

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

**IN THE MATTER OF A COMPLAINT AGAINST
THE NATIONAL UNION OF MINeworkERS**

APPLICANT MR J CLARKE

Date of Decision:

22 March 2001

DECISION

- 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 -

- (1) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;
- (2) 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 8 October 2000, I received an application from Mr J Clarke, a suspended member of the National Union of Mineworkers (NUM), complaining that the union had breached its rules in relation to disciplinary action taken against him. In correspondence with my office, Mr Clarke confirmed, on 30 October 2000, that he considered the NUM to have breached its Rule 29.H. This rule limits the membership of the National Disciplinary Committee and the role of Secretary to that Committee, to those who have not been personally involved in the matter giving rise to the complaint (see paragraph 1.16).

1.5 The applicant alleged that the personnel dealing with a previous Branch complaint, and a subsequent personal complaint he had made to the union, were also involved in the disciplinary procedure taken against him by the union, and that as all three complaints involved the same matters, this was in breach of union Rule 29.H

1.6 The application was accepted by me as a complaint under section 108A (1) of the 1992 Act that the NUM had breached its rules relating to a matter mentioned in section 108A (2) (b), namely: -

“disciplinary proceedings by the union (including expulsion)”

1.7 I investigated the complaint in correspondence and, on 27 February 2001, held a formal hearing of argument on the complaint. The union was represented by Mr A Scargill (President, NUM). In presenting his case, Mr Clarke called Mr P Cooper to support his case.

Decision

1.8 After careful consideration of the union rule, documents, evidence and arguments put to me I refuse to make the declaration sought by Mr Clarke. The reasons for my decision are set out below.

Requirements of the Legislation and the relevant union rule.

1.9 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)

1.10 In referring to the NUM's rules, throughout this decision I have referred to the NUM's RULES, 1996 edition. The relevant union rule relating to the union's disciplinary procedure is found under Rule 29 of the NUM Rule book.

1.11 Under the rule heading "Disciplinary Procedure", Rule 29.A provides:

" There shall be a National Disciplinary Committee of the Union consisting of seven members of the Union who each have at least five years' unbroken membership at the date of nomination. Members shall be elected by a Branch vote of the Union from the Areas or groups of Areas contained in Schedule One of these Rules. No Area shall have more than three members on the National Disciplinary Committee..... A member shall be eligible for re-election to the National Disciplinary Committee".

1.12 Rule 29.B provides:

" No member of the N.E.C. shall be eligible for membership of the National Disciplinary Committee, except as provided in paragraph 29.C below... Any member of the National Disciplinary Committee who becomes a member of the N.E.C. shall cease to be a member of the National Disciplinary Committee. No member shall be eligible for membership of the National Disciplinary Committee if he or she is a full-time Official or officer of the National Union.....".

1.13 Rule 29.C provides:

“ *Subject to paragraph 29.G below, the National Vice-President.....shall preside over meetings of the National Disciplinary Committee.....A quorum of the National Disciplinary Committee shall be three members including the person presiding and shall be selected on a rotating basis”*

1.14 Rule 29.F provides that:

“ *A complaint may be put before the National Disciplinary Committee by any individual member or members, or by a Branch, a Branch Committee, an Area Council, an Area Executive Committee or the N.E.C. Any such member, group of members or Union body may appoint a member or Official of the Union (including in the case of a group of members or a Union body, one of themselves) to present their complaint.”*

1.15 Rule 29.G provides that:

“ *The Executive Officer, in person or by deputy, shall act as Secretary to the National Disciplinary Committee. Any complaint, together with a statement of facts to be relied on in support of the complaint, shall be first sent to the Executive Officer.....The N.E.C. or National Disciplinary Committee shall resolve any dispute if called on by the Executive Officer, or the complainant or complainants to do so.....The Executive Officer shall convene a meeting of the National Disciplinary Committee to adjudicate on every complaint at such date and place as having regard to any reasonable requests made by the complainant or the complainants, or members, Branch or Area concerned, as appears to them to be*

suitable.”

1.16 Rule 29.H provides:

“ No member of the union shall sit as a member of the National Disciplinary Committee or preside at one of its meetings if that member is or has been personally involved in any matter giving rise to the complaint. If the application of this Rule makes it impossible to secure a quorum of the National Disciplinary Committee, the N.E.C. shall have power to nominate as many members of the Union, being eligible under paragraphs 29.A and 29.B of this Rule, as will create a quorum to be temporary members of the National Disciplinary Committee. Neither shall any person act as secretary to the National Disciplinary Committee if he or she is or has been personally involved in any matter giving rise to the complaint.”

1.17 Rule 29.J provides:

“ When it has heard the evidence and arguments of each party, the National Disciplinary Committee shall consider in private whether it finds the complaint proved. No complaint shall be found proved except by the vote of a majority of those present throughout the hearing....”

1.18 Rule 29.N provides:

“ Any party to a disciplinary complaint who is dissatisfied with the decision of the National Disciplinary Committee shall have a right of appeal to the National Appeals Committee.”

1.19 Rule 29.P provides:

“ No member of the N.E.C. shall be eligible for membership of the National Appeal Committee except as provided in paragraph 29.Q below. Any member of the National Appeals Committee who becomes a member of the N.E.C. shall cease to be a member of the National Appeals Committee. No member shall be eligible for membership of the National Appeals Committee if he or she is a full-time Official or officer of the National Union....”

1.20 Rule 29.Q provides:

“ Subject to paragraph 29.H above, the National President shall preside over meetings of the National Appeals Committee.....”

Argument

1.21 At the commencement of the Hearing, Mr Scargill presented argument that I should not proceed to hear the complaint on the grounds that:

(i) Mr Clarke had not utilised the provisions of union Rule 29.N and had, therefore, failed to avail himself of the full extent of the union’s internal procedures in respect of the disciplinary action taken against him;

(ii) he (Mr Scargill) had, the previous evening received a “Transcript of a Meeting with Barnsley Road Transport on Wednesday 15 March 2000 in the Miners’ Offices, Barnsley at 3.00 p.m.”, which indicated that my office had, on 9 February 2000, provided Mr Clarke with advice on the matter

of the complaint prior to its submission to my Office;

(iii) documents arising from Mr Clarke's contact with my Office, and relevant to the complaint brought by Mr Clarke, had not been disclosed to the defence by my Office; and

(iv) from the correspondence prior to, and that available at the Hearing, the specification of the complaint was not sufficiently clear.

1.22 Following a short adjournment to enable me to consider the points raised by Mr Scargill, I decided to proceed to hear the complaint for the following reasons:

(i) Section 108B (1) provides that:

“The Certification Officer may refuse to accept an application under section 108A unless he is satisfied that the applicant has taken all reasonable steps to resolve the claim by use of any internal complaints procedure of the union.”

This provides me with discretion not to accept a complaint. I chose not to exercise that discretion;

(ii) on 9 February 2000, Mr Clarke telephoned my Office to enquire about the type of complaint for which I have jurisdiction, and how to make such a complaint. As is always the case in respect of any union member who contacts my office for such information, Mr Clarke was apprised of the provisions of the Trade Union and Labour Relations (Consolidation) Act

1992, covering complaint procedure. He was also appraised that he should endeavour to resolve any alleged breach of union rule through the union's internal complaints procedure. Finally, and in accordance with the practice of my Office, he was made aware that because of my role in determining complaints made to me, it was not appropriate for me, or my Office, to give advice or comment on a matter which might come before me as a complaint at a later date. My Office wrote to Mr Clarke on the same day confirming and reiterating the points discussed during the telephone conversation. At the Hearing, Mr Clarke confirmed that this was correct.

It is often the case that my Office discusses issues as outlined above with union members in respect of their general enquiries. I am aware that such a course of action helps to ensure that union officials are only contacted by my Office if the grounds of a complaint have been established;

(iii) the letter of 9 February 2000, sent to Mr Clarke related to a request for general information and not to any complaint made to my Office. The NUM was aware of Mr Clarke's contact with my Office as a result of their meeting with him on 15 March 2000. Although the NUM may not have made available a transcript of that meeting to Mr Scargill until the evening before the Hearing, the fact of contact had been known to the union, and therefore available to the defence, since 15 March 2000;

(iv) I accept that Mr Clarke's specification of the complaint involving the Branch complaint, his personal complaint and the disciplinary action taken

against him varied, and that in seeking to clarify the issues raised by Mr Clarke, the documentation provided by my Office may not have fully succeeded. It is, however, fair to point out, as detailed in paragraph 1.4 above, that in his response of 30 October 2000, to a letter from my Office, Mr Clarke confirmed that he was citing a breach of union Rule 29.H. My Office further wrote to Mr Clarke on 10 November 2000, confirming that I proposed to treat his correspondence as a complaint that the NUM had breached its Rule 29.H in respect of its disciplinary procedures. Copies of both letters were included in the documentation provided in advance of the Hearing.

1.23 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 decision.

The Complaint was that the NUM had breached its rules in respect of one matter. This was that the personnel dealing with Mr Clarke's previous (individual) complaint to the union (and that made by his Branch), were also involved in the disciplinary procedure taken against him by the union and that this was contrary to NUM Rule 29.H.

Facts

2.1 In the autumn of 1999, the Barnsley Road Transport Branch, and subsequent to that, Mr Clarke, submitted complaints to the NUM about the behaviour of the National President (Mr Scargill). Margaret Fellows in her capacity as Secretary to the National Disciplinary

Committee responded to the Branch complaint in accordance with the provisions of union Rule 29. The Branch wrote to Ms Fellows to indicate that it considered there would be a conflict of interest if Ms Fellows actioned the complaint because of her position as Secretary to the National President and as Secretary to the National Disciplinary Committee. In her response of 4 February 2000, Ms Fellows advised the Branch, via Mr Clarke, that the matter would be referred to Mr Frank Cave, National Vice-President, for him to action in accordance with union rule. At a meeting of the National Executive Committee (NEC) on 9 March 2000, Mr Paul Hardman (Union Executive Officer), advised the meeting of the Branch complaint. Due to the ill health and absence of Mr Cave, Mr Ian Lavery was appointed to conduct the investigation into the complaint.

2.2 On 5 April 2000, Mr Clarke wrote to Mr Scargill alleging that as Margaret Fellows had responded to his Branch's complaint in her capacity as Secretary to the National Disciplinary Committee, there would be a conflict of interest if she were to take similar action in relation to his personal complaint against him (Mr Scargill). On 20 April 2000, Mr Scargill replied, referring Mr Clarke to the relevant union rules and that he (Mr Scargill) was unable to have any involvement because of his position as President/Secretary of the Union and because he (Mr Scargill) was the person Mr Clarke was making the complaint against. Mr Scargill further advised Mr Clarke that it was his understanding that the matter would, "in accordance with rule", be reported to the National Executive Committee for their action in light of Mr Clarke's concerns about conflict of interest.

2.3 It is worth my commenting at this point that the substance of the Branch complaint, and Mr Clarke's individual complaint are of relevance or consequence to this case only in so far as the subject matter involved was essentially the same and Mr Clarke was disciplined

over his behaviour on the same subject matter. Beyond that, I am concerned solely with the issue of whether the personnel involved with those complaints were also involved in the subsequent disciplinary action taken by the union against the complainant in contravention of the provisions of union Rule 29.H.

2.4 On 11 May 2000, the NEC took a decision to commence its own disciplinary action against Mr Clarke, over actions he had taken in submitting the Branch complaint against Mr Scargill. This progressed to a disciplinary hearing on 3 July 2000. Mr Hardman, as Acting Secretary to the National Disciplinary Committee, advised Mr Clarke of the decision of the NEC and of Mr Clarke's rights under rule. In advance of the hearing, Mr Hardman wrote to advise Mr Clarke that Mr Danny O'Connor would act as Secretary to the National Disciplinary Committee for the hearing on 3 July. Mr O'Connor subsequently wrote to Mr Clarke to advise him that D Lamin, P Burke, K Williams, E Heaton and J Sawyer would be the Disciplinary Committee hearing the complaint. On the same day, Mr O'Connor also advised Mr Clarke that his personal complaint against the National President would not be considered until after 3 July 2000. On 4 July 2000, Mr O'Connor wrote to Mr Clarke to advise him that the complaint by the NEC had been upheld.

The Applicant's Case

2.5 In correspondence with my Office, Mr Clarke made repeated assertions that the same personnel within the union had had dealings with the Branch complaint, his own complaint and the disciplinary action taken against him by the NEC. He also stated, in a letter dated 27 December 2000, that he had not availed himself of his right of appeal under union Rule 29.N because "my appeal would have been dealt with by the people against

whom I am complaining under Rule 29.H”.

- 2.6 He argued that over the period of time relating to the progression of union procedures in respect of the Branch complaint, his own complaint, and the NEC action against him, Margaret Fellows, Frank Cave, Paul Hardman, Ian Lavery and Danny O’Connor were all involved, which constituted a clear breach of union Rule 29.H.
- 2.7 In response to the union’s assertion that Mr Hardman and Mr Lavery, who had presented the NEC’s case against Mr Clarke on 3 July 2000, had left the proceedings thereafter and were not party to the decision taken, Mr Clarke indicated that he was not aware that this had been the case.
- 2.8 In summary, Mr Clarke maintained that the NUM had breached its Rule 29.H because the same personnel had dealings with the Branch complaint, his own complaint and the disciplinary action taken against him by the NEC. It was, he asserted, only ever his intention to try and secure fair treatment and that this would only have been obtained, in respect of the disciplinary action taken against him, by the appointment of somebody completely independent.

The Union’s Response

- 2.9 In correspondence with my Office, the NUM identified the functions of the various union officials and NEC members who had had dealings with the Branch complaint, Mr Clarke’s complaint, and the NEC action taken against Mr Clarke, and set out the procedures undertaken by the union in order to address Mr Clarke’s concerns. Of relevance to the

subject of the application before me is the fact that the union identified, and clarified, those involved with the disciplinary proceedings against Mr Clarke (paragraph 2.6 above refers), and their roles in accordance with the provisions of union Rule 29.

2.10 Mr Scargill maintained that union Rule 29.H had not been breached because the union had, in order to accommodate Mr Clarke's comments, appointed different personnel when concerns of 'conflict of interest' or 'the same people' were made known to it.

2.11 Mr Scargill stated, and Mr Clarke agreed, that prior to the Branch complaint, Mr Clarke's complaint and the NEC action, some of the same union personnel (specifically Mr O'Connor), had responded to other actions undertaken by the complainant (e.g. Tribunal case relating to possible losses in respect of the mining industry), but which have no connection to this case.

2.12 In conclusion, Mr Scargill stated that Rule 29.H had not been breached by the union as the members of the Union's National Disciplinary Committee, in accordance with union Rule, had not had any dealings with the Branch or individual complaint. Although Mr Hardman and Mr Lavery had been present at the disciplinary hearing on 3 July 2000, it was in order to present the case on behalf of the NEC. Mr O'Connor had been present in his capacity as Acting Secretary to the National Disciplinary Committee. The resulting decision was, however, taken solely by the members of the National Disciplinary Committee, none of whom had been involved with the Branch or individual complaint.

Reasons for my Decision

2.13 It is clear to me that some of the same union personnel did indeed have dealings with

aspects of the Branch complaint, Mr Clarke's complaint, and the disciplinary hearing of the NEC's complaint against Mr Clarke. Mr Clarke argued that this was a breach of union Rule 29.H. The NUM argued that it was not. It is for me to decide whether those personnel were involved in a way which constituted a breach of that union Rule.

2.14 Rule 29 is a comprehensive, and clearly set out, rule of the NUM which refers to Disciplinary Procedure. It defines the functions, procedures, and eligibility for membership of the National Disciplinary Committee and the National Appeals Committee.

2.15 At the disciplinary hearing on 3 July, there were, in addition to Mr Clarke, eight people present; Mr Hardman, Mr Lavery, Mr O'Connor and the five members of the National Disciplinary Committee.

2.16 The National Disciplinary Committee comprised D Lamin, P Burke, K Williams, E Heaton and J Sawyer, none of whom had been, or have been alleged to have been, "*personally involved in any matter giving rise to the complaint*", and who were appointed in accordance with the provisions of Rule 29.H. The case was heard and determined by them.

2.17 It was accepted by both sides that Mr Hardman and Mr Lavery were present at the disciplinary hearing against Mr Clarke. It was also evident, that Mr Hardman had been in correspondence with Mr Clarke prior to that hearing, and that Mr Lavery had conducted the investigation into the Branch complaint. They were present at the disciplinary hearing, however, solely to present the case for the NEC, as provided for in

union Rule 29.F, and not forbidden under Rule 29.H. They took no part in the resulting decision.

2.18 The position of Mr O'Connor is less straightforward. He replaced Mr Hardman as Acting Secretary to the National Disciplinary Committee. Whether or not he took part in reaching the decision to suspend Mr Clarke is irrelevant. Rule 29.H is clear in that he was not qualified for this role if he had been "*personally involved in any matter giving rise to the complaint*". In the evidence before me, the only involvement of Mr O'Connor prior to the disciplinary hearing on 3 July was as the person who signed a letter to Mr Clarke on 13 June. This letter told Mr Clarke that his personal complaint against the National President would not be actioned until the NEC's complaint against Mr Clarke had been dealt with. I do not judge that action to be "*involvement in any matter giving rise to the complaint*". At worst, it is involvement in decisions about the procedures to be followed in handling overlapping complaints. As such, it did not debar Mr O'Connor from acting as Secretary to the National Disciplinary Committee.

2.19 It is for these reasons that I find there was no breach of NUM Rule 29.H and dismiss this complaint.

E G WHYBREW

Certification Officer