

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION
MADE UNDER SECTION 55(1) OF THE TRADE UNION AND LABOUR
RELATIONS (CONSOLIDATION) ACT 1992**

Mrs C Simms

v

Unite the Union (Amicus Section)

Date of Decision:

27 November 2008

DECISION

Upon application by Mrs Simms (“the Claimant”) under section 55(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

I refuse to make the declaration sought by the Claimant that Unite the Union breached section 47(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 between 9 November and 31 December 2007 by unreasonably excluding her from standing as a candidate in its National Executive Council elections 2008.

REASONS

1. The Claimant is a member of the Amicus section of Unite the Union (“the Union”). By an application received at the Certification Office on 28 December 2007, the Claimant made a complaint against her Union. Following correspondence with the Claimant, the complaint was confirmed by her in the following terms:-

That between 9 November and 31 December 2007 in breach of section 47(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 the Union unreasonably excluded Ms Simms from standing as a candidate in its NEC election 2008 by not providing a nomination form to the Goole (0404) Branch to enable it to register its nomination of Ms Simms for the election.’

2. I investigated the alleged breach in correspondence. A hearing took place on 13 November 2008. At the hearing, the Claimant represented herself. Both she and her husband provided witness statements and were cross-examined by the Union. The Union was represented by Ms S Banerjee (Union in-house solicitor and legal officer). Witness statements were provided by Mr J Gibbins (the Union’s Conference Manager), Mr T Hanley (the Union’s Conference Coordinator) Mr B McAulay (then Union Regional Secretary for the Claimant’s region) and Ms C Hannon (Electoral Reform Services Ltd). Mr Gibbins was present at the hearing but was not cross-examined by the

Claimant. The other witnesses for the Union were not present at the hearing. Ms Banerjee provided a written skeleton argument. A joint bundle of 171 pages was before me, which had been prepared by my office from documents supplied by the parties and correspondence with them. I also accepted into evidence a three page spreadsheet submitted late by the Union, which became pages 172-174.

Findings of Fact

3. Having considered the oral and documentary evidence and the submissions of the parties, I find the facts to be as follows:
4. Mrs Simms has been a member of the Union and its predecessors for over twenty years and occupied a senior lay position in MSF, one of her former unions. Since about 1996 she has been the Branch Secretary of what is now the Leeds Craft branch of the Amicus section of the Union. Mrs Simms sought nominations to become a candidate in the election to be held in 2008 for her region's seat on the Executive Council of the Union. She is a member of the North East, Yorkshire and Humberside region. In order to become a candidate for this seat, Mrs Simms required five branch nominations. The Union stated that it only received four nominations for her and, accordingly, her name did not appear on the ballot paper. Mrs Simms maintained that she had been nominated by a fifth branch, the Goole (0404) branch, but that the Union had breached section 47(1) of the 1992 Act by not providing this branch with a nomination form.
5. Unite the Union was formed on 27 April 2007, following the merger of Amicus and the TGWU. The Union continues to operate with an Amicus section and a TGWU section and, initially, the executive committees of the two former unions continued in office. Elections were held in 2008 to create the first joint executive council, which was to consist of forty members from each section. The rules governing this election were to be the rules of the relevant former unions. The rules of the Amicus section provide that those seeking election for a regional seat on the executive council require nominations from five branches.
6. In September 2007, the Union published a leaflet entitled "NEC Election Special", which informed members of the timetable for the election and the nomination arrangements. Nominations were to take place at branch meetings held in November and December. Electoral Reform Services Limited ("ERS") had been appointed as the independent scrutineer and was to send nomination forms to branches and chapels from 8 October 2007. All nominations had to be received by the scrutineer by 11 January 2008. Voting was to take place between 3 and 28 March 2008.
7. The department of the Amicus section responsible for the administration of internal Union elections is the Conference Department. The Conference manager is Mr Gibbins, who has considerable experience in this role. Mr Gibbins briefed the relevant regional secretaries on the arrangements for the election and the Union circulated the NEC Election Special to all officers and

staff. The election was extensively publicised. Mr Gibbins explained to the regional secretaries that if a branch requested a duplicate nomination form that request should be referred to him so that he could retain a central record of the duplicate nomination forms that were despatched. In the event, 45 branches are recorded as having made such a request and they were each sent a duplicate nomination form.

8. In the week commencing Monday 8 October 2007 ERS despatched nomination forms to all the branches that appeared on the spreadsheet with which it had been provided by the Union. The Goole (0404) branch appeared on this spreadsheet as did the correct address of its branch secretary, Mr Wood.
9. On Saturday 3 November 2007, Mr McAulay, the regional secretary of the Claimant's region, visited Mrs Simms at home and encouraged her to stand in the NEC elections, if she wished. He also suggested the name of some branches which might nominate her, including the Goole branch.
10. Mrs Simms attended the branch meeting of the Goole branch on the evening of 9 November 2007. At this meeting the members who were present decided to support her. The minutes of the meeting include the words, "*get in touch with head office about procedure*", suggesting that the branch secretary had not seen the material that had been circulated both to him and generally. Mr Wood is a branch secretary of some four years experience. Mrs Simms left it to the Goole branch to submit her nomination in the same way that she would submit the nominations from her branch, Leeds Craft.
11. Mrs Simms also obtained nominations from four other branches. The Union did not immediately accept three of these nominations as there were obvious errors on the face of the nomination forms. For example, the membership number quoted for Mrs Simms was not her own and the branch officials of a Doncaster branch had purported to submit its nomination in the name of the Leeds Craft branch.
12. Whilst the Union was engaged in correspondence on these problems, Mrs Simms submitted a registration of complaint form to the Certification Office dated 26 December 2007. She alleged that the Union had refused to accept her nominations.
13. Eventually the Union decided that the three disputed nominations were in order. By this time, however, the deadline for nominations had closed and ERS had notified the Union of the nominations it had received. ERS had not received a nomination for the regional seat for Mrs Simms from the Goole branch. Accordingly the Union decided that Mrs Simms had insufficient nominations for her name to appear on the ballot paper.
14. In a letter to the Certification Officer of 11 February 2008 Mrs Simms stated:

"Mr Wood has informed me he contacted Unite amicus head office to get a nomination form. He asked for the officer John Gibbons [sic] to send the form he received no forms the telephone call can be found on the phone call records.

Mr Wood contacted his Regional Officer (based in Wakefield) he asked him to get a nomination form, the Regional Officer (Bernard McAulay refused to get him the form) Mr Wood is willing to testify to these facts”.

Mrs Simms did not produce the phone records as evidence and Mr Wood neither appeared as a witness nor provided a witness statement.

15. Mr McAulay agrees that Mr Wood telephoned him seeking a duplicate nomination form. Mr McAulay did not keep forms and was aware of the correct procedure, as explained to him by Mr Gibbins. Mr McAulay told Mr Wood that he should contact Mr Gibbins at head office by telephone, advise him he had not received a form and ask for one to be sent to him. He also advised Mr Wood to follow up his telephone request in writing. Mr McAulay states that Mr Wood agreed to do as he recommended.
16. Mr Gibbins’ witness statement states that Mr Wood did not telephone or write to him requesting a duplicate nomination form and that, as all such requests were to be dealt with by him personally, he is confident that no member of his staff received such a request either.
17. The minutes of the meeting of the Goole branch in December 2007 and January 2008 do not describe any difficulties encountered by Mr Wood in obtaining a duplicate nomination form. This issue was next discussed at the Goole branch on 11 April 2008, after voting in the NEC election had ended. The minutes of that meeting again state, “*Get in touch with head office about procedures*”. On the following day, 12 April, Mr Wood wrote to the Union in the following terms:

“Mrs Simms was nominated by the Goole branch 9.11.07 for Northeast, Yorkshire and Humberside regional NEC. The relevant nomination form was never received. The issue was brought up at the Goole branch meeting held on 11-4-08. It was agreed that the nomination of the above still goes ahead. Could this be addressed as a matter of urgency due to the time limit for which the form has to be in”.

That is the extent of the evidence from Mr Wood on this matter.

18. In the above circumstances, Mrs Simms wrote to the Certification Office on 12 May 2008 stating that her “central complaint” was “Why did Goole branch not receive a nomination form”. I permitted Mrs Simms to amend her complaint to advance this different argument and the words of the present complaint were put to the Union on 19 June 2008.

The Relevant Statutory Provisions

19. The Claimant alleged a breach of section 47(1) of the 1992 Act, which is in the following terms:-

Section 47 - Candidates

- (1) *No member of the trade union shall be unreasonably excluded from standing as a candidate.*

Summary of Submissions

20. Mrs Simms submitted that she had been nominated by five branches and so should have been permitted to stand as a candidate in the NEC elections in 2008. She maintained that the Union accepted that she had received four valid nominations and that she had produced evidence to show that she had been nominated by a fifth branch, namely Goole (0404). Mrs Simms said she had spoken to Mr Wood and been told by him that Mr McAulay had refused to send Mr Wood another nomination form and that Mr Wood had also made a request for a nomination form by telephone to head office, but again without success. In Mrs Simms' submission this amounted to the unreasonable exclusion of her from standing for office contrary to section 47(1) of the 1992 Act.

21. For the Union, Ms Banerjee, in a very thorough and lucid submission, argued that the Union did not receive five valid nominations for Mrs Simms for the seat of regional representative on the NEC and that accordingly the decision not to put her name on the ballot paper was taken in accordance with the rules and not unreasonable. In Ms Banerjee's submission, I should infer from the evidence that a nomination form had been sent to the Goole branch by ERS and that Mr McAulay did not refuse or unreasonably fail to provide Mr Wood with a duplicate nomination form. She further submitted that I should prefer the evidence of Mr Gibbins that he received no request for a duplicate nomination form from Mr Wood. In conclusion, Ms Banerjee argued that even if there were any such failures there was no deliberate targeting of Mrs Simms. She argued that Mr McAulay had encouraged Mrs Simms to seek nomination and was therefore unlikely to have deliberately undermined her attempt to stand. She further argued that, in requesting a duplicate nomination form, Mr Wood would have had no need to tell Mr McAulay or head office who the branch was intending to nominate and the Union would have had no reason to ask. Ms Banerjee submitted that the Union did not have knowledge of the Goole nomination of Mrs Simms and that the evidence established the Union was not at fault in this regard, taking into account its arrangements for the distribution of the original and duplicate nomination forms. In these circumstances Ms Banerjee submitted that Mrs Simms was not unreasonably excluded from standing as a candidate contrary to section 47(1) of the 1992 Act.

Discussion and Conclusion

22. Mrs Simms complained that she had been unreasonably excluded from standing as a candidate in the Union's election to its first joint NEC in 2008, contrary to section 47(1) of the 1992 Act. She argued that this was unfair as she had, as a matter of fact, been nominated by five branches and the failure of the Goole branch to inform the Union of its nomination of her was the fault of the Union in not providing its branch secretary, Mr Wood, with a nomination form.

23. I find as a fact that the Union provided ERS with the correct name and address of Mr Wood as the branch secretary of the Goole branch and that ERS mailed

to Mr Wood the letter from the returning officer of 8 October 2007 together with a nomination form. The whole of Mr Wood's subsequent conduct is consistent with him not having received this letter or the nomination form but I am unable to reach any finding as to whether it went astray in the post or was mislaid by Mr Wood. In any event, I find that Mr Wood, as a branch secretary of some experience, was aware of the relevant procedures, if not their detail.

24. I further find that when Mr Wood telephoned his regional secretary, Mr McAulay, for a duplicate nomination form he was told that Mr McAulay could not provide him one as they were kept at head office and that he should telephone Mr Gibbins for one, confirming his request in writing. I find that Mr McAulay did not refuse to provide Mr Wood with a duplicate nomination form.
25. I also find, on the balance of probabilities, that Mr Wood did not request a duplicate nomination form from head office. The only evidence that he did so is the unsupported hearsay evidence of Mrs Simms. Weighed against this is the evidence of Mr Gibbins who attended the hearing and was available for cross-examination. I note that Mrs Simms stated in correspondence that she could support her assertion with telephone records and the evidence of Mr Wood. It is telling that neither materialised.
26. In the above circumstances, the Union had to make a decision on whether to accept the candidature of Mrs Simms on the information before it. The information it had, as supplied by ERS, was that Mrs Simms had four branch nominations, not the five nominations required by the rules. On these facts, the Union had no alternative but to refuse to accept Mrs Simms as a candidate.
27. I have considered whether the Union found itself with only four nominations for Mrs Simms by virtue of its own unreasonable conduct. In my judgment, however, the steps that the Union had taken to communicate the electoral procedures to officers, staff, branches and chapels, were not unreasonable. The distribution of the nomination forms by ERS was not defective. The advice given to Mr Wood by Mr McAulay was accurate and no request was made to head office by Mr Wood for a duplicate nomination form. In these circumstances I find that the decision reached by the Union to exclude Mrs Simms from the 2008 NEC election was not based on its own unreasonable conduct.
28. For the above reasons I find that the Union did not breach section 47(1) of the 1992 Act between 9 November and 31 December 2007 by allegedly unreasonably excluding Mrs Simms from standing as a candidate in its National Executive Council elections 2008.

David Cockburn
The Certification Officer