

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

MR H PARRY

v

UNITE THE UNION (AMICUS SECTION)

Date of Decision

1 February 2008

DECISION

Upon application by Mr Parry (“the Claimant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992.

Pursuant to section 256ZA of the Trade Union and Labour Relations (Consolidation) Act 1992, I order that the Claimant’s complaint be struck out on the grounds that it has no reasonable prospect of success or is otherwise misconceived.

REASONS

1. The Claimant was a member of the Amalgamated Engineering and Electrical Union (“the AEEU”) until it amalgamated with another union on 1 January 2002 to form Amicus. On 27 April 2007 Amicus amalgamated with the Transport and General Workers Union to form Unite the Union. The Claimant is now a member of the Amicus section of Unite the Union.
2. The Claimant commenced his application by a registration of complaint form received at the Certification Office on 13 September 2007. After correspondence with my office, he identified his complaint in the following terms:-

“that Amicus (now Unite the Union (Amicus Section)) in or about 1999, at the time of Mr Parry’s termination of employment with Mitsui Babcock Energy Services Limited, breached Sections 34 and 36 of part V of the National Agreement for the Engineering Construction Industry 1998, which agreement is a part of the rules of the Union”

3. By a letter dated 5 December 2007, the Claimant was given notice pursuant to section 256ZA(4) of the 1992 Act that I proposed making an order striking out his claim on the ground that it had no reasonable prospect of success or was otherwise misconceived. The Claimant was given an opportunity to show cause why such an order should not be made. He responded by letters dated 11 and 29 December 2007, 3 and 28 January 2008.
4. There has been no hearing in this matter but the Claimant has set out his position in his Registration of Complaint Form and in correspondence. He has also supplied a number of supporting documents. In making this decision I have considered all the material on file.
5. The Claimant was employed by Mitsui Babcock Energy Limited on and off since 1977 at various sites throughout the UK. It is said in correspondence that there was a break in his service between November 1998 and March 1999. In 1999, the Claimant worked at the Connah's Quay power station. There is on file a blank statement of particulars of contract of employment issued by Matsui Babcock which effectively incorporates into the relevant contract of employment the appropriate terms of the National Agreement for the Engineering Construction Industry, known as the 'National Agreement' or the 'Blue Book'.
6. At some date in 1999 the Claimant was dismissed by Matsui Babcock. There is on file a copy letter from Matsui Babcock dated 25 July 1999 purporting to dismiss him. It states that since the Claimant had been unable to attend site since 2 July 1999 the company had been forced to make alternative arrangements and must therefore terminate his employment. Other letters on file suggest the date of dismissal was in May 1999.
7. The Claimant considered, and still considers, that his dismissal was grossly unfair. He considers that if the requirement for work had diminished at the Connah's Quay power station he should have been transferred back to the Wylfa power station, where he had worked prior to November 1998. He considers it particularly unfair that someone who was far junior in service than him should have been recalled from Connah's Quay to work at the Wylfa power station.
8. The Claimant contacted his Union to make representations on his behalf about his dismissal and an Employment Tribunal claim was commenced. This claim was dismissed, apparently on the grounds that it was presented out of time, although there may also have been problems relating to continuity of service.
9. Since that time, the Claimant has been assiduous in his attempts to remedy the injustice that he perceives has been done to him. As well as consulting solicitors, he has consulted his Member of Parliament, Albert Owen MP, who wrote on his behalf to the Department of Trade and Industry (DTI). He has also contacted his Member of the European Parliament, Glenys Kinnock MEP, who provided him with an application form to make a complaint to the European Court of Human Rights.

10. The Claimant also continued to press his Union for assistance and he had a meeting with its Regional Secretary, Ms Speight, in February 2007 in Swansea. It appears that at this meeting a suggestion was made that the Claimant's better course of action would have been to pursue his case through the relevant procedure in the National Agreement rather than through the Employment Tribunal. By a letter dated 9 May 2007, Ms Speight informed the Claimant that she did not believe that there was any more that the Union could do for him.
11. In the meantime, the Claimant had contacted the National Joint Council for the Engineering and Construction Industry ("the NJC"). He was sent a copy of the National Agreement and referred to sections 34 and 36. He was told about the various conditions that had to be fulfilled for the procedure in the National Agreement to apply. The Claimant took his case up with the Engineering Construction Industry Association, but he was informed by them by a letter dated 17 August 2007, that they were unable to assist.
12. The Claimant was probably told that I might have jurisdiction in this matter subsequent to a letter from the DTI to his MP in 2005, in which contact details for the Certification Office were given. The Claimant first contacted this office by telephone in January 2005. My office subsequently wrote to him to confirm the limited nature of my jurisdiction in respect of complaints of breach of union rule and also about the relevant limitation period in bringing claims to me. This information was repeated in March 2005, March 2006 (on the telephone), August 2007 and September 2007. In the letter from my office of September 2007 the Claimant was informed that if he did wish to pursue a complaint he should submit a Registration of Complaint Form. He did so on a form dated 12 September 2007.
13. The Registration of Complaint Form contains the question, "Which Union rule do you allege has been or is about to be breached by the Union?" The Claimant responded to this question with the words, "National Agreement book". In subsequent correspondence, the Claimant has stated, "*I have been in contact with a friend of mine (who is a F.T.O. with a different Union) he has spoken to me and said the National Agreement and the Union rules are the same.*" The Claimant also placed emphasis on his correspondence with Mr Askew of the NJC who, he stated, had told him that the Union are a party to the National Agreement. The Claimant states that he is totally confident that the National Agreement has been breached and prays in aid a letter from his local Union Officer of February 2002 seeking the advice of the Union's legal department or solicitors on this point. The Claimant argues that the part of the National Agreement that needs to be examined is the grievance section and that it "*clearly states in the Union rule book that procedure is the same as the National Agreement*". In a letter dated 3 January 2008 the Claimant asks for this matter to be amended to take into account his submission that the section of the Union's rule book dealing with grievances and complaints is exactly the same as the National Agreement procedure. It is, however, clear from a comparison of the National Agreement and the rules of the AEUU at the relevant time, that this is not the case. With his letter of 28 January 2008, the Claimant provided a marked up copy of two pages of the National Agreement. He commented that he had no doubt that the breach in the procedure he had highlighted "*is where*

the breach of the rules has been” and that it is a breach of union rules if a union officer does not comply with his duty under that procedure.

The law

14. My jurisdiction in relation to breach of union rule complaints is contained in section 108A(1) and (2) of the 1992 Act which provides:

Right to apply to the Certification Officer

Section 108A

- (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) and (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;

15. The time within which an application to me alleging a breach of rule must be made is contained in section 108A(6) and (7) of the 1992 Act which provide:

- (6) An application must be made –
 - (a) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or
 - (b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in subsection (7).
- (7) Those days are –
 - (a) the day on which the procedure is concluded, and
 - (b) the last day of the period of one year beginning with the day on which the procedure is invoked.

16. The power for me to strike out a complaint is contained in section 256ZA of the 1992 Act, which provides:

- (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.

- (3) An order under this section may be made on the Certification Officer's own initiative and may also be made -
 - (a) if the order sought is to strike out an application or complaint, or to amend or strike out anything in an application or complaint, on an application by the respondent, or
 - (b) if the order sought is to strike out any response, or to amend or strike out anything in any response, on an application by the person who made the application or complaint mentioned in subsection (1).
- (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.

Conclusion and Order

17. For a complaint to be within my jurisdiction it must allege a breach of a rule of the Union which relates to one or more of the matters set out in section 108A(2) of the 1992 Act. The Claimant has been unable to direct me to any particular rule contained in the rule book of the AEEU at the relevant time that was breached. He has rather referred to an alleged breach of the National Agreement or Blue Book. This is a collective agreement which was entered into between four trade unions, including the AEEU, and three employers associations. The terms of the National Agreement are not, in my judgment, rules of the Union. A breach of the terms of the National Agreement is not therefore a breach of the rules of the Union. I find the Claimant's assertion that the terms of the National Agreement are in some way to be read as rules of his Union to be misconceived. For the avoidance of doubt, I make no finding about whether the terms of the National Agreement were or were not breached or whether the Claimant's representation by the Union was or was not negligent. Neither of these are matters within my jurisdiction.
18. I am also mindful that the alleged breach of rule by the Union occurred in 1999 and that the Claimant first raised this matter with my office in a telephone conversation in 2005, before submitting a registration of complaint form in September 2007. Accordingly, even had the Claimant's complaint related to a rule of the Union, it has been presented well outside the limitation period, which extends at most for a period of 24 months beyond the date of the alleged breach of rule.
19. For the above reasons, I order that the Claimant's complaint be struck out, pursuant to section 256ZA(1) of the 1992 Act, on the grounds that it has no reasonable prospect of success or is otherwise misconceived.

20. I observe in passing that a possible source of confusion to the Claimant is that the National Agreement appears to have been incorporated into his contract of employment with Matsui Babcock. Accordingly, many of the terms of the National Agreement may have become terms of his contract of employment. However, a clear distinction must be made between the terms of a contract of employment (into which certain terms of a collective agreement may be incorporated) and the rules of a union. No arguable case has been made to me by the Claimant that his Union has acted in breach of any of its rules within my jurisdiction in relation to the matters about which complaint has been made.

David Cockburn
The Certification Officer