

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

**IN THE MATTER OF COMPLAINTS AGAINST
UNISON - THE PUBLIC SERVICE UNION**

APPLICANT MS F RYAN

Date of Decisions:

4 April 2001

DECISIONS

- 1.1 Under section 108A(1) of Part I of the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended) (“the 1992 Act”) 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 me for a declaration to that effect.
- 1.2 Section 108B of the Act empowers me to make such enquiries as I think fit and, after giving the applicant and the union an opportunity to be heard, to make or refuse to make the declaration asked for. Whether or not I make the declaration sought, I am required to give the reasons for my decision in writing.
- 1.3 Where I make a declaration under section 108B I am required, unless I consider to do so would be inappropriate, to make an enforcement order on the union. My enforcement order is required to impose 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.

1.4 On 6 November 2000, I received an application from Ms F Ryan, a member of UNISON - The Public Service Union (UNISON, "the union"), complaining that the union had breached its rules in relation to disciplinary action taken against her. She contested that in being excluded from meetings she was entitled to attend, she had been subjected to disciplinary action which had been applied to her in breach of National Rule C7.4 and National Rule I.

1.5 In her application, Ms Ryan also submitted complaints that the decisions of the Birmingham Branch Officers Group relating to both the cancellation of a Branch meeting, and Branch expenditure had breached UNISON Rules at Branch level (Birmingham Branch Rules 16.6 and 18.9), and National level (National Rule G4.3.1.).

1.6 In correspondence with my Office, Ms Ryan set out her complaints, that:

- (i) *in excluding her from meetings that she was entitled to attend, she had been subjected to disciplinary action in breach of National Union Rule C7.4 ;*
- (ii) *the Birmingham Branch Officers Group, in taking a decision to exclude her from*

meetings, breached National Rule I by failing to apply its provisions;

(iii) in taking the decision to cancel the Branch Committee meeting in August 2000, the Birmingham Branch Officers Group breached Branch Rule 16.6 which provides that the Branch Committee meet monthly; and

(iv) the Birmingham Branch Officers Group, in making decisions on matters which were not emergencies (such as payment of taxi fares for delegates to attend National Delegates Conference), breached both Birmingham Branch Rule 18.9 and National Union Rule G4.3.1;

In her original correspondence, Ms Ryan listed separately, complaints of breach of rules as referred to in complaint (iv). As the substance of those complaints was essentially the same, they were itemised as one complaint for the purposes of the hearing.

1.7 The allegations were accepted by me as complaints under section 108A (1) of the 1992 Act that UNISON had breached its rules relating to matters mentioned in section 108A (2) (b) and (d), namely: -

“(b) disciplinary proceedings by the union (including expulsion)” (complaints (i) and (ii)), and

“(d) the constitution or proceedings of any executive committee or of any decision-making meeting” (complaints (iii) and (iv)).

1.8 I investigated the complaints in correspondence and, on 6 March 2001, held a formal

hearing of argument on the complaints. The union was represented by Mr B Langstaff (Counsel), and, called as witness, Mr A Bickle (UNISON, Chairman, Birmingham Branch). Ms V Phillips (of Thompsons, Solicitors) and Mr C Remington (UNISON, Head of Constitutional Matters), Mr A Rabaiotti and Mr F Buonaguro (UNISON, Regional Officers, West Midlands), attended in support of the defence. In presenting her case, Ms Ryan called, as witness, Ms U O'Brien (Treasurer, UNISON Birmingham Branch).

Declaration and Order

1.9 After careful consideration of the documents, evidence and arguments put to me, the union's rule book and the relevant legislation:

“I declare that on 27 July 2000, UNISON Birmingham Branch Officers' Group in excluding Ms Ryan from Branch Officer and Branch Committee meetings breached National Rule C7.4 and I 8, and Birmingham Branch Code of Conduct paragraph 4, in that the union applied the provisions of disciplinary action against Ms Ryan when no disciplinary action in accordance with union rule had been taken against her. (Complaints i and ii, as set out in paragraph 1.6 above).

I also declare that UNISON Birmingham Branch Officers' Group was in breach of National Rule G4.3.1 and Birmingham Branch Rule 18.9 in that the Branch Officers' Group utilised the 'emergency' provision of Branch Rule 18.9 to reimburse taxi fares when no emergency existed for it to do so, and that therefore National Rule G4.3.1 was also breached (complaint iv, as set out in paragraph 1.6

above)”

The reasons for my decisions are set out below.

1.10 I do not propose to make an enforcement order in respect of the above breaches.

1.11 Also for the reasons set out below, I refuse to make the declaration sought in respect of the other alleged breach of union rule.

Requirements of the Legislation and the relevant union rule.

1.12 It may be helpful, at this point, if I set out the relevant statutory requirements of the Act to which I have referred in this decision and the union rules which have a bearing on this application. The relevant statutory requirements are as follows:

“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)

(b) disciplinary proceedings by the union (including expulsion);

(c)

(d) the constitution or proceedings of its executive committee or of any

decision-making meeting.

1.13 In referring to UNISON's Rules, throughout this decision I have referred to the UNISON Rule book, as amended at the 2000 Conference.

1.14 The relevant union rules relating to the union's disciplinary procedure are found under National Rule C7.4 and National Rule I of the UNISON Rule book. Birmingham Branch Code of Conduct, Paragraph 4 is also relevant.

1.15 Under the Rule heading "SUSPENSION", National Rule C7.4 provides:

"The National Executive Council shall have the power in exceptional circumstances to suspend a member from office for a period of not more than 60 days (unless such a period is extended by agreement between the parties) if the member faces disciplinary charges under Rule I and the National Executive Council considers it appropriate in the interests of her or his branch or of the Union generally that she/he should be suspended until the charges are determined."

1.16 National Rule I sets out the union rules governing Disciplinary action. National Rule I 8 provides:

"Where a disciplinary charge is proved against a member, any of the following penalties may be imposed:

By the Branch

(1)

(2) debarring the member from attending any branch meeting for a period not exceeding 24 months;

(3)”

1.17 Birmingham Branch Code of Conduct, Paragraph 4 provides that:

“The Chair shall have the authority to remove any UNISON steward, activist or member in breach of this Code from the meeting or premises where the breach occurs.

Further, the member, steward, or activist may be subject to other Branch or National processes or procedures.”

1.18 The relevant union rules relating to the proceedings of its executive committee or of any decision-making meeting, relevant to complaints (iii) and (iv) listed in paragraph 1.6 above, are found under National Rules G 2.3, G4.3.1; Birmingham Branch Rules 16.6 , 18.9 and 22.1. Birmingham Branch Code of Conduct Paragraphs 3.1 and 3.2 are also relevant.

1.19 National Rule G2.3 provides that:

“The Branch Committee shall meet as necessary”.

1.20 National Rule G4.3.1 provides that:

The Branch Treasurer shall:

.1 “conduct the branch’s financial business and keep accounts in accordance with the rules

.2”

1.21 Birmingham Branch Rule 2 provides that:

CONSTITUTION

“2,. (a) The Branch Rules will be in accordance with the National Rules, decisions of the National Delegate Conference and the NEC.

(b)”.

1.22 Birmingham Branch Rule 16.6 provides that:

The Functions of the Branch Committee shall be:

“To meet monthly”

1.23 Birmingham Branch Rule 18.9 provides that:

“.....the Branch Officers Group (which) shall be authorised to deal with emergency matters arising between meetings of the Branch Committee and deal with matters referred to it by the Branch Committee”.

1.24 Birmingham Branch Rule 22.1 provides that:

“Branch expenses can be claimed by Section Officers, Branch Officers and Stewards and appropriate members for expenses incurred while undertaking work for the Branch in attending meetings, courses, conferences and other valid expenses approved, in advance, by the Branch Committee.”

1.25 Birmingham Branch Code of Conduct, paragraph 3.1 provides that:

“The Branch Officials will:

- Give adequate notice of meetings*
- Ensure relevant members, stewards, officers, delegates etc are invited to submit items for the agenda where appropriate.*
- Ensure invitations go to all relevant members, stewards, officers, delegates etc.*
- Hold meetings at a time and place that does not automatically exclude individuals or groups of individuals*
-*
- Ensure compliance of the relevant quorum”.*

1.26 Birmingham Branch Code of Conduct, paragraph 3.2 (Conduct in meetings) provides that:

“- Listen to what others have to say and avoid being dismissive of their contribution.

- Refrain from personal attacks.*
- Allow speakers to continue uninterrupted.*
- Give due credit to other members’ points of view.*

- *Speak concisely and do not dominate the discussion.*
- *Allow and encourage all who want to contribute to do so.*
- *Do not use language that is racist, sexist, disablist, anti lesbian, anti gay or ageist.*
- *When representing a work group, report accurately their view.*
- *Respect the Chairperson's instructions to maintain the above requirements".*

1.27 That then is the background, relevant legislation and union rules. I now set out the facts and arguments put by the parties and the reasons for my decisions. I have endeavoured to record the basis and thrust of the issues giving rise to each complaint.

The Complaints were that UNISON had breached its rules in respect of five matters.

These were:

- i) her exclusion from meetings she was entitled to attend had subjected Ms Ryan to disciplinary action;**
- ii) the decision of the Birmingham Branch Officers Group to exclude Ms Ryan from meetings, ignored the provisions of a National Rule;**
- iii) the cancellation of a Branch Meeting by the Branch Officers Group;**
- iv) and (v) decisions of the Branch Officers Group on matters not confirmed as emergencies.**

and that these actions were contrary to UNISON Rule.

THE COMPLAINTS

Complaints (i) and (ii)

- (i) in excluding her from meetings that she was entitled to attend, she had been subjected to disciplinary action in breach of National Union Rule C7.4 ;*

- (ii) the Birmingham Branch Officers Group, in taking a decision to exclude her from meetings, breached National Rule I by failing to apply its provisions;*

Facts

- 2.1 On 27 July 2000, a letter was sent to Ms Ryan, in the name of five Officers of the local (Birmingham) Branch, advising her that she was excluded from two Branch Officers' Group meetings and a Branch Committee meeting. Subsequently, when Ms Ryan attempted to attend a meeting of the Branch Officers' Group on 2 August 2000, she was advised by Mr Bickle (Branch Officer, Chair), that she had been excluded from that meeting, the meeting scheduled for 16 August 2000, and the Branch Committee meeting scheduled for September 2000.

- 2.2 The union maintained that a letter to this effect had been sent to her and that the grounds for the exclusion were to reinforce the provisions of the local Code of Conduct.

The Applicant's Case

- 2.3 In correspondence with my Office, Ms Ryan maintained that the action taken by the Branch Officers in excluding her from meetings that she was entitled to attend was disciplinary action against her. Ms Ryan maintained that the original letter had never

reached her and that she only received a copy of it when she had arrived at the meeting scheduled for 2 August. On the same day, Ms Ryan wrote to the five Birmingham Branch Officers, the signatories of the letter of 27 July 2000, to query the legality under UNISON Rules of the action undertaken by those Branch Officers in deciding to exclude her from meetings.

- 2.4 Ms Ryan contended that action to suspend a member from office could only be taken, in exceptional circumstances, by the National Executive Council (NEC), provided a member faced disciplinary charges, in accordance with National Rule I. The Birmingham Branch Officers had decided to exclude her from meetings even though no disciplinary charges under Rule I had been brought. The Branch had, in effect, taken action without regard to National Rule C.7.4 and National Rule I.

The Union's Response

- 2.5 In correspondence with my Office, UNISON cited the provisions of the local Code of Conduct as justification for the action to exclude Ms Ryan from meetings. The Code provides the guidelines and basis on which meetings should take place. The union argued that Ms Ryan's behaviour at meetings had been contrary to the provisions of the Code, but that action taken to exclude her from meetings was not one of discipline. The union further argued that I did not have jurisdiction under Section 108 2 (b) to hear the complaint because Ms Ryan did not face disciplinary charges, no disciplinary penalty was imposed as such and the motive was not to punish.
- 2.6 In response to Mr Langstaff's questioning, Ms Ryan affirmed her belief that the action to exclude her from meetings had been contrary to National Rule C7.4 and National Rule I.

Mr Langstaff argued that there had been no breach of these rules because the action taken against Ms Ryan, arising from her behaviour at meetings had been in accordance the local Code of Conduct, and had been taken to ensure that the Branch functioned within the requirements of that Code.

- 2.7 Mr Langstaff further argued that the Chair felt that the action he had taken was necessary to ensure the proper conduct of business in accordance with the Branch Code of Conduct. The Code had been drawn up in an endeavour to contain infighting which had led to the suspension of the Branch previously. The union acknowledged that the Branch Chair's power to ask a member acting in breach of the Code of Conduct to leave a meeting did not cover the action taken in this case where a ban from attending three meetings was imposed in advance of those meetings.
- 2.8 The union felt that this ban was not a disciplinary penalty, however, and so National Rule I had not been breached and, indeed, this raised the question of my jurisdiction under section 108A.

Reasons for my Decision

- 2.9 The conduct of business at the Birmingham Branch of UNISON is, evidently, rarely incident free. Whether, as was suggested at the hearing, it is healthy and lively debate, or whether, as was also suggested, it is an attempt to disrupt the functioning of the Branch is not for me to decide. Such a perpetual high level of incident in the past, has, however, led to the provision of a set of local Rules and a Code of Conduct, under which Branch business should take place. I am willing to accept that operating under two local sets of

guidelines/Rules and National Rules may at times lead to confusion or accidental misapplication.

2.10 That said, Paragraph 4 of the Code of Conduct is clear in its intent. In excluding the applicant from meetings which she was entitled to attend, however, the Branch Officers who took the decision have not applied that Paragraph in accordance with its provision.

Ms Ryan was advised that she was *excluded* from the meetings. The decision was not that she was present at a particular meeting and was, in accordance with Paragraph 4, being *removed* from the meeting. Paragraph 4 has no authority to exclude.

2.11 Such authority is found in accordance with Disciplinary action as provided for under National Rule I (particularly Rule I.8) and National Rule C7.4. The action taken against Ms Ryan was punitive and a penalty of a nature mentioned in Rule I 8 was imposed. It clearly subjected Ms Ryan to action that was, in its very nature, one of discipline and, therefore, falls within my jurisdiction. I cannot accept the argument that an action which is mentioned in the rules only as a disciplinary penalty, can be legitimised and taken out of my jurisdiction by the claim that it was not a disciplinary penalty because the disciplinary rules and procedures had not been invoked.

2.12 It is clear to me that the exclusion of a member from meetings is an option available to the Branch, but only in accordance with UNISON National Rules governing discipline, as set out under Rule I. The Branch failed to follow this procedure. I uphold Ms Ryan's application for a declaration to that effect.

Complaint (iii)

in taking the decision to cancel the Branch Committee meeting in August 2000, the Birmingham Branch Officers Group breached Branch Rule 16.6 which provides that the Branch Committee meet monthly;

Facts

3.1 On the 18 July 2000, the Branch Officers Group took the decision to cancel the Branch Committee meeting scheduled for August 2000. The Branch Officers' Group maintained that this was because of potential absenteeism resulting from the school holiday period and the possibility that participation would not be maximised as required under National Rule. The issue had not been discussed at the Branch Meeting in early July.

The Applicant's Case

3.2 In correspondence, Ms Ryan argued that the cancellation of a Branch Committee meeting scheduled for August 2000, breached Birmingham Branch Rule 16.6 (see paragraph 1.22 above). She also argued that the Branch Rules had been constituted at National level, to be effected in accordance with National Rules.

3.3 The complainant maintained that the decision to cancel the August meeting had been taken by the Branch Officers Group in mid-July 2000, and not by the Branch Committee itself. Ms Ryan opined that this was against the provisions of Branch Rule 18.9, because no emergency existed to warrant the action taken by the Branch Officers in deciding to cancel the meeting. The Branch Officers Group cited the unavailability of Branch

members to attend the meeting due to the school holidays. Ms Ryan stated that there had been a Branch Committee meeting on 5 July 2000, and that no matter had arisen relating to difficulties of members attendance at the proposed August meeting.

3.4 Ms Ryan stated that the Birmingham Branch membership was some 18,000 strong and that 53 delegates were entitled to attend Branch meetings. For the meeting to be quorate, 18 delegates were required to be present. It was her opinion that the action taken by the Branch Officers Group was, in effect, an attempt by the Branch Officers to stifle the democratic process within the Branch, as there had never been any indication that the meeting would not be quorate.

3.5 In response to questioning by Mr Langstaff, Ms Ryan was adamant that she had tried to object to the cancellation of the Branch Meeting, but as she had been excluded from attending three meetings (Complaints i and ii), she had not been able to properly do so. Ms Ryan re-iterated that the action of the Branch Officers' Group was a clear breach of Birmingham Branch Rule 16.6.

The Union's Response

3.6 In correspondence, the union referred to the fact that section 3.1 of the Branch Code of Conduct requires meetings to be held at a time and place which does not automatically exclude individuals or groups. The union maintained that because of the school holidays some groups or individuals would be excluded. In its written evidence, the union also stated that the issue of the August Branch Committee was due for discussion at the July Branch Committee meeting, but this had not proved possible because of disruptive

behaviour at that meeting. The union further pointed out that Branch Rule 16.2.1 required all meetings to be conducted in accordance with the Code of Conduct.

3.7 In arguing that there had been no breach of rule, Mr Langstaff cited Birmingham Branch Rule 2 and National Rule G.2.3 (see paragraph 1.19 above), and maintained that as the relevant words of Rule G.2.3 were “as necessary”, it allowed the Branch Secretary or Chair discretion to convene meetings.

3.8 Mr Langstaff further argued that the “function” of the Branch Committee as set out in Branch Rule 16.6 was not prescriptive and had to be considered in conjunction with National Rule G.2.3. Mr Langstaff pointed out that there would always be occasions when the date of a meeting could be subject to change; the unexpected, for example the weather, or an unforeseen disaster, might necessitate such action being taken. In giving the Branch Secretary and Chair discretion to call a meeting “as necessary”, the converse must also be true, i.e. the discretion to cancel or rearrange a meeting “as necessary”.

3.9 In conclusion, Mr Langstaff stated that the decision to cancel the meeting had been taken in good faith after representations from delegates who would have been disenfranchised had the meeting gone ahead. The following Branch Committee meeting was deliberately held in early September to ensure that the union and the Branch continued to work on behalf of the overall membership.

Reasons for my Decision

3.10 It has not been my experience that rules or guidelines relating to the frequency of meetings

are absolute. In this case, the National Rules governing the frequency of meetings are such that I do not consider there to have been a clear breach. The Rules provide the mechanism for a meeting to be called and caters for discretion to be used. It is not unacceptable for similar provision to be available to deconvene a meeting. In my opinion, such discretion is available for those closest to the relevant issues at the time to make a decision which is reasonable in the circumstances. It should not be construed, however, as giving wholesale provision to pursue nefarious or factional agendas.

3.11 On the evidence before me, I am satisfied that the decision to cancel the August meeting was reasonable in the circumstances. I refuse to make the declaration sought and dismiss the complaint.

Complaint (iv)

the Birmingham Branch Officers Group, in making decisions on matters which were not emergencies (such as payment of taxi fares for delegates to attend National Delegates Conference), breached both Birmingham Branch Rule 18.9 and National Union Rule G4.3.1;

Facts

Examples

(i) Taxi Fares

4.1 Branch delegates attended the National Delegates Conference in June 2000. Payment of allowable expenses had been made in advance of the Conference. Previous Branch custom and practice had permitted payment of taxi fares in some circumstances. The Branch Treasurer, in post since March 2000, did not regard the taxi fare expenses as allowable and they were not paid. Subsequently, in July 2000, the Branch Officers Group authorised the reimbursement of those taxi fares. In the prevailing circumstances, the Branch Officers' Group regarded the issue of reimbursement as an emergency falling within the provisions of Branch Rule 18.9

(ii) Office refurbishment

4.2 The Branch Officers' Group took action to actively pursue negotiations and costings in relation to office refurbishment. The Branch Officers' Group has no authority to agree such expenditure and minuted that a referral to the Branch Committee would be necessary before a final decision could be made.

The Applicant's Case

4.3 In correspondence with my Office, Ms Ryan stated that the Branch Officers Group was making decisions in excess of its powers and was in breach of Birmingham Branch Rule 18.9, an example of which was the cancellation of the August meeting (see paragraph 3.2). Ms Ryan drew more heavily on two other examples, particularly, the payment of taxi-fares for delegates to attend Conference, and the refurbishment of the local union offices at an estimated cost of around £10,000.

- 4.4 Ms Ryan contended that the payment of expenses was a Branch Committee matter, as provided for in Branch Rule 22.1. In respect of the payment of taxi fares, Ms Ryan maintained that the Branch Officers' Group had overruled the Branch Committee in agreeing the payment of such fares, and by so doing, had not adhered to National Rule G4.3.1, which set out the function of the Branch Treasurer. The action of the Branch Officers' Group clearly breached Branch Rule 18.9, as the issue was not one which should be regarded as an emergency. The principle of Rule, not the sum involved (£10) was the point.
- 4.5 In response to questioning from Ms Ryan, Ms O'Brien stated that she did not consider the issue of payment of the taxi fares as one that fell within the definition of an emergency, because the claims were received after the expenditure had been incurred. She added that cheques in respect of expenses to attend the National Delegates Conference had been issued and no request in respect of taxi fares was made prior to, or during, the Conference, which she had attended together with the other delegates from the Birmingham Branch. Ms O'Brien added that in accordance with auditing and accounting practice, taxi fares were not reclaimable in this situation.
- 4.6 The Conference had taken place in the middle of June 2000. The issue was not raised at the July meeting of the Branch Committee and the eventual payment, having been authorised by the Branch Officers' Group in July 2000, was not made until September 2000.
- 4.7 In response to questioning from Ms Ryan, Mr Bickle stated that previous custom and practice was for taxi fares to be paid as an allowable expense in certain circumstances (e.g.

ill-health). He further stated that the Branch Officers had authorised payment, and that although payment was not made until 14 September 2000, the issue had been dealt with as one warranting authorisation by the Branch Officers' Group in accordance with Branch Rule 16.6.

4.8 In relation to the proposed office refurbishment, Ms Ryan maintained that the Branch Officers' Group had circumvented the Branch Committee by proceeding with investigations into costings and agreements for the work to be carried out.

4.9 In response to questioning from Ms Ryan, Ms O'Brien stated that she had not been party to the negotiations in respect of the proposed office refurbishment and had not been advised of such negotiations, as she would have expected in her position as Branch Treasurer.

4.10 In conclusion, Ms Ryan re-iterated her belief that the Branch Officers' Group, were pursuing, and taking, decisions on matters which were not emergencies and that they had, therefore breached Branch Rule 18.9. Further, that in sidelining the Branch Treasurer and the function of that office, the actions of the Branch Officers' Group had also breached National Rule G4.3.1.

The Union's Response

4.11 In correspondence with my Office, the union maintained that the payment of taxi fares for delegates to attend Conference had been dealt with as an emergency because custom and practice had led those affected to expect reimbursement of those fares, as had occurred

in previous years. The fact that that expectation was, without warning, not realised had created the situation which the Branch Officers' Group had determined should be treated as an emergency.

4.12 Responding to Mr Langstaff's questioning, Ms O'Brien stated that she had been Branch Treasurer since March 2000, and had previously been an assistant treasurer. She added that she had not previously been aware of any precedent for payment for taxi fares.

4.13 Mr Bickle advised the hearing that it was the Branch Treasurer's refusal to pay the taxi fares claimed which first brought the issue to the fore. The action of the Branch Treasurer was in contrast to that taken by previous Branch Treasurers and it was right for the Branch Officers' Group to consider the payment of the taxi fares as an emergency.

4.14 The issue of proposed office refurbishment did not amount to a breach of rule in Mr Langstaff's view. Branch Officers' Group minutes indicated that the matter had to go before the Branch Committee before any approval/sanction could be given. Prior to that, nothing other than provisional costings or undertakings could be given. Such costings or undertakings, which might lead to a definite proposal, would go before the Branch Committee.

4.15 In response to Mr Langstaff's questioning, Mr Bickle agreed that a sub-committee had been formed to investigate the possibility of office refurbishment, and that Ms O'Brien had been invited, but had declined, to be part of that sub-committee.

4.16 In conclusion, Mr Langstaff reiterated that there had not been a breach of National Rule G4.3.1 or Branch Rule 16.6. The issue of taxi fares was party to Branch custom and

practice, the unexpected abandonment of which had been the catalyst for the intervention of the Branch Officers' Group in resolving the issue as an emergency. The possibility for office refurbishment was provisional only, and, for it to progress, would be subject to Branch Committee approval.

Reasons for my Decision

4.17 No decision on the issue of office refurbishment has yet been taken. There is an undertaking by the Branch Officers Group to refer the matter to the Branch Committee.

I find no evidence to support a claim of breach of rule here.

4.18 I have sympathy with those directly affected by the actions of the Branch Treasurer in respect of taxi fares for those attending the National Delegates Conference. Ms O'Brien said she did not believe she was breaking established custom and practice. I believe she was, and certainly some delegates would have expected their claims to be met.

4.19 Payment or reimbursement of the taxi fares may have been urgent. I would have hoped that the issue could have been dealt with as a matter of urgency at a Branch Committee meeting subsequent to the Conference. Regrettably, this was not the case and the Branch Officers' Group acted, with good intention, to resolve the problem. On the evidence before me, I do not accept that this was an issue to be regarded as an emergency. There were, moreover, other ways to resolve the issue as the matter of urgency; which I accept it probably was. I therefore uphold Ms Ryan's complaint.

4.20 I consider it very unfortunate that the issues in this complaint have ever had to be brought before me for decision. Such issues are clearly better decided by the union at Branch level. It is disturbing that there is so obviously a lack of will for it to be so.

COMMENT

- 5.1 In the application before me, Ms Ryan argued that there were clear breaches of Union Rule. UNISON argued that there were not. It was for me to decide whether the actions of the union in respect of the complaints as detailed in paragraph 1.6 constituted breaches of Union Rule. That I have done.
- 5.2 In setting out their arguments, the clarity of presentation provided by both the applicant and the defence was exceptional, for which I thank and commend them.
- 5.3 It is, however, sadly clear to me that the Birmingham Branch of UNISON is not working for the benefit of its membership in the way that that membership has every right to expect. Inter-factional disagreement, confrontation, and power struggle, which I understand led to the Branch being suspended in the past, appears to be continuing.
- 5.4 As demonstrated by this application, each faction is seeking to use the rule book of the union, whether at local or National level, to buttress its own position, irrespective, it seems to me, of the obligations of the union to its membership as detailed in the union's "*Aims and objectives*" under section B of its National Rules. It is my hope that this situation will not prevail and that the welfare and well being of the membership, to whom the union is ultimately accountable, will be given their proper and correct attention in future.

ENFORCEMENT ORDERS

- 6.1 Where I find rules within my jurisdiction have been broken, I am required to consider making an order to remedy the breach and/or to prevent future breaches. In the case of the exclusion from meetings, I do not think an order would be appropriate under either objective. In the case of the actions by the Branch Officers' Group, I do not intend to make an order as I consider these issues must be resolved within the Branch, with help from the National Union if necessary.
- 6.2 Further, it is likely that at present, any order I might make would be used by the factions to make the resolution of the underlying problems within the Branch even more difficult.

E G WHYBREW

Certification Officer