

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

MR B MORGAN

v

**NATIONAL ASSOCIATION OF SCHOOLMASTERS
UNION OF WOMEN TEACHERS**

Date of Decision:

21 October 2005

DECISION

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

- (i) I declare that the National Association of Schoolmasters Union of Women Teachers (the “NASUWT” or “the Union”) breached section 48(4) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) by failing to secure that no modifications were made to the election address submitted by Mr Morgan on 20 January 2005 in connection with the election of members to the Union’s National Executive for the period 2005/2006.
- (ii) When I make a declaration and I am satisfied that steps have been taken by the union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in future, or that the union has agreed to take such steps, I am required by section 55(4) of the 1992 Act to specify those steps in the declaration.
- (iii) I am satisfied that steps have been taken by the NASUWT with a view to securing that a failure of the same or any similar kind does not occur in future. The steps taken by the Union are, firstly, the removal to another post of the member of staff allegedly responsible for the modifications of the election address and, secondly, the variation of the protocol governing procedures in

such elections. The protocol has been varied so as to secure, amongst other things, that the Independent Scrutineer will be required to compare the election addresses that are to be published with the candidates' original election addresses, together with any permitted amendments.

REASONS

1. By an application dated 22 April 2005 the Claimant made a complaint against his union, the National Association of Schoolmasters Union of Women Teachers ("NASUWT", "the Union"). The application alleged a breach of section 48(4)(a) and (b) of the 1992 Act in relation to the Union's National Executive election for 2005/2006. The alleged breach was:-

"that on a date between 27 January and 14 March 2005 the election address of Mr Morgan, in the Union's Election of Executive Member, District 34, was modified by the union and such modification was not with his consent and was not necessary to the method adopted for producing the election address, in breach of section 48(4)(a) and (b) of the 1992 Act".

2. I investigated the alleged breach in correspondence. As required by section 55(2)(b) of the 1992 Act, the parties were offered the opportunity to be heard and a formal hearing took place on 17 October 2005. The Union was represented by Mr Cooper of Russell Jones and Walker, solicitors. Mr Morgan acted in person. A bundle of documents was prepared for the hearing by my office which contained relevant exchanges of correspondence. At the hearing this bundle was supplemented by a letter from Russell Jones and Walker of 11 October 2005, a letter from Mr Morgan of 13 October and the declaration of the result of the election in question dated 23 March 2005. Mr Morgan submitted a written "summary of argument".

Findings of Fact

3. Having considered the representations made to me and the relevant documents I found the facts to be as follows:-
4. The NASUWT conducted its annual elections for membership of its National Executive between January and March 2005. On 20 January 2005 Mr Morgan was nominated by his local Association of South Down/South Armagh for one of the two positions on the National Executive representing District 34. On 27 January Mr Morgan submitted his nomination forms, election address and photograph by post and email.
5. Mr Morgan received his election material on 5 March 2005. Upon reading his election address as circulated he found that certain words had been omitted from his election address as submitted. These were the words which formed the heading to his text. They read, "*VOTE FOR BRENDAN MORGAN VOTE FOR CHANGE!*" At the hearing, it emerged that there had been another alteration to the text as submitted. In the fourth paragraph, the word "school" had been amended to "NASUWT". Mr Morgan had not noticed this alteration earlier and made no point on it.

6. By a letter to the Union's General Secretary dated 14 March 2005, Mr Morgan complained about the modification of his election address. The General Secretary responded by a letter dated 18 March. She stated:

"As part of our standard procedure the Word Processing Department correctly typed out your election address, including the header, into the format we use for all addresses. This copy was provided by email to the member of staff responsible for completing the ERBS forms and sending the election material to them to print. Unfortunately, as she cut and pasted the address into the ERBS format she omitted the header.

This was a complete oversight made by someone who was at the time having to deal with a large volume of election material and I am sure you will appreciate that from time to time mistakes do occur. I do however apologise most sincerely for the error that was made ..."

In an email of the 5 April the General Secretary accepted full responsibility for the clerical error that had been made.

7. The election closed at 12 noon on 23 March 2005 and the result was reported to the Union by the Independent Scrutineer the same day. The report recorded the result as follows;

Jim McDaid	1659 Elected
Peter Scott	1464 Elected
Brendan Morgan	800

8. Mr Morgan's complaint to the Certification Officer is dated 22 April 2005. The Union's formal response to the complaint is dated 26 May. The Union's formal response reiterates the points made by the General Secretary in her letter of 18 March. In a subsequent letter of 21 June, Mr Morgan stated that he was seeking a declaration and also "*an enforcement order that the NASUWT amend its procedures to prevent a further reoccurrence of this type of event*".
9. By a letter dated 11 October 2005 the Union's solicitors, Messrs Russell Jones & Walker, formally admitted liability. It was conceded that a declaration should be made that there had been a breach of section 48(4) of the 1992 Act. The letter also set out the steps taken by the Union to secure that nothing of this nature would occur again. It described the steps as follows:

"First, the member of staff responsible has been moved to another post. Secondly, the protocol governing elections of this nature has been varied so as to secure, amongst other things, that the Independent Scrutineer will be required to compare the election addresses that are to be published with the candidate's original election addresses (and, where appropriate, evidence of any consent for amendments to the original election addresses as submitted)."

The letter concluded by commenting that if Mr Morgan were to agree to these steps a hearing might be avoided.

10. By a letter dated 13 October Mr Morgan confirmed his wish for the hearing to proceed. He stated, "*I will be arguing that the alteration to my election address was deliberate and formed part of a carefully orchestrated and*

ongoing campaign being conducted against me. The remedial actions alluded to by the union's solicitors will not address this matter therefore I will be arguing that an enforcement order would be appropriate in this instance."

Mr Morgan did not state the terms of the enforcement order that he would be seeking at the hearing.

The Relevant Statutory Provisions

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

S.48 Election address

(4) *The trade union shall secure that no modification of an election address submitted to it is made by any person in any copy of the address to be distributed except –*

- (a) *at the request or with the consent of the candidate, or*
- (b) *where the modification is necessarily incidental to the method adopted for producing that copy*

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.

(3) *If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply*

(4) *Where he makes a declaration and is satisfied that steps have been taken by the union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in future, or that the union has agreed to take such steps, he shall specify those steps in the declaration.*

(5A) *Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements –*

- (a) *to secure the holding of an election in accordance with the order;*
- (b) *to take such other steps to remedy the declared failure as may be specified in the order;*
- (c) *to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.*

A Brief Summary of the Submissions

12. Mr Morgan requested that an enforcement order be made in the following terms, “*that the NASUWT abstain from any activity that could be conceived as placing an impediment to my standing in elections to that body or imposing restrictions on groups or members within the Union which would have the effect of preventing them from making a nomination on my behalf or for expressing their support for me within the rules of the Association.*” He argued that such an enforcement order was within my jurisdiction on a broad interpretation of the word “similar” in section 55(5A)(c) of the 1992 Act. Mr Morgan submitted that the modification of his election address was “*undemocratic interference*” and that I was therefore entitled to make an enforcement order in respect of any other sort of similar “*undemocratic interference*”. He invited me to consider evidence of such interference on other occasions, to reach findings of fact on those events and to then make an enforcement order in the terms he sought.
13. Mr Cooper, for the Union, submitted that I do not have jurisdiction to make an enforcement order in the terms sought by Mr Morgan. He argued that the word “similar” in section 55(5A)(c) of the 1992 Act had to be construed in the context of the particular breach that had been established. He further argued that the effect of accepting Mr Morgan’s interpretation would be to permit him to litigate issues about which he had not lodged a complaint. Mr Cooper submitted that the steps that the Union had taken in relation to the method of processing election addresses were appropriate to secure that a failure of the same or a similar kind did not occur in the future. For the record, Mr Cooper denied that the Union had committed any act of undemocratic interference as alleged by Mr Morgan, or at all.

Conclusion

14. The Union has conceded liability. However, there remains a dispute between the parties as to whether the admitted modification of the election address by the Union was the result of an administrative error (as alleged by the Union) or was a deliberate act (as alleged by Mr Morgan). There is no need for me to resolve this dispute as the issue of motive is irrelevant as to whether or not there has been a breach of section 48(4) of the 1992 Act. I am satisfied that there has been a breach of section 48(4) and I make a declaration accordingly.
15. Mr Morgan contends that the enforcement order he seeks is appropriate having regard to the number of unresolved disputes he has had, and continues to have, with the Union. By seeking this enforcement order, Mr Morgan is in effect seeking to have his position in these disputes vindicated. However, a claimant cannot claim a remedy in respect of a dispute which he has chosen not to litigate. The claim that Mr Morgan chose to litigate concerned the Union’s failure to secure that his election address was not unlawfully modified. In these circumstances, section 55(5A)(c) provides that any enforcement order may specify the acts from which the union must abstain, with a view to securing that a failure of the same or a similar kind does not occur in future. In my judgment, the reference to “*failure ... of a similar kind*” will ordinarily refer to failures by the Union which would lead to there being a breach of the

same statutory provision about which complaint has been made. On the facts of this case, I am not persuaded that an enforcement order covering situations which go beyond the present complaint would be either proper or appropriate. Furthermore, the terms of the order proposed by Mr Morgan are too vague to be capable of effective enforcement by the courts. For these reasons, I refuse to make the enforcement order sought by Mr Morgan.

16. I have considered the steps already taken by the Union with a view to securing that a failure of the same or similar kind does not occur in the future. Those steps are set out above. I am satisfied that they are sufficient to prevent the recurrence of a similar failure to the one established in this case. Accordingly, having regard to the steps taken by the Union, I find that it would be inappropriate that I make any enforcement order.

David Cockburn
The Certification Officer