

D/3/88

DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE UNDER SECTION  
5 OF THE TRADE UNION ACT 1984

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IN THE MATTER OF A COMPLAINT AGAINST THE  
GENERAL MUNICIPAL BOILERMAKERS AND ALLIED TRADES UNION

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DATE OF DECISION ..... 14 OCTOBER 1988

DECLARATION

Under section 5 of the Trade Union Act 1984 (the Act), I am empowered to make a declaration applied for by any person who claims that their trade union has failed to comply with one or more of the provisions of Part I of the Act. In making the declaration, I am required to specify the provisions with which the trade union has failed to comply.

For the reasons which follow I declare that, in relation to an election held between 19 October and 9 November 1987, the General Municipal Boilermakers and Allied Trades Union failed to comply with section 2(7) of the Act (or with that subsection as modified by section 3(1)), in that the Union failed to do all that was reasonably practicable to ensure that members of the Union's Ayrshire General Branch located in Irvine, Kilbirnie, Beith and Dalry were sent or had made available to them or were supplied with a voting paper and were given an opportunity to vote in the manner required by those sections.

## The Application

1. On 7 April 1988 I received a complaint from a member of the Ayrshire General Branch of the General Municipal Boilermakers and Allied Trades Union (the Union) that members of that Branch located in Irvine, Kilbirnie, Beith and Dalry had had no opportunity to vote in the 1987 elections to the Union's Central Executive Council.

## The Facts

2. Many of the facts in this case are disputed, but it is common ground that the elections in question were elections to which Part I of the Act applied. The Union have, for their part, admitted that some 370 members in the locations referred to by the applicant, although entitled to vote, did not receive voting papers and were consequently unable to vote. The applicant claimed that the number disenfranchised was nearer 500 but, for reasons that I will explain later, the precise figures do not affect the case.

3. As to what happened to bring this situation about, I held a hearing which established the following facts. For their 1987 elections to the Central Executive Council, the Union had drawn up quite elaborate plans, based mainly on voting at the workplace, for ensuring that eligible members had an opportunity to vote. It was the first time the system had been used.

4. At local level the elections were organised through the Union's branch structure, in line with instructions issued by the National and Regional Offices. Every Branch was to elect a Chief Scrutineer, whose duties included the distribution of ballot papers to all the scrutineers within the area of the Branch. Those scrutineers were also to be elected by the Branches to cover, between them, all the workplaces. Their duties were to distribute ballot papers to voters and to run the ballots at the workplaces. Guidance notes were issued explaining, for the assistance of Regional Returning Officers, Chief Scrutineers and scrutineers, what the duties of each were.

5. Some members of the Union were to receive their ballot papers by post and to return them by post. For everyone else, whether voting at their place of work or returning their ballot paper by post, the intention was that supplies of ballot papers would be in the hands of Chief Scrutineers by 12 October. They were to pass them on to the scrutineers in time for voting to take place at workplaces between 19 October and 1 November. In the event, things did not go entirely according to plan in the Union's Ayrshire General Branch.

6. As instructed, the Branch appointed a Chief Scrutineer and apparently also agreed that shop stewards in the areas covered by the Branch would act as scrutineers for the workplaces for which they were responsible. These decisions were taken towards the end of August, although the guidance notes explaining the duties of Chief Scrutineers and scrutineers were not issued until some time in September.

7. The next event of significance was that printing problems delayed the distribution of voting papers to the Chief Scrutineers. The Union accepted that the Chief Scrutineer for the Ayrshire General Branch did not receive the voting papers for the Branch until 22 October, 3 days after the work place voting period had officially started.

8. The Chief Scrutineer for the Ayrshire General Branch told me that at this point he realised that the task he was expected to perform was beyond his resources. On 26 October, apparently with the backing of those members who had attended a Branch meeting on 25 October, the Chief Scrutineer got in touch with Regional officials to inform them that he would not distribute the voting papers to the scrutineers for the Branch. Attempts were made, without success, to persuade him to change his mind. Eventually, on 28 October, all the voting papers were taken back from him by a Regional official.

9. Subsequently, the Regional officials themselves managed to distribute most of the papers to most of the scrutineers in the Branch, but there were two exceptions. The first was a shop steward who for personal reasons refused to accept voting papers for the members for whom he was responsible. The second was the Chief Scrutineer, who was himself a shop steward and therefore a scrutineer in his own right in respect of a number of workplaces. Whether because of a misunderstanding of what he had said, or because it was indeed the position he took up, the Regional officials became convinced that he was refusing to distribute voting papers even in his capacity as a scrutineer for his own area of the Branch. He and the other scrutineer were between them responsible for all the workplaces in the areas to which this application relates.

10. The Regional officials concerned said that in the face of the failure of these two shop stewards to co-operate, they concluded that in the time available there was nothing they could do to provide the members in these areas with any kind of opportunity to vote. The possibility that some of the members in these areas might have been identified in time to be provided with an opportunity to vote was regarded as an unacceptable option, as it might have given an impression of selectivity and partiality to those who were not so identified. However that may be, I suspect that sheer exasperation was a telling factor at this stage.

#### Submission as to the propriety of the complaint

11. The Union's preliminary submission to me was that I should not entertain the complainant's application. Their argument rested on the degree to which the applicant himself was implicated in the cause of the alleged breach of statutory requirements. They argued that, if there was a breach of statutory requirements, the applicant should not be allowed to blame the Union for a situation which he himself brought about. I cannot accept that argument.

I do not say that there are no circumstances in which I might find that an applicant was so much the author of his own misfortune as to have no case against his union in respect of disadvantages that he alone might have suffered; nor that there may not be occasions where an application should be rejected out of hand because the applicant is acting frivolously or vexatiously, or is attempting to use the process established by the Act for ulterior purposes. However, I am satisfied that this is not such a case. On the Union's own admission, at least 370 of their members were disenfranchised as a result of what happened; and the claim that what happened amounted to a failure on the part of the Union has been brought to my notice by someone who, it is not disputed, was qualified in the terms of section 5(1) of the Act to do so. I therefore considered it right to hear the case, and to seek to reach a decision on it.

#### Reasons for making the Declaration

12. This decision records only a bare outline of the system adopted by the Union for the conduct of elections, but I am content to say that, given the state of the law at the time, the system so far as it went appeared to be a good one. But, however good it was on paper, its success ultimately depended on the cooperation of a relatively small number of individuals at Regional and Branch level. Those individuals were officials of the Union, and the Union rightly accepted that the Union must bear responsibility for the acts of their officials in the course of their duties.

13. However, it was argued before me that the Union should not be held responsible where the failure to provide eligible members with an opportunity to vote resulted only from the deliberate refusal of two officials to perform their duties. In effect, the Union submitted that in adopting a system which would have been adequate if officials had acted in a proper way, they fulfilled their obligation to do all that was reasonably practicable to provide the opportunities to vote that the Act requires.

14. I do not think that the issue is as simple as that. It seems to me that I have to ask myself not just whether the system might have worked if everyone had done their duty but whether, when something for whatever reason did go wrong, the Union did all that could reasonably be expected to put matters right.

15. The essential question is what did the Union do when confronted by the problem which arose in this Branch? It is fair to say that for the most part the Regional officials seem to have acted with commendable vigour to ensure that most of the members of the Ayrshire General Branch received voting papers. However, in the light of the Union's statutory duty, I cannot condone the failure to do more for members in the four areas to which this complaint relates.

16. On the Union's side I take into account the fact that, because of printing problems, time was already pressing when the Chief Scrutineer for the Ayrshire General Branch informed Regional officials of his decision not to distribute voting papers to the scrutineers. I have also to say that, whatever his reasons, it is regrettable that the Chief Scrutineer left it so late to make his position known to the Region. Nevertheless it seems to me that despite the difficult circumstances in which they found themselves, the Regional officials could have got voting papers to at least some of the members in the areas concerned. I may say that I understand the dilemma put to me by the Union. I can see that, looked at from their point of view, it might have seemed a manifest unfairness to provide voting papers to some of a group because they were known to the Regional officials, while leaving out others in that group for whom either name or location was unknown. Be that as it may, the right to an opportunity to vote belongs to each eligible member individually and cannot be subordinated to a desire to deal even-handedly with groups of members. I put the blame in this respect no higher than this: that in the haste of the moment a decision appears to have been taken in all good faith which due consideration would have shown the officials concerned that it was a decision they were not entitled to take. For that lapse the Union must bear the responsibility.

17. The Union's final submission was that, in the event of my finding against them on the facts of this case, I should nonetheless consider refusing to make a declaration. Again their argument rested on the applicant's own involvement in the whole affair. I have considered that submission carefully, but for the reasons already rehearsed I am unable to accept it. I therefore make the declaration sought by the applicant.

#### Observations

18. This has been an unfortunate case which I can summarise as a Union slipping into error in difficult and trying circumstances. I am also aware that although the number of those deprived of their right to vote was not small it was, even on the applicant's figures, insufficiently large to have affected the result of the elections. The recent legislative amendments contained in the Employment Act 1988, which remove the option of holding a non-postal ballot, will in any event require the Union to revise their election arrangements so that the precise circumstances of this case should not arise again.