

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

**DAVID A WARRINGTON**

**- v -**

**MANUFACTURING, SCIENCE AND FINANCE UNION**

**Date of Decision:**

**30 November**

**2001**

**DECISION**

1. The applicant's complaint under S108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 that there had been a breach of a relevant rule of the Manufacturing, Science and Finance Union is upheld.
2. A declaration is made that there was a breach of Rule 30 of the rules of the Manufacturing, Science and Finance Union, in that unauthorised written material was circulated in support of candidates at the time of the National Executive Committee elections in 2000.
3. It is inappropriate that an enforcement order is made.

**REASONS**

4. Mr Warrington is a member of the Manufacturing, Science and Finance Union ("MSF" or "the union"). By an application received by me on 19 March 2001 Mr Warrington raised a number of complaints against his union. This is the only complaint which remains

outstanding, the others having been dealt with by way of rejection, withdrawal or having been adjudicated upon. In this complaint Mr Warrington alleges a breach of Rule 30 of the rules of the union which prohibits the circulation of written material of any kind in support of a candidate in any national election within the union without the approval of the National Executive Committee (“the NEC”).

5. At Mr Warrington’s request an oral hearing was held. At the hearing Mr Warrington represented himself and called no witnesses. The union was represented by Mr Lyons, its General Secretary, who was accompanied by Mr McKenna, a senior official who acted as the union’s returning officer in the relevant election. A bundle of relevant documents prepared by my Office had been provided to the parties in advance of the hearing. Mr Lyons provided one additional document during the course of the hearing to explain the present position regarding the proposed reform of the rules on elections.

### **Findings of Fact**

6. Having heard the parties and considered their written representations I find the following facts.
  - 6.1 An election was held for membership of the NEC of MSF in 2000.
  - 6.2 Rule 30 of the rules of MSF provides, “No written material of any kind may be circulated in support of a candidate in any national election within the Union without the approval of the NEC”.
  - 6.3 An unsigned circular dated March 2000 was addressed to “All MSF staff members West Midlands Region” and enclosed a glossy four page leaflet supporting the candidature of four named individuals who were seeking election to the NEC. The circular was on MSF headed paper. The leaflet was headed “MSF Election News” and carried the emblem “MSF first”. Neither the circular nor the leaflet was signed or carried any indication of the name of the author(s) or publisher(s).

- 6.4 The applicant received a copy of this circular and leaflet on 22 March 2000, and immediately complained to Mr McKenna, in his role as returning officer. Mr McKenna responded to the applicant by letter dated 4 April advising him that the matter would be investigated and that he would write again to the applicant in due course.
- 6.5 The union received approximately twelve complaints from branches or individuals in connection with the circulation of unsolicited and anonymous material in support of candidates contesting the West, East and Joint East/West Midland Regional seats in the NEC elections. All the complaints were investigated individually and the candidates, supported by such material, were interviewed. Each of those candidates denied any involvement in or responsibility for the material.
- 6.6 The applicant maintained that it was overwhelmingly probable that the four individuals whose candidature had been supported in the written material were responsible for its production and/or circulation. In support of this he contended that the circular was on MSF headed paper, that the material had been distributed by post using MSF mailing lists, that the references in the text to “our candidates” indicated the candidates involvement, that the leaflet reproduced the candidates own election statements prior to their publication by Electoral Reform Balloting Services and that the leaflet also reproduced photographs of the candidates that could only have been obtained with their permission.
- 6.7 Mr Lyons, for the union, gave evidence that the circulation of material in support of candidates had been a problem for the union since the law was amended to require postal voting. He said that the distribution of anonymous material was widespread and not restricted to one geographical area or interest group within the union. All complaints were investigated but that, without direct evidence of a member’s involvement, it was difficult to take action. He was, however, aware of one complaint which was pursued against an individual who had published canvassing material on his personal website, thereby identifying himself. He commented that the circumstantial evidence provided by the applicant of the candidates involvement was far from conclusive as headed paper and mailing lists are widely available within the union and it is common sense that candidates

would not treat their election materials as being confidential.

- 6.8 The result of the investigations into the complaints regarding the NEC elections was considered by the General Purposes and Finance Committee (“the GPFC”) and subsequently, on 22 July 2000, by the NEC. The NEC endorsed a report in the following terms:

*“ .... to uphold the complaints in respect of the circulation of unsolicited and anonymous material including the use of the MSF Logo as contrary to Rule 30 (Canvassing) and to condemn such attacks on an activity as unacceptable behaviour .... That in view of the above and on the basis of similar problems that had arisen in previous NEC elections to establish an “NEC Commission” to review all aspects of NEC Elections, aimed at improving all aspects of the Nomination procedures; Candidate Addresses; and all aspects of the ballot procedure ....”*

By this time the election had been concluded and the four candidates supported in the election circular had been elected. They were subsequently excluded from that part of the NEC meeting of 22 July dealing with this issue.

- 6.9 Notification of this decision was disseminated to union offices and branches in the usual way but no letter was sent to Mr Warrington advising him of the decision, despite the indication that he would be so advised in the letter from Mr McKenna of 4 June.
- 6.10 The Electoral Commission set up by the NEC looked at the conduct of elections within MSF and the way in which other unions had attempted to deal with similar problems. During 2001, however, MSF members voted to merge with the Amalgamated Engineering and Electrical Union, arising out of which a Joint Rules Commission was established by both unions to consider the proposed rules of the new merged union. At a meeting on 11 October 2001 the GPFC of MSF considered a preliminary report of its Electoral Commission and agreed that the issues it had raised should be reported to the Joint Rules Commission to assist in the drafting of rules for the new union.

## **Submissions**

7. The applicant claimed that there was a clear breach of Rule 30 and that I should therefore make a declaration to that effect. He did not in all the circumstances request that I make an enforcement order.
8. The union accepted that there had been a breach of Rule 30 but considered that it was inappropriate for a declaration to be granted, having regard to the fact that in July 2000 the NEC had accepted that there had been a breach of Rule 30 and had instituted an Electoral Commission to deal with the underlying problem.

### **The Law**

9. The relevant statutory provisions relating to my powers are as follows:-

- “S108A.-(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) .....*
  - (c) .....*
  - (d) .....*
  - (e) .....*
- S108B.-(2) If he accepts an application under S108A the Certification Officer -*
- (a) .....*
  - (b) .....*
  - (c) .....*
  - (d) may make or refuse the declaration asked for, and*
  - (e) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.*
- (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.”*

### **Conclusions**

10. It is agreed between the parties that there has been a breach of Rule 30 of the rules of MSF by the circulation of written material in support of candidates in a national election without the approval of the NEC. Whenever an applicant establishes to my satisfaction that there has been a breach of a relevant rule a declaration to that effect will normally be made. Acceptance by the union that a breach has occurred will not in itself be grounds for not granting that declaration. On the facts of this case, having regard to the evidence of widespread abuse of Rule 30, it is plainly appropriate that a declaration is made and I accordingly do so.
11. The applicant was asked in correspondence prior to the hearing what remedy he was seeking in light of the NEC's acceptance that there had been a breach of Rule 30. He did not respond to that question but nevertheless requested an oral hearing, which request I am required to grant. At the oral hearing the applicant stated for the first time that he was not seeking an enforcement order. Having regard to the nature of the breach, the steps taken by the union in establishing an Election Commission and the union's proposed merger, I consider that it would be inappropriate for an enforcement order to be made.

### **Observations**

12. Each party has a statutory right to require there to be a hearing. However a hearing is normally only appropriate when there are issues which remain in dispute. Where it is agreed that there has been a breach of a relevant rule and there is no dispute as to the appropriate remedy, it is preferable for the parties to consent to the matter being dealt with without the expense and inconvenience to them both of a formal hearing.
13. By S256(3) of the Trade Union and Labour Relations (Consolidation) Act 1992, the Secretary of State may make a scheme for the payment by the Certification Officer of expenses incurred by applicants in attending a hearing. Under the terms of the scheme presently in force all payments are at the discretion of the Certification Officer. Applicants should therefore be aware that I will consider whether expenses will be allowed in cases in which there are no relevant issues in dispute but in which they nevertheless require a

hearing. On the facts of this case, however, having regard to the union's failure to advise the applicant of the outcome of their investigations into his complaint, as they had led him to believe they would, and to the sense of grievance engendered by this omission, I do not propose to disallow the applicant's expenses.

D COCKBURN  
Certification Officer