

STATEMENT OF THE REASONS FOR
DECISIONS OF THE CERTIFICATION OFFICER ON
COMPLAINTS MADE UNDER SECTION 4 OF
THE TRADE UNION (AMALGAMATIONS, ETC.) ACT 1964

K RICHARDS
AND

THE NATIONAL UNION OF MINeworkERS
(SOUTH DERBYSHIRE AREA)

Date of Complaints 5 December 1985
Date of Decisions 6 December 1985

1. Ballots were held in October 1985 on a resolution to approve an amalgamation between the National Union of Mineworkers (Nottingham Area), the National Union of Mineworkers (South Derbyshire Area) and the Colliery Trades and Allied Workers Association. In each case a majority of those voting approved the terms of the amalgamation, and an application to register the Instrument of Amalgamation was made on 25 October.
2. On 5 December Mr Kevin Richards, acting through his solicitor, Seifert Sedley Williams, submitted to me written objections concerning the conduct of the ballot in the South Derbyshire Area. Mr Richards was a member of the National Union of Mineworkers (South Derbyshire Area), which hereafter I shall refer to as the South Derbyshire NUM. I treated his submission as containing three complaints under section 4 of the Trade Union (Amalgamations, etc.) Act 1964 ("the 1964 Act").
3. Under section 4(3) of the 1964 Act I have the power to dismiss complaints without holding a hearing. After careful consideration I decided to dismiss each of the complaints, and I so informed Mr Richards, through his solicitors, on 6 December. Under section 4(4) of the 1964 Act I am required to furnish a statement of the reasons for my decisions. The reasons for my decisions on Mr Richards' three complaints are set out below.

THE FIRST COMPLAINT

4. Mr Richards headed his first complaint "Members eligible to vote" and began by saying "This is a complaint under section 4(i) and (ii)". I took this to mean section 4(1)(a) and section 4(1)(b) of the 1964 Act. This reading is consistent with his other references to "section 4(i) and section 4(ii)" in relation to other sections of the 1964 Act found elsewhere in his complaints.
5. In support of the grounds of his complaint Mr Richards quoted three different figures of the number of members eligible to vote in the South Derbyshire Area: those given to him by the solicitor for the South Derbyshire NUM (2,767); those to be found in the South Derbyshire NUM ledgers (2,754); and those he put forward based on what he referred to as the National Coal Board Printout for the week ending 19 October 1985 (2,488). His conclusion from these three figures was that "This would imply that either more people than members were given entitlement to vote or less", and that "Either case amounts to a breach of either or both sections 1(2)(a) or (b)."

6. Consideration must start with the grounds of complaint set out in sections 4(1)(a) and 4(1)(b) of the 1964 Act. The ground of complaint in section 4(1)(a) is that:-

"the manner in which the vote on the resolution was taken did not satisfy the conditions specified in section 1(2) of this Act;"

and the ground in section 4(1)(b) is that:-

"where the vote was taken under arrangements made under section 2(2) of this Act, that the manner in which it was taken was not in accordance with the arrangements;"

7. As to the ground of complaint in section 4(1)(a), Mr Richards directed my attention to the conditions in paragraphs (a) and (b) of section 1(2). The conditions in paragraphs (c) and (d) of section 1(2) were not raised in his complaint.
8. The conditions specified in paragraphs (a) and (b) of section 1(2) are that -
- " (a) every member of the union must be entitled to vote on the resolution;
- (b) every member of the union must be allowed to vote without interference or constraint and must, so far as is reasonably possible, be given a fair opportunity of voting; "
9. Mr Richards' assertions as to fact consisted of the three figures he quoted (see paragraph 5). He made no assertion as to which, if any, was the correct figure. Even assuming the figures he quoted to be provable in evidence, I do not accept that they bear the implications which Mr Richards claimed for them. I am in no doubt that by themselves these figures are incapable of demonstrating as a matter of fact that entitlement to vote was given to more or to fewer people than were members, or that any member wishing to vote was subjected to interference or constraint or was not given a fair opportunity to vote.

10. As to the ground of complaint in section 4(1)(b), that ground refers back to section 2(2) which says -

"For the purposes of the passing of a resolution to approve an instrument of amalgamation or transfer, the committee of management or other governing body of a trade union shall, unless the rules of that union expressly provide that this subsection shall not apply in relation to that union, have power, notwithstanding anything in the rules of the union, to arrange for a vote of the members of that union to be taken in any manner which that body think fit."

Mr Richards did not seek to show that the Union had adopted arrangements under section 2(2), nor what those arrangements were, nor in what respect the manner in which the vote was taken was not in accordance with them. I find nothing in the figures he produced which could of itself demonstrate a departure from voting arrangements made by the Union.

11. For those reasons I decided to dismiss Mr Richards' first complaint.

THE SECOND COMPLAINT

12. Mr Richards headed his second complaint "High percentage of voting". He began by saying "This is a complaint under section 4(ii)", and ended "I submit that each of these instances amount to breaches of section 2(2)." Section 2(2) is, as is clear from paragraph 10 above, concerned exclusively with the power of the committee of management or other governing body of a trade union to make voting arrangements. As the ground of complaint in section 4(1)(b) is that the manner in which a vote was taken was not in accordance with arrangements made under section 2(2), I concluded that his reference to section 4(ii) was intended to be a reference to section 4(1)(b), and I treated the complaint accordingly.
13. Mr Richards again relied on figures to support his complaint. He said that the Electoral Reform Society had registered 2553 votes cast. Referring back to the figures which he had produced for his first complaint he concluded that, taking the South Derbyshire Area as a whole, 2,553 votes would represent -

on South Derbyshire NUM figures	92.27% of the membership,
on South Derbyshire NUM ledger figures	92.7% of the membership,
on NCB figures	97.45% of the membership.

14. Mr Richards then produced figures in relation to three of the branches within the Area where, he said, observers had noted the number of ballot papers issued. His figures read:

"Ballot papers issued

Rawden	785
Donisthorpe	804
Cadley Hill	778

Compare with numbers entitled to vote (South Derbyshire NUM Ledger).

Rawden	834
Donisthorpe	871
Cadley Hill	851

—————
2556
—————

This gives the percentage vote for each pit of:

Rawden	$\frac{785}{834} \times 100 = 94.13\%$
Donisthorpe	$\frac{804}{871} \times 100 = 92.3\%$
Cadley Hill	$\frac{778}{851} \times 100 = 91.4\% "$

15. Finally, Mr Richards produced figures showing that the absentee rates for the three branches over the two days on which voting took place were

Rawden	17 October 1985	12.9%
	18 October 1985	15.3%
Donisthorpe	17 October 1985	14.6%
	18 October 1985	20%
Cadley Hill	17 October 1985	14.8%
	18 October 1985	19.4% "

16. Again, Mr Richards did not seek to show that the Union had adopted arrangements under section 2(2), nor what those arrangements were, nor in what respect the manner in which the vote was taken was not in accordance with them. His sole contention was that the figures show the percentage of members voting was substantially higher than the percentage who attended work, and that this raised an "irresistible inference ... that either members voted more than once or non-members voted or there was a mathematical error". Even assuming that Mr Richards had proved in evidence all the figures that he introduced, I find no "irresistible inference" from these figures that there was irregularity in the conduct of the vote of the kind he suggested. Nor do I find anything in the figures he produced which could of itself demonstrate a departure from voting arrangements made by the Union.
17. For those reasons I decided to dismiss Mr Richards' second complaint.

THE THIRD COMPLAINT

18. Mr Richards headed his third complaint "Sick members". The terms of the complaint were brief and I set them out in full -

"I submit this claim under section 4(i). I have been informed that at least one member registered as sick was unable to cast his vote, this is a contravention of section 1(2)(b)".

Again, I treated the reference to section 4(i) as an intended reference to section 4(1)(a), which is the only ground of complaint which relates directly to the conditions specified in section 1(2). As already indicated the condition specified in section 1(2)(b) is that -

"every member of the union must be allowed to vote without interference or constraint and must, so far as is reasonably possible, be given a fair opportunity of voting;".

19. In support of his claim that the conditions in section 1(2)(b) were not satisfied Mr Richards said no more than that he had been informed that at least one member registered as sick had been unable to cast his vote. But even if it were proved that one member of the Union, or perhaps more than one member, had been unable to vote because he was ill throughout the period of the vote, that fact alone would not make a case that there had been interference

or constraint, or that the member or members concerned had been denied a fair opportunity to vote. The further issue of whether the Union had done all that was reasonably possible to give that sick member, or others, a fair opportunity to vote was not addressed at all by Mr Richards.

20. In putting his complaint in these terms, Mr Richards in effect required me to draw a particular inference against the Union from a circumstance which, even if proved, bears no necessary inference that I can discern. I am in no doubt that this circumstance did not and could not of itself demonstrate a failure to satisfy one or more of the conditions specified in section 1(2)(b) of the 1964 Act.

21. For that reason I decided to dismiss Mr Richards' third complaint.

M WAKE
CERTIFICATION OFFICER
20 December 1985