

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

Mr Harjinder Singh

v

Unite the Union

Date of Decision

18 March 2015

DECISION

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

1. I refuse Mr Singh's application for a declaration that on or around 20 June 2014 Unite the Union breached paragraph 6.5.2 of Appendix 1 of the rules of the union by allegedly not allowing Mr Singh to continue in office as its shop steward in his place of work notwithstanding his election to that position for a period of three years in April 2014.

REASONS

1. Mr Singh brought this complaint as a member of Unite the Union ("Unite" or "the Union"). His Registration of Complaint Form was received at the Certification Office on 24 July 2014 and alleged the Union had breached paragraphs 6.5.1 to 6.5.3 of Appendix 1 of the rules of Unite.
2. Following correspondence, Mr Singh confirmed that the complaint he sought to pursue was in the following terms:

Complaint

On or around 20 June 2014 Unite the Union breached paragraph 6.5.2 of Appendix 1 of the union rule book because Mr Harjinder Singh was not allowed to hold office for a period of three years following his election in April 2014 to the post of Shop Steward Puma Assembly 'C' Shift, despite his not having changed job, workplace, department or role during the period.

3. I investigated the alleged breach in correspondence and a hearing took place on 11 March 2015. At the hearing, the claimant was represented by a friend and colleague, Mr Kevin Akerman. Mr Singh produced a written witness statement and gave oral evidence. Mr Akerman also produced a written statement and gave oral evidence. The Union was represented by Mr Michael Potter of counsel, who was instructed by Mr Neil Gillam of the Union's Legal Department. The Union submitted six written

witness statements. These had been made by Mr Vince Passfield, Deputy Regional Secretary for Unite's London and Eastern Region; Mr Terry Burns, former-Convenor of the Dagenham South Joint Shop Stewards Committee; Mr Cecil Constantine, Shop Steward for Puma Assembly C Shift at Dagenham South Estate; Mr Mick Preshaw, Convenor of the Dagenham South Joint Shop Stewards Committee; Mr Terry Warden, Chairman of the Dagenham South Joint Shop Stewards Committee; Mr Jason Brandon, member of the Dagenham South Joint Shop Stewards Committee. Five of the Union's witnesses gave oral evidence. Mr Brandon was unable to attend the hearing. Mr Singh and Mr Potter each provided skeleton arguments. There was in evidence a 65 page bundle of documents consisting of letters and other documentation supplied by the parties. In the course of the hearing, Mr Akerman adduced another one page document which I admitted to the bundle as page 66. The rules of the Union were also in evidence. Mr Potter produced a bundle of legal authorities which was not referred to at the hearing.

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. Mr Singh entered the employment of the Ford Motor Company at Dagenham in 1988. He is now employed as a Group Leader in the Puma Assembly line. Mr Singh also joined the predecessor union to Unite in 1988 and is a member of its branch LE/001, which covers the whole of the Ford site at Dagenham.
6. Ford employs some 3,000 workers at Dagenham, the vast majority of whom are in one or other of the three recognised trade unions; Unite The Union, the GMB and United Road Transport Union ("URTU"). At one time Fords at Dagenham had what were known as the North Estate and the South Estate. There remains only the South Estate. On that estate the major activity is engine assembly, which is conducted on a number of assembly lines each named after a type of big-cat. This case concerns the Puma Assembly Line. The assembly lines operate a rotating shift system, known as shifts A, B and C. Mr Singh worked on shift C of Puma Assembly. There are approximately 120 workers on that shift.
7. The three unions recognised by Fords come together in the Dagenham South Estate Joint Shop Stewards Committee which is sometimes known as the Joint Shop Stewards Committee or the Joint Works Committee ("JWC"). The 56 or so shop stewards from all the unions on the South Estate elect the JWC which has seven members; a convenor, deputy convenor, chairman and four ordinary members. At the time in question, Mr Terry Burns was the convenor and Mr Mick Preshaw was the chairman. Mr Jason Brandon and Mr Terry Warden were two of its ordinary members. The JWC is elected for a period of three years. At the beginning of each electoral period, it formally adopts "Rules of Procedure and Standing Orders for the Conduct of Meetings". The Rules of Procedure and Standing Orders for 2011-2014 included what I shall call SO18 which provides as follows:

"S.O.18 Any person wishing to stand for election should be in the department they wish to represent for a minimum of twelve months. No person who has applied to become a foreman or member of staff WITHIN THE LAST TWO (2) years will be allowed to submit his/her Nomination papers to stand for the

position of a Trade Union Shop Steward within the jurisdiction of the south Estate Joint Works Committee. Any existing Shop Steward who makes his/her intentions known that he/she wishes to become a foreman then that person will resign their position with immediate effect."

8. Mr Singh was first elected as a shop steward of Unite in about September 2013 when a casual vacancy occurred following the resignation of the previous shop steward. He successfully stood for re-election in or about April 2014.
9. In the meantime, on or about 19 March 2014 Mr Singh applied for a foreman's position, that of Production Supervisor. This proved to be controversial, having regard to SO18. The form on which a member seeks to be nominated as a Unite shop steward draws attention to SO18. On an earlier version of the form this was done by reference to the number of the standing order only but on the current version of the nomination form SO18 is set out in full, except for the final sentence. This demonstrates the importance accorded to SO18 by Unite.
10. I find that sometime in mid May 2014 Mr Singh met with the members of the JWC in the JWC office on the Ford site at Dagenham in order to discuss his role as an elected Unite shop steward and his application for a supervisor's job. Present at the meeting were most of the members of the JWC. Mr Singh was accompanied by Mr Kevin Cutter, a friend and a deputy shop steward who worked on the Puma Assembly A shift. Mr Singh confirmed he had applied for the supervisor's position and Mr Burns asked him to resign as a shop steward having regard to SO18. Mr Singh asked for that request to be put in writing with grounds but he never did receive such a written request from the JWC. Instead, he was given a copy of its rules and standing orders. Mr Burns asked Mr Singh to talk to his members to find out if they were all behind him or if anyone wanted to take his place as shop steward. Mr Burns was aware that the JWC had no power to remove someone as a shop steward of Unite. He saw two possible ways forward, if Mr Singh did not resign. If Mr Singh's members were sufficiently upset at him having applied for a supervisor's position, they could have a vote to recall him under paragraph 6.5.2.2 of Appendix 1 of the Unite rules. Alternatively, if the members were solidly behind Mr Singh, Mr Burns would have approached the union's full time officer to see if there was some way that Mr Singh could remain as a shop steward.
11. Shortly afterwards Mr Burns was informed that there were members who wished to replace Mr Singh as the Unite shop steward on the C shift of Puma Assembly. They were Mr Vize and Mr Constantine.
12. Mr Burns and Mr Preshaw then met with Mr Singh again. They told him that in all the circumstances, he should now resign as a Unite shop steward. Mr Singh said that he still wanted the request for him to resign to be put in writing with grounds but that he would think about his position.
13. A few days later Mr Cutter told the members of the JWC that Mr Singh had made up his mind to resign. Mr Preshaw told Mr Cutter that this verbal notification was not good enough and that it was necessary for Mr Singh to put his intentions in writing.

14. I find that on or about Monday 2 June 2014, Mr Singh went to the JWC office and handed to Mr Burns a letter of resignation as a shop steward. This was shortly before Mr Singh was to start his shift at 2.30pm. The letter had been prepared on Mr Singh's computer at home and printed on his peach/salmon coloured notepaper. Mr Singh handed over this letter of resignation to Mr Burns in the presence of Mr Preshaw, Mr Warden and Mr Brandon who each gave evidence to that effect. On the weight of the evidence I do not accept Mr Singh's account that he did not hand over a letter of resignation on 2 June nor his assertion that he submitted a different version of the same letter to Mr Burns on 4 July.
15. Shortly afterwards, Unite started the process of electing a replacement shop steward. Nomination forms were exhibited sometime between 13 and 17 June 2014, with close of nominations on 20 June. At the close of nominations there was only one candidate, Mr Constantine. He was declared elected on Monday 23 June. The notice advising members of his election set out the terms of SO18 and stated that it was with regret that the existing shop steward had had to be asked to resign.
16. Mr Singh wrote a letter to Mr Burns dated 23 June 2014 which he delivered personally. This letter noted that Mr Burns had instructed him to resign but went on to say that he had no intention of doing so as SO18 was inappropriate and not in line with the rules of Unite. He also informed Mr Burns that he had complained to the Certification Office. This letter had been drafted for Mr Singh by Mr Akerman, who also works at Fords. In 2007 the Union had refused to accept Mr Akerman's nomination as a shop steward on the grounds that he had previously applied for a position of supervisor. Mr Akerman subsequently drafted all future letters for Mr Singh's signature.
17. On 25 June 2014 my office received a letter from Mr Singh dated 20 June, seeking to make a complaint against the JWC and the convenor of the committee. Mr Singh provided copies of both this letter and his letter to Mr Burns of 23 June to the union's Deputy Regional Secretary, Mr Passfield.
18. Before Mr Passfield received the above two letters, he had spoken to Mr Singh on the telephone, following Mr Singh having called into the Dagenham office and having left a message. Mr Passfield remembers Mr Singh being very unhappy at having been told he should resign and that Mr Singh had told him he had resigned his position at that point. Following receipt of the two letters, Mr Passfield met with Mr Burns and others from the JWC and was told that Mr Singh had resigned. Mr Passfield considered that Mr Singh's continuing issue was with the general operation of SO18 and not his personal position. Mr Passfield responded to Mr Singh by a letter dated 2 July 2014 commenting upon the status and appropriateness of SO18.
19. Mr Singh submitted as evidence a copy of what he maintains was his actual letter of resignation dated 4 July 2014. This is in identical terms to his letter of resignation dated 2 June but the date has been crossed out and replaced in manuscript with 4 July. Further, the letter is in a different font and with different margins to the letter of 2 June. The font and margins are more similar to those found in the letters that Mr Singh had sent with Mr Akerman's assistance. The union denies all knowledge of this letter re-dated 4 July and claims that it was never delivered. I accept the evidence of Mr Burns and Mr Preshaw that they did not receive this letter. In any

event, I find that it was signed after Mr Singh's letter of resignation of 2 June, which remained the operative document.

The Relevant Statutory Provisions

20. 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.*

The Relevant Rules of the Union

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

Rule 6: Lay Office

6.5 *The electoral period to hold lay office shall be three years unless otherwise provided for under these rules.*

Appendix 1 Rule 6 – Lay Office EC Guidance

1) Rule 6 – Executive Statement carried at the June 2011 Rules Conference

The Executive Council supports the principle set out in Rule Six that those who seek to serve on Unite's constitutional committees and as delegates to constitutional conferences should be accountable representatives of workers. The union is stronger and more representative for the application of this principle.

Rule Six rightly gives the Executive Council broad scope in determining the definition and implementation of the criteria set down in rule to ensure that those who serve on constitutional committees are genuinely representative of the membership at work but that no-one is unfairly barred from participation in the union's life. The Executive Council carries out its responsibilities in this respect by drawing up Guidelines for the implementation of the Rule. The EC may vary these guidelines at its own discretion, by a simple majority, in the light of its appreciation of changing industrial circumstances affecting the membership, and in the light of issues raised by the application of the Rule and the Guidelines.

2) EC Guidance – Rule 6: Lay Office

6.1 ... 6.4....

6.5 *The electoral period to hold lay office shall be three years unless otherwise provided for under these rules.*

6.5.1 *All lay representatives must be elected. Elections, other than casual vacancies, should always take place in June to ensure synchronisation with other aspects of the union's constitutional structures.*

6.5.2 *They will be elected to hold office for three years, unless one of the following occurs, in which case an election will be held for a replacement as soon as is practicable:*

6.5.2.1 *The elected representative changes jobs so that they no longer work in the workplace (or department, or role,) that they were elected to represent.*

6.5.2.2 *More than 50% of the members in the constituency that they were elected to represent, vote or petition to hold a new election for that post.*

Should industrial circumstances or particular workplace traditions dictate that elections are necessary more frequently than three years that is permissible, but under no circumstances less frequently.

Consideration and Conclusions

22. Mr Singh's complaint is in the following terms:

"On or around 20 June 2014 Unite the Union breached paragraph 6.5.2 of Appendix 1 of the union rule book because Mr Harjinder Singh was not allowed to hold office for a period of three years following his election in April 2014 to the post of Shop Steward Puma Assembly 'C' Shift, despite his not having changed job, workplace, department or role during the period."

23. Paragraph 6.5.2 of Appendix of the rules of the Union provides as follows:

"6.5.2 They will be elected to hold office for three years, unless one of the following occurs, in which case an election will be held for a replacement as soon as is practicable:

6.5.2.1 The elected representative changes jobs so that they no longer work in the workplace (or department, or role,) that they were elected to represent.

6.5.2.2 More than 50% of the members in the constituency that they were elected to represent, vote or petition to hold a new election for that post.

Should industrial circumstances or particular workplace traditions dictate that elections are necessary more frequently than three years that is permissible, but under no circumstances less frequently".

Summary of Submissions

24. Mr Akerman, for Mr Singh, submitted that Mr Singh had resigned on 4 July 2014 and that I should disbelieve the Union's evidence that he had resigned on Monday 2 June. He argued that the Union's witnesses were uncertain about various dates whereas Mr Singh was clear that his first substantive discussion with the JWC about his job application was on Friday 30 May. On that basis, Mr Akerman argued that it was not possible for everything to have occurred as the Union alleged between that meeting and 2 June. Mr Akerman further argued that the Union had come into possession of Mr Singh's letter of 2 June by having been given it by Mr Constantine. It was Mr Singh's case that on the evening of 2 June he had written two different letters; one resigning and the other refusing to resign. He stated that he had taken both to work the next day and given them to Mr Constantine so that he could take

them to the JWC and explain that Mr Singh was considering his position. Mr Akerman stated that Mr Singh later withheld the letter refusing to resign because it needed to be redrafted and presumes that Mr Constantine gave the letter of resignation to the JWC. Should I find that Mr Singh's resignation was effective on 4 July, Mr Akerman argued that Mr Singh was still the shop steward for the Puma Assembly C shift on 23 June, the date that Mr Constantine was declared elected, and that his de facto removal from that position was in breach of rule 6.5, which provides that a shop steward shall remain in office for three years. Accordingly, Mr Akerman submitted that Mr Constantine's election was unlawful and Mr Singh had remained in office until his resignation on 4 July. Should I find that Mr Singh resigned on 2 June, Mr Akerman quite properly conceded that Mr Singh's application must fail.

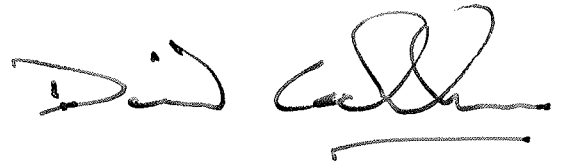
25. Mr Potter, for the Union, argued that it was pellucid that Mr Singh had resigned on 2 June 2014. He noted that there were four witnesses to the letter of resignation of 2 June being handed over, as well as the evidence of Mr Passfield, and that the terms of Mr Singh's letter were unambiguous. He further noted that the letter was signed by Mr Singh whereas Mr Singh had stated in his oral evidence on two occasions, that he had not signed the letter of 2 June until 4 July. On that basis, Mr Potter submitted that the Union had acted lawfully in organising an election to replace Mr Singh and that Mr Constantine was properly elected. Should I find that Mr Singh had resigned on 4 July, Mr Potter argued, in the alternative, that the Executive Council Guidance to the rules contained in Appendix 1 of the rule book does not constitute rules of the Union within the meaning of section 108A of the 1992 Act. He observed that guidance to the rules is not the same as the rules themselves which generally have to be approved at a conference convened for that purpose in accordance with rule 13. In the further alternative, Mr Potter submitted that if the Guidance in Appendix 1 constituted a part of the rules of the Union, the Union could rely upon the proviso in rule 6.5 that permits the period of lay office to be less than three years if otherwise provided by the rules. He argued that SO18 formed an "industrial circumstance or particular workplace tradition" within the meaning of the final few lines of paragraph 6.5.2 of Appendix 1 of the rule book, enabling there to be a further election within three years of a shop steward's previous election. Finally, Mr Potter argued that the commonsense of SO18 was so obvious and it was so longstanding that there is an implied term of the rules to the following effect, "*It is permissible where the union is part of a joint works arrangement with other unions for rules made by the joint works body to make provision for more frequent elections should particular work place traditions require same*". Should I accept the existence of such an implied term, Mr Potter submitted that there was no breach of the rules as alleged by Mr Singh.

Conclusion

26. I have found in paragraph 14 above that Mr Singh submitted his letter of resignation to Mr Burns on 2 June 2014. In doing so, I prefer the evidence of Mr Burns, Mr Preshaw, Mr Warden, Mr Brandon and Mr Pasfield to the evidence of Mr Singh and the submissions of Mr Akerman. I find the explanation given by Mr Singh as to how the Union came to be in possession of his signed letter of resignation on his coloured notepaper to be implausible, especially having regard to the evidence of Mr Constantine who expressly denied having handed it to the JWC. Mr Singh's credibility on this issue is further compromised by his evidence that he signed the

letter dated 2 June on 4 July, whereas the Union had the signed letter in its possession at an earlier date.

27. Mr Akerman conceded that if I found that Mr Singh resigned as a shop steward by his letter of 2 June, his complaint to me must fail. That concession was made correctly. I find that when the Union sought nominations for the position of shop steward to represent members on shift C of the Puma Assembly line on or shortly after 13 June, Mr Singh was no longer holding that lay office and that accordingly Mr Constantine was properly elected to it. There was no breach of the rules of the Union as alleged by Mr Singh. For these reasons I refuse Mr Singh's application for a declaration that on or around 20 June 2014 the Union breached paragraph 6.5.2 of Appendix 1 of its rules by allegedly not allowing him to hold office as shop steward for a period of three years.
28. As I have determined this complaint on the facts, on Mr Potter's primary submission, there is no need for me to reach conclusions on the alternative submissions which he advanced and I do not do so.

A handwritten signature in black ink, appearing to read 'David Cockburn', with a horizontal line underneath the signature.

David Cockburn
The Certification Officer