

D/9/00

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE
UNDER SECTION 55 OF THE TRADE UNION AND LABOUR RELATIONS
(CONSOLIDATION) ACT 1992**

**IN THE MATTER OF A COMPLAINT AGAINST THE
BROADCASTING ENTERTAINMENT CINEMATOGRAPH AND THEATRE UNION
APPLICANT: MR T D GATES**

Date of decision	10 March 2000
Date Reasons Published	30 March 2000

DECISION

The Application

- 1.1 Under section 55 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) any person having sufficient interest who claims that his or her trade union has failed to comply with any of the provisions of section 46 to 53 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. Whether I make or refuse to make the declaration sought, I am required to give, in writing, the reasons for my decision.

1.2 On the 17 November 1999 I received an application from Mr T D Gates a member of the Broadcasting Entertainment Cinematograph and Theatre Union (BECTU) complaining that BECTU had failed to ensure that the President of the union had been elected to that position in an election satisfying the requirements of section 46(1) of the 1992 Act.

1.3 Sections 46(1) and (2) of the Act provides:

“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 positions to which this Chapter applies (subject as mentioned below) are

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(a) member of the executive,

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

(c) *president, and*

(d) *...*

and the requirements referred to above are those set out in sections 47 to 52 below.”

Jurisdiction

1.4 The union was represented by Mr Stephen Cavalier of Thompsons Solicitors who submitted, as a preliminary point, that as the result of the last election of President of BECTU was announced on the 30 May 1998 and, as section 54(3) of the Act provides:

“No such application may be made after the end of the period of one year beginning with the day on which the union announces the result of the election”

that the application made by Mr Gates on the 17 November 1999 was out of time. Mr Cavalier argued that the application was made one year, five and a half months after the election about which the complaint was made and in these circumstances that I had no jurisdiction to consider the application.

- 1.5 Before I could hear the complaint, it was therefore necessary for me to consider as a preliminary issue whether Mr Gates' application was made within the time limit specified in section 54(3) of the 1992 Act.
- 1.6 I decided to hold a formal hearing to give the parties an opportunity to address me on this issue. The hearing was held on the 9 March 2000. At the hearing Mr Cavalier represented the union while Mr Gates represented himself.
- 1.7 After careful consideration of the documents, evidence and argument, put to me on the 9 March, I notified the parties, on the 10 March 2000, that I had decided that the application made by Mr Gates was made outside of the time limit specified by section 54(3) of the 1992 Act and that therefore I did not have the jurisdiction to determine the application.

I now set out the arguments put to me and the reasons for that decision.

Mr Gates' Application

- 2.1 Mr Gates made his application on the 11 November 1999 and it was received by me on the 17 November 1999. He complained that the President of BECTU was elected by the National Executive Committee (NEC) of the union and not by a vote of the general membership in an election complying with the requirements of the 1992 Act. He argued that in view of my decision in the earlier case of a complaint against the British Actors' Equity Association (Equity) (D/1-2/99) that his complaint was justified, as there was now a conflict

between my decision in the Equity case and the rule book of BECTU relating to the election of the President of each union.

2.2 In response to the union's argument on the question of my jurisdiction to hear this application, Mr Gates stated that he had no particular comment on the union's submission and that, in view of the union's argument and my decision in the Equity case, he was seeking clarification of the requirements of the Act to help the parties and other unions.

2.3 With regard to the question of timing, he argued that he could hardly complain until he was aware of the ambiguity and that at the time the President was elected it was carried out in line with the union's rule book, which had been drawn up in 1991 when the union was formed and was based on legal advice which he assumed was correct.

2.4 It was, he argued, only after seeing a copy of the Equity decision (Mr Gates explained he was a member of both unions), that he realised that he was a member of two unions who appeared to have conflicting views on the requirements of the 1992 Act relating to the election of the President of each union. He commented that, in view of my decision in the case of Equity and the BECTU rule book, he had made the application in November 1999 to end the ambiguity which he felt had arisen.

The Union's Response

- 2.5 The union in its response stated that the result of the last election of its President, elected in accordance with the union rules, was announced on 30 May 1998. The union argued that as section 54(3) provides that “*No such application may be made after the end of the period of one year beginning with the day on which the union announces the result of the election.*” and that as Mr Gates made his application on the 17 November 1999, that I had no jurisdiction to hear the complaint.
- 2.6 At the hearing the union argued that section 55 of the Act, the right of a person having sufficient interest to make an application, must relate to a particular election and the time that that election was held.
- 2.7 In response to my questions at the hearing, the union argued that there must be an event (the election) to trigger the time limit. The union argued that the time limit was triggered on 30 May 1998 the date on which the President was elected by the NEC in accordance with union rules. It argued that the election of the President of BECTU was essentially a two-stage election. First, Mr Cavalier explained, the NEC was elected by the full membership of the union and then the members of the NEC elected the union's President by a vote of the members of the NEC.
- 2.8 In summing up the union's response at the hearing, Mr Cavalier argued that the process the union used to elect its President was satisfactory. He argued that the process used was both

an intention and a process to comply with section 46 of the Act and that therefore the complaint must be made with the time limit specified within the Act and, as it was not, that I had no jurisdiction to hear the application.

Reason for my Decision

3.1 Whether or not this application falls within my jurisdiction depends on the interpretation of section 54(3) of the Act. This reads:

“No such application may be made after the end of the period of one year beginning with the day on which the union announces the result of the election”

On a strict literal interpretation those words might be taken to rule out any complaint in circumstances where a person holding a position covered by the provisions of Chapter IV of Part I of the Act stayed in office beyond the five years covered by a valid election. Indeed they could also rule out a complaint where no election had ever been held. Neither of these interpretations would be even vaguely consistent with the whole purpose of Chapter IV. In the context of Chapter IV the words “*where an election has been held*” (which appear in section 54(2)) must be imported into section 54(3). This was accepted by both parties and means that the time limit applies only where there has been an election.

3.2 The election does not have to satisfy all, or even most, of the requirements of Chapter IV in order to give rise to the time limit. But it must go sufficiently far towards doing so that the

complaint is properly interpreted as being a complaint about the way in which the election was conducted, rather than a complaint that no election was held.

- 3.3 The question in the present application then becomes did the election which BECTU claimed triggered the start of the twelve-month period satisfy that test. This is a different question. It gets close to the heart of Mr Gates' substantive complaint, which was that the union's process of first electing its NEC by vote of the full membership, and then its NEC members electing the President from amongst the NEC members, was contrary to the requirements of Chapter IV. At this stage I do not have to determine that substantive point, but merely whether the events which took place in BECTU were sufficiently close to the requirements of Chapter IV to trigger the start of the twelve-month limitation period.
- 3.4 Taken separately neither the direct election to the NEC of the eventual President nor the election by the NEC pass the test. However the union argued that the two stage process was the election which put the President in office and which triggered the start of the limitation period.
- 3.5 I have not at this stage formed a view as to whether the two stage process does satisfy the requirements of Chapter IV but I do accept that it goes far enough towards doing so to trigger the time limit set out in section 54(3) and on balance therefore I find that the complaint was lodged more than twelve months after the result of the election of the BECTU President was announced on 30 May 1998.

3.6 It was for the reasons given that I found, on the 10 March 2000, that I did not have the jurisdiction to determine the application.

E G WHYBREW

Certification Officer