

D/2-3/19-20

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

Bromfield

V

GMB

Date of Decision

9 May 2019

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Decision

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

Pursuant to section 256ZA of the 1992 Act, I strike out the claimant’s application on the grounds that the complaints, as advanced by the claimant, have no reasonable prospect of success and/or are otherwise misconceived.

Reasons

2. Mr Bromfield first contacted my office in June 2018. The matters he raised in those letters were not matters on which I could adjudicate. Mr Bromfield wrote to me again on 30 January 2019.
3. Following correspondence with my office, Mr Bromfield confirmed his complaint as follows:-

Complaint 1

That, on or around 4 February 2019, the Union breached Rule 35.13 by not suspending all Union benefits from Mr Bromfield when he broke the rule by making Union business known to unauthorised organisations, unofficial journals and the media without getting approval.

4. Mr Bromfield made a further complaint on 8 March 2019. This complaint was confirmed by Mr Bromfield as follows:-

Complaint 2

That on or around October 2018, the union breached rule 35.13 by not suspending all union benefits from Sharon Yates when she broke the rule by making union business known to an unauthorised organisation, namely the police service, when she made a complaint against Mr Carl Bromfield, a member of the union, without first raising the complaint using the Union’s complaint procedures.

5. I understand that there is a long and complicated background to the issues between Mr Bromfield and the GMB which has led to the complaints to me by Mr Bromfield. I have been given a summary of those issues by Mr Bromfield.

In 2014 Mr Bromfield pursued a personal injury claim against his employers. He was unhappy with the support he received from the Union, and their solicitors, and informs me that, at one meeting, he had been accused of fraud. Mr Bromfield raised complaints about this through the formal Union processes but his complaints were not upheld. He appealed the decisions made under the complaints processes but the appeal was not upheld. These issues do not form part of the complaint to me; however, they provide useful context to the matters which are the subject of the complaint.

6. Mr Bromfield has informed me that, once he had exhausted the Union's complaints processes, he published information about his case and his treatment by the Union on the internet. His view is that, by doing so, he breached Rule 35.13.
7. In relation to complaint 2 Mr Bromfield asserts that, in his view, Mrs Sharon Yates should have used the Union's internal procedures to make complaints about him rather than make a complaint to the police.

Findings of fact

Complaint 1

8. Mr Carl Bromfield has been a member of the GMB for over 40 years.
9. In early 2014 he took sick leave from his employer. He had a meeting with the Union solicitor in January 2015 about seeking compensation for the injury which led to his sick leave. In March 2016 Mr Bromfield made a complaint to the Union about the Union's legal team. Around May/June 2016 the Union closed Mr Bromfield's case.

10. Mr Bromfield then made an official complaint to Sharon Yates, Branch Secretary, Hanley branch who forwarded the complaint to the Union's regional office. The complaint and subsequent appeal were not upheld.
11. On or around 27 June 2018 Mr Bromfield posted his description of his experience with the Union on The Prole-star an online newsite. He told me that he did so because he believed that this would, under Rule 35.13, result in his suspension and expulsion from the Union giving him the opportunity, through a Hearing, to raise his wider concerns.
12. On or around 2 February 2019 Mr Bromfield posted a review, on the trustpilot website, of his experience with the GMB.
13. The Union have not taken any action against Mr Bromfield as a result of the post in The Prole-star or the trustpilot review.

Complaint 2

14. On or around August 2018 Mrs Yates, made a personal complaint to the police about Mr Bromfield on what she saw as personal slurs on her character made in a public forum such as the Union Facebook page.
15. On 2 November 2018, the police visited Mr Bromfield at his home in relation to Mrs Yates's complaint to them. The Police looked into the matter, deemed it to be a civil matter and closed their files on 16 January 2019.

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.

256ZA Striking out

(1) At any stage of proceedings on an application or complaint made to the Certification Officer, she 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.

(4) Before making an order under this section, the Certification Officer shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made.

The Relevant Rules of the Union

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

Rule 5 Membership

5.4 The Central Executive Council, a regional council or a regional committee has the power to suspend a member from benefit or ban them from holding any GMB office, or ban a member from taking part in GMB business and affairs, in any case for as long as the council or committee feels necessary:

- If they believe the member is guilty of trying to harm the Union or acting against the rules;
- If the member makes or in any way associates themselves with any defamatory or abusive comments made against any of our officials or committees;
- If the member, alone or together with any other members or people opposes or acts against any of our policies;
- If the member acts against the best interests of the GMB
- If the member encourages or takes part in the activities of any organisation or group whose policies or aims are racist or promote racists beliefs,

or for any other sufficient reason.

5.8 At each hearing before the regional council, the regional Committee, the Central Executive Council or the Appeals Tribunal, the member will have a reasonable opportunity

- To hear the evidence against them, to answer it and to question witnesses;
- To present their case orally or in writing, and

- To support their case with written statements or by using witnesses.

Rule 6 Complaints procedure for members

1. Any member who wants to complain must do so to their branch secretary, who will take the matter to the branch. If the members is not satisfied with the branch's decision or the branch decides it does not have the authority to deal with the matter, the member can appeal in writing to the regional committee within one month of the branch meeting. The regional committee will make the final decision. The Regional committee order a complaint be struck out for scandalous, vexatious or unreasonable behaviour by the complainant or for excessive delay in proceeding with the complaint. Before making such an order the complainant will be sent notice giving them an opportunity to show why the order should not be made.
2. At each hearing before the branch or the regional committee, the member will have a reasonable opportunity
 - To present their case orally or in writing
 - To support their case with written statements or by using witnesses
 - To hear the evidence against their complaint, to answer it and to question witnesses.

Rule 35 Branches

13. Members or branches must not issue any addresses or circulars without getting approval from the regional council, regional committee or Central Executive Council. Also, members must not make our business known to unauthorised organisations, unofficial journals or the media without getting approval. Any member of any branch who:

- Issues or hands out any circular;
- Makes our business known, or calls unauthorized meetings, without the approval of the regional committee; or

- Breaks this rule in any other way;

will be suspended from receiving all benefits we provide and could have their membership cancelled.

Considerations and Conclusions

Background

Complaint 1

18. It is not disputed that Mr Bromfield made Union business known to unauthorised organisations. Mr Bromfield's complaint to me is that this should have led to the Union taking action under rule 35.13 and that the Union should have taken action against him.
19. Mr Bromfield has argued in correspondence that rule 35.13 is a standalone rule and that the Union is bound by this rule to suspend his Union benefits. It is important to note, however, that this rule is silent on who should impose that suspension. Mr Bromfield believes that this can be done by a branch disciplinary panel. I have not been pointed to any Union Rules that enable a branch to impose such a sanction.
20. It is an established position that that the principle of natural justice must be incorporated into the Union Rules as an implied term where any disciplinary action is taken. My predecessor set this out in his decision in **Foster v Musicians Union**:
- 'The rights of the Applicant as a Union member are contained in the rules of the Union, both express and implied, and in various statutes. The implied duties of a union include the duty to conduct its disciplinary processes in accordance with the judicially recognised principles of fairness, sometimes referred to as natural justice.' [Foster v Musicians Union (D/13-17/03)]
21. Therefore, the suspension of benefits under rule 35.13 could only be imposed where a member had been given an opportunity to be heard. Rule 35.13 must, therefore, be read in conjunction with the Union's disciplinary rule 5.4 which gives the power to suspend a member's benefits to the Central Executive Committee, a Regional Council or a Regional Committee. Consequently, there must be a process

under Rule 5.4, which gives the Member the right to be heard, before the Union can suspend benefits from that Member.

22. Rule 5.4 is a discretionary Rule which permits the Union to consider taking disciplinary action; it does not require disciplinary action to be taken. It is difficult, therefore, to see how this Rule could be breached. Consequently, it must be the case that where a member appears to have breached Rule 35.13 by disclosing Union business it is open to the Union to consider whether to take action under the disciplinary procedures in Rule 5.4. Where it does so, and it finds that a breach has occurred, it must remove Union benefits as required by Rule 35.13. In effect, Rule 35.13 creates a mandatory sanction. But I can see nothing in Rule 35.13 or Rule 5.4 which requires the Union to begin the disciplinary process which would lead to that sanction. Nor does Rule 5.4 enable a branch disciplinary hearing to lead to the suspension of a member's benefits.
23. Consequently, I can see no prospect of Complaint 1 being successful.

Complaint 2

24. Mr Bromfield's complaint is that the Union should have stopped Mrs Yates's Union benefits because she disclosed Union business to the police when she made a complaint about him. His view is that a disclosure to the police is a disclosure to an unauthorised organisation under Rule 35.13.
25. Although there is no definition of 'unauthorised organisation' within the Union Rules I cannot accept that the disclosure of Union business to an appropriate investigatory or regulatory body could lead to the automatic suspension of a Union Member's benefits. That could not have been the intention of the Union when it drafted and approved the Rules, as doing so would undermine the effective operation of investigative authorities by impeding the investigation of potential criminal offences and potential regulatory breaches.
26. Even if that were not the case the same principles of natural justice would apply to this complaint as for complaint 1. The requirement for a fair hearing would engage

Rule 5.4 and the Union would have discretion as to whether to proceed with a disciplinary case.

Conclusions

27. For the reasons given above I am satisfied that the complaints to me are misconceived and there is no prospect of success.
28. Section 256ZA (4) of the 1992 Act requires me to send notice to the party against whom the strike out order shall be made giving an opportunity to show cause why the order should not be made. Mr Bromfield was therefore invited, on 10 April 2019, to provide representations as to why his application should not be struck out in whole given both the Union and Mr Bromfield accept rule 35.13 relates to disciplinary proceedings as it has powers to impose sanctions.
29. Mr Bromfield replied by letters dated 12 and 22 April stating he stood by his original statement that Union Rule 35.13 is quite clear that any member breaking the Rule will have Union benefits removed and could have their membership cancelled. He argued that both he and Mrs Yates had broken the rule and should face Union disciplinary measures. No new relevant information was included which has caused me to reconsider my original opinion that rule 35.13 has not been breached.

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

Sarah Bedwell

The Certification Officer