D/77-78/01

DECISIONS OF THE CERTIFICATION OFFICER ON APPLICATIONS MADE UNDER SECTION 108A OF THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

IN THE MATTER OF COMPLAINTS MADE AGAINST UNISON - the Public Service Union

APPLICANTS: MR G KELLY
MR D ROBERTS

Date of Decisions: 31 July 2001

DECISIONS

1.1 Under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended) ("the 1992 Act") 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 me for a declaration to that effect. Subsection 108A(2)(d) relates to "*the constitution or proceedings of any executive committee or of any decision-making meeting,"* (this is defined by sections 108A(10)(a-c) and 108A(11)(a-b)).

1.2 Section 108B of the Act empowers me to make such enquiries as I think fit and, after giving the applicant and the union an opportunity to be heard, to make or refuse to make the declaration asked for. Whether or not I make the declaration sought, I am required to give the reasons for my decision in writing.

1.3 Where I make a declaration under section 108B I am required, unless I consider to do so would be inappropriate, to make an enforcement order on the union. My enforcement order is required to impose on the union one or both of the following requirements -

(a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;

(b) to abstain from such acts as may be specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.

1.4 As background to these complaints, I should explain that early in 2000 I received complaints from both Mr Kelly and Mr Roberts to the effect that the Standing Orders Committee of their union (UNISON) had broken its rules in not putting their branches' motions on the agenda for the union's National Delegate Conference. After a hearing on 14 November 2000 I decided I was unable to determine their complaints as they fell outwith my jurisdiction (Decision D/4-5/01). On 11 December 2000 I received a fresh application from Mr G Kelly, complaining that the union's Standing Orders Committee ("SOC") and the National Delegate Conference ("the NDC") had denied the right of his branch to submit a rule change at the union's National Delegate Conference 2000 and that this was a breach of the union's Rules N1., B1., B2.5., D1.10.4., P2.3., P2.4., and P3.1. On 12 December 2000 I received an identical complaint from Mr D Roberts alleging that his branch had also been denied the right to submit the same rule changes for debate at the National Delegate Conference 2000.

1.5 Both applicants argued that they had a right to submit rule changes in accordance with the

provisions of Rule D.1.10.4 which gives Branches and other bodies (as specified therein) the right to submit motions to the NDC and that the SOC and NDC had breached this rule by the SOC not including the rule change as an agenda item for debate at Conference and by the NDC ratifying that, allegedly unlawful, decision. I investigated the complaints in correspondence and, on 28 June 2001, held a formal hearing of argument on the complaints. The union was represented by Mr A White (Counsel), Ms B McKenna (Director of Services to Members - UNISON), and Mr K Sonnet (Deputy General Secretary of the Union)also attended and Mr Sonnet gave evidence. Mr Kelly and Mr Roberts represented themselves.

1.6 For ease of reference, I set out below the wording of the rules which the applicants claim have been breached by the action of the union,(and other rules which have a bearing on the complaints), in denying them the right to have the rule change motion debated at Conference:

CONFERENCE QUORUM AND PROCEDURE

Rule D1.10.4 *"Each branch may submit motions, amendments to motions and amendments to Rule. A Regional Council, a Self-organised Group, the National Young Members' Forum and the Retired Members Organisation may each submit a total of two motions and/or amendments to rule."*

UNION DEMOCRACY

Rule B2.1 *" To promote, safeguard and improve the interests and status of members and the Union as a whole"*

Rule B2.5 *"To promote and safeguard the rights of members to have an adequate opportunity to participate in the initiation and development of policy-making, through meetings, conferences, delegations or ballots, and to encourage the maximum democratic debate, together with the right to campaign to change policy, while at all times acting within the rules and agreed policy."*

Amendment of rules

Rule N.1 *"Rule shall not be amended except by a resolution passed at the National Delegate Conference by two-thirds majority of those delegates voting in favour or, in the case of a card vote, at least two-thirds of the votes cast."*

Standing Orders for conferences

Rule P2.3 *"The functions of the Standing Orders Committee shall, subject to these Standing Orders, be to:*

Rule P 2.3.1 *ensure that the Union's Rules and Standing Orders relating to the business of Conferences are observed, and notify the President of any violation that may be brought to the Committee's notice*

Rule P 2.3.2 *draw up the preliminary agenda and final agenda of Conference*

business, and the proposed hours of business, to be circulated in accordance with the timetable stated in Rule D.1.9

Rule P2.3.3 *determine the order in which the business of Conference shall be conducted, subject to the approval of Conference*

Rule P2.3.4 *consider all motions and amendments submitted for consideration by conference and, for the purpose of enabling conference to transact its business effectively the Committee shall:*

Rule P.2.3.4.1 *decide whether such motions and amendments have been submitted in accordance with the Rules*

Rule P 2.3.4.2 *group together motions and amendments relating to the same subject , decide the order in which they should be considered and whether they should be debated and voted on separately or together and voted on sequentially*

Rule P 2.3.4.3 *prepare and revise, in consultation with the movers of motions and amendments, composite motions in terms which in the opinion of the Committee best express the subject of such motions and amendments*

Rule P 2.3.4.4 *refer to another representative body within the Union a motion or amendment which in the opinion of the Committee should*

properly be considered there; the mover shall be informed of the reason for so doing

Rule P 2.3.4.5 *have power to do all such other things as may be necessary to give effect to these Standing Orders."*

Rule 3.1 *"Motions, amendments and other appropriate business may be proposed for the Conference by the bodies set out in Rules D1.10.3 and D 1.10.4 "*

1.7 I had before me a large volume of documents which formed the basis of the applicants' and the union's arguments to me. These included some produced specifically for this hearing and some for the hearing on 14 November 2000. I treated all of this as evidence in relation to the present complaints.

1.8 For the reasons stated below I dismiss these complaints.

Further background to the applications

2.1 On 8 and 25 May 2000 the applicants complained to me that the union's SOC had refused to accept, on the National Conference Agenda, proposed rule changes to the union's political fund rules submitted by their branches for debate at the National Delegate Conference 2000. In that instance I dismissed their applications for want of jurisdiction under section 108A(2)(d) of the1992 Act, on the grounds that the SOC's decisions did not concern the *"the constitution or proceedings of any executive committee or of any decision-making meeting, as defined by sections 108A(10) (11) and (12) of the 1992 Act*

." The current applications before me, of 11 and 12 December 2000 made the same complaints, with the difference that the applicants now stated that the SOC acted contrary to rule in preventing the motion from being debated at Conference, and the NDC acted contrary to rule in ratifying the action of the SOC.

2.2 Both Mr Kelly and Mr Roberts' branches submitted motions for changes to the union's political fund rules for consideration at the National Delegate Conference to be held in June 2000. This, they argued, was done in accordance with the rules of the union with regard to the content, process and time-tabling of such motions.

2.3 It is the responsibility of the SOC to draw up the Conference Agenda according to the principles laid down in the union's rules. The SOC considers each motion or rule amendment proposal to determine whether it has been submitted in accordance with the union's rules and whether the motion or amendment can be debated at the NDC. The SOC then draws up a preliminary agenda which is published and circulated to all branches and regions. This agenda sets out the motions/rule amendments received and also gives the reasons as to why certain motions and amendments have been ruled out of order. Next, the SOC publishes the final agenda containing the approved list of motions and amendments and this is also circulated to all branches and regions. Thus, all Conference delegates have access to the preliminary and final agenda to the NDC.

2.4 The NDC delegates also receive a separate NDC information pack which includes an "Amendments to Rule" booklet and a " Conference Guide." This Guide includes the SOC's report to the NDC which sets out the SOC's recommendations for the smooth running of Conference. At the start of Conference, the SOC submits its Second Report

which informs Conference of the structure and content of the final agenda. Conference then votes on whether to ratify the SOC's Second Report. Thus, it is the NDC that ratifies the reports and in effect approves the agenda for the Conference. At that stage, the delegates (Branch representatives) have the opportunity to question the SOC's decision to exclude a motion/rule amendment. The delegates may raise an objection to the SOC Report by challenging it from the floor of the Conference during the consideration of the Report by the NDC. The NDC then makes a decision on the final agenda taking any such objections into account. In cases where Conference does not ratify the exclusion of a particular motion or rule amendment in the SOC report, the NDC has then to move for reference back to the SOC to reconsider its original decision (to exclude the motion from Conference agenda).

2.5 The SOC Secretary wrote to both branches to the effect that the branch amendments submitted (amendments to Rules J.7.4.4., J.8.2 and J.8.5) had been ruled out of order as proposals not being competent for the National Delegate Conference. Both branches remonstrated against this decision by the SOC, but were unable to obtain a change of ruling by the SOC Committee. They did not raise the matter at the NDC.

The Applicants' case

2.6 The applicants argued that it was a breach of the union's rules for the SOC to omit their branches' rule change motions from the agenda as such and to categorise them as non-competent for the agenda. Further, that it was a breach of rule for the NDC to ratify an already erroneous decision by the SOC. Mr Kelly explained that the reasons given by the union for the SOC's decision to omit Mr Kelly and Mr Roberts's branch motion/amendments to rule were that the proposals were not competent for the NDC. The

union submitted that such amendments, involving changes to the union's political fund, could not be changed at the NDC without the agreement of the relevant political fund. Such action might in the union's view place it in legal jeopardy. Moreover, the union took the view that for changes to be made to the Affiliated Political Fund ("APF"), (one of two sections to the union's political fund) the proposals to change the APF rules should be made through the relevant APF forums and from thence to the NEC to submit (at its discretion) the amendments to Conference. Mr Sonnet, the secretary of the SOC advised the applicants in correspondence that the advice had been circulated to members prior to the deadline for motions to Conference 2000. The applicants objected to this line of argument on the grounds that the APF forums could propose a rule change amendment via the National Executive Council ("the NEC") who might then submit this to Conference, whilst their branches were being denied the same right in respect of their own rule change proposals. They questioned the basis for the legal advice to the union underpinning this ruling. In their view, the decision to block the right of a branch to submit a rule change was outside the union's rules and that the only power to do so was vested in the NDC.

2.7 The applicants alleged that a letter of 4 May 2000 from the SOC accepted that the NEC did not have "any additional submission rights over and above branches" and that the NEC had submitted amendments to the Political Fund rules in 1998. If that was so, they argued, branches had an equal right. On that basis it would be wrong for the SOC to accept on the preliminary agenda the NEC's rule change amendment but at the same time deny that right to the branches. The applicants concluded from this that in the absence of a rule permitting the SOC to discriminate between the NEC and the branch in the matter of the submission of rule change amendments to the NDC, the union's real objective was

to prevent a legitimate debate taking place on the use made of the union's political fund.

2.8 The applicants questioned the arguments made by the union that there must necessarily be implied rules of a union for situations like this that were not covered by the rule book and that such implied rules might be established by custom and practice. According to the applicants, an implied term in contract law would only be accepted by the courts: if it was absolutely necessary to do so; if it was clear that both parties would have agreed to that term had it been discussed: or if, by the parties conduct, it was clear they had accepted it. As the applicants had challenged the ruling of the SOC for two years, it followed that they had not agreed to any such implied term.

2.9 That an implied term had been incorporated in the rules through custom and practice was denied by the applicants. The union had said that the SOC had ruled as out of order any motion which could not lawfully be implemented if passed. Further, that it could not have been the sensible intention of the rule book to require any amendment or motion "however bizarre or illegal" to be discussed (at the NDC). The applicants rejected the case of McVitae -v- UNISON (1996) IRLR which they asserted was irrelevant to the issue of the right to debate any matter at Conference. They cited the case of Ropner & Co -v- Stoate, Hosegood & Co (1905 The Law Times 328) as establishing the principle that in order to be accepted as a customary term, the provision must be "notorious, certain and reasonable." UNISON had only been in existence for seven years, which the applicants did not think was long enough in law to establish custom and practice in any matter. During that seven-year period they asserted that the union had regularly debated whether the union would be prepared to break anti union laws. Conference had debated the propositions that the union might defy the Immigration and Asylum Act and had also

called for support, at the 1999 Conference, for the non-payment of student tuition fees. There were similar debates, the applicants argued, at this year's conference, for example, calling on Conference to "be at the forefront in organising a general strike in an attempt to repeal anti union laws" and calling on the union to organise "a programme of national industrial action to defend public services and jobs and branches opposing privatisation." Thus, in their view there could not be a custom and practice term which prevented debate on issues which if implemented would be unlawful.

2.10 Ultimately, it was argued, an express term could not be overturned by an implied one and in this context a clear and express term existed to give the branches the right to submit motions without qualification or equivocation (Rule D1.10.4 - see para 1.6).

2.11 The applicants then referred to the potential effect of their branches' rule change motion. Existing fund rules restricted the use of the APF to expenditure in support of the Labour Party. The purpose of the amendment was not to allow the use of the general funds for political objectives, it was simply to remove the restriction on the use of APF revenue in support of a single political party. The applicants argued that the fund was divided into two sections purely for union administrative convenience and not as a statutory requirement and in their view there were no legal restrictions preventing the amendment of the political fund rules. They did not believe it to be the union's intention to derogate from the unequivocal right provided by Rule D.1.10.4 to propose amendments to any union rule.

2.12 The applicants argued that the NDC, in accepting the (unlawful) recommendations of the SOC, had also broken the union's rules. They drew attention to the fact that they did not

expect necessarily that their branches' motions and amendments to be debated at the NDC, merely that they should be given "an equal opportunity to be scheduled to be debated ." In their view, the rule change motion was excluded from the agenda for its political content, rather than that it contravened any union rule. Neither the SOC nor the NDC, by their actions, had promoted and safeguarded the rights of its members as required by Rule B.2.5 (see para 1.6) and both had failed to ensure that the union's rules and standing orders had been observed, in breach of union Rule P.2.3.4.1 (see para 1.6). They described the SOC's decision to rule out of order a properly submitted motion and amendment and for the NDC to ratify it as perverse, and not falling within the terms of Rules P.2.3.4 and P.2.3.4.1. These rules say that the SOC shall:

> *"consider all motions and amendments submitted for consideration by Conference and, for the purpose of enabling Conference to transact its business effectively the Committee shall:*
>
> *decide whether such motions and amendments have been submitted in accordance with the Rules."*

2.13 The applicants drew my attention to the process for dealing with motions to be debated at the NDC. The nub of their argument was that whilst all motions were included on the preliminary agenda they did not have equal status, in that the motion in question was categorised as being "motions ruled out of order," an unlawful decision in their view. Following this, the final agenda was printed and the branches and regions were asked to prioritise motions for debate. As the applicants motion was not on the final agenda, it could not be prioritised for debate and as such did not have equal status with all other motions and amendments submitted by members. In consideration of the union's

submission that the applicants' branches had not objected to the SOC Report, and attempted to persuade Conference not to ratify it, the applicants described the 'reference' mechanism as ineffective in practice. Conference rules did not allow debate or speech and only questions might be asked as to why the motion was not on the final agenda. The Conference delegates would not have the text of the applicants' amendment motion before them. Thus, there would be little point for the applicants to raise an objection on a matter which would be obscure to the majority of those at Conference.

2.14 The applicants therefore concluded that it was perverse for the SOC, and the NDC in accepting the SOC's position, to act outside rule by refusing to consider a motion for debate because they didn't like the content or the individual branch who submitted it.

The Union's response

2.15 Mr White responded on behalf of the union. His primary submission was that the union had no case to answer because the applicants had failed to identify any breach of Rules D.1.10.4., Rule B.2.5., or Rule 2.3.1 (see para 1.6 above).

2.16 He agreed that the supreme government of the union was vested in the NDC under Rule D.1.1. Further, that Rule D.1.10.4 (see para 1.6) gave branches the right to submit motions, amendments to motions and amendments to rule. However, the decisions of the SOC were subject to ratification by the Conference, and thus the SOC's decisions did not ultimately preclude the right of the applicants branches to submit motions to Conference. The applicants' branches did actually submit motions but the NDC ratified the SOC decision not to include those motions on Conference agenda. The applicants sought to show that the motions should have been included on the agenda and given an equal

opportunity to be scheduled to be debated. The rules allowed motions to be submitted but it was a misconception, Mr White said, that this gave an automatic right to have motions accepted for debate. The applicants had the right to question the SOC report and persuade Conference not to ratify the SOC's agenda but they did not do so. Thus, in the union's view, the decision of the SOC to exclude the applicants' motion from the agenda was not a breach of the rules in relation to the SOC's powers to set the Conference agenda. Also, the NDC's actions in ratifying the SOC report did not amount to a breach of rule in relation to the laid down procedure for ratifying SOC reports, or at all. Therefore, the union contended that the applicants had not shown a breach and the complaints were based on a misconceived right to have the motions included on the agenda and debated at the NDC, whereas Rule D.1.10.4 only conferred upon the branches the right to submit.

2.17 Mr White drew attention to the duty of the SOC to draw up the Conference agenda and to Rule P.2.3.4 which placed upon the SOC the duty to consider all motions and amendments for consideration by Conference. Rule P.2.3.4.1, he explained, then gave the SOC express powers to ensure that the Conference could transact its business effectively and to *"decide whether such motions and amendments have been submitted in accordance with the rules."* Rule P 3.2, which states that "*Motions and amendments shall be sent to the General Secretary in order that the Standing orders Committee may consider them for inclusion in the preliminary agenda,"* also provided for the SOC to consider whether motions and amendments should be considered for inclusion on the Conference preliminary agenda and also to consider invoking its powers to approve those motions and amendments which were not on the final agenda for consideration by Conference. If the SOC could consider motions for inclusion on the Conference agenda, the corollary, Mr White argued, was that it had powers to exclude such motions from the

agenda. It also followed that for all practical purposes, not every motion submitted could or should be included on the preliminary agenda. However, the rules were silent on the question of what criteria the SOC should use for determining whether or not to include motions on the preliminary agenda, or to give its approval to amendments or motions being considered which had not been included on the Conference final agenda (Rule P.11.3). Mr White affirmed that UNISON's rule book did not contain all the provisions for the contract between the union and its members and therefore, necessarily, these were supplemented by implied rules which, as demonstrated in the case of McVitae -v- UNISON, represented "*the obvious but unexpressed intentions of the union and its members.*"

2.18 The union further argued that it was the obvious but unexpressed intention of UNISON and its members to include or exclude motions and amendments from the preliminary agenda for the purpose of enabling Conference to transact its business effectively. This was not acting in a perverse manner as suggested by the applicants. The union had not excluded items from the agenda because it disagreed with the content of the motion or that it did not like the branch who had submitted the motion. The union (SOC) had to prioritise to effect a workable agenda and thus its selections for the agenda were made for rational, sensible reasons and in accordance with union rules and the duty laid upon the SOC by Rule P 2.3.4.1 (see para 1.6). Such a reason would be if the motion or amendment was illegible, meaningless, impossible to implement by virtue of invoking a non-existent rule or that to do so would call upon UNISON to act unlawfully. The SOC had, as a long standing practice, excluded amendments from Conference agenda and this approach had been ratified by the NDC. If a branch had submitted a motion which the SOC considered would be impractical to include on the preliminary agenda and the NDC ratified that

decision, no rule had been breached because the branch had not been denied its right to submit the motion or amendment.

2.19 The union further argued that there was custom and practice in force by means of the circulars the union had sent out to branch secretaries in December 1998 (for the 1999 Conference) and December 1999 (for the year 2000 Conference). A circular also went out to branches and regional secretaries to cover the National Delegate Conference 2001. The purpose of these circulars was specifically to advise members in relation to the submission of motions calling for changes to the rules governing the Affiliated Political Fund that the SOC would exercise its powers to exclude any such motions. This would be on the grounds that any attempt to change the purposes on which money from that fund could be used would be unlawful without the consent of those contributing and thus be incapable of implementation by the union. Mr Sonnet emphasised that at the first NDC (following amalgamation) in 1994 *" a challenge was made to the SOC's decision to exclude motions relating to the Affiliated Political Fund("APF")."* Point 7 of the SOC Second Report showed that the SOC had ruled out motions seeking to direct the work of the APF and the NDC referred point 7 back to the SOC for reconsideration. A further SOC report recommended that the two committees of the political fund had exclusive control over the two sections of the political fund (General and Affiliated) under power delegated to it by the NEC and that Conference should not seek to disturb that position. Conference had accepted this, and it was emphasised by a statement to this effect from the General Secretary and incorporated into the rulebook in J.7.2.

2.20 According to the union, the motions submitted by the applicants' branches had been excluded under the express powers given to the SOC under Rule P.2.3.4.1 (see para 1.6)

to decide whether motions/amendments had been submitted in accordance with union rules, and as supplemented by implied terms and custom and practice. The union contended that Rule D.1.10.2 required that *"all motions and amendments for the agenda shall be of relevance to the Union as a whole rather than a Service Group."* However, a motion which called for changes to the rules governing the purposes for which monies from the APF could be spent was not of relevance to all the members. Members who did not pay into the fund could not say how the money should be spent and thus would have no interest in it. Thus, the motion to effect changes to the APF could not be said to be of relevance to the union as a whole. The principles of this were set out in the case of Richards -v- NUM (1981) IRLR 247. It was also reasonable to point out, Mr White added, that not every motion could be considered by Conference, by virtue of the number of motions submitted, the limited time allowed for debate and the expense involved to the membership in setting up each annual conference. It was, therefore, the union's responsibility to ensure that each event was effectively scheduled and managed and that the motions submitted were relevant to the interests of the membership as a whole.

2.21 Furthermore, the union argued, the branches' motions were properly excluded under Rule P.3.2, which gave the union express powers to consider motions for inclusion on the preliminary agenda. The union said that this was supplemented by the implied term that the SOC might exclude motions from the agenda, which if implemented would cause the union to act unlawfully. Mr White produced further submissions regarding the lawfulness of the proposed changes to the rules. The reasons for my decision will make it clear that it is unnecessary for me to detail them further here.

2.22 For all the above reasons, the union contended that the SOC had taken the right decision

to exclude the branches' motions from Conference agenda according to its express powers, supplemented by implied terms and custom and practice which had existed ever since amalgamation and which were currently in force. As the SOC had not breached union rules and as the NDC had itself followed correct procedures at Conference as laid down in union rules, it must follow, the union argued, that no breach had occurred and that the applications should be dismissed by me.

Reasons for my decision

2.23 The applicants' complaints before me are that the SOC, by ruling that the amendment motion was not competent, effectively barred the motion from inclusion in the agenda for consideration at the National Delegate Conference 2000 and that the motion could not be prioritised for debate at Conference. The NDC, in ratifying the SOC's Second Report, in which this motion appeared as 'not competent,' effectively, in the applicants' view, breached the rules of the union by approving an allegedly unlawful action.

2.24 I have already ruled in the matter of Kelly and Roberts -v- UNISON (Decision No D/4-5/01) that I had no jurisdiction to hear the applicants' complaints relating to the same matters as the applicants now complain of in respect of the SOC. In that case, I had no jurisdiction to hear the complaint against the SOC. However, because the applicants now also complain of a breach by the NDC, I recognise that certain facts are common to both applications. I therefore, with the agreement of the parties, accepted in evidence the documents relating both to these applications, made to me on 11 and 12 December 2000 and the previous complaints which Mr Kelly and Mr Roberts made on 8 and 25 May 2000 respectively. I have therefore reached my decision in the light of the facts and arguments presented in the current and the previous applications, as they relate to the involvement

of the SOC and the NDC at the Conference 2000.

2.25 The question to be decided rests on interpretation of the rules regarding Conference procedure for the acceptance of motions to it; the drawing up of agenda and the process and rationale for the ratification or otherwise of those motions by the NDC. I am not concerned (except in one respect by way of observation only, dealt with in 2.29 below) with arguments as to the correctness of the SOC's decision to rule the motion 'non-competent.' The central plank of this complaint is that the applicants' claim that they were denied the right to submit motions to Conference in breach of Rule D.1.10.4 which says that: *"Each Branch may submit motions, amendments to motions and amendments to Rule...."*

2.26 It is common ground that the applicants' branches submitted motions for rule changes in relation to the current Rules, J.7.4.4., J.8.2 and J.8.5., concerning the Associated Political Fund. The applicants and their branches complied with the Conference timetable requirements set out in Rule D.1.9. What followed was that the SOC ruled these motions 'non-competent' for the reason set out in the union's argument above. The process of motions for submission to agenda and debate are explained at paras 2.3.and 2.4 above. The effect of this was that the motions were not set out in full and included in Conference final agenda for debate by the delegates. The motions were categorised as 'motions ruled out of order' and appeared as such in the SOC report to Conference from which the final agenda is formed and is subject to ratification by the NDC. Conference may accept the whole report or refer back to the SOC those motions on which it considers the branch delegates have raised valid objections.

2.27 The applicants have argued that the action of the SOC, in ruling the amendment motion as 'non-competent' did not give them equal status with all other motions. They made it clear that they had not necessarily expected the motions to be debated at Conference, merely that they should have been given 'an equal opportunity to be debated.' In my view, the applicants' branches were not denied the right to submit their rule amendment motions to Conference and it is acknowledged by all parties that the motions were received by the SOC, categorised as non competent and that the applicants were unable to persuade the SOC to change its mind on the matter. It seems to me that the applicants, by using the expression 'equal opportunity to be debated' have implied much more in their complaint than is required by Rule D.1.10.4, the rule which underpins this complaint to me. The right to submit motions and amendments means no more or less than that, and it does not accord any further status to the motion for it to be included in the Conference agenda for consideration by the delegates on an equal footing with all other motions and amendments. I cannot see that the SOC has exceeded its powers, because it did accept and consider the branches' motion as submitted, albeit the motion did not progress to the preliminary agenda as the applicants had expected it to.

2.28 I turn now to the role of the NDC in ratifying the SOC Report. The salient point is that all branches and regions saw the preliminary agenda on circulation, and could have noted the SOC's ' non- competent' ruling against the branch motion. Furthermore, at the start of Conference, the SOC submits its Second Report which contains the structure and content of the final agenda. Conference (the NDC) then votes on whether to ratify the Report or not and this gives dissenting delegates their opportunity to question the report, and to argue for a reference back to the SOC for reconsideration, in the matter of motions categorised as non-competent for debate. In the absence of any objections, Conference

has no option but to ratify the SOC Report. In this case the delegates from the branches which submitted these motions in fact raised no objections to the Report. The applicants have also argued that the mechanism available at Conference to raise objections is ineffective, but the union have demonstrated to me that there are examples where reference back has operated successfully. Be that as it may, the rules make clear that it is incumbent on delegates to take the opportunity provided by Conference to raise objections and the applicants or the delegates on their behalf failed to do so. I therefore conclude that there was no breach by the NDC in ratifying the SOC Report and the applications fail.

2.29 As I have indicated above, it is not for me to judge the validity of the SOC's reasons for the decision it took. I should though record that I do not accept, as the applicants have suggested, that the SOC's decision with regard to these motions and the NDC's action was in any way perverse. The union has developed procedures for the administration of its political fund which clearly provides that the two sections of the political fund are under the exclusive control of two separate committees which control the use of APF and GPF funds. The NDC endorsed the SOC's decision to rule out of order any motions or amendments that related to the APF on the basis that such matters would be determined by the APF and its internal structures. From 1994 to 1997 the SOC has so ruled and latterly has issued guidelines to branches on this point (1998 and 1999). If it was matter for me I would not construe as 'perverse' a SOC decision which seeks to prioritise conference agenda to avoid debate on matters which the SOC has regularly ruled on as not being competent for Conference debate, and on which it has advised union members to this effect.

2.30 For the sake of completeness I should add that Rules N1, B1 and B2.5 have not been

broken in this case. Rule N1 deals with the majority required to pass a rule amendment at the NDC. In the present case there is no issue of any rule change being effected - let alone without the required majority. Rules B1 and B2.5 are general aims of the union and in the absence of other specific breaches of rule (which I have not found) it is hard to see how decisions of the NDC could breach these two rules.

2.31 For the reasons set out above I find that none of the rules cited by the complainants have been breached and I therefore dismiss both complaints.

E.G. WHYBREW

Certification Officer