

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

**Mr J Yates**

**v**

**GMB**

**Date of Decision: 16 June 2011**

**DECISION**

Upon application by Mr Yates ("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, the Claimant's application that the GMB breached byelaw 16 of its rules in the course of the election for the position of General Secretary in 2011 is struck out for excessive delay in proceeding with it and/or on the grounds that the manner in which the application has been conducted by the applicant has been unreasonable.

**REASONS**

1. Mr Yates brought this application as a member of the GMB ("The Union" or "GMB"). He did so by a registration of complaint form which was received by email at my office on 7 October 2010.
2. Mr Yates' application form referred to the nomination process for the forthcoming election for the position of General Secretary of the GMB. His application form did not directly assert a breach of rule or statute but it reproduced correspondence between himself and the Union which suggested that his complaint may relate to an alleged breach of bye law 16 of the rules of the Union. Mr Yates enclosed a copy of a circular letter dated 24 September 2010 from the National Returning Officer, Mr Short, to all branches in which letter nominations for the post of General Secretary were invited. This letter began by explaining why an election was being held. It quoted from the report of the General Secretary to the GMB Congress in 2010. The incumbent General Secretary had reported that he had decided to seek re-election even though, having regard to his retirement date, there was no statutory obligation for him to do so. The complaint form indicated that Mr Yates intended to contest this election but that byelaw 16 of the rules

prevented him from obtaining the contact details of other branches in his region in order for him to obtain the minimum support necessary to stand for election, that is the support of thirty branches.

3. On 13 October 2010 my office wrote to Mr Yates requesting a hard copy of his complaint form, a copy of byelaw 16 and an explanation as to why he considered there had been a breach of byelaw 16.
4. Mr Yates responded by an email dated 1 November 2010. He stated that he had already sent an online version of his form and that the purport of his complaint was that the regulations do not permit anyone to access the database to contact branches in pursuance of the election of a candidate. He went on to state that Mr Short's letter of 24 September was sent to all branches and included what could only be described as an address by the General Secretary in support of his candidature.
5. On 9 November 2010, my office responded to Mr Yates. He was again asked for a hard copy of his complaint form and a copy of byelaw 16. It went on to suggest a possible formulation of his complaint, which was as follows:

*"On 24 September 2010, Steve Short, the National Returning Officer, sent to a letter to all branches inviting nominations for the election of the General Secretary and Treasurer post. The letter included what could be described as an address by the current General Secretary. This could only be done by accessing information contained in the Union's membership or other database in breach of bye-law 16."*

The letter asked Mr Yates if the above formulation accurately reflected the complaint he wished to make and, if not, to amend the complaint as appropriate.

6. Mr Yates emailed my office on 25 November 2010 in reply. He did not attach a copy of byelaw 16 nor comment on the proposed formulation of his complaint. He stated that byelaw 16 was used by the Union as the reason that he could not have "the same right of access to the branches as afforded to Paul Kenny, the incumbent General Secretary".
7. On 30 November 2010 my office repeated the requests that it had made in its letter of 9 November. A response was required by 13 December but none was received. On 29 December my office wrote a reminder to Mr Yates, to which a response was required by 12 January 2011.
8. Mr Yates sent an email to the GMB on 12 January 2011, a copy of which was also sent to my office. From the email chain which formed a part of this email, it was possible to deduce that Mr Yates had been invited to a meeting of the GMB Finance & General Purposes Committee on 24 January to pursue a rule 61 complaint about a breach of byelaw 16.
9. On 13 January 2011 my office wrote to Mr Yates noting that its previous correspondence was still unanswered and that he appeared to have a

meeting arranged with the Union for 24 January to hear his complaint. Mr Yates was asked to provide my office with an update after this meeting and, if he wished to pursue his complaint, a full response to the earlier correspondence.

10. On 15 March 2011 my office wrote to Mr Yates noting that it had not received a report from him on the outcome of the meeting of 24 January. The letter asked to be informed if he wished to continue with his complaint and, if so, to provide a full response to the earlier correspondence.
11. Mr Yates sent an email to my office on 16 March 2011 stating that a meeting with the GMB had taken place on 14 March and that the outcome was still awaited. He stated that he would notify my office once the outcome was known.
12. On 5 April 2011 my office wrote to Mr Yates informing him that his complaint could not be stayed indefinitely to facilitate his discussions with the Union and that he must by 26 April indicate whether he wished to pursue his complaint (and, if so, to provide a full response to the earlier correspondence) or withdraw his complaint. This letter cautioned Mr Yates that his case could be struck out for excessive delay in proceeding with it.
13. Mr Yates sent an email to my office on 15 April 2011 stating that an appeal had been arranged by the GMB for 18 April and that he would advise accordingly in the event of a satisfactory outcome or otherwise.
14. On 26 April 2011 my office wrote to Mr Yates stating that I was not prepared to allow his complaint to remain stayed any longer and that he was now required to provide a full response to the earlier correspondence by 10 May.
15. Mr Yates sent an email to my office on 10 May. He stated that he was in receipt of the final appeal from the GMB which he needed to discuss with his Branch Executive. He requested a stay in the process for no more than two weeks, by which time he would provide the details requested or cease his action.
16. On 12 May 2011 my office wrote to Mr Yates agreeing to an extension of time until 20 May for him to furnish the information previously requested. In this letter Mr Yates was asked to show cause why his complaint should not be struck out for excessive delay in proceeding with it and/or its unreasonable conduct.
17. Mr Yates had not responded to the letter from my office of 12 May 2011 by the date of this decision.

## The Relevant Statutory Provisions

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

### **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,*
- (b) order anything in the application or complaint, or in any response, to be amended or struck out on those grounds, or*
- (c) order the application or complaint, or any response, to be struck out on the grounds that the manner in which the proceedings have been conducted by or on behalf of the applicant or complainant or (as the case may be) respondent has been scandalous, vexatious, or unreasonable.*

*(2) The Certification Officer may order an application or complaint made to him to be struck out for excessive delay in proceeding with it.*

*(3) An order under this section may be made on the Certification Officer's own initiative and may also be made.....*

*(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.*

## Conclusions

19. On the above facts I find that there has been excessive delay on the part of Mr Yates in proceeding with his complaint and that his failure to respond to correspondence from my office so as to identify his cause of action and the grounds relied upon amounted to unreasonable conduct by the applicant in the manner in which he conducted the complaint.
20. For the above reasons, I strike out this complaint pursuant to section 256ZA of the 1992 Act.



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