

**DECISIONS OF THE CERTIFICATION OFFICER ON APPLICATIONS MADE
UNDER SECTIONS 55 AND 108A OF THE TRADE UNION AND LABOUR
RELATIONS (CONSOLIDATION) ACT 1992**

**IN THE MATTER OF COMPLAINTS MADE AGAINST THE
NATIONAL UNION OF JOURNALISTS**

APPLICANT: MR J ECCLESTONE

Date of Decisions:

31 July 2001

DECISIONS

- 1.1 Under section 55 of the Trade Union and Labour Relations (Consolidation) Act (“the Act”) any person having sufficient interest who claims that a trade union has failed to comply with any of the requirements of Chapter IV of Part I of the 1992 Act concerning the need for, and conduct of, elections to certain positions may apply to me for a declaration to that effect. Similarly, under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended), 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 me for a declaration to that effect.
- 1.2 Sections 55 and 108B of the Act empower 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. In both sections, I am required, whether I make or

refuse the declaration sought, to give reasons for my decision in writing. Under section 55 of the Act, these decisions may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

1.3 In making a declaration under section 55 of the 1992 Act I am required to specify the provisions with which the trade union has failed to comply. Where I make a declaration under either section I am required, unless I consider to do so would be inappropriate, to impose an enforcement order on the union.

1.4 Under section 55(5A) my enforcement order should impose one or more of the following requirements on the union:-

(a) to secure the holding of an election in accordance with the order;

(b) to take such other steps to remedy the declared failure as may be specified in the order;

(c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

1.5 Under section 108B (3) I may also make an enforcement order unless I consider to do so would be inappropriate. If I make an enforcement order, it should impose on the union one or both of the following requirements: -

(b) 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.*

1.6 On 19 January 2001, 23 February 2001, and 11 March 2001, I received complaints from Mr Ecclestone, a member of the National Union of Journalists (“NUJ”/“the union”). On 19 January 2001, Mr Ecclestone alleged that the union had breached union rule 10 (e) in the appointment of a Broadcast Organiser. On 23 February 2001, Mr Ecclestone alleged that in respect of the National Executive Council (NEC) elections held in January 2001, the NUJ had failed to carry out the provisions of section 49(5) of the Act in notifying the union membership of the appointment of an election scrutineer before the scrutineer commenced duties. On 11 March 2001, Mr Ecclestone alleged that the election of the President of the NUJ, in March 2001, had been in breach of the provisions of section 46 (1) (a) of the Act.

1.7 Mr Ecclestone’s allegations were accepted, by me, as complaints under sections 55 and 108A(1) of the 1992 Act, that there had been breaches of the Act and union rule in respect of the following matters:

- i) that section 46(1)(a) of the Act, had been breached in respect of the election of the union’s President in March 2001;
- ii) that section 49(5) of the Act had been breached in respect of the union’s failure to notify its members of the name of the election scrutineer before

the scrutineer commenced duties; and

- iii) that union Rule 10 (e) had been breached by the appointment of a Broadcasting Organiser by the union and that this was a matter referred to in section 108 (2) (a) of the 1992 Act.

1.8 I investigated the complaints in correspondence and, on 5 July 2001, held a formal hearing of argument on the complaints. The union was represented by Ms J Eady (Counsel). Mr Ecclestone represented himself.

Declarations and Order

1.9 After careful consideration of the documents, evidence, arguments put to me, the requirements of the legislation, union rules and that the union had conceded the two breaches of the statutory requirement: -

“I declare that the National Union of Journalists was in breach of section 46 (1)

(a) of Chapter IV of Part 1 of the Act in that the union failed to elect its President

in accordance with the requirements of the legislation.”

1.10 I believe that, in view of the union’s failure to elect its President in accordance with Chapter IV of Part 1 of the Act, I should issue an enforcement order. So by agreement with the parties (but recognising that such agreement is without prejudice to the right of

appeal to the Employment Appeal Tribunal), I make the following order on the National Union of Journalists:

“I order that by 30 April 2003, the post of President of the National Union of Journalists shall be filled in a manner which satisfies the requirements of Chapter IV of Part 1 of the Trade Union and Labour Relations Act 1992 (as amended). In the intervening period, commencing with the date of this order, there shall be no election for the post of President of the union that does not satisfy the requirements of the legislation.”

1.11 Further:

“I declare that in the elections for the union’s National Executive Council in January 2001 the National Union of Journalists was in breach of section 49 (5) of the 1992 Act, in that the union failed to notify its members of the name of the scrutineer by either of the methods shown in that section before the scrutineer commenced duties.”

1.12 In the light of assurances from the union about arrangements for future notification of matters of general interest to its members, and my observations thereon, I do not propose to make an enforcement order in respect of the breach of section 49 (5).

1.13 I refuse to make the declaration sought in respect of the alleged breach of union rule 10 (e).

1.14 The reasons for my decisions are set out below.

Requirements of the Legislation and the Relevant Union Rules

1.15 It may be helpful, at this point, if I set out the relevant statutory requirements of the Act to which I have referred in my decisions, the union rule alleged to have been breached and other union rules which have a bearing on the first complaint made to me. The relevant statutory requirements are as follows:

“46 - (1) *A trade union shall secure -*

(a) that every person who holds a position in the union to which this Chapter applies does so by virtue of having been elected to it at an election satisfying the requirements of this Chapter; and

(b)”

(2) The position to which this Chapter applies (subject as mentioned below) are: -

(a) a member of the executive,

(b) any position by virtue of which a person is a member of the executive,

(c) *president, and*

(d) *general secretary.”*

“49 (5) *The trade union shall, before the scrutineer begins to carry out his functions, either -*

(a) *send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or*

(b) *take all such other steps for notifying members of the name of the scrutineer as is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.”*

“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) *...*

(c) *...*

(d) *... ”*

1.16 In referring to the NUJ's rules, I have, unless otherwise stated, referred to the NUJ rule book, as amended at the 2000 Conference.

1.17 The relevant union rule relating to the appointment of officials of the union is found under Rule 10 of the NUJ rule book.

1.18 Under the Rule heading "OFFICIALS OF THE UNION", Rule 10 (e) provides:

"All vacancies for salaried posts shall be advertised externally at the discretion of the NEC....."

1.19 Under the Rule heading "NATIONAL EXECUTIVE COUNCIL", Rule 8 (q) provides:

"...Unless specifically prevented by these rules the NEC shall have power to interpret the rules and to determine any question on which the rules are silent and no policy has been laid down by ADM."

1.20 These then are the relevant pieces of legislation and union rules. I now set out the facts and arguments put by the parties and the reasons for my decision in respect of complaint (i). Further, I also set out the reasons for my decisions in respect of complaints (ii) and (iii).

THE COMPLAINTS

The Complaints were that the NUJ had breached the Act and its rules in respect of three matters.

These were:

i) that the union breached its rule 10 (e) in failing to advertise externally the post of Broadcasting Organiser and that this was a matter that related to section 108A (2) (a) of the Act.

ii) that the union breached section 49 (5) of the Act by failing to notify its members of the appointment of an election scrutineer in accordance with the provisions of section 49 (5) of the Act.

This complaint was conceded by the union.

iii) that the union elected a new President by decision of the delegates at Annual Conference and that this was in breach of section 46 (1) (a) of the Act.

This complaint was conceded by the union.

Complaint One:

that the union breached its rule 10 (e) in failing to advertise externally the post of Broadcasting Organiser and that this was a matter that related to section 108A (2) (a) of the Act.

Facts

- 2.1 Resulting from the 1984 Annual Delegates Meeting (ADM), NUJ rules from 1984 governing the appointment of salaried staff stated “*All vacancies for salaried posts shall be advertised. Such advertisements shall be placed externally and shall be for the post that has fallen vacant, the number of advertisements to be at the discretion of the NEC.*”
- 2.2 In 1996, union rules governing the appointment of salaried staff stated “*All vacancies for salaried posts shall be advertised externally at the discretion of the NEC.....*”
- 2.3 In November 2000, the NUJ filled the post of Broadcasting Organiser by promoting an existing member of staff without any advertisement.
- 2.4 Mr Ecclestone wrote to the union on 20 December 2000 stating his belief that there had been a breach of union rule 10(e) (see paragraph 1.18 above) and requesting details of any NUJ members’ internal complaints procedure, independent of the National Executive Committee (NEC).
- 2.5 On 12 January 2001, the union advised Mr Ecclestone that the issue he had raised would go before the NEC with a recommendation that it be reported to the Annual Delegates Meeting (ADM) in April 2001. On 19 January 2001, Mr Ecclestone formally submitted a complaint to me alleging breach of union rule, and stated that there was no specified union procedure for dealing with complaints from union members..

The Applicant’s Case

- 2.6 In correspondence with my Office, Mr Ecclestone maintained that the NEC had power to interpret a rule, but only if no clear policy had been laid down by the ADM, or the rule

was silent (see paragraph 1.19 above).

2.7 Mr Ecclestone contended that the intent of the policy agreed by the ADM in 1984, and its subsequent incorporation into the union rule book (see paragraph 2.1 above), should be upheld because there had been no subsequent ADM resolution/sanction for a change of rule, even though the wording of the rule had been altered.

2.8 Under the union rule arising from the 1984 ADM decision, Mr Ecclestone argued that the NEC had discretion only in relation to the number of advertisements, not whether they should be placed internally/externally.

2.9 In conclusion, Mr Ecclestone stated that the ADM had agreed a clear policy in 1984 which had become part of the union rule book. There had been no subsequent resolution to amend either the policy or the rule. The action taken by the NEC in appointing an internal candidate and not advertising the post externally was, therefore, contrary to union rule.

The Union's Response

2.10 In opening the union's response, Ms Eady drew my attention to the construction of the rule as at November 2000, the time to which the allegation was relevant (see paragraph 1.18 above).

2.11 Ms Eady contended that although the rule as set out in the current rule book differed from the wording as agreed at the 1984 ADM (and such change of wording having occurred

around 1996), such wording had never been challenged at any subsequent ADM. Ms Eady opined that this indicated the wording had been accepted by the union membership as correct. This current rule was not ambiguous, but clear on the face of it.

2.12 Ms Eady acknowledged that it was unfortunate no information could be found to indicate exactly how, when, or why the wording of union Rule 10 (e) had changed, but argued that that was not the relevant point to be considered.

2.13 The point, she contended, was that in this case, the current wording of the rule had been in the union rule book, unchanged and unchallenged since 1996. The membership could have sought to change that wording at any ADM since 1996. It had not.

2.14 In conclusion, Ms Eady argued that historical reference provided an insight by way of background, but did not have direct relevance on union Rule 10 (e), which was not ambiguous. The NEC had not, therefore, had to interpret a rule which was clear in its intent and no breach had occurred.

Reasons for my Decision

2.15 I have sympathy with union members who find that the wording of a union rule has changed without any apparent reason, and possibly without approval being sought for such a change. That said, however, I am satisfied that had the membership found the change to union Rule 10 (e) unacceptable, or unclear, recourse to any ADM since 1996 could have been taken. Such recourse was not sought. I note that since 1996, Conference passed other changes to union Rule 10 (e) and that at such time, Conference

would have had the change to union Rule 10 (e) relating to the advertising of posts before it.

2.16 I am further satisfied that in considering the complaint before me, union Rule 10 (e) has clarity. There is no benefit, and it is not necessary, therefore, to use historical reference in this case, and no need to consider whether the NEC can interpret the rule under union Rule 8 (q). Accordingly, I refuse to make the declaration sought and dismiss the complaint.

Complaint Two:

that the union breached section 49 (5) of the Act by failing to notify its members of the appointment of an election scrutineer in accordance with the provisions of section 49 (5) of the Act.

Background

3.1 In conceding this complaint, the union stated that through an oversight the appointment of the scrutineer was notified to members by way of Branch circular only and not by way of its normal practice which was to issue the information via Branches and Chapels of the union.

Reasons for my decision

3.2 Prior to the union's concession, the issue for determination was whether a Branch circular constitutes a means by which the union normally advises its membership of matters of general interest.

- 3.3 In correspondence with my Office, Mr Ecclestone stated that the union had advised him that the information relevant to the appointment of the election scrutineer had been issued to union members, as required under section 49 (5) of the Act, by means of a Branch circular.
- 3.4 Mr Ecclestone had referred to historically poor attendance generally at Branch meetings and had made the point that on matters of general interest to the membership, such as the election of the union General Secretary, or information on the proceedings of the annual conference, the union utilised other means, notably through the union publication “The Journalist”. Circulars could also be issued to the chapels of the union (the chapel being the workplace unit organisation). Both methods, Mr Ecclestone had stated, were a better means of providing information to the general membership than was a Branch circular.
- 3.5 In its outline representations for the hearing, the union had stated that the editor of “The Journalist” enjoyed editorial independence. As a result, the union declared it could not guarantee that any particular item would be included in any given publication of “The Journalist”. Accordingly, “The Journalist” was not a means by which the union normally advised its members of matters of general interest.
- 3.6 The union acknowledged, however, that in respect of the appointment of the election scrutineer, it had, due to an oversight, not followed past practice of issuing union information via to “Branches *and* Chapels” as a means of communicating a matter of general interest to its membership.
- 3.7 In conceding that it had not complied with the requirements of section 49 (5) of the Act,

the union gave an assurance that such information of general interest would, in future, be issued to Branches and Chapels in line with past practice. My declaration is made in light of that.

Complaint Three:

that the union elected a new President by decision of the delegates at Annual Conference and that this was in breach of section 46 (1) (a) of the Act.

Reasons for my Decision

- 4.1 Mr Ecclestone submitted his complaint on the basis of my decision in the case of *Gates v BECTU* (D/23-24/00). In that decision, I found that the 1992 Act required the President of a trade union to be directly elected to that position by a ballot of union members. Mr Ecclestone submitted that that had not been the case in the election of the President of the NUJ.
- 4.2 It is not contested that current NUJ procedure requires the President to be elected from the NEC by the ADM on an annual basis. Such candidates as there may be must be members of the outgoing and incoming NEC. Nor is it contested that the post of President of the union is more than a ceremonial one and is, therefore, subject to the requirement for election according to the provisions of Chapter IV of Part 1 of the 1992 Act.
- 4.3 The union accepted that my decision in the case of *Gates v BECTU* had been subsequently upheld by the Employment Appeals Tribunal (EAT). The key issue in the *Gates v*

BECTU case was whether the general membership of BECTU should be allowed to elect its President under the principle that entitlement to vote shall be accorded equally to all its members in order to comply with the provisions of section 46 of the Act. My decision was that it should. The EAT decision confirmed that there was no error in law in the decision I had made. Consequently, the NUJ did not seek to resurrect any of the arguments that had been presented in the BECTU case and conceded that its system for electing its President did not satisfy the requirements of the 1992 Act.

4.4 I am certain the NUJ was right to concede the complaint before me. The union requested that it be given time to consider its options in seeking to remedy the breach of Act conceded.

4.5 My declaration is made in light of the union's concession. The order I have made takes note of the union's request for time to consider its options and that there was genuine uncertainty in trade union circles until the EAT confirmed my decision in the case of *Gates v BECTU*.

Observation

5.1 In its representations to me in respect of the breach of section 49 (5) of the Act, the union stated that it accepted it would be better practice to provide information on matters of general interest to its membership via Branches and Chapels (as opposed to just Branches). By so doing, the union seeks to address the breach of Act conceded.

5.2 I would urge the union to consider carefully, however, whether its proposed practice

would fully satisfy the requirements of the Act (particularly where the union has a substantial number of members who may not belong to a Branch or Chapel), or whether it has a better mechanism open to it for such a purpose, as used, for example, in the dissemination of information in respect of the union's election results.

E G WHYBREW
Certification Officer