

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

D. J. REEVES
AND
TRANSPORT AND GENERAL WORKERS UNION

Date of hearing : 8th June, 1979
Date of decision : 6th July, 1979

The complainant appeared in person.
The Union was represented by Mr. I. Hunter of Counsel.

1. Mr. D. J. Reeves, who is a member of the Transport and General Workers 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. Mr. Reeves' complaint is based on two principal grounds. The first is that as a member who had contracted out of contributing to the political fund of the Union he was, in breach of rule 24.7 of the Union's rules, not exempted from paying the political contribution but had to claim refunds of the contribution. The second is that although, after he had protested, the Union offered to refund the amount of his political contribution in advance of the time he was due to pay it under the rules, and did in fact so refund that amount for certain periods, this arrangement also is in breach of rule 24.7.

3. Mr. Reeves also alleged that Union rule books were not issued to new members, that contracting out notices were not readily available, and that when such notices were completed and sent to the Union, receipts were not given, as required by the rules. However, his recollection as to whether he himself had experienced difficulty in these matters was not clear and I do not therefore consider that it would be right for me to deal with these aspects of his complaint.

Background to the Complaint

4. Rule 24.7 is in the following terms:

"The General Executive Council shall give effect to the exemption of members to contribute to the political fund of the Union by relieving any members who are exempt from the payment of part of any periodical contributions required from the members of the Union towards the expenses of the Union 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 Union 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 Union, it is hereby provided as follows:

- (a) 8p of the first weekly contribution each quarter where the said contribution is 16p or more of which 2p per quarter will be allocated to the Regions for local political purposes, and
- (b) 4p of the first weekly contribution each quarter where the said contribution is 12p or less

is a contribution to the political fund of the Union, and that any member who is exempt as aforesaid shall be relieved from the payment of the said sum of 8p or 4p, as the case may be, and shall pay the remainder of such contributions."

5. Mr. Reeves joined the Union in 1969 and according to the Union's records, which he did not dispute, gave notice of objection to contribute to the political fund in December 1975. In accordance with rule 24.6 he was therefore due to be exempted with effect from 1 January 1976. Contrary to his expectations, and for reasons which are set out below, he continued to pay the political contribution in the first week of each quarter. He was, however, paid 56p by the Union on 8 February 1977, which meant that he had been refunded retrospectively for all four quarters of 1976 and the first quarter of 1977 and had been refunded in advance for the second and third quarters of 1977. He was paid a further 40p on 25 July 1978, which represented a refund in arrears for the last quarter of 1977 and the first three quarters of 1978 and a refund in advance for the last quarter of 1978. I should add that the Union paid these refunds only after Mr. Reeves had objected to the way he was being treated. On 6 February 1979 he was paid a further 32p in respect of all four quarters of 1979.

6. Mr. Reeves made it clear that in bringing his complaint he was concerned not about the relatively small sums of money involved but about the principle of being forced to contribute to the Union's political fund against his will even if that contribution was refunded.

Operation of the "Check-off" System

7. Rule 24.7, reflecting the provisions of section 6 of the Act, requires that an exempt member must be relieved from payment of the political contribution. The obvious way of doing so is for the Union not to collect that contribution from the member when it falls due for non-exempt members. There is no difficulty about this if the method of collection is a flexible one which enables the Union readily to take account of variations in each member's contribution. Such a situation existed at the time when the Act was passed because the normal practice was for union contributions to be paid directly to a collector who could allow for changes in the amount.

8. The position has now changed. In many industries payment to a collector has increasingly been replaced by some form of "check-off" or payroll deduction system under which the employer agrees to deduct union subscriptions, often with the use of a computer, and pay them over to the union. Such a system provides a reliable and convenient means of collecting subscriptions and therefore has considerable advantages both for unions and for their members. But it may cause difficulties in complying with the Act because of its relative inflexibility.

9. Mr. Reeves' case illustrates the point. The reason why he is not exempted simply by making a reduced payment in the first week in each quarter - the method which, at least on the face of it, the second paragraph of rule 24.7 primarily envisages - is that his employer, British Airways, has a "check-off" agreement with the Union. Under the agreement British Airways has undertaken that if an employee who is a member of the Union signs the necessary form of authority it will deduct his contributions from his pay in accordance with the authority and remit them to the Union. For this service the Union pays the company a sum equal to $2\frac{1}{2}$ per cent of the contributions collected. As one might expect the payroll at British Airways is computerised.

10. Mr. Stringfield, who is the Industrial Relations Planning Manager at British Airways, said, in giving evidence for the Union, that the weekly collection of wages was a complex and expensive matter; the company's general approach was to obtain as simple and as efficient a payment system as possible and therefore to avoid building in unnecessary complexities. Payroll deduction was operated for a considerable number of unions and the present computerised system could cope with variations in subscription rates arising from, for example, different branch subscriptions and options to pay a higher rate for increased benefit, provided that the deductions were the same for each pay period. What it could not cope with were irregular variations such as would be needed to allow an exempt member to pay 8p less in the first week of each quarter than in other weeks. To do this, reprogramming would be necessary and British Airways would be reluctant to incur the considerable extra expense involved for a purpose which brought the company no direct benefit. Further, the system could deal only in payments of whole pennies per week and could not therefore cater for the Union's present political contribution of 32p per year.

11. Mr. Westbrook, the Union's Finance Administrator for Region No.1, which covers Mr. Reeves' branch, gave evidence about the operation of the payroll deduction system from the Union's point of view. Many employers only remitted the money collected through the system to the Union on a quarterly basis. The Union did not divide up the income as it came in between the general, political and other funds but paid it all into the general fund and waited until the end of the quarter before allocating it. The amount paid into the political fund was calculated by reference to the number of exempt members in a particular branch compared with the total branch membership.

12. Payroll deduction was of great administrative benefit to the Union because the money passed through fewer hands and therefore fewer errors were likely to occur; further, the member benefited because he could be sure of not falling into arrears with his contributions. Accordingly the Union encouraged payroll deduction, which now covered about 60 per cent of the 540,000 members in Region No.1. On the other hand the system involved employers in administrative inconvenience and cost. Generally, they agreed to introduce it reluctantly and would only do so if the inconvenience and cost were kept to a minimum; many refused to

deduct anything other than the basic subscription and would not even allow for variations between branches. The advantages for the Union were so great that it was prepared to tolerate some administrative difficulties in order to secure an agreement, but this meant that the Union was to a large extent in the hands of employers and their individual payment systems.

13. In 1976 the Regional Secretary for Region No.1 issued a circular setting out the Union's policy in regard to exempt members which was circulated to branch secretaries. It reads as follows:

"EXEMPTION OF POLITICAL LEVY

Arising from correspondence received from the Certification Officer pertaining to complaints directed from a number of members of this Region complaining that the Branch has failed to carry out the correct procedure regarding applications for exemption and subsequent refund, in order to avoid any possible misunderstanding I am anxious to ensure that all Branches adhere to Rule 24 governed by the Trade Union Act of 1913.

It is essential, therefore, to ensure that any application for a refund received from a member for exemption is currently dealt with, and when a Contracting Out Form is passed to the Branch, the application is formally acknowledged by the Branch Secretary and immediately passed on to Regional Office for retention.

Exemption is operative in all cases of existing members as from the first day of January the following year, or for new entrants immediately provided the exemption form is completed within a month of enrolment.

With regards refunds there is no problem for members paying contributions manually, as in accordance with the Rule, they are entitled to deduct from the first weekly payment of each Quarter a sum of 8p. i.e. for members paying Full Scale contributions, or 4p. for members paying Scale 1A(Special Categories).

The position has, of course, been somewhat aggravated by the implementation of payroll deductions, as it is not practical or possible for firms to make any specific deductions other than the basic weekly or monthly payments, which means that any excess payments must be refunded to the member by the Union, and as such provisions were made for Branches which in the main appear to resolve the position.

Briefly, Branch Secretaries are required to forward a list to the Branch Regulation & General Audit Department on a quarterly basis applying for reimbursement. In some cases the number of members in a Branch would be minimal and therefore the application would be on a yearly basis. Whilst for administrative purposes, I have no desire to alter the system, I must emphasise that should any member apply for immediate return of the political payment, on no account should the request be refused, and I feel sure that whilst awaiting the quarterly return from Regional Office, Branches could temporarily make the payment from the Branch Fund.

I would appreciate your assistance in ensuring that this procedure is carried out, and in anticipation, I thank you for your co-operation."

14. It will be seen that the circular required branch secretaries to refund exempt members for any excess amount paid in respect of the political contribution and said that if the member asked for an immediate refund the request should be met even though the branch itself had not yet received a reimbursement in respect of exempt members from the regional office.

15. In summary, the result, whatever the complexities that lead to it, is that Mr. Reeves is not relieved from paying the 8p which represents the political contribution in the first week in each quarter in the way the rules primarily envisage and his employers say it is not possible so to relieve him through the payroll deduction system under which he currently pays his union contributions.

The Interpretation of Rule 24.7

16. Mr. Hunter made detailed submissions on behalf of the Union as to the meaning of rule 24.7 and in particular of the words "shall be relieved from payment" which appear towards the end of the second paragraph of the rule.

17. His first proposition was that the words "For the purpose of enabling each member to know as respects any such periodical contribution what portion, if any, of the sum payable is a contribution to the political fund of the Union, it is hereby provided as follows" qualified the whole of the second paragraph of the rule and had the effect that it was not really a substantive part of the rules that exempt members should be relieved from the payment of 8p (or 4p) in the first week of each quarter. Rather, the paragraph had the limited purpose of

conveying to members an indication of which part of the overall contribution was earmarked for the political fund.

18. I agree that the rule does have this purpose, but in my view that does not preclude it from having other purposes or from being a substantive rule in its own right, which I consider it to be. I would reach that conclusion in any event but my opinion is strengthened by the words:

"The General Executive Council shall give effect to the exemption of members to contribute to the political fund of the Union by relieving any members who are exempt from the payment of part of any periodical contributions required from the members of the Union towards the expenses of the Union as hereinafter provided....."

To my mind this is inconsistent with Mr. Hunter's proposition because the words "as hereinafter provided" make it clear that the details in the second paragraph of the rule are incorporated into the substantive requirement in the first paragraph, i.e. that the method by which the General Executive Council shall give effect to the exemption of members is by relieving members who are exempt from payment.

19. Mr. Hunter also submitted that the final words of the first paragraph "and such relief shall be given as far as possible on the occasion of the same periodical payment", meant that relief did not necessarily have to be given to members on the occasion of the payment specified in the second paragraph. No doubt that is right in certain contexts but the general meaning of the expression, which is taken directly from section 5 of the Act and appears in the model rules issued by the Certification Office, is, in my opinion, that unions may exempt members on the occasion of different periodical payments if the periodical intervals at which different classes of members pay their contributions differ, for example, weekly and monthly. In this case its application is not easy to determine because under the rules the Union has only one period for paying contributions, namely weekly. However, I do not think it enables the Union to ignore the terms of the second paragraph of the rule on the ground that a member pays his contributions by one method rather than another.

20. Mr. Hunter argued, as indeed he was obliged to, that paragraph 16 of my decision in McCarthy and Association of Professional Executive Clerical and Computer Staff (APEX), issued on 6 June 1979, was incorrect. That paragraph reads as follows:

"In response to Mr. McCarthy's allegations, the Union's first contention was that Mr. McCarthy did not pay 5p of the political contribution because the Union was careful to ensure that extra money paid by exempt members always went into the general fund and not the political fund. While I think the Union deserves some credit for seeing that money paid in this way does not go to the political fund, the point made is inconsistent with rule 81 which says "it is hereby provided that 18p from the contributions paid in each full quarter is (my emphasis) a contribution to the Political Fund of the union and that any member who is exempt as aforesaid shall be relieved of such payment and shall pay the remainder of such contribution only". To my mind this makes it quite clear that exempt members must be required to pay only the "remainder" of the overall contribution after deduction of the political contribution and that there is a breach of the rule if they have to pay more. Further, since rule 81 says that 18p is the political contribution, it is irrelevant whether any extra money paid by exempt members is put in the political fund or not; under the rule, the extra is still the political contribution."

21. It follows from my earlier observations that notwithstanding Mr. Hunter's submissions, I consider that reasoning to be equally applicable to Mr. Reeves' complaint. In my opinion the second part of rule 24.7 has the effect that 8p of the first weekly contribution in each quarter is a contribution to the political fund and that exempt members have the right to be relieved from payment of that amount.

22. Mr. Hunter went on to submit that such a member could properly be "relieved from payment" in at least three different ways:

- (a) by not paying the political contribution on the occasion of the first weekly payment in each quarter;
- (b) by paying the political contribution and receiving a refund in arrears, i.e. after that payment has been made;
- (c) by paying the political contribution and receiving a refund in advance, i.e. before that payment has been made.

There is, of course, no doubt that the means of providing relief in (a) is within the rule - indeed that is what the rule primarily envisages. The question is whether either or both of the means described in (b) and (c) are also within the rule.

23. In relation to (b), Mr. Hunter argued that a refund in arrears was within the terms of rule 24.7, but that if the refund was substantially delayed there would be a breach of rule 24.8 because the member would be placed at a disability or disadvantage as compared with other members by reason of his exemption. It was a matter of degree; if a member was refunded the next day, or within a reasonable time after he had paid the contribution, there would be no disadvantage, but there would be if the refund was made, say, a year later.

24. It seems to me, however, that the expression "relieved from payment" does not, in the ordinary meaning of the English language, cover a situation where a member has to pay and then claim or be given a refund. Such a person is not relieved from payment; he has to make a payment even though the money is given back to him later. Mr. Hunter submitted that I should not adopt a strained construction if that meant putting an undue administrative burden on the Union or would make it difficult to operate the payroll deduction system. But in my view there is no question of a strained construction - the natural meaning of the words does not encompass the member having to pay first and obtain a refund later. It follows that the length of time between the payment and the refund is immaterial; there is a breach of rule 24.7 however short the interval.

25. The McCarthy case already referred to raised the same question and I took the view in that case that the system under which Mr. McCarthy, although an exempt member, had to pay part of his union's political contribution and then obtain a refund was in breach of the union's rules. The conclusion just stated is consistent with that decision, which itself followed a previous decision by the Chief Registrar of Friendly Societies (Robinson v National Association of Colliery Overmen, Deputies and Shotfirers).

26. As regards (c), I think Mr. Hunter is on much stronger ground. A member who receives a refund in advance is never out of pocket and there is no time when he has paid more to the Union than the

rules oblige him to pay. While I do not think the matter is entirely an easy one and I can see force in the strict argument that the rule requires a deduction of 8p to be made from the contributions which exempt members pay in the first week of each quarter, I have come to the conclusion that if a member is refunded in advance then he is relieved from payment within the meaning of rule 24.7.

27. It was made clear in evidence at the hearing that the Union's accounting procedures ensure that no part of the contribution paid by exempt members goes into the political fund and that both payments and refunds affect only the general fund. If this were not the case my conclusion as to the propriety of making refunds to exempt members in advance might well be different.

Findings

28. What then is the position of Mr. Reeves on the basis of the conclusions I have reached? It is clear that to the extent that refunds paid to him were in arrears, the Union was acting in breach of rule 24.7 and I therefore hold his complaint to be justified in that respect. However, I do not consider that there was any breach of the rules in relation to the refunds paid to him in advance in respect of 1979 or earlier periods.

29. The question remains whether I should make any order to remedy the breach of rules which I have found to have occurred. On the view I take, the rules require the Union to relieve Mr. Reeves from payment of the political contribution either on the occasion of the first weekly payment of contributions in each quarter or by means of an advance paid before that date. It is therefore extremely regrettable if Mr. Reeves, or for that matter other members in his position, has to go through the invidious process of pursuing the Union in order to get his money back; it should be for the Union to take the initiative by ensuring that exempt members are relieved from payment in accordance with its rules.

30. The Union has, of course, refunded Mr. Reeves in advance for 1979 and will presumably continue to do so. I have no reason to doubt its good faith, but I must take into account the past difficulties which Mr. Reeves has experienced in obtaining refunds. I therefore consider it right to order the

Union to arrange that so long as Mr. Reeves remains an exempt member and pays his union contributions by a system which does not enable him to be exempted through it, it will pay him the amount of the political contribution in advance of the occasion when, under the rules, the periodical payment which includes the political contribution falls due.

31. As Mr. Hunter emphasised, the issue raised by Mr. Reeves' complaint is an important one both for this union and for the trade union movement as a whole. Collection of union subscriptions through the "check-off" system is already widespread and is likely to develop still further. The problem is to reconcile it with the requirements of an Act of Parliament drafted in the pre-computer age. The Union's political fund rules closely follow the model rules prepared by the Certification Office and are in similar terms to those of other major unions, so that the number of union members who could be affected is very large.

32. I realise that the conclusions I have reached in this case may raise problems for unions with political funds. However, I have to apply the law as it stands and as long as the Act remains in its present form those unions must arrange their affairs so as to comply with it.