

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

Mr Anthony Sweeney (No. 2)

v

Union of Construction, Allied Trades and Technicians

Date of Decisions

25 November 2015

DECISIONS

Upon application by Mr Sweeney (“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.

1. I strike out the claimant’s complaint that on or about 2 July 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 Sweeney, or any member accompanying him, to attend an appeal hearing before the General Council, scheduled for 13 July 2015.
2. I strike out the claimant’s complaint that on or about 2 July 2015, the Union of Construction, Allied Trades and Technicians breached rule 27 clause 7 of its 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 7 October 2015.

REASONS

1. Mr Sweeney brought this application as a former member of the Union of Construction, Allied Trades and Technicians (“UCATT” or “the Union”). He did so by registration of complaint forms which were received by my office on 11 August 2015 and 26 August 2015. Mr Sweeney authorised his friend, Mr Terry Brough, to deal with this matter on his behalf and make representations for him.

2. Following correspondence with my office Mr Brough agreed Mr Sweeney's complaints in the following terms:

Complaint 1

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.

Complaint 2

On or around 2 July 2015, the Union breached rule 27, clause 7 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 7 October 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. Notwithstanding Mr Sweeney having been excluded from the Union on 15 January 2014, the provisions in UCATT's rules as to the appeals of members still applied to him.

3. On the basis of the correspondence and documentation before me the background to these complaints appears to be as follows.
4. UCATT expelled Mr Sweeney from the Union on 15 January 2014. On 18 March 2014 this penalty was reduced by UCATT's General Council to expulsion for 15 years. Mr Sweeney brought an application to the Certification Office arising out of his expulsion and my decision in this matter is dated 27 November 2014 (*Sweeney v UCATT* (D/43-48/14-15)). I upheld one of his four complaints and ordered that his appeal to the General Council of the Union be re-heard, if it had not previously been withdrawn.
5. On 11 September 2013, whilst still a member of UCATT, Mr Sweeney made internal union complaints against two other members, Mr Egan and Mr Winstanley, under rule 26 of UCATT's rules, seeking to have them disciplined. The complaints were made to the Union's North West Regional Council. Mr Sweeney alleged that Mr Egan and Mr Winstanley had breached rule 3 clause 7 of UCATT's rules by having allegedly refused to permit Mr Sweeney to attend a branch meeting on 9 September 2013.
6. On 29 November 2013, a hearing took place before the North West Regional Council. It dismissed the complaints made by Mr Sweeney on the grounds that they were considered to be ill-conceived.
7. Mr Sweeney appealed the decision of the North West Regional Council to the Union's Executive Council. By a letter dated 28 February 2014, Mr Steve Murphy, General Secretary of UCATT, informed Mr Sweeney that his appeal had been scheduled for 19 March 2014 at UCATT's general office in London and that he had

a right to be accompanied by witnesses/representatives. Mr Sweeney was asked to confirm his attendance.

8. By a letter dated 11 March 2014, Mr Sweeney wrote to Mr Murphy informing him that he was unable to attend the appeal hearing. He enclosed a statement in support of his appeal. Mr Sweeney explained that he was unable to attend the hearing "*not the least because of the travel costs that I would be expected to bear*". Mr Sweeney lives in Liverpool.
9. On 18 July 2014, Mr Sweeney wrote to Mr Murphy explaining that he had not heard anything from UCATT since his letter to him of 11 March 2014. On 17 October 2014, Mr Sweeney wrote a further letter of reminder to Mr Murphy. In that letter he expressed his concern that the Union might be ignoring his appeal as he was now no longer a member of the Union. He reminded Mr Murphy that rule 27 clause 7 of the rules provides that excluded members could still appeal under the rules.
10. On 4 November 2014, Mr Murphy replied to Mr Sweeney. Mr Murphy explained that, as Mr Sweeney had said he was unable to attend a hearing on 19 March, it had been moved to the next day, 20 March. Mr Sweeney did not attend that hearing and the Executive Committee merely noted his written statement. Mr Murphy asked Mr Sweeney if he now wanted to be present at his appeal to the Executive Committee. The hearing was re-listed for 18 March 2015.
11. On 25 February 2015, Mr Sweeney wrote to Mr Murphy indicating that he did wish to attend the hearing and that he would be accompanied by another member of the Union. He asked about claiming travel expenses. Mr Murphy replied on 11 February 2015. In relation to travel expenses, he explained that if a member had initiated a charge or had lodged an appeal for the consideration of the Executive Council or the General Council, it was the member's responsibility to meet both his own travel expenses and those of his witnesses. On the other hand, if a member was being charged or the Executive Council was adjudicating on an appeal from a member against whom a charge had been upheld, any travel expenses incurred by him or her were normally reimbursed by UCATT. Mr Murphy stated that, notwithstanding this policy, it was UCATT's custom and practice to reimburse travel expenses if the charge or appeal was successful. He explained that otherwise the payment of expenses was left to the member to deal with or that it was at the discretion of the member's branch. Mr Murphy concluded that Mr Sweeney was not therefore entitled to travel expenses as he had initiated the charges against the two other members and was appealing against the dismissal of those charges.
12. Mr Sweeney did not attend the hearing of his appeal on 18 March 2015. On 31 March 2015, Mr Murphy wrote to Mr Sweeney informing him that the Executive Council had decided to uphold the decision of the North West Regional Council decision of 9 December 2013 to dismiss the charges that he had brought against Mr Winstanley and Mr Egan.
13. By an email of 23 April 2015, Mr Sweeney wrote to Mr Brian Rye, who was then covering the post of General Secretary, in order to appeal the decision of the Executive Council to the General Council of the Union.

14. A hearing before the General Council was arranged for 13 July 2015. Mr Sweeney indicated that he would be unable to attend because of a prior commitment but sought clarification on the position about travel expenses. On 2 July 2015, Mr Rye wrote to Mr Sweeney informing him that he would endeavour to arrange an alternative date for the hearing and confirmed that the position about travel expenses was as set out in Mr Murphy's letter of 11 February.
15. Mr Sweeney brought his original application to me by a registration of complaint form received at my office on 11 August 2015.
16. On 18 August 2015, Mr Rye wrote to Mr Sweeney informing him that his appeal before the General Council had been re-scheduled for 7 October 2015.
17. On 26 August 2015, Mr Sweeney wrote to Mr Rye stating that he wished to be present at the hearing on 7 October and that he would be accompanied by Mr Brough. He went on to request rail warrants in order to enable himself and Mr Brough to attend before the General Council.
18. Mr Sweeney's further application to me was brought by a registration of complaint form received at my office on 26 August 2015.
19. On 2 November 2015, my office was informed by Mr Brough that Mr Sweeney's appeal to the General Council has not taken place on 7 October but had been re-arranged for 27 January 2016.

Relevant Statutory Provisions

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.*

- ...
- (2) *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

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.*

The Development of the Issues

20. On 3 September 2015, my office wrote to Mr Brough informing him that there was a potential issue on jurisdiction as Mr Sweeney had been expelled from the Union on 15 January 2014 and his complaint related to breaches of rule that allegedly occurred on 2 July 2015, when he was no longer a member. By section 108A(3) of the 1992 Act any complaint to me must be brought by someone who is a member of the respondent union at the time the complaint is brought or had been a member at the time of the alleged breach.

21. Mr Brough responded to my office on 8 September 2015. He stated, “As Rule 27, clause 7 ensures that all the provisions of Rule 27 are applicable to excluded members, such as Mr. Sweeney, it follows that his right to appear at his appeal (Rule 27, clause 2) is beyond doubt. Accordingly, the Certification Officer’s jurisdiction in this matter is not compromised.”
22. On 17 September 2015, my office put Mr Sweeney’s complaints to UCATT for its comments. The Union replied on 8 October 2015. In relation to Mr Sweeney’s first complaint of a breach of rule 27 clause 2, the Union argued that there was nothing in that rule which entitled Mr Sweeney and/or his representative to claim travel expenses in order to attend an appeal hearing before the General Council. In relation to Mr Sweeney’s second complaint of a breach of rule 27 clause 7, the Union accepted that Mr Sweeney could take advantage of this rule as an expelled member, but argued that there was nothing in it that entitled him to travel expenses when attending an appeal before the General Council. The Union observed that by July 2015, Mr Sweeney had been expelled for over a year and that it was their understanding that only a member of a union could bring a complaint to me.
23. On 13 October 2015, my office sent Mr Brough a copy of UCATT’s response of 8 October and invited his comments on it. My office specifically asked Mr Brough to address UCATT’s assertion that on 2 July 2015, the date Mr Sweeney alleged that UCATT breached its rules, he was no longer a member of the Union.
24. Mr Brough provided a response to my office on 23 October 2015. He 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. In relation to the second complaint, Mr Brough agreed that there was nothing in the express terms of rule 27, clause 7 which required UCATT to pay travel expenses. However, he argued that, as rule 27 clause 7 conferred on Mr Sweeney, as an excluded member, all the rights of a member in relation to the appeal, it followed that in refusing to pay Mr Sweeney and his accompanying member their travel expenses in order to attend an appeal before the General Council, the Union had breached rule 27 clause 7.
25. In relation to the jurisdictional issue that the Union had raised, Mr Brough accepted that on 2 July 2015 Mr Sweeney was not a member of UCATT. However, he argued that as rule 27 clause 7 conferred all the provisions of rule 27 on excluded members, it followed that this also gave Mr Sweeney standing to bring a complaint to the Certification Office, even though he was no longer a member of the Union.

26. By a letter dated 30 October 2015, my office informed Mr Brough that I was considering striking out Mr Sweeney's complaints under section 256ZA(1) of the 1992 Act on the basis that they had no reasonable prospect of success and/ or were otherwise misconceived. Mr Brough was advised that I was considering a strike out on two grounds. Firstly, on the basis that the rules allegedly breached by the Union (rules 27 clause 2 and 27 clause 7) did not contain any obligation that requires UCATT to pay travel expenses as alleged. Secondly, on the basis that he had been expelled from UCATT on 15 January 2014 and was therefore not a member on or about 2 July 2014 when he alleged that UCATT had breached its rules. Mr Brough was invited to show cause under section 256ZA(4) of the 1992 Act why Mr Sweeney's complaints should not be struck out.

27. Mr Brough responded to the show cause letter on 2 November 2015. He referred me to the arguments he had previously advanced in correspondence.

Conclusions

28. Section 108A of the 1992 Act provides me with jurisdiction to determine certain complaints from a trade union member that his or her union has breached or threatened to breach one or more of its rules. The rules allegedly breached must relate to one of the matters specified in sections 108A(2)(a) to (d). Section 108A(3) of the 1992 Act provides that in order to bring a complaint before me, an applicant must be a member of the union, or have been one, at the time of the alleged breach or threatened breach.

29. Mr Sweeney accepts that he was expelled from the Union on 15 January 2014. He was not therefore a member of the Union at the time he brought either of his complaints to me in August 2015, nor was he member at the time of the alleged breaches, 2 July 2015. Mr Brough argues that rule 27 clause 7 confers on excluded members all the provisions of rule 27 and that accordingly Mr Sweeney has standing to bring a complaint before me.

30. In my judgment, Mr Brough is wrong to conclude that the rulebook rights, which rule 27 clause 7 extends to excluded members, also give an excluded member a right to make a complaint to the Certification Officer under section 108A(1) of the 1992 Act. The rights accorded to a person by the rules of a union and the rights accorded by the 1992 Act are two completely different matters. Accordingly, I find that Mr Sweeney's complaints were brought at a time when he was no longer a member of the Union and that he was not a member of the Union at the date of the alleged breaches. His complaints were therefore brought in breach of section 108A(3) of the 1992 Act and I strike them out under section 256ZA(1)(a) of the 1992 Act on the basis that they are misconceived.

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.



David Cockburn
The Certification Officer