

DECISION OF THE CERTIFICATION OFFICER ON A COMPLAINT
MADE UNDER SECTION 3(2) OF THE TRADE UNION ACT 1913

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J. G. CLEMINSON
AND
POST OFFICE ENGINEERING UNION

Date of hearing : 19th September 1979
Date of Decision : 24th October 1979

The complainant appeared in person.
The Union was represented by Mr B. Hooberman of
Messrs Lawford & Co., solicitors.

1. Mr J. G. Cleminson, who is a member of the Post Office Engineering Union ("the Union:") complains to me under section 3(2) of the Trade Union Act 1913 ("the Act") that the Union has acted in breach of its political fund rules.

The Complaint

2. The grounds of Mr Cleminson's complaint, as notified to the Certification Office in a letter from his solicitors, Messrs Lovell, White & King, dated 11th September 1979, were as follows :

(a) that having contracted out from contributing to the Union's political fund in 1964 he was not relieved from payment of the political contribution during the years from 1966 to 1977 inclusive, as required by what is now rule 25(7) of the Union's rules;

(b) that the system by which the Union relieves exempt members from payment of the political contribution (i.e. by paying them the amount of that contribution in advance

of the date on which it falls due for payment by non-exempt members) placed him, in breach of rule 25(8) of the Union's rules, at a disability or disadvantage as compared with other members of the Union by reason of his being exempt because (i) the system could easily go wrong, in which case he would be deprived of the payment to which he was entitled, and (ii) it revealed to Union officials that he was an exempt member and therefore exposed him to the risk of victimisation.

3. At the hearing Mr Cleminson abandoned that part of the second ground which alleged that he had been exposed to the risk of victimisation, and expressly disclaimed any suggestion that he had himself been victimised by the Union or any of its officials. However, he raised a further ground of complaint that having ceased to pay his Union contributions through the payroll deduction or "check-off" system, the means by which he subsequently paid them, namely by cheque, was less convenient than paying through the "check-off" and had therefore also placed him at a disability or disadvantage in breach of rule 25(8).

4. Mr Cleminson's grounds of complaint can therefore be briefly summarised as follows :

(a) that for 12 years he was not relieved from payment of the political contribution ("the first ground");

(b) that the Union's system of paying refunds in advance to exempt members in respect of the amount of the political contribution placed him at a disability or disadvantage because of its fallibility ("the second ground");

(c) that payment of his contributions by cheque placed him at a disability or disadvantage because it was less convenient than payment through the "check-off" ("the third ground").

Background to the complaint

5. Rules 25.7 and 8 are in the following terms :

"7. The National Executive Council shall give effect to the exemption of members to contribute to the political fund of the organisation by relieving any members who are exempt from the payment of part of any periodical contributions required from members of the organisation towards the expenses of the organisation as hereinafter provided, and such relief shall be given as far as possible to all members who are exempt on the occasion of the same periodical payment.

For the purpose of enabling each member of the organisation to know as respects any such periodical contribution what portion, if any, of the sum payable by him is a contribution to the political fund of the organisation, it is hereby provided that 24p of each quarterly contribution is a contribution to the Political Fund of the organisation, and that any member who is exempt as aforesaid shall be relieved from the payment of the said sum of 24p and shall pay the remainder of such contribution only.

8. A member who is exempt from the obligation to contribute to the political fund of the Union shall not be excluded from any benefits of the Union, or placed in any respect either directly or indirectly under any disability or disadvantage as compared with other members of the Union (except in relation to the control or management of the political fund of the Union) by reason of his being so exempt.

6. Mr Cleminson joined the Union in 1955 and contracted out of paying the political contribution in 1964. In 1966 the Union entered into a payroll deduction agreement with the Post Office under which the Union contributions of those employees who were members of the Union and who agreed to the arrangement were to be deducted from their wages and remitted to the Union. At that time the Post Office was not prepared to operate the system in a way which would enable the Union to relieve exempt members from paying the political contribution through it; the Union therefore arranged to refund the amount of the political fund contribution to exempt members in advance each year.

7. Mr Cleminson agreed to pay his contributions through the "check-off and accordingly did so from 1966 onwards. However, towards the end of 1977 he realised that he had been paying the political contribution without receiving any refunds and in December of that year he wrote to the Union's head office asking for repayment. This produced a quick response because on 12th January 1978 the then General Treasurer sent him a cheque to repay the accumulated amount of the political

contribution he had paid during the years 1966 to 1977. At about the same time Mr Cleminson was refunded in advance in respect of the amount of the political contribution for 1978.

8. In September 1978, for reasons which are not entirely clear (see paragraphs 15 and 16 below), he ceased to pay his contributions through the "check-off" and started to pay them by cheque sent to his branch of the Union at Reading. Apparently the branch officials were unable to cope with this method of payment and they neither paid in his cheques nor acknowledged their receipt. With effect from the beginning of 1979 Mr Cleminson began to deduct the amount of the political contribution. In July 1979 the Chairman of the Reading branch visited him, returned all his cheques and asked him to pay his contributions direct to head office. Mr Cleminson then sent a cheque to head office to cover his accumulated contributions since September 1978 less the amount of the political contribution for the first 8 months of 1979.

9. In presenting his case, Mr Cleminson made it quite clear that in his view the only fully satisfactory solution was for him and other exempt members to be able to pay their Union contributions, less the political contribution, through the "check-off".

The first ground of complaint

10. The Union did not dispute that between 1966 and 1977 it had failed to refund Mr Cleminson the amount of the political contribution, that he had therefore not been relieved from payment of the political contribution as required by Rule 25.7, and that the failure amounted to a breach of that rule. Accordingly I find this ground of the complaint to be justified.

The second ground of complaint

11. In my decision in the case of Reeves and Transport and General Workers Union, given on 6th July 1979, I held that refunds paid in advance to exempt members amounted to relief from payment under the rules of that union but said that the position might be different if any part of the contributions of exempt members was paid into the political fund. The Union's procedures ensure, as in the case of the TGWU, that no part of the contributions from exempt members is paid into the political fund. The relevant parts of rule 25.7 are in identical terms to those of the corresponding rule of the TGWU and I

therefore consider that the refunding of exempt members in advance amounts to relief from payment under the rule.

12. Mr Cleminson's complaint is, however, not that he was not relieved from payment but that the system of refunding him in advance placed him at a disability or disadvantage as compared with other members of the Union - namely, the non-exempt members paying through the "check-off" - by reason of his being exempt. He says that the disadvantage lies in the fact that the administration of the system can easily go wrong so that the exempt member is not refunded or relieved from payment. Bearing in mind the earlier history of his case I can understand Mr Cleminson taking this view, but I cannot agree with it. It is for unions to see that exempt members are relieved from paying the political contribution in accordance with the rules. If the system actually goes wrong so that the exempt member is not refunded, then, as my decision on Mr Cleminson's first ground of complaint indicates, there will be a breach of the rule that exempt members are to be relieved from payment ; however, I do not consider that Mr Cleminson suffered any disadvantage or disability as compared with other members simply because of the possibility that he might not be relieved from payment owing in a breakdown in the system. I therefore hold that this ground is not justified.

The third ground of complaint

13. Mr Cleminson contends that paying his contributions by cheque places him at a disability or disadvantage as compared with other members by reason of his exemption, because he has to keep a check of the payments due and a record of what he has paid and this is an inconvenience which members paying through the "check-off" do not suffer. I accept that paying by cheque involves a degree of inconvenience and therefore that it places an exempt member at a disability or disadvantage in breach of rule 25.8 if the Union requires the member to pay by cheque or does not present him with any satisfactory alternative (i.e. one which does not involve a disability or disadvantage). On the other hand if an exempt member voluntarily chooses to pay by cheque rather than by such an alternative means, then any disadvantage he suffers will be a consequence of his own actions and not of his being an exempt member.

14. Accordingly, if the Post Office, acting as agent for the Union, had said that because of his dissatisfaction with the "check-off" system he could no longer pay his contribution by that method and the Union had, as in fact happened, made no effort to enable Mr Cleminson to pay by a comparably convenient means, I would no doubt have found that he had been placed at a disability or disadvantage by reason of his exemption. Conversely, if Mr Cleminson had himself asked the Post Office to stop paying his contribution through the "check-off", I would, in view of my findings that the system of paying refunds in advance amounts to relief from payment under the rules and does not place him at a disability or disadvantage, have held that any disadvantage he suffered was the result of his own actions and not of a breach of the rules.

15. Unfortunately the evidence as to why Mr Cleminson came off the "check-off" system, which I regard as critical to this ground of his complaint, was inconclusive. Mr Cleminson implied on a number of occasions during the hearing that the Post Office had taken him off the "check-off" system without being asked to do so; Mr Hooberman representing the Union, based his submission that Mr Cleminson was the author of his own misfortune on the premise that he had himself asked the Post Office to stop deducting his contribution, but the validity of that premise was not supported by clear evidence.

16. On 7th September 1978, the Post Office, in reply to a letter from Mr Cleminson's solicitors, wrote a letter to them which described the "check-off" system and went on :-

"This procedure does not seem to have worked properly in Mr Cleminson's case. In the circumstances, and in view of your letter, arrangements have been made to cancel entirely the deductions at present being made from Mr Cleminson's pay in respect of his membership of the POEU. This takes effect from Monday 11th September. It is therefore important that your client should make his own arrangements to keep up his membership from that date. Naturally there is no reason why deductions should not be resumed if your client reaches a satisfactory arrangement with the union and authorises deduction to be made again in the normal way."

That paragraph is open to either interpretation and since the letter from Mr Cleminson's solicitors was not put in evidence and no other satisfactory evidence was given at the hearing, I conclude that it would not be right for me to make any finding on this ground of complaint.