

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

Mr T RICHARDS

v

MUSICIANS' UNION

**Date of Decision:
2002**

28 February

DECISION

Upon application made 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 make the following declarations:-

1.1 The Union breached paragraph 3 of Appendix B of the rules of the Union in that it failed to give the applicant written notice of the date fixed for his appeal hearing, 19 September 2001, no less than fourteen days in advance of the hearing.

1.2 The Union breached paragraph 5 of Appendix B of the rules of the Union in that its Appeals Committee failed to communicate the decision it made on 19 September 2001 to the applicant in writing by recorded delivery.

REASONS

2. By an application dated 23 October 2001, Mr Richards made three complaints against his union, the Musicians’ Union. The two complaints that are being pursued allege breaches

of the rules of the Union in respect of disciplinary proceedings. This is a matter within the jurisdiction of the Certification Officer by virtue of section 108A(2)(b) of the 1992 Act. The alleged breaches are that:-

- (i) The Musicians' Union breached paragraph 3 of Appendix B of the rules of the Union in that the General Secretary failed to give the applicant written notice of the date fixed for his appeal hearing, no less than 14 days in advance of the hearing.
 - (ii) The Musicians' Union breached paragraph 5 of Appendix B of the rules of the Union in that the Appeals Committee communicated its decision to the applicant by ordinary post and not by recorded delivery, as required by rule.
3. I investigated these matters in correspondence. As required by section 108B(2)(b) of the 1992 Act, the parties were offered the opportunity of a formal hearing but both parties were content for the matter to be dealt with without such a hearing. This decision has therefore been reached on the basis of the written representations made by the Applicant and the Union, together with such documents as were provided by them.

Findings of Fact

4. Having considered the representations made to me and the relevant documents I make the following findings of fact:-
5. The minutes of the meeting of the Midlands District Council on Sunday 13 February 2001 record the applicant as having described the Union's disciplinary procedure as being a kangaroo court and as having alleged that a member of the London Disciplinary Committee had been bullied into that committee's verdict in the matter of a complaint against Mr Kay, the then General Secretary.
6. On 23 March 2001 the Union wrote to the Applicant informing him that a member of the Union had brought charges against him under Rule XXI of the Union. The charges were that the Applicant had:-

- (a) *“Brought the Union into disrepute by making a false statement about the Union’s disciplinary procedures,*
- (b) *Brought Mr Foster into disrepute by making a false statement about him to his discredit and by association and innuendo,*
- (c) *Brought members of the London District Disciplinary Committee into disrepute to the discredit of each of them and by association and innuendo you have caused to bring to the entire said District Disciplinary Committee into disrepute. As a consequence you have brought the Union into disrepute.”*

7. At a further meeting of the Midlands District Council on Sunday 29 April 2001 the Applicant challenged the accuracy of the minutes of the meeting of 13 February. The minutes were amended to clarify the fact that the applicant had not expressed an opinion that the Union’s disciplinary procedure was a kangaroo court. It was accepted that he had merely reported that it had been described as such in the press.
8. The East District Disciplinary Committee heard these charges on 10 June 2001 and decided that the Applicant should be officially reprimanded. The Applicant appealed against this decision by a letter to the Union’s National Office dated 21 June 2001.
9. The Appeals Committee of the Union met on 19 September 2001. The Applicant received no written notice that the Appeal Committee was to meet on that date. In accordance with the rules of the Union the applicant was not required to attend the Appeal Hearing. The Appeals Committee decided not only to uphold the reprimand imposed by the East District Disciplinary Committee but also to impose an additional penalty, a fine of £100. The further penalty was imposed pursuant to the power of the Appeals Committee to do so under paragraph 6 of Appendix B of the rules of the Union.
10. The Applicant’s registration of complaint form dated 23 October 2001 was received by my office on 29 October 2001.
11. On 19 December 2001, following representations to the Union by the applicant, the

Appeals Committee reconvened to give further consideration to the Applicant's case. It decided to allow his appeal and the applicant was notified of the Appeal Committee's decision by letter on 7 January 2002.

The Relevant Statutory Provisions

12. 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) ...
 - (b) disciplinary proceedings by the union (including expulsion)
 - (c) ...
 - (d) ...
 - (e) ...”

13. Section 108B(2) of the 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 the declarations asked for. I am required, whether I make or refuse the declarations sought, to give reasons for my decision in writing.

The Union Rules

14. The Union rules relevant to the Applicant's complaints are as follows:

Rule Appendix B: Standing Orders for the Hearing of Appeals

- (3) The General Secretary shall give written notice to the appellant of the date fixed for the hearing no less than fourteen days in advance.
- (4) Unless the Appeals Committee shall so require the parties shall not attend the hearing

of an appeal or submit further statements or evidence.

- (5) The decision of the Appeals Committee shall be announced by its Chairperson within fourteen days of the hearing, and shall be final and conclusive as to that appeal. The Appeals Committee shall communicate its decision in writing to the appellant by recorded delivery.

The Complaint That No Notice Was Given of the Appeal Hearing

The Applicant's Submission

15. The applicant argued that in accordance with the provisions of paragraph 3 of Appendix B of the rules he should have been given written notice of his appeal hearing by the General Secretary no less than fourteen days in advance of the appeal hearing. The Applicant contended that he was given no written notification of the date fixed for the hearing by the General Secretary, or by anyone else on behalf of the Union.

The Union's Response

16. The Union informed me in correspondence that the Deputy General Secretary, Andy Knight, had spoken to the Applicant on 29th August 2001. In that conversation Mr Knight had explained that the Union was still trying to arrange a date in September 2001 for the Applicant's appeal hearing. Mr Knight asked the applicant if he wanted the Union to confirm this in writing, having regard to the fact that the rules of the Union provide that the parties are not entitled to attend any appeal. The Applicant said that he did not require written confirmation. The Union stated that it was in these circumstances that it did not notify the applicant of the hearing date in writing.

Conclusion

17. The Union accepts that the Applicant was not given written notice of the date fixed for the hearing of his appeal and accordingly there is a clear breach of paragraph 3 of Appendix B, unless the Applicant waived his right to such notification.
18. In his conversation of 29 August 2001, Mr Knight informed the Applicant that he was still

trying to arrange a date for the appeal and reminded the Applicant that the rules provide that the appellant shall not normally attend the appeal. It was to this information that Mr Knight referred when he asked the Applicant if he wished to have written confirmation and it was in answer to that question that the applicant said that he did not require written notification. I find that the Applicant did not in this conversation waive his right to be notified in writing of the date fixed for the hearing.

19. I accordingly declare that the Union breached paragraph 3 of Appendix B of the rules of the Union in that it failed to give the Applicant written notice of the date fixed for his appeal, no less than fourteen days in advance.
20. I do not make an enforcement order under section 108B(3) of the 1992 Act as I consider it would be inappropriate for me to do so.

The Complaint that the Decision of the Appeals Committee was not sent by Recorded Delivery

The Applicant's submission

21. The Applicant argued that in accordance with the provisions of paragraph 5 of Appendix B of the rules, the decision of the Appeals Committee of the 19 September 2001 should have been communicated to him in writing by recorded delivery. The Applicant contended that he received the Appeal Committee's decision by ordinary post and provided me with evidence of this in the form of the envelope in which he received that decision.

The Union's Response

22. The Union concedes that by reason of an administrative error the letter informing the Applicant of the decision of the Appeals Committee was sent to him by ordinary post, not by recorded delivery.

Conclusion

23. On the Union's concession, I declare that the Union breached paragraph 5 of Appendix

B of the rules of the Union in that its Appeals Committee failed to communicate the decision it made on 19 September 2001 to the Applicant in writing by recorded delivery.

24. I do not make an enforcement order under section 108B(3) of the 1992 Act as I consider it would be inappropriate for me to do so.

D COCKBURN
Certification Officer