CO/1964/14
(Mergers)

DECISION OF THE CERTIFICATION OFFICER ON A COMPLAINT MADE UNDER SECTION 103 OF THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

IN A MATTER OF COMPLAINTS AGAINST THE CIVIL AND PUBLIC SERVICES ASSOCIATION and PUBLIC SERVICES TAX AND COMMERCE UNION

Date of first complaints	**1 October 1997 (PTC)** **14 October 1997 (CPSA)**
Date of hearing	**18 November 1997**
Date of Decision	**25 November 1997**
Date reasons published	**29 November 1997**

DECISION

1. I have to decide whether I have jurisdiction to hear complaints by eleven members of the Public Services Tax and Commerce Union ("PTC") and one member of the Civil and Public Services Association ("CPSA") relating to the holding of a ballot on a resolution to amalgamate and form a new union to be known as the Public and Commercial Services Union. That resolution was passed by a clear and substantial majority of the members of each union in October 1997. But the complainants allege only after the views of the delegate conferences had been ignored. In order to decide whether I had jurisdiction I held

a hearing on that issue alone on the 18 November 1997. At that hearing Mr Alan England represented 10 of the 11 complainants against the PTC as well as the single complainant against the CPSA. Mr Boxshall represented the remaining PTC member. Mr Brian Langstaff QC represented the CPSA and Professor Jack Beatson of counsel represented the PTC.

2. My jurisdiction to hear complaints relating to mergers is contained in section 103 of the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended) ("the 1992 Act"). The relevant parts of that section read:-

> *"(l) A member of a trade union who claims that the union -*
>
> *(a) has failed to comply with any of the requirements of section 99 to 100E,or*
>
> *(b) has, in connection with a resolution approving an instrument of amalgamation or transfer, failed to comply with any rule of the union relating to the passing of the resolution, may complain to the Certification Officer",* (my emphasis)

The complainants' case and the unions' rules

3. The complainants' cases are fairly straight forward. Those who are members of the PTC contend that at the Annual Delegate Conference ("PTC ADC") held in May 1997 resolutions were passed which determined either or both the principles and policy of the PTC in respect of the proposed amalgamation. It is claimed that the National Executive Committee ("PTC NEC") has not conducted the affairs of the union in accordance with these principles and/or policies in holding the ballot on the resolution to amalgamate. They claim the terms of the proposed amalgamation do not accord with the principles and

policies as determined by the ADC. They point me to a number of rules in their Rule Book.

Rule 4.1 states:-

> *"The governing body of the Union shall be the Annual Delegate Conference ("ADC"), which shall determine the principles and policies of the Union. Any proposal put to members for a merger must contain the rule that delegate conference is the principle policy making body of the Union; this rule must be contained within the rules of any union arising as a result of a merger with another body."*

Rule 5.1 states:-

> *"Between Delegate Conferences the management and control of the Union shall be vested in the National Executive Committee ("NEC"). The NEC shall conduct its affairs in accordance with these Rules and with the principles and policies determined by Delegate Conference."*

4. In particular the complainants complain that either in breach of rule 5.1, the PTC NEC has conducted the affairs of the PTC not in accordance with the principles and policies as determined by the PTC ADC or, in breach of 4.1, that the principles and policies of the Union in respect to the proposed amalgamation have been determined by the PTC NEC not the PTC ADC. No complaint is made in respect of the second sentence of PTC rule 4.1.

5. It has also been alleged that there is a breach of the rules (or at the very least their spirit) relating to amendment of the rules of the PTC and its dissolution.

Rule 11.2 of the PTC Rule Book states:-

> *"Except as expressly provided for elsewhere, these Rules shall not be amended except by Delegate Conference. In order to be carried, a motion proposing an amendment shall require a majority of not less than two thirds of the delegates present, subject to Rule 4.11 relating to card votes."*

The Rule 11.8 relating to dissolution states:-

> *"A Delegate Conference may, by a two thirds majority of delegates present and voting, pass a resolution to dissolve the Union. If such a resolution is carried, a resolution shall be taken as to the disposition of all monies or other assets of the Union after all liabilities have been met, including the appointment of such person(s) as may be thought fit to carry out the dissolution and deal with any consequential matters. The resolutions of Conference shall be put to all members in a ballot, and shall require a two thirds majority of those members voting to be endorsed."*

6. Again put simply the claim is that the proposed amalgamation will have the effect of changing the rules of the PTC in breach of the procedures set out in Rule 11.2. With regard to dissolution they say the proposed amalgamation will have the effect of dissolving the union, but without following the procedures laid down by PTC Rule 11.8.

7. The complainant who is a member of the CPSA makes an identical complaint against his union. The annual delegate conference for his union was also held in May. He similarly alleges that resolutions were passed at that conference which established the principles and policies of the CPSA in respect of the proposed amalgamation. He makes the same points about amending the rules and dissolution.

8. The relevant provisions of the CPSA Rules are:

CPSA Rule 7.1 (C):-

> *"Annual delegate conference shall determine the principles and policy of the association and elect to all positions falling due to be filled under Rule 15 at annual delegate conference."*

CPSA Rule 6.1 and 6.2:-

> *"6.1 The governing body of the association shall be delegate conference as hereinafter provided.*
>
> *6.2 Between meetings of delegate conference, the general management and control of the association, and the handling of its whole affairs, shall be vested in the national executive committee. Except for at the meetings which determine the policies of the association in regards to British annual trade union congress, these affairs shall be vested in the national executive committee and the twelve members to the association's delegation elected under Rule 15.5(i)(a). The national executive committee to conduct its affairs in accordance with the principles and policies of the association as determined by annual delegate or special delegate conference."*

Rule 32.1:-

> *"No new rule shall be made, nor any of the rules for the time being in force be amended or rescinded, except at the annual or special delegate conference and approved by not less than two thirds of the votes cast thereon. Any motion for such alteration shall be submitted and dealt with as provided for motions delegate conference under rule 9."*

Rule 31.1:-

> *"The association shall only be dissolved by decision of a special delegate conference at which a resolution for such dissolution is approved, by not less than five sixth of the votes cast."*

9. At this point I should emphasise that for the purposes of determining whether I have jurisdiction to hear these complaints, I do not have to decide whether the allegations made by the complainants against their respective unions are well founded. At the preliminary

hearing on jurisdiction, both unions stressed their denial that there had been any breach of their respective rules. What I do have to decide is whether, on the facts asserted by the complainants, it is arguable that there is a rule of the union that has been breached, and, if it were to be shown that such a breach had occurred, that breach was of a rule relating to the passing of the resolution as required by section 103(l)(b) of the Act.

General legislative background

10. It might help if I next set out the general legislative background relating to my involvement with trade union mergers. The statutory provisions create a procedure which every trade union must follow where it proposes to amalgamate or transfer its engagements. These procedures are designed to facilitate such mergers. The relevant statutory provisions are set out in Chapter VII of Part 1 of the 1992 Act. The relevant provisions of section 97 read as follows:-

> *"(1) Two or more trade unions may amalgamate and become one trade union, with or without a division or dissolution of the funds of any one or more of the amalgamating unions, but shall not do so unless -*
>
> *(a) the instrument of amalgamation is approved in accordance with section 98, and*
>
> *(b) the requirements of section 99 (notice to members) and section 100 (resolution to be past by required majority on ballot held in accordance with sections 100A to 100E) are compiled with in respect of each of the amalgamating unions. ....*
>
> *(3) An amalgamation .... does not prejudice any right of any creditor of any trade union party to the amalgamation .....*
>
> *(4) The above provisions apply to every amalgamation .... notwithstanding anything in the rules of any of the trade unions concerned."*

11. Section 98 requires me to approve an instrument of amalgamation before a ballot on the resolution is put to the members. Sections 99 to 100E set out the statutory requirements which are to be followed in respect of the conduct of the ballot on the resolution to approve the proposed amalgamation. For our purposes section 100 is particularly relevant. It states:-

> *"(1) A resolution approving the instrument of amalgamation .... must be passed on a ballot of the members of the trade union held in accordance with sections 100A to 100E.*
>
> *(2) A simple majority of those voting is sufficient to pass such a resolution unless the rules of the trade union expressly require it to be approved by a greater majority or by a specified proportion of the members of the union."* (my emphasis)

12. In my opinion whether I have jurisdiction to hear these complaints turns on the meaning of the words "failed to comply with any rule of the union relating to the passing of the resolution" found in section 103(l)(b). In my letter of the 6 November to all the parties I intimated what seemed to be the four possible conclusions based on the contentions put by them in correspondence, namely that my jurisdiction was:-

(a) limited only to alleged breaches of rules relating to the *majority necessary* for the resolution to pass;

(b) it included (a) but also included alleged breaches of other rules relating to the *conduct of the resolution ballot*;

(c) it included (a) and (b) but extended to any alleged breach of the rules relating to the *ability of the union to hold a resolution ballot*; and

(d) it included *any rule of the union allegedly breached, in relation to the merger.*

13. I also asked the parties to address me on the affect of section 97(4) of the 1992 Act on these propositions.

The interpretation of the legislation: (a) the complainants' view

14. The complainants argued that I should construe the words in section 103(l)(b) widely and in accordance with their ordinary and natural meaning. They urged me not to construe them as limiting my jurisdiction only to a breach of a rule which would fall within section 100(2), namely one expressly requiring a resolution to be approved by a greater majority or specified proportion of the members of the union. They argued that had Parliament intended my jurisdiction to be so narrow then it would have said so expressly in section 103(l)(b), by limiting my jurisdiction to breach of rules relevant to section 100. Section 103 (l)(b) refers to "any rule" and one "relating to" the passing of a resolution ballot and is not expressly limited to one relating to section 100(2).

15. They further argue that I should have regard to the provisions of section 103(5) in determining what my jurisdiction is. That subsection reads:-

> *"The validity of a resolution approving an instrument of amalgamation or transfer shall not be questioned in any legal proceedings whatsoever (except proceedings before the Certification Officer under this section or proceedings arising out of such proceedings) on any ground on which a complaint could be, or could have been, made to the Certification Officer under this section."*

They urged me to construe subsection 5 as indicating that my jurisdiction is wide. Where there is any breach in procedures - particularly one as substantial as they allege there must be a remedy.

16. They also reminded me that the rules of a union should not be taken lightly. They urged me to construe section 97(4) narrowly in considering whether the rules of a union are set aside by subsection (4). They said I should look at the mischief at which section 97(4) is directed, namely rules which prevent mergers, or conflict with the statutory arrangements. They urged me to take the view that union rules should only be disregarded when they are inconsistent with the statutory provisions relating to the amalgamation, or would prevent it occurring at all. They submitted that where a rule can compliment the statutory provisions, and need not be overridden by them in order to give effect to the statutory regime, they retain their full force and I have jurisdiction to hear complaints about alleged breaches of those rules.

The interpretation of the legislation: (b) the unions' view

17. Mr Langstaff QC for the CPSA submitted that my jurisdiction is very limited. He reminded me that Parliament should not be seen as acting in vain and that each word of a statutory provision should be given force insofar as the context will allow. I should not lightly read in a wider jurisdiction unless that is plain from the wording of the statute. He submitted that I should have regard to the statutory context of the jurisdiction and the complaints which may arise subsequently under it. He submitted that my jurisdiction is limited to breaches of the statutory provisions (namely sections 99 to 100E) and (only where an instrument of amalgamation is approved) breaches of rule relating to the passing

of the resolution. He argued that the only rule relating to a resolution which has been passed and which is about the *passing* of the resolution is a rule falling within section 100(2) relating to the necessary majority required.

18. Professor Beatson for the PTC did not take such a strict line. His view was that in any event the rules which the complainants allege to have been broken are not rules which properly construed have anything to do with the *passing of the resolution*. He submitted that they are either about putting the resolution to the membership or about the ability of the union to merge. If Parliament had intended me to have a jurisdiction wider than a rule relating *to the conduct of the ballot* it would have said so; there would be no need to refer to the "passing of" the resolution in section 103 subsection (l)(b), nor would my jurisdiction be limited only to where the resolution had been approved.

My decision and my reasons

19. I have found all of the submissions most clear and helpful in reaching my conclusion. I have decided that I do not have jurisdiction to hear these complaints for the reasons I set out below.

20. I should first say that my jurisdiction is dictated by the provisions of the statute not by any rule book. It would be wrong for me to extend my jurisdiction into alleged breaches of union rules beyond that given to me by Parliament. I accept Mr England's contention that in interpreting the statute I often have to have regard to the union's rule book (for example on the question "who is a member"?). Sometimes Parliament expressly gives me jurisdiction to look at alleged breaches of rules, as it does in this case (section 103(l)(b)

expressly requires me to do so). I must therefore consider those rules, the alleged breach of which the complainants argue brings their complaints into my jurisdiction.

21. First there are the specific rules relating to dissolution. It seems to me clear that on an amalgamation, it is possible for a union either to be dissolved or for the assets of the union to transfer to the new amalgamated union. This is implicit by the opening wording of section 97 which states "Two or more unions may amalgamate and become one trade union with or without a division or dissolution of the funds of any one or more of the amalgamating unions". Section 97(4) states that section 97(1) applies to every amalgamation .... notwithstanding anything in the rules of any of the trade unions concerned. In my view section 97(4) has the effect of disapplying any rule of the union which would prevent a trade union merging. Even if the PTC and CPSA both had rules requiring the dissolution of assets on any amalgamation, section 97(4) would overrule such a rule. The policy behind these statutory provisions is to assist trade unions to merge by providing a statutory procedure which overrides arrangements in their rules about such issues. It seems clear to me that the intended purpose of section 97(4) is clear. It is to override rules of the unions involved which would otherwise obstruct that process.

22. The argument that an amalgamation is effectively a dissolution of assets is also fundamentally flawed. An amalgamation is not necessarily a dissolution (section 97(1)). In any event no dissolution of either trade union is proposed in this amalgamation, neither do the rules of either trade union require such a dissolution.

23. Secondly I do not accept the assertion that the effect of the merger is to bring about a breach of the PTC or CPSA rules about amending the rules. It is quite clearly the case that the amalgamated union formed will be a new union with new rules. The rules of the CPSA and PTC about amending their respective rules are not about adopting rules for any amalgamated union, nor do they contemplate this.

24. Thirdly there is the complainants' claim that the PTC and CPSA rules have been broken by their respective NECs ignoring principles and policies established at Delegate Conferences. This constitutes the strongest set of arguments for me having jurisdiction and underpins the sense of injustice felt by the complainants. On the facts presented by the complainants it is arguable that there were breaches. But the unions strenuously deny that any such breaches occurred. As I have already said I do not have to decide if these rules were breached nor did I seek to have this issue aired at the hearing. I only have jurisdiction to hear and decide whether a breach occurred if the rules are ones the breach of which would lead them to be covered by section 103(l)(b). In other words are these rules "relating to the passing of the resolution".

25. In para 12 above I set out four possible conclusions on the scope of the rules covered by 103(l)(b). The first two, which I shall call the narrow interpretation, restrict the scope to rules relating to the size of the majority or to the conduct of the ballot. The second two - a wider interpretation - would extend the scope to rules relating to the ability of the union to hold a resolution ballot or to any rule relating to a merger. The complainants argued for a wider interpretation; the unions for a narrower one.

26. Mr England stressed that 103 (1)(b) referred to any rule of the union - ie that there was little or no limit to the scope of rules covered. On the other hand Mr Langstaff said that 'any' clearly meant "if any" and was confined at least to "rules relating to the passing of the resolution". On balance, and for reasons which will become clearer when I deal with the effect of section 97(4), I favour Mr Langstaff s interpretation.

27. I agree though with the complainants that, in interpreting section 103(l)(b), the comparison with section 100(2) is relevant. The scope of section 100(2) is clearly very narrow, because it refers specifically to rules of the union which "expressly require it to be approved by a greater majority or by a specified proportion ...". By contrast, section 103(l)(b) does not specifically refer to majorities and does not require the rule to relate "expressly" to a greater majority or specified proportion of the members of the union. By itself this might point to a wider interpretation. On the other hand as Mr Langstaff pointed out had Parliament intended me to have jurisdiction over the issues raised by the complainants it would not have included the words "relating to the passing of the resolution". On the complainants' interpretation those words would have no purpose. Further more had Parliament intended to give me a wide jurisdiction, I think it would have expressly said so. It might also not have limited my jurisdiction to complaints only where the resolution *has been passed.*

28. Mr England for the complainants argued that it was necessary to look at 103(1)(b) in the context of subsection 103(5) which he read as providing for "the validity of a resolution approving an instrument of amalgamation" to be questioned in "proceedings before the Certification Officer under this section". I do not accept this interpretation of 103(5). It

is faulty both in logic and construction. The subsection in my mind merely tates that where I have jurisdiction that jurisdiction is exclusive. It does not widen any jurisdiction. Again I am of the view that there is nothing in this section to suggest other than the narrower interpretation of 103(l)(b).

29. All of this leads me to conclude that the words in section 103(l)(b) should be given a narrow interpretation. How narrow is a matter for debate. It certainly seems to me arguable that Professor Beatson is correct that the provisions of section 103(l)(b) are wide enough to encompass my jurisdiction extending beyond that which would allow me only to consider whether there had been a breach of a rule (about the size of majority required) referred to in section 100(2), but in order to decide whether I have jurisdiction in the matter in hand, I need not determine that issue finally today.

30. I am reinforced in my conclusion that 103(l)(b) should be construed narrowly by a consideration of section 97. This makes it clear that the rules of an amalgamating trade union are overridden so long as certain requirements relating to the content and approval of documents, to balloting and to creditors are followed. In the case in hand (even if the Delegate Conference resolutions established rules of the union, or lead to the breach of other rules) the complainants case effectively seems to be that these unions were prevented from amalgamating by their rules unless certain procedures, not ones required by statute, were followed. Is this not the same as a rule restricting the terms on which a union can amalgamate? Say for example each union's Delegate Conference had passed a resolution which established a new rule of each union which said that neither union would ever merge. Is that not exactly the sort of rule that section 97(4) is aimed at? Section

97(4) is directed at rules which in any tangible way obstruct or get in the way of the statutory procedures for amalgamation.

31. The question now remaining is do any of the rules allegedly breached by the unions constitute rules "relating to the passing of the resolution"? The Delegate Conference resolutions are clearly not rules of the union. PTC rules 4.1 and 5.1 and CPSA rules 6.1 and 6.2 are principle rules of the unions but they concern the powers of their NECs. They are clearly not rules in any true sense relating to the conduct of the ballot nor even directly about the putting of the amalgamation resolution (except possibly the second sentence of PTC 4.1 which Mr England conceded was not at issue and which would in any case be overruled by section 97(4)). Mr England argued though that these rules (4.1 etc) were broken by putting the amalgamation resolution in the form it was put and that those rules therefore related to the passing of the resolution. In my judgement that argument stretches any connection beyond breaking point.

32. In order for me to have jurisdiction in this regard, it seems to me there would need, at least, to be a direct link between the rule broken and the passing of the resolution (for example the time required by the rules for the voting period on such a resolution). The rule also must not be overruled by section 97(4). On my analysis the complainants' case is really about whether the resolution to approve the proposed amalgamation should have been put to the members in the form it was in the first place, not about whether it had been properly passed.

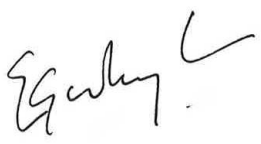
33. In conclusion I consider that no rule which has allegedly been breached relates "to the passing of the resolution" as construed in my category (b) in para 12 above. As I have already explained the broader formulation urged on me by the complainants and as set out in paragraphs (c) and (d) of that approach does not in my opinion give enough weight to the words in the statute.

34. It such circumstances I am forced to conclude that I do not have jurisdiction in this matter and I therefore dismiss the complaints.

Postscript

35. This merger is scheduled to take effect on 1 January 1998. At the hearing I indicated to the parties that, should I dispose of all outstanding complaints, and should any steps I have required to be taken where I have made a declaration in respect of any complaint, be taken, I proposed to register the merger as soon as possible after 2 December.

36. There is a right of appeal under section 104 of the 1992 Act to the Employment Appeal Tribunal in respect of any question of law arising from my decision in these complaints. I may not register any amalgamation until all complaints which I have jurisdiction to hear, are finally determined. Should I be notified that an appeal has been lodged with the EAT I would not be able to register the amalgamation until that appeal had been determined.



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