

**DECISION OF THE CERTIFICATION OFFICER ON A COMPLAINT
MADE UNDER SECTION 82(2) OF THE TRADE UNION AND
LABOUR RELATIONS (CONSOLIDATION) ACT 1992 BY A MEMBER
OF A TRADE UNION AGGRIEVED BY A BREACH OF A
TRADE UNION'S POLITICAL FUND RULES**

IN A MATTER OF A COMPLAINT AGAINST GMB

**PRELIMINARY DETERMINATION OF
JURISDICTION TO HEAR COMPLAINT**

Date of Decision

10 September 1999

DECISION

1. Under section 82 (2) of the Trade Union and Labour Relations (Consolidation) Act 1992 as amended (“the Act”) if a member of a trade union is aggrieved by a breach of the union’s political fund rules made in pursuance of Part I Chapter VI of the Act, he may complain to the Certification Officer. If, after giving the member and the union an opportunity to be heard, I consider a breach has been committed I may make such order for remedying the breach as I think just in the circumstances.

The application

2. On 11 March 1999 I received a complaint from a member of GMB (“the union”) that it was in breach of its political fund rules because, in continuing to give funding to the Labour Party, it breached one of its core objectives set out in Rule 2:10. This provides:

“To secure the return of members to Parliament and public authorities, -who will support the policies of the Union and further the interests of members through political means, providing the candidates are pledged to collective ownership, under democratic control, of the means of production, distribution and exchange.”

3. The complainant alleged that the Labour Party had, in 1995, rejected clause four of its rules, which previously had committed it to the collective ownership of the means of production, distribution and exchange. It had subsequently adopted a form of words which were in opposition to the GMB’s Rule 2:10. Consequently any funding of the Labour Party was in breach of Rule 2:10 and therefore a breach of the union’s political fund rules.
4. As a preliminary issue in this application, I have to decide whether Rule 2:10 is a political fund rule of the union made in pursuance of Part I Chapter VI of the Act. If it is not then I have no jurisdiction to deal with this complaint.
5. For the reasons set out below I have concluded that Rule 2:10 is not a political fund rule of the GMB made in pursuance of Part I Chapter VI of the 1992 Act. I therefore lack the jurisdiction to determine this complaint.

6. I made enquires of both the complainant and the union in respect of this preliminary point and, having considered their representations, gave both parties the opportunity of a formal hearing before reaching a decision. Having made written submissions, on which the other party had been invited to comment, both parties decided that a formal hearing was not necessary.

Requirements of the Legislation

7. The relevant statutory requirements with regards to my jurisdiction in respect of political fund rules are as follows: -

- 71.-(1) The funds of a trade union shall not be applied in the furtherance of the political objects to which this Chapter applies unless -
- (a) there is in force in accordance with this Chapter a resolution (a “political resolution”) approving the furtherance of those objects as an object of the union (see sections 73 to 81), and
 - (b) there are in force rules of the union as to -
 - (i) the making of payments in furtherance of those objects out of a separate fund, and
 - (ii) the exemption of any member of the union objecting to contribute to that fund,

which comply with this Chapter (see sections 82, 84 and 85) and have been approved by the Certification Officer.

72. -(1) The political objects to which this Chapter applies are the expenditure of money
- (a) on any contribution to the funds of, or on the payment of expenses incurred directly or indirectly by, a political party;
 - (b) on the provision of any service or property for use by or on behalf of any political party;
 - (c) in connection with the registration of electors, the candidature of any person, the selection of any candidate or the holding of any ballot by the union in connection with any election to a political office;
 - (d) on the maintenance of any holder of a political office;
 - (e) on the holding of any conference or meeting by or on behalf of a political party or of any other meeting the main purpose of which is the transaction of business in connection with a political party;
 - (f) on the production, publication or distribution of any literature, document, film, sound recording or advertisement the main purpose of which is to persuade people to vote for a political party or candidate or to persuade them not to vote for a political party or candidate.

Subsections (2), (3) and (4) essentially expand on the meaning of terms within these objects.

82.(1) The trade union's rules must provide -

- (a) that payments in the furtherance of the political objects to which this Chapter applies shall be made out of a separate fund (the "political fund" of the union);
 - (b) that a member of the union who gives notice in accordance with section 84 that he objects to contributing to the political fund shall be exempt from any obligation to contribute to it;
 - (c) that a member shall not by reason of being so exempt -
 - (i) be excluded from any benefits of the union, or
 - (ii) be placed in any respect either directly or indirectly under a disability or at a disadvantage as compared with other members of the union (except in relation to the control or management of the political fund); and
 - (d) that contribution to the political fund shall not be made a condition for admission to the union.
- (2) A member of a trade union who claims that he is aggrieved by a breach of any rule made in pursuance of this section may complain to the Certification Officer.
- (3) Where, after giving the member and a representative of the union an opportunity of being heard, the Certification Officer considers that a breach has been

committed, he may make such order for remedying the breach as he thinks just under the circumstances.

- (4) Any such order, on being recorded in the county court or, in Scotland, the sheriff court, may be enforced in the same way as an order of that court.

Facts

8. The political fund rules of the GMB were first approved in 1989. A political fund review ballot was successfully held in 1994 and formal approval had subsequently been given to minor amendments to the political fund rules. At the time of the complaint the political fund rules in force were set out in Rule 67 of the GMB rule book. I had last formally approved an amendment to the rules in respect of a change to the political fund contribution rate in June 1998. Neither I, nor to my knowledge any predecessor of mine, had ever approved or been called upon to approve GMB Rule 2:10.
9. That then is the relevant legislation and background to this complaint.

The Complainant's Case

10. The complainant argued that GMB Rule 2:10 was a fundamental and core rule of the union, it had been one of its founding principals and one of the reasons leading to the creation and foundation of the union. Financial and political support from the union to a political party that had rejected the formerly shared political and ethical values of the union and labour movement was clearly a matter which the Certification Officer could not ignore.

11. Rules of the union could not be read in isolation and were interrelated. Having failed to seek the consent of its members to either amend or delete Rule 2:10 it was claimed that the GMB had acted in breach of its foundational rules in continuing to provide financial support to the Labour Party and this was illegal.

The Union's Case

12. The GMB's primary submission on the point of jurisdiction was that an allegation of a breach of Rule 2.10 was not an allegation of "a breach of any rule made in pursuance of section 82(1) of the Trade Union and Labour Relations (Consolidation) Act 1992.
13. It was argued that section 71 of the 1992 Act prohibits the application of the funds of a trade union in the furtherance of "*political objects*" unless there are in force, rules of the union as to the making of payments in furtherance of those objects out of a separate fund, and the exemption of any member of the union objecting to contributing to that fund, which comply with Chapter VI of the 1992 Act and have been approved by the Certification Officer. Section 71(1)(b) cross-refers to sections 82,84 and 85 of the 1992 Act.
14. It was the union's submission that the rules made in pursuance of section 82 and referred to in subsection (2) of that section, are coterminous with the rules referred to in section 71(1)(b), being rules which have been approved by the Certification Officer. In other words, section 82(2) confers on the Certification Officer jurisdiction to hear only a complaint of a breach of a rule which has been made for the purpose of establishing a

political fund and for that purpose has been approved by the Certification Officer - in other words, “the Political Fund Rules”.

15. Conversely, it was submitted the Certification Officer does not have jurisdiction to entertain a complaint which alleges a breach of any other rule of a trade union.

16. In support of this proposition the union quoted Harvey on Industrial Relations and Employment Law, paragraph [1753] page M/690: -

“It is, however, important to note the limits of the general jurisdiction of the Certification Officer; it is a jurisdiction to hear complaints of a breach of any Political Fund rule”

At paragraph [1758]: -

“Furthermore, the breach of rule in question must be a breach of some rule made in pursuance of the Act. The complaint must relate to the Political Fund Rules, the Political Ballot Rules or the Exemption Notice Rules, and no other. Furthermore the Certification Officer will only consider whether the Society is in breach of the rule so far as the rule is made necessary by the Act.”

17. The union further added that a similar approach had been followed by those holding the post of Certification Officer over the years.

18. In the event that the union’s primary submission was rejected, an alternative argument was made that the Certification Officer did not have jurisdiction to entertain the complaint.

19. The widest interpretation of the powers of the Certification Officer is that section 82(2) encompasses breaches of rules which represent extensions of or procedural additions to

section 82(1). It was submitted that Rule 2:10 was not, and could not reasonably be interpreted as, an extension of or procedural addition to the political fund rules, which the union has seen fit to make. Rather, Rule 2:10 is a general statement of the objects of the union, regardless of the existence or otherwise of its political fund rules. It was an independent and separate provision, which does not depend for its existence on the union having a political fund rule. It was not a question of whether, in the absence of a political fund rule, expenditure in pursuance of Rule 2:10 would be lawful. Furthermore, there would be serious difficulties in the Certification Officer having a wider jurisdiction than to entertain complaints of breaches of the political fund rules approved under the legislation.

Reasons for my decision

20. The complaint is that this union by financially supporting members of the Labour Party out of funds held in the union's political fund is breaking one of its rules which states that its objects include: -

“To secure the return of members to parliament and to public authorities, who will support the policies of the union and further the interests of members through political means, providing the candidates are pledged to collective ownership, under democratic control, of the means of production distribution and exchange”


21. I do not, at least at this stage, have to consider whether the union is or is not breaking this rule. The question for me to determine first is whether I have jurisdiction to consider it. If I do not have jurisdiction, I have no power to determine the substance of the complaint which is denied by the union.

22. The Certification Officer is a creature of statute. I have no inherent jurisdiction. My jurisdiction is given to me by Parliament and is specified in the provisions of the 1992 Act. At present I have no other jurisdiction to determine complaints about breaches of rules of a trade union.
23. Chapter VI of the Act (dealing with the application of funds for political objects) has two sections (80 and 82) giving me jurisdiction to hear complaints. Section 80 concerns complaints about the conduct of ballots to establish or retain a political fund. That is not an issue here.
24. That leaves section 82 as the only possible source of any jurisdiction I may have to determine this complaint. That section it will be recalled requires that the rules of a union which wishes to expend money on political objects falling within section 72(1) of the 1992 Act must provide: -
- a) *that payments in furtherance of political objects are made out of the union's political fund; and*
 - b) *that a member who gives notice in accordance with section 84 that he objects to contributing to the political fund should be exempt from making contributions;*
 - c) *that a member shall not by reason of being so exempt: -*
 - (i) *be excluded from any benefit of the union, or*
 - (ii) *be placed in any respect either directly or indirectly under a disability or at a disadvantage as compared with other members of the union (except in the management of the political fund); and*
 - d) *that contributing to the funds is not a condition of membership of the union.*

Section 82(2) of the 1992 Act states: -

“A member who claims that he is aggrieved by a breach of any rule made in pursuance of this section may complain to the Certification Officer.”

25. If I am to have jurisdiction in this matter it will be that given to me under section 82(2) of the Act. This union has a political fund resolution in force and there are rules which have been approved by me. The question is therefore whether the rule complained about falls within my jurisdiction under section 82(2) of the 1992 Act. In my view section 82(2) is very restricted. It does not give me a general jurisdiction to hear complaints about breaches of every rule of the union which touches upon the political fund. It is clearly and expressly limited to jurisdiction over rules made in pursuance to section 82. Section 82 only requires rules to be made about those matters listed in paragraph 24 above. It does not in my opinion require the rule to be made about which the complainant complains. That rule (GMB rule 2.10) is therefore not, in my opinion, made in pursuance of section 82 and is accordingly not one over which I have jurisdiction.
26. Parliament has given me a limited and exclusive jurisdiction to determine complaints under section 82(2). A complaint that falls outside my jurisdiction is one for the Courts, not me. In my view this is just such a complaint and I have no power to determine it. An appeal against my decision on a question of law lies to the Employment Appeal Tribunal.



E G WHYBREW
Certification Officer

