

D/2/93

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE  
UNDER SECTION 55 OF THE TRADE UNION AND LABOUR RELATIONS  
(CONSOLIDATION) ACT 1992**

**IN THE MATTER OF A COMPLAINT  
AGAINST THE NATIONAL UNION OF RAIL, MARITIME  
AND TRANSPORT WORKERS**

**DATE OF DECISION**

**10 June 1993**

**DECISION**

Under Section 55 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the Act) I am empowered to make, or refuse to make, a declaration on the application of any person who claims that their trade union has failed to comply with one or more of the provisions of Part I Chapter IV of the Act which imposes a duty to hold elections for certain positions. One of these provisions is that no member shall be unreasonably excluded from being a candidate in such an election. For the reasons set out below, I decline to make a declaration in this case.

**The application**

1. On 2 November 1992, I received a formal complaint from a member of the National Union of Rail, Maritime and Transport Workers (the union) alleging that the union had unreasonably excluded him from standing as a member of the Council of Executives (which is the union's principal executive committee) on the grounds that he could not complete his term of office before reaching the retiring age of 65 years. The union claimed that it was a principle that in order to stand, candidates must be able if successful to complete a full term of office before retiring at 65. The complainant also argued that, as a result of decisions taken at the 1992 Annual General Meeting of the Union, the actual period of office

for members of the Council of Executives was two years rather than the three years stated by the union and that he would be able to complete a two year term before reaching the age of 65.

2. After a fairly substantial exchange of correspondence and documents I held a hearing on 6 April 1993 to enable the parties to elaborate on their arguments. Subsequently there was a further short exchange of letters. This decision is based on material presented in all the correspondence and at the hearing.

### **The Facts**

3. The union was formed on 10 September 1990 as a result of an amalgamation between the National Union of Seamen (of which the complainant was a member) and the National Union of Railwaymen. On 23 July 1992 the union sought nominations for its Council of Executives. Thirteen seats on the Council were for representatives of the Shipping grades. The form seeking the nominations made it clear that the period of office would start on 1 January 1993. It did not specify when the period of office would end. It made clear however that the period of office was under active consideration and that it was "not possible to assume that existing conditions will apply".

4. The complainant, as required by union rules, was nominated by his branch. This nomination, on a form which included the complainant's date of birth, was originally accepted by the union. The complainant's name appeared in a list of candidates "nominated by 21st August" circulated by the union during the course of the nomination process which closed on 14 October. Subsequently his election address was accepted by the union. Then on 29 September the complainant was told through a letter to his branch that he could not be included as a candidate for this election as a computer check had shown that his date of birth, 7 July 1930, meant he could not complete a full three year term of office on the Council of Executives prior to reaching 65 years of age. Another candidate was nominated by the complainant's region and returned unopposed to the Executive Council which took office on 1 January 1993.

### **The requirements of the legislation**

5. Section 47(1) in Chapter IV of the Act provides:

"(1) No member of the trade union shall be unreasonably excluded from standing as a candidate (my emphasis).

(2) No candidate shall be required, directly or indirectly, to be a member of a political party.

(3) A member of a trade union shall not be taken to be unreasonably excluded from standing as a candidate if he is excluded on the ground that he belongs to a class of which all the members are excluded by the rules of the union.

But a rule which provides for such a class to be determined by reference to whom the union chooses to exclude shall be disregarded."

Sub-sections (1) and (3) are particularly relevant to this case.

### **Argument and reasons for refusing to make a declaration**

#### **(a) Period of Office**

6. I will deal first with the issue of whether the period of office was two years as argued by the complainant, or three as argued by the union. I take this first because if the period was two years the exclusion of the complainant could not have been based on the principle on which the union claimed to have acted.

7. There is no dispute that prior to the 1992 Annual General Meeting of the union the period of office for this Executive Council would have been three years. The difficulty arose because of the complex interaction between a series of proposed amendments to the union's rules, some of which were carried and some lost, at the union's 1992 Annual General Meeting. I can fully understand the confusion caused by this and am grateful that by the time of the hearing on this complaint the parties were agreed that the 1992 Annual General Meeting had not changed the status quo and that the period of office remained three years.

(b) **Was the Exclusion under the rules of the Union?**

8. I must next consider whether the exclusion was on the basis that the complainant belonged to a class of which all the members were excluded by the rules of the union and therefore permitted by section 47(3). For if that was the case I would not need to examine whether the exclusion was otherwise reasonable or not.

9. I have examined the rule book of the union and have had the benefit of hearing the union's view on the matter. I have been unable to find any rule, or combination of rules, in the union rule book which debars a member from standing for the Council of Executives because he or she would be unable to complete a full term before reaching age 65. I do not therefore believe that the complainant was excluded by anything which appears in the RMT rule book.

10. The word "rules" however need not always be confined to the express provisions in the rule book of the union. For example, it may, in appropriate circumstances, be proper to consider that a long standing custom or practice has established a "rule". However in the case of a union such as RMT, which at the relevant time was less than three years old, there has been little time for any custom and practice to become established.

11. The union claimed that the principle in question was established practice in the two unions which amalgamated to form the RMT. If that was the case, and if the practice in the merged union had not contradicted it, I would be prepared to consider that the exclusion was on the basis of an RMT 'rule'. However, the claimant, supported by a letter from a former General Secretary of the National Union of Seamen, disputed that this had in fact been the practice, at least in the NUS.

12. On the evidence presented, custom and practice in the National Union of Railwaymen, reflected in an Executive decision of 1956 but not that union's rule book, was to exclude those unable to serve a full term before reaching retirement age. Within the National Union of Seamen, arguably more relevant to the case in question, the picture is more confused. The rule book was silent on the issue and there is evidence of at least one case where an Executive Councillor served on the NUS Executive after the age of 65.

13. Against this background it is difficult to conclude with any confidence that there is anything in the rules of the union - including custom and practice - to unequivocally justify the exclusion of the complainant's candidature. I therefore find that the complainant's exclusion cannot be justified under the exception permitted by section 47(3).

(c) **Otherwise reasonable**

14. As the exception does not apply the question remains of whether the exclusion was reasonable or not. On one test it might be thought to be unreasonable to accept the nomination, circulate it and accept an election address only to reject the candidature on the basis of information available at the outset. I regard that sequence of events as an unfortunate procedural mishap suggesting poor administration. I do not though, nor did the complainant, regard it as 'unreasonable' in the terms covered by the statute.

15. The complainant argued that because there was no upper age limit, but only a health requirement, on work as a merchant seaman it was unreasonable to set such an age limit on a seaman's service on the union's Executive Council, particularly as the places for shipping grades were all part-time.

16. The union stated that it was unfortunate that the nomination was not rejected as soon as it was received. They thought it irrelevant whether the post was full or part-time but that it was a perfectly reasonable principle to require a candidate to be able to complete a full term before reaching retirement age. To do otherwise and allow members to stand for the executive and serve for as much of the period as they could before retiring, would increase administrative problems and mid-term elections to fill vacancies. They cited the NUR 1956 Executive decision as evidence that it was a long standing practice in at least one of the merged unions; they also cited the rules governing union nominations to the Trades Union Congress and other special delegations. They argued that it was not unreasonable to regard 65 as the retirement age to which the principle related, particularly as that was the rule under the Merchant Seaman's Pension Fund and in the vast majority of agreements under which their members worked. They accepted that those who, like the complainant, worked on foreign flagged vessels were able to work beyond 65, but did not feel that the union's policy on this matter should be determined by the position of this tiny minority of members.

17. I find the union's arguments on this central point of the reasonableness of excluding the candidature of those unable to complete a full term before reaching retirement age convincing. Moreover in the course of the examination of the complaint it emerged that another nomination in this election was rejected on the same grounds as those applied to the complainant.

### **Conclusion**

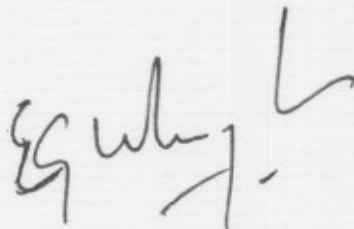
18. Against the background set out above I have decided to refuse to make the declaration sought. The exclusion was not based on any explicit provision in the union's rule book, nor unequivocally on custom and practice. However it was not an arbitrary decision. It was based on a principle, which was not in itself unreasonable, and which was applied to others.

### **Observations**

19. Although I have not made a declaration I think it appropriate to record two observations in this case. The complaint has amply demonstrated the difficulties that can arise when a union's rule book is unclear or silent on matters which form part of the union's policy on certain important issues. In this instance a lot of time and trouble could have been avoided if the principle, that Executive Committee representatives must be able to complete their term of office before retiring at 65, had been embodied in the union's rule book. At least the principle could have been set out on the nomination circular or forms.

20. The other matter relates to the Certification Officer's jurisdiction over the content of a union's rule book. In the course of the hearing in this case it was suggested that at the time of the merger to form the National Union of Rail, Maritime and Transport Workers the union's rule book had been approved by the Certification Officer. I wish to make it clear that the Certification Officer has only a limited role relating to "approving" union rules. The rules which govern political funds and political fund ballots are required to be approved by me. Also where two or more unions merge the Certification Officer has to satisfy himself that the rules of the merged union are not inconsistent with the provisions of the instrument

of merger, before registering that instrument. The Certification Officer has no power of approval or otherwise in relation to any other aspect of a union's rule book, nor can his exercise of his judgement be interpreted as having wider implications regarding a union's rule book.

A handwritten signature in black ink, appearing to read 'E G Whybrew'. The signature is stylized and cursive, with a large 'L' shape at the end.

E G WHYBREW  
Certification Officer  
10 June 1993