

D/7/19-20

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

Dinsdale

V

GMB

Date of Decision

17 June 2019

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Decision

1. Upon application by Mr Edwin Dinsdale (“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 Mr Dinsdale’s complaint on the grounds that the complaint, as advanced by Mr Dinsdale, has no reasonable prospect of success and/or is otherwise misconceived.

Findings of fact

2. Mr Dinsdale contacted my office in December 2018 and made a number of complaints. One of those complaints was that the Union had breached rule 43 of its rulebook with regards to the election of the Sellafield Site Shop Stewards. Following correspondence with my office, Mr Dinsdale confirmed this complaint as follows:

On or around 15 June 2018 and continuing the union breached rule 43 by the Sellafield Site Shop Stewards Roger Denwood, Diane Robertson, Pat McCarry and Gary Batty) not being elected in line with the ways prescribed in rule 43.2 (a)-(d) rather they were appointed by Mr Joe Murdock, GMB Convenor Sellafield.

3. Mr Dinsdale appeared to allege that rule 43 was breached by the Union because, the four Site Shop Stewards named in the complaint, were elected to the Shop Steward role and at some point later were transferred to a different role, that of Site Shop Steward (Sellafield site). He asserted that there should have been an election for that new role in accordance with rule 43.
4. He also told me that “when a local Shop Steward relinquishes their positions to move to a site position, another Shop Steward is voted in locally, and as such the Site Shop Steward has been replaced and no longer has a mandate from any GMB members”

The Relevant Statutory Provisions

5. 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

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

Background

6. Mr Dinsdale alleges that the only way a Shop Steward can be removed within Rule, is by the members in the workplace voting in a new Shop Steward to replace the existing Shop Steward. He claims that the named individuals within his complaint, Roger Denwood, Diane Robertson, Pat McCary and Gary Batty left the local Shop Steward role that they had been elected to, and took up a site position. He then claims that the members within the area that they have vacated elect a new Shop Steward or adopt a representative from within the local area, which he claims removes the full-time representatives by default.

Conclusions

7. Looking at Rule 43, however, there does not appear to be anything which requires the union to have a further election when a Shop Steward moves into the role of the Site Shop Steward. Nor is there anything which prevents a Shop Steward, having been elected locally, from taking on a Site Shop Steward role. It is difficult, therefore, to see how rule 43 has been breached in the manner claimed by Mr Dinsdale. Specifically, the Rules do not appear to require the further election that he asserts is required. Consequently, I find that this complaint has no reasonable prospect of success and/or is otherwise misconceived.
8. For the reasons given above I am satisfied that the complaint to me is misconceived and that there is no prospect of success.
9. 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 Dinsdale was therefore invited, on 8 May 2019, to provide representations as to why this complaints should not be struck out.
10. Mr Dinsdale replied by a letter dated 20 May 2019; however, he did not provide any new relevant information to support his claim that Rule 43 had been breached. He did ask that I consider this complaint at the Hearing which will consider his other complaints so that the facts could be flushed out. I do not think that is a reasonable approach, however, as Mr Dinsdale has been unable to demonstrate that the Union's actions, as presented by him, could amount to a breach of Rule 43.



Sarah Bedwell

The Certification Officer