

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

MR L WILLIAMS

v

COMMUNITY

Date of Decision:

15 December 2006

DECISION

Upon application by Mr L Williams (“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 Community acted in breach of section 47(1) of the 1992 Act in the conduct of its 2006 National Executive Council elections.

REASONS

1. Mr Williams is a member of the Respondent trade union, Community (“the Union”). By an application dated 27 April 2006, Mr Williams made a complaint to me against his Union arising out of the elections to the Union’s National Executive Council (“NEC”) in 2006. Following correspondence with my office, Mr Williams identified his complaint in the following terms:-

‘In breach of section 47(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended) between 7 March and 3 April 2006 the Union unreasonably excluded Mr Williams from standing as a candidate in the Union’s 2006 National Executive Council Elections.’

2. I investigated the alleged breach in correspondence and a hearing took place on 23 November 2006. Mr Williams did not appear and was not represented. He had, however, set out his complaint in his Registration of Complaint form and subsequent correspondence. He had also submitted two witness statements from Union members; from Mr Hardman and Mr Simons, neither of whom appeared at the hearing. The Union was represented by Mr Gavin Millar QC, instructed by Mr Fraser Whitehead of Russell Jones and Walker, solicitors. The Union submitted five witness statements; from Mr M Walsh (Head of Research), Mr J Lloyd (Head of Policy and Strategy), Mr C Tait (Regional Secretary-Region 7) Mr B Pike (Regional Secretary – Region 2), and Mr K

Jordan (NEC member – Region 7). Mr Lloyd and Mr Tait gave evidence and Mr Walsh was available at the hearing to be cross-examined. A bundle of documents was prepared for the hearing by my office. The rules of the Union were also in evidence. Mr Millar QC submitted a skeleton argument and five authorities.

Findings of Fact

3. Having considered the oral and documentary evidence, the witness statements and the representations of the parties, I find the facts to be as follows.
4. The Union came into existence on 1 July 2004 as a result of the amalgamation of the Iron and Steel Trades Confederation (“ISTC”) and the National Union of Knitwear, Footwear and Apparel Trades (“KFAT”). Upon formation, the Union had what were known as interim rules and an interim NEC. The intention was to have new rules in place by early 2006 and for there to be an election to a new NEC, under those rules, prior to the holding of a delegate conference in June 2006.
5. The new rules of the Union came into effect on 6 March 2006. The nomination period for candidates seeking election to the new NEC was between 6 March and 3 April. Election addresses were to be received by 13 April and voting was to take place between 24 April and 19 May. The first meeting of the new NEC was to be on 5 June.
6. Mr Williams was a former member of KFAT. He had been the President of its branch in Kendal, Cumbria, and the chairman of the KFAT Northern District Committee which, prior to the amalgamation, met in Oldham every two months. He was and remains a well respected lay activist.
7. The Northern District of KFAT covered almost the whole of northern England. It was based in Oldham and Mr Tait was its Regional Secretary or equivalent. Community adopted a different regional structure, which was more similar to that of the former ISTC than the former KFAT. It has a region based in Yorkshire (Region 3), a region based in Middlesbrough (Region 2) and a region based in Oldham (Region 7). After the amalgamation, Mr Williams regarded himself as a member of Region 7, with his Regional Office still in Oldham and Mr Tait still his Regional Secretary. The Union had, however, allocated him to Region 2, based in Middlesbrough, where the Regional Secretary was Mr Pike. There was some confusion as to whether the boundary of Region 2 included the whole of Cumbria or only North Cumbria. Be this as it may, the Union and Mr Williams had a different understanding as to the Region to which he was allocated. Mr Williams’ understanding was furthered by the fact that the Union agreed to permit the former KFAT Northern District Committee to continue in existence until the first Delegate Conference under the new rules. This Committee was used mainly to keep the former KFAT members in the Region informed of developments in the new union. It did this by receiving reports from the NEC members in the Region. It also provided feedback to those NEC members. After the amalgamation, the Committee met

on an ad hoc basis, two or three times a year, in the Innkeepers Lodge, a public house near the Oldham Regional Office.

8. The Union has about 848 branches, the vast majority of which are geographically or workplace based. However, there are a minority of branches into which members are placed if there is no appropriate geographical or workplace branch. Mr Williams was a member of one such branch. It was known as a 'Regional Community Branch'. Mr Williams' branch had nine members, four of whom lived by the north east coast and five of whom lived in Cumbria. Of the five members in Cumbria, three were listed as not being working members. The Branch Secretary of such a Regional Community Branch is the relevant Regional Secretary. In the case of Mr Williams' branch, it was Mr Pike.
9. The Union asserted that Mr Williams was or should have been aware when nominations were being sought in the elections to the new NEC in 2006. This assertion was made on the following grounds.
10. In early February 2006 the General Secretary wrote to all members enclosing a voting paper for the ballot on the new rules, together with what has been referred to as a "Vote Yes" leaflet. The letter and the leaflet both refer to the NEC and explain that the ballot paper for the rules ballot must be returned by 6 March. The leaflet also explains that the new rules will permit the election of a new NEC. Mr Williams received this material.
11. Between 6 and 20 February 2006, the Union organised meetings in its regions to campaign for a 'yes' vote in the ballot on the new rules. The meeting in Region 7 took place on the afternoon of 14 February at the Innkeepers Lodge, Oldham. There were about 20 to 30 people present. Amongst the full time officers present, there were the General Secretary, Mr Lloyd, the Head of Policy and Strategy, and Mr Tait, the Regional Secretary. Amongst the lay members present, there were Mr Williams, Mr Hardman, Mr Simons (then a member of the NEC) and Mr Jordan (soon to be elected a member of the NEC). Each of the regional meetings followed a set format. Mr Tait gave the lead presentation, being the person responsible for the arrangements and timetables of both the rules ballot and NEC elections. He was not responsible for the voting process. Mr Lloyd made his presentation from prepared notes and a prepared flip chart. He explained the effect of the new rules and, should the new rules be adopted, what would happen next. The evidence as to what was said at this meeting was in dispute. However, I accept the oral evidence of Mr Lloyd and Mr Tait of what Mr Lloyd said at that meeting, supported as it was by the written evidence of Mr Jordan. I find that Mr Lloyd explained to the meeting, in Mr Williams' presence, that if the new rules were adopted, the timetable for the NEC ballot would involve nominations being made between 6 or 7 March and 3 April.
12. On 15 February 2006, Mr Tait exhibited the proposed timetable for the NEC election on a notice board at the Oldham Regional Office. However, Mr Williams did not attend at the Oldham Regional Office during the relevant period to enable him to see that notice.

13. On 3 March 2006, there was a meeting at the KFAT Northern District Committee at the Innkeeper Lodge, Oldham. Mr Williams chaired this meeting. There were the usual reports back on recent events. Mr Tait, the Regional Secretary, reconfirmed that the NEC elections would begin upon approval of the new rules.
14. On 6 March 2006, the new rules were approved by the membership by a large majority. The General Secretary wrote to all Branch Secretaries on the same day inviting nominations for candidates to the NEC. Nominations were to be received by 3 April. On the following day, 7 March, the General Secretary wrote to Branch Secretaries again, correcting an omission from his previous letter.
15. On 23 March 2006, the General Secretary sent a further circular to Branch Secretaries, reminding them that branches must make all reasonable efforts to ensure that all members were aware that the nomination process was in progress. On 24 March the General Secretary sent a similar circular to Regional Secretaries to remind them of their responsibility to those branches of which they were the Branch Secretary, including Community Branches. There was no evidence that Mr Pike cascaded this information down to the members of Mr Williams' branch.
16. Nominations closed on 3 April 2006. There had been 530 requests for nomination forms, which resulted in 37 candidates standing for the 20 seats on the NEC. There were strict qualifying criteria to be eligible to stand as a candidate. In the seat for which Mr Williams qualified, there were four candidates for two seats.
17. On 4 April 2006, Mr Williams telephoned Mr Tait and asked when details of the nomination procedure would be sent out. Mr Tait informed him that the closing date had passed.
18. On 5 April 2006, Mr Williams wrote to the General Secretary stating that he had left the regional meeting of 14 February feeling very positive, believing that he could be a member of the new NEC. He stated that he had been unable to stand in the election through no fault of his own. He asked why he had not been personally notified of the NEC election procedure and requested that he be given an opportunity to stand.
19. The General Secretary responded by a letter dated 21 April 2006, informing Mr Williams that the election had been reasonably publicised amongst union members. He referred to the regional workshops that had been held and to the usual branch circulars. He declined Mr Williams' request to be allowed to stand in the election. Following a further letter from Mr Williams, the General Secretary stated in a letter dated 5 May 2006 that he was satisfied that Mr Williams had been well aware of the forthcoming election and the timetable under which it was to be conducted.

20. Mr Williams completed his Registration of Complaint Form to the Certification Office on 27 April 2006 and this form was received at my office on 2 May 2006.

The Relevant Statutory Provisions

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

S.47 Candidates

- (1) *No member of the trade union shall be unreasonably excluded from standing as a candidate.*
- (2) *No candidate shall be required, directly or indirectly, to be a member of a political party.*
- (3) *A member of a trade union shall not be taken to be unreasonably excluded from standing as a candidate if he is excluded on the ground that he belongs to a class of which all the members are excluded by the rules of the union.*

But a rule which provides for such a class to be determined by reference to whom the union chooses to exclude shall be disregarded.

S.55 Application to Certification Officer

- (1) *A person having a sufficient interest (see section 54(2)) who claims that a trade union has failed to comply with any of the requirements of this Chapter may apply to the Certification Officer for a declaration to that effect.*
- (2) *On an application being made to him, the Certification Officer shall –*
 - (a) *make such enquiries as he thinks fit, and*
 - (b) *give the applicant and the trade union an opportunity to be heard, and may make or refuse the declaration asked for.*

Summary of submissions

22. I did not have the benefit of Mr Williams' attendance at the hearing but I have carefully considered the contents of his Registration of Complaint Form and subsequent correspondence. I have also taken into account the short witness statements that he submitted from Mr Hardman and Mr Simons. Mr Williams complained that he had been unreasonably excluded from standing as a candidate in the NEC elections as no information regarding those elections had been sent to him. More specifically, as it emerged in correspondence, Mr Williams was complaining that he had not received a document from the Union, whether through the post or at one of the meetings he attended which indicated how to obtain a nomination form and the date by which completed nomination forms had to be submitted. Mr Williams noted that in the previous month a ballot paper had been sent to him personally, as had a notification of increase in subscriptions. He queried why he had not also been personally notified of the nomination timetable and procedure.

23. Mr Millar QC, for the Union, submitted that a complaint under section 47(1) of the 1992 Act needs to allege that an actual (as opposed to a hypothetical) member or members have been unreasonably excluded from standing as a candidate in a relevant election. On the facts of this case, Mr Millar submitted that Mr Williams did know when nominations were opening and closing and how to obtain a nomination form. In these circumstances, it was argued that Mr Williams had not been unreasonably excluded from standing as a candidate by reason of him being unaware of these matters.

Conclusion

24. I respectfully adopt the dictum of Smith J in **Ecclestone v NUJ (1999) IRLR 166** as to the purpose of section 47(1) of the 1992 Act. Smith J accepted the submission of Chris Jeans QC that:

"...this provision is designed, first, to ensure that a person is not excluded from standing for office by the imposition of unreasonable or unfair criteria or procedures, and also to ensure that he or she is not excluded by the unfair, or unreasonable, application of criteria or procedures which are fair in themselves."

25. This is not a case in which the eligibility criteria are challenged. It is Mr Williams' case that he was unreasonably excluded from standing as a candidate in the NEC elections by reason of the procedure adopted by the Union for informing members about the nomination timetable and procedures. Specifically, Mr Williams argued that he had been unreasonably excluded from standing as a candidate as he had not personally received from the Union any written notification explaining the nomination process.
26. It is, however, apparent from the legislation that there is no express statutory requirement that members be given individual written notification of the nomination process. Where the statute imposes such a requirement, it says so expressly, as in section 51(4) of the 1992 Act in relation to the provision of voting papers. The test in section 47(1) is a more general one, namely whether a member has been unreasonably excluded from standing as a candidate.
27. In the present case, the Union notified members of the nomination process in two ways. First, in recognition that new rules were being adopted and that this was to be the first NEC elected under those rules, meetings were arranged in each region to explain the process to those members interested enough to attend. In addition, the timetable of the NEC election was exhibited in the Oldham Regional Office and there were reports made to various constitutional and ad hoc committees; specifically to the KFAT Northern District Committee. Secondly, members were notified by the method which it was the practice of the Union to use when matters of general interest needed to be brought to their attention. This was by circulars to Branch Secretaries, enabling the information to be cascaded to members in the manner appropriate to the circumstances of each branch. Mr Millar QC referred me to the case of **Re NATFE (D/2/88-1988 CO)** in which one of my predecessors, Mr Wake, found that a similar method of notification by way of branch circular did not

lead to a breach of section 2(9) of the Trade Union Act 1984, the similarly worded predecessor to section 47(1) of the 1992 Act. Quite correctly, however, Mr Millar reminded me that each case must be considered on its own facts.

28. In my judgment, the purpose of the nomination notification procedure is to communicate to potentially qualifying members such information about the nomination process as would enable them to stand in the election. Accordingly, if a person has actual knowledge of the nomination process, he or she is by definition unable to complain that he or she was unreasonably excluded from standing in the relevant election by reason of the procedure used by the Union to notify members generally of the nomination process. The test for me to apply is not whether the union had a reasonable procedure but whether the relevant member or members were unreasonably excluded from standing as a candidate.
29. On the facts of this case, I have already found that Mr Williams is a respected lay activist within the Union and the Chairman of the KFAT Northern District Committee. I find, on the balance of probabilities, that he took a keen interest in the affairs of the Union. I also find that by early 2006 Mr Williams was anticipating an NEC election to follow immediately after the ballot on the new rules and that he was already interested in standing as a candidate, if qualified to do so. In the course of these proceedings the Union queried if Mr Williams was qualified as a candidate under its strict requirements but his eligibility was never put to the test. I find that Mr Williams was aware of the proposed timetable for the NEC election from at least 14 February 2006 and that this knowledge was confirmed at the meeting of the KFAT Northern District Committee on 3 March. I also find, on the balance of probabilities, that Mr Williams knew from 6 March or shortly thereafter that the actual nomination period for the NEC election had opened on 6 March and was due to close on 3 April. In my judgment, Mr Williams could have stood for election, if he had so wished and was qualified to do so. I find that his telephone call to Mr Tait of 4 April enquiring about the nomination process the day after nominations closed was disingenuous, rather than coincidental.
30. Accordingly, for the above reasons, I refuse to make the declaration sought by the Claimant that Community acted in breach of section 47(1) of the 1992 Act in the conduct of its 2006 National Executive Council elections.

David Cockburn
The Certification Officer

