

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

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

Date of Decision:

24 October, 1996

APPLICATION AND DECISION

Under section 55 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") I am empowered to make, or refuse to make, a declaration on the application of any person who claims that his or her trade union has failed to comply with one or more of the provisions of Chapter IV, Part I of the 1992 Act concerning the need for, and the conduct of, elections to certain positions. In making a declaration I am required to specify the provisions with which the trade union has failed to comply.

For the reasons which follow I declare that in the 1995 election of its General Secretary the Transport and General Workers' Union failed to comply with the requirements of section 48(6) of the 1992 Act. I dismiss another complaint that section 48(3) was also breached.

The application

1. On 19 June 1996 I received a formal complaint from a member of the Transport and General Workers Union ("TGWU" or "the union") concerning the

conduct of the 1995 election of the General Secretary of the TGWU. A question arose as to whether this application was in time. The ballot in question closed on 16 June 1995 and section 54(3) provides that applications must be made within one year. However the year begins with the day on which the union announced the result of the election. The scrutineer's report for this ballot is dated 23 June 1995. The union cannot lawfully publish the results of the ballot until it receives this report. There was no evidence that the union had published the result before receiving the report. Consequently the year began on or after 23 June and complaint was made within time.

2. The complaint was that the union had allowed one of the candidates (who was its incumbent General Secretary) to publish his election address, which contained more than the 500 words permitted by union rules. This was said to be contrary to the provisions of section 48(6) of the 1992 Act, (see paragraph 3). In subsequent correspondence the complainant clarified the allegations and further claimed that the union had breached section 48(3) of the 1992 Act by permitting the extra words in the General Secretary's address.

The requirements of the legislation

3. The 1992 Act provides that a trade union shall comply with certain requirements concerning the preparation of election addresses in respect of ballots for certain positions in the union including the position of General Secretary. Section 48 sets out the particular requirements for election addresses. The relevant parts of section 48 concerning this application are:

".....

(3) The trade union may provide that election addresses submitted to it for distribution -

(a) must not exceed such length, not being less than one hundred words, as may be determined by the union, and.....

(6) The trade union shall, so far as reasonably practicable, secure that the same facilities and restrictions with respect to the preparation, submission, length or modification of election

address, and with respect to the incorporation of photographs or other matters not in words, are provided or applied equally to each of the candidates."

The complainant's case

4. The ballot rules adopted by the union for this election specified that election addresses should not exceed 500 words. The rules also provided precise instructions on how expressions such as "1988/89" or "1988 - 1989" should be counted. The former would count as one word, the latter as two. Other rulings were similarly precise. The other two candidates in the 1995 election for the union's General Secretary submitted addresses within the 500 word limit. The address of the incumbent General Secretary who was also a candidate in the election certainly exceeded 500. On one count 506 words were published. On another interpretation of the instructions a total of 526 words were published.

5. In a subsequent election for a different post in the union the limit on the number of words in the election address had been set at 150 words. When the complainant, who was a candidate in that election, submitted his address he was required to reduce it by two words.

6. The union's rule and detailed instructions which had been strictly applied against him had not been applied in the case of the General Secretary.

7. In the complainant's view in the election for General Secretary the union had not secured "that the same facilities and restrictions with respect to the preparation, submission, length or modification of an election address" (my emphasis) had been applied equally to all candidates. On this basis the complainant sought a declaration that the union had breached section 48(6) of the 1992 Act.

8. The complainant also contended that these same facts (ie publication of an election address exceeding that laid down in the rules) constituted a breach of section 48(3) which permits the union to make provision for an election address not exceeding a specified number of words.

The union's case

9. The union maintained that it had conducted the election in accordance with the relevant statutory provisions. The union had appointed an independent scrutineer to oversee the ballot and had established a ballot unit in its headquarters to ensure that the ballot was conducted within the union's rules and to administer the process of the election.

10. The election addresses of all three candidates in the election had been received by the ballot unit. It had conducted a word count of the election addresses to ensure that the number of words were within the limits set by the union and to otherwise check that the election addresses were within the ballot rules.

11. The union agreed that it had set a limit of 500 words but maintained that the total number of words in an election address would depend on how they were counted. For example in the second paragraph of the General Secretary's election address the number of words might vary between 41 and 48 depending on whether "1964-68", "1988/89", "district organiser/secretary", "1992-present" counted as one or two words. In this connection ballot guidelines issued by the union stated that partial dates separated by an oblique line eg "1988/89" should be treated as one word whilst full dates such as "1988 - 1989" should be counted as two words.

12. The union maintained that it had applied these principles uniformly to all the candidates. On the basis of its guidelines all candidates were within the 500 words maximum set down by the rules. However if the staff of the ballot unit had misunderstood the guidelines, then the same misunderstandings would have applied to the election addresses of all the candidates.

13. Had the ballot unit established that the General Secretary had exceeded the word limit he would have been asked to reduce his election address to the 500 maximum permitted.

14. The union also pointed out that it is difficult to provide ballot guidelines that cover every combination of words and circumstances that candidates might use. The person who checked the number of words did so in good faith believing that the correct principles were applied in all cases.

In this event all the candidates would in any event have been treated equally.

15. In the light of this evidence the union considered that there had been no breach of the statutory provisions. However if the Certification Officer disagreed with this view the union considered that any breach was so technical that no declaration should be made.

Reasons for my decision

16. The first question I have to decide is did the incumbent General Secretary's election address contain more than 500 words? This a question of fact.

17. The union came up with several variations on their word count. These ranged from 498 to 505. The complainant's range was 506 to 526. Each maintained their counts could be squared with the instructions for counting words. The complainant's 526 depended, among other things, on counting the expression "T & G" (not expressly dealt with in the instructions) as three words rather than the one word for "TGWU" prescribed in the instructions. I find that interpretation hard to accept.

18. The instructions say that numbers in a block eg "1989", "1/128", "1988/89" will be counted as one word but "1988-1989" will count as two. However in order to get within the 500 word limit the union argued that "district organiser/secretary" should be counted as at most two words and that dates such as "1964-68" should also count as one word. I find nothing in the rules to justify this position and a great deal to deny it. The intention I think of the rules was to specify which combination of words or numbers, which would normally, or could conceivably count as more than one word, should be counted as one word. If something is not covered it should therefore be counted as the actual number of words.

19. Applying the instructions as I understand them the election address complained of consisted of 506 words and therefore exceeded the limit set by the union. I also find that the union misapplied the rules it had set, it did not just make a mistake. It was moreover reasonably practicable for the union to secure that the same restrictions as regards to length of election address were applied equally to all candidates.

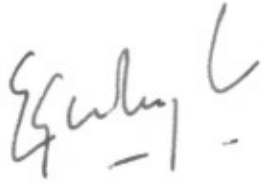
20. The next question is, does the fact that the instructions may have been mis-applied equally to all candidates make any difference? In my view it does not. When the candidates submitted their addresses they would expect that the instructions would be strictly applied. One candidate submitted an address that was within 3.5% of the limit. The other was well within it. The mis-application of the instructions had the effect of changing their impact and this changed impact worked to the advantage of just one of the candidates.

21. The next question I have considered is whether the breach is so minor that it should be disregarded within the context of precise but not all embracing instructions. If it is then I would be wrong to issue a declaration based on it. I certainly do not regard the breach as one likely to have had any impact on the outcome of the election. The other candidates in the election have not complained about this issue - indeed they are probably unaware of the breach. The union has argued that any breach in this case is so technical that no declaration should be made. However the union continued to argue that there had been no error and I have been made aware that in another case (incidentally involving the complainant, see paragraph 5 above) the union regarded an excess of two words over its declared limit as sufficient to require the address to be shortened. To my mind this rules out the defence that in accepting the General Secretary's election address their action was in the range of reasonable responses open to it. In such circumstances I am disinclined to accept the union's argument that I should not issue a declaration.

22. It is for these reasons that I make the declaration set out at the very beginning of this decision to the effect that the union breached section 48(6) of the 1992 Act.

23. I make no declaration in respect of the complaint under section 48(3). I dismiss this complaint which is based on a misreading or misunderstanding of the statutory requirements. Section 48(3) provides only that the union may provide that election addresses "...must not exceed such length, not being

this particular provision is concerned.



E G Whybrew
Certification Officer

Observations

I have indicated in my decision that I do not regard this as a breach of any particular consequence. I do not have power to order a re-run of an election. Even if I did I would not have done so in this case. There is no evidence that the error had any impact on the outcome of the election. The complainant admitted that he would have been unaware of it had the union not strictly applied the instructions against him. Nothing more can or needs to be done in respect of the 1995 General Secretary's election.

For the future I would add that in my view the union got itself into this difficulty by being over precise in its election instructions. Once precise instructions are drawn up they must be comprehensive or some objective mechanism instituted to resolve difficulties. They must also be applied consistently. Setting a limit of 150 or 500 words and showing some flexibility in the way words/dates etc are counted might be perfectly adequate. Alternatively it could say that because of difficulties over the treatment of particular items such as dates, groups of initials etc candidates might consider aiming for slightly less than the maximum number of words.