

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

Mr B JOHNSON

v

THE MUSICIANS' UNION

Date of Decision: **25 September 2002**

DECISION

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

The application for declarations that the Musicians' Union acted in breach of rule XXI section B(2)(b) and/or rule XIX section E of the rules of the Union in the election of Veronica Parker to the London District Disciplinary Committee in 2001 are refused.

REASONS

1. The Applicant is a member of the North London Branch of the Musicians' Union ("the Union"). By an application dated 2 February 2002 the Applicant made two complaints against his Union. The two complaints alleged breaches of the rules of the Union in respect of the election of Veronica Parker to the London District Disciplinary Committee. These are matters within the jurisdiction of the Certification Officer by virtue of section 108A(2)(a) of the 1992 Act. The alleged breaches are that:-
 - (a) In breach of rule XXI section B(2)(b) the London District Council accepted Ms Veronica Parker as a candidate in its election for the North London Branch representative on the London District Disciplinary Committee without Ms

- Parker having been proposed or nominated at a meeting of the North London Branch.
- (b) In breach of rule XIX section E(3), the London District Council conducted its election for the North London branch representative on the London District Disciplinary Committee without following the procedures set out in section 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 6 September 2002. Mr B Johnson, the Applicant, was represented by Mr D Kay. Mr N Charles (Branch member) gave evidence on Mr Johnson's behalf. Mr Johnson chose not to appear and give evidence. The Union was represented by Mr A Knight (Deputy General Secretary). Mr T Childs (Full-time Secretary of the North London and East London Branches) and Mr D Webster (North London Branch Chair) gave evidence on behalf of the Union. A bundle of documents was prepared for the hearing by my Office which consisted of the exchanges of correspondence with the parties, together with their enclosures. At the hearing, Mr Knight presented a further page of a minute, extracts of which were already in the bundle, and a written skeleton argument. This decision has been reached on the basis of the representations made by the Applicant and the Union, together with such documents as were provided by them.

Findings of Fact

3. The Musicians' Union has about 31,000 members who are organised into 73 branches. The branches are grouped into 8 Districts and delegates are elected annually to the relevant District Councils by ballot vote of each branch in that District. The principal executive committee of the Union is its Executive Committee. A Delegate Conference is held biennially.
4. Rule XXI section B(1) provides for a number of Disciplinary Committees “*To facilitate the hearing of disputes between members ... or when it appears that any member may be guilty of any offence ...*” Each District is to have an elected Disciplinary Committee, the constitution of which is provided for in rule XXI section B(2). This provides:-

- "2. (a) The Disciplinary Committee shall comprise one member from every Branch in each District of the Union as provided by Rule XII.6.
- (b) Each District Council shall, at its first meeting in each year of office elect its representatives for service upon the Disciplinary Committee, namely one representative from each Branch in the District.
- (c) No member of the EC and no member directly involved in any case shall be eligible to serve on the Disciplinary Committee.
- (d) A Chairperson from amongst their number shall act as Chair for the Disciplinary Hearing and shall supervise the proceedings and may vote. In the event of equality of voting the Chairperson shall have an additional casting vote.
- (e) The Disciplinary Hearing shall be conducted under Standing Orders as provided in Appendix A to these Rules."

Rule XII deals with the position of District Councils and rule XII(6) provides:-

"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 XXI.B.2(a))."

5. This application concerns the election in 2001 by the London District Council (the "LDC") of the person to the London District Disciplinary Committee (the "LDDC") as a member from the North London Branch. In 1999 and 2000 Ms Parker had been elected by the LDC to hold this position. She was also an elected member of the LDC.
6. At some time prior to the meeting of the North London Branch on 4 January 2001, Ms Parker telephoned the secretary of the North London Branch, Mr Childs and told him that she would be unable to attend the branch meeting on 4 January but that she wished to continue sitting on the LDDC. Mr Childs is the full-time Branch Officer for the North London and East London Branches.
7. On 4 January 2001 there was a meeting of the North London Branch. Mr Kay, a member of the East London Branch, was present in his then capacity as General Secretary, a position which he subsequently vacated. After the meeting had made certain nominations, Mr Johnson asked for there to be nominations for the position of LDDC representative. Mr Johnson handed to Mr Childs a completed nominations form for this position on which he was seconded by Mr Charles. Mr Childs had no experience of nominations being submitted for this position in such a formal manner. He said he wished to check the relevant rules of the Union. As he did so, Ms Brand,

wrote out a similar nomination form for herself, which she had seconded and gave to Mr Childs. The subsequent events became confused but I find that, when Mr Childs had clarified for himself the relevant rules, he informed the meeting that members of the LDDC were elected by the LDC not through nomination at branch meetings, and that the procedure for the election of the LDDC members is set out in rule XII.6. Although at one stage of the meeting Ms Brand had proposed offering herself only for the position of reserve member on the LDDC, I accept the evidence of Mr Childs that, later in the meeting, following the clarification of the constitutional position, Ms Brand told him that she wished her name to go through to the LDC for consideration as a relevant member, not just as a reserve. Mr Childs told Mr Johnson and Ms Brand that he would inform the LDC that they both wished to be considered for election to the LDDC. Mr Childs did not inform the meeting that he had already received a request from Ms Parker to put her name forward for this position. Mr Johnson, Ms Brand and Ms Parker were all elected members of the LDC in 2001.

8. On 5 February 2001 there was a meeting of the LDC at which the election of members to the LDDC took place. When the meeting came to this item, Mr Childs informed the secretary to the Committee that there were three candidates from the North London Branch; Mr Johnson, Ms Brand and Ms Parker. The relevant part of the minute of this meeting is as follows:-

“Three North London candidates wished to be considered for the London District Disciplinary Committee. Consequently the Organiser arranged for a ballot of District Council members on a paper vote. The results of the vote were as follows:

*V Parker - 12 votes;
B Johnson - 6 votes;
G Brand - 5 votes.*

Therefore the members elected from the North London Branch to serve on the London District Council Disciplinary Committee for 2001 are:

*V Parker;
Reserve, B Johnson.”*

9. Mr Johnson challenged the election of Ms Parker at a number of levels within the Union. At a branch meeting on 18 April 2001, he unsuccessfully challenged the accuracy of the minute of the meeting of 4 January. At a meeting of the LDC on 22 April, the chairman concluded that the rules had been correctly followed. In August

2001, the Executive Committee rejected Mr Johnson's complaint that the rules had not been followed. On 12 December, the branch referee, reporting on the Applicant's complaint to the branch, expressed his opinion that, according to rule XXI(B)(2)(b) Mr Childs had carried out his duties correctly. On the same day the North London Branch approved a resolution that "*...the complaint made by Brian Johnson is without substance and consequently is rejected.*"

The Relevant Statutory Provisions

10. The provisions of the 1992 Act which are relevant for the purpose of this application 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 from, any office
 - (b) ...
 - (c) ...
 - (d) ...
 - (e) ... "

11. 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, to make or refuse to make the declarations asked for. I am required, whether I make or refuse the declaration sought, to give reasons for my decision in writing.
12. Section 108B(3) of the 1992 Act requires that where I make a declaration I shall also, unless I consider that to do so would be inappropriate, make an enforcement order requiring, *inter alia*, the Union to take such steps to remedy the breach as may be specified in the order.

The Union Rules

13. Rules XII.6 and XXI section B(2)(b) are set out above. Rule XII.3 states:-

"The voting at District Council meetings shall be by show of hands of the delegates present at the meeting."

14. Rule XIX section E states:-

“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.”

The Complaints

The Rule XXI Section B(2)(b) Complaint

The Applicant’s Submission

15. Mr Kay, on behalf of the Applicant accepted that it was for the LDC to elect the members of the LDDC but he argued that the LDC could only elect from amongst the candidates nominated for this position by the relevant branch. He pointed out that Ms Parker was not nominated by the North London Branch. Mr Kay accepted that there was no express rule which gave such a role to the branches but argued that this was effectively what had happened for many years and was now custom and practice. He also argued that the reference to the word “*representative*” in rule XXI(B)(2)(b) and rule XII.6 could only be a reference to a branch representative and that this confirmed that only a representative selected by the branch could stand for election. Furthermore, Mr Kay submitted that the election of members of District Disciplinary Committees need not be made exclusively from existing members of the relevant District Councils. He pointed out that this had not been the practice in recent years

and that to do so would make the rules inoperable. Mr Kay made this submission on the basis that over 50% of the branches had less than 300 members and, under the rules, were only entitled to one member on the District Council. In these circumstances he submitted that it would not be possible to comply with rule XII.6 if it were to be interpreted as requiring a District Council to elect “...*from its number...*” both a District Disciplinary Committee member and a reserve.

The Union’s Response

16. Mr Knight submitted that the LDC was entitled to elect Ms Parker to the LDDC as she was an existing member of the LDC who wished to stand for election. He stated that the rules assume that the LDC would elect from amongst its number and supported this by asserting that the LDDC was a sub-committee of the LDC. Whilst Mr Knight accepted that there were circumstances in which District Councils would be forced to look outside their own membership for candidates, he submitted that on the facts of the present case this complication did not arise as Ms Parker was a member of the LDC. Mr Knight accepted that, in this election, the LDC had not complied with rule XII.3, which requires voting by show of hands, as the election to the LDDC had been conducted using voting papers. He stated that all District Councils had since been reminded of the requirements of rule XII.3.

Conclusion

17. Rule XXI section B(2) does not impose any restriction on the constituency which can stand for election to the District Disciplinary Committees other than the requirement that there must be one member from each branch in the relevant District. There is no express requirement in the rules that the nomination or approval of the branch is required. Furthermore, the implication of such a rule is neither necessary nor self evident and the evidence before me does not support the implication of such a rule by custom and practice. The District Council must elect a person from each branch and it follows that the person so elected could be described as the representative of that branch. This does not require the nomination or approval of the branch. More grammatically, the reference in rule XXI section B(2)(b) to “*its representatives*” (my emphasis) can only be a reference to the person elected being a representative of the

District Council. I find that the inclusion of the word “*representative*” in the relevant rules is not conclusive in the Applicant’s favour.

18. Mr Knight informed me that the custom and practice in relation to elections to the District Disciplinary Committees is that candidates are normally found from amongst the members of the District Councils but, where this is not possible, the branches are asked to suggest appropriate and willing candidates. This is clearly a sensible way of proceeding but, it is not necessary for me to decide whether this practice is the only lawful method by which candidates for District Disciplinary Committees can emerge, as all the candidates in this particular election were already members of the LDC.
19. Similarly, in determining this application, it is not necessary for me to decide whether the requirement in rule XII.6 that the election by the District Council be “*from its number*” applies only to the position of Chairperson and Vice-Chairperson or whether it also applies to the representative on the District Disciplinary Committee. Were it to have been necessary, however, I would have found on the arguments presented to me that this requirement in rule XII.6 qualifies only the position of Chairperson and Vice-Chairperson. Whilst rule XII.6 may at first appear ambiguous in this regard, its meaning becomes clear when read in context and, in particular, with rule XXI section B(2). I am supported in this view by the fact that the alternative interpretation would leave rule XII.6 inoperable, having regard to the number of branches with only one member on the relevant District Council. Furthermore, I do not accept the proposition that the District Disciplinary Committee can only be composed of members of the District Council as it is a sub-committee of the District Council. Once elected the District Disciplinary Committee has an existence separate from and independent of the District Council. It does not discharge any of the functions of the District Council nor is it accountable to the District Council for the discharge of its quite separate functions under the rules. In my judgment, the District Disciplinary Committee is not a sub-committee of the District Council.
20. In conclusion therefore I find that rule XXI section B(2) placed no restriction on Ms Parker putting herself forward for election to the LDDC and that she was validly elected to that position. I accordingly refuse the Applicant’s application for a

declaration that in accepting Ms Parker as a candidate the LDC acted in breach of rule XXI section B(2)(b).

The Rule XIX Section E Complaint

The Applicant's Submission

21. Mr Kay submitted that the LDC should have conducted the election to the LDDC in accordance with the procedures contained in rule XIX section E. He argued that different rules provide for different election processes for different positions or circumstances and that section E provides for "*Voting in cases other than the election of Branch Officers*". He argued that being a member of the District Disciplinary Committee was not being a Branch Officer and therefore rule XIX section E applied.

The Union's Submission

22. Mr Knight submitted that rule XIX section E does not apply to branch officers and that being a member of the District Disciplinary Committee was to be a branch officer, by reason of the definition of Branch Office in rule XVIII and the fact that the District Disciplinary Committee was a subcommittee of the District Council. He further submitted that rule XIX section E was intended to apply only to ballot votes of the membership at large and not to elections conducted by District Councils. By way of example, Mr Knight stated that this rule was used to supplement the rules on the election of the General Secretary, President and Executive Committee and would be used, as appropriate, in ballot votes on such issues as strikes or pay.

Conclusion

23. The voting procedure for the position of member of the District Disciplinary Committee is clearly expressed in rules XII and XXI. The election shall be carried out by the District Councils and voting shall be by show of hands. In my judgement, for the reasons set out below, rule XIX section E has no place in the election of members to the District Disciplinary Committees. First, rule XIX section E is expressly restricted to ballot votes. Voting for a position on the District Disciplinary Committee

is by show of hands. Secondly, the requirement that the election of members to the District Disciplinary Committees must be carried out at the first meeting of each year is a strong indication that the extended procedure of rule XIX section E was not intended to apply. Thirdly, the structure and content of rule XIX section E is inappropriate for the conduct of voting by District Councils for District Disciplinary Committees. The definition of members in sub-paragraph (1) is otiose in the case of existing members of District Councils and the provision for the involvement of the General Secretary or an independent electoral body is so inappropriate for ballots of this nature that, in my judgment, the application of rule XIX section E to such an election would require the clearest possible words.

24. Accordingly, I refuse the Applicant's application for a declaration that in failing to elect Ms Parker to the LDDC by using the procedure in rule XIX section E the union acted in breach of rule.

D COCKBURN
Certification Officer