

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION  
MADE UNDER SECTION 82(2) OF THE TRADE UNION AND LABOUR  
RELATIONS (CONSOLIDATION) ACT 1992**

**Mr J L Hutchinson**

**v**

**Unite the Union**

**Date of Decision:**

**20 May 2011**

**DECISION**

Upon application by Mr Hutchinson ("the Claimant") under section 82 (2) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").

Pursuant to section 256ZA of the Trade Union and Labour Relations (Consolidation) Act 1992, I strike out the Claimant's application that Unite the Union ("the Union") breached rule 23.6 and 23.7 of its rules by not exempting him from contributing to the political fund of the Union on the grounds that the complaint as advanced by the Claimant had no reasonable prospect of success or is otherwise misconceived.

**REASONS**

1. Mr Hutchinson brought this application as a retired member of Unite the Union ("The Union") or ("Unite"). He did so by a registration of complaint form which was received at my office 12 November 2010. In essence, Mr Hutchinson complained that the Union had deducted the political levy from his Union contributions since he retired in April 2008, notwithstanding that he had not paid the levy for the previous 36 years, since opting out.
2. Mr Hutchinson's complaint was identified and agreed with him in the following terms:  
*"The Union breached Rule 23.6 and 23.7 of the rules of the Union by not exempting Mr Hutchinson from contributing to the political fund of the Union since April 2008 when Mr Hutchinson gave notice that he objected to contributing to the political fund."*

3. The background to this complaint appears to be as follows, on the basis of the correspondence and documentation before me:
4. Mr Hutchinson has been a member of the Union or its predecessors since about 1974. From the outset he opted out of payment into the political fund of the Union and made no such contributions prior to 2008, when he alleges that the breaches began.
5. In January 2008 Mr Hutchinson retired from work but continued his membership of the Union. His subscriptions were then at the retired members rate.
6. By a letter dated 2 April 2008, the Union informed Mr Hutchinson that his membership had been amended to reflect his retired status and that retired membership was £3.10 a year for members not paying the political levy.
7. At some time in early 2010 Mr Hutchinson became aware that his subscription had gone up to £12.96 and he concluded that the balance above £3.10 was by way of a contribution to the political fund.
8. On 28 March 2010 Mr Hutchinson wrote to the Union asking, amongst other things, why he has now been made to pay the political levy. He did not receive a reply to this letter nor to the other five letters that he sent to the Union on 14 December 2009, 9 January 2010, 19 April 2010, 4 and 24 May 2010.
9. On 30 July 2010 Mr Hutchinson commenced proceedings against the Union in the Caernarfon County Court claiming the repayment of £9.86 that he alleged the Union had unlawfully given to the Labour Party as part of his annual subscription of £12.96. Mr Hutchinson had calculated the political fund part of his contribution by deducting from his annual subscription of £12.96 the sum of £3.10 that had been referred to in the Union's letter of 2 April 2008.
10. On 23 August 2010 the Union wrote to Mr Hutchinson apologising for not having responded to his earlier letters and explaining its understanding of the situation. It stated that the Union had had a new rule book since 1 May 2009, following the merger of Amicus with the TGWU. It went on to confirm that Mr Hutchinson had been in continuous membership since 1974 and had paid his increased contributions for 2010 by a cheque for £12.96 in February 2010. It informed Mr Hutchinson that the contribution rate for retired members did not include any element of political fund levy and thus no part of his contributions had gone to the political fund or the Labour Party. The Union stated that in any event the political levy was 61p per month or £7.32 annually. It concluded by stating that even though it denied any liability, it would pay Mr Hutchinson £30 in respect of his court fees if he withdrew his claim in the County Court.
11. Mr Hutchinson accepted this offer by a letter dated 25 August 2010.

12. By a letter dated 2 September 2010, the Union sent Mr Hutchinson a cheque for £30. It confirmed that his annual subscription as a retired member at the date he retired had been £3.10 but that in September 2009 that rate had been increased to £12.96, in accordance with the previous TGWU rate. It also confirmed that the sum of £12.96 did not include an element of political fund contribution.
13. Mr Hutchinson subsequently received a letter from the Union dated August 2010 which was headed "*To all political fund payers*". The letter concerned the ballot for the leader of the Labour Party. The Union maintains that this letter was sent to Mr Hutchinson in error.
14. On 6 September 2010 Mr Hutchinson informed the Union that he had received the above letter and that it was noted that it had been sent to all political fund payers. He concluded that a political fund donation had been deducted from his subscription. He returned the cheque for £30 and stated that he would continue with his County Court action.
15. On 7 October 2010 the Caernarfon County Court struck out Mr Hutchinson's claim on its own motion.
16. Mr Hutchinson wrote to my office in this regard on 14 October 2010 and later submitted a registration of complaint form which was received at my office on 12 November 2010.
17. Having identified the precise nature of Mr Hutchinson's complaint, my office put the complaint to the Union on 7 December 2010.
18. The Union's solicitors, Thompsons, responded on 17 December 2010. They denied liability and applied for Mr Hutchinson's claim to be struck out on the grounds that it had no reasonable prospect of success or was otherwise misconceived. It explained that Mr Hutchinson had been sent the letter addressed "*to all political fund payers*" in August 2010 as a result of an administrative error. The error was said to be that his membership record in February 2010 was marked so as to show that he paid the political levy when that could not have been the case, given his category of membership. Thompsons confirmed that Mr Hutchinson's membership record had since been corrected.
19. My office sent a copy of the Union's letter to Mr Hutchinson. He replied on 10 January 2011, commenting that he did not believe that there had been administrative error which had resulted in him being recorded as a political fund payer. He further submitted that an element of political levy had been deducted from his subscription.
20. My office then sought more detailed evidence from the Union's solicitors as to the subscriptions paid by Mr Hutchinson and the relevant subscriptions rate. The Union's solicitors replied on 14 February 2011 with further detailed information and supporting documentation.

21. By a letter sent on 18 February 2011 (wrongly dated 18 January) my office sent a copy of the Union's further response and supporting documentation to Mr Hutchinson. By this letter, my office also informed Mr Hutchinson that I was minded to strike out his complaint as having no reasonable prospect of success or being otherwise misconceived. Mr Hutchinson was given an opportunity to show cause why his case should not be struck out. A response was required by 4 March.
22. Mr Hutchinson did not respond to the above letter. My office wrote to him again on 14 March 2011 effectively extending the time for him to respond to 29 March. Mr Hutchinson did not respond to this second letter.
23. My office wrote again to Mr Hutchinson on 5 April 2011 stating that if he did not respond to the previous correspondence or withdraw his complaint by 18 April I would decide whether to strike out his complaint.

### **The Relevant Statutory Provisions**

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

#### **Section 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 complainant 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.*

*(3) An order under this section may be made on the Certification Officer's own initiative and may also be made*

*(a) if the order sought is to strike out an application or complaint, or to amend or strike out anything in an application or complaint, on an application by the respondent, or*

*(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.*

## The Relevant Rules of the Union

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


*23.6 Any member may obtain exemption by sending such notice to the secretary of the Branch to which the member belongs and, on receiving it, the secretary shall send an acknowledgement of its receipt to the member at the address in the notice, and shall inform the General Secretary of the name and address of that member.*

*23.7 On giving such a notice, a member shall be exempt, so long as his/her notice is not withdrawn, from contributing to the political fund of the Union as from: (a) the first of January next after notice by the member is given, or, (b) in the case of a notice given within one month after the notice given to members under Clause (3) or after the date on which a new member admitted to the Union is supplied with a copy of these rules under Clause (17), as from the date on which the member's notice is given.*

## Conclusions

26. At the heart of Mr Hutchinson's complaint is an allegation that the Union had wrongfully deducted a political fund element from his Union contributions. He asserted that this was in the sum of £9.86.
27. The Union has supplied an explanation of the contribution rates applicable to Mr Hutchinson, the contributions he has paid and has also supplied detailed supporting documentation. It explained that in April 2009 the former contribution rate for retired members was increased from £3.10 to £12.96, an increase of £9.86. The Union has also explained an administrative error that caused Mr Hutchinson to be sent a letter which should only have been sent to political fund payers.
28. Mr Hutchinson was invited to comment on the information supplied by the Union which is prima facie a complete answer to his complaint. Mr Hutchinson has failed to provide any response which casts doubt on the Union's position. He has also been asked to show cause why his cause should not be struck out on the grounds that it has no reasonable prospect of success or is otherwise misconceived. Mr Hutchinson has also failed to respond to this request.
29. In the above circumstances, I find that Mr Hutchinson has no reasonable prospect of successfully establishing that the Union has made deductions from his contributions, which deductions have been paid into the political fund of the Union, contrary to his opt out. On the facts available to me, I also find that Mr Hutchinson's complaint is misconceived.
30. For the above reasons and pursuant to section 256ZA of the 1992 Act, I strike out the claimant's application that the Union allegedly breached rule 23.6 and 23.7 of its rules by not exempting him from contributing to

the political fund of the Union on the grounds that it has no reasonable prospect of success and/or is otherwise misconceived.

A handwritten signature in black ink, consisting of a stylized 'D' followed by a series of loops and a horizontal stroke.

**David Cockburn**  
**The Certification Officer**