

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

Mr Royston Bentham

v

**Union of Construction, Allied Trades and Technicians
(No. 3)**

Date of Decisions

7 July 2016

DECISIONS

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

And pursuant to section 256ZA(1)(a) of the 1992 Act.

1. I strike out the claimant’s complaint that on or about 15 June 2015, the Union of Construction, Allied Trades and Technicians breached rule 26, clause 7 of its rules by not summoning two witnesses to attend a hearing before the Executive Council of the Union on 17 June 2015 where charges made by the North West Regional Council of the Union against Mr Bentham were to be heard. I do so on the basis that the complaint is out of time.
2. I strike out the claimant’s complaint that on or about 17 June 2015, the Union of Construction, Allied Trades and Technicians breached rule 26, clause 8 of its rules by not summoning two witnesses to attend a hearing before the Executive Council of the Union on 17 June 2015 where charges made by the North West Regional Council of the Union against Mr Bentham were to be heard. I do so on the basis that the complaint is out of time.

REASONS

1. Mr Royston Bentham was a member of the Union of Construction, Allied Trades and Technicians (“UCATT” or “the Union”). By applications received at the Certification Office on 8 March 2016 and 7 April 2016, Mr Bentham brought two complaints under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”). Mr Bentham was represented by Mr Terry Brough. Following correspondence with the Certification Office, Mr Brough confirmed Mr Bentham’s complaints in the following terms:

Complaint 1

That on or around 15 June 2015, UCATT breached rule 26 clause 7 of its rules when the Union, as represented by Mr B. Rye, Pro-Tem General Secretary, refused the request by Mr R. Bentham to summon two witnesses to attend an Executive Council hearing on 17 June 2015 where charges made against Mr R. Bentham by the North West Regional Council were to be heard.

Complaint 2

That on or around 17 June 2015, UCATT breached rule 26 clause 8 of its rules when the Union, as represented by Mr B. Rye, Pro-Tem General Secretary, refused the request by Mr R. Bentham to summon two witnesses to attend an Executive Council hearing on 17 June 2015 where charges made against Mr R. Bentham by the North West Regional Council were to be heard.

2. On 17 June 2015, the Executive Council of the Union ("the EC") convened a hearing to consider two charges that had been made against Mr Bentham by the North West Regional Council of the Union ("the NWRC"). Mr Bentham was subject to a charge, under rule 25, clause 1(i) of UCATT's rules, of conduct against the interests of the Union. He was also separately charged with a breach of rule 7, clause 15 of UCATT's rules, which provides that members are exempt from payment of full contributions for each full week that they are not in receipt of wages, however, this particular charge was dismissed and is not of material relevance to Mr Bentham's application to the Certification Officer.
3. I am unclear from the documents submitted by either Mr Bentham or the Union as to the precise circumstances that gave rise to the charge under rule 25, clause 1(i) of UCATT's rules but it appears that on 1 May 2014, Mr Bentham, together with Mr John Flanagan and Mr Tony Sweeney, both of whom were former members of UCATT who had been expelled from the Union, met with a photographer from the *Liverpool Echo* outside the offices of the NWRC. Subsequently, a photograph of Mr Bentham, Mr Flanagan and Mr Sweeney appeared in the *Liverpool Echo* accompanied by an article. This article and photograph was deemed by the Union as bringing it into disrepute. It was alleged by the Union that Mr Bentham had been actively involved in this event and helped ensure it was widely publicised to the detriment of the Union. Having heard the charges, the EC decided to expel Mr Bentham from UCATT for five years. By letter dated 22 June 2015, Mr Bentham was advised of this decision.
4. Mr Bentham's application to the Certification Officer is based on a refusal by the Union to summon two witnesses to attend the hearing of 17 June 2015 before the EC. On 9 June 2015, Mr Bentham emailed Mr Brian Rye, Pro Tem General Secretary of UCATT, to request that Mr Winstanley and Mr Sheppard, whom he assumed had brought the charges against him, attend the hearing in order to present the charge and be subject to questioning.
5. On 12 June 2015, Mr Bentham emailed Mr Rye and referred to an email sent by Mr Rye to Mr Bentham (a copy of which has not been supplied to the Certification Office), in which Mr Rye had informed Mr Bentham that the charges being brought by the NWRC would be presented by Mr Fisher and that it would not be summoning any witnesses. Mr Bentham said in this email that he had yet to be informed if Mr Rye would be summoning Mr Winstanley and Mr Shepard as witnesses as he had requested.

6. On 15 June 2015, Mr Rye emailed Mr Bentham and explained that neither Mr Winstanley nor Mr Sheppard had been requested to attend the hearing by the complainant (the NWRC) and, on this basis, neither had been summoned. Mr Rye explained that it was for the complainant to determine which of their witnesses were called and he believed it was impractical and unreasonable to agree to Mr Bentham's request to summon Mr Winstanley and Mr Sheppard.
7. On 16 June 2015, Mr Bentham emailed Mr Rye. He explained that he did not feel that he was given specific details of the charges that he faced and that he felt the presence of Mr Winstanley and Mr Sheppard at the hearing, so that they could be cross examined, was essential. He asserted that he had requested their presence at the hearing under rule 26, clause 5 of UCATT's rule book. Mr Bentham asked that the hearing set for 17 June 2015 be postponed until his request for Mr Winstanley and Mr Sheppard to attend the hearing could be met. He asserted that under the circumstances he would not be attending the hearing. The hearing on 17 June 2015 by the EC took place without Mr Bentham.
8. On 13 July 2015, Mr Bentham emailed Mr Rye in order to appeal to the General Council of the Union ("the GC"). He did so in the following terms:

7/13/15

to Brian, Sheila, me

Dear Brother Rye,

In your position as pro temp General Secretary of the Union,

In accordance with the provisions of General Rule 27, clause 2, I write to appeal to the General Council against the decision to expel me for 5 years.

The decision was conveyed to me by your letter dated 22nd June as pro temp General Secretary.

Please put this appeal before the General Council,

Yours fraternally,

Roy,

*Roy Bentham
93 Stevenson Street
Liverpool L15HA
Ucatt Everton branch*

9. The appeal before the GC took place on 8 March 2016. Mr Bentham did not attend this appeal but made written submissions. The GC upheld the decision of the EC to expel Mr Bentham for five years. Mr Bentham did not provide my Office a copy of the outcome of this appeal hearing.

The Relevant Statutory Provisions

10. The relevant statutory provisions 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.

...

(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) if 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) An application must be made-

- (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.

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.

...

(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

11. In order for Mr Bentham's complaints that UCATT breached its rules to have been made in time they had to be made in accordance with section 108A(6) and (7) of the 1992 Act. These provisions require an application to be made within six months of the day on which the breaches were alleged to have taken place ("the primary limitation period") or within an extended period if, within that period of six months, "any internal complaints procedure of the Union is invoked to resolve the claim" ("the extended limitation period").

12. Mr Bentham alleges that UCATT breached rules 26, clause 7 (complaint 1) and 26, clause 8 (complaint 2) on 15 and 17 June 2015, respectively. To be within the primary limitation period, complaint 1 needed to be received by my Office by 14 December 2015 and complaint 2 by 16 December 2015. Accordingly, Mr Bentham's complaints are outside of the primary limitation period. It remains for me to determine if Mr Bentham's complaints fall within the extended limitation period.

13. On 13 July 2016, when Mr Bentham emailed Mr Rye in order to appeal the decision of the EC to expel him for five years, he did not specify the grounds of his appeal. He simply stated that:

"In accordance with the provisions of General Rule 27, clause 2, I write to appeal to the General Council against the decision to expel me for 5 years".

14. What I am required to determine is this: by sending this email, was an internal complaints procedure of the Union invoked in order to resolve the claim?

15. According to the Union (letter dated 18 May 2016):

"...the appeal made by Mr Bentham on 13 July 2015 was against the decision of the General Council to expel him for five years. No explicit appeal was made concerning any alleged misinterpretation or breach of rule 26 sub clause 7 or rule 26 sub clause 8. Mr Bentham has not therefore used the Union's internal procedure".

16. According to Mr Brough (letter dated 3 June 2016):

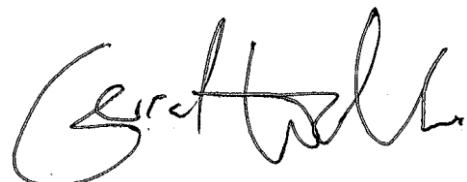
"I reject Ms. O'Brady's contention that Mr. Bentham had not used the Union's internal procedure because Mr. Bentham's appeal dated 13 July 2015 was against the decision of the Executive Council to expel him for five years; and that no explicit appeal was made in relation to Rule 26, clauses 7 and 8. The internal procedure was invoked by Mr. Bentham in the appropriate manner. The issues around cross-examination / summonsing of witnesses / full and fair hearing were matters to be raised at the appeal as can be seen from the contents of Mr. Bentham's statement to the General Council dated 7 March 2016".

17. By letter dated 17 June 2016, and as required by section 256ZA(4) of the 1992 Act, my Office wrote to Mr Brough and asked him to show cause why Mr Bentham's complaints should not be struck out under section 256ZA(1) of the 1992 Act on the basis that Mr Bentham's complaints were out of time. My Office explained that Mr Bentham was required to establish that his complaints were brought within the extended limitation period and that irrespective of when, under UCATT's rules, Mr Bentham was required to disclose his grounds of appeal, in order to satisfy the requirement of section 108A8(6)(b) of the 1992 Act, Mr Bentham needed to show that, within the primary limitation period, he invoked an internal complaints procedure of the union with a view to resolving his complaints that the Union had breached rule 26, clause 7 and rule 26, clause 8 by not calling Mr Winstanley and Mr Sheppard to attend the hearing before the EC of 17 June 2015.

18. By letter dated 26 June 2016, Mr Brough explained why Mr Bentham's complaints should not be struck out. He referred to the arguments he had made in earlier correspondence to my Office as to why Mr Bentham's complaints were within the extended limitation period. He also referred to two of the then Certification Officer's previous decisions, *Flanagan (2) v UCATT (D/17-20/14-15)* and *Sweeney v UCATT*

(D/43-48/14-15), in respect of which he said the then Certification Officer had accepted complaints in circumstances where the issues in question had not been previously raised with the union through its internal appeals procedure and which would otherwise have been outside the primary limitation period.

19. Complaints which are not brought within the primary limitation period and seek to rely on the extended limitation period are generally fact specific. The particular circumstances of each case requires individual scrutiny. For this reason, a reference to other cases, no matter how superficially similar, will seldom if ever be determinative.
20. I have nevertheless considered the cases to which Mr Brough refers but, on the facts of this case, my judgement is that Mr Bentham's complaints were brought outside the extended limitation period. When appealing against his expulsion he did not specify that he was complaining about the refusal by the EC to summon the witnesses he wished to attend the hearing before it within the primary limitation period. Accordingly, these complaints do not fall for consideration under the extended limitation period in section 108A(6) of the 1992 Act.
21. For the above reasons, Mr Bentham's complaints are struck out under section 256ZA(1)(a) of the 1992 Act on the basis that they are out of time.



Gerard Walker
The Certification Officer