

D/8/19-20

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

Tavsanoglu

V

GMB

Date of Decision

17 June 2019

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## Decision

1. Upon application by Dr Solmaz Tavsanoğlu (“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 it has no reasonable prospect of success and/or is otherwise misconceived.

## Reasons

### Background

2. Dr Tavsanoğlu is a member of GMB. She worked as an admin officer at GMB Branch D30 and was paid an honorarium for her work as an admin officer. She did not receive her expected payment in May 2018. I received an application from her on 16 December 2018. The application included information about her work at the GMB (“the Union”) and cited alleged breaches of Rules 34(5), 35 (11) and 37 of the Union’s Rule Book.
3. On 5 February 2019 Dr Tavsanoğlu confirmed that her complaint was about the ‘removal from my post by the GMB officers...’. Since then my office has been in correspondence with Dr Tavsanoğlu to identify whether this post is included within the Union Rule Book and whether a complaint about her removal from that post falls within my jurisdiction. My office wrote to Dr Tavsanoğlu on 13 February 2019 stating that the Certification Officer needed to be pointed to a Rule that dealt with the appointment or removal of person to the relevant role (ie that of ‘admin officer’).
4. By way of reply to that letter, on 17 April 2019 Dr Tavsanoğlu wrote by e-mail as follows:

“My complaint is still stand. I believe that I provided all required evidence for my complaint before.

I expect that you will consider my complaint on the basis of the evidence, that I provided, and make you decision accordingly.”

5. However, Dr Tavsanoğlu did not provide a Rule that appeared to be relevant to the matter of her complaint, as asked for in the letter of 13 February 2019.

## **The Relevant Statutory Provisions**

6. 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.

(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**

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

### **Rule 34 (5): under Finance, Payments to Branches**

Any branch which does not provide their quarterly financial report in line with the timetable set by the National Administration Unit will not receive the next quarters payment from the region

### **Rule 35 11 under Branches**

Any branch officer who the regional secretary and the regional committee believe has not satisfactorily carried out their duties can be removed from office at any time by the regional committee. The regional committee have the power to authorise the branch members to hold a new election, or to take any other action they feel is appropriate.

### **Rule 37 under Branches, Branch secretary**

1 The branch secretary will:

- keep all the branch's books, accounts and documents;
- carry forward in the contribution book and on members' cards all contributions members have not yet paid;
- deal with all correspondence and read it to the members of the branch; and
- take part in all branch and committee meetings, and keep a record of them.

2 Each quarter, the branch secretary will hand over all money taken on behalf of the branch to the region. They will also give the region a quarterly sheet showing the branch's income and spending. If, under the circumstances, the branch secretary is not able to do this, they must make other arrangements with the regional secretary.

3 The branch secretary will send to the National Administration Unit the branch's financial report, which should be signed by the auditors and the president, within the timetable set by the National Administration Unit.

4 The balance sheet must have the necessary details filled in to allow the National Administration Unit to make up the summary for the region.

5 If branch auditors are not available, the branch secretary must apply for auditors from the regional office.

6 If a member wants to transfer to any other branch, the branch secretary must provide written authority, which can be either provided on paper or by digital media. The branch secretary must not allow any member to transfer to their branch without evidence of such approval from the branch secretary of the branch they are transferring from. Transfers will need to be approved by the regional secretary and registered with the regional office. Branch secretaries of both the branch that the transferee is leaving and the branch the transferee is joining will be advised by the regional office when the transfer takes place.

7 The branch secretary will report to the regional secretary, in writing, any case where a collecting steward has failed to carry out their duties.

8 The branch secretary and the president can call special branch meetings when necessary.

9 The branch secretary must give one month's notice if they want to resign. If they do not do this, they will lose any payments they are owed.

10 When the branch secretary resigns or retires (or when asked to do so), they must give all money, books and property of the Union to the responsible officers of the region. If they do not do this, we may begin legal proceedings against them.

11 The branch secretary will have the right to speak and vote on any business carried out at their branch.

## **Considerations and Conclusions**

8. Dr Tavsanoğlu alleged that GMB had breached Rules 34(5), 35 (11) and 37 of the Union's Rule Book. None of those Rules, however, deal with the removal from office of an admin officer. There has been correspondence between my office and Dr

Tavsanoglu on this matter. She has not been able to demonstrate, however, that the role of admin officer was covered by the Rules of the Union nor provided any information to suggest that Rules 34(5), 35 (11) or 37 had been breached. On that basis I am satisfied that Dr Tavsanoglu's application 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. My office wrote to Dr Tavsanoglu on 30 April 2019. This letter stated that, having considered Dr Tavsanoglu's application and further correspondence I was minded to exercise my powers section 256ZA of the Trade Union and Labour Relations (Consolidation) Act 1992 to strike out her application on the grounds that it has no reasonable prospect of success or is otherwise misconceived. The letter invited Dr Tavsanoglu to provide written representations as to why I should not strike out her application.
10. Dr Tavsanoglu responded by an e-mail of 31 May 2019 which stated, in part, as follows:

'The requested reference to the rule book was provided in the application form and supported evidence at the time the complaint was made. I provided my wage slips and their letter acknowledging my appointment as an admin officer in the branch. I understand that you are asking which rule directly states that "an admin officer was a post covered by the rule book". As you must know the rule books do not cover every single eventuality.

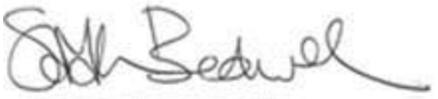
Considering the existing GMB rule book's ambiguous content and its coverage, its unclear and contradictory complaints procedure (ie if you have a complaint against a branch secretary you have to make your complaint to the branch secretary), I expect you to give consideration with respect to the evidence that I have submitted.

At present I have provided relevant information. I would again request that you do give due consideration without which it is impossible to consider that my submission has had a fair hearing.'

Dr Tavsanoğlu did not, however, point to a Rule within my jurisdiction that appeared to be relevant to the matter of her complaint.

11. I have, of course, taken Dr Tavsanoğlu's views into account in reaching my decision. I understand that she is unhappy with her treatment by the GMB and that her complaint to me has not been resolved. However, given the limits of my powers and with no link with the Rule Book having been identified, I have no jurisdiction to determine her complaint. Whilst she may be right to say that Union Rule Books do not cover all matters, I can only deal with complaints about a breach of the Rule Book and the complainant must be able to identify the Rule which they say has been breached. The Rules which Dr Tavsanoğlu identified do not relate to the post which she held. My office corresponded with her to explain this and to give her the opportunity to demonstrate a link between the facts of her case and those Rules but she has been unable to do so.
12. As to the Union's complaints procedure, Dr Tavsanoğlu's complaint to this office was not about faults in that procedure. She confirmed to us that the complaint was about her removal from office. And, even if her complaint was about the alleged breach of a complaints procedure this would appear to fall outside of the matters I can consider.

13. Finally, it is not clear to me whether Dr Tavsanoglu was, in fact, employed by the Union as an admin officer. She certainly undertook the work and received payment for it; however, she has provided documents which suggest that she was employed and I have seen a letter from the Union which confirms that she was not employed. I have not taken Dr Tavsanoglu's employment status into account in my decision. This is because, whether or not her role as admin officer amounts to employment, she has not been able to demonstrate a link between the facts of her case and the Rules.



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Sarah Bedwell

The Certification Officer