

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

Mr G Evans

V

UNISON: The Public Service Union

Date of Decision:

22 October 2013

DECISION

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

Pursuant to section 256ZA of the 1992 Act, I strike out the claimant's complaint on the grounds that it has no reasonable prospects of success and/or is otherwise misconceived.

REASONS

1. Mr Evans brought this application as a member of UNISON The Public Service Union ("UNISON" or "the Union"). He did so by a Registration of Complaint Form which was received at my office on 2 May 2013.
2. Mr Evan's complaints were understood by my office to be in the following terms:-

"That on 21 February 2012, the Branch Executive Committee of the City and County of Swansea Branch of UNISON breached rule 9e of the branch rules, by removing Mr Gary Evans from the position of Branch Secretary, when the Branch Committee meeting was inquorate."

This formulation was put to Mr Evans for his agreement or otherwise. He responded by formulating his complaint as follows:-

'I agree that the Rule breached was 9e and therefore I wish to pursue this particular breach of rules which states that "The quorum for the Branch Committee shall be 5 voting members", and that the (sic) on February 21st 2012, The Branch Executive Committee held a Branch meeting in order to vote in the Secretary of the City and County of Swansea's Unison Branch after he had resigned his post, and as previously stated there were not enough Branch Officers present to vote in the said person.'

3. On a provisional view of the facts on the incomplete documentation before me, the background to Mr Evan's complaint appears to be as follows.

4. Mr Evans is a member of the City and County of Swansea branch of UNISON. In late January or early February 2012, the then branch secretary Mike Davies indicated that he was resigning and/or would not seek re-election in the branch elections that were about to be held. About two weeks later there was a meeting of the branch committee. The minutes of that meeting are dated 21 February 2012 but Mr Evans maintains that the meeting was held on 9 February. The minutes record the following with regard to Mike Davies (MD):-

'MD indicated 2 weeks ago that he resigned from the post of Branch Secretary. However he has since had time to reflect and to reconsider and wants to continue to stay as the Branch Secretary to see in job evaluation & also to bed in the new Secretary.

The committee has agreed to M.D. continuing in the role of Branch Secretary & agreed that MD was allowed to change his decision. Decision of the Branch Committee to be given to the Chair R.T, & G.J to meet with R.T.'

5. Mr Evans maintains that this meeting was inquorate and so had no authority to agree to rescind Mr Davies' resignation.
6. At about this time the branch elections were about to take place or were taking place. Under the rules of the branch, all branch ballot results have to be ratified at the branch Annual General Meeting. The branch Annual General Meeting is to take place before 31 March each year. In 2012 the AGM was held on 29 March.
7. The Union comment in a letter dated 9 August 2013 that initially four members were nominated for the position of Branch Secretary, Mr Davies, Mr Evans, Mr Rob Thomas and one other. Rob Thomas, who was at that time the branch chair as well as the Returning Officer and Scrutineer for the election, refused to accept Mike Davies as a candidate.
8. On 1 March 2012, after the close of nominations, Mr Rob Thomas sent a group email to a number of members to which he attached a list of all Officer Posts that Mr Thomas considered to have been elected unopposed for the forthcoming year. The list is headed 'Officers Designate for 2012/13' and records himself as being the next Chairperson and Mr Evans as the next Secretary.
9. Later the same day, the Regional Organiser in Wales, Mr Glyn Jones, Regional Organiser, sent an e-mail to the same people stating that Mr Thomas was mistaken in stating that the named individuals had been elected unopposed and that Mr Thomas' email should be ignored. It was later said that Mr Thomas had no authority to say that officers had been elected unopposed prior to the Branch AGM.
10. On 7 March 2012 Mr Jones send a further email asking candidates to confirm their acceptance of nomination and inviting them to submit an election address by 9 March. Mr Evans did not confirm his acceptance of nomination nor submit an election address. Consequently, he was not a candidate in the election.
11. As it turned out, there were two positions for which it was necessary to conduct a contested election; those of branch secretary and health and safety officer. Mr Davies

won the election for branch secretary, beating Mr Thomas by 58 votes. The ballot results were ratified at the AGM on 29 March. There has been no complaint to me about this election.

12. On 2 April 2012, Mr Evans wrote to the Member Liaison unit, at UNISON Head Office, making a complaint against UNISON's Regional Office in Swansea. The date of this letter is uncertain as in it Mr Evans refers to letters of 10 and 26 April 2012. However, in that letter, Mr Evans complains that his letter of 8 June 2011 had not been properly dealt with. That letter related to a personal injury case arising out of a dog bite injury he sustained during the course of his duties as a Pest Control Officer in March 2010. This case had been handled by Thompsons Solicitors which had been given a health and safety report on the incident by the employers (the RIDDOR form), which was not helpful to his case, together with two appraisals. Mr Evans had wished to raise a grievance with his employers about these documents having been made available to his solicitors without his consent but Mr Glynn Jones had allegedly recommended not to pursue such a grievance.
13. On 10 April 2012, Mr Evans wrote to Mr Dominic MacAskill, UNISON Regional Manager, Head of Local Government, Swansea, in relation to his letter of 8 June 2011. His letter contains further complaints. His first additional complaint concerned a request he had made to the Union for a 'tribunal case' which he said had been mislaid with the effect that his potential claim was now out of time. Another complaint concerned an unsuccessful application to go on a three day union training course in February 2012. A third complaint was about him having been notified by Mr Thomas that he was to be branch secretary only for that post to be taken away from him within 24 hours by Glyn Jones.
14. On 7 June 2012 Margaret Thomas, Wales Secretary of UNISON, wrote to Mr Evans informing him that Dawn Bowden, Regional Manager, had been appointed to hold an investigation in relation to his complaint of the branch elections process and other 'inter connected complaints'. However, on 18 July, Ms Thomas wrote again to Mr Evans informing him that Dawn Bowden would continue to investigate his complaint regarding the 2012 branch elections but that Mr Dominic MacAskill would be investigating the other matters, despite Mr Evans' objections to Mr Macaskill's involvement.
15. On 30 August 2012 Ms Thomas wrote to Mr Evans in the following terms:-

'I refer to our previous correspondence regarding your complaint about the Swansea Branch elections and Dawn Bowden's email of 25th August confirming she had completed her investigation into a number of complaints around these Branch Officer Elections.

In summary, your complaint related to your perceived treatment by the Union in respect of the Branch Election process for 2012. Based upon the evidence presented this complaint is partially upheld. You had been led to believe that you had been elected Branch Secretary. This was very unfortunate and should not have happened. Rob Thomas as Presiding Officer had no authority to issue such information in advance of the AGM and had no authority to intervene in the election process by speaking to candidates to avoid election and fill vacant positions.

Glyn Jones, Regional Organiser, had no option but to intervene in the process in light of Rob Thomas' action, to ensure the branch conducted such matters within rule. The actions of Rob Thomas being outwith rule could be construed as him interfering in the election process. Had this been allowed to go unchallenged by the intervention of Glyn Jones, Regional Organiser, I would have had no alternative but to declare the elections invalid.

The Union could however, have anticipated your disappointment and possibly those of your colleagues and should have taken steps to make personal contact with you to explain the situation.

This element of your complaint is upheld. In light of this failure, I would offer UNISON's unreserved apology.

The elections for the Branch Officers for 2012 will stand as they complied with branch rule in use and in most part, the Code of Good Branch Practice following the intervention of the region on 7th March 2012.

As previously advised and agreed with you, Donminic MacAskill, Regional Manager, will investigate your other complaints in respect of:-

- 1. RIDDOR complaint from 2011.*
- 2. Missing case papers and failure to submit a complaint to an Employment Tribunal 2011.*
- 3. Abuse of Branch Secretary's position by removing you from an Education Course in February 2012.*

If you remain dissatisfied with my response you may request a Stage 3 review of your complaint by writing to

*Elizabeth Thompson,
Head of Member Liaison Unit,
UNISON Centre,
13 Euston Road,
London
NW1 2AY*

Once again, please accept my apologies for the disappointment caused by you by the inappropriate and incorrect announcement of Branch Officer Elections made by the Presiding Officer in March last year.

*Yours sincerely
Margaret Thomas
Cymru/Wales Regional Secretary'*

16. On 19 September 2012, Mr Evans wrote to Mrs Elizabeth Thompson, Head of the Member Liaison Unit, requesting a stage three review stating that Ms Thomas' reply 'was way below what was expected as far as thorough investigation is concerned'.
17. Mr Evans' wrote a further letter to Ms Thompson on 2 October 2012 in which he asserted that Ms Bowden had not remained impartial during her investigation. He also stated:-

'I have enclosed various copies of minutes taken during Branch Officers meetings held within the City and County of Swansea (Local Authority), of which I have marked as example A and B, this will enable you to have a better understanding when I set out my reasons for my request for a stage three appeal.

*❖ (Example A) Mike Davies resigned as Unison Secretary during the month of January 2012, in order to pursue other interests however, if you look at **Example A** which is a copy of the minutes of the Branch Committee Meeting held in the Civic Centre, Swansea, on Thursday 9th February 2012, I would like to inform you that indeed this meeting actually took place on the 21st of February and not the 9th Feb 2012. I will also point out that a total of seven members attended, two of them were only senior stewards and one of them was a full time Regional Officer and Mike Davies who had resigned as Branch Secretary in the month of January 2012 and therefore, Mike Davies would have no part or right to attend the Branch Committee meeting along with the two Senior Shop Stewards held on that day, if you remove the voting rights of two senior shop stewards, the Regional Officer and Mike Davies ex Secretary that would only leave three recognised Branch Officers present who by Unison Rules had the right to vote however, because there were less than five Branch Officers present then the meeting would be **INQUORATE** and therefore, the meeting should not have taken place, where I also find it quite disturbing that two Senior Stewards was even allowed to attend a Branch Committee Meeting, where I feel this is a serious breach of Unisons Rules, where a full time Regional Officer was also present and sat back without intervening and advising the Officers that voting and or any agenda should not take place because the meeting was **INQUORATE.***

In this letter Mr Evans also indicates his intention to ensure the Certification Officer is made aware of the situation.

18. On 5 October 2012 Mr Evans wrote to Ms Thompson requesting a stage 3 complaint against Mr Dominic MacAskill in relation to the findings of the investigation he had conducted into the complaints other than the 2012 branch elections. On 7 November 2012, Glen Turner, Member Liaison Coordinator wrote to Mr Evans in relation to this matter stating *'I note that during this review process you have submitted additional documents regarding your complaint. A stage three review is an assessment of the way your complaint was handled. It is not a reinvestigation of your case.'* On 11 November 2012 Mr Evans responded to Mr Turner informing him that he would contact the Certification Officer. On 7 April 2013 Mr Evans e-mailed Mr Turner informing him that he had written to the Certification Officer and requested that all the paperwork and statements supplied by him concerning the 2012 elections be returned to him.
19. Mr Evans submitted a Registration of Complaint Form to my office which was received on 2 May 2013. The thrust of the complaint was that he was removed from office as Branch Secretary at a Branch meeting when that meeting was inquorate.
20. In my office's reply to Mr Evans, it was pointed out that his complaint was outside the primary time limit of 6 months as provided for in section 108A(6)(a) of the 1992 Act, in that it related to an event that took place before 3 November 2012. Mr Evans was informed that he needed to provide evidence that he had raised the complaint submitted to this office with the union using its internal complaints procedure to take advantage of the extended limitation period in subsections (6)(b) and (7).
21. In correspondence with my office Mr Evans had submitted the following complaint wording: *'I would like an investigation against the City and County of Swansea's Unions Branch, that on 21 February 2012, the Branch Executive Committee of the City and County of Swansea Branch of Unison breached rule 8c of the branch rules, by removing myself Mr Gary Evans from the position of Branch Secretary, when the Branch Committee meeting was inquorate, all evidence will be produced on request if and when required'*. Accordingly, Mr Evan's complaint was put to the Union on 26 July 2013 in the following terms: *'That on 21 February 2012, the Branch Executive Committee of the City and County of Swansea Branch of Unison breached rule 8c of the branch rules, by removing Mr Gary Evans from the position of Branch Secretary, when the Branch Committee meeting was inquorate.'*
22. The Union responded on 9 August 2013. It stated that the relevant rules in force at the time of the breach were branch rules dated February 2009, not those dated March 2012 as provided by Mr Evans. As such the relevant rule was rule 9(e), not rule 8(e) as alleged by Mr Evans. The Union submitted that the complaint should be struck out on the grounds that it is misconceived and has no reasonable prospect of success. It submitted that (a) Mr Evans had not been elected branch secretary by 21 February 2012 or at any other time and could not therefore be removed from office as alleged and (b) Mr Evans registered his complaint to me on 2 May 2013 some 14 months after the alleged breach and was clearly out of the primary limitation period. The Union further argued that Mr Evans had used its internal complaints procedure by his letters dated 2 and 10 April 2012 but that it was not invoked to resolve the present matter, as the letters initiating the internal procedure made no reference to the events

that took place at the branch meeting that was allegedly inquorate on 9 or 21 February 2012. Consequently the Union argued that for Mr Evans' application to be in time it would have had to be received at my office on or before 8 or 20 August 2012.

23. On 12 August 2013, the Union's response was sent to Mr Evans for his comments. He was also asked to confirm the precise wording of his complaint. Mr Evans responded on 25 August. He confirmed the rule breached was 9(e) and that he wished to pursue the alleged breach that the meeting was inquorate. Mr Evans went on to state, *'The time limit had run out for myself based on the fact that, the Liaison department and the Unison in Swansea both dragged their heels in responding to this and other complaints I had made of the period of time'*.
24. On 4 September 2013 my office wrote to Mr Evans asking him to either confirm the terms of the complaint as had been put to him previously or provide alternative wording. The wording that had been put to him was: *'that on 21 February 2012, the Branch Executive Committee of the City and County of Swansea Branch of UNISON breached rule 9e of the branch rules, by removing Mr Gary Evans from the position of Branch Secretary, when the Branch Committee meeting was inquorate'*. Mr Evans responded on 9 September with the following formulation of his complaint: *"I agree that the Rule breached was 9e and therefore I wish to pursue this particular breach of rules which states that "The quorum for the Branch Committee shall be 5 voting members", and that on (sic) February 21st 2012, the Branch Executive Committee held a Branch meeting in order to vote in the Secretary of the City and County of Swansea's Unison Branch after he had resigned his post, and as previously stated there were not enough Branch Officers present to vote in the said person"*. I directed that the basis of his complaint was sufficiently clear to resolve the issue of the limitation period, if not as clear as I would have wished.
25. On 20 September 2013 my office wrote a show cause letter to Mr Evans, noting how he now put his claim. The letter was written pursuant to section 256ZA(4) of the 1992 Act giving Mr Evans an opportunity to show cause why his complaint should not be struck out on the grounds that it had been made out of time and had no reasonable prospect of success and/or was otherwise misconceived.
26. Mr Evans responded to this show cause letter on 21 September 2013, stating, inter alia, *"If I could also refer to your letter concerning "Striking out the Claim-Request to Show Cause, I stated in my previous letter that the reason for my delay to the Certification Office was because of the inept attitude and lack of professionalism from the Swansea Branch (Unison) where their administration was of a very poor standard, which resulted in many or all of my complaints being discarded, I as an honest and loyal shop steward was hoping that this matter would be resolved without me complaining to the Certification Officer, where the run out time for my complaint to the Certification Office never entered my mind. I can confirm that I put in many written complaints well before the run out period to my Branch Office, having said that because of the seriousness of my complaint all Officer's involved well (sic) obviously deny any of my complaints made to them."*

The Relevant Statutory Provisions

27. 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.
- (6) An application must be made-
- (a) within a period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or
 - (b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in subsection (7).
- (7) Those days are-
- (a) the day on which the procedure is concluded, and
 - (b) the last day of the period of one year beginning with the day on which the procedure is invoked.

256ZA Strike Out

- (1) At any stage of proceedings on an application or complaint made to the Certification Officer, he may-
- (a) order the application or complaint, or any response, to be struck out on the grounds that it is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived,
-
- (3) An order this section may be made on the Certification Officer's own initiative and may also be made-
- (a) if the order sought is to strike out an application or complaint, or to amend or strike out anything in an application or complaint, on an application by the respondent, or
 - (b) if the order sought is to strike out any response, or to amend or strike out anything in any response, on an application by the person who made the application or complaint mentioned in subsection (1)
- (4) Before making an order under this section, the Certification Officer shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made

The Relevant Rules of the Union

28. The rule of the City and County of Swansea Branch of the Union which is relevant for the purposes of this application is:

9. Branch Committee

9.e The quorum for the Branch committee shall be 5 voting members.

CONCLUSIONS

29. The precise terms of Mr Evans' complaint have been difficult to ascertain. His claim was originally advanced as a breach of rule 8(e) of the 2012 branch rules (now accepted as being a reference to rule 9(e) of the 2009 branch rules) on the grounds that he had been unlawfully removed from office as branch secretary at a branch committee meeting held on 9 or 21 February 2012 which had allegedly been inquorate. More recently, and following receipt of the Union's response to the complaint as originally put to it by my office, Mr Evans has alleged that the decision that was unlawfully taken at that allegedly inquorate branch committee meeting was to permit Mike Davies to resume his position of branch secretary following his earlier resignation. For the purposes of this decision, it is not necessary that I examine any further the precise terms of Mr Evans' complaint as the different ways it has been advanced each relate to the allegedly unlawful act that occurred at the branch committee meeting on 9 or 21 February 2012. The question for me to decide is whether the claim that my office received on 2 May 2013 about the events of 9 or 21 February 2012 was received in time.
30. The primary limitation period within which a complaint of breach of rule must be made to my office is 6 months, as provided for in section 108A(6)(a) of the 1992 Act. However, subsections (6)(b) and (7) provide for an extended limitation period in certain restricted circumstances. Beyond this extended limitation period, I have no residual discretion to extend time. The extended limitation period applies where the claimant has, within the 6 months primary limitation period, invoked any internal complaints procedure of the union to resolve the claim. The 'claim' to which reference is made in section 108A(6)(b) is the claim that has been made to me under section 108A(1). Accordingly, I must decide if Mr Evans invoked any internal procedures of UNISON before 8 or 20 August 2012 to resolve the matter which he has now placed before me for adjudication.
31. Mr Evans has supplied me with copies of the letters he wrote to the Union on 2 and 10 April 2012 (within the primary limitation period) which are expressed to be formal complaints and which the Union processed under its internal complaints procedure. I must therefore consider whether either of these letters was written to invoke the Union's complaints procedure to resolve the claim now before me. In my judgment, there is nothing in the letter dated 2 April 2012 which is of assistance to Mr Evans in this regard. As to the letter of 10 April 2012, the only one of Mr Evans' three complaints that merits close consideration is the one relating to the notification given to Mr Evans by Rob Thomas that he was the branch secretary designate and the effective nullification of that notification by Glyn Jones later the same day. The nature of this complaint is clear not only from its express terms but also from the manner in which the Union responded to it by Margaret Thomas' letter of 30 August 2012. In my judgment, this complaint was not invoked to resolve the claim before me but a different matter. The claim before me relates to whether the branch committee meeting of 9 or 21 February 2012 was

inquire. The complaint that Mr Evans submitted to the Union's internal complaints procedure was whether Glyn Jones had acted properly in effectively nullifying Rob Thomas' notification that Mr Evans would be the branch secretary for 2012/13. I find that these are two different matters. There may be tenuous links that might be made between the two but it is not for me to strive to make connections which are not apparent and which have not been raised in response to the show cause letter. The duty on any claimant is to get his/her claim to my office in time, within the primary or extended limitation periods. The safer course is clearly to submit the claim within the primary limitation period. Reliance on the extended limitation period requires the restricted circumstances set out in the 1992 Act to be clearly established. On the facts of this case, I find that those circumstances were not established and that Mr Evans' claim was therefore brought out of time.

32. For the above reasons, I strike out Mr Evans' complaint pursuant to section 256ZA of the 1992 Act on the grounds that it has no reasonable prospects of success and/or is otherwise misconceived

A handwritten signature in black ink, appearing to read 'David Cockburn', written in a cursive style.

David Cockburn
The Certification Officer

