

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

Ms D CORRIGAN

v

GMB (No. 3)

Date of Decision:

3 July 2007

DECISION

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

By the powers conferred on me by section 256ZA(1)(a) of the 1992 Act I strike out Ms Corrigan’s complaint on the grounds that it has no reasonable prospect of success and is otherwise misconceived.

REASONS

1. Ms Corrigan (“the Claimant”) is a member of the GMB (“the Union”). By an application dated 18 December 2006 the Claimant made a complaint against her Union relating to the nomination of Mr Paul Kenny as a candidate in the GMB’s election 2006 for the post of General Secretary. Following correspondence with the Claimant and her representative, Mr Rafferty, the complaint was identified in the following terms:-

‘On or around 13 March 2006 by the nomination of Mr P Kenny as a candidate in the GMB’s election 2006 for the post of General Secretary, the Union breached rule 18.6 of the rules of the Union in that, as an employee of the Union, Mr Kenny was in receipt of a pension from the Union and was not eligible for appointment or election as an Officer of the Union.’

2. I investigated the alleged breach in correspondence. The Union was represented by Mr J O’Hara of Thompsons Solicitors.

Findings of Fact

3. Having considered the documentary evidence and the submissions of the parties, I find the facts to be as follows:-
4. The Claimant is a member of Branch 242 which is within the Liverpool, North Wales and Irish Region of the GMB.
5. On 15 March 2005, the then General Secretary of the Union Mr Curran was suspended from office. On 23 March 2005 Mr Kenny, a Regional Secretary was appointed as Acting General Secretary under rule 14.2. On 7 April 2005 Mr Curran resigned as General Secretary and Mr Kenny continued as Acting General Secretary.
6. On 11 March 2006, the Union's recalled Congress 2005 amended the Union's rules to lift the bar on any one appointed under rule 14.2 standing in a future election for the position of General Secretary. Hitherto rule 14.2 had stated that anyone appointed to act as General Secretary and Treasurer pro tem until a new General Secretary and Treasurer was elected, would not be eligible for nomination and election as General Secretary and Treasurer or as a Deputy General Secretary. This change of rule had the effect of allowing Mr Kenny (who had been appointed under rule 14(2)) to stand for election as General Secretary and Treasurer of the Union.
7. At the same Conference a provision was added to rule 18.6 to the effect that "No person who is in receipt of a pension from the Union shall be eligible for appointment or election as an Officer of the Union." It is on this sentence that the complaint relies.
8. Mr Kenny was nominated as a candidate in the General Secretary election on 13 March 2006. On 8 May 2006 the Head of Operations, Electoral Reform Services, Mr Nick Goodman, who was the Independent Scrutineer for the election of the GMB General Secretary, reported that Mr Paul Kenny had been elected unopposed as the Union's General Secretary.
9. Mr Kenny was a contributing member of the Union's pension scheme both as a Regional Secretary and as Acting General Secretary. He is not drawing a pension from that scheme or otherwise from the Union.
10. The Claimant wrote to the Union's President, Ms Mary Turner, on 1 September 2006 complaining that: *"I am writing to you as union President to raise this matter as a breach of union rules. Rule 18 of GMB rules, in force from 11 March 2006, two days before Mr Kenny could be nominated by branches for General Secretary Election, ruled him out from standing, as he was a paid employee, making pension contributions, with his employer, GMB. For the purposes of that rule he was at nomination "in receipt of a pension" (as distinct from receiving a pension for obvious reasons)."* The claimant requested that the President investigate the matter as soon as practicable and advise her of the Union's findings.

11. On 16 October 2006 the Claimant wrote again to the Union's President asking if she would confirm when the President would reply to her letter of 1 September.
12. On 18 December 2006 the claimant wrote to my office stating that the Union had failed to reply to her and making a complaint to the Certification Office.
13. The Union's written response to the complaint was received on 26 February 2007. The Union argued that I should exercise my discretion under section 108B(1) of the 1992 Act not to accept Ms Corrigan's complaint on the grounds that she had not taken all reasonable steps to resolve her claim by the use of the Union's internal resolution procedures. Further, the Union considered that the application had no reasonable prospect of success and was misconceived. The Union invited me to strike out the application by the exercise of my powers under section 256ZA(1)(a) of the 1992 Act.
14. My office wrote to the Claimant on 8 March inviting her comment and observations on the Union's argument that she had not used the Union's internal procedure to resolve her complaint and said that I was considering the use of my powers under section 256ZA(1)(a) of the 1992 Act to order the complaint to be struck out on the grounds that it had no reasonable prospect of success or was otherwise misconceived. I gave her notice under section 256ZA(4) of the 1992 Act to show cause why such an order should not be made and requested her response by 22 March.
15. Mr Dermot Rafferty, a volunteer worker in the Belfast Unemployed Centre became Ms Corrigan's representative in the matter and my office received a reply from him dated 30 March in which he requested an extension of time by which to reply to my letter of 8 March, owing to certain family difficulties being experienced by Ms Corrigan.
16. By letter of 4 April 2007 my office granted an extension of time for such a reply until 16 April –the date suggested by Mr Rafferty.
17. Having had no further correspondence from Mr Rafferty by 8 May 2007. My office wrote again enclosing a copy of my letter of 4 April and requested his urgent attention to this matter and his response by 11 May.
18. As no response was received, on 17 May 2007 my office wrote to Mr Rafferty, referring to previous correspondence with him on the matter, informed him that I had taken due account of both his health and Ms Corrigan's personal problems and that he should reply to my letter of 8 March, by 31 May. As this date also passed without a response from Mr Rafferty my office wrote to Mr Rafferty, on 1 June, informing him that the papers would now come to me to consider striking out Ms Corrigan's application.
19. In a decision dated 20 March 2007, I made a declaration that the GMB had breached section 46(1)(a) of the 1992 Act by failing to secure that the position of General Secretary of the Union had been filled by a person elected to it at

an election satisfying the requirements of the 1992 Act. I declined to make an enforcement order.

The Relevant Statutory Provisions

20. The provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 (“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) ...*
- (c) ...*
- (d) ...*

108B Declarations and orders

(1) The Certification Officer may refuse to accept an application under section 108A unless he is satisfied that the applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union

(3) 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 both of the following requirements -

- (a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;*
- (b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.*

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) ...*

(2) The Certification Officer may order an application or complaint made to him to be struck out for excessive delay in proceeding with it.

(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.*

The Relevant Union Rules

21. The rules of the Union relevant to this application are as follows:-

Rule 15 Election of General Secretary and Treasurer, and of Deputy General Secretary

- 1 *This rule shall apply to the election of the General Secretary and Treasurer, and to the election of the Deputy General Secretary, each of whom shall hold office for a period of five years from taking up office.*
- 2 *Nominations shall be sought from the Branches of the Union by the Central Executive Council six months before the term of office expires, or in the event of a vacancy, as soon as practicable taking account of any relevant matters. Nominations shall be sent by Branches to a Returning Officer appointed by the Central Executive Council.*
- 3 *No member shall be eligible to stand as a candidate in an election under this rule unless the Central Executive Council is satisfied that:*
 - (a) *he/she is qualified under these rules to stand for election to the office and*
 - (b) *he/she has complied with the requirements and conditions set out in by-laws for nominees.*

Only candidates who have so satisfied the Central Executive Council as to their qualifications and compliance shall be validly nominated.

Rule 18 Qualifications for Office and Definition of Officers

- 6 *No person who has, or who in the preceding five years has had, a written contract of employment with the Union, or who is in receipt of a pension from the Union shall be eligible for election as a delegate to Congress (Rule 8); as a delegate to Regional Council (Rule 20 or Rule 21); or as a delegate to a National or a Regional Delegate Conference (Rule 68) or Section Conference. No person who is in receipt of a pension from the Union shall be eligible for appointment or election as an Officer of the Union.*

Rule 63 Senior Officers Electoral Appeals and Disputes

- 1 *This Rule shall apply to all complaints, grievances and disputes arising from any election for General Secretary and Treasurer or Deputy General Secretary. Rule 6 shall not apply to any matter falling within this Rule.*
- 2 *Any complaint under this rule must be received in writing by the National Returning Officer*
 - a *in the case of a complaint by a member that the Central Executive Council has decided under rule 15.3 that he/she is not eligible to stand as a candidate in an*

- election, by not later than one week after that decision*
- b *in all other cases by not later than one month after the declaration of the result of the election.*

Summary of the submissions

The Claimant's submission

Preliminary issue

22. On the question of whether or not the claimant had used the Union's internal complaints procedures, Mr Rafferty, as the claimant's representative, stated in his letter to me of 30 March 2007 that Ms Corrigan had written to "*one of the most senior people in GMB several times and had not received a single acknowledgement/reply.*" He therefore argued that "*it is impossible to resolve matters internally if one party won't communicate with another.*" He further stated that he would address this matter in detail when replying on the substantive issue. In the event Mr Rafferty did not write again on this issue or at all. I have therefore not considered it any further for the purposes of this strike out order.

Complaint of a breach of rule 18(6)

23. In a letter to me of 2 February 2007 the Claimant argued that Rule 18(6) prevents anyone in the Union who is in receipt of a pension from the Union, being eligible for election as an Officer of the Union. According to the Claimant, Rule 18(2) defines the Union officers to include the General Secretary and that Rule 18(6) came into force on or about 11 March 2006.
24. She further stated that Mr Kenny was appointed temporarily as GMB General Secretary and Treasurer on or about 11 March 2006. As a GMB employee for '*many years*' Mr Kenny was said to be in receipt of a pension in the sense of it being part of his employment contract and '*himself making necessary contributions.*' In being in receipt of a pension Ms Corrigan said that Rule 18(6) prevented Mr Kenny from being nominated for the post of GMB General Secretary on 13 March 2006.

The Union's Submission

Complaint of a breach of Rule 18(6)

25. The Union confirmed that Mr Kenny is a member of the Union's pension scheme but that "*He is not drawing a pension from that scheme or otherwise from the Union.*" The Union construed the claimant's argument as being that anyone making contributions to the Union's pension scheme would be disqualified by clause 6 of Rule 18.
26. In the Union's view, Rule 18(6) is in effect in two parts. The effect of the first sentence of Rule 18(6) is to exclude from election to lay office of the Union any person who has a written contract with the Union or had had one in the

preceding five years before the relevant election. This was to preserve these offices to non-employees rather than to those whose employment had ceased some time previously and who had no direct financial link to the Union. The second sentence allowed current and former employees to stand for election as officers unless they were in receipt of a pension and so had a direct financial link to the Union.

27. The Union argued that to be in receipt of a pension is to receive or be drawing a pension, which is distinct from being an active member of the pension fund, and paying into that fund as an employee of the Union. As Mr Kenny was not drawing a pension from the Union, he could not be in breach of rule 18(6).
28. The Union requested me to strike out the complaint on the grounds that it had no reasonable prospect of success and was misconceived.

Conclusions

29. Had this matter reached the stage of a hearing I would have sought further argument on the issue of whether the Claimant had taken all reasonable steps to resolve her claim by the use of any internal complaints procedure of the Union. For the reasons given below I am using my powers under Section 256ZA(1) of the Act to strike out the complaint so I have reached no conclusion on Ms Corrigan's use of the Union's internal complaints procedure.
30. At the time of Mr Kenny's nomination Rule 18.6 provided that "No person who is in receipt of a pension from the Union shall be eligible for appointment or election as an Officer of the Union" Ms Corrigan invites me to conclude Mr Kenny was 'in receipt of a pension (as distinct from receiving a pension)' and therefore his nomination was in breach of rule 18.6.
31. To succeed in her claim Ms Corrigan would need to establish the fact that as Mr Kenny was contributing to a pension scheme this meant that for the purpose of rule 18.6 he was in 'receipt of a pension.' [see previous comment]
32. In considering the claimant's argument I have borne in mind the view taken by the courts in interpreting union rule books. In **Jacques v AUEW (1986) ICR 683 Mr Justice Warner** stated that '*the effect of the authorities may I think be summarised by saying the rules of a trade union are to be construed as 'so as to give them a reasonable interpretation which accords with what is the courts' view they must have been intended to mean, bearing in mind their authorship, their purpose, and the readership to which they are addressed.'*
33. On the normal meaning of the words I have no doubt that the words in rule 18.6 '*in receipt of a pension*' could not be held to include 'contributing to a pension scheme'. Moreover I do not believe it likely that the recalled Congress in March 2006 removed one barrier to Mr Kenny standing for election only to amend rule 18.6 to debar him It was for these reasons I was minded to strike out this complaint. Neither Ms Corrigan nor her representative produced any argument as to why I should not do so.

34. I therefore strike out this complaint as having no reasonable prospect of success and being otherwise misconceived.

EG Whybrew CBE
Assistant Certification Officer