

D/9-11/03

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

Mr D KAY

v

MUSICIANS' UNION

Date of Decision:

31 March 2003

DECISION

Upon applications by the Applicant under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") for declarations that the Musicians' Union ("the Union") acted in breach of the rules of the Union:-

1. I refuse to make the declaration sought by the Applicant that, on or about 13 March 2002, the Musicians' Union acted in breach of section B.1 of rule XXI of the rules of the Union by refusing to process the Applicant's complaint against Messrs Watson and Sweeney under the disciplinary procedures of the Union.
2. I refuse to make the declaration sought by the Applicant that the Musicians' Union acted in breach of section E of rule XIX of the rules of the Union in the election of the Vice-Chairperson of the Executive Committee of the Union on 19 June 2002.
3. I refuse to make the declaration sought by the Applicant that the Musicians' Union acted in breach of section D or section E of rule XIX of the rules of the Union in the election of the Chairperson of the London District Council of the Union on 4 February 2002.

REASONS

1. By an application dated 15 July 2002, the Applicant made a number of complaints against his Union, the Musicians' Union ("the Union"). These fell under five headings. Following correspondence with my Office, the Applicant confirmed by a letter of 15 September 2002 that one complaint fell outside my jurisdiction and that another complaint was being dealt with by the Union. I exercised my discretion under section 108B(1) of the 1992 Act not to accept the complaint which was being dealt with by the Union as I was not satisfied that the Applicant had taken all reasonable steps to resolve the complaint by the use of any internal complaints procedure of the Union. The Applicant confirmed that the three complaints which were to go forward had been correctly identified. These complaints were potentially within the jurisdiction of the Certification Officer by virtue of sections 108A(2)(a) and (b) of the 1992 Act. The alleged breaches are that:-

- 1.1 In breach of union rule XXI Section B.1 the union failed to properly process Mr Kay's application to invoke the disciplinary procedures of the union against Mr Watson and Mr Sweeney for an offence outlined in union rule XXI Section A.1(a).
- 1.2 At a Special Executive Committee meeting on 19 June 2002 by electing Richard Watson as Vice-Chairperson of the Executive Committee the union breached its rule XIX Section E.
- 1.3 In breach of union rule XIX Section D and/or E an election took place for the Chair of the London District Council on 4 February 2002 without following the election procedures set out in union rule XIX Section D or E.

2. I investigated these matters in correspondence. As required by section 108B(2) of the 1992 Act, the parties were offered the opportunity of a formal hearing and such a hearing took place on 12 March 2003. The Union was represented by Mr E Cooper of Messrs Russell Jones and Walker, Solicitors. Mr J Smith, General Secretary of the Union, was in attendance. The Applicant was neither present nor represented. No witnesses were called by either party. A bundle of documents was prepared for the hearing by my Office which consisted of relevant exchanges of correspondence with the parties, together with their enclosures. As the Applicant chose not to attend the hearing, I considered his complaints on the basis of the representations that he had previously made in writing. These representations were contained in the bundle.

Findings of Fact

3. Having considered the representations made to me and the documents to which I was referred I make the following findings of fact:-

Complaint One

4. In 2001 the Executive Committee of the Union (“the EC”) decided to hold a rule change ballot in January 2002. The voting papers were dispatched to members on 10 January 2002 and were due to be returned to the independent scrutineer by 31 January.
5. On 17 January 2002, Mr Andy Knight, the then Deputy General Secretary of the Union, sent a memorandum to the members of the EC. He explained that the proposed rule changes had not been circulated to the branches before the ballot vote, as was required by rule XIX section C(3). He stated that he had considered recommending that the ballot should be declared void and run again but, after rehearsing the pros and cons of doing so, he stated that he proposed, in effect, to continue with the flawed ballot. He asked the members of the EC to complete a tear off slip at the end of the memo to indicate their approval or otherwise to his proposed course of action. On 30 January Mr Knight sent a further memo to the members of the EC in which he stated “*The result of the postal survey of EC members was 19 in support of the proposed actions and 2 opposed*”. Without making any admissions, the Union is content for these applications to proceed on the basis that Mr Watson and Mr Sweeney voted with the majority in this exercise.
6. In the rule change ballot itself, a majority of members voted for the proposed rule changes and, at a meeting of the EC held between 12-14 February 2002, the EC voted by 15 votes to 2 votes to accept the report of the independent scrutineer. Without making any admissions, the Union is also content for these applications to proceed on the basis that Mr Watson and Mr Sweeney voted with the majority on the EC on this issue.

7. On 19 February 2002 Mr Kay sought to bring disciplinary proceedings against Messrs Watson and Sweeney under rule XXI of the rules of the Union. He wrote to Mr Wearn, at that time an Assistant General Secretary of the Union, in the following terms:-

“....It must be unprecedented that the Union has voted to change Rules in breach of Rules. This makes a mockery of Rules themselves and I refer to the introductory note of the Rulebook which states:

‘Members should examine these Rules carefully. The rules will be strictly enforced; and ignorance of them will not be accepted in mitigation of any breach of them’.

I therefore wish to bring charges against Chair and Vice Chair of the EC, namely Richard Watson and William Sweeney, for the offence outlined in Rule XXI.A.1(a) (committed a breach of any of these Rules) for intentional breach of XIX.C.3.”

8. Mr Knight responded to Mr Kay by letter dated 13 March 2002. He informed him that he was unable to process the charges against Mr Watson and Mr Sweeney for two reasons. First, he explained that one of the new rules brought in by the rule change ballot precluded members from making charges against officers of the Union when acting in that capacity. Secondly, he referred to the terms of my decision in the case of *Chesterman v Musicians’ Union* (D/13-14/02), issued on 28 February 2002, in which I held that rule XXI of the rules of the Union was restricted to disciplinary proceedings against members of the Union and was not intended to be used to challenge decisions made by committees of the Union.
9. On 14 June 2002 I decided the case of *Saunders v Musicians’ Union* (D/23/02), in which I declared that the rule change ballot in 2002 had been conducted in breach of rule XIX section C(3). I also issued an enforcement order which required the Union to treat the alteration of rules approved by the rule change ballot as being void and ineffective.
10. The Applicant complains that the Union acted in breach of rule XXI section B.1 of the rules of the Union by failing to process the disciplinary charges he had wished to bring against Messrs Watson and Sweeney, as contained in his letter to the Union of 19 February 2002.

Complaint Two

11. At a meeting of the EC in February 2002, Mr Watson was elected Chairperson of the EC under the rules that had been amended in the rule change ballot in 2002. Following my decision in the *Saunders* case on 14 June 2002, the Union held what it described as an Emergency EC on 19 June at which the elections held pursuant to the amended rules were revoked. An election was held at this Emergency EC for the then vacant position of Vice-Chairperson of the Union. This election was conducted in accordance with rule VII.1 by and from members of the EC. Mr Watson was elected unopposed. The Applicant complains that this election was not conducted, as it should have been, in accordance with the provisions of section E of rule XIX.

Complaint Three

12. At a meeting of the London District Council of the Union (“the LDC”) on 4 February 2002 an election was held for the position of Chairperson. This election was conducted in accordance with rule XII.6 by and from the members of the LDC. Mr Foster, the delegate from the South London Branch, was elected. He defeated a delegate from the Applicant’s branch, the East London Branch. The Applicant complains that this election was not conducted, as it should have been, in accordance with the provisions of either section D or section E of rule XIX.

The Relevant Statutory Provisions

13. The provisions of the 1992 Act which are relevant for the purpose of these applications are as follows:-

- “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) 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)
- (e)

108B.-(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.”

14. Section 108B(2) of the 1992 Act empowers me to make such enquiries as I think fit and, after giving the Applicant and the Union an opportunity to be heard, provides that I may make or refuse to make the declaration asked for. I am required, whether I make or refuse the declaration sought, to give reasons for my decision in writing.

The Union Rules

15. The Union rules most relevant to the Applicant’s complaints are:-

Rule V: EXECUTIVE COMMITTEE AND ITS ELECTION

“9. Members of the EC shall be elected by a ballot vote of the Districts for which there are vacancies to be filled.....”

Rule VII: PROCEEDINGS OF THE EXECUTIVE COMMITTEE

“1. At the first meeting of the EC in each year the EC shall elect a Chairperson and Vice-Chairperson for the year from amongst their number.”

Rule VIII: THE GENERAL SECRETARY

“1. The General Secretary shall be elected by a ballot vote of the Union...”

Rule X: BRANCH SECRETARIES

“2. Except in Branches in which there is a permanent Branch Secretary appointed by the EC, the Branch Secretary shall be elected annually by ballot vote of the members of the Branch.”

Rule XII: DISTRICT COUNCILS

“6. The District Council shall, at its first meeting in each year, elect from its number a Chairperson and Vice-Chairperson for the year together with a representative and one reserve from each Branch within the District to serve on the Disciplinary Committee...”

Rule XVIII: OFFICERS AN OFFICIALS

“1. In these Rules, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:
 “Branch office” means the office held by any Branch officer; “Branch officer” includes a member of a Branch Committee, a member of a District Council, a Branch auditor other than a professional accountant, a Branch Referee, a Branch Trustee, a Branch Secretary other than a permanent Official.....”

2. Branch officers shall be elected by a ballot vote of the Branch annually and whenever it may be necessary to fill a casual vacancy.”

Rule XIX: ELECTION PROCEDURES, BALLOT VOTING AND ALTERATION OF RULES

“Section B - Elections

1. Any candidate for an office shall be nominated in writing by another member and such nomination and the written consent of the nominee must be received at or before the Branch meeting held for the purpose, which, in the case of annual elections, shall be in the month of September. In the case of nominations for any office other than a Branch office the nominations must be forwarded to the General Secretary by a date fixed by the EC.

4. Unless the EC shall otherwise direct all annual elections shall take place in November and the newly elected officers shall take office on 1st January. Officers elected to fill casual vacancies shall take office immediately the result is declared.”

“Section C - Alteration of Rules

3. In the case of a Rule change emanating from the EC all Branches will be circulated with the proposals of the EC before a ballot vote of the membership on the proposals is taken.”

“Section D - Voting in the case of Branch Officers

1. In the case of the election of Branch officers the Branch Secretary will arrange for voting papers to be printed and for a certificate of the number of papers printed to be given by the printers.
2. The voting papers (which shall specify the date for their return) accompanied by an envelope, shall be given or sent by the Branch Secretary to each member of the Branch entitled to vote at least seven days before the return date and a list shall be submitted to the tellers of the members who have received voting papers.
3. The members shall on or before the specified date return the voting papers sealed in envelopes provided to the Branch Secretary, who will immediately place them in the ballot box.....
4. The tellers shall count the votes and communicate the result to the Branch Secretary, who shall declare the result of the vote to the Branch members and to the General Secretary.”

“Section E - Voting in cases other than the election of Branch Officers

1. Notwithstanding anything in these Rules, members entitled to vote in ballot votes other than for the election of Branch officers shall be those members not being honorary members who are included in the central register of members held at the National Office at the time of the ballot and the procedures specified in this Section shall apply to such members.
2. The General Secretary or his/her deputy shall arrange for voting papers (which shall specify the date for their return) to be printed and a certificate of the number of papers printed to be given by the printer.
3. The voting papers which shall be accompanied by a return envelope and such biographical material as shall be supplied by candidates in accordance with regulations established by the EC shall be sent to members entitled to vote at least ten days before the return date.
4. The member shall on or before the specified date return the voting paper sealed in the envelope provided to the General Secretary or where directed to the independent

electoral body designated for this purpose, who will arrange for the votes to be counted and communicate the results to the EC and thereafter to the Branches.

5. The EC may make such administrative arrangements as it deems fit for the procedures specified in this Section including the delegation of all or some of these administrative arrangements to an agency or other organisation.”

Rule XXI: DISCIPLINARY PROCEDURES AND AUTOMATIC PENALTIES

“Section A - Offences

1. Any member shall have the right to invoke the Union’s disciplinary procedures against any other member held to have committed any of the following actions:

- (a) committed a breach of any of these Rules;
- (b)
- (c)
-
-
- (k)

“Section B - Disciplinary Committee

1. To facilitate the hearing of disputes between members amongst themselves which cannot be dealt with by any procedure provided elsewhere in these Rules as agreed by them, or when it appears that any member may be guilty of any offence under section A above, the matter shall be reported within four weeks of the offence to the General Secretary who will place the allegation before the relevant District Disciplinary Committee established under 2 below for consideration in accordance with the procedures set out for conducting Disciplinary Hearings (Appendix A to these Rules).”

Conclusions

16. The Applicant chose not to attend the hearing. In a fax received by my Office the day before the hearing the Applicant stated, inter alia:-

“After taking further advice and with lengthy consideration I feel that justice cannot be served from attending your hearing and I intend to wait until my complaint to the Parliamentary Ombudsman is dealt with before I participate further. I will therefore not be attending and I will not be providing alternative representation or argument on 12 March.”

I considered whether in these circumstances an adjournment was appropriate. I took into account the fact that the Applicant did not seek an adjournment nor did he put forward any grounds for an adjournment. I had regard to the fact that the Union objected to the matter being adjourned. I was also not persuaded that the Applicant’s alleged complaint to the Parliamentary Ombudsman had any relevance to the issues to be determined in this case and I had no information as to when any such complaint might be determined. I decided that the hearing should not be adjourned.

Complaint One

In breach of union rule XXI Section B.1 the union failed to properly process Mr Kay's application to invoke the disciplinary procedures of the union against Mr Watson and Mr Sweeney for an offence outlined in union rule XXI Section A.1(a).

17. The Applicant alleged that the Union's failure to process his complaint against Messrs Watson and Sweeney under the Union's disciplinary procedures was a breach of rule XXI section B(1). In a letter to the Union of 15 March 2002 the Applicant stated, inter alia:-

"... I am not complaining about a decision of a committee, but about the misconduct of individuals in a committee meeting, whose disregard for the Union's disciplinary procedures was so blatant that it verged on arrogance."

1. Mr Cooper, for the Union, referred me to the decisions in the cases of *Chesterman v Musicians' Union* (see above) and *Johnson & Daly v Musicians' Union* (D/29-30/02). He argued that the *Chesterman* case had found that the casting of a vote by an individual member of the EC could not in itself amount to a breach of rule XIX section C(3), capable of being the subject of disciplinary proceedings. He argued further that the *Johnson & Daly* case was an application of the *Chesterman* decision to virtually identical facts to those in the present case. He observed that the only difference between the two cases was that in the *Johnson & Daly* case the disciplinary procedures were invoked against different members of the EC. Mr Cooper commented that the Applicant had not put forward any arguments to distinguish his complaint on its facts nor had he sought to argue that the previous cases had been wrongly decided. He commented that the Applicant had accompanied Mr Johnson at the hearing of his complaint and he was accordingly very familiar with the arguments. Mr Cooper submitted that the present complaint should be dismissed on the basis of the reasoning contained in the two earlier cases to which he had referred.

Conclusion: Complaint One

2. The Applicant sought to invoke the Union's disciplinary procedure against Messrs Watson and Sweeney by his letter to the Union of 19 February 2002. In that

letter the Applicant sought disciplinary action to be taken against Messrs Watson and Sweeney under rule XXI section A(1)(a). This rule provides for disciplinary action to be taken if a member has “...committed a breach of any of these Rules”. The rule which the Applicant alleged that Messrs Watson and Sweeney had broken was rule XIX.C.3. This rule states:-

Rule XIX.C.3

“In the case of a Rule change emanating from the EC all Branches will be circulated with the proposal of the EC before a ballot vote of the membership on the proposals is taken.”

20. In the *Johnson & Daly* case, Mr Johnson and Mr Daly had made similar complaints that Messrs Worsley and Dalton, also members of the EC, had breached rule XIX.C.3 by the way they had voted on the issue in question. In dismissing these applications, I found that “*Rule XIX section C(3) places a requirement on the Union which is not capable of being breached by an individual*”. I concluded that “...the charges brought by Mr Johnson and Mr Daly were not charges which were capable of amounting to the breaches alleged and that in refusing to process these charges Mr Knight did not act in breach of rule XXI section B(1)”. There have been no arguments addressed to me that my conclusion in the *Johnson & Daly* case was wrong.
21. I find that the reasoning in the case of *Johnson & Daly* applies to the facts of the present case and that Mr Knight did not act in breach of rule XXI section B(1) in not processing under the Union’s disciplinary procedure the complaint brought by the Applicant against Messrs Watson and Sweeney. Rule XIX.C.3 is only capable of being breached by the Union. It is not capable of being breached by the manner in which individuals vote at meetings of the EC.
22. I accordingly refuse to make the declaration sought by the Applicant that, on or about 13 March 2002, the Musicians’ Union acted in breach of section B.1 of rule XXI of the rules of the Union by refusing to process the Applicant’s complaint against Messrs Watson and Sweeney under the disciplinary procedures of the Union.

Complaint Two

At a Special Executive Committee meeting on 19 June 2002 by electing Richard Watson as Vice-Chairperson of the Executive Committee the union breached its rule XIX Section E.

23. The Applicant alleged that the Vice-Chairperson of the Union should have been elected pursuant to rule XIX section E and that the Union was in breach of its rules in failing to have done so. The Applicant noted that the heading to section E states “*Voting in cases other than the election of Branch Officers.*” He submitted that this provision requires the election of any person other than Branch Officers, including the Vice-Chairperson of the Union, to be conducted in accordance with rule XIX section E. He went on to argue that this interpretation is supported by the opening words of rule XIX section E(1), which state, “*Notwithstanding anything in these Rules...*”.

24. Mr Cooper, for the Union, observed that the scope of rule XIX section E had already been considered by me in the case of *Johnson v Musicians’ Union* (D/24-25/02) and that I had decided that the broad meaning the Applicant attributed to rule XIX section E was incorrect. Mr Cooper observed that the Applicant had been Mr Johnson’s representative at the hearing of that case. Mr Cooper respectfully adopted the reasoning in the *Johnson* case but went on to give a more detailed analysis of section E. In his submission, the term “*ballot votes*” in rule XIX section E has a restricted meaning in the context of that rule and relates only to elections to those positions which are expressly required to be conducted by “*ballot vote*” under the rules. He identified these as being elections to the EC (rule V.9), General Secretary (rule VIII.1), Branch Secretary (rule X.2), delegates to District Councils (rule XII.2), Conference delegates (rule XIII.4) and Branch officers (rule XVIII.2). Mr Cooper noted that the position of Vice-Chairperson of the EC was not one which was subject to an election by “*ballot vote*” and submitted that it was accordingly not one which was to be filled using the balloting procedure of rule XIX section E. Mr Cooper submitted that the election had been properly conducted in accordance with rule VII.1.

Conclusion: Complaint Two

25. I accept the submission of Mr Cooper that the expression “*ballot vote*” in rule XIX section E has the restricted meaning for which he contended. I note, however, that amongst those positions expressed to be filled by “*ballot vote*” is that of Branch Officer and yet such elections are to be conducted in accordance with rule XIX section D, not section E. In my judgement this apparent anomaly does not detract from Mr Cooper’s analysis as it is dealt with expressly in section E. Rule XIX section E(1) provides that section E is applicable to “...*ballot votes other than for the election of Branch officers...*”.
26. I observe further that the Applicant has not sought to argue that my reasoning in the case of *Johnson v Musicians’ Union* is flawed or that the facts of the present case are so materially different that it can be distinguished on its facts.
27. I accordingly find that the position of Vice-Chairperson of the EC is not one which is required to be filled using the procedure in rule XIX section E. In my judgement this position was correctly filled in accordance with the provisions of rule VII.1, which provide that the Vice-Chairperson of the EC is to be elected “...*from amongst their number*”.
28. For the above reasons I refuse to make the declaration sought by the Applicant that the Musicians’ Union acted in breach of section E of rule XIX of the rules of the Union in the election of the Vice-Chairperson of the Executive Committee of the Union on 19 June 2002.

Complaint Three

In breach of union rule XIX Section D and/or E an election took place for the Chair of the London District Council on 4 February 2002 without following the election procedures set out in union rule XIX Section D or E.

29. The Applicant alleged that the Chairperson of the LDC should have been elected in accordance with either section D or E of rule XIX of the rules of the Union and that the Union was in breach of rule in failing to ensure that the Chairperson was so elected. With regard to his complaint of a breach of section E, the Applicant made the same submissions as he had done in his complaint about the election of the Vice-Chairperson of the EC. With regard to his allegation of a breach of section D, the Applicant observed in his letter to my Office of 15 September 2002 that section D applies to the election of Branch officers and a member of a District Council is defined by rule XVIII.1 as a Branch officer. In this letter the Applicant submitted that it follows that the Chairperson of a District Council is also a Branch officer. He concluded by stating, “...*the complaint could be considered as a breach of rule XIX section D only*”.
30. Mr Cooper, for the Union, submitted that rule XIX section E did not apply to the election of the Chairperson of the LDC for the same reasons that he had advanced in relation to the previous complaint. He relied upon the restricted meaning of “*ballot vote*” in rule XIX section E and to the reasoning in the *Johnson* case. As to rule XIX section D, Mr Cooper submitted that the Chairperson of a District Council is not a Branch officer. He argued that members of a District Council are elected by and from the branch membership as a whole and that by its terms rule XIX section D is clearly intended to apply only to such elections. He contrasted this to the position of the Chairperson of a District Council which, by rule XII.6, is to be elected “...*from its number*”. He submitted that the election process provided for in section D was clearly not intended to apply to such an election. Mr Cooper pointed out that rule XIX section D did not begin with the words, “*Notwithstanding anything in these Rules,...*”, unlike section E, which further detracted from the Applicant’s case.

Conclusion: Complaint Three

31. I find that rule XIX section E does not apply to the election of Chairperson of a District Council for the same reasons as I have given above in relation to the second complaint. I find that section E applies only to elections to be

conducted by “*ballot votes*”, as that expression is used in the rules of the Union, and that the position of Chairperson of a District Council is not one which is subject to election by ballot vote. I also adopt the reasoning in the *Johnson* case, in so far as it is appropriate to the facts of this complaint.

32. As to the complaint concerning rule XIX section D, I find that the role of Chairperson of a District Council is not a role within the definition of Branch officer in rule XVIII.1 and is not therefore subject to election in accordance with the procedures provided for in rule XIX section D. I note first that the role of Chairperson of the District Council is not referred to in rule XVIII.1 and, secondly, that rule XVIII expressly requires that its definitions shall have regard to the context. In this regard, I accept Mr Cooper’s submission that rule XIX section D is restricted to those Branch officer elections which are conducted ‘by and from’ the entire membership of a branch. I observe that sub-paragraph 2 of rule XIX section D provides that the Branch Secretary shall give or send a voting paper and envelope to each member of the branch entitled to vote. This provision is only compatible with the vote of the entire membership of the branch. It is not compatible with a vote by and from the membership of the District Council, as is required for the position of its Chairperson by rule XII.6. In my judgement the rule which determines the method of election of Chairperson of a District Council is rule XII.6 and I find that Mr Foster was elected in accordance with that rule.

33. For the above reasons I refuse the declaration sought by the Applicant that the Musicians’ Union acted in breach of section D or section E of rule XIX of the rules of the Union in the election of the Chairperson of the London District Council of the Union on 4 February 2002.

Observations

34. The Union protested at the hearing about the Applicant's conduct of these complaints but recognised that I had no jurisdiction to consider penalising the Applicant in costs or otherwise.
35. The Applicant's complaint to my Office in this matter was made on 15 July 2002. At that time my decisions in *Chesterman v Musicians' Union* and in *Saunders v Musicians' Union* had already been issued. Subsequent to the Applicant's complaint, I decided a further three cases involving the Musicians' Union. These were *Johnson v Musicians' Union* (25 September 2002), *Taylor v Musicians' Union* (15 October 2002) and *Johnson & Daly v Musicians' Union* (31 October 2002). The Applicant was present at the hearings of the two cases involving Mr Johnson and copies of the decisions in those cases were sent to the Applicant during his correspondence with my Office on this complaint. On 16 September 2002 the Union wrote a six page letter to my Office setting out its defence in considerable detail. A copy of this letter was sent to the Applicant and his comments were invited. He declined to comment. He subsequently made complaints about the administration of this case. The Applicant was of course entitled to bring these complaints against the Union but it would or should have been apparent to him during the pre-hearing procedures that, by reason of the subsequently decided cases, his complaints had no reasonable prospect of success. The Applicant's complaints could at that stage be described as misconceived, as that term is used in the Employment Tribunals (Constitutions and Rules of Procedure) Regulations 2001. The Applicant could properly have attempted to argue that the earlier cases had been wrongly decided or that they could be distinguished on their facts. He chose not to argue either of these propositions. He also chose not to appear at the hearing, giving less than 24 hours notice of his intention not to do so. In these circumstances, the Union were deprived of the opportunity properly to consider whether it wished to incur the expense of attending the hearing.

D Cockburn
Certification Officer