

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

**Mr P Williams**

**V**

**Musician Union**

**Date of Decision**

**13 September 2013**

**DECISION**

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

I declare that on or around 31 December 2012 the Musicians Union breached rule III.3 of its rules by not allowing Mr Williams to hold office as a member of the Regional Committee of the East and South East England Region of the Union for the two year term required by rule III.3.

**REASONS**

1. Mr Williams is a member of the Musicians Union (the "MU" or "the Union"). By Registration of Complaint Forms received at the Certification Office on 20 February 2013 and 7 March 2013, Mr Williams complained of a breach of the rules of the Union regarding his removal as a member of the Regional Committee of the East and South East England Region of the Union. Following correspondence with the claimant, a complaint was confirmed by him in the following terms.

*Complaint*

*That on or around 31 December 2012 the union breached its Rule III.3 by not allowing Mr Peter Williams to hold office as member of the Regional Committee (East and South East) for the full two year term.*

2. I investigated the alleged breach in correspondence and a hearing took place on 13 September 2013.
3. At the hearing on 13 September, Mr Williams represented himself. In response to a request from my office for a witness statement and skeleton argument, Mr Williams submitted a brief letter dated 6 September 2013. The Union was represented by Mr Neil Johnson of Thompsons Solicitors. Mr Johnson submitted a skeleton argument and a written witness statement from Mr David Ashley, Assistant General Secretary, Finance and Administration. There was also in evidence a 128 page bundle of documents containing correspondence and other documentation as supplied by the

parties for use at the hearing together with the rules of the Union. I gave permission for the Union to submit a further letter at the hearing.

### **Findings of Fact**

4. Having considered the oral and documentary evidence and the submissions of the parties, I find the facts to be as follows:
5. Mr Williams has been a member of the Union for about 43 years. He is a bass guitarist. He served on the Regional Committee of the East and South East England Region of the United Kingdom from about 2001 to 2004.
6. The Union underwent a major reorganisation in 2004. It then had 72 branches and seven districts. It was agreed to replace this structure with six regions. Each region would have a Regional Committee consisting of 20 elected members with 2 year terms of office. This structure was put in place by amendments to the rules, the Effective Date for which was 1 January 2005.
7. The 2005 rules of the Union also included certain transitional provisions. Rule XXIV.2 begins, "Rule III shall come into force on the Date of Adoption for the purpose of electing members of Regional Committees to take office from the Effective Date". The transitional rule goes on to modify rule III for the Regional Committee election in the year after the Effective Date. In that election, the candidates with the ten highest votes would be elected for a period of two years and the candidates with the ten next highest votes would be elected for a period of one year from the Effective Date. Rule XXIV.2 concludes "All subsequent elections shall be conducted in accordance with Rule III". By about 2008 rule XXIV had been deleted from the rule book. It does not appear in the 2011 rule book, the one relevant to the issues to which this application gave rise.
8. Between 2005 and 2011 all the regions of the Union had held elections to their Regional Committees, apart from the East and South East England Region. In that region, all previous calls for nominations had not secured more than 20 candidates and therefore there were always vacancies, some of which were filled by co-options.
9. In 2011 the East and South East England Region held elections to its Regional Committee for members to take up office in January 2012. Mr Williams stood in that election and was successful.
10. On 21 November 2011 the Regional Organiser of the East and South East England Region, Mr Burrows, wrote to all the candidates indicating who had been elected. Mr Williams was declared elected but an asterisk appeared against his name and that of four others. Mr Burrows' letter went on to explain:

*"As this is the first contested ballot in the East/South East England Regional Committee (all previous calls for nominations have resulted in vacancies being carried on the Committee) it is an opportunity to re-establish that continuity, therefore the candidates who polled the highest ten ballots will serve on the Committee for 2012 and 2013, and the remaining five will serve for one year alongside the five current RC members whose term*

*of office ends in December 2012. The elected candidates with the lowest five ballots are indicated (\*) above."*

11. By a letter dated 29 November 2011 Mr Burrows notified Mr Williams of the four meetings of the Regional Committee to be held in 2012 but not of the meetings to be held in 2013.
12. On 20 January 2013 Mr Williams gave notice that he would be unable to attend the Regional Committee meeting the next day due to bad weather. This letter prompted a reply from Mr Burrows dated 21 January. Mr Burrows pointed out that Mr Williams ceased being a member of the Regional Committee on 31 December 2012 and noted that he had not stood for re-election when nominations were sought in 2012. The letter went on to ask Mr Williams if he wanted to be co-opted to the Regional Committee in 2013 as it then had only 17 members.
13. On 28 January 2013 Mr Williams wrote to the General Secretary of the Union, Mr John Smith, protesting about his exclusion from the Regional Committee.
14. By a letter dated 8 February 2013 Mr Smith responded to Mr Williams. He referred to Mr Burrows' letter to Mr Williams of 21 November 2011 and confirmed that Mr Burrows had been correct in considering that Mr Williams had been elected in November 2011 for a one year term only, not a two year term.
15. Mr Williams commenced this application by a Registration of Complaint Form received at my office on 20 February 2013. He re-submitted a further version of this form with additional comments, which was received on 7 March.
16. Having obtained clarification from Mr Williams about the precise nature of his complaint, my office put the complaint to the Union on 17 April 2013. The Union's solicitors, Thompsons, responded on 10 May. The Union accepted that by having restricted Mr Williams' term of office to one year it had breached rule III.3. The solicitors went on to explain that this had arisen due to a misunderstanding of the effect of transitional rule XXIV.2 and proposed that Mr Williams be reinstated on the Regional Committee until the end of 2013, namely the end of the two year period for which he was originally elected.
17. Mr Ashley, the Union's Assistant General Secretary Finance & Administration, gave evidence that in 2011 Mr Burrows had sought his advice about the Regional Committee elections to be held that year. He candidly accepted that, when advising Mr Burrows, he had the mistaken belief that transitional rule XXIV still applied. Mr Ashley advised that only the ten candidates with the highest vote should be elected for two years, with the remainder being elected for one year only.
18. On 16 May 2013 the General Secretary wrote to Mr Williams and all the other members of the Regional Committee in the same terms. This letter states that the EC had accepted that there had been a breach of rule III in relation to Mr Williams' membership of the Regional Committee and that he had been reinstated with immediate effect until 31 December 2013. The letter enclosed a three page explanation about how this mistake had occurred.

19. Subsequently, Mr Williams indicated that he wished to pursue his complaint, notwithstanding the Union's acceptance of liability and his reinstatement. The Union indicated that it wished there to be an oral hearing, rather than an adjudication on the papers alone.

### **The Relevant Statutory Provisions**

20. The provisions of the 1992 Act which are relevant for the purposes of this application are as follows:-

#### **108A Right to apply to Certification Officer**

*(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) the balloting of members on any issue other than industrial action;*
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;*
- (e) such other matters as may be specified in an order made by the Secretary of State.*

#### **108B Declarations and orders**

*(3) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements -*

- (a) 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.*

### **The Relevant Rules of the Union**

21. The 2011 rules of the Union which are relevant to this application are:

#### *Rule III: Regions*

*3. Candidates for election to the Regional Committee shall have been members of the Union and of the Region for at least one year on the nomination day. No persons who is or who at any time during the preceding five years was employed by the MU shall be eligible for nomination. Save for members filling casual vacancies in accordance with sub-Rule III.4, members shall take office from the start of the first Regional Committee meeting in the calendar year following their election and shall hold office until immediately before the first such meeting in the calendar year two years later. Members of the Regional Committee shall be eligible for re-election unless otherwise disqualified.*

*Elections shall be held each year by a ballot vote of the Region as follows:*

- a....*
- b....*
- c....*

22. The 2005 rules of the Union relevant to this application are:

*Rule XXIV: Effective Date and Transitional Rules*

1. *These Rules shall come into force on 1 January 2005 (the effective date), save that this Rule and Rule XVIII shall come into force immediately upon the adoption of these Rules (The Date of Adoption) and shall supersede all other Rules.*
2. *Rule III shall come into force on the Date of Adoption for the purpose of electing members of Regional Committees to take office from the Effective Date. In each Region the candidates with the 10 highest votes shall be elected and shall hold office for two years from the Effective Date and the candidates with the 10 next highest votes shall be elected and shall hold office for one year from the Effective Date. All subsequent elections shall be conducted in accordance with Rule III.*

## **Consideration and Conclusions**

### **Complaint**

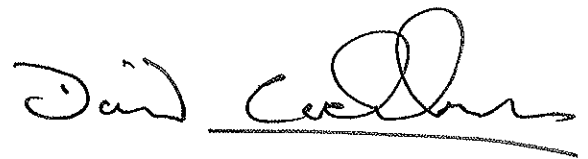
23. Mr Williams' complaint is as follows:-

*"That on or around 31 December 2012 the union breached its Rule III.3 by not allowing Mr Peter Williams to hold office as member of the Regional Committee (East and South East) for the full two year term."*

24. The Union has correctly accepted liability. It concedes that it breached rule III.3 of its rules in removing Mr Williams from the East and South East England Regional Committee after one year of his two year term of office.
25. Accordingly, I make the declaration sought by Mr Williams that on or around 31 December 2012 the Musicians Union breached rule III.3 of its rules by not allowing Mr Williams to hold office as a member of the Regional Committee of the East and South East England Region of the Union for the two year term required by Rule III.3.
26. When I make such a declaration, section 108B(3) of the 1992 Act provides that I shall also make an Enforcement Order unless I consider that to do so would be inappropriate. By section 108B(3) an Enforcement Order is an order imposing on the union a requirement to take such steps to remedy the breach that has been upheld as may be specified in the order and/or to abstain from such acts as may be specified with a view to securing that the same or a similar breach does not occur in the future.
27. Mr Williams sought an Enforcement Order that the Union and/or Mr Burrows should give him a personal and/or public apology to remedy the damage that his removal from the Regional Committee had allegedly caused to his political standing within the Union. In corresponding with my office Mr Williams had raised the possibility of other Enforcement Orders but these were not pursued at the hearing.
28. Mr Johnson for the Union, submitted that it was doubtful whether such an Enforcement Order was comprehended within section 108B(3) of the 1992 Act but that, in any event, it would be inappropriate to make it or any other Enforcement Order. Mr Johnson argued that the Union had made a genuine mistake in its understanding of the rules and had acted promptly to put things right once it had

received legal advice on the matter. He further noted that the error that had been made was that of Mr Ashley, not Mr Burrows, so an apology from Mr Burrows would be clearly inappropriate. Mr Johnson also observed that the other members of the Regional Committee were given a detailed explanation of the position as early as 16 May 2013 and that there was no evidence that Mr Williams' standing in the Union had been diminished by the Union's admitted error.

29. In my judgement, the Union's wrongful exclusion of Mr Williams from the Regional Committee in 2013 was the result of an honest mistake on the part of its administrative staff. I find that when the Union was informed by its solicitors that it had erred in its application of the rules, the Union took prompt and effective action to remedy its admitted breach by granting Mr Williams immediate reinstatement on the Regional Committee for the remainder of the term for which he had been elected. It is significant that the Union not only granted Mr Williams immediate reinstatement, but that it circulated a letter to all members of the Regional Committee on 16 May 2013 admitting its error and enclosing a three page explanatory memorandum.
30. In all the circumstances of this case, I find that it is inappropriate to make an Enforcement Order in the terms requested by Mr Williams or at all.



**David Cockburn**  
**The Certification Officer**

**This decision was sent to the  
parties on 17 September 2013**