

D/39/18-19

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

Robinson

v

GMB

Date of Decision

6 December 2018

Contents

Decision 3

Reasons 3

Findings of fact 5

The Relevant Statutory Provisions 5

The Relevant Rules of the Union 6

Considerations and Conclusions 7

Decision

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

1. I refuse Mr Robinson’s application for a declaration that on or around 1 March 2018, the Union breached rule 43 of the GMB rulebook by removing Peter Robinson from the post of GMB Sellafeld Craft (Tech) Convenor/Fulltime Representative without appointing a representative to replace him under rule 43.2(a)-(d).

Reasons

2. Mr Robinson brought this application as a member of the GMB (or “the Union”). He did so by a registration of complaint form received at the Certification Office on 13 June 2018.
3. Following correspondence with my office, Mr Robinson confirmed his complaint as follows:-

On or around 1 March 2018, the Union breached rule 43 of the GMB rulebook by removing Peter Robinson from the post of GMB Sellafeld Craft (Tech) Convenor/Fulltime Representative without appointing a representative to replace him under rule 43.2(a)-(d).

4. At a hearing before me on 28 November 2018, Mr Robinson was represented by Mr Edwin Dinsdale. A witness statement was submitted by Mr Dinsdale. A written witness statement and oral evidence was given by Mr Robinson. The Union was represented by Mr Edward Cooper. Written witness statements for the Union were given by Mr Joe Murdock, Mr Roger Denwood, Mr Peter Kane and Mr Chris Jukes, who all also gave oral evidence. There was in evidence a bundle of documents consisting of 279 pages containing correspondence and the Rules of the Union. Both the Union and Mr Dinsdale provided skeleton arguments.

5. Prior to the hearing, Mr Robinson applied to have two additional documents included for reference into the hearing bundle. These were;
 - a. an email purporting to provide a background history of representation of boilermakers within the GMB, and
 - b. a recent news article regarding a GMB secretary.

The Union resisted the inclusion on a number of grounds, including the documents' relevance and the Union's lack of opportunity to test the evidence. After considering these representations, I decided that the two documents should not be included in the bundle to be used at the hearing on the basis that, on the information provided, they did not have sufficient relevance to the specific complaint to be determined.

6. Prior to the hearing, the Union applied that I use my powers under section 256ZA of the 1992 Act to strike out the evidence of Mr Dinsdale. The Union argued, among other grounds, that the evidence was unrelated to the breach alleged by Mr Robinson and that some of the evidence had already been raised in a previous complaint by Mr Dinsdale before me, which was dismissed. At the start of the hearing, I considered representations from Mr Dinsdale on the above, after which I decided to strike out the whole of the witness statement provided by Mr Dinsdale as it did not contain any material that was relevant to the issues to be determined by me in this case. Mr Dinsdale's statement was, therefore, not considered nor did he provide oral evidence. This decision was accepted by both parties without further application.
7. Also prior to the hearing, the Union applied that I use my powers under section 256ZA of the 1992 Act to strike out the whole of Mr Robinson's complaint on the grounds that the manner in which the proceedings had been conducted by the applicant had been scandalous or unreasonable. After considering this application, I decided that the circumstances to strike out the whole complaint on that basis were not satisfied and declined to use my power to strike out the complaint. This decision was accepted without further application.

Findings of fact

8. Peter Robinson is a Member of the GMB based at Sellafield. He has been a shop steward since about 1993.
9. Mr Robinson was a member of the Cumbria Engineering Branch of GMB, which represented craft workers, until July 2014. That Branch was closed in July 2014 and Mr Robinson was transferred to the GMB Sellafield Branch. Mr Robinson remained as a shop steward after the closure of the Branch.
10. Joseph Murdock, Convenor and Branch Secretary of the GMB Sellafield Branch decided to remove Mr Robinson's 100% facilities time in March 2018.

The Relevant Statutory Provisions

11. 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.

256ZA Striking out

(1) At any stage of proceedings on an application or complaint made to the Certification Officer, he may—

(a) order the application or complaint, or any response, to be struck out on the grounds that it is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived,

(b) order anything in the application or complaint, or in any response, to be amended or struck out on those grounds, or

(c) order the application or complaint, or any response, to be struck out on the grounds that the manner in which the proceedings have been conducted by or on behalf of the applicant or complainant or (as the case may be) respondent has been scandalous, vexatious, or unreasonable.

The Relevant Rules of the Union

12. The Rules of the Union which are relevant for the purposes of this application are:-

Rule 35 Branches

12 Any branch can make by-laws for how it carries out its own business. However, these by-laws must keep to our rules, and be approved by the regional council, regional committee or Central Executive Council before they are used.

Rule 43 Representatives in the workplace

1 Shop stewards or staff representatives will be appointed (or elected by the members employed where necessary), if approved by the branch committee or regional secretary (if more than one branch is involved).

2 These representatives will be appointed in any of the following ways, depending on which is the most suitable.

a By a majority vote, through a show of hands or a ballot, of the members at the workplace.

b By a majority vote, through a show of hands, at a branch meeting.

c If all the members concerned agree that a member appointed by the regional secretary should act as representative.

d By shop stewards or staff representatives at the workplace electing one of themselves as convenor or chief staff representative.

3 The shop stewards and staff representatives and their convenor or chief staff representative will work under the authority of the regional committee. They must follow the decisions and policies set out by the governing authorities of the union.

Considerations and Conclusions

Summary of Submissions

13. Mr Robinson and the Union agree that Mr Robinson has been a shop steward at Sellafield since about 1993 and that he remains in that role now. They also agree that he was a full time representative until the beginning of March 2018 as he had been granted 100% facilities time. Where they disagree is whether the position of full time representative is subject to Rule 43 of the GMB Rule Book and whether Mr Robinson's full time position was protected by the Company Joint Industrial Council & Company Joint Staff Council Agreement to Establish New Consultation

and Negotiation Arrangements for Sellafield Site License Company in place since 2007 (“the 2007 Agreement”), between his employer and the Union. Mr Dinsdale told me that the 2007 Agreement, which provided for a full time Representative for craft workers protects Mr Robinson’s role and that Mr Murdock did not have the authority to remove Mr Robinson from that role. From earlier correspondence between Mr Robinson and my office, and the wording of the complaint itself, I have assumed that Mr Robinson believes that the full-time representative role is subject to Rule 43 and consequently he could only have been replaced in that role by one of the methods outlined in Rule 43.

14. The Union’s position is that Mr Robinson remains a shop steward and has not been removed from that role but, following Mr Murdock’s decision, no longer has 100% facilities time (facilities time is time away from a worker’s normal duties, with their employer’s agreement, so that they can undertake union duties). A worker with 100% facilities time may also be said to have full time release. In other words the role of full time representative is not a separate role but reflects the granting of 100% facilities time and this is at the discretion of the Convenor. Mr Cooper also told me that the 2007 Agreement afforded no protection as it was not legally enforceable, and that the 2007 Agreement had been superseded by an agreement now in place and known as the 2017 Agreement.

15. Mr Cooper told me that the current Sellafield Branch Constitution enables Mr Murdock to decide which shop stewards should be granted 100% facilities time. Although this is not specified in the complaint, nor in the written submissions, Mr Dinsdale’s view is that the Branch Constitution is in breach of Rule 35 as it is inconsistent with the GMB Rule book.

Was Mr Robinson a Convenor?

16. Mr Robinson and The Union agree that, before March 2018, Mr Robinson used the title of full time representative/Craft Convenor. I have also seen emails from Mr Robinson where he used the title GMB Craft Convenor after March 2018. This is important because Mr Robinson’s complaint is that he was removed from the role

of GMB Sellafield Craft (Tech) Convenor/Fulltime Representative. I would add, for clarity only, that “Craft” and “tech” appear to be used interchangeably to relate to this role and to the workers represented by Mr Robinson.

17. Mr Jukes, when giving evidence, explained that there is only one GMB Convenor at each workplace, including at Sellafield. He said that, even before the Cumbria Engineering Branch closed and its members transferred to the Sellafield Branch, there was only one GMB Convenor on the Sellafield site. The current GMB Convenor at Sellafield is Mr Murdock who was re-elected into the role in January 2017. Mr Robinson did not stand for election as Convenor of the Sellafield Branch. He told me in evidence that he did not attend the Branch Shop Steward meetings and had not attended the meeting at which Mr Murdock had been elected because his role was to represent the Craft members.
18. Mr Dinsdale, in his submissions, told me that the workers represented by Mr Robinson perceived him to be their Convenor, as did the company. This is consistent with verbal evidence given by Mr Denwood who told me that the company sometimes referred to all full time union representatives as Convenors. Neither Mr Dinsdale nor Mr Robinson presented me with any evidence that Mr Robinson was, in fact, a Convenor. On the contrary, Mr Dinsdale told me that, in his view, Mr Robinson had been a full time shop steward until March 2018.
19. I am satisfied that Mr Robinson was not a Convenor before March 2018. I agree with both parties that he was, and remains, a shop steward. It is also clear to me, and both parties agreed, that the role of shop steward falls within Rule 43.

Does the role of Full Time Representative fall within Rule 43?

20. Mr Dinsdale’s view is that the full time representative role filled by Mr Robinson until March 2018 is also subject to Rule 43. He argued that the role could only be filled following an election by workplace representatives which had not taken place after Mr Robinson’s removal from the post in March. There had, however, been an attempt, by those who Mr Robinson represented, to hold a vote of confidence in

him to demonstrate their support. There was some discussion about this at the hearing before me. Mr Cooper suggested that this vote of confidence had, in fact, been an attempt by Mr Robinson to hold an election and that this meant that he must have resigned to stand again. Mr Robinson told me that he had not resigned and that the process that was followed was an attempt by those he represented to demonstrate their support for him following Mr Murdock's decision. He acknowledged that the process that was followed was perhaps not the best way to handle the situation. For my part, I have seen no evidence that an election within the Rules of the Union was held and accept the evidence from Mr Robinson that this was an attempt by his colleagues to be seen to support him.

21. Mr Dinsdale argued that Mr Robinson's full time position was also protected by the 2007 Agreement between Sellafied and the Unions active on site. Mr Robinson told me that the current live Agreement at Sellafield was signed in 2007 and provides for the number of fulltime representatives of each Union at Sellafield. That Agreement provides for one full time GMB tech representative which is the position which he held. He told me that the post had been in place since he began working at Sellafield about forty years ago.

22. Mr Murdock told me that that the current live agreement was produced in 2017 and, although it has not yet been signed, it reflects current custom and practice at Sellafield and provides for five full time GMB Representatives. He also told me that the provisions governing the appointment of full time GMB Representatives are not found in either the 2007 Agreement or the 2017 Agreement but are in the Branch Constitution which was last updated in 2009. That Constitution reflects that there is an Agreement with the employer which, amongst other things, provides for some shop stewards to have full time release, and enables the Convenor to appoint to these positions.

23. I have not been provided with a signed copy of the 2007 Agreement, the 2017 Agreement, or the Branch Constitution. Mr Kane told me that the 2007 Agreement had been signed in 2007 and that he was at a GMB Branch Meeting at which the

Branch Constitution was adopted. He also told me that he believed the Constitution had been passed to the GMB Northern Region Regional Secretary for approval. Conversely, I have been provided with documents from the company and another Union which suggest that they are working to the 2007 Agreement although no evidence was submitted to support this.

24. Dealing first with the two Agreements, I consider them to be useful context for me although I cannot see that they assist me to reach a decision as to whether the full time representative role is subject to Rule 43. The Agreements are between the employer and the unions which it recognises. Their relevance here, is limited to the allocation of full time release to individual shop stewards. Both versions of the Agreement set out, for each union, the number of Representatives who may have full time release but, as I would expect, do not make any provision as to how each union should appoint to those roles. The 2007 Agreement sets out an allocation of 1 GMB Tech role which Mr Robinson believes is the role from which he was removed. However, even if that Agreement remains in force, I have no role in deciding whether the Union has breached that requirement nor in how it should allocate full time release.

25. As to the Branch Constitution Mr Kane has told me that he was there when it was agreed by the Branch shop stewards and that he believed it had been passed to the Region for authorisation. Mr Murdock told me that the Convenor and shop stewards have operated with reference to it during the ten years he has been on full time release. Neither Mr Dinsdale nor Mr Robinson presented any evidence to contest this. Mr Dinsdale, however, submitted that the Branch Constitution is in conflict with Rule 35.12 because it purports to give the Convenor power to appoint full time representatives which, in his view, conflicts with Rule 43.

26. Mr Cooper told me that Rule 43 relates to work place representatives; at Sellafeld these are known as shop stewards. Mr Murdock removed Mr Robinson's facility time but did not remove Mr Robinson from his role as shop steward.

27. Mr Dinsdale told me, as did Mr Robinson when giving evidence, that Mr Robinson remained as a shop steward but had been removed from his role as a full time representative. For that to be the case the full time representative role must be a separate role from the shop steward role. I cannot accept that this is the case; the role that Mr Robinson was elected to, whatever it was known as locally, was clearly a shop steward role falling within Rule 43. It became a full time representative role only when Mr Robinson was granted full time release some years ago. In my view, it is clear that Mr Robinson held only one role as shop steward and that he remains in that post. When I asked Mr Robinson how his role had changed since March he told me that he was now working in the business training apprentices. His work place representation role had not changed although he now needed to agree, with his line manager, the facilities time necessary to undertake that role. He also told me that he had been removed from a number of meetings which he had previously attended as a full time representative. This is consistent with Mr Dinsdale's view that that, before March 2018, Mr Robinson had been a full-time shop steward and does not, in my view, demonstrate that the full time representative role is separate from the shop steward role. Rather, it supports the view that he was a shop steward with full time release and remains a shop steward but needs to agree the time he spends on union business with his line manager.

28. On that basis I am satisfied that Mr Robinson was not removed from a role which falls within Rule 43 although it is clear, and accepted by the Union, that the facilities time he had been granted was removed. Rule 43 does not deal with the allocation of facility time nor make any distinction between full and part time roles. Consequently, any consideration as to whether a role attracts full or part time release must fall outside Rule 43. That would be the case even if the Branch Constitution was not in place. That Constitution does, however, clarify where responsibility lies for granting full time release to shop stewards; this supports my view that full time representatives are shop stewards who have been granted full time release.

29. On that basis I do not agree with Mr Robinson that the Union has breached Rule 43. My view is that he remains in his post as shop steward but no longer has access to full time release.

30. I would add that I was given evidence, which Mr Dinsdale strongly disagreed with, as to why Mr Murdock took the decision to remove facilities time. The reasons for the removal are not, however, relevant to my decision which relates only to the complaint made by Mr Robinson and I have not taken them into account in reaching this decision.

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

Sarah Bedwell
The Certification Officer