

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

**IN THE MATTER OF A COMPLAINT MADE AGAINST
TRANSPORT AND GENERAL WORKERS UNION**

APPLICANT: MR P A CHAMBERLIN

Date of Decision:

2 November 2001

DECISION

1. For the reasons which follow, I refuse to make the declaration sought by Mr Chamberlin.

REASONS

2. Following correspondence between my Office, the union and Mr Chamberlin, by application dated 23 July 2001, Mr Chamberlin made a complaint against his union, the Transport and General Workers Union (“TGWU” or “the union”). Mr Chamberlin alleged:

“that the General Secretary, acting on behalf of the General Executive Council, wrongfully excluded a motion from my branch to the Biennial Delegates Conference 2001 from the Preliminary and Final Conference Agendas.” and that this was a breach of the union’s rule 4, section 6.

3. The complaint was accepted as an application under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended) (“the 1992 Act”) and was investigated in correspondence, following which as required by section 108B(2)(b) of the Act, I offered the parties the opportunity of a formal hearing. Mr Chamberlin and the union agreed that such a hearing was unnecessary.

Findings of Fact

4. Having considered the relevant documents I make the following findings of fact:-
 - 4.1 Mr Chamberlin's branch of the union, of which he was the branch secretary, agreed a branch motion for the union's 2001 Biennial Delegates Conference ("BDC") at a meeting on 17 January 2001. The General Motion, in accordance with the union's rules and within the time scales given, was submitted to the union's General Secretary.
 - 4.2 By letter on 22 March 2001, the union's General Secretary advised Mr Chamberlin that the branches motion was not eligible to be placed on the Conference agenda. The reason given was that motions to amend the rules were not eligible to be placed on the agenda for Conference and the union considered that the proposal was in effect a change of rule.
 - 4.3 By letter of 29 March 2001, Mr Chamberlin explained the motion and asked the General Secretary to consider the motion as an emergency resolution.
 - 4.4 This request was rejected by the union's letter to Mr Chamberlin of 2 April 2001 which stated that the proposals contained in the motion clearly required a change of rule and that the power to make, amend and revoke the rules of the union were vested only in the Rules Conference and that the BDC did not have the power to call a special rule's conference.
 - 4.5 Mr Chamberlin wrote to the union again on 16 April asking the union to reconsider, as while he recognised that parts of the motion required a rule change, it was his view that the BDC did have the power to instruct the union's Executive to call a Rules Conference for that purpose.
 - 4.6 On 24 April, Mr Chamberlin wrote to me with an application seeking a declaration that the union's General Secretary's refusal to include a motion from his branch amounted to a breach of rule. This letter did not identify which union rule he alleged had been breached.
 - 4.7 An exchange of correspondence followed between the Certification Office and Mr

Chamberlin in which he identified the rule he believed to be breached as rule 4.6. My Office also wrote to the union seeking the union's response and outcome in respect of Mr Chamberlin's letter of 16 April and seeking to establish whether the union had dealt with Mr Chamberlin's letter as part of its internal complaints procedure.

- 4.8 The union replied to my Office by letter of 9 May which, by way of explanation, enclosed a copy of the union's letter of 8 May to Mr Chamberlin. In that letter the union's General Secretary sought to explain his position with regard to the agenda for the BDC and stated that he had considered Mr Chamberlin's letter but that he remained of the opinion that the motion was both in its terms and effect, a proposal to amend the rules and was not, therefore permissible. The letter went on to explain the relationship between the union rules, the BDC and the General Executive Council ("GEC"). It stated that the motion, against that background, was ambiguous and concluded by stating that all motions, including Mr Chamberlin's, would be further considered by the union's Standing Order Committee ("SOC") which had the duty to report to the BDC on all matters of procedure.
- 4.9 In view of the union's letter of 8 May, my Office wrote to Mr Chamberlin on 23 May and advised him that, as the branch motion would be further considered by the SOC, it was my view that the matter was still to be resolved, that no breach of rule appeared yet to have occurred and that the Certification Officer would not be taking any further action in this matter until the union's SOC and the BDC had considered the matter. The letter of 23 May concluded by requesting Mr Chamberlin to write again if, following the union's consideration, he was of the opinion that a breach of rule had occurred.
- 4.10 Following further correspondence Mr Chamberlin made application to the Certification Officer on 23 July 2001. He stated the union's BDC had been held from 2 to 6 July and that neither he nor his branch had been advised that the decision to rule the motion out of order was endorsed by the SOC either before Conference or since. He explained that he had asked Conference to give its permission to debate the motion under rule 4 section 6. Mr Chamberlin's letter explained that in order for Conference to proceed, delegates must endorse the report of the SOC. He further explained that there were two challenges from the floor of Conference, one of which was his request for Conference to support his request that the SOC distribute his branch's motion and that delegates decide whether or

not they wished to debate it. The union's General Secretary opposed the request, from the rostrum. The Conference Chairman asked delegates to endorse the SOC report which they did. Mr Chamberlin commented that he felt aspects of the Conference proceedings were flawed but he nevertheless accepted the result.

- 4.11 The union, by letter of 20 July to my Office, commented that Mr Chamberlin raised his complaint at Conference by moving a reference back of the SOC report to Conference but that the SOC report was accepted by Conference and the branch motion was not placed on the agenda (for Conference).

The Relevant Union Rules and the Law

5. Rule 3.3 of the union, under the rule heading "Constitution and Government" provides: *"For the General administration of the Union's business and for the government of the Union in the period between the Biennial Delegates Conference there shall be a General Executive Council. This Council shall consist of such number of elected members as is provided for in the rules."*

Rules 4.1 and 4.6 under the rule heading "Biennial Delegates Conference" provides, rule 4.1: *"The government of the Union and the appointment of its trustees, shall be vested only in a Biennial Delegates Conference, which shall meet in the month of June or July. Special Conferences may be held as in these rules provided."*

Rule 4.6: *"General motions may be moved at the instance of branches, regional trade groups or districts, or national trade groups or sections, regional committee or the General Executive Council. The General Secretary shall send not later than December in the year preceding each Biennial Delegates Conference to each Branch an invitation to forward general motions for the agenda of such Conference. No general motion shall be placed upon the agenda unless despatched to reach the General Secretary within a period of six weeks of the date of the circular issued by the General Secretary inviting the submission of general motions."*

The agenda, subject to such grouping or verbal revision as the General Executive Council may deem advisable, shall be issued to the delegates, to the branches, and all national and regional authorities at least three weeks before the Biennial Delegates Conference meets, and no subject not included therein shall be discussed without the permission of the Biennial Delegates Conference, or unless the Standing

Orders Committee report it to be a matter of urgency...”

Union rule 5.1 under the rule heading “Rules Conference” provides: *“The power to make, amend and revoke the rules of the Union and its constitution shall be vested only in a Rules Conference, which shall meet in the month of June or July of every sixth year commencing with the year 1950. Special Rules Conferences may be held as in these rules provided.”*

Union rule 5.13 provides: *“A Special Rules Conference may be called by the General Executive Council. Such Conference shall only deal with the business for which it is summoned.”*

Union rule 16.3 under the rule heading “General Secretary” provides: *“The General Secretary shall perform all the duties laid down by the General Executive Council and shall generally supervise the work of the Union in all departments.”*

6. The provisions of the 1992 Act which are relevant for the purpose of this application are as follows:-

Section 108A(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) *.....;*
 - (b) *.....;*
 - (c) *.....;*
 - (d) *the constitution or proceedings of any executive committee or of any decision-making meeting;”*

Section 108B(1) *“The Certification Officer may refuse to accept an application under section 108A unless he is satisfied that the applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union.*

Section 108B

- (a) *...*
- (b) *shall give the applicant and the union an opportunity to be heard,*

Section 254(3) *“The Certification Officer may appoint one or more assistant certification officers ...”.*

Section 254(4) *“The Certification Officer may delegate to an assistant certification officer such functions as he thinks appropriate, ...”.*

7. Under section 108A the applicant must be a member of the union, or have been one at the time of the alleged breach and section 108B empowers me to make such enquiries as I think fit and, after giving the applicant and the union an opportunity to be heard, to make or refuse the declaration asked for. I am required, whether I make or refuse the declaration sought, to give reasons for my decision in writing.

The Submissions

8. Mr Chamberlin, in correspondence, quoted rule 4 section 1 that “*The government of the union... shall be vested only in a Biennial Delegates Conference.*”, rule 3 section 3 that “*For the general administration of the union in the period between the Biennial Delegates Conference there shall be a General Executive Council,* rule 16 section 3 in relation to the duties of the General Secretary and rules 5 sections 1 and 13 in respect of the Rules Conference. He argued that these rules set out very clearly the union’s constitutional hierarchy.
9. He accepted that under rule 4 section 6 the General Secretary was charged with preparing the Conference agenda. He also accepted that any motion requiring the BDC to change the union’s rules would have to be ruled out of order. However he argued that his branches motion was about the Rules Conference being recalled immediately and that since the government of the union was vested only in a BDC, it followed that Conference had the right to request a recalled Rules Conference and therefore that the motion should not have been excluded from the Conference agenda.
10. He argued that the union’s rules were very specific about the role of its Conference’s SOC in drawing up the Conference agenda, that the union’s rule 4 simply states that motions from the various constitutional bodies shall be forwarded to the General Secretary, and that the agenda be sent to delegates and constitutional bodies, subject to any groupings or verbal revision as the GEC may deem advisable.
11. The General Secretary, Mr Chamberlin wrote, “... *acting on behalf of the GEC, wrongfully excluded a perfectly legitimate (if unwelcome) motion from the conference agenda...*” and that this was in breach of union rule 4.

12. He stated that the union's GEC was not given sight of the motion when it considered the Conference agenda and that the motion was not printed in the preliminary and final agendas. Therefore, he wrote, the delegates and constitutional bodies were unaware of its content, and were unable to submit amendments. This he commented, placed him at an extremely unfair disadvantage when he argued at the BDC that delegates should be allowed to see the motion and decide for themselves whether they wanted to debate it. He added that he accepted that the GEC had a right to exclude motions which ran counter to rule, but his did not and that even in those cases which did, the motions should be printed in the agenda with reasons for their exclusion.
13. Mr Chamberlin had stated in correspondence that his complaint was, and is, that his branch's motion to BDC was wrongfully excluded from the Preliminary and Final Agendas of Conference by the General Secretary, acting on behalf of the GEC, in breach of union rule 4, section 6.

The Union's Response

14. In correspondence, the union stated it is the responsibility of the General Secretary, both as General Secretary and under his delegated authority on behalf of the GEC to prepare the agenda for the BDC and, as such, it is the General Secretary's responsibility to ensure that the agenda does not contain motions which expose the Union to legal liability (eg motions which are defamatory) or motions which would be ultra vires the powers of the BDC, if approved.
15. The union explained that the rules of the union are sovereign and that both the BDC and the GEC were subject to the Rules. It was argued that the motion, in question, was ambiguous insofar as it would lead to a BDC decision to hold a special Rules Conference and was clearly a motion which asked the BDC to exceed its Rule Book authority.
16. The union further explained that it is the custom for the General Secretary to convene an initial meeting of the SOC in London prior to the Conference. At that meeting, which in the case in question took place on 19 June, the General Secretary presented a Report on Conference arrangements. This report included a list of motions and amendments that the

General Secretary had ruled out of order as being the proper business of a Rules Conference. The report, I was informed, was discussed and endorsed by the SOC and branches informed that the decision to rule a motion out of order had been endorsed by the Committee.

17. Following that meeting, the union informed me, the SOC Report to Conference was prepared. This report, which forms the rules by which the Conference will be conducted, is presented at the start of the Conference and must be adopted by delegates before proceedings can continue. I was advised that, if any delegate was unhappy about the SOC's report they could move reference back of the report and Conference must make a decision on this.
18. I was informed by the union, that it is normal practice for its General Secretary to check, monitor and question motions submitted for Conference and that the union relies on Rule 4 section 6 which invites motions. The General Secretary establishes that motions are in order and places them on a preliminary agenda (or not as the case may be). This agenda, with all submitted motions and associated correspondence, is then submitted to the SOC.
19. The union argued that the motion from Mr Chamberlin's branch was, both in its terms and effect, a proposal to amend the Rules of the Union and therefore not permissible.

Conclusions

20. The Certification Officer using the provisions of sections 254(3) and (4) of the 1992 Act may appoint one or more Assistant Certification Officers (ACO) and may delegate to an ACO such functions as he thinks appropriate. Such references in the 1992 Act relating to the Certification Officer functions should be construed accordingly. Because of a conflict of interest by the Certification Officer in this application, I was appointed by the Certification Officer to the post of ACO to determine the application. The conflict arose from advice given to the union by Mr Cockburn (the current Certification Officer) before his appointment to the post of Certification Officer on the 1 August this year. At no stage have I discussed Mr Chamberlin's complaint with Mr Cockburn.

21. The Certification Officer's jurisdiction in this matter is derived from section 108A(2)(d) of the 1992 Act. The union's General Secretary, as provided by union rule 16.2 acts generally under the orders of the union's GEC. The decision-making body, who had the final say on the matter of the motion was the union's BDC whose decision in this matter was final. Although Mr Chamberlin felt the Conference proceedings to be flawed, he wrote to me stating that he accepted the result and that he would not wish to put the validity of the BDC in doubt.
22. The point at issue in this application is what happened when the motion submitted by Mr Chamberlin's branch got to the union's General Secretary. Mr Chamberlin's argument was that under rule 4. 6 the motion, which was correctly moved by the branch and submitted within time, should be put to Conference and, by not doing so, the union had breached that rule. The union's response was that it was the General Secretary's responsibility to prepare the agenda for the BDC and to ensure that the agenda did not contain motions which exposed the union to legal liability.
23. I am clear that it cannot be the case that any motion submitted, although submitted correctly and within time, should be put to Conference. The right to submit motions means no more or less than that, and it does not accord any further status to the motion for it to be included in the Conference agenda for consideration by the delegates on an equal footing with all other motions. Most unions will, at times, be faced with the situation where motions have been duplicated, or are inconsistent with each other, or with the rules of the union, or in the union's words "*...expose the Union to legal liability...*". This point was conceded by Mr Chamberlin in correspondence.
24. All unions will have mechanisms in place to rule out motions. In the TGWU, it is the custom for the General Secretary to prepare a report on the Conference arrangements for the SOC. That report includes a list of the motions and amendments that the General Secretary rules out of order as being the proper business of the Rules Conference. The General Secretary, in advance of Conference, meets with the SOC and discusses the report. The report, as endorsed by the SOC, goes to the BDC and the branch informed if the decision to rule its motion as out of order, had been so endorsed. I acknowledge,

at this point, that Mr Chamberlin, on 23 July, advised me that neither he nor his branch had been informed that the decision to rule the motion out of order had been endorsed by the SOC, either before Conference, or since.

25. I was advised by the union, that the SOC report to the BDC is presented to Conference at its start. The report must be adopted by the delegates and any delegate can move reference back of the report and Conference must then make a decision on it. In this case Mr Chamberlin asked Conference to support his request that the SOC distribute his branch motion and to allow delegates to decide whether or not they wished to debate the issue. That request was rejected by Conference and Mr Chamberlin accepted that Conference had that right and did not wish to debate the motion.
26. Mr Chamberlin's argument turns on whether rule 4.6 requires that all motions should be put to Conference, along with recommendations on whether they should be debated, and that it is then for Conference to decide on whether they are in fact debated. I am of the view that neither the rule book nor custom and practice in the union requires this. In this instance I am satisfied that Mr Chamberlin's motion was properly considered according to the unions procedures and that the decision to rule it out of order was properly taken.
27. The fact that neither Mr Chamberlin nor his branch apparently received notification of the SOC's decision, to endorse the exclusion, could be explained in many ways. However in the circumstances of this case I do not believe that Mr Chamberlin's position was sufficiently prejudiced, by this apparent omission, for me to alter my overall conclusion.
28. As I explain below I do not have to decide if the grounds on which the motion was ruled out were or were not well founded. As no rule was broken in the way the decision was taken and as the grounds for that decision were certainly not perverse there are no grounds for me to uphold Mr Chamberlin's complaint. It is for these reasons that I refused to make the declaration sought.
29. I would add that much of the correspondence between Mr Chamberlin and the union and between the parties and the Certification Office related to the terms of the motion, its likely cause or effect and the grounds for its rejection as a motion for the union's

Conference. I am not concerned with arguments on the effect of the motion. Those considerations were not a decision for me to take because the union rules provide a mechanism to determine such issues. This complaint was about Mr Chamberlin's claim that his branch was denied the right to submit the motion to Conference and that this breached rule 4.6.

30. Finally, I would like to thank both the union for its cooperation, and particularly Mr Chamberlin on the clarity and tone with which he submitted and argued his case both with the union direct and with the Certification Office.

E G WHYBREW

Assistant Certification Officer