

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

**IN THE MATTER OF A COMPLAINT AGAINST
THE COMMUNICATION WORKERS UNION**

APPLICANT: MR M P HUGHES

Date of Decision:

4 May 2001

DECISION

- 1.1 Under section 108A(1) of the Trade Union and Labour Relations(Consolidation)Act 1992 (as amended) (“ the Act”) any member of a trade union aggrieved by an alleged breach of the union’s rules relating to any of the matters mentioned in subsection(2) may apply to me for a declaration to that effect. The matters mentioned in subsection (2) include “disciplinary proceedings by the union(including expulsion)” If after giving the member and the union an opportunity to be heard, I consider a breach has occurred I may make such order for remedying the breach as I think just in the circumstances.

- 1.2 On 5th May 2000 I received an application from Mr Hughes, a member of the Communication Workers Union(“the CWU”), complaining of a breach of rule relating to the operation of the union’s disciplinary procedures. The complaint was that:

In invoking disciplinary action against Mr Hughes under local branch rule 5.1 the union had not complied with, and thus breached, its National rule 14.1

1.3 I made enquiries of Mr Hughes and the union, after which I was ready to make a decision but, as required by section 108B(2)(6) of the Act, I offered the parties the opportunity of a formal hearing. Both parties agreed that such a hearing was unnecessary.

1.4 Due to an administrative oversight in my Office this complaint was omitted from the list of 11 complaints made by Mr Hughes and Mr Higgins, and decided by me on 2 February 2001.

Decision

1.5 For the reasons set out below I refuse to make the declaration sought.

Requirements of the Legislation

1.6 It may be helpful if I set out the relevant statutory requirements of the Act to which I have referred in this decision. The relevant statutory requirements are as follows:-

“Section 108A(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 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 or of any decision-making meeting;*
- (e) *such other matters as may be specified in an order made by the Secretary of State.”*

The Complaint: that, in invoking disciplinary action against Mr Hughes under local branch rule 5.1 the union had not complied with, and had thus breached, National rule 14.1

The Applicant's case

2.1 I set out below the relevant sections of CWU rules which the applicant claimed were involved in the alleged breach by the union.

Rule 5.1 of the CWU South Yorkshire Branch states that:

“Officers absent from three meetings (officer, committee and branch combined) will be notified to the Branch Committee. The officer concerned will be given the opportunity to explain his/her absence to the Committee. The Committee will have the discretion to either take the issue to the Branch or impose the following penalties:-

- i) *Removal of facilities.*

ii) Suspension from office up to the next AGM. ”

CWU National Rule 14 .1 states that:

“Matters of a disciplinary nature affecting the individual member or members of the union shall only be dealt with in accordance with the provisions of this rule.”

National rule 14.1 sets out a series of offences, and the procedures to be followed in determining them - including appeal and penalties.

- 2.2 The background of the applicant’s case giving rise to the complaint was that the Branch Chairman of the CWU South Yorkshire Branch(“the Branch”) wrote to Mr Hughes on 6 August 1999 notifying him that his record of attendance at Committee, Branch and Officers meetings was ‘in serious breach of the branch rules.’ In so far as branch rule 5.1(see para 2.1) states that ‘Officers absent from 3 meetings(Officer, Committee and Branch combined)will be notified to the branch committee,’ Mr Hughes had allegedly recorded seven absences for all meetings and *prima facie*, had become liable to disciplinary proceedings under branch rule 5.1. The Chairman said that Mr Hughes attendance record would be a matter for a committee report and Mr Hughes would have the opportunity, under branch rules, to explain his absences to the Committee. A Committee meeting on 12 August 1999, at which Mr Hughes neither attended nor sent an oral address, decided to suspend Mr Hughes from Office ‘up to the next AGM’ in accordance with the provisions of branch rule 5.1.

- 2.3 Subsequently, Mr Hughes wrote to Roger Pheasey(chairman of the branch), Bill McClory (CWU Assistant Secretary), Eric Lovett (CWU National Organising Secretary), and to Derek Hodgson(the union's General Secretary), appealing against the branch decision to suspend him from Office until the next AGM. In the same correspondence, Mr Hughes questioned the right of the branch to suspend him under branch rule 5.1, asserting that the matter should have properly been dealt with under National rule 14.1 relating to discipline, (see para 2.1) . There being no reply from the General Secretary to Mr Hughes' correspondence, Mr Hughes complained to me on 3 May 2000 that his suspension from Office under branch rule 5.1 was in breach of National rule 14.1 which, he claimed, covered all matters of discipline involving union members.
- 2.4 The substance of Mr Hughes argument was that, in spite of the existence of branch rule 5.1 (about the attendance of officers at meetings), any decision by the union involving the disciplining of individual members should be dealt with at national level under rule 14. Mr Hughes contended that rule 14.1 was quite unequivocal in stating that:

“Matters of a disciplinary nature affecting an individual member or members of the union shall only be dealt with in accordance with the provisions of this Rule.”

Moreover, rule 14.2 he claimed, reinforced this, by calling for matters of disciplinary action to be determined by a National Discipline Committee of three members appointed by the National Executive Council and in providing for appeals against decisions of the National Discipline Committee to be heard by an Independent Review body (rule 14.3). In addition to this, rule 4.3.1.1, he said, stated that any special bye-laws or standing orders adopted by a branch must not be at variance with the Model Bye-Laws and Standing

Orders approved by the National Executive Council ‘or these rules shall be void.’ The bye-laws adopted by the branch to deal with this aspect of discipline were, Mr Hughes stated, at variance with the rules approved by the National Executive Council. He went on to say that the branch had also acted in contravention of National rule 4.3.1.6 in issuing instructions about disciplinary matters because a branch may not:

“Instruct, authorise or permit an officer of the branch to do any act which is contrary to these Rules or to refrain from doing any act which is required under these Rules to perform.”

- 2.5 Mr Hughes concluded from this that branch rule 5.1 was in conflict with, and had breached National rule 14.1(see para 2.1) and that national rules must prevail over branch rules in matters of the disciplining of individual members.

The Union’s response

- 2.6 The union responded by asserting that there was no conflict between branch rule 5.1 and National rule 14.1

- 2.7 With regard to the alleged conflict between National rule 14.1 and Branch rule 5.1 raised by Mr Hughes, the union referred to National rule 4.4.1.6, which states that:

“All proceedings of Branches and sections and all business conducted by them shall be governed by the Rules of the union and any bye-laws properly passed in accordance with these Rules and approved by the National Executive Council. Anything done in variance or conflict therewith shall be void unless subsequently rendered valid by ratification by the National Executive Council.”

The purpose of National rule 4.4.1.6, it was stated, was to ensure that branch rules were consistent with the National rules of the union. In practice, I was informed, only those branch rules that appeared contrary to the national rules were referred to the Organisation and Training Committee. Those that did conform were simply approved by the National Organising Secretary. In the case of the South Yorkshire Branch bye-laws, the union stated that they were ‘approved by the NEC and its standing Organisation and Training Committee in September 1998, following a detailed investigation by national officers of the problems experienced within the branch’. The branch rules were, I was informed, subsequently amended at a branch meeting on 17 January 1999. The Organisation and Training Committee’s approval of branch rules was limited to matters affecting the attendance of members at Branch, Committee or Sub-Committee meetings in order to confine matters of purely local concern to the Branch. Otherwise, each and every instance of discipline including non-attendance at branch meetings would, the union argued, have to be dealt with by the General Secretary and the National Discipline Committee under National rule 14.1. There were, the union said, more than 300 CWU branches and this would simply be impractical and result in administrative inefficiency. Thus, it was the union’s view, that National rule 4.4.1.6 had devolved power to the South Yorkshire branch to deal with matters of non-attendance at meetings as a local disciplinary issue, in this case, under local branch rule 5.1. The union argued, therefore, that the branch rule 5.1 was not at variance with the national rules in the manner suggested by Mr Hughes.

- 2.8 The union averred that the matter of attendance was specifically referred to by the NEC’s Special Investigation into the affairs of the South Yorkshire branch during 1998 and that the investigation was necessitated by the very uneasy state of relations in the branch. The investigation had produced a report with recommendations and as a result, the branch was

instructed to make amendments to its local rules. In particular, the report emphasised that:

“(g) The recognised forum for discussing office organisation and airing grievances shall be Officers' meetings. These meetings shall be scheduled and Branch Rules 5.1 amended to encourage attendance.

(j) The Branch Committee will, with the assistance of a facilitator from CWU Head Office if necessary, meet to draw up plans for the implementation of recommendations a-h above. The recommendations will take the form of amendments to Branch Rules which shall be placed before a special general meeting of the Branch (as defined under Branch bylaw 7) to take place no later than 31 December 1998. The revised Branch Rule Book, which must be passed to the NEC for ratification, will not be endorsed unless the NEC is satisfied that recommendations a-h have been appropriately incorporated into it.”

The recommendations were, the union said, endorsed by the Organisation and Training Committee at meetings on 3rd and 24th September 1998, prior to their adoption by the National Executive Committee meeting in September 1998. The union therefore had no doubt that the matter of disciplining branch members in respect of failure to attend the requisite number of meetings under branch rule 5.1 was properly a local matter and not for referral to the General Secretary under National rule 14.1

- 2.9 The union further stated that Mr Hughes had had two opportunities to raise his concerns about the apparent conflict between national rules and local branch rules with regard to the disciplining of individual members. The union said that two Rules Revision meetings

had been held after Mr Hughes had raised this complaint to which he was entitled to submit motions to change the rules. Mr Hughes did not do so, nor did he raise the matter at branch meetings or at the AGM, as far as the union were aware.

- 2.10 The union was, it was stated, therefore convinced that its action in disciplining Mr Hughes under local branch rule 5.1 was justified and procedurally within rule. Every effort was made, the union stated, to schedule meetings to suit the wishes of Branch Officer and Committee members, by means of a questionnaire, returned by Mr Hughes and the other officers. Mr Hughes could not argue, the union stated, that meetings had been scheduled at times which were inconvenient to him. Moreover, the Branch Chairman wrote to Branch Officers on 5th May 1999 giving details of their attendance record and warning them of the consequences of missing three or more meetings as set out in branch rule 5.1. Mr Hughes was a recipient of such a letter. He apparently made no representations about the course of action laid down in the Branch Chairman's letter and the union believe that Mr Hughes must have been aware of the consequences of the failure to attend meetings or to provide a full explanation for his non-attendances.
- 2.11 The union denied Mr Hughes' allegation that it had acted inconsistently by applying the provisions of branch rule 5.1 solely to him. Another Committee member, the union stated, had been in breach of rule 5.1 but unlike Mr Hughes, had been able to provide the union with a satisfactory explanation for unsatisfactory attendance. There were also Branch Officers whose record of attendance was in question but who were able to justify their absences from meetings to the Branch Chairman. Mr Hughes was alone in not doing so and was, therefore, the union stated, the only individual officer to be suspended under branch rule 5.1.

2.12 The union therefore submitted to me that the South Yorkshire Branch of the CWU had been justified in its suspension of Mr Hughes until the next AGM and that the suspension was within the authority allowed under branch rule 5.1

Reasons for my decision

2.13 Much has been said in correspondence about the accuracy of the South Yorkshire branch records relating to the attendance of individual officers at meetings and about the consistency of Mr Hughes' treatment by the Branch. I am not required to comment on this or on Mr Hughes attendance record. My decision is solely concerned with Mr Hughes' complaint to me that the disciplinary action taken against him by his union under branch rule 5.1 did not comply with, and had thus breached, National rule 14.1.

I am not persuaded that this is the case, for the following reasons.

2.14 On the face of it, National rule 14.1 seems to be quite clear. It states that all matters of a disciplinary nature '*affecting an individual member or members of the union shall only be dealt with in accordance with the provisions of this rule.*' Rule 14.2 goes on to say that disciplinary matters have to be determined by a National Discipline Committee. Mr Hughes' suspension from Office is a disciplinary matter. It would appear from this that South Yorkshire branch rule 5.1 is in conflict with National Rule 14.1 in that the South Yorkshire Branch dealt with Mr Hughes' case as a local issue under local branch rule 5.1.

2.15 On this basis, if one had regard only to National Rule 14.1, Mr Hughes would have been improperly disciplined by his branch, particularly as where branch rules and national rules conflict it is usual for national rules to prevail.

2.16 I do not though believe that it is the intended meaning or purpose of the union's rules that every case of disciplinary action at every level within the union had, in the first instance at least, to be determined at national level. It would be totally impracticable to run a union of the size and complexity of the CWU on that basis.

2.17 The issue can in my view be resolved conclusively by reference to National rule 4.4.1.6. This rule interposes between National rule 14.1 and local rule 5.1 in providing that Branch rules/bye-laws which appear to be at variance with national rules must be approved by the union's National Executive Council. I accept the union's statement and saw evidence that the South Yorkshire bye-laws in respect of local rule 5.1 were approved by the NEC and the Organisation and Training Committee in September 1998. I therefore agree with the union's view that National rule 4.4.1.6 effectively devolved powers from the national executive to the branch to deal exclusively with matters of attendance at officers' meetings and any subsequent disciplinary issues arising therefrom.

2.18 For the above reasons, I dismiss Mr Hughes' complaint.

E G WHYBREW

Certification Officer