at the Union's head office. On the same day, he sent a text message to Mr Smart informing him of this conversation and stating that all was resolved, he having offered to pay his back-dues. Mr Trumm asked Mr Smart for advice about standing for a local position within the Union.
25. On 16 January 2012 Mr Trumm again spoke on the telephone with someone in the membership department and was told for the first time that he was not a member of the RMT. Mr Trumm was told that he must ask Mr Crow for permission to join the Union. He was then transferred to a Mr Scott, who he believed to be Mr Crow's private secretary, and who told him that he had to write to Mr Crow for more information.
26. On 17 January 2012 Mr Trumm wrote to Mr Crow. He again set out a brief history of his engagement with the Union. He noted that he had not been officially informed either that his membership had been rejected under rule 2.3 or he had been expelled under rule 2.18. Mr Trumm stated that he was obliged to raise this issue with both the Certification Office and Employment Tribunal "*to ensure that time conditions are met*". He looked forward to Mr Crow finding a solution to the issue.
27. On 24 January 2012 the Union wrote to Mr Trumm advising him that his letters of 8 December and 17 January were receiving attention.
28. On 28 January 2012 Mr Trumm was involved in a fatality as he was driving a train and sent a text to Mr Smart in which he wondered if the RMT legal department could assist, even though he was aware that his membership was still a live issue.
29. On 13 February 2012 Mr Crow wrote to Mr Trumm confirming that his membership of the Union had been declined. The letter states, amongst other things: "*The fact that you helped form ATCU and played such a prominent and active role in its organisation which was directly opposed to the RMT, its rules, vision and values, and sought to discredit our union, is inconsistent with membership of the RMT. Therefore I reject your application for membership of the RMT in accordance with rule 3.*" Mr Crow's letter also sets out the Union's position regarding the direct debit mandate, the meeting with Mr Crow in the cafe and with Mr Smart as well as Mr Trumm's nomination for a position on the Company Council. It concludes by advising Mr Trumm of his right to appeal to the Council of Executives. Mr Trumm did not appeal. In a letter to my office of 26 May, he explained that "*For me to use this route would be an acceptance of their refusal to admit, something clearly inappropriate*".
30. By a letter dated 29 February 2012 Mr Trumm responded to Mr Crow, commenting on Mr Crow's version of events since May 2011, which he disputed, and expressing his desire to stand as a local rep.
31. Mr Trumm commenced this complaint to me by a form of application received at my office on 15 April 2012.
32. I was informed at the hearing that Mr Trumm had also commenced proceedings in an Employment Tribunal which have reached the stage of submission of the ET1 and ET3 forms but have not progressed further.

The Relevant Statutory Provisions

33. The provisions of the 1992 Act which are relevant for the purposes of this application are as follows:-

Section 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) 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.

The Relevant Rules of the Union

34. The rules of the Union which are relevant for the purposes of this application are as follows:-

Rule 2

Conditions of membership

Definition of Member

1. In these Rules "Member" means:

- (a) any worker employed in the shipping or offshore energy industries or any transport undertaking or subsidiary thereof, or;
- (b) any worker contracted to work in the shipping or offshore energy industries or any transport undertaking or subsidiary thereof, or;
- (c) any worker employed by, an undertaking or subsidiary thereof which has an association with the shipping, offshore energy or transport industries;
- (d) any person appointed and employed by the Union;

who has been admitted into membership in accordance with the provisions of this Rule and who thereafter is not at any time more than eight weeks in arrears with their contributions, unless otherwise exempted by these Rules. The period for which any member who, on the day before the effective date, was a member of either the National Union of Railwaymen, the National Union of Seamen or the Offshore

Industry Liaison Committee, shall constitute an equivalent period of membership of the Union in respect of any benefits, entitlements or elections governed by these Rules.

Admission to Membership

2. An application for membership shall be made on a form provided, which shall stipulate that the applicant shall abide by the Rules of the Union. No persons shall be admitted a member unless they have signed such an undertaking. The membership of a new member shall date from the date recorded on the membership application form. An application for membership shall not be rejected because of the applicant's race, religion, sex or political beliefs.

Rejection

3. The General Secretary or the Council of Executives shall have authority to reject applications for membership from any person. A rejected membership application shall cease as from the date the application to join the Union was made and any Union membership contributions paid by the rejected applicant shall be reimbursed. A person whose application to join the Union has been rejected, may appeal to the Council of Executives, subject to any by-laws the Council of Executives may adopt for this purpose.

Arrears

16. Any member of the General or Offshore Grades of the Union whose contributions are eight weeks or more in arrears whilst in employment shall cease to be a member, unless they can show good reason to the contrary, including negligence on the part of the employer or the Branch Officers. All fines, levies and monies not paid when due shall be considered arrears of contributions, part payment of which may or may not be taken, as the Branch may decide.

This Clause shall also apply to members of the Shipping Grades who are 26 weeks or more in arrears whilst in employment.

Any member whose membership is to be terminated under this Clause shall be given notice as provided in Clause 20 of this Rule.

Expulsion

18. The Council of Executives may expel from the Union any member or members who in its opinion has or have:

- (a) conducted themselves in a manner deemed to be inconsistent with membership of the Union;
- (b) injured or discredited the Union or otherwise acted contrary to the interest of the Union and its members;
- (c) refused to undertake or to comply with the duties imposed by these Rules;
- (d) refused to comply with, or acted contrary to any decision or instruction issued in pursuit of any movement or proceeding authorised by the provisions of Rule 22, or with any decision or instruction issued by any committee having jurisdiction under these Rules over the member or members concerned;
- (e) knowingly participated in or been party to misrepresentation, misappropriation, misapplication or fraud in respect of any of the funds or benefits to which these Rules apply;
- (f) attempted to bring about the dissolution of the Union other than in accordance with the provisions of Rule 25.

20. It shall be necessary to give notice to any member of the intention to proceed under this Rule and of the grounds or matters the Council of Executives are proposing to consider. Every expelled members shall afterwards receive notice of expulsion and the grounds thereof, and thereupon have the right to appeal to the Annual General Meeting. This appeal shall, as provided by Rule 4, Clause 7(h), be the sole method by which every or any decision given in purported exercise of the

powers conferred by the Rule shall be questioned, controlled, reversed, or suspended.

Consideration and Conclusions

34. Mr Trumm's complaint is in the following terms;

"On or around 13 February 2012 the RMT breached its rule 2.20 by effectively expelling Mr Steven Trumm from the Union without following the procedures for expulsion of a Member as set out in rule 2.20."

35. Rule 2.20 of the rules of the Union provides as follows;

Rule 2.20

"It shall be necessary to give notice to any member of the intention to proceed under this Rule and of the grounds or matters the Council of Executives are proposing to consider. Every expelled member shall afterwards receive notice of expulsion and the grounds thereof, and thereupon have the right to appeal to the Annual General Meeting. This appeal shall, as provided by Rule 4, Clause 7(h), be the sole method by which every or any decision given in purported exercise of the powers conferred by the Rule shall be questioned, controlled, reversed, or suspended."

Summary of Submissions

36. Mr Trumm submitted that he had been expelled by the Union on or about 13 February 2012, the date of the General Secretary's letter confirming the rejection of his membership, which he had first heard about unofficially on 16 January. He argued that the procedure for expulsion set out in rule 2.20 had not been followed. In his skeleton argument, Mr Trumm argued that his expulsion happened at the moment someone decided to cancel his direct debit and that the Union's failure to chase payment demonstrated an intent to remove his membership. He maintained that he was admitted as a member of the Union in May 2011 and that the Union had treated him as a member in June 2011 at its meetings with him and by his nomination to the Company Council. Mr Trumm submitted that the purported use of rule 2(3) to reject his application was underhand and that the Union could not use rule 2(3) so long after a person had been admitted as a member, as in his case. He argued that he had behaved moderately and reasonably in all his dealings with the Union, that it was reasonable for him to believe he was a member of the Union until at least 16 January 2012 and that he had throughout acted appropriately and promptly. He submitted that his claim had not been brought out of time.

37. For the Union, Mr Edwards submitted that his primary case was that Mr Trumm's application to be a member of the Union had been properly rejected by Mr Crow in accordance with rule 2(3) and that Mr Trumm was therefore not expelled on 13 February 2012 or at all. If I were to be against him on that argument, Mr Edwards' alternative case was that Mr Trumm ceased to be a member when his subscriptions became 8 weeks in arrears, namely on 29 June 2011. Mr Edwards noted that the rules of the Union are the terms of a contract between the members. He submitted that rule 2 covers three aspects. First, he maintained that it deals with the process and timing of an application for membership. Secondly, it deals with the process of rejecting any such application which he argued was conceptually different to the process of expulsion. Mr Edwards noted that if an application is rejected, the rules provide that the rejection is backdated to the date of the application and any

contributions that have been made are refunded. Thirdly, he observed that expulsion is dealt with in rule 2(18) and does not require any refunds to be given. In Mr Edwards' submission, the rules provide that an applicant becomes a member of the Union upon receipt by the Union of a completed application form and that accordingly, if rule 2(3) is to have any meaning, it must be possible to reject the application of a member after he or she has become a member. In argument, Mr Edwards observed that although there was no time limit on someone's membership being removed by way of their application being rejected, this might be subject to some implied limitation. On the facts of this case, Mr Edwards submitted that the only operative decision for Mr Trumm's loss of membership was the General Secretary's rejection of application made under rule 2(3), which he considered occurred in May or possibly June 2011. Mr Edwards commented that no decision was taken on 13 February 2012, as alleged, that being merely the date of an official notification of the earlier rule 2(3) rejection. He noted that Mr Trumm accepted Mr Crow's evidence about the timing of his decision to reject Mr Trumm's application, vague though this timing was, and that he accepted Mr Crow's good faith about the reasons he had given for the rejection of that application, whilst disagreeing with them. In these circumstances, Mr Edwards submitted that Mr Trumm's complaint was clearly out of time; it having been made more than 6 months after the actual date upon which the alleged breach had taken place. He further submitted that Mr Trumm could not take advantage of the extended time period for making a claim in section 108A(6)(b) of the 1992 Act as there was no internal complaints procedure of the Union that had been invoked. Mr Edwards noted Mr Trumm's argument that he had acted promptly upon becoming aware of the position but observed that section 108A(6) does not give me any residual discretion to permit a case to proceed which is otherwise out of time and that I must apply section 108A(6) as it is. He commented that this applies whether the removal of Mr Trumm's membership in May or June 2011 is characterised as a rejection of an application (as the Union submits) or as an expulsion (as Mr Trumm submits).

Consideration and Conclusion

38. Mr Trumm's complaint is that he was effectively expelled by the Union on or around 13 February 2012 in breach of rule. In considering this complaint, I have asked myself three principal questions. First, did Mr Trumm become a member of the Union or was his application for membership rejected in accordance with rule 2(3)? Secondly, if Mr Trumm became a member, was he expelled or did the Union lawfully apply rule 2(3) to reject his application *ex post facto*? Thirdly, when did Mr Trumm's membership of the Union cease, for whatever reason, and is this complaint brought in time?
39. The first question is whether Mr Trumm ever became a member of the Union at all. This is obviously important as without being a member, Mr Trumm could not be expelled and without being a member, Mr Trumm could not bring a complaint to me by virtue of section 108A(3) of the 1992 Act. However, on this question at least the parties are agreed. Both consider that Mr Trumm was a member. Mr Trumm does so on the basis of the letters he received dated 4 and 17 May 2011, the membership card and number he received together with his other engagements with the Union in June 2011. The Union proceed on the basis that the rules require it to accept into membership anyone who submits a satisfactorily completed application form by reason of the sentence in rule 2(2) which provides, "*The membership of a new*

member shall date from the date recorded on the membership application form". Based on this approach, the Union has the practice of admitting into membership all those who submit a satisfactorily completed application form.

40. In my judgement, however the Union has proceeded on an incorrect interpretation of rule 2. In considering this rule I have borne in mind the guidance that has been given by the courts from time to time on the interpretation of Union rules, which is perhaps best summarised by Warner J in **Jacques v AUEW (1986) ICR 683**, as follows:

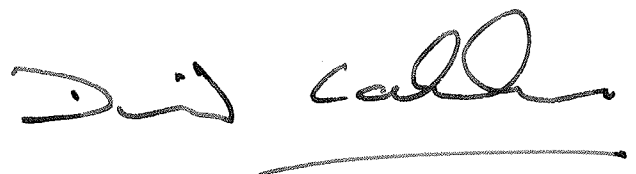
"The rules of a trade union are not to be construed literally or like a statute, but so as to give them a reasonable interpretation which accords with what in the court's view they must have been intended to mean, bearing in mind their authorship, their purpose, and the readership to which they are addressed."

41. The ordinary use of language, and the application of basic contractual principle, would suggest that entering into a contract of membership requires an application to be made and for that application to be accepted. The date of membership would normally be the date upon which the application is accepted, unless the rules of the organisation provide otherwise. The organisation may accept or reject the application. If the application is rejected, it follows that the applicant does not become a member. This usual approach to membership may of course be departed from if the rules of the organisation provide otherwise and I have considered whether rule 2 has this effect.
42. I note that rule 2(1) refers to a member '*Who has been admitted into membership in accordance with the provisions of this rule*'. This suggests that the rule supposes an admissions or acceptance process. Furthermore, rules 2(2) and 2(3) refer to the rejection of an application. I find that this is a reference to the time when an applicant is being considered for admittance into membership. Once an applicant is admitted into membership, that person is no longer an applicant. He or she is a member. The time for rejecting the application has passed.
43. As noted above, I was informed that the Union's current practice is based upon the sentence in rule 2(2) which reads, '*The membership of a new member shall date from the date recorded on the membership application form*' read together with the requirement in rule 2(3) to reimburse any contributions paid by a rejected applicant. I have asked myself whether these provisions require the approach that has been taken by the Union. I find that they do not. The above provisions do not remove the requirement for an application to be accepted but do affect the date that membership is deemed to commence once an application has been accepted. Whereas normally a persons membership will have affect upon acceptance, these rules have the effect of deeming membership to begin on the date recorded on the membership application form, but only after the application has been accepted. This can be very important to a trade union and its potential members as an event may be about to happen at a person's place of work and the potential member may be comforted to know that the rights of membership will accrue from the date of application. I find nothing in rule 2 which drives me to a contrary conclusion. The requirement in rule 2(3) to reimburse the contributions of rejected applicants merely reflects the practical reality that contributions are often tendered with an application, by way of cash, cheque, standing order or direct debit, and any decision to admit or reject might not be immediate. In such circumstances, a provision to reimburse may be legally otiose but as a matter of giving comfort to a potential member and explaining the position

clearly, there is much to be said for it. In as much as the rules cause the date of admission to the RMT to differ from what is usual in membership organisations, appropriate information can be given to applicants on the application form.

44. Although I was informed that the power to reject an application had never previously been invoked, it was Mr Crow's understanding that it was a power that could be exercised by the Council of Executives or General Secretary at any time after a person becomes a member by having merely submitted an application form, even years afterwards. On this understanding, a view could be taken on the pre-application conduct of long-standing members and their memberships could be removed under rule 2(3), it being said that their applications had been rejected. I find this consequence of the Union's interpretation of rule 2 to be unattractive. The rules provide for a wide set of circumstances in which a member may be expelled, including '*Conducting themselves in a manner deemed to be inconsistent with membership of the Union*' and '*Having injured or discredited the Union or otherwise acted contrary to the interests of the Union or its members.*'. The only inhibiting factor in using expulsion as a means of removing membership is that it requires due process but I do not find a requirement to follow due process to be a compelling ground for upholding an interpretation that enables the removal of membership in a more peremptory manner. It might also be feared that conduct which predates membership cannot be used as a grounds for expulsion but I observe no such restriction in the rule. Indeed, the process of admission into membership is often a 'paper' exercise, checking whether the membership qualifications are met, and it cannot be expected that any previous misconduct by the applicant will be revealed at that stage. However, if a person with a known history applies for membership, rule 2(3) allows that the application may be rejected. For these reasons, rule 2 as currently drafted does not, in my judgement, support the interpretation given to it by the Union.
45. On the above analysis, I agree with the parties that Mr Trumm was a member of the Union from May 2011 but I disagree with the Union's submission that it was entitled to remove his membership by the application of rule 2(3). I find that as Mr Trumm was a member of the Union, the Union was not entitled to remove that membership by allegedly rejecting his application for membership after it had already been accepted.
46. The second question I have asked myself is, if Mr Trumm became a member of the Union, how did his membership cease? Whilst I accept that the Union acted in good faith in relying upon its interpretation of rule 2(3), I find that by removing Mr Trumm's membership of the Union as it did, it effectively expelled him. The reason for expulsion was clearly the reason for purportedly rejecting his application for membership and is set out in Mr Crow's letter to Mr Trumm of 13 February 2012 (see paragraph 29).
47. The third question I have asked myself is, if Mr Trumm was expelled, when did this take place. Mr Trumm accepts the evidence of Mr Crow that the decision to reject his application for membership was in May or June 2011 and I have found that it was on or about 23 June. I find that on or about that date Mr Trumm's direct debit was cancelled, his name was removed from the database for the monthly magazine and other mailings and from the database for email notifications.

48. By section 108A(6) of the 1992 Act a complaint must be brought to me within the period of 6 months starting with the day on which the breach is alleged to have taken place. Mr Trumm's complaint to me was received on 15 April 2012 and was accordingly in time for any alleged breach which occurred after 16 October 2011. In his complaint, Mr Trumm gives the date of the alleged breach as being 13 February 2012, which would make his complaint in time. However, I have found that there was no breach on that date. The date of any breach that may have occurred was in June 2011, which renders his application out of time pursuant to section 108A(6)(a). In these circumstances, I have also considered whether Mr Trumm can take advantage of the extended limitation period in section 108A(6)(b). This is available to claimants who, within the primary limitation period, invoke any internal complaints procedure of the Union to resolve the claim. In order for this provision to apply, Mr Trumm would have had to have invoked such a procedure by about 22 December 2011. In my judgement, Mr Trumm did not invoke such a procedure within that period, or at all, and so cannot rely upon the extended limitation period in section 108A(6)(b).
49. Accordingly, for the above reasons, I refuse Mr Trumm's application for a declaration that on or around 13 February 2012 the RMT breached rule 2.20 of its rules by allegedly expelling him on or about that date without following the procedures for expulsion as set out in rule 2.20.
50. I make two concluding comments. First, for the avoidance of doubt, I have reached no findings upon the merits of the General Secretary's decision to remove Mr Trumm's membership of the Union. That was not an issue before me to determine. I have merely recorded Mr Trumm's acceptance that the General Secretary acted in good faith. Secondly, I have noted the unsatisfactory explanation given by the Union for its failure to inform Mr Trumm in good time that it had removed his membership in June 2011. Its failure to so inform Mr Trumm can now be seen to have operated in its favour as it contributed to this claim having been found to be out of time. I find this to be an unattractive feature of the present case, but I have no residual discretion on such matters. I must apply the law as it appears in section 108A(6), whatever its consequences. On the present facts, those consequences are mitigated by Mr Trumm having been warned in the Union's letter of 4 May 2011 that he should check his bank statements to ensure the direct debit is being deducted, by his failure to have done so before November 2011, by his failure to have regard to the absence of the Union's monthly magazine since May 2011 and the absence of email notifications from the Union since June 2011 together with his awareness of the limitation issue as is apparent from his letter to the Union of 17 January 2011.



David Cockburn
The Certification Officer

