

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

Mr R Vowles

v

Unite the Union

Date of Decision

13 March 2013

DECISION

Upon an application by Mr Robert Vowles ("the claimant") under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act")

1. I refuse Mr Vowles' application for a declaration that on or around 6 January 2012 Unite the Union breached its rule 27.4 in suspending him from holding office or representing the union in any capacity, thereby suspending him from acting as the convenor at Arriva London South Buses.

2. I refuse Mr Vowles' application for a declaration that on or around 2 July 2012 Unite the Union breached its rule 27.3 by the hearing which considered the charges against him allegedly not being constituted in accordance with rule 27.3.

REASONS

1. Mr Vowles brought these complaints as a member of Unite the Union ("the Union" or "Unite"). His application was received at the Certification Office on 23 July 2012. Mr Vowles alleged breaches of the rules of the Union in relation to his suspension from office as convenor in January 2012 and the disciplinary hearing that he attended in July 2012.
2. Following correspondence with the claimant, he confirmed the complaints he sought to pursue in the following terms:

Complaint 1

That on or around 6 January 2012 Unite the Union breached rule 27.4 of the Union rules by suspending myself from office as convenor of Arriva London South Buses on the sole authority of Mr Peter Kavanagh, the rules state only the Executive Council or Regional Committee may suspend a member from office.

Complaint 2

On or around 2 July 2012 Unite the Union breached its rule 27.3 because the hearing arranged to hear a charge against Mr Vowles was not constituted within the terms of the rule. The charge was not heard by a committee or other body of the Union empowered to do so under the rule.

3. I investigated the alleged breaches in correspondence and a hearing took place on 7 February 2013. At the hearing, Mr Vowles represented himself. Mr Vowles and his witness, Mr Goacher, each produced a written witness statement and gave oral evidence. Mr Vowles also tendered a letter from a Mr Maurice Cullum by way of an additional witness statement. Mr Cullum did not attend the hearing. The Union was represented by Mr Michael Ford of counsel, instructed by Ms Victoria Phillips of Thompsons Solicitors. The Union submitted written witness statements from Mr Peter Kavanagh, Regional Secretary of the Union's London and Eastern Region and Mr Andrew Murray, the Union's Chief of Staff, who both also gave oral evidence. Mr Vowles and Mr Ford provided skeleton arguments. There was in evidence a 268 page bundle of documents consisting of letters and other documentation supplied by the parties as well as a copy of the rules of the Union.

Findings of Fact

4. Having considered the oral and documentary evidence and the representations of the parties, I find the facts to be as follows:
5. By way of setting the scene, I record that Mr Vowles entered the employment of London Transport in 1974 as a bus driver based at the Norwood garage. His employment transferred to Arriva Buses about 14 years ago. In about 1989 Mr Vowles became the Garage Representative at the Norwood garage and Deputy Convener for the TGWU, one of the predecessor unions of Unite. Unite the Union was formed in April 2007. In about 2008 he became the Convener for Arriva Buses London South and as such he headed a team of Garage Representatives in six Arriva garages in South London, including the Brixton garage. This position was full time. Mr Vowles continued to be paid by Arriva but was employed wholly on trade union duties. In late 2009 he was found to be medically unfit to perform driving duties, mainly on account of his blood pressure. On 6 January 2012 the Union suspended Mr Vowles from holding any Union office or representing the Union in any capacity. In late January 2012 he commenced a period of sick leave from Arriva, from which he did not return. He was dismissed by Arriva on 13 April 2012 under its long term sickness policy.
6. The matters most relevant to these complaints began in early 2011 when the Garage Representative in the Brixton garage of Arriva, John Mulvey, began posting material on Facebook to which Mr Vowles took exception. He considered that some material was confidential to the Union and some was unfairly critical of himself. At a meeting of Union representatives in South London in November 2011 Mr Vowles informed those present that posting such material was contrary to the Arriva policy on 'Social Networking Websites and Electronic Media'. Mr Vowles stated that on this and on other occasions he had informed the regional organiser of the Union responsible for his allocation, Roger Dillon, of Mr Mulvey's activities but that Mr Dillon had not taken any action to stop Mr Mulvey's postings.
7. On 6 December 2011 Mr Vowles reported Mr Mulvey to Arriva, their common employer, in respect of further Facebook postings that had been forwarded to him on 5 December by John Bown and Robert Goacher. Mr Bown was the Chair of the Brixton branch and Mr Goacher was its Branch Secretary. The employers took this

information so seriously that they commenced disciplinary proceedings against Mr Mulvey and dismissed him on 22 December 2011.

8. I accept the Union's evidence that the dismissal of Mr Mulvey on the instigation of Mr Vowles had a destabilising effect on the relevant membership in South London and resulted in strong feelings and conflicting loyalties amongst the membership. Mr Dillon was the officer who had to deal with this situation. On 27 December 2011 he wrote to his line manager, Mr Jose Villa, stating that Mr Mulvey's dismissal had been instigated by Mr Vowles and Mr Bown and that they together with Mr Goacher had provided fabricated and altered evidence that had been used against Mr Mulvey. He called for an investigation into Messrs Vowles, Bown and Goacher and their immediate suspension, warning that if the Union did not act quickly it was likely to lose a very large group of membership. Mr Villa immediately raised this matter on the telephone with the Regional Secretary of the Union's London and Eastern Region, Mr Peter Kavanagh, even though Mr Kavanagh was then on holiday abroad.
9. Upon Mr Kavanagh's return from holiday on 3 January 2012 he consulted with his senior aide and colleague, Mr O'Sullivan, with the Regional Chair, Mr Jim Kelly and with the Chief of Staff in the General Secretary's office, Mr Andrew Murray. Mr Murray advised Mr Kavanagh that it was within his authority as Regional Secretary to suspend Messrs Vowles, Bown and Goacher but that he should bring the matter to the attention of the Regional Finance and General Purposes Committee ("F&GP") and Regional Committee as soon as possible. On 6 January 2012 Mr Kavanagh wrote to Mr Vowles in the following term:-

"Dear Brother Vowles,

I am writing to advise you I have received a report alleging that you have been involved in actions which have been instrumental in the dismissal of the representative at Brixton Garage.

I will be asking a senior officer of the Union to conduct an investigation into whether or not there is a case to answer under the following Rules:

27.1.1 Acting in any way contrary to the Rules or any other duty or obligation imposed on that member by or pursuant to these Rules, whether in his/her capacity as a member, a holder of a lay office or a representative of the Union.

27.1.5 Bringing about injury or discredit upon the Union or any member of the Union.

I have also decided that under Rule 27.4 of the Unite Rule Book, to suspend you from holding office or representing the Union in any capacity, pending the outcome of this investigation and/or any disciplinary hearing that may follow.

I will be asking your Regional Officer, Roger Dillon, to notify your employer of the decision to suspend you.

You will be contacted by a senior officer of the Union in due course and I would urge you to fully cooperate with the investigation.

*Yours fraternally,
Peter Kavanagh,
Regional Secretary"*

I understand similar letters were sent to Messrs Bown and Goacher. In due course, Arriva and the relevant membership were informed of the suspension of their lay officials.

10. On 10 January 2012 there was a meeting of the Regional F&GP. Mr Kavanagh gave a report of his actions. The F&GP ratified his actions and endorsed the suspension of the three officers. This meeting was chaired by Mr Jim Kelly. For reasons explained later, I record that Mr Tom Murphy was not present.
11. Also on 10 January 2012, Mr Vowles wrote to Mr Kavanagh stating that he would refute the allegations made against him but that he had some concerns about Mr Kavanagh's interpretation of rule 27.4. Mr Vowles stated that by this rule only the Executive Council ("the EC") or the Regional Committee could suspend him and that he had grave concerns that, if Mr Kavanagh had made the decision, the rules had not been applied correctly. Mr Kavanagh responded on 12 January. He informed Mr Vowles that as Regional Secretary he had delegated authority for taking the decision to suspend him and that, in any event, his suspension was reported to the F&GP and would be reported to the full Regional Committee on 24 January.
12. The rule upon which Mr Vowles relied, rule 27.4, states:-

"The Executive Council or the relevant Regional Committee may suspend a member charged under this Rule from holding any office or representing the Union in any capacity pending its decision. A member shall be given written notice (or, if the member was informed verbally confirmation in writing) of any such suspension as soon as is reasonably practicable.

The provision upon which Mr Kavanagh relied as establishing his delegated authority was a resolution of the Regional Committee in February 2010, in the following terms:-

"Delegated Authority

The Regional Secretary advised that it is a requirement that a provision be made for a delegation of authority to deal with contingencies arising between Regional Committee meetings and it was therefore:

Resolved: "that this Region 1 Committee empowers:
Regional Finance & General Purposes Committee to act in its name for the purpose of carrying on business of the Committee between Regional Committee sittings.

The Committee also empowers the Regional Secretary to act on behalf of the Committee for the purposes of such Committee business as is necessary under Rule 8 with the exception of the authority to impose penalties upon members."

Mr Kavanagh gave evidence that such a resolution has been passed at the first meeting of the Regional Committee in each electoral cycle for as long as he can remember. He stated that the resolution is necessary both for the general administration of the region and for dealing with urgent matters, given that the Regional Committee only meets on a quarterly basis. Mr Kavanagh also gave evidence that he did not consider that by suspending Mr Vowles he was imposing "a penalty" or disciplinary sanction on him. He described it as a precautionary measure whilst the investigation was pending.

13. Mr Kavanagh then put the proposed disciplinary action into procedure. He appointed a senior colleague, Mr Vince Passfield, to conduct a preliminary investigation to test if there was a case to answer. Mr Passfield contacted Mr Vowles and his representative, Mr Chapman, to arrange a date for an investigatory meeting. This was eventually arranged for 15 February 2012 in the Union's Head Office in London.
14. In the meantime, the Regional Committee met on 25 January. It considered the decision of the F&GP on 10 January regarding the suspension of the three lay officials and indicated its agreement with the action taken by "accepting" the minutes of the F&GP, in accordance with the way such matters are dealt with within Unite.
15. On 26 January 2012 Mr Vowles wrote to the General Secretary indicating his concern that rule 27.4 had not been interpreted correctly. He asked the General Secretary to investigate.
16. Mr Vowles and his representative attended the investigatory meeting with Mr Passfield on 15 February 2012 but refused to respond to any of the substantive issues unless and until the Union answered four questions relating to the process. Mr Passfield adjourned the meeting and supplied Mr Vowles with the answers he required on 17 February when he also suggested that the investigation might continue on 21, 23 or 24 February.
17. On 20 February 2012 Mr Vowles wrote to Mr Passfield with "grounds of grievance" against Mr Kavanagh and Mr Dillon. This grievance was expressed in very general terms, being a description of the events since 6 January. Mr Passfield replied on 23 February informing Mr Vowles that he was not the person to whom the grievance should be addressed as he was not the appropriate level of management responsible for the Regional Secretary. Mr Passfield pressed Mr Vowles to agree a date for the resumed investigatory meeting, stating that he wanted it to take place in the next two weeks so that his report could be completed by 16 March. Mr Vowles responded on 4 March by refusing to meet with Mr Passfield whilst his grievance was outstanding. By a letter dated 5 March, Mr Passfield informed Mr Vowles why he considered that his grievance did not impact or interfere with the investigation, that he would continue with his investigation until its conclusion but that, until then, he remained available to meet with Mr Vowles.
18. Mr Passfield met with Mr Mulvey on 30 January, with Mr Goacher on 8 February, with Mr Vowles on a preliminary basis on 15 February, with Mr Bown on 7 March, with Mr Dillon on 12 March and Mr Kavanagh on 12 March. He had completed his investigations by 16 March and took six days to prepare his report. On the following Monday, 26 March, Mr Passfield informed Mr Vowles that in his opinion there was a case to answer and that the matter would be returned to the Regional Secretary who would progress it to the next stage. Mr Passfield assumed that Mr Vowles' suspension from holding office would remain in place until otherwise advised.
19. On 10 April 2012 the Regional F&GP considered a report on Mr Passfield's investigation and conclusions. It accepted that a disciplinary panel would be set up to hear the case as soon as possible.
20. On 13 April 2012 Mr Vowles was dismissed by Arriva.

21. On 24 April 2012 the Regional Committee considered the minutes of the F&GP of 10 April and a report from Mr Kavanagh on Mr Passfield's investigations. The Regional Committee not only adopted the report of the F&GP but specifically authorised the Regional Secretary to write to the three lay representatives inviting them to a disciplinary panel. At the end of this meeting, as the members of the Regional Committee were gathering up their papers, Mr Kavanagh spoke with a number of senior colleagues. He was on the top table with Eileen Woods, Vice-Chair of the region, who had chaired the meeting in Mr Jim Kelly's absence. Mr Kavanagh gave evidence that he spoke with her and three members of the F&GP and they agreed that the disciplinary panel to hear the charges against Messrs Vowles, Bown and Goacher would consist of Mr Jim Kelly and Mr Tom Murphy, another senior member of the F&GP. The selection of these two members was not put to or discussed by the Regional Committee as a whole and there is no minute of the meeting recording their selection by the Regional Committee.
22. On 30 April 2012 Mr Kavanagh wrote to Mr Vowles informing him that the disciplinary hearing would take place on 2 July. A complete set of the documentation for the hearing was enclosed. In accordance with the disciplinary procedures of the Union, any documents to be relied upon at a disciplinary hearing in support of a charge should be sent to the member at least 8 weeks before the hearing is to take place.
23. The disciplinary hearing took place on 2 July 2012. Mr Vowles was accompanied by Mr Maurice Cullum. Mr Passfield presented the case against him. A Regional Coordinating Officer, Mr Ian Maidlow, was present effectively to act as the clerk to the disciplinary panel to offer it whatever guidance it sought, together with administrative support.
24. On 23 July 2012 my office received the present complaints from Mr Vowles.
25. By a letter dated 25 July 2012 Mr Kavanagh informed Mr Vowles that he had agreed to a request by the disciplinary panel that it should have more time to deliver its decision. He stated that he had given it until 17 August.
26. Mr Kelly reported the decision of the disciplinary panel to Mr Kavanagh on 13 August 2012. It made four findings adverse to Mr Vowles, to the effect that he had deliberately chosen not to pursue a complaint against Mr Mulvey through the Union's internal procedures as he should have done. The panel recommended Mr Vowles' expulsion from the Union. By rule 27.6 the disciplinary sanctions available to a Regional Committee are limited and do not include expulsion. Accordingly, if expulsion is to be considered as a remedy, it is the practice of the Union for the regional disciplinary panel to make a recommendation of expulsion. This has the effect that the whole case is progressed to the EC which may hold a full rehearing and reach its own determination both on the merits and sanctions.
27. By a letter dated 28 August 2012 Mr Kavanagh informed Mr Vowles that the regional panel had decided to refer his case to the EC for a consideration of expulsion and that he would have an opportunity to present his defence against such a proposition to the EC panel.

28. Mr Vowles commenced not only this action before me but also a claim against the Union for unjustifiable discipline at an employment tribunal. In these circumstances, the Union decided to postpone any determination by an EC panel until after the conclusion of the litigation. Mr Vowles has not been informed whether his suspension remains in force pending the determination of his case by the EC. He assumes that it does. However, his electoral period as the Convener for Arriva London South ended around 30 June 2012 and is also no longer employed by Arriva. Accordingly, even if his suspension were to have been lifted, there is no position within the Union to which he would automatically revert.
29. Mr Goacher resigned from the Union in January 2012 and no action was pursued against him by the Union. Mr Bown's case was considered by the regional disciplinary panel and an indefinite bar on him holding office was imposed.

The Relevant Statutory Provisions

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

Section 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.*

Section 108B Declarations and orders

(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.

The Relevant Rules of the Union

31. The rules of the Union which are relevant for the purposes of this application are as follows:-

RULE 8 REGIONS

8.2 Each Region shall have a Regional Committee of lay members elected from the Regional Industrial Sector Committees, Area Activists Committees where established, and as otherwise provided for by these rules in such proportions, as may be determined by the Executive Council. Should any seat become vacant on the Regional Committee, then the Regional Secretary shall write to the nominating committee seeking a replacement delegate.

8.3 The Regional Committees shall have responsibility for the management of the Union's affairs in their Regions in conformity with decisions of the Executive Council and responsible to it.

8.8 The Regional Committee shall have power to appoint one or more subcommittees from among its members and, except where otherwise determined by the Executive Council, shall have the power to delegate to any such sub-committee all or any of its powers including

therein the conduct of hearings, appeals, inquiries, investigations or any other proceedings or functions whatever which it is authorised by these rules to undertake.

RULE 14 EXECUTIVE COUNCIL

14.8 The Government, management and control of the Union shall be vested in the Executive Council collectively, which may do such things consistent with the rules and objects of the Union as it may consider expedient to promote the interests of the Union or any of its members. In particular and without limiting the general powers conferred on it by these rules the Executive Council shall have the power to:

14.8.1...

.....

14.8.18...

14.10 In addition to any express powers in these rules provided, the Executive Council shall have power generally to carry on the business of the Union, as it may deem necessary, and do such things and authorise such acts, including the payment of moneys, on behalf of the Union, as it, in the general interests of the Union, may deem expedient, and to delegate to any person or persons the power to represent and to act on behalf of the Union. Between Executive Council meetings the Executive Council's powers under clause 8 above and this clause are delegated to the General Secretary save the following:

14.10.1 regarding appeals and resolutions

14.10.2 regarding delegation of powers from the Executive to any committee

14.10.3 regarding Executive Council procedures.

RULE 15 GENERAL SECRETARY

15.6 The General Secretary may delegate to any employee of the Union such of the General Secretary's powers as the General Secretary may consider appropriate.

RULE 27 MEMBERSHIP DISCIPLINE

27.1 A member may be charged with:

27.1.1 Acting in any way contrary to the rules or any duty or obligation imposed on that member by or pursuant to these rules whether in his/her capacity as a member, a holder of a lay office or a representative of the Union.

27.1.2 Being a party to any fraud on the Union or any misappropriation or misuse of its funds or property.

27.1.3 Knowingly, recklessly or in bad faith providing the Union with false or misleading information relating to a member or any other aspect of the Union's activities.

27.1.4 Inciting, espousing or practising discrimination or intolerance amongst members on grounds of race, ethnic origin, religion, age, gender, disability or sexual orientation.

27.1.5 Bringing about injury to or discredit upon the Union or any member of the Union.

27.1.6 Obtaining membership of the Union by false statement material to their admission into the Union or any evasion in that regard.

27.2 Disciplinary Hearings shall be organised and conducted under directions issued by the Executive Council. These directions ensure that the process is fair and conducted in accordance with the principles of natural justice.

27.3 A charge under this rule may be heard by a Branch, Branch Committee (where so determined by the Branch), Regional Committee or the Executive Council. The Executive Council may delegate to a subcommittee of the Executive Council.

27.4 The Executive Council or the relevant Regional Committee may suspend a member charged under this rule from holding any office or representing the Union in any capacity pending its decision. A member shall be given written notice (or, if the member was informed verbally confirmation in writing) of any such suspension as soon as is reasonably practicable.

27.5 The range of disciplinary sanctions shall include the following:

27.5.1 censure;

27.5.2 withdrawal of workplace credentials;

27.5.3 removal from office;

27.5.4 barring from holding office and

27.5.5 expulsion.

27.6 The full range of disciplinary sanctions shall be available to the Executive Council, however the range of disciplinary sanctions for other bodies shall be limited to the following:

27.6.1 Branch, shall have the power to censure;

27.6.2 Regional Committee, shall have the power to censure and withdraw workplace credentials.

Consideration and Conclusions

Complaint 1

32. Mr Vowles' first complaint is in the following terms;

"That on or around 6 January 2012 Unite the Union breached rule 27.4 of the Union rules by suspending myself from office as convenor of Arriva London South Buses on the sole authority of Mr Peter Kavanagh, the rules state only the Executive Council or Regional Committee may suspend a member from office."

33. Rule 27.4 of the rules of the Union provides as follows:

Rule 27 Membership Discipline

27.4 The Executive Council or the relevant Regional Committee may suspend a member charged under this rule from holding any office or representing the Union in any capacity pending its decision. A member shall be given written notice (or, if the member was informed verbally confirmation in writing) of any such suspension as soon as is reasonably practicable.

Summary of Submissions

34. Mr Vowles submitted that by rule 27.4 only the EC or the relevant Regional Council could have suspended him and that it was a breach of rule 27.4 for Mr Kavanagh to have suspended him by his letter dated 6 January 2012. Mr Vowles stated that he had made this argument to Mr Kavanagh, by his letter of 10 January, and to the General Secretary, by his letter of 26 January. At the hearing, Mr Vowles accepted that the Regional Council could have delegated its power to suspend him to the F&GP under rule 8.8 but he submitted that on the facts of this case it had not done so and was unable to do so retrospectively, after Mr Kavanagh had made his decision in breach of the rules. Mr Vowles argued that as his original suspension

was illegal, the whole thing fell like a pack of cards and that it was now too late for the F&GP to put the situation right. Mr Vowles further submitted that the Regional Committee could not delegate its authority to suspend a member to the Regional Secretary as the resolution of February 2010 upon which the Union relied specifically excluded "*the authority to impose penalties upon members*". He observed that he had been suspended for over 12 months and that this must amount to a penalty on him as a member. Mr Vowles commented that rules 27.5 and 27.6 refer to the withdrawal of workplace credentials as being a disciplinary sanction and that his suspension, having regard to its length, was in effect a withdrawal of his workplace credentials.

35. For the Union, Mr Ford submitted three authorities on the correct approach to the interpretation of the Rules of a Trade Union. They are *Jacques v. AUEW* (1986) ICR 683 at 692B (Ch.D), *Wise v. Usdaw* (1996) ICR 691 at 704C (Ch.D) and *Cummings v. POA D/20/01* (Certification Officer) at paragraph 2.18. He also relied upon the case of *R v. Chief Constable of Greater Manchester Police ex parte Lainton* (2000) ICR 1324 (CA) in support of the proposition that provisions which give a specific person the power to do certain acts (in this case a Chief Constable) can be read as permitting those acts to be done by a deputy or subordinate where the administrative convenience of allowing the deputy or subordinate to do so very clearly outweighs the principle that the designated officer should perform this act. In the *Lainton* case, the provisions could be read as permitting another person to extend the probationary period of an officer but they could not be read so as to permit the delegation of the power to dismiss.
36. Mr Ford's primary submission was that the authority to suspend a member had been successfully delegated to the Regional Secretary by the Regional Committee in its resolution of February 2010. He noted that by rule 8.3 the Regional Committee had responsibility for the management of the Union's affairs in the region but that, as it only met quarterly, it could not, as a matter of practical reality, manage either the day to day business of the region or matters which arose as an emergency. He further noted that the Regional Committee's only express power of delegation is to be found in rule 8.8 which allows delegation to one or more sub committees. In his submission, the ability of the F&GP to manage the day to day business of the Region was subject to the same practical constraints. Mr Ford contrasted this with the longstanding practice of the Union for the Regional Committee to delegate to the Regional Secretary at its first meeting of every electoral cycle the ability to manage the administration of the region. He commented that this must include the right to suspend as it would almost always arise as a matter of urgency and could not wait for the Regional Committee or a sub committee to be convened. Mr Murray gave evidence that the suspension of members in these circumstances was almost invariably done by the relevant Regional Secretary. Having regard to the longstanding practice within the Union and the approach approved by the Court of Appeal in *ex parte Lainton*, Mr Ford submitted that rule 8.8 must be read as permitting the right to delegate appropriate tasks to the Regional Secretary as well as to sub committees. He argued that, analysed in this way and having regard to the manner in which trade union rules should be interpreted, the delegation of powers to the Regional Secretary by the Regional Committee in February 2010 was within a permissible reading of rule 8.8. On the basis that the delegation of authority to Mr Kavanagh in February 2010 was

permissible, Mr Ford further submitted that Mr Kavanagh's decision to suspend Mr Vowles was not a penalty. He argued that a penalty is a disciplinary sanction, whereas Mr Kavanagh imposed a precautionary suspension which did not imply a finding of guilt. Mr Ford argued that, in determining whether Mr Kavanagh imposed a penalty, I should not look back at the length of the suspension, which may be the result of many factors, but that I should judge it as at the date it was imposed, 6 January 2012.

37. Mr Ford's alternative submission, should I find that Mr Kavanagh had no delegated authority to suspend, was that any breach that may have occurred on 6 January 2012 was cured by a valid decision by the F&GP on 10 January to uphold the suspension. He observed that rule 8.8 clearly permits delegation of the right to suspend to the F&GP. Mr Ford submitted that there was no principle of public or private law that a decision wrongly taken in the first instance precludes a later decision correctly taken from being effective.
38. Finally, Mr Ford argued that Mr Vowles' case should be dismissed under section 108B(1) of the 1992 Act as Mr Vowles had not taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the Union. In as much as I had already accepted Mr Vowles' complaint by having considered his submissions in this regard and permitted his application to proceed to a hearing, Mr Ford submitted that I should review my decision.

Conclusion

39. Section 108B(1) to the 1992 Act provides as follows:-

"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."

I observe that this provision gives me a wide discretion to refuse to accept an application but that I may not do so if I am satisfied that the applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union.

40. This provision does not require me to refuse to accept a complaint if the applicant has not taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union. It is a discretionary power. Each case must be considered on its own facts and I must not fetter my discretion. However, in considering what are 'reasonable steps to resolve the claim', it may be relevant for me to consider the likelihood of the claim being resolved in this way. Resolution can imply an outcome acceptable to both parties. Another relevant consideration may be the delay which could prejudice the recollection of witnesses in any case before me. The sort of case in which section 108B(1) may readily be invoked is where a union accepts there has been a breach which it is prepared to remedy but in which the applicant insists on a hearing before me, rather than pursuing a resolution through the union's own procedures. The sort of case which sits less comfortably with section 108B(1) is where a member is in a dispute with a union's Executive Committee on a matter of principle and the prospect of the dispute being resolved in a timely manner through the union's internal complaints procedure is remote. When

a case is listed for a hearing, I will have considered section 108B(1) and exercised my discretion to allow it to proceed. Should a Union wish me to reconsider that decision it should make an application in good time before the hearing. Such an application should not be made at the hearing. On the facts of this case I have already considered all the matters relied upon by Mr Ford in making his submission and find no reason to exercise my discretion differently.

41. Mr Vowles' first complaint requires me to determine whether Mr Kavanagh, as the relevant Regional Secretary, had the authority to suspend him on 6 January 2012. Mr Vowles' original contention was that rule 27.4 restricted this authority to the EC and the relevant Regional Committee but, at the hearing, he accepted that a Regional Committee may validly delegate that authority to a sub committee under rule 8.8. Nevertheless, Mr Vowles maintains that any further delegation to the Regional Secretary is impermissible.
42. The Union contended that the Regional Secretary had delegated authority and relied upon the delegation of the Regional Committee in February 2010. I had before me the relevant resolutions of February 2008 and 2012. I did not have before me the relevant resolution of February 2010 but I accept that it was in similar if not identical terms. The 2008 resolution provides as follows:

“Delegated Authority

The Regional Secretary advised that it is a requirement that a provision be made for a delegation of authority to deal with contingencies arising between Regional Committee meetings and it was therefore:

Resolved: “that this Region 1 Committee empowers:
Regional Finance & General Purposes Committee to act in its name for the purpose of carrying on business of the Committee between Regional Committee sittings.

The Committee also empowers the Regional Secretary to act on behalf of the Committee for the purposes of such Committee business as is necessary under Rule 8 with the exception of the authority to impose penalties upon members.”

The 2012 resolution adds the further requirement that all exercises of delegated authority are to be reported to the Regional Committee either through the minutes of the F&GP or written report. I was told, however, that this was the invariable practice in any event. The issue for me to determine is whether this delegation was permissible within the powers given to the Regional Committee in rule 8, which appear to restrict its powers to delegate only to a sub committee.

43. In considering this issue I was assisted by the authorities provided by Mr Ford. It is now well known that the rules of a trade union are not to be construed as a commercial contract or statute. In *Jacques v. AUEW*, Warner J said:

“The effect of the authorities may be summarised by saying that the rules of a trade union are not to be construed literally or like a statute, but so 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 are addressed.”

Further, the approach of the Court of Appeal in *ex parte Lainton* might be seen to apply a fortiori to the construction of trade union rules, especially where the construction for which the union contends has been the practice for as long as any witness recalled. It would appear a matter of common sense that a Regional Committee meeting quarterly cannot itself take all executive decisions necessary for the day to day management of a region and it is similarly impracticable for a sub committee which only meets from time to time. I find that it is permissible to read into the powers of the Regional Committee a power to delegate its responsibilities to the Regional Secretary between meetings of the Regional Committee with two provisos. The first is that issues referred to in *ex parte Lainton* as being those of "special substance" within the authority of the Regional Committee should be reserved to it or to sub committees established under rule 8.8. The second proviso is that such matters are reported to the next convenient meeting of the Regional Committee, as has been the longstanding practice and as is required by the 2012 version of the delegation. Accordingly, I find that the Regional Committee had the authority to approve a resolution in February 2010 empowering the Regional Secretary to act on its behalf for the purposes of such of the business of the Regional Committee as is necessary under rule 8.

44. The remaining question is whether Mr Kavanagh was prevented from suspending Mr Vowles by the final clause of the resolution granting him powers of delegation. This clause provides that the Regional Secretary's delegated authority does not extend to imposing penalties on members. Mr Vowles contends very strongly that his suspension was a penalty in that it caused him significant detriment. However, not all decisions taken by a union which cause detriment amount to a penalty. In my judgment, a penalty is a punishment for having breached a rule, law or other obligation. At the time of Mr Vowles' suspension on 6 January 2010 he had not been found guilty of any offence. Mr Kavanagh was faced with a situation in which a Convener had arguably caused the dismissal of another lay official of the Union. Mr Kavanagh was entitled to accept the advice from his local officer that the situation was heated and required urgent action. In these circumstances I accept the Union's submission that the action of Mr Kavanagh is better described as a precautionary or administrative suspension to allow the Union to sort matters out amongst its Arriva London South membership whilst the disciplinary process was undertaken. I find that Mr Kavanagh did not impose a penalty on Mr Vowles contrary to the express terms of his delegated authority and that Mr Vowles' suspension was not a matter of 'special substance', as that expression is used in *ex parte Lainton*. Accordingly I find that Mr Kavanagh did have the authority to suspend Mr Vowles on 6 January 2012.
45. For the above reasons I refuse Mr Vowles' application for a declaration that on or around 6 January 2012 the Union breached its rule 27.4 in suspending him from holding office.

Complaint 2

46. Mr Vowles' second complaint is in the following terms:

"On or around 2 July 2012 Unite the Union breached its rule 27.3 because the hearing arranged to hear a charge against Mr Vowles was not constituted within the terms of the rule. The charge was not heard by a committee or other body of the Union empowered to do so under the rule."

47. Rule 27.3 of the rules of the Union provides as follows:

Rule 27 Membership Discipline

27.3 A charge under this rule may be heard by a Branch, Branch Committee (where so determined by the Branch), Regional Committee or the Executive Council. The Executive Council may delegate to a subcommittee of the Executive Council.

Summary of Submissions

48. Mr Vowles originally argued that the disciplinary panel which heard the case against him on 2 July 2012 was improperly constituted as it consisted of Mr Jim Kelly and Mr Tom Murphy who had both been present at the meeting of the F&GP on 10 January 2012 which had ratified and endorsed Mr Kavanagh's decision to suspend him. It transpired, however, that Mr Tom Murphy was not at that meeting and so Mr Vowles did not pursue this argument at the hearing before me. He also accepted that a body which considered his suspension was not prohibited from hearing his disciplinary case. Further, he did not pursue his point that Mr Ian Maidlow was an unauthorised member of the disciplinary panel. Indeed, Mr Vowles candidly accepted that in preparing his case for this hearing he had thought that this complaint was very weak. However, he argued that his complaint had been made good by the evidence of Mr Kavanagh. Mr Vowles stated that he had not appreciated until Mr Kavanagh gave evidence that Mr Kelly and Mr Murphy had not in fact been appointed to this disciplinary panel at the meeting of the Regional Committee on 24 April 2012. He submitted that they had been appointed by Mr Kavanagh immediately after that meeting had terminated in consultation with the deputy chair and other members of the F&GP. He submitted that in these circumstances the disciplinary panel was not a sub committee of the Regional Committee under rule 8.8.
49. Mr Ford, for the Union, submitted that whilst rule 27.3 does not refer expressly to a charge being heard by a sub committee of the Regional Committee, the position is made clear by rule 8.8 which provides expressly that the Regional Committee has the power to delegate its powers to conduct a hearing. He observed that this must be correct as the Regional Committee consists of 40 to 45 members. Mr Ford's primary argument was that the selection of Mr Kelly and Mr Murphy to form a disciplinary sub committee was carried out at the meeting of the Regional Committee on 24 April 2012, albeit at the very end of that meeting as the members were gathering their papers, following an informal discussion. Alternatively, Mr Ford argued that the F&GP had decided on 10 April that there was to be a disciplinary sub committee, which decision was adopted by the Regional Committee on 24 April. He submitted that by these decisions the Regional Committee had in effect constituted a disciplinary sub committee to hear Mr Vowles' case and that Mr Kavanagh was then entitled, under his delegated powers, and in consultation with the deputy chair and others, to determine who sat on that committee.

Conclusion

50. By rule 27.3, a charge may be heard by a number of specified bodies. These do not include a sub committee of the Regional Committee. On the other hand, rule 8.8 provides that the Regional Committee may delegate to a sub committee its

powers to conduct hearings. In my judgment, in order to give practical effect to rule 27.3, it has to be read in conjunction with rule 8.8 and accordingly a sub committee of the Regional Committee may hear a charge under rule 27.3.

51. I do not accept Mr Ford's primary submission that the disciplinary sub committee consisting of Mr Kelly and Mr Murphy was established at the meeting of the Regional Committee on 24 April 2012. I find that the Regional Committee had terminated before the names of Messrs Kelly and Murphy were decided. This conclusion is supported by the absence of any minute of their appointment and by the evidence that there was no discussion of this matter at the Regional Committee and no decision by it. On the other hand, there is no doubt that the Regional Committee knew the stage that the disciplinary proceedings had reached. At the F&GP on 10 April (attended by both Mr Kelly and Mr Murphy) it was noted that a disciplinary panel would be set up to hear the case as soon as practicable. At the Regional Committee on 24 April (attended by Mr Murphy but not Mr Kelly) the minutes of the F&GP of 10 April were considered and adopted, the Regional Secretary reported on the disciplinary process and a resolution was approved authorising the Regional Secretary to write to the three representatives inviting them to a disciplinary panel. In my judgment, the only sensible understanding of the resolutions of the Regional Committee of 24 April is that it approved the establishment of a disciplinary sub committee to hear the cases against Mr Vowles and the other two members charged. After the end of the meeting, but in the same room and with most members of the Regional Committee present, Mr Kavanagh and the Vice-Chair of the region in consultation with senior members of the F&GP, decided upon the names of Mr Kelly and Mr Murphy. Their appointment was subsequently made known to the F&GP and Regional Committee. Indeed Mr Kelly chairs both these bodies. In these circumstances, I find that the disciplinary sub committee or disciplinary panel was authorised by the Regional Committee and that Mr Kavanagh was entitled under his delegated authority to appoint Mr Kelly and Mr Murphy to it, which decision was open to challenge at any later meeting of the F&GP or Regional Committee. Accordingly, I find that the hearing arranged to consider the charges against Mr Vowles on 2 July 2012 was properly constituted under rule 27.3.
52. For the above reasons I refuse Mr Vowles' application for a declaration that on or around 2 July 2012 the Union breached its rule 27.3 by the hearing which considered the charges against him allegedly not being constituted in accordance with rule 27.3.



David Cockburn
The Certification Officer