

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

MR D J OWEN

V

UNITE THE UNION

Date of Decisions

6 December 2010

DECISIONS

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

- (i) I refuse to grant the declaration sought by Mr Owen that on or about 12 June 2009 Unite the Union ("the Union") breached rule 27.3 of its rules in that a charge was allegedly brought against Mr Owen which was not heard by a Branch Committee, Regional Committee or the Executive Council.
- (ii) I refuse to grant the declaration sought by Mr Owen that on or about 30 June 2009 the Union breached rule 27.2 of its rules in that Mr Owen was allegedly then asked to resign at a meeting which amounted to a disciplinary hearing, that hearing not being organised or conducted under directions issued by the Executive Council
- (iii) I refuse to grant the declaration sought by Mr Owen that on or about 30 June 2009 the Union breached rule 27.7.1 of its rules in that a disciplinary sanction was allegedly imposed on Mr Owen against which he was not given the right to appeal . The disciplinary sanction was that Mr Owen was forced to resign

REASONS

1. Mr Owen is a member of Unite the Union ("the Union"). By a letter of 30 June 2010 and a Registration of Complaint Form received at the Certification Office on 13 July 2010, Mr Owen made a complaint of various breaches of the rules of the Union. He maintained that these breaches were within my jurisdiction under section 108A(1) and (2) of the 1992 Act, being alleged breaches of rules which relate to the appointment or election of a person to, or the removal of a person from, any office by the union and to disciplinary proceedings by the union. Following correspondence with my office, Mr Owen confirmed the three complaints that he wished to pursue in the following terms:-

Complaint 1

“That on or around 12 June 2009 the union breached its rule 27.3 in that a charge was brought against Mr Owen, which was not heard by a Branch Committee, Regional Committee or the Executive Council”.

Complaint 2

“That on or around 30 June 2009 the union breached its rule 27.2 in that Mr Owen was asked to resign at a meeting on that date, which amounted to a disciplinary hearing. The hearing was not organised or conducted under directions issued by the Executive Council”.

Complaint 3

“That on or around 30 June 2009 the union breached its rule 27.7.1 in that a disciplinary sanction was imposed on Mr Owen which he was not given the right to appeal against. The disciplinary sanction was that Mr Owen was forced to resign”.

2. I investigated the alleged breaches in correspondence. A hearing took place on 16 November 2010. At the hearing, the claimant represented himself and called no witnesses. Mr Owen chose not to give evidence himself. The Union was represented by Ms Omambala of counsel. The Union called Mr Kevin Walsh, Convenor at the Vauxhall warehouse branch of the Union as a witness. A witness statement for Mr Walsh was produced. There was in evidence a 104 page bundle of documents consisting of letters and other documentation supplied by the parties for use at the hearing. Mr Owen and the Union each provided a written skeleton argument.

Findings of Fact

3. Having considered the oral and documentary evidence and the submissions of the parties, I find the facts to be as follows:
4. Mr Owen is employed as a warehouse operative by Vauxhall in Luton. He joined the Transport & General Workers Union (“TGWU”) in 1989 and was elected as a shop steward in January 2008 for a period of two years. At the relevant time Mr Owen was also the Vice Chair of his branch.
5. The TGWU amalgamated with Amicus on 24 April 2007. Under the terms of the amalgamation there was to be a transitional period in which the former Unions became sections of the new Union and continued to operate under their former rules. The rules of Unite the Union were known as the General Rules and incorporated the former rules of the TGWU and Amicus. On 1 May 2009, new rules were adopted for the Union as a whole and the TGWU and Amicus sections of the Union ceased to exist.
6. The warehouse operation at Vauxhall, Luton, employed both former TGWU and Amicus members. There was a joint Shop Stewards Committee but the two former unions also had their own sectional structures. The TGWU section had Mr Simon

Bellis as its Chair, Mr Chris Elliot as its Convenor and Mr Andrew Jack as its Deputy Convenor. The shop steward structure of the Amicus section had Mr David Young as its Convenor and Mr Kevin Walsh as its Deputy Convenor. Each section had a separate office provided by the employer. Separate to its shop steward structure, the TGWU section of Unite had a work place branch, Branch 1925, of which Mr Owen was a member. The Branch Chair was Mr Nigel Thralel, the Branch Secretary was Mr Simon Bellis and the Branch Vice Chair was Mr Owen. Notwithstanding the new rules which came into effect on 1 May 2009, the former structures of the TGWU and Amicus sections continued to operate in the warehouse operation of Vauxhall until 28 September 2009 when there was a biennial general meeting for all members in that workplace at which the election results for all shop stewards were declared. Mr Kevin Walsh was elected as Convenor, Mr Chris Elliot as Deputy Convenor and Mr David Young as Chair.

7. The incidents which precipitated these complaints occurred around the end of Mr Owen's shift on or about 11 June 2009. Mr Owen is alleged to have used racially offensive language about a colleague which was heard by a number of employees, including Mr David Young and Mr Anthony Critchett. The colleague in question was not present on these occasions. Mr Owen maintained that his words were intended as banter about a colleague with whom he shared the pastime of kick boxing.
8. On 12 June 2009 Mr Young told Mr Owen that members had complained about the language he had used and suggested that he apologised. Mr Owen refused. Later that day Mr Owen went to the TGWU room allocated as an office for the TGWU section on an unrelated matter. David Young and Andy Jack were there. Having received more complaints about the language that Mr Owen had used, they asked him to sit down. They explained the situation and asked him to apologise. Mr Owen again refused. The discussion lasted some 3 or 4 minutes. Mr Young made a brief note of what had occurred.
9. At some unknown date between 12 and 30 June 2009, the colleague about whom the offensive remarks had been made spoke with Kevin Walsh, David Young and Chris Elliot. He told them that Mr Owen had not apologised to him and that if Mr Owen was not removed as a steward, he would go to the company and make an official complaint about the use of racist language. Other concerned members had also complained about Mr Owen's conduct. The three shop stewards decided to talk again to Mr Owen and emphasise the seriousness of the situation.
10. Mr Owen was invited to meet with Mr Walsh, Mr Young and Mr Elliot on 30 June 2009 in the office of the TGWU section. This meeting lasted some 10 minutes. Mr Young read out his note of the previous discussion for the benefit of Mr Young and Mr Elliot, who had not been present. Mr Owen was told that, as he was refusing to apologise, the matter might be reported to the company and he could face disciplinary action, which could result in his dismissal. Mr Owen confirmed that he would not apologise and asked if they were seeking his resignation. They replied that they were merely informing him of what might happen if he did not resign and their intention was to give him an opportunity to save himself from disciplinary action by the company. Mr Elliot commented that in the circumstances of this case, he would not be prepared to represent Mr Owen at any subsequent

disciplinary hearing arising out of these events. Mr Owen was told that he should decide what to do within the next few days.

11. On 3 July 2009 Mr Owen resigned from his position as a steward, but he remained as the Vice Chair of the 1925 branch.
12. On 24 July 2009 Mr Owen wrote to the Union's regional secretary, Mr Hart. He complained about the way his case had been handled and stated that he had had to resign "*because of trumped up charges brought against me by Union stewards without a proper investigation by his own committee*". He complained that he was unaware that the two meetings he had attended were to be formal meetings and stated that he had resigned under threat of losing his job. He commented that he had spoken to someone at regional office and had been told that the TGWU and Amicus sections were not yet one union and so he could have been offered representation.
13. On 4 August 2009 Mr Hart wrote to Mr Owen informing him that he had requested a report from the relevant full time officer and would respond further when this was to hand. In fact, Mr Hart did not respond substantively to Mr Owen for some five months, until his letter of 20 January 2010. In that letter Mr Hart commented that there were witnesses to the racial remark who had now produced statements and that the Union does not tolerate such behaviour towards members. Mr Hart summarised the situation. He stated that Mr Owen had been asked to consider his position and that Mr Owen had taken the decision to resign as a Union representative.
14. By a letter received by the Union on 3 March 2010, Mr Owen took issue with a number of points raised in Mr Hart's letter and complained that his treatment was in breach of the rules of the Union and proper procedures. Following reminder letters from Mr Owen on 13 April and 28 May, Mr Hart replied on 6 July. He again summarised the situation. He stated that Mr Owen had refused to apologise but that he had not been asked to resign as a steward. Mr Hart concluded that he had nothing further to add to his letter of 20 January.
15. This application was begun by an initial letter from Mr Owen dated 30 June 2010, followed by a registration of complaint form received on 13 July.

The Relevant Statutory Provisions

16. 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 the 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.

The Relevant Union Rules

17. The National Rules of the union which are relevant to this application are as follows:-

RULE 27. MEMBERSHIP DISCIPLINE

27.2 Disciplinary Hearings shall be organised and conducted under directions issued by the Executive Council. These directions ensure that the process is fair and conducted in accordance with the principles of natural justice.

27.3 A charge under this rule may be heard by a branch, Branch Committee (where so determined by the Branch), Regional Committee or the Executive Council. The Executive Council may delegate to a sub-committee of the Executive Council.

27.7 Appeals

1. A member shall have the right to appeal against any disciplinary sanctions.

Conclusions

Was the Application Made in Time?

18. By section 108A(6)(a) of the 1992 Act, any complaint of breach of rule must be made within six months starting with the day on which the breach is alleged to have taken place (the primary limitation period). The events about which Mr Owen complains occurred on 12 and 30 June 2009 and so the primary limitation periods expired on 11 and 29 December 2009 respectively. The earliest date upon which it can be argued that Mr Owen made his complaints to me is 30 June 2010. His complaints therefore fall outside the primary limitation period.
19. However, section 108A(6)(b) of the 1992 Act provides that an application can also be made if, within the primary limitation period, any internal complaints procedure of the Union is invoked to resolve the claim and the complaint is then made within six

months of either the date on which the procedure is concluded, or within one year of the procedure being invoked, whichever is the earlier (the extended limitation period).

20. Mr Owen argued that he invoked an internal complaints procedure of the Union by his letter to Mr Hart of 24 July 2009, which was within the primary limitation period, and that this procedure was not concluded until Mr Hart's letter of 6th July 2010. In these circumstances Mr Owen submitted that his registration of complaint form received on 13 July 2010 was in time.
21. For the Union, Miss Omambala, accepted that the Union had a relevant internal complaints procedure but argued that Mr Owen was unable to take advantage of section 108A(6)(b) of the 1992 Act for two reasons. First, she argued that Mr Owen's letter to Mr Hart of 27 July 2009 was a mere letter of protest and not an invocation by Mr Owen of a procedure to resolve the same claim that he later presented to the Certification Office. Counsel noted that the letter did not refer to a breach of any specific rule or call upon Mr Hart to reinstate him as a steward. Secondly, Miss Omambala submitted that Mr Owen had not invoked the internal complaints procedure as the procedure was in three stages and that, by raising his complaint with the Regional Secretary, Mr Owen had raised it improperly at the second of these stages. She argued that in order to invoke this procedure, Mr Owen was required to start at the first stage by taking his complaint up with his branch.
22. In response to the Union's arguments, Mr Owen stated that he was unsure about where to direct his complaint as he was confused about which rule book applied. He said that he had written to Mr Hart to obtain justice. Mr Owen stated that he was aware of the complaints procedure but gave different explanations for not having first raised his complaint with the branch. He said that he did not do so because it would involve submitting his complaint to some of the same people about whom he was complaining. He also said that he did not do so as he thought the branch would not be quorate as, in order to be quorate, it required the presence of himself as Vice Chair and that he could not both sit on the branch committee and be the complainant.
23. In my judgement, Mr Owen's letter to Mr Hart of 24 July 2009 did invoke the internal complaints procedure of the TGWU section of the Union. I accept Mr Owen's statement that in June 2009 he was confused as to the position under the rules which had taken effect on 1 May 2009 but had not been implemented at his workplace. By writing to Mr Hart Mr Owen took a step which was a part of the internal procedure and I find that in doing so he invoked that procedure. If Mr Owen did not enter the procedure at the appropriate stage, his error could have been corrected by Mr Hart's letter of 4 August 2009. Mr Hart did not correct this error but lead Mr Owen to believe that his complaint was being processed. I find that in doing so, Mr Hart accepted the complaint under the procedure. The Union's submissions in this regard are not attractive having regard not only to Mr Hart's failure to correct the alleged procedural error in August 2009 but also to the Union's failure to respond substantively to Mr Owen's complaint until January 2010 after the primary limitation period had expired. I further find that Mr Owen's letter to Mr Hart of 24 July was written to resolve his claim. In my judgement, such letters must be

read as a whole and in context. They must not be subjected to an exclusively or unduly legalistic analysis. On the other hand, a mere letter of protest is not the invocation of an internal complaints procedure to resolve the claim. Each case must be considered on its own facts. The essential question is whether, as a part of its internal complaints procedure, the Union has been called upon to enquire into the same or sufficiently similar issues to those which are later submitted to the Certification Office as a complaint. Applying this approach, Mr Owen's letter of 24 July is on the borderline but, on balance, I find that it was submitted for consideration under the Union's internal complaints procedure and that it was intended to resolve essentially the same matter that I am now called upon to resolve. Mr Owen refers to "charges", "without proper investigation" and to him not being aware that it was a "formal meeting". I find that in this letter Mr Owen was putting to Mr Hart a complaint that disciplinary action had been taken against him improperly. Mr Hart's reply of 20 January 2010 examines the facts and concludes that it was Mr Owen who took the decision to resign, effectively rejecting the complaint relating to "charges, proper investigation and formal meetings".

24. For the above reasons I find that Mr Owen's complaint of 13 July 2010 was brought within 6 months of the conclusion of the internal complaints procedure on either 20 January or 6 July 2010 and was therefore brought in time.

Complaint One

25. Mr Owen's first complaint is as follows:-

"That on or around 12 June 2009 the union breached its rule 27.3 in that a charge was brought against Mr Owen, which was not heard by a Branch Committee, Regional Committee or the Executive Council".

26. Rule 27.3 of the rules of the Union provides as follows:

"A charge under this rule may be heard by a Branch, Branch Committee (where so determined by the Branch), Regional Committee or the Executive Council. The Executive Council may delegate to a sub-committee of the Executive Council".

27. Mr Owen submitted that he was subjected to a disciplinary procedure and that the rules of the Union relating to discipline were not followed. He argued that the charge he faced of using racist language was not heard by his branch (or, for that matter, by his branch committee, regional committee or the Executive Council) but by three stewards, two of whom were not even from his section of the Union and thereby not entitled to attend meetings of his branch. He argued that the meeting on 12 July 2009 was a formal disciplinary hearing by virtue of the way it was conducted and by the fact that a record of the meeting was taken by Mr Young.
28. Ms Omambala, for the Union, submitted that the short discussion which took place on 12 June 2009 was clearly not a disciplinary hearing which engaged rule 27 of the rules of the Union. She argued that it was merely two stewards putting their concerns to Mr Owen. Ms Omambala stated that no charges of the sense contemplated by rule 27.3 were put to Mr Owen at the hearing or at any other time.

29. I accept the evidence of the Union as to the alleged meeting of 12 June 2009. I find that no charges in the sense envisaged by rule 27.3 were put to Mr Owen at this meeting or heard by the stewards who were present at it. I find that Mr Owen was not summoned to this alleged meeting, that it was not conducted as a disciplinary hearing and that such discussion as did occur lasted only about 3 or 4 minutes. In my judgement that discussion was, as the Union submitted, no more than two stewards expressing their concerns to someone whom they believed had acted badly. I find that the so-called meeting was not a disciplinary hearing which engaged rule 27 of the rules of the Union
30. For the above reasons I refuse to grant the declaration sought by Mr Owen that on or about 12 June 2009 the Union breached rule 27.3 of its rules in that a charge was allegedly brought against him which was not heard by a branch committee, regional committee or the Executive Council.

Complaint Two

31. Mr Owen's second complaint is as follows:-

“That on or around 30 June 2009 the union breached its rule 27.2 in that Mr Owen was asked to resign at a meeting on that date, which amounted to a disciplinary hearing. The hearing was not organised or conducted under directions issued by the Executive Council”.

32. Rule 27.2 of the rules of the Union provides as follows:

“Disciplinary Hearings shall be organised and conducted under directions issued by the Executive Council. These directions ensure that the process is fair and conducted in accordance with the principles of natural justice”.

33. Mr Owen submitted that the meeting on 30 June 2009 between himself and Mr Walsh, Mr Young and Mr Elliot was a disciplinary hearing and that it had not been organised and conducted under the appropriate directions issued for this purpose by the Executive Council. He argued that it was a disciplinary hearing as he had been summoned to the meeting, that the notes of the previous meeting had been read out and that it was conducted with a degree of formality.
34. Ms Omambala for the Union, submitted that on the evidence of the Union, the meeting of 30 June 2009 was clearly not a disciplinary hearing. She argued that the factors referred to by Mr Owen were not sufficient to turn an informal meeting, called to inform Mr Owen of the seriousness of his position, into a disciplinary hearing. In counsel's submission, the meeting that occurred on the 30 June did not engage rule 27 of the rules of the Union.
35. I accept the evidence of the Union as to the meeting of 30 June 2009. In my judgement, this meeting was, as submitted by the Union, no more than three stewards passing information to Mr Owen and expressing their concerns about a situation that was becoming increasingly serious for him as a result of his refusal to apologise for alleged racist remarks. I find that this meeting was not a disciplinary hearing which engaged rule 27 of the rules of the Union.

36. For the above reasons, I refuse to grant the declaration sought by Mr Owen that on or about 30 June 2009, the Union breached rule 27.2 of its rules in that he was allegedly then asked to resign at a meeting which amounted to a disciplinary hearing, that hearing not being organised or conducted under directions issued by the Executive Council.

Complaint Three

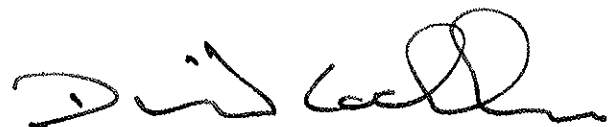
37. Mr Owen's third complaint is as follows:-

“That on or around 30 June 2009 the union breached its rule 27.7.1 in that a disciplinary sanction was imposed on Mr Owen which he was not given the right to appeal against. The disciplinary sanction was that Mr Owen was forced to resign”.

38. Rule 27.7.1 of the rules of the Union provides as follows:

“A member shall have the right to appeal against any disciplinary sanctions”

39. Mr Owen submitted that the ultimatum he was given at the meeting on 30 June 2009 was to resign as a steward or probably face disciplinary action by the company. He argued that this amounted to a disciplinary sanction within the meaning of rule 27.7.1 and that he was not given the right to appeal against that disciplinary sanction.
40. Ms Omambala for the Union submitted that the Union did not impose any disciplinary sanction on Mr Owen. She argued that the Union did not require Mr Owen to resign, but that he chose to do so. In these circumstances, Ms Omambala maintained that rule 27 of the rules of the Union was not engaged by the events in question.
41. I have already found that the meeting of the 30 June 2009 was not a disciplinary hearing which engaged rule 27 of the rules of the Union. Accordingly, the information and advice given to Mr Owen on that occasion was not a disciplinary sanction from which he had a right of appeal under rule 27.7.1. In my judgement, therefore, Mr Owen was not denied any right to appeal against a disciplinary sanction.
42. For the above reasons, I refuse to grant the declaration sought by Mr Owen that on or about 30 June 2009 the Union breached rule 27.7.1 of its rules in that a disciplinary sanction was allegedly imposed on him, against which he was not given the right to appeal; the disciplinary sanction being that Mr Owen was forced to resign.



David Cockburn
The Certification Officer