

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE UNDER
SECTION 31(1) OF THE TRADE UNION AND LABOUR RELATIONS
(CONSOLIDATION) ACT 1992**

Mr Paul Markham

v

GMB

Date of Decision

22 January 2018

DECISION

Upon application by Mr Paul Markham (“the claimant”) under section 31(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

I uphold Mr Markham’s complaint that, in breach of section 30(2) of the 1992 Act, GMB failed to comply within 28 days with Mr Markham’s email of 12 August 2016 requesting access to the accounting records for the Union’s A55 branch.

REASONS

The Complaint

1. Mr Markham brought this application as a member of GMB (“the Union”). He did so by a registration of complaint form which was received at the Certification Office on 13 February 2017.
2. Mr Markham agreed his complaint on 17 July 2017 in the following terms:

In breach of section 30(2) of the 1992 Act, GMB failed to comply within 28 days with Mr Markham’s request of 12 August 2016, requesting access to the accounting records for the Union’s A55 branch.

Background

3. Mr Markham, a member of the Union’s A55 branch, sent a request by e-mail on 12 August 2016 to the Union to view the branch accounting records. He received no reply. Mr Markham made the request again on 28 October 2016. There were subsequent exchanges of e-mails between Mr Markham and the Union in which the Union attempted to make arrangements for Mr Markham to view the relevant records. The Union subsequently told my office, in its letter of 18 August 2017, that

they understood that they had made appropriate arrangements; however, both Mr Markham and the Union agree that he did not view the records at that time.

4. Mr Markham's complaint was copied to the Union on 17 July 2017 and the Union sent its response by a letter 18 August 2017. This stated, "*We are unable to confirm receipt of an e-mail request to inspect the accounts on 12 August 2016, and do not admit that this request was received.*" The letter continues that, "*Branch accounts are generally available for inspection at each branch meeting.*" The letter adds that, "*...there is no issue with Mr Markham viewing the branch accounts for GMB branch A55 and he is free to inspect them at a mutually convenient time and location.*"
5. By an e-mail dated 27 Sept 2017 Mr Markham confirmed that he had viewed the accounting records on 18 September 2017.
6. Mr Markham further confirmed that he wished to pursue his complaint and a hearing was listed for 24 January 2018.
7. By an e-mail dated 17 January 2018 the solicitors representing the Union stated that the Union had discovered that Mr Markham's email of 12 August 2016 was received by a Union official. The 17 January e-mail further stated, in part, as follows:

Although the branch books and accounts (comprising the accounting records requested) would have been available at the next branch meeting in line with Mr Markham's request, the union accepts that it did not make any arrangements with Mr Markham for him to inspect those records (as the request was overlooked). GMB therefore accept that there has been a breach of section 30 in respect of the 12 August 2016 request and that the Certification Officer may make a determination that this complaint is well founded.

8. The parties were informed by an e-mail from my office of 18 January 2018 that, as the Union had conceded a breach of Section 30 of the 1992 Act, it was my intention to make a written decision upholding Mr Markham's complaint. The e-mail also notified the parties that the hearing had been cancelled.

The Relevant Statutory Provisions

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

30 Right of access to accounting records.

- (1) *A member of a trade union has a right to request access to any accounting records of the union which are available for inspection and relate to periods including a time when he was a member of the union.
In the case of records relating to a branch or section of the union, it is immaterial whether he was a member of that branch or section.*
- (2) *Where such access is requested the union shall—*
 - (a) *make arrangements with the member for him to be allowed to inspect the records requested before the end of the period of twenty-eight days beginning with the day the request was made,*

- (b) allow him and any accountant accompanying him for the purpose to inspect the records at the time and place arranged, and
 - (c) secure that at the time of the inspection he is allowed to take, or is supplied with, any copies of, or of extracts from, records inspected by him which he requires.
- (3) The inspection shall be at a reasonable hour and at the place where the records are normally kept, unless the parties to the arrangements agree otherwise.
 - (4) An “accountant” means a person who is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006.
 - (5) The union need not allow the member to be accompanied by an accountant if the accountant fails to enter into such agreement as the union may reasonably require for protecting the confidentiality of the records.
 - (6) Where a member who makes a request for access to a union’s accounting records is informed by the union, before any arrangements are made in pursuance of the request—
 - (a) of the union’s intention to charge for allowing him to inspect the records to which the request relates, for allowing him to take copies of, or extracts from, those records or for supplying any such copies, and
 - (b) of the principles in accordance with which its charges will be determined, then, where the union complies with the request, he is liable to pay the union on demand such amount, not exceeding the reasonable administrative expenses incurred by the union in complying with the request, as is determined in accordance with those principles.
 - (7) In this section “member”, in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes a member of any of the constituent or affiliated organisations.

31 Remedy for failure to comply with request for access

- (1) A person who claims that a trade union has failed in any respect to comply with a request made by him under section 30 may apply to the court or to the Certification Officer.
- ...
- (2B) Where the Certification Officer is satisfied that the claim is well-founded he shall make such order as he considers appropriate for ensuring that the applicant –
 - (a) is allowed to inspect the records requested,
 - (b) is allowed to be accompanied by an accountant when making the inspection of those records, and
 - (c) is allowed to take, or is supplied with, such copies of, or of extracts from, the records as he may require.

CONSIDERATIONS AND CONCLUSIONS

10. Mr Markham’s complaint is as follows:

In breach of section 30(2) of the 1992 Act, GMB failed to comply within 28 days with Mr Markham’s request of 12 August 2016, requesting access to the accounting records for the Union’s A55 branch.

11. The relevant statutory provisions are set out in paragraph 9 above. The key issue here is whether the union responded to Mr Markham’s initial request,

made on 12 August 2016, by making arrangements, within 28 days of that request, for Mr Markham to view the accounting records.

12. The Union initially told my office, on 18 August 2017, that (i) they were unable to confirm whether Mr Markham's request of 12 August 2016 had been received by the Union, (ii) they did not admit that the request had been made on that date and (iii) they understood that they had made arrangements for Mr Markham to view the records in November 2017.
13. The Union's representative subsequently told my office on 17 January 2018, and ahead of the hearing scheduled for 24 January 2018, that they now understood that Mr Markham's email of 12 August 2016 had been received by a Union Official and appears to have been overlooked at that time. The Union conceded that it had been in breach of section 30(2) of the 1992 Act.
14. Consequently, it is clear to me that Mr Markham's complaint is well-founded and I uphold his complaint that the GMB had failed to comply with section 30(2) of the 1992 Act.
15. Section 30(1) of the Act requires me to make such Order as I consider appropriate for ensuring that Mr Markham has access to the relevant accounting records. As Mr Markham has now been given access to the accounting records no such Order is appropriate.
16. The Hearing listed for 24 January 2018 is no longer necessary and has been cancelled.

A handwritten signature in black ink, appearing to read 'Sarah Bedwell', with a long horizontal line extending to the right from the end of the signature.

Sarah Bedwell
The Certification Officer