

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

MR G PAUL

v

**UNION OF CONSTRUCTION ALLIED TRADES AND TECHNICIANS
(No 2)**

Date of Decisions:

23 November 2007

**DECISIONS
AT A PRELIMINARY HEARING**

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

- (i) On the grounds that this complaint was made out of time and is outside the jurisdiction of the Certification Officer, I dismiss the Claimant’s application for a declaration that on 2 March 2004 the Union of Construction, Allied Trades and Technicians (“the Union”) breached rule 3(7) by knowingly taking disciplinary action against the Claimant and pursuing this action to conclusion when the Union should have known that as Branch Secretary the Claimant was not responsible for branch discipline.
- (ii) On the grounds that this complaint was made out of time and is outside the jurisdiction of the Certification Officer, I dismiss the Claimant’s application for a declaration that on 2 March 2004 the Union breached rule 16(6) by singling out, charging and taking disciplinary action against the Claimant as the Branch Secretary, for an alleged breach of rule 3(7) and pursuing this action to conclusion when the Union should have known that as Branch Secretary the Claimant was not responsible for branch discipline.
- (iii) On the grounds that this complaint was made out of time and has no reasonable prospect of success, I dismiss the Claimant’s application for a declaration that on 11 May 2004 the Union breached rule 26(4) by charging the Claimant with breaches of the rules of the Union this being 71 days after the events at the branch meeting of 2 March 2004 and 43 days over the time limit in rule 26(4) of 28 days for the receipt of such charges by the appropriate council.

- (iv) On the grounds that this complaint was made out of time and is outside the jurisdiction of the Certification Officer, I dismiss the Claimant's application for a declaration that on 2 March 2004 the Union breached rule 28.6 by singling out, charging and taking disciplinary action against the Claimant as the Branch Secretary, for an alleged breach of rule 3(7) and pursuing this action to conclusion when the Union should have known that as Branch Secretary the Claimant was not responsible for branch discipline.

REASONS

1. The Claimant is a member of the Union of Construction, Allied Trades and Technicians ("UCATT" or "the Union"). By an application received at the Certification Office on 25 May 2007, the Claimant made complaints against his Union arising from disciplinary action taken against him. Following correspondence with the Claimant, he identified four complaints which were confirmed by him in the following terms:-

Complaint 1

"that UCATT breached rule 3(7) of the rules of the Union on 2 March 2004 by knowingly taking disciplinary action against Mr Paul as the branch secretary and pursuing this action to conclusion when the Union should have known that as branch secretary Mr Paul was not responsible for branch discipline."

Complaint 2

"that UCATT breached rule 16(6) of the rules of the Union on 2 March 2004 by singling out, charging and taking disciplinary action against Mr Paul as the branch secretary, for an alleged breach of rule 3(7) and pursuing this action to conclusion when the Union should have known that as branch secretary Mr Paul was not responsible for branch discipline."

Complaint 3

"that UCATT breached rule 26(4) of the rules of the Union by charging Mr Paul with breaches of the rules of the Union on 11 May 2004 this being 71 days after the events at the branch meeting of 2 March 2004 and 43 days over the time limit in rule 26(4) of 28 days for the receipt of such charges by the appropriate council."

Complaint 4

"that UCATT breached rule 28(6) of the rules of the Union on 2 March 2004 by singling out, charging and taking disciplinary action against Mr Paul as the branch secretary, for an alleged breach of rule 3(7) and pursuing this action to conclusion when the Union should have known that as branch secretary Mr Paul was not responsible for branch discipline."

2. I investigated the alleged breaches in correspondence and a preliminary hearing took place on 13 November 2007 to consider whether the complaints had been made within the statutory time-limits; whether these complaints fell within my jurisdiction under section 108A of the 1992 Act and whether the complaints had no reasonable prospect of success or were misconceived. At the hearing, the Claimant represented himself. The Union was represented by Mr Hogarth QC instructed by Mr Cottingham of O H Parsons & Partners, solicitors. A 156 page bundle of papers consisting of relevant documents was prepared for the hearing by my office. At the hearing this was supplemented

by three additional documents supplied by the Claimant. Both parties submitted outline arguments.

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. The Claimant has been a member of the Union and its predecessors since 1968. He has for the past 10 years held the positions of Branch Secretary and Member of the Scottish Regional Council.
5. The Union is divided into ten regions covering the United Kingdom and the Republic of Ireland. Within its Constitution there are Branches, Regional Councils, an Executive Council ("EC") and a General Council. The General Council consists of single representatives elected from each of the Union's Regions and its duties include hearing appeals, including appeals from the EC.
6. The events which gave rise to the present complaints arose at a meeting of the Bathgate Branch of the Union (Branch UA029) on 2 March 2004. At that time, there was an election in progress for the post of General Secretary. Prospective candidates were seeking nominations from the Union's branches. The nomination of each branch is decided at the March meeting of the branch. As the March branch meeting is marked in the Union's diary with a star, it has become known within the Union as a Star Night.
7. The Star Night meeting of the Bathgate Branch on 2 March 2004 was attended by just four of its members; the Claimant, the Branch Secretary, Mr McBride, the Branch President, Mr Paton, the Branch Treasurer and Mr Watt, a member. In addition, a Mr Farrell and Mr Dillon were in attendance. They are not members of the Bathgate Branch but were known to Mr Paul. They are both Secretaries of other branches and sit on the Regional Council with the Claimant. Mr Farrell is also Chair of the Regional Council. I was informed by Mr Hogarth QC that it is not uncommon for members from other branches to attend the Star Night meeting of a branch in order to ensure that the correct procedures are adopted. Rule 3(7) permits the attendance of members from other branches. It provides "*Any member visiting a branch, other than his or her own, shall be admitted on producing his or her card, and may take part in the proceedings, but not vote.*"
8. The Claimant asked Mr Farrell and Mr Dillon to produce their membership cards. They did so, but did not hand their cards to the Claimant when asked to do so. The Claimant says he asked to see the cards in order to check that their subscriptions were up to date. The Claimant then asked Mr Farrell and Mr Dillon to leave the meeting. They refused, but said that they would leave if asked by Mr McBride. Mr McBride asked them to go and they left the meeting. About 10 minutes later, after the branch had made its nomination, Mr Farrell and Mr Dillon were allowed back into the room. No other business was conducted that evening.

9. On the next day, 3 March 2004, the Claimant wrote to the General Secretary stating that his branch had voted by four votes to none to raise charges against Mr Farrell and Mr Dillon for their obstructive and intimidating conduct.
10. Mr Farrell is the Branch Secretary of the Motherwell Branch (UA343). On 13 March 2004, the Motherwell Branch voted by three votes to none to raise charges against the Claimant and Mr McBride for failing to allow Mr Farrell to attend their branch meeting on 2 March. The minutes of the Scottish Regional Council of 1 April contains an entry under "*Charges regarding visiting of branches*". The then Regional Secretary, Mr Ritchie, was instructed by the Regional Council to write to the branches concerned to obtain their responses.
11. On 11 May 2004, Mr Ritchie wrote to the Claimant informing him of the charges that Mr Farrell had made against him. In August 2004, Mr Ritchie wrote similarly to Mr Farrell and Mr Dillon informing them of the charges laid against them by the Claimant and others from the Bathgate Branch.
12. The hearing of both sets of charges, together with similar charges involving other branches and branch visitors, took place on 27 April and 23 June 2005. The charges were heard by a panel of three members of the Regional Council together with the Regional Secretary. The Regional Council found that the Claimant had breached Rule 3.7, by having excluded Mr Farrell and Mr Dillon from the meeting, and Rules 25.1(i), (ii) and (iii). The sanctions imposed by the Regional Council Panel were suspension from holding any office in the Union for a period not exceeding three years and the denial of expenses for having attended the hearing. The charges against Mr Farrell and Mr Dillon were found to have been not proven.
13. The Claimant was notified in writing of the decision of the Regional Council Panel by a letter dated 19 September 2005 from the new Scottish Regional Secretary, Mr Frew. Mr Ritchie had by then been elected as the General Secretary. The decision of the Panel was officially announced at a meeting of the Scottish Regional Council on 21 September 2005.
14. On 26 September 2005, the Claimant wrote to the General Secretary stating his wish to appeal to the EC against the decision to exclude him from holding office in the Union for three years. In acknowledging receipt of that appeal, the General Secretary confirmed that the status quo would prevail until the appeal had been dealt with.
15. On 5 December 2005, the Certification Office wrote to the Claimant, in response to an e-mail from him, giving general advice on the limitation periods in claims before the Certification Officer of both breach of statute and breach of rule. The first paragraph of that letter states, "*Thank you for your email of 4 December 2005. You request information in respect of time limits for submission of complaints to the Certification Officer, but do not state the issue upon which you may be considering submitting an application to the Certification Officer*".

16. The Claimant's appeal was considered by the EC on 24 August 2006. The Claimant did not attend. On 4 October 2006, the General Secretary wrote to the Claimant informing him that his appeal had been partly successful. The charges under Rules 25.1(i), (ii) and (iii) were quashed. However, the charge under Rule 3(7) was upheld. The EC reduced the period of exclusion from office from three years to one year.
17. By a letter dated 23 October 2006, the Claimant entered a further appeal, to the General Council. This appeal was considered by the General Council on 27 March 2007. The Claimant did not attend. On 18 April, the General Secretary wrote to the Claimant informing him that his appeal had been dismissed. On 24 April, Mr Frew wrote to the Claimant informing him that his exclusion from office for one year would be effective from 27 March 2007.
18. The Claimant commenced these proceedings by an undated registration of complaint form, received at the Certification Office on 25 May 2007.

The Relevant Statutory Provisions

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

Section 108A Right to apply to Certification Officer

(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) to (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) ...;*
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting*
- (e) ...*

(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.*

Section 256ZA Striking out

(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) ...
 - (c) ...
- (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.*

The Relevant Union Rules

20. The rules of the Union which are relevant for the purpose of this application are as follows:-

Rule 3 Branch Meetings

- (7) *Any member visiting a branch, other than his or her own, shall be admitted on producing his or her card, and may take part in the proceedings, but not vote.*

Rule 16 Duties of Other Branch Officers

- (6) *The BP shall deal with any member causing a quarrel, swearing, or using abusive language at any meetings in accordance with the provisions of Rule 28 Clause 6.*

Rule 25 Disciplinary Powers

- (1) *The EC shall have power to impose a fine not exceeding £25, suspend from all or any benefits or from holding any office, or exclude from the Union, any member, who, in the opinion of the EC:*
- (i) *by his or her conduct acts against the interests of the Union, such conduct to include racist or sexist behaviour;*
 - (ii) *refuses to carry out any decision of any governing body of the Union made in virtue of the Rules, or disregards such decision, or acts against it;*
 - (iii) *wilfully or otherwise breaks or evades any provision of the Rules of the Union;*

Rule 26 Procedure for Dealing with Charges

- (1) *The EC, any Regional Council, any Branch, Branch Committee or member of the Union may charge any member with any offence alleged to have been committed against Rule 25 or against any other Rule of the Union.*
- (4) *Any such charges must be made and received by the appropriate council within 28 days of the discovery of the relevant facts.*
- (17) *Any member seeking to redress a grievance in any manner other than that provided for in these Rules before having exhausted the procedure laid down therein, shall be liable to be excluded from the Union but nothing in this or any other Rule shall be construed as placing on any member any restriction in respect of his/her instituting, prosecuting or defending proceedings.*

Rule 28 Miscellaneous Obligations

- (6) *Should any member cause a quarrel or use indecent or abusive language at any of the Union's meetings, s/he shall be dealt with under Rule 26. Should s/he continue disorderly conduct s/he shall be expelled from the room, if necessary by force, and shall be liable to be dealt with under the same Rule. No member shall introduce any matter not related to the Union's business.*

A Brief Summary of the Submissions

21. Prior to the preliminary hearing, the Claimant had been asked in correspondence to address two particular issues; namely whether he had brought his claims in time; and whether his claims were within the jurisdiction of the Certification Officer. He had also been informed that I would be considering whether his claims should be struck out on the grounds that they stood no reasonable prospect of success or were misconceived. On the question of time, the Claimant accepted that the dates on which he had alleged that the breaches had occurred were either 2 March 2004 or 11 May 2004. He was therefore obliged to also accept that the claims that he had made to the Certification Office on 25 May 2007 were more than six months after the dates of the alleged breaches. Nevertheless, the Claimant submitted that I should hear his complaints out of time as, by Rule 26(17) of the Rules of the Union, he could have been expelled from the Union had he not exhausted its internal procedures before going outside the Union and starting this claim. He stated that he had only exhausted the Union's procedures on 18 April 2007, when his appeal to General Council was dismissed, and his complaints to the Certification Officer were brought within six months of this date. On the question of jurisdiction, the Claimant asserted that his whole complaint was about the fact of him being disciplined and so his complaint must, in effect, come within section 108A(2)(b) of the 1992 Act. The Claimant submitted that on these grounds I should allow his claims to proceed to a full hearing.

22. On the issue of time, Mr Hogarth submitted that the Claimant had misunderstood the meaning of Rule 26(17) and that he would not have been at risk of expulsion from his Union had he commenced these proceedings in time. Mr Hogarth observed that the Claimant had brought an earlier complaint before the Certification Officer (CO/D/7-12/04) and that he had not been expelled from the Union for having done so, even though the internal mechanisms of the Union had not been exhausted on that occasion. Mr Hogarth went on to submit that, whatever meaning the Claimant may have attributed to Rule 26(17) of the Rules of the Union, the Certification Officer has no discretion to extend time if the statutory limitation period has been exceeded. He argued that in this case the limitation period had clearly been exceeded and that each of the complaints should be dismissed. On the issue of jurisdiction, Mr Hogarth submitted that the first, second and fourth of the Claimant's complaints did not fall within any of the jurisdictions provided for in section 108A(2) of the 1992 Act and that, in reality, these complaints were seeking to re-open the substance of the charges against the Claimant which had been dealt with by the Union. As to the Claimant's third complaint, Mr Hogarth submitted that it had no reasonable prospect of success as the Claimant had clearly misunderstood Rule 26.4 of the rules of the Union. In Mr Hogarth's submission, this rule requires that any charges are received by the Union within 28 days of discovery of the relevant facts and that the Claimant's argument that the charge must be communicated to the accused within 28 days of that date is not correct. Mr Hogarth observed that the complaint against the Claimant is dated 13 March 2004 and as this date is within 28 days of the meeting of the Bathgate Branch on 2 March 2004, the Claimant's third complaint fails on the facts.

Conclusions

23. This preliminary hearing was convened to determine whether the Claimant's application had no reasonable prospect of success or was otherwise misconceived as had previously been canvassed with him by my office in correspondence. The specific issues that had been raised with the Claimant were whether his claim had been presented in time and whether his complaints fell within my jurisdiction under section 108A of the 1992 Act.
24. Any claim to the Certification Officer under section 108A(1) of the 1992 Act must be made within the time period set out in section 108A(6) and (7) of the 1992 Act. These subsections 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.*
25. The primary limitation period of six months begins to run from “... *the day on which the breach or threatened breach is alleged to have taken place...*”. The complaints advanced by the Claimant refer to alleged breaches of rule on 2 March 2004 (complaints one, two and four) and 11 May 2004 (complaint three). On this basis, the Claimant's complaints would be out of time if not commenced by November 2004. His complaints were received by my office on 25 May 2007 and were therefore well outside the primary limitation period.
26. The Claimant argued that Rule 26(17) of the Rules of the Union provides that he would be liable to expulsion if he had brought these proceedings without having first exhausted the Union's internal procedures and that his final appeal was not dismissed until 18 April 2007. In advancing this argument, he was asking me to construe the statutory provisions or exercise any discretion I might have so as to avoid the hardship to him that would result from a straightforward application of the statutory limitation periods.
27. In my judgment, the Claimant's submissions are misconceived for two reasons. Firstly, the statutory provisions on time in section 108A of the 1992 Act do not give the Certification Officer any jurisdiction to extend the time beyond the periods defined in section 108A(6) and (7) of the 1992 Act. I have no residual discretion in this matter. Secondly, the Claimant had misunderstood Rule 26(17) of the rules of the Union. This Rule does not provide that in all circumstances a member may be excluded if she or he seeks redress of a grievance before exhausting the Union's internal procedures. The final clause of that rule contains an exception in respect of “...*instituting, prosecuting or defending proceedings*”. An application to the Certification

Officer is a proceeding within the meaning of that rule and so the Claimant was not inhibited from commencing these proceedings in time by Rule 26(17).

28. I have gone on to consider whether the Claimant's case might be within time by virtue of the extended limitation periods provided for in section 108A(6)(b) of the 1992 Act. In order to take advantage of this provision, the Claimant is still required to identify the dates on which the breach is alleged to have taken place. As stated in paragraph 25 above, the dates on which the Claimant has expressly alleged that the breaches in question occurred are 2 March and 11 May 2004. Be this as it may, it is arguable that the breaches only occurred when he either received the charges on 11 May 2004 or when the disciplinary sanctions were imposed upon him on or about 21 September 2005. Taking the date most favourable to the Claimant, that is 21 September 2005, I have applied section 108A(6)(b) of the 1992 Act and asked myself whether he invoked any internal complaints procedure of the Union to resolve his complaints within six months of that date. It is again arguable that he did so by having lodged an appeal to the EC on 26 September 2005. Section 108A(7) of the 1992 Act would then require me to recalculate the limitation period. The six months to make a claim would then begin to run from the earlier of two events; namely the conclusion of the internal procedure or "*the last day of the period of one year beginning with the day on which the procedure is invoked.*" On this hypothesis and on the facts of this case, the latter date is the appropriate one and results in the recalculated starting date for the limitation period being 25 September 2005. Had the six month limitation period begun to run from 25 September 2005, the Claimant should have submitted his complaint to the Certification Office by 24 March 2007. He did not do so. His complaint was submitted on 25 May 2007. The Claimant's failure to submit his complaint in time is all the more remarkable as in December 2005, he sought and was given guidance by the Certification Office on the time limitation provisions without him having disclosed the reason why he had sought such guidance.
29. Accordingly, I dismiss each of the four complaints brought by the Claimant on the grounds that they were made out of time.
30. As the Claimant's complaints were each made out of time, it is not necessary for me to consider whether the complaints which he sought to bring were within my jurisdiction or whether they had no reasonable prospect of success. Nevertheless, should I be wrong on the issue of time, I now deal with these further matters.
31. To the extent that they are relevant to these complaints, section 108A(1) and (2) of the 1992 Act provide as follows:

Section 108A Right to apply to Certification Officer

(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) to (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;*
 - (e) ...

32. These provisions in effect require a Claimant to identify the rule of the Union which has allegedly been breached. The Certification Officer will only have jurisdiction to consider the alleged breach of that rule if it is one “*relating to any of the matters mentioned in subsection (2)*” of section 108A of the 1992 Act.
33. On the facts of this case therefore, I have considered whether the Claimant’s first, second and fourth complaints (concerning respectively Rules 3(7), 16(6) and 28(6)), “relate” to any of the matters set out in section 108A(2) of the 1992 Act. I observe that these rules deal with the right of members to be present at branch meetings or the conduct of members at branch meetings. They are rules which, if broken, may result in disciplinary proceedings and those disciplinary proceedings may result in the member being removed from office. However, this does not necessarily bring those rules within my jurisdiction as being rules “*relating to...the removal of a person from, any office*” (section 108A(2)(a)) or “*disciplinary proceedings by the union...*” (section 108A(2)(b)). In particular, the fact that the Claimant was disciplined for an alleged breach of Rule 3(7) does not, in my judgment, make Rule 3(7) a Rule which relates to “*disciplinary proceedings by the union...*”. If this were not to be the correct approach, I could find myself adjudicating upon the merits of whether a member has in fact breached a particular rule, a function for which Parliament has not provided the Certification Officer with jurisdiction. In my judgment, the issue of jurisdiction under section 108A of the 1992 Act should first be approached outside the facts of a particular case. One should first ask whether the rule allegedly breached relates to any of the matters set out in section 108A(2) of the 1992 Act. Applying this test, I find that the Claimant’s first, second and fourth complaints do not relate to any of the matters set out in section 108A(2)(a)-(c). They could, however, relate to the matter set out at section 108A(2)(d), namely “*the constitution or proceedings of any executive committee or of any decision-making meeting.*” The Claimant’s difficulty in this regard is that, by section 108A(10), (11) and (12) of the 1992 Act, that provision only applies to branches which have more than 1,000 members. The Claimant stated that his branch has only 400 members. Accordingly, I find that the Claimant’s first, second and fourth complaints are outwith my jurisdiction under section 108A of the 1992 Act.
34. The Claimant’s third complaint alleges a breach of Rule 26(4) of the Rules of the Union, which provides that “*Any such charges must be made and received by the appropriate council within 28 days of the discovery of the relevant facts*”. I find that this is a complaint of a breach of rule which does relate to “*disciplinary proceedings by the union...*” and is accordingly within my jurisdiction by virtue of section 108A(2)(b) of the 1992 Act. However, I find

that the Claimant's interpretation of Rule 26(4) is misconceived. His complaint is premised upon the 28 day period being measured between the event which has given rise to the charge and that charge being put to the accused. This is patently not the correct interpretation of the rule, which provides expressly that the 28 day period is to be measured between the event giving rise to the charge and the receipt of that charge by the appropriate council. The event giving rise to these charges occurred on 2 March 2004 and the charges of the Motherwell Branch against the Claimant are dated 13 March 2004. The Regional Council minutes of 1 April 2004 refer to "*Charges regarding visiting of Branches.*" The charges were put to the Claimant by a letter dated 11 May 2004. On these facts and on the correct interpretation of Rule 26(4), I find that the Claimant's third complaint has no reasonable prospect of success.

35. Accordingly, should I be wrong in having dismissed the Claimant's complaints on the grounds that they were made out of time, I would have dismissed his first, second and fourth complaints on the grounds that I lack jurisdiction to deal with these complaints under section 108A of the 1992 Act and his third complaint on the grounds that it has no reasonable prospect of success.

David Cockburn
The Certification Officer