

CO/1964/9

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

IN THE MATTER OF A COMPLAINT AGAINST THE
NATIONAL ASSOCIATION OF COLLIERY OVERMEN, DEPUTIES
AND SHOTFIRERS (STAFFORDSHIRE AREA)

Date of complaint: 15 November 1990
Date of decision: 20 December 1990
Date of statement of reasons: 22 January 1991

STATEMENT OF REASONS

1. A ballot was held in August 1990 on a resolution to approve a transfer of engagements from the National Association of Colliery Overmen, Deputies and Shotfirers (Staffordshire Area), ("the Association") to the National Association of Colliery Overmen, Deputies and Shotfirers Midland Area. A majority of those voting approved the terms of the transfer, and an application to register the Instrument of Transfer was made to my Office on 16 October 1990. On 1 November I received a letter from a member of the Association complaining, amongst other things, that retired members of the Association had not been given a vote in the ballot. I accepted this letter as a complaint under section 4 of the Trade Union (Amalgamations, etc.) Act 1964 to the effect that the vote on the resolution was not taken in accordance with the requirements of section 1(2) of that Act.

3. At the end of the hearing I reserved my decision. On 20 December, after careful consideration of the evidence and all the points put to me, I decided that the complaint should be dismissed and the parties were notified accordingly. I am required by section 4(4) of the 1964 Act to give a statement of the reasons for my decision, and this is set out below.

The facts

4. The Association is both an area division of the national union, NACODS, and a listed trade union in its own right. As a result of the contraction in the mining industry it now has fewer working members (285) than retired members (over 300). In the ballot to approve the Instrument of Transfer, only the Association's 285 working members were given entitlement to vote. On a turnout of over 50% the result was 130 votes in favour of the transfer and 17 against. The complainant is, in fact, a working member of the Association who had a right to vote but he complains, as he is entitled to, that the denial of a vote to retired members contravened the requirements of the 1964 Act.

5. It is necessary to start by setting out the relevant statutory requirements and certain rules of the Association which were quoted at the hearing.

The statutory requirements

6. So far as material, section 1(1) and (2) of the 1964 Act provide -

"1. - (1) ...

(b) a trade union may transfer its engagements to any other trade union ... but shall not do so unless, in the case of the transferor union, a resolution which approves an instrument of transfer approved by the Certification Officer has been passed on a vote taken in a manner which satisfies [the conditions specified in subsection (2)].

(2) The conditions referred to in the foregoing subsection are the following, that is -

(a) every member of the union must be entitled to vote on the resolution; ...".

7. Section 4(1) enables a member of a union which has passed or purported to pass such a resolution to complain to me on the grounds, among others, that the manner in which the vote on the resolution was taken did not satisfy the conditions in section 1(2).

Status of members under the Association's rules

8. The Association's affairs are governed by its rules. After the opening rules which provide for the Association's name, central office and objects, Rule 4 deals with membership as follows:

"4 - MEMBERSHIP

The following shall be eligible to be elected as members of the Association:-

(i) any overman, deputy or shotfirer holding a certificate of competency complying with the Coal Mines Regulations made in pursuance of the Mines and Quarries Act, 1954, and employed as such at any colliery in Staffordshire;

(ii) any other person in accordance with T.U.C. policy".

9. Rule 5 deals with applications for membership and provides inter alia -

"(a) An application ... shall be submitted to the Branch Secretary of the Association for the area in which the applicant is employed" [my emphasis].

Rule 6 deals with Branches and provides -

"(b) Each Branch shall be composed of the members working at the collieries shown in the Second Schedule hereto against the name of a particular Branch or as is otherwise in the said Second Schedule provided" [my emphasis].

10. It is convenient at this point to turn to Rule 26 which deals with cessation of membership, as follows:

"26. CESSATION OF MEMBERSHIP

A member shall cease to be a member of the Association if he shall:-

- (a) cease to hold such a certificate as is mentioned in Rule 4(i) and shall not otherwise be eligible for election to membership under rule 4 hereof, or
- (b) shall cease to be employed (otherwise than in any way that would entitle him to any benefit under [rule 21] (a), (c) or (d) hereof) and shall not otherwise be eligible for election to membership under rule 4 hereof, or
- (c) shall give notice of his retirement from membership to the Secretary, or
- (d) shall cease to be a member of the Association in any of the ways in these rules mentioned".

11. The Association's rules provide for a Council and for Area officers. Rule 16 deals with elections and sub-rule (1) provides -

"Every member of the Association other than members who are not in employment, members who are 3 months in arrears with their Association dues, members who are trainees and members of less than 3 months standing, shall be entitled to vote in elections for Council" [my emphasis].

I note in passing that this rule reflects the stipulations in section 2(1) and (2) of the Trade Union Act 1984. It does not purport to apply to mergers.

12. Rule 19 deals with members' contributions. After providing in paragraph (a) for an entrance fee for new members, it continues as follows -

"(b) Every member earning wages as an Overman, Deputy or Shotfirer shall pay to the Association a weekly contribution. Other members to pay a contribution determined by Council. Such sum to be permitted to be

deducted from each members wages by his employer and sent by the latter to the Secretary. 2.5% of any future increase in wages for Deputies shall, in addition, be deducted from all members wages as Union contributions.

- (c) Any member who shall become unemployed through no fault of his own or if he shall have been dismissed for carrying out the directions of Council or Area Officers and who shall be unable to obtain further employment for a period of three months may, after the end of such period, pay a weekly contribution of 6p per week until he shall obtain employment or could have obtained employment if he so desired.
- (d) Any member who shall retire from his employment in the coal mining industry may pay a contribution of 6p per week for so long as he shall continue to be unemployed and he shall during such period continue to be a member of the Association notwithstanding the provisions of rule 26 hereof. This contribution to be paid directly to the office and any claims for financial benefit to be made to the office. [My emphasis].
- (e) Any member allowing his contributions, levies or fines to be three months in arrears shall not be entitled to receive any such benefit before or after he becomes in arrears.
- (f) ...
- (g) Any member who is not in receipt of wages from his employer shall pay a contribution of 6p per week instead of the full contribution paid whilst in receipt of wages".

13. Finally, Rule 21 deals with benefits -

"21. BENEFITS OF THE ASSOCIATION

Subject as in these rules provided all members of the Association shall be entitled to the following benefits:-

- (a) [Sickness or injury benefit of £1 a week up to a total of £50 - not available to retired members].
- (b) should any member die his nominee or legal personal representative or next of kin shall be entitled to receive the sum of £25 on the production to the Secretary of a death certificate. Provided that if there is more than one next of kin the Secretary shall have a complete discretion as to which of those persons shall receive the twenty-five pounds under this sub-rule;
- (c) any member who, through sickness, accident or industrial disease, attends a convalescent home approved by the Association shall be entitled to receive such sum per week as the Area Officers shall from year to year direct to be paid under this sub-rule. The Secretary shall, subject to a member's right to appeal to the Area Officers, decide whether a member is obliged to attend such a home as a result of sickness, accident or industrial disease;
- (d) [Out of work benefit of £2 per week - not available to retired members].
- (e) subject to his right to appeal to the Area Officers, a member shall be entitled to such legal assistance, whether from Council or a solicitor or both, as the Secretary shall consider necessary in the interests of the member and the Association. Provided that if the Area Officers shall at any time consider that the funds of the Association are inadequate for the proper functioning of this rule, they shall be entitled to suspend the operation of this rule for such time and to such an extent as they think fit;

(d) of rule 19 hereof shall not be entitled to the benefits provided by sub-rules (a) and (d) of this rule. [My emphasis].

(f) ...".

The position of retired members in practice

14. Mr Williams explained that whilst retired members were entitled to certain benefits, for which they paid a very small contribution, they had no involvement in the policy affairs of the Association. They had no vote and were not entitled to attend the national conference. They paid the Association 6 pence per week, usually in the form of a lump sum of £3 annually, which went into the "Retired Members Fund". This is a separate fund of the Association for accounting purposes. The Association's most recent annual return to my Office, that for the year ending 31 December 1989, showed a Retired Members Fund to which 280 members were contributing at that time. It showed 350 other members contributing to the General Fund and the other funds of the union. The income from retired members' contributions to the Retired Members Fund in 1989 was shown as £952, as compared with £85,657 from working members to the General Fund (the main fund).

15. Two benefits are payable out of the Retired Members Fund. These are a £25 death grant payable under Rule 21(b) on the death of a member or retired member, and a £2 grant for spending money made to retired members under Rule 21(c) who are attending the Association's convalescent home. At the end of 1989 the amount shown in the Retired Members Fund was £4,702.

16. Retired members may additionally be entitled to legal assistance under Rule 21(e) if funds permit. For example, if a member retired because of disablement resulting from a work injury, and over the succeeding years his disablement worsened, he might be given assistance in applying to the Medical Appeal Tribunal for a reassessment of the degree of disablement (and hence of his disablement pension).

The Association's first submission

17. The Association's first submission was that "retired members" were not really members under the Association's rules. Counsel for the Association

argued that the question whether a person was or was not a member of the Association must be determined by reference to the Association's rules. Rule 26(a) and (b) could hardly be clearer - a person who ceased to be employed in the coal industry as required by Rule 4 ceased to be a member of the Association. Rule 19(d) did no more than preserve certain limited contractual rights for those who had retired; it did not seek to preserve their status as members. My own view is that Rule 19(d) is difficult to reconcile with Rule 26 because of obscure drafting. Be that as it may, as the complainant pointed out, one difficulty with the argument that the retired members are not really members at all but people with contractual claims to limited benefits, is the Association's traditional assertion that "once you are a member you are a member for life". Mr Williams conceded that this was the traditional view. He went on to say this: "They are members for life in that sense, that we look after them because of ... the job, the industrial illnesses and accidents that they have. We follow those through and we say that we are always available to lend a hand".

18. What is reasonably clear, I think, is that the general degree of participation of retired members in the Association is very limited. They are not in employment and therefore the whole range of the Association's representational activities is of no value to them. They are not able to be trustees or Area Officers. They have no vote in Area Officer or Council elections. They pay a very small subscription, which is credited exclusively to the Retired Members Fund and hence make no effective contribution to the running costs of the Association; and they have only a very limited range of benefits. On the other hand, their connection with the Association is clear and is governed by the rules, not by a separate deed or contract. There is clearly some kind of feeling that they still "belong" to the Association.

19. The respective arguments as to the precise status of "retired members" under the Association's rules are interesting, and the issue is by no means
I do not think it is necessary for me to pursue those

The Association's second submission

20. The Association's second submission was that Parliament cannot have intended that "members" in section 1(2)(a) of the 1964 Act covered everyone described in the rules as any kind of member. If "member" in section 1(2)(a) means every kind of member of whatever degree, then those with extremely limited rights in a union will have the right to vote for or against a merger which is essentially for the benefit of the ordinary members of the union. In the present case the retired members, as it happens, constitute a numerical majority giving them a potentially decisive voice in a merger ballot. That cannot be what Parliament intended when it enacted the condition in section 1(2)(a) of the 1964 Act.

21. The force of that argument, in the circumstances of this case, seemed to me very strong. However, it is necessary to look at the possible counter-arguments, of which there seemed to me to be three.

22. The first argument against the Association's submission is the straightforward proposition that "every member" means every person called a member in the rules of the union concerned. Thus a "retired member" is a member for the purposes of section 1(2)(a) of the Act, and that is that. In my view that is an oversimplification of the issue. I do not underestimate the significance of the use of the term "member" in a rule book, but I do not think that titles can be regarded as decisive in themselves. Otherwise this union, and others likewise, would need only to rename the relevant class as "retired associates" without any change whatsoever in the substance of the relationship.

23. The second argument against the Association is that, since on a transfer of engagements all members of the transferor union will become members of the transferee union, Parliament must have intended that all such members must be given a vote in the ballot. I do not think this would necessarily have been a point considered by those who framed the 1964 legislation. Common sense suggests that their broad concern was simply to ensure that trade union mergers are subject to membership ballot, with adequate notice and so on. When Parliament did consider specifically the question of different categories of member, in the Trade Union Act 1984, it provided expressly that members not in employment, members in arrears with their contributions, and student or trainee

concerned is de minimis. As it happens, in this case the complainant in fact conceded that section 1(2)(a) of the 1964 Act applied to certain categories, including superannuated members, but as Counsel for the Association pointed out that concession meant there was no finding on the issue by the Registrar. In any event, as I have said, I found the Registrar's observation in that case helpful.

27. In passing, I should mention that there are two other decisions under the 1964 Act, one by the Registrar and one by the Certification Officer, which involve a finding that members whose contributions are in arrears fall within section 1(2)(a) and must therefore be given a vote in a merger ballot, notwithstanding any contrary provision in the union's rules. Neither of them in my view has any relevance to the present case.

28. The other case from which I draw some support (though it was not cited in argument) is Re GKN Sports and Social Club [1982] 2 ALL ER 855, at pp 863-864, in which Sir Robert Megarry, the Vice-Chancellor, decided that certain kinds of people connected with the club did not have any interest in the club which entitled them to a share in its assets when the club ceased to exist. Three of those classes were "associates", "temporary members" and spouses and minor children of members. Under the club's rules rights were conferred on each of these classes to make use of the club's facilities on certain occasions by in effect "signing in", without paying any subscription or having any say in the running of the club. A fourth class, "honorary member", was virtually moribund, paid only a small token contribution and also had no say in the club's activities. That case involved very different issues from the present case but I take it as indicative of two general propositions. First, that the term "such-and-such member" need not be decisive either way. Secondly, that the degree of involvement in the running of the body concerned and the degree of contribution to its finances may be relevant considerations.

29. Finally, I considered a third possible argument that Parliament could not have intended that votes should be denied to people who have a clear financial interest in the union in accordance with its rules, as the Association's retired members have in the Retired Members Fund. I have already indicated that I consider the totality of the interests of a retired member in this case as being de minimis. The retired members make no contribution to the general funds of the union and, while their financial interest in the Retired Members Fund is clear, I do not think it should be given undue weight (it works out in fact at less than £16 per head). I should mention in passing that the Retired Members Fund has now been distributed among all the retired members in the course of making an advance payment to them of their accrued entitlement to the death grant (to which members who retire in future will not be entitled under the rules of the transferee union).

30. I do not underestimate the importance of a trade union amalgamation or transfer of engagements to those affected by it. It may well be appropriate that many kinds of members who, for example, are lawfully excluded from entitlement to vote in national executive elections should, for the purposes of a merger ballot, be regarded as having a sufficient interest in the union to fall within section 1(2)(a) of the 1964 Act. However, I do not think that that provision can be regarded as necessarily extending to every member of whatever category, though the exceptional cases may well be rare. In the present case, in my view, the Association's retired members are not to be regarded as "members" for the purposes of section 1(2)(a) of the 1964 Act.

31. The point that the complainant raised with me was a serious and difficult one. He cannot be criticised for raising it. However, for the reasons given above I decided that the complaint must be dismissed.