

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE UNDER
SECTION 108A(1) OF THE TRADE UNION AND LABOUR RELATIONS
(CONSOLIDATION) ACT 1992**

Mr Terry Brough

v

Union of Construction, Allied Trades and Technicians

(No 3)

Date of Decision

17 May 2016

DECISION

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

And pursuant to section 256ZA(1)(a) of the 1992 Act.

I strike out the claimant’s complaint that on or around 15 December 2015, the Union of Construction, Allied Trades and Technicians breached rule 27, clause 2 of its rules by refusing to make a payment in respect of the expenses that would have been incurred by Mr Brough to attend the hearing of an appeal made by him to the General Council. I do so on the grounds that the complaint is misconceived and/or has no reasonable prospect of success

REASONS

1. Mr Brough brought this application as a member of the Union of Construction, Allied Trades and Technicians (“UCATT” or “the Union”). He did so by a registration of complaint form which was received by my office on 7 March 2016.
2. Following correspondence with my office, Mr Brough confirmed by letter dated 30 March that his complaint was in the following terms:

On or around 15 December 2015, UCATT breached rule 27, clause 2 of its rules by refusing to make a payment in respect of the expenses that would have been incurred by Mr Brough to attend the hearing of an appeal made by him to the General Council, scheduled for 27 January 2016, against a decision of the Executive Council notified to Mr Brough by letter dated 24 November 2015. The appeal related to the dismissal of charges laid by Mr Brough against Mr Sloane and Mr Stansfield which was heard on 18 November 2015. The refusal to pay expenses effectively prevented Mr Brough from being able to attend this appeal hearing as provided for by rule 27, clause 2.

3. The background to Mr Brough's complaint, in summary, is as follows.
4. Mr Brough brought a charge against two members of the Union under the procedures in the Union's rules. The charges were heard by the UCATT Executive Council ("EC") on 18 November 2015 in London. Mr Brough lives in Merseyside. The EC dismissed the charges. Mr Brough was notified of the decision by a letter dated 24 November from the pro-tem General Secretary, Mr Brian Rye. Mr Brough had raised the matter of travel expenses to attend the hearing whilst at the hearing before the EC. Mr Rye's letter to Mr Brough of 24 November notes, *"...if the Union were to agree to meet expenses of those members who were proffering charges and their witnesses and expenses for subsequent appeals to the General Council, and dare I add meeting the cost of defending the Union at the hearing by the Certification Officer, there would not be much time or money left for the Union to campaign for issues which are relevant to building workers"*. By a letter dated 11 December 2015, Mr Brough notified Mr Rye that he wished to exercise his right to appeal the EC's decision to the General Council. In that letter he referred to *"the vexed question of travel expenses to a hearing under Rule 27"* and went on to note that his branch had not agreed to meet his travel expenses either. He stated, *"I am personally unable to cover the cost, nor, you will know, do I consider it the member's responsibility to do so. Unless I am provided with the financial means to travel to the hearing, I will be prevented from attending as per Rule. I await your decision in this matter."*
5. Mr Rye responded by a letter of 15 December 2015 in which he advised Mr Brough that the General Council would hear his appeal at its meeting on 27 January 2016. He addressed Mr Brough's comments on the payment of travel expenses as follows, *"As for your contention about the Union reimbursing your travel costs, I can only reiterate the contents of my letter of the 24 November 2015. Furthermore, as you are aware this matter has already been adjudicated by the Certification Officer and I am enclosing a copy of his ruling as you may or may not be privy to his decision"*. The decision referred to was in the case of *Sweeney v UCATT (No 2) (D/36-37/15-16)*.
6. In *Sweeney v UCATT (No 2)*, Mr Sweeney made two complaints to me against UCATT. The first of these was in very similar terms to Mr Brough's present complaint. It was as follows, *"On or around 2 July 2015, the Union breached rule 27, clause 2 of UCATT's rules by refusing to make a payment in respect of the expenses that would have been incurred by Mr Sweeney, or any member accompanying him, to attend an appeal hearing before the General Council, scheduled for 13 July 2015, against a decision of the Executive Council dated 18 March 2015. The appeal related to the dismissal of charges laid by Mr Sweeney against Mr Egan and Mr Winstanley to the North West Regional Council on 11 September 2013. This decision not to pay expenses effectively prevented Mr Sweeney from being able to attend this appeal hearing in person as provided for by rule 27, clause 2"*.
7. In making his application to the Certification Officer, Mr Sweeney authorised Mr Brough to act for him in the matter and to make representations on his behalf. Mr Brough dealt with all the correspondence on behalf of Mr Sweeney.

8. I ordered both Mr Sweeney's complaints to be struck out under section 256ZA. The decision was issued on 25 November 2015. In my decision I stated,

“ 31. I also considered whether it is arguable that rule 27 clause 2 and rule 27 clause 7 require the Union to pay the travel expenses of a member and the person accompanying him in appearing before the General Council. Mr Brough accepts that there is nothing in the express terms of rule 27 clause 2 or rule 27 clause 7 which requires UCATT to pay such travel expenses. However, he argued that the spirit of this rule and natural justice requires that travel expenses be paid by the Union. In his submission, the rights conferred under the rules would be meaningless aspirations without the provision of the means to realise those rights. He argued that it was inconceivable that the authors of rule 27 clause 2 had intended to provide members with a right of appeal without the means of realising it. He also noted that rule 27 clause 7 provides that all the provisions in the rules as to appeals by members apply to excluded members and to persons claiming on account of such members.

32. For the purposes of this decision on whether to strike out these complaints, Mr Sweeney need only raise an arguable proposition that the rules expressly or impliedly create a duty on the Union to pay travel expenses in attending appeals before the General Council. The parties accept that the rules do not expressly provide a right to members being paid travel expenses. I must therefore ask myself whether there is an arguable proposition that there is such an implied right. In considering this point I reminded myself of the approach which the courts have applied to the interpretation of the rules of trade unions over many years. This was expressed by Warner J in Jacques v AUEW (1986) ICR 683 in the following terms:

“The effect of the authorities may I think be summarised by saying that the rules of a trade union are to be construed as to give them a reasonable interpretation which accords with what in the court's view they must have been intended to mean, bearing in mind their authorship, their purpose, and the readership to which they were addressed”.

In my judgment, Mr Sweeney falls a long way short of establishing an implied rule to that effect. Whether or not expenses are paid is quintessentially a matter of discretion unless a right to them can be established. On the facts of this case, no such right was given expressly and there is no sound basis for finding that such a right can be read into the rules of the Union as an implied right. Mr Brough's argument is essentially that it is unfair for the Union not to pay these travel expenses but that is not sufficient to establish an implied rule. The question of travel expenses is something to be decided by the Union in accordance with its democratic procedures, whether as a matter of express rules or as a matter of a policy. Accordingly, on this ground also, I strike out Mr Sweeney's complaints under section 256ZA(1)(a) of the 1992 Act. I do so on the grounds that, in my judgment, they are misconceived and/or have no reasonable prospect of success.”

9. In view of the circumstances (the close similarity between Mr Sweeney's adjudicated complaint and the complaint brought by Mr Brough, and Mr Brough's close involvement in the determination of Mr Sweeney's complaint), my office wrote

to Mr Brough of 16 March 2016 requested him to “*explain why you think the circumstances of your case are sufficiently different from the complaint in Sweeney (No 2) v UCATT for the Certification Officer not to consider striking out your complaint on the same or similar grounds as applied in Mr Sweeney’s case*”.

10. Mr Brough responded by a letter dated 30 March 2016. Having considered the contents of that letter, I caused a further letter to be sent to Mr Brough on 12 April informing him that I was considering exercising my powers to strike out his application and, in accordance with the provisions of section 256ZA(4) of the 1992 Act, he was invited to show cause why I should not do so. On the same date UCATT was informed by my office of Mr Brough’s application and provided with copies of the correspondence in the matter. The Union was informed that I did not require its response at this stage.
11. Mr Brough responded to the show cause letter by a letter dated 26 April 2016. In that letter, Mr Brough noted that Mr Sweeney’s complaints had been struck out on two grounds; firstly, that he was not a member of the Union at the material time and, secondly, that in my judgement his complaints were misconceived and/or had no reasonable prospect of success. Mr Brough noted that the first of these grounds was not applicable as he was a member of the Union at the time of the alleged breach. This fact is not in dispute.

Relevant Statutory Provision

12. The relevant statutory provisions of the 1992 Act 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.*
- (3) *The applicant must be a member of the union, or have been one at the time of the alleged breach or threatened breach.*

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

13. The relevant rules of the Union are as follows:-

RULE 27

Appeals of Members, Branches and Regional Councils

1. *Any member or members excepting regional full-time officials or national organisers aggrieved at a decision of the Branch, Regional Council, or Executive Council shall have a right of appeal against any such decision as set out hereafter. Such right of appeal shall similarly apply to the Branch or Regional Council. In the case of appeals concerning the working rules the appeal in the first instance shall be dealt with by the Regional Council. Any other appeals shall be directed to the Executive Council. Any appeal against the decision of the Executive Council shall be to the General Council whose decision shall be final and binding, subject to any power vested in any court or tribunal.*

2. *In all cases, appeals must be made in writing through the Branch Secretary or Regional Secretary in the case of Regional Council appeals. The appellant or appellants in all cases shall have the right to appear at all levels of the appeals procedure if s/he so wishes and be accompanied by a member. No evidence other than that which was before the council which made the decision appealed against will be admitted or accepted by any council dealing with an appeal. Appeals must be lodged to reach the appropriate council within 28 days of receipt by the member or members of the decision appealed against, failing which such decision shall be final and binding, subject to any power vested in any court or tribunal. The Branch Secretary shall forward the appeal without delay. In no case shall a Branch withhold the appeal of a member or members.*

3. *Any council dealing with appeals shall have power to alter, amend or modify any decision appealed against and shall set out clearly the reasons upon which a decision or decisions were based.*

A fine which has been quashed, and any amount by which a fine has been reduced on appeal shall be repaid forthwith. Except where in cases of emergency the authority of the Union making the decision rules to the contrary, a fine, a suspension or exclusion of a member and a suspension or removal from office shall not take effect until the appeal has been dismissed or the time for appeal has expired.

4.-5. ...

6. *All correspondence or copies of correspondence sent or received by the Branch Secretary in connection with the appeals of member(s) must be read to the Branch. The member or members who are appealing shall be notified to the effect, in order that they may attend and hear the same read.*

7. *All provisions in these rules as to appeals of members shall apply also to excluded members and to persons claiming on account of members.*

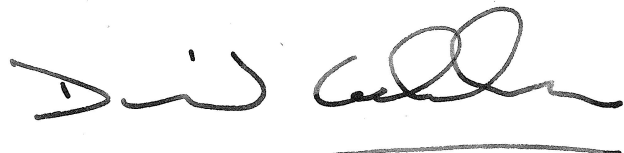
8. *Consideration of an appeal by the General Council shall constitute the final stage of the appeals procedure of the Union, and its decisions shall be final and binding upon all members of the Union. Appeals shall be considered by consultation on timing between the General Secretary and the Chair of the General Council. In the case of any decision of the Executive Council involving the expulsion of a member the General Council shall meet within 20 working days of such a decision for consideration of the appeal.*

Conclusions

14. Mr Brough's application alleges a breach of rule 27, clause 2 of the rules of the Union on the grounds that, by refusing to pay his travel expenses to attend a hearing of his appeal against a decision of the EC, he was effectively prevented from making the appeal provided for by the rules. This is an allegation of a breach

of the same rule, on the same or very similar grounds, that I considered in Sweeney v UCATT (No.2)(D/36-37/15-16). .

15. In relation to the meaning rule 27, clause 2, Mr Brough maintained in correspondence the arguments which he had advanced unsuccessfully when representing Mr Sweeney. In my decision in Sweeney v UCATT (No2) I summarised those arguments. I stated, “[Mr Brough] *accepted that there was nothing in the express terms of rule 27 clause 2 which required UCATT to pay travel expenses. However, he referred to the preface to the UCATT rulebook which states that the rules of the Union provide the opportunity for the Union’s objectives to be realised and that the rights conferred under UCATT’s rules would be meaningless aspirations without the provision of the means to realise those rights. He argued that it was inconceivable that the authors of rule 27 clause 2 had intended to provide members with a right of appeal without the means of realising it. Mr Brough referred to UCATT’s policy on the payment of expenses. He argued that the Union had not always adhered to that policy and that there was nothing in rule 27 clause 2 that provided for it. Mr Brough submitted that the spirit of rule 27 clause 2 and natural justice required that members attending appeals to the General Council, and people accompanying them, be paid their travel expenses.*” I further noted, “[Mr Brough] *argued that it was inconceivable that the authors of rule 27 clause 2 had intended to provide members with a right of appeal without the means of realising it. He also noted that rule 27 clause 7 provides that all the provisions in the rules as to appeals by members apply to excluded members and to persons claiming on account of such members.*”
16. Having considered Mr Brough’s written submissions I am not persuaded that Mr Brough has distinguished his case from that of Mr Sweeney on the facts or on the law. The facts of this case are not materially different to those in Sweeney v UCATT so far as they are relevant to this application. Further, Mr Brough has not advanced any new or different arguments to those I rejected in the Sweeney case. I am not persuaded that I should depart from my reasoning in that case. Accordingly I strike out Mr Brough’s complaint under section 256ZA(1)(a) of the 1992 Act. I do so on the grounds that, in my judgment, it is misconceived and/or has no reasonable prospect of success, as explained in Sweeney v UCATT (No 2).



David Cockburn
The Certification Officer