

D/28-29/18-19

Decision of the Certification Officer on an application made under Section 108A(1) of  
the Trade Union and Labour Relations (Consolidation) Act 1992

Hussain

v

Communication Workers Union

Date of Decision

12 November 2018

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## **Decision**

Upon application by Mr Azhar Hussain (“the applicant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

1. I grant Mr Hussain’s application for a declaration that on or around 5 December 2017, the Union breached rule 3 of Appendix B of the CWU SE5 Branch Constitution by allowing people other than the scrutineers appointed by the Branch Committee to count postal ballots for branch elections.
2. I grant Mr Hussain’s application for a declaration that on or around 24 October 2017, the Union breached rule 2 of Appendix B of the CWU SE5 Branch Constitution by altering the biographical details submitted by Mr Jamil Kayani when producing ballot papers for the election of ILC Health & Safety Late Shift Representative and for Late Shift IR Representative.
3. I consider that it would be appropriate to make an enforcement order. I order that:  
The Union undertake the remaining stages of the current ballot, which was originally concluded in December 2017 and which is the subject of the complaints made by Mr Hussain, in accordance with the Union’s Rules. The result of the ballot should be declared by 3 December 2018.

## **Reasons**

4. Mr Hussain brought this application as a member of the Communication Workers Union (“CWU” or “the Union”). He did so by a registration of complaint form received at the Certification Office on 16 May 2018.
5. Following correspondence with my office, Mr Hussain confirmed his complaints as follows:-

### **Complaint 1**

On or around 5 December 2017, the Union breached rule 3 of Appendix B of the CWU SE5 Branch Constitution by allowing people - namely Michelle

Burnett and Julie Valentine (whose accreditation was not clear), Martin Collins (who should not have been in the room), Azhar Hussain and Manjinder Singh (who came to observe but were coerced in to counting) and Andy Moorey (a returning officer who should not count ballot papers) - other than the scrutineers appointed by the Branch Committee to count postal ballots for branch elections

## Complaint 2

On or around 24 October 2017, the Union breached rule 2 of Appendix B of the CWU SE5 Branch Constitution by altering the biographical details submitted by Mr Jamil Kayani when producing ballot papers for the election of ILC Health & Safety Late Shift Representative and for Late Shift IR Representative

## Background

6. Mr Hussain is a member of the South East No. 5 (SE5) branch of the CWU.
7. On or around 3 October 2017 the Branch Returning Officer, Andy Moorey, sent a notice calling for nominations for elections for various posts within the branch. According to a letter to Mr Hussain received from the union, there were 13 different ballots with 44 candidates. These positions included HWDC/ILC Deputy Area Representative (for which Mr Hussain was nominated as a candidate), ILC Health & Safety Late Shift Representative and ILC Processing Late Shift Representative. Mr Jamil Kayani was nominated as a candidate for the latter two posts.
8. Those who wished to be considered as a nominee for a post were required to fill out a Nomination Form which asked for, among other information, the date the nominee entered the business and the date the nominee joined the CWU. These were required to be sent to Mr Moorey by 24 October 2017.

9. According to a copy of Mr Kayani's nomination form, provided to me by the union, Mr Kayani filled out the date he entered the business as '26/7/2004'. He left blank the question which asked the date he joined CWU.
10. After the nominations closed, ballot papers were sent to those taking part in the vote together with biographical details of each of the candidates. A copy of the relevant document setting out Mr Kayani's biographical details was provided to me by the union. This lists Mr Kayani's 'date entered RM' (meaning Royal Mail, or in other words, the business) as '07/08/2017' and 'date joined CWU' as '26/07/2004'.
11. The ballot was conducted by post and ballot papers were required to be returned so that they could be counted on 5 December 2017.
12. Michelle Burnett and Julie Valentine had been appointed as scrutineers and attended the Count. Four other people, including Mr Hussain, attended the Count. The union have confirmed to me that all six people were involved in counting ballot papers. I have seen branch minutes which demonstrate that Ms Burnett and Ms Valentine had been appointed as scrutineers.
13. Mr Hussain and Mr Kayani were unsuccessful in the election. I have been provided by the applicant with the results of ILC Health & Safety Late Shift Representative and ILC Processing Late Shift Representative which show Mr Kayani as having 4 votes to the successful candidate's 89 votes for the former post, and 1 vote to the successful candidate's 49 votes for the latter. I have not been provided with the breakdown of votes for the position for which Mr Hussain stood.
14. On 14 December 2017, Mr Hussain raised a number of complaints to Mr Moorey, the Branch Chair, regarding how the counting of ballot papers was conducted and asking for the elections to be re-run. Mr Moorey replied on 20 December providing an explanation and did not agree to re-run the elections. Further correspondence between the two did not produce any agreement.

15. Mr Hussain sent a letter to Dave Ward, General Secretary, on 10 January 2018 and again on 24 January, informing Mr Ward of his concerns. Martin Akerman, Policy Advisor to the General Secretary's Office, wrote to Mr Hussain on 2 May 2018 explaining that, following a full investigation, the union believed that the ballot was conducted fairly and found no evidence to support the claim to re-run the ballot.

### **The Relevant Statutory Provisions**

16. The provisions of the 1992 Act which are relevant for the purposes of this application are as follows:-

#### 108A Right to apply to Certification Officer

- (1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).
- (2) The matters are –
  - (a) the appointment or election of a person to, or the removal of a person from, any office;
  - (b) disciplinary proceedings by the union (including expulsion);
  - (c) the balloting of members on any issue other than industrial action;
  - (d) the constitution or proceedings of any executive committee or of any decision-making meeting;
  - (e) such other matters as may be specified in an order made by the Secretary of State.

## **The Relevant Rules of the Union**

17. The rules of the union which are relevant for the purposes of this application are:-

Appendix B of the CWU SE5 Branch Constitution

### **2. Biographical Details**

Members who consent to being nominated for election shall also furnish details with the nomination form

### **3. Voting Papers**

...

All Postal Ballots shall be counted by the scrutineers appointed by the Branch Committee under the supervision of the Returning Officer and they will sign a certificate declaring the results, which will then be notified to the membership.

## **Considerations and Conclusions**

### **Complaint 1**

18. In a letter to my office dated 5 October 2018, the union have conceded that on 5 December 2017, a breach of rule 3 of Appendix B of the branch constitution occurred when people other than the appointed scrutineers were allowed to count ballot papers. The union have stated that this was due to the desire for results to be published to members as quickly as possible and have further stated that there is no evidence that the counting was not performed with good intentions, due diligence, integrity and accuracy.

19. Consequently, I uphold Mr Hussain's complaint that on or around 5 December 2017, the Union breached rule 3 of Appendix B of the CWU SE5 Branch Constitution by allowing people other than the scrutineers appointed by the Branch Committee to count postal ballots for branch elections.

20. I note that two of those named in Mr Hussain's complaint as people who should not have counted ballot papers (Michelle Burnett and Julie Valentine) were clearly nominated as independent scrutineers by the branch at a meeting on 13 November 2017. My declaration is therefore on the basis that four other people counted ballot papers without being scrutineers appointed by the Branch Committee.

## Complaint 2

21. In a letter to my office dated 5 October 2018, the union have conceded that on 5 December 2017, a breach of rule 2 of Appendix B of the branch constitution occurred when alterations were made to the biographical details submitted by Mr Kayani on the document provided with ballot papers. The union had previously stated that this was due to an unintentional typographical error which was not identified at the time of sending out the ballot papers.

22. Consequently, I uphold Mr Hussain's complaint that on or around 24 October 2017, the Union breached rule 2 of Appendix B of the CWU SE5 Branch Constitution by altering the biographical details submitted by Mr Jamil Kayani when producing ballot papers for the election of ILC Health & Safety Late Shift Representative and for Late Shift IR Representative.

## Enforcement Order

23. Having made these declarations, I also have to consider whether making an enforcement order would be appropriate to remedy the breach. I considered this at a hearing on 9 November 2018. Ms Katharine Newton represented the Union. Mr Michael Duodu represented Mr Hussain.

24. Mr Duodu explained that the Branch's conduct of the election in 2017 and previous elections called into question the Branch's ability to conduct an election. This meant that members of the Union could not have confidence in the results of the election. He gave examples of how another election is



currently managed and how the ballot papers for the Union's re-ballot in the election which is the subject of this complaint was being conducted. He asked that I order the election to be run again and that this should include fresh nominations and be managed by independent scrutineers. He said that this would enable Branch members to have confidence in the process.

25. Ms Newton told me that it was neither appropriate nor proportionate to make an Order. The union was already conducting a new ballot. The ballot was being completed in accordance with the Rules of the Union and the Count would be completed within the Rules. Representatives of the General Secretary's office would attend the ballot to ensure that the Count was conducted within the Rules. She referred me to **GMB v Corrigan [2008] ICR 197** in which the Employment Appeal Tribunal held that an order is discretionary and its purpose is to secure compliance by the wrongdoing union.

26. Ms Newton told me that I had no jurisdiction to make the Order requested by Mr Duodu. The complaint before me was in respect of the ballot papers and the Count only; there was no complaint in respect of the nominations. She also told me that requiring the Union to appoint an independent scrutineer would go beyond the Rules of the Union. She referred me to **Thompson v National Union of Mineworkers UKEAT/0079/14** in which the Employment Appeal Tribunal upheld an appeal that the Certification Officer had no power to make an enforcement order which formed no part of remedying the breach.

27. I do not think it appropriate for me to make the Order requested by Mr Duodu. Such an Order would be outside my powers which are set out in s108B(3) of the 1992 Act. The complaints before me relate only to the ballot papers and to the Count and so any Order must relate to remedying those or to preventing a similar breach. It is not my role to decide whether conducting the re-election in the manner Mr Duodu proposes would ensure greater confidence in its result; that is a matter for the Union.

28. I do not, however, accept Ms Newton's argument that it is not appropriate, or proportionate, to make an Order at all. The Union has accepted that there were breaches of its rules during the ballot which took place last year. I received assurances from Ms Newton that the process conducted so far was within the Rules, although it should be noted that Mr Duodu disputed this. Whilst I am not in a position to make a determination on that point I can make an Order to require that the ballot and Count, which has not yet taken place, be conducted in a manner which is consistent with the Rules of the Union.
29. My view is that it is appropriate for me to do so to ensure that steps are taken to remedy the breaches which the Union has accepted and which have not yet been remedied. I also consider it appropriate for my Order to require the result to be declared promptly to ensure that Mr Hussein can seek remedy through the courts if he does not believe that the Union has complied with my Order. I understand, from the Union, that the current ballot will close on 26 November 2018 and that the result should be declared on the same day.
30. I, therefore, order that the Union undertake the remaining stages of the current ballot, which was originally concluded in December 2017 and which is the subject of the complaints made by Mr Hussain, in accordance with the Union's Rules. The result of the ballot should be declared by 3 December 2018.

A handwritten signature in black ink, appearing to read 'Sarah Bedwell', with a horizontal line underneath it.

Sarah Bedwell  
The Certification Officer