

**DECISIONS OF THE CERTIFICATION OFFICER ON AN APPLICATION
MADE UNDER SECTION 108A (2) OF THE TRADE UNION AND
LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

Ms S AUGUST

**V
UNISON**

Date of Decisions

15 December 2010

DECISION

Upon application by Ms August ("the claimant") under section 108A (2) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"):

- (i) I declare that UNISON breached rule G5.1 of its rules by not causing there to be an annual election of a steward at the claimant's workplace in 2010.
- (ii) I declare that UNISON breached rule I 5.1.1 of its rules on or about 9 June 2010 by removing the claimant from the position of steward in her workplace without the disciplinary procedure provided for in the rules having been followed.
- (iii) I consider that it would be inappropriate to make an enforcement order.

REASONS

1. The claimant is a member of UNISON ("the Union"). By an application received on 5 July 2010 the claimant made an allegation of breaches of rule against her union. She alleged that it had breached its rules in relation to the annual election of a shop steward in her place of work and in relation to the disciplinary act of removing her as a steward. Following correspondence with Ms August, two complaints were confirmed by her and put to the Union in the following terms:

Complaint 1

"UNISON breached Rule G5.1 by not causing there to be an annual election of a steward at Fulston Manor School in 2010, which position was confirmed by a meeting of members at the school on or about 9 June 2010."

Complaint 2

On 9 June 2010 Unison breached rule I 5.1.1 by imposing a disciplinary sanction on Ms August without any disciplinary procedures being followed by the Branch Committee or

Service Group Executive investigating Ms August's removal. The disciplinary sanction was the removal of Ms August from her post as steward for Fulston Manor School"

2. I investigated the alleged breaches in correspondence. Both parties agreed to the determination of the complaints being made by me without an oral hearing on the basis of the documentary evidence and written submissions they had presented.

Findings of Fact

3. On the basis of the documentary evidence and written submissions presented to me by the parties, I find the facts to be as follows.
4. Ms August works at Fulston Manor School, a secondary school in Kent, and is a member of Unison. At the relevant time she was one of 21 employees who were known to Unison as Support Staff Members. Ms August had fulfilled the duties of a steward for these members since about 2007. Her complaints concern the electoral process to this position in 2010.
5. Ms August maintains that in January 2010 she was re-elected as a steward for the Support Staff Members at her school by means of an email ballot, the same means by which she had been re-elected in 2009. However, in February 2010 an issue arose as to the validity of her 2010 election. On 22 February Ms August circulated an email to the Support Staff Members at her school seeking to identify the most convenient date to arrange a meeting *"to clarify in person that you all wish me to continue to be your steward."* As she received only five replies, Ms August circulated a further email to the same people on 8 March. She asked them to state either *"Yes. I would like you to continue as union steward"* or *"No. I would prefer to nominate (insert name) as our union steward"*. By 10 March, thirteen members had responded. Each wished Ms August to continue. Ms August maintains that this constituted her further re-election.
6. The validity of this so called re-election was not universally accepted and, on 4 June 2010, the branch secretary of the Unison Kent branch, Mr Lloyd, wrote to all Support Staff Members at the school. He invited them to a union meeting at the school on 9 June. The stated purpose of the meeting was to update members on current issues along with electing a Unison steward.
7. On 9 June 2010 Mr Lloyd attended the meeting at Ms August's school together with the branch chair and the branch women's officer. Fifteen Support Staff Members also attended. After some discussion of academy status and the role of women in the Union, Mr Lloyd stated that Ms August had not been properly elected and that this meeting was now to elect a steward. Someone said that they were not sure a steward was needed and Mr Lloyd decided that there should first be a vote on whether anyone wanted a steward. The members present indicated their preference on a ballot paper. Ten votes were cast against having any steward. Accordingly, no election was held and the head teacher of the school was informed that Ms August was no longer a steward.

8. Ms August and a number of colleagues subsequently complained by email to the branch and to the region but without any response which was satisfactory to Miss August.
9. On 5 July 2010 Ms August emailed a Registration of Complaint Form to my office. The wording of her two complaints was confirmed by Ms August on 2 August and the complaints were put to the Union. By a letter dated 18 August, the Union's solicitors, Thompsons, stated that Ms August had not exhausted the internal complaints procedure of the union as she had not used stage 3 of that procedure by writing to head office. On 27 August, Ms August sent a stage 3 letter of complaint to the Union's head office. She received a response from the Member Liaison Unit dated 3 September. The response stated that although the way Ms August had attempted to gather nominations for her election was not in accordance with the union's Code of Good Branch Practice, it did appear that the branch had acted unconstitutionally and that accordingly her complaint was upheld in part. The letter went on to state that the Union's regional manager for Kent would arrange for a fresh election to be held. Ms August considered that this letter neither addressed the issues she had raised nor offered her the outcome she was seeking. She wished her case before me to continue.
10. By a letter dated 14 September 2010, Thompsons informed my office that the Union was taking immediate steps to reinstate Ms August as a steward at the school. In its written response to Ms August's complaints, Thompsons conceded that the Union had acted in breach of rule by failing to hold an annual election for the position of steward at the school prior to the branch AGM in 2010. No similar concession was made in respect of Ms August's second complaint. On the evidence before me, I find that Ms August was reinstated as a steward on or about 14 September 2010.
11. In subsequent correspondence with my office, Ms August stated that she wished her case to proceed and that she sought an enforcement order that her term of office as a steward should continue until either September 2011 or March 2012.
12. By a letter dated 20 August 2010, Thompsons, on behalf of the union, admitted the two breaches of rule alleged by Ms August and stated the Union's willingness to submit to a declaration in those terms. The Union's solicitors went on to submit that the power for me to make an enforcement order in section 108B(3) of the 1992 Act did not extend to making an order in the terms sought by Ms August.
13. Both parties consented in writing to this decision being made without an oral hearing, on the basis of written submissions and the documentary evidence before me.

The Relevant Statutory Provisions

14. 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

- (ii) I declare that UNISON breached rule I 5.1.1 of its rules on or about 9 June 2010 by removing the claimant from the position of steward in her workplace without the disciplinary procedure provided for in the rules having been followed.
17. Ms August seeks an enforcement order that her term of office as a steward is extended to either September 2011 or March 2012 to take into account the period between 9 June and 14 September 2010 when she was removed from that position in breach of the rules of the Union.
18. The Union resists Ms August's application for an enforcement order. It asserts that Ms August will remain as the steward for her workplace for the remainder of the 2010/2011 electoral period, which will expire on 2 March 2011 at the branch AGM when the results of the 2011/2012 elections will be declared. On that basis, the Union submits that there is no continuing breach in respect of Ms August's second complaint that could be cured by an enforcement order. As to Ms August's first complaint, the Union accepts that there is a continuing breach of rule G 5.1 and that the most obvious enforcement order to make would be one requiring the Union to hold an immediate election for the position of steward at Ms August's workplace. The Union observes, however, that this would sit uneasily both with its decision to reinstate Ms August as the steward and with the electoral timetable for the 2011/2012 period, the nominations for which open on 4 January 2011. The Union further argues that the enforcement order sought by Ms August would place the Union in breach of its rule that requires stewards be elected annually and for a period of no more than twelve months.
19. Section 108B(3) of the 1992 Act provides that where I make a declaration I shall, unless I consider that to do so would be inappropriate, make an enforcement order. Such an order may, amongst other things, impose a requirement on the union to take such steps to remedy the breach as may be specified in the order.
20. The facts of this case that emerge from the documents before me are not clear. It appears, however, that in 2010 no valid election (ie one conducted in accordance with the rules of the Union) was held for the position of steward in the claimant's workplace. In that event, the decision to "reinstate" Ms August as the steward on or about 14 September 2010 is somewhat curious. It perhaps reflects a pragmatic approach by the Union, having regard to the administrative errors to which it admits and the stated wishes of the majority of Ms August's colleagues that she should continue to represent them.
21. In any large membership organisation, administrative and other errors can occur which may lead to a breach of the rules of that organisation. In these circumstances, it is desirable that the organisation is able to identify quickly the mistakes that have occurred and remedy them. On the facts of this case, it is to the Union's credit that it has accepted that mistakes did occur in relation to the position of steward in the claimant's workplace and has taken steps to put them right. It is a matter of regret that this could not have been done earlier, in which case the need for Ms August to have brought these complaints to me might have been avoided. To Ms August's credit, I note that throughout the period of her removal as a steward between June

and September 2010 she continued to assist her colleagues at work on an informal basis.

22. Having regard to the facts as a whole and in particular to the admitted failure of the Union to conduct a relevant election in Ms August's workplace in 2010, its decision to "reinstate" her pending the next election and the fact that the next election to that position will commence in less than four weeks in any event, I consider that it would be inappropriate to make an enforcement order.

A handwritten signature in black ink, appearing to read "David Cockburn". The signature is written in a cursive style with a horizontal line underneath the name.

David Cockburn
The Certification Officer