

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

Mr R Newton

V

Musicians Union

Date of Decision:

1 March 2013

DECISION

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

And pursuant to section 256ZA of the Trade Union and Labour Relations (Consolidation) Act 1992.

I strike out the claimant's application that the Musicians Union allegedly breached rule XVIII of its rules on or about 18 October 2012 on the grounds that his complaint has no reasonable prospect of success and/or is otherwise misconceived.

REASONS

1. Mr Newton brought this application as a member of the Musicians Union ("the Union"). He did so by a registration of complaint form which was received at my office on 15 November 2012.
2. Mr Newton's complaint was confirmed by him in the following terms:
"On or around 18 October 2012 the Musician's Union breached its rules by removing Mr Newton from his position as an Executive Member without following the disciplinary procedures contained in Rule XVIII."
3. On the material before me, the background to Mr Newton's complaint appears to be as follows.
4. Mr Newton is a member of the Theatre Section of the Union and was, at the relevant time, a member of its Executive Committee ("the EC").
5. On 18 October 2013 a meeting of the Executive Committee was held at the Union's head office at which Mr Newton was present.

6. At the meeting, EC member Steve Levine advised the committee that it was his intention to put forward a motion which would call for the removal of Mr Newton as an EC member under rule V.15. Mr Levine proposed the following motion which was read to the meeting:

"That Mr Raymond Newton be removed from the Executive Committee under Rule V.15 as a result of his failure to observe collective responsibility in relation to the Executive Committee's decision and subsequent response to the petitioned motion regarding the agreement with The Walt Disney Company debated at the September 2012 meeting of the Executive Committee".

7. There was a debate on the motion in which Mr Newton was criticised for having publicly disagreed with an EC decision in writing. It was argued that Mr Newton's actions had damaged the EC's reputation with Walt Disney Ltd and could lead to the EC's position being weakened in future negotiations. Mr Newton participated in the debate. He argued that he was not a member of the EC in December 2011 at the time it reached the decision in question and therefore considered he was exempt from any collective responsibility requirements. The Chair of the EC accepted the proposition that Mr Newton advanced but stated that the criticism related to a decision taken by the EC in September 2012 when he was a member. The Chair read rule V.15 to the meeting in order to ensure the members of the EC fully understood what they were being asked to do. Rule V.15 is in the following terms:

Rule V EC Powers

V.15 In addition to the disciplinary procedures provided for by Rule XVIII an EC member may be suspended from or removed from office as a member of the EC, by resolution of the EC carried by not less than 75% of the total number of serving EC members, if the EC member is found to be acting in contravention of the EC's objects, duties, policies or aims or have been found to have breached EC collective confidentiality or collective responsibility. A person removed from office under this Rule shall not be eligible for re-election to the EC.

The motion was carried. Amongst those present at the meeting 16 voted in favour and one voted against. The Chair advised Mr Newton that as a result of the vote he was no longer a member of the EC and requested that he left the meeting, which he did without further comment.

8. Mr Newton submitted a registration of complaint form to my office which was received on 15 November 2012. The thrust of his complaint was that he felt that the decision to remove him was unfair and unjust. He stated that he was not given any advance notice of the motion against him and he was thereby denied the opportunity to prepare his case. He maintained that he had never brought the Union into disrepute in any shape or form.
9. After an exchange of correspondence Mr Newton identified his complaint as set out in paragraph two. He complained that there was a breach of the disciplinary procedure contained in rule XVIII as he had had no notice that the motion to remove him was going to be put to the EC .

10. Mr Newton's complaint was put to the Union on 10 January 2013. The Union responded on 17 January. It accepted that Mr Newton had been removed from his position on the EC but denied that he had been removed under rule XVIII. The Union asserted that the disciplinary procedures contained in rule XVIII were not engaged on the facts of this case as Mr Newton had been properly removed from office under rule V.15. There had been a resolution of the EC carried by not less than 75% of the total number of serving EC members and Mr Newton had been removed from office by reason of his breach of collective responsibility.
11. My office sent a copy of the Union's letter of 17 January 2013 to Mr Newton. He replied by a letter dated 31 January 2013, received in my office on 4 February 2013, confirming that he had been removed from office under rule V.15.
12. Pursuant to section 256ZA(4) of the 1992 Act, my office sent a show cause letter to Mr Newton on 7 February 2013 giving him an opportunity to show why his complaint should not be struck out on the basis that it had no reasonable prospect of success and/or was otherwise misconceived. Mr Newton responded on 14 February.

The Relevant Statutory Provisions

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

Section 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.*

Section 256ZA Striking 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 under 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

14. The rules of the Union which are relevant for the purposes of this application is as follows:-

Rule XVIII Disciplinary Procedures

XVIII .4 Where a complaint of an alleged disciplinary offence is made to the General Secretary within 28 days of the alleged offence and there appear to the General Secretary to be reasonable grounds to think that a member might be guilty of a disciplinary offence the General Secretary shall investigate whether charges are justified.

Rule V EC Powers

V .15 In addition to the disciplinary procedures provided for by Rule XVIII an EC member may be suspended from or removed from office as a member of the EC, by resolution of the EC carried by not less than 75% of the total number of serving EC members, if the EC member is found to be acting in contravention of the EC's objects, duties, policies or aims or have been found to have breached EC collective confidentiality or collective responsibility. A person removed from office under this Rule shall not be eligible for re-election to the EC.

Conclusions

15. The Union's response to Mr Newton's complaint asserted that the rule allegedly breached, rule XVIII, was not engaged on the facts of this case. I invited Mr Newton to comment on this response and he confirmed that he had been removed as an EC member under union rule V.15. This raised a strong prima facie argument that Mr Newton's complaint was either misconceived or stood no reasonable prospect of success. Accordingly I caused a letter to be sent to him by my office requiring him to show cause why his complaint should not be struck out pursuant to section 256ZA of the 1992 Act.
16. Mr Newton responded to the show cause letter on 14 February 2013. He submitted that his complaint should not be struck out on the following five grounds. First, he had signed the motion in question from the Theatre Section as a musician not as an EC member. Secondly, he was not party to the original EC decision in December 2011. Thirdly, one EC member had expressed an element of doubt during the debate of the motion that removed him. Fourthly, he was given no opportunity to call as witnesses the other members who had signed the petition. Fifthly, his treatment had been totally unfair and unjust. In summary, Mr Newton's response set out why he thinks

the decision to remove him from the EC was wrong and why the process was, in his opinion, unfair. It does not deal with the central point raised in the Union's response to his complaint.

17. The Union maintains that rule XVIII was not engaged on the facts of this case and that Mr Newton's removal from the EC was effected lawfully by the operation of rule V.15. Mr Newton has not raised any argument which suggests that rule V.15 cannot be used in the way it was used against him. Indeed it appears that rule V.15 was drafted to deal with just this sort of situation. I note that this is not a case in which Mr Newton was denied the opportunity to state his case or that he was unaware of the case against him. The facts as they appear in the documents submitted by the parties appear relatively straightforward. Whilst there is nothing before me to suggest that the Union applied rule V.15 incorrectly, that is not the issue for me to determine. I have to decide if there was a breach of rule XVIII. In my judgment, on the evidence before me, rule XVIII did not come into play. I find that Mr Newton has not established that rule XVIII was engaged on the facts of this case and accordingly, in my judgment, his complaint has no reasonable prospect of success or is otherwise misconceived.
18. On the above grounds, I strike out Mr Newton's application that the Union allegedly breached its rule XVIII on or about 18 October 2012 by removing him from his position as an Executive Member without first following the disciplinary procedures contained in rule XVIII.



David Cockburn
The Certification Officer