

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

Mr Roger Bannister

v

UNISON: The Public Service Union

Date of Decisions

30 August 2016

DECISIONS

Upon application by Mr Roger Bannister (“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 21 October 2015, UNISON: The Public Service Union breached rule B2.2 of its rules. I do so on the basis that the complaint has no reasonable prospect of success and/or is otherwise misconceived.
2. I strike out the claimant’s complaint that on or about 21 October 2015, UNISON: The Public Service Union breached rule B2.4 of its rules. I do so on the basis that the complaint has no reasonable prospect of success and/or is otherwise misconceived.
3. I strike out the claimant’s complaint that on or about 21 October 2015, UNISON: The Public Service Union breached rule B4.6 of its rules. I do so on the basis that the complaint has no reasonable prospect of success and/or is otherwise misconceived.

REASONS

1. Mr Roger Bannister brought this application as a member of UNISON: The Public Service Union (“UNISON” or “the Union”). He did so by a registration of complaint form dated 28 December 2015 which was received by my office on 30 December 2015. Mr Bannister was an unsuccessful candidate in the UNISON 2015 General Secretary election. Following correspondence, Mr Bannister confirmed that he wished to pursue the following five complaints:-

Complaint 1

On or about 21 October 2015, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures, which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book. The breach occurred at a meeting organised and attended by UNISON officials in the Greater London Region which took place at the UNISON premises known as Congress House and where UNISON staff received a briefing on how to campaign for the re-election of David Prentis. Given that this meeting took place at UNISON premises, was attended by paid UNISON officials during their working hours, and discussions took place on how UNISON resources had already been used to campaign for David Prentis and how UNISON staff should subsequently be used to distribute campaign material for David Prentis, both the meeting itself and the decisions reached at it amounted to the use of UNISON funds, resources and property to campaign for David Prentis.

Complaint 2

On or about 21 October 2015, UNISON breached paragraph 7 of Schedule C to the UNISON rules by issuing guidance to nominating bodies about the General Secretary election which was not agreed by a meeting of the National Executive Council of UNISON. In so doing UNISON also breached rules D.7 and E3.3, which require elections to be conducted in accordance with Schedule C to the UNISON Rulebook and regulations made by the National Executive Council.

Complaint 3

On or about 21 October 2015, UNISON breached rule B.2.2 of the UNISON rulebook. The breach occurred at a meeting organised and attended by UNISON officials in the Greater London Region which took place at Congress House and where UNISON staff received a briefing on how to campaign for the re-election of David Prentis. By using UNISON resources, contrary to the General Secretary 2015 Election Procedures, UNISON officers interfered in the election in a manner prejudicial to the promotion and establishment of a member-led union and the carrying out and fulfilment of decisions made by members in a spirit of unity and accountability.

Complaint 4

On or about 21 October 2015, UNISON breached rule B.2.4 of the UNISON rulebook. The breach occurred at a meeting organised and attended by UNISON officials in the Greater London Region which took place at Congress House and where UNISON staff received a briefing on how to campaign for the re-election of David Prentis. Interference by paid UNISON officials in the election process, in breach of the General Secretary 2015 Election Procedures, was prejudicial to encouraging solidarity and an effective working partnership between members, activists, representatives, officers and all staff in the service of the Union and its agreed policies.

Complaint 5

On or about 21 October 2015, UNISON breached rule B.4.6 of the UNISON rulebook. The breach occurred at a meeting organised and attended by UNISON officials in the Greater London Region which took place at Congress House and where UNISON staff received a briefing on how to campaign for the re-election of David Prentis. Interference by paid UNISON officials in the election process, in breach of the General Secretary 2015 Election Procedures, was prejudicial to fostering good industrial relations with the Union's employees through their trade unions, to encourage and maintain good employment practices and to promote equal opportunities for all employees irrespective of race, gender, sexuality, gender identity, disability, age or creed.

2. During the course of correspondence with my office, Mr Bannister was asked to explain the basis upon which he considered that rules B2.2, B2.4 and B4.6, which he alleged that the Union breached in his third, fourth and fifth complaints, respectively, were within my jurisdiction under section 108A(2)(a) of the 1992 Act. By a letter dated 5 April 2016 I caused the complaints to be sent to UNISON for its comments and observations. The Union responded by letter dated 18 May 2016

from Mr Ben Patrick, the Union's solicitor. Mr Patrick denied each of the alleged breaches. In relation to Mr Bannister's third, fourth and fifth complaints, he asserted, inter alia, that Section B of the Rulebook set out the aims and objectives of the Union and did not relate to the matters which were relied on in section 108A(1) of the 1992 Act. By a letter from my office dated 24 May 2016, Mr Bannister was asked to provide his comments on Mr Patrick's letter. He did so by letter dated 2 June 2016.

3. On 28 July 2016, my office sent a show cause letter to Mr Bannister, under section 256ZA(4) of the 1992 Act, giving him an opportunity to show why his third, fourth and fifth complaints should not be struck out on the basis that these complaints had no reasonable prospect of success and/or were otherwise misconceived. Mr Bannister responded by an email dated 5 August 2016.

The Relevant Statutory Provisions

4. The provisions of the 1992 Act which are relevant for this purposes of this application 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.*

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.*

The Relevant Rules of the Union

5. The rules of the Union which are relevant for the purposes of these decisions are as follows:-

B Aims and objectives

...

2 UNION DEMOCRACY

...

2. To promote and establish a member-led union and to carry out and fulfil decisions made by members in a spirit of unity and accountability.

...

4. To encourage solidarity and an effective working partnership between members, activists, representatives, officers and all staff in the service of the Union and its agreed policies.

4 GENERAL

...

6. To seek to ensure that members, activists, representatives and staff are treated with dignity and respect at all times when participating in the Union's democratic structures. Also that members, activists, representatives and staff seeking the Union's services provided by external suppliers are treated similarly by the providers of those services.

Conclusions

6. Mr Bannister's third, fourth and fifth complaints are in the following terms:-

Complaint 3

On or about 21 October 2015, UNISON breached rule B.2.2 of the UNISON rulebook. The breach occurred at a meeting organised and attended by UNISON officials in the Greater London Region which took place at Congress House and where UNISON staff received a briefing on how to campaign for the re-election of David Prentis. By using UNISON resources, contrary to the General Secretary 2015 Election Procedures, UNISON officers interfered in the election in a manner prejudicial to the promotion and establishment of a member-led union and the carrying out and fulfilment of decisions made by members in a spirit of unity and accountability.

Complaint 4

On or about 21 October 2015, UNISON breached rule B.2.4 of the UNISON rulebook. The breach occurred at a meeting organised and attended by UNISON officials in the Greater London Region which took place at Congress House and where UNISON staff received a briefing on how to campaign for the re-election of David Prentis. Interference by paid UNISON officials in the election process, in breach of the General Secretary 2015 Election Procedures, was prejudicial to encouraging solidarity and an effective working partnership between members, activists, representatives, officers and all staff in the service of the Union and its agreed policies.

Complaint 5

On or about 21 October 2015, UNISON breached rule B.4.6 of the UNISON rulebook. The breach occurred at a meeting organised and attended by UNISON officials in the Greater London Region which took place at Congress House and where UNISON staff received a briefing on how to campaign for the re-election of David Prentis. Interference by paid UNISON officials in the election process, in breach of the General Secretary 2015 Election Procedures, was prejudicial to fostering good industrial relations with the Union's employees through their trade unions, to encourage and maintain good employment practices and to promote equal opportunities for all employees irrespective of race, gender, sexuality, gender identity, disability, age or creed.

7. Section 108A of the 1992 Act provides my jurisdiction to determine complaints from a member of a trade union who seeks to complain that his or her union has breached or threatened to breach one or more of its rules. My jurisdiction is limited to complaints about rules which relate to the four areas of the rules of the union specified in section 108A(2)(a) to (d). Rules B2.2, B2.4 and B4.6 which appear in the rule book under the heading 'Aims and Objectives' are not rules which prima facie relate to any of those four areas.:-
8. My immediate predecessor as Certification Officer, Mr Cockburn, considered the meaning of the expression 'relating to' in the case *Lynch v UNIFI (CO/1964/18)*. He held at paragraph 49:-

In my judgment, however, the use of the word "relate" does not have the effect of extending my jurisdiction to all those rules which touch upon, no matter how obliquely, the matters set out in section 108A(2). I find that the connection between the rule allegedly breached and the matters set out in section 108A(2) must be clear and direct. Whether a rule is one relating to a matter listed in section 108A(2) is a matter of fact and degree to be determined in the circumstances of the particular case.

9. By letter dated 7 February 2016, Mr Bannister made the following submissions as to why he considered that there was a clear and direct link between rules B2.2, B2.4 and B4.6 of the Union and the matters set out in section 108A(2) of the 1992 Act. He did this in the following terms:-

- **Rule B.2.2** *The establishment of a member-led union is intrinsically linked to the conduct of elections in which the members exercise their rights to elect the leadership of the union, I cannot see how this link can be regarded as indirect or oblique in any way.*
- *By using the resources of the union contrary to the Election Procedures UNISON officers interfered in the election in a manner deliberately intended to undermine the concept of a member-led union.*
- *This breach of rule took place at the previously identified staff meeting in UNISON's Greater London Region on 21 October 2015.*
- **Rule B.2.4** *The balance of power and responsibilities between paid officials and lay members is an important issue in any trade union, as is indicated by the very existence of this particular Rule.*
- *Unconstitutional interference in an election process, in breach of the Election Procedures directly threatens the object of this particular Rule.*
- *This breach of rule took place at the previously identified staff meeting in UNISON's Greater London Region on 21 October 2015.*
- **Rule B.4.6** *This rule makes a direct reference to "participating in the Union's democratic structures", and the election of the General Secretary is a prime example of such activity, the link between this Rule and the election cannot realistically be described as anything other than direct.*
- *Unconstitutional interference in an election process, in breach of the Election Procedures directly threatens the object of this particular Rule. It is difficult to see how such behaviour can be regarded as treating three particular candidates in the General Secretary election, including myself, (about whom a disparaging comment is made in the recording), and the lay members voting in that election, with dignity and respect, rather it represents an abuse of their rights under Rule.*

10. Mr Bannister made direct reference to the above arguments in his email dated 5 August 2016 in which he showed cause why I should not strike out his third, fourth and fifth complaints under section 256ZA(1)(a) of the 1992 Act.

11. In response to the above submissions made by Mr Bannister, by letter dated 18 May 2016, the Union made its own submissions as to why there was no clear and direct link between the rules that Mr Bannister alleged that the Union breached and the matters set out in section 108A(2) of the 1992 Act. The Union did this in the following terms:-

49. These complaints raise no new facts, they seek to link the meeting on 21 October 2015 which is the subject of the first complaint to certain provisions contained in section B of the Rulebook. Section B of the Rulebook is entitled "aims and objectives". These aims and objectives relate to all the Union's activities (which encompasses a huge variety of work). There is no direct link between these aims and any particular aspect of the Union's activities; rather, they underpin all of its work.

50. UNISON notes that the Certification Officer has limited powers under s.108A TULRCA to determine complaints that a union has breached (or threatened to breach) its rules in relation to certain matters. The matters relied on in this case are "the appointment or election of a person to...any office" and "the balloting of members on any issue other than industrial action". The aims and objectives articulated in section B of the Rulebook do not relate directly to the matters that are relied on in s.108A (1) TULRCA. Further, the complainant's first complaint already covers his concerns about a breach of the more specific provisions which exist to govern the conduct of elections.

51. As the Certification Office has already noted, the expression "relating to", which appears in s.108A TULRCA, has been the subject of previous consideration by the Certification Officer in the case of Lynch v UNIFI (CO/1964/18) at paragraph 49. In particular, the connection between the rule allegedly breached and the matters set out in the statute must be "clear and direct" rather than just "obliquely" touching on those matters.

52. Mr Bannister's explanation (in his email of 27 January 2016) is that the (alleged) "breaches of B2. 2, B2. 4 and B4. 6...have a direct effect on the manner in which the election for the position of General Secretary was conducted". The reality is that Mr Bannister's essential complaint relates to one meeting allegedly having been conducted in breach of the Election Procedures, which are the specific provisions governing the conduct of elections. The complaint regarding the Union's aims and objectives is not a separate or 'freestanding' complaint, nor is it one which directly relates to the matters that fall within the jurisdiction of the Certification Officer.

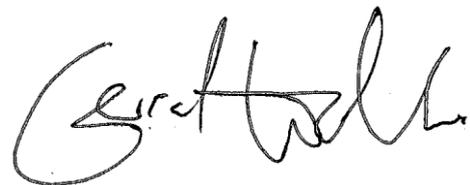
12. By letter dated 2 June 2016, Mr Bannister provided his response to the above submissions made by the Union. He did so in the following terms:-

6. Section B.2 of the Rulebook is entitled UNION DEMOCRACY, this clearly directly relates to "the appointment or election of a person to any office", and "the balloting of members on any issue other than industrial action". Rule B.2.5 states "To promote and safeguard the rights of members to have an adequate opportunity to participate in the initiation and development of policy making, through meetings, conferences, delegations or ballots..." The rule breaking evidenced in the Greater London Region referred to in my Complaints clearly did not promote and safeguard the rights of members in relation to this ballot, rather it was aimed at giving one candidate an unfair advantage in the ballot.

7. The Lynch v UNIFI case has limited relevance here, since the Rule in question in that case related to the maintenance of a membership register, and made no reference to ballots. As pointed out above. Rule B.2.5 has an explicit reference to ballots, and therefore can definitely said to be "clear and direct" rather than "obliquely" touching".

8. This rule gets to the heart of UNISON's raison d'etre, if fair balloting is so important as to justify a reference in those Rules relating to the Aims and Objectives of the union, then breaches of them as important as these cannot be lightly ignored, and the election should be re-run.

13. I find that the decision of Mr Cockburn, then then Certification Officer, in *Lynch v UNIFI (CO/1964/18)*, as to the meaning of the expression 'relating to', as is used in section 108A(1) of the 1992 Act, is of direct relevance to the matters that I must decide in relation to the application brought by Mr Bannister. I am also in complete agreement with what Mr Cockburn decided in this case particularly as to the meaning of this expression. Accordingly, the question I ask myself is this: is there is a clear and direct link between the rules which Mr Bannister alleges that the Union breached on or about 21 October 2015, namely rules B2.2, B2.4 and B4.6 of UNISON, and the matters set out in section 108A(2) of the 1992 Act.
14. On the facts of this case I find that rules B2.2, B2.4 and B4.6 of UNISON are exactly what they are described as in the Union rulebook, that is aims and objectives. They are very broad and aspirational in nature and can be seen as the setting within which the Union seeks to go about conducting its business. I further find that the connection between rules B2.2, B2.4 and B4.6 of UNISON and the election of the General Secretary of UNISON are not sufficiently clear and direct so as to render these rules as relating to either the appointment or election of a person to, or removal of a person from, any office, as provided for in section 108A(2)(a) of the 1992 Act, or the balloting of members on any issue other than industrial action, as provided for in section 108A(2)(c) of the 1992 Act. There may be many rules which contribute to the factual matrix against which an election for the General Secretary of a trade union take place but, in my judgement, this does not in itself bring them within section 108A of the 1992 Act. Such rules may or may not be part of such an election process dependant on the facts of the particular case. On the facts of this case, however, I find that I do not have jurisdiction under section 108A to determine whether UNISON has breached rules B2.2, B2.4 and B4.6 of its rules.
15. For the above reasons, Mr Bannister's third, fourth and fifth complaints are struck out under section 256ZA(1)(a) of the 1992 Act on the basis that they have no reasonable prospect of success and/or are otherwise misconceived. Mr Bannister's first and second complaints are not affected by this decision and will proceed to a full hearing in order to be determined.



Gerard Walker
The Certification Officer