

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION UNDER  
SECTION 108A OF THE TRADE UNION AND LABOUR RELATIONS  
(CONSOLIDATION) ACT 1992**

**IN A MATTER OF A COMPLAINT MADE AGAINST THE  
COMMUNICATION WORKERS UNION (CWU)**

**APPLICANT MRS I KNIGHT**

**Date of Decision:**

**1 August 2000**

**DECISION**

- 1.1 The Trade Union and Labour Relations (Consolidation) Act 1992 was amended, on the 27 October 1999, by section 29 and schedule 6 of the Employment Relations Act 1999. One of the effects of the 1999 Act amendment was to insert, into the 1992 Act, sections 108A to 108C.
- 1.2 Under section 108A-(1) of the 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) of section 108A may apply to me for a declaration to that effect.
- 1.3 Under section 108B(2) of the Act I am empowered to make or refuse to make the declaration sought. In each case I am required to give the applicant and the union an opportunity to be heard and whether I make or refuse the declaration sought, I am required to give reasons for my decision in writing.

1.4 Where I make a declaration, I am required, unless I consider to do so would be inappropriate, to make an enforcement order imposing 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 so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.

1.5 On the 2 March 2000, following correspondence with Mrs Knight a member of the Communication Workers Union (CWU), I accepted a complaint from her that the union was alleged to be in breach of its rule 14.3 in refusing her the right of appeal against a decision of the union's National Discipline Committee (NDC) to an Independent Review Body and that this was a matter relating to discipline referred to in section 108A(2)(b) of the Act.

1.6 I investigated the complaint in correspondence and decided that a formal hearing, to hear argument, should be held. The hearing was held on the 10 July 2000. The union was represented by Mr J Reeves Acting Assistant Secretary. The applicant attended the hearing and spoke for herself. Ms G Mitchell an Assistant Secretary of the union, who was also the union's officer with responsibility for the administration of the NDC, also attended the hearing and gave evidence. I found this particularly helpful in my determination of the complaint.

1.7 For the reasons set out below I refuse to make the declaration sought.

## Requirements of the Legislation

1.8 It may be helpful, at this point, if I set out the relevant statutory requirements of the Act to which I have referred to in this decision. The relevant statutory requirements are as follows:

*“108A.-(1) 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 the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).*

*(2) The matters are -*

- (a) the appointment or election of a person to, or the removal of a person from, any office;*
- (b) disciplinary proceedings by the union (including expulsion);*
- (c) the balloting of members on any issue other than industrial action;*
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;*
- (e) such other matters as may be specified in an order made by the Secretary of State.*

*(3) ...”*

**The Complaint (that the union was in breach of its rule 14.3 in refusing to grant Mrs Knight the right of appeal from a decision of its National Discipline Committee)**

**Union rule 14.3**

2.1 The union's disciplinary procedures affecting individual members are set out in Rule 14 of its rule book under the general heading of "Discipline". Rule 14.3 provides:

*"There shall be a right of appeal against decisions of the National Discipline Committee to an Independent Review Body. In all cases of appeal the decision appealed against shall be suspended pending the hearing of the appeal."*

**The Applicant's Case**

2.2 Following correspondence between Mrs Knight and Ms Mitchell, Mrs Knight wrote to the union on the 4 November 1999 bringing proceedings under the union's discipline rule 14.1 against five members of the union relating to their actions in the representation, by the union, in her action against her employer, the Post Office. The charges brought by Mrs Knight against the five included behaving in a manner contrary to the union's interests, discussing her case with a work colleague and delaying her case.

2.3 The union responded by letter on the 18 November confirming that Mrs Knight's letter was to be treated as a reference to the union's General Secretary under the union's discipline rule 14.4.1, which stated "*All matters requiring consideration under the authority of Rule 14.1*

*shall be referred to the General Secretary and by the General Secretary to the National Discipline Committee. ...*". The union's letter continued by explaining that one of the five persons charged, by Mrs Knight, was an employee of the union but not a member and that therefore he could not be charged under union rule. The letter concluded by stating that "*... once the terms of the Bye-laws have been applied, you will be advised of the Committee's view as to whether or not there is a prima facie case to answer, as required in rule 14.4.4.*".

2.4 On the 21 December 1999 the union again wrote to Mrs Knight. The letter informed Mrs Knight that the union's NDC had met on the 16 December 1999 and found that no prima facie case existed against those members charged by Mrs Knight. The letter added that the Committee (the NDC) had therefore instructed Ms Mitchell to close the file on the case.

2.5 Mrs Knight replied to this letter indicating her disappointment to find that no prima facie case existed against the charged members adding that she would await contact from the union (with regard to the union obtaining an up-to-date position in respect of her claims against her employer) before deciding whether or not to appeal to the independent review body.

2.6 On the 5 January 2000 the union wrote to Mrs Knight acknowledging this letter and stating:

*" Whilst I understand your disappointment with the Committee's decision, I need to advise you that there is no appeal to the Independent Review Body.*

*An appeal is only available to those charged members who have a case against them found proven. The member bringing the charge has no right of appeal.*

*In respect of the decision itself, it is not the practice of the Committee to give reasons for its decision, although, of course, in an appeal situation a submission is given to the Independent Review Body.”*

- 2.7 Mrs Knight argued that the union’s rule 14.3 did not exclude her from making an application (appeal) from a decision of the NDC. She pointed out that rule 14.3 specifically referred to all cases of appeal ( her emphasis added) not just to the charged members.
- 2.8 Mrs Knight argued the union’s rules were there to safeguard the interests of its members and that nowhere in rule 14 did it indicate that an appeal was only open to those charged members who have a case against them proven. She argued that it did not state that a member bringing charges had no right of appeal.
- 2.9 Mrs Knight continued by arguing that unless the full facts of the case were available to her, she could not gain an understanding of why the NDC had reached its decision of no prima facie case against those charged, and that the only way she could find out was to have the appeal under rule 14.3 which the union had denied her.
- 2.10 Finally Mrs Knight stated, the NDC had made a decision, she argued that she had the right of appeal against that decision and added, that if she was found to be wrong in her interpretation of rule 14.3, then she asked that the union make the position (regarding appeals from a decision of the NDC) clear in its rules and bye-laws.

## **The Union's Response**

2.11 In correspondence the union argued that rule 14.3 must be read in conjunction with rule 14.4.5, which provided that:

*“Following the hearing of a complaint, the National Discipline Committee may exercise any one or more of the following powers:”*

Rule 14.4.5, it stated, then continued by listing in clauses (a) to (g) seven sanctions ranging from censure or suspended sentence through to the member being expelled from the union.

2.12 On behalf of the union it was argued that it was only after the NDC had exercised its powers and determined that a member or members would be subject to one of the sanctions listed (in rule 14.4.5) that the appeal process came into effect. In Mrs Knight's case, the union argued, the decision of the NDC was that a prima facie case did not exist and therefore no further action was taken.

2.13 At the hearing, Mr Reeves on behalf of the union stated that the prime function of the union's rules regarding discipline was to ensure that there were sufficient checks and balances including a right of appeal. However, he argued that that right of appeal, significantly, was against any sanction (disciplinary penalty) awarded within the powers of the union against the charged member.

- 2.14 In the case brought by Mrs Knight, Mr Reeves argued it was important that no sanction or penalty had been decided upon by the NDC. He suggested, the purpose of rule 14.3 was to ensure that a member who had had a sanction imposed (on them) had the right of appeal.
- 2.15 For the union it was argued that it did not believe it was reasonable to interpret the rule in such a way that gave a right of appeal to the member bringing the charge. To interpret the rule in this manner, the union believed, would be perverse. It was argued that a commonsense approach to the rule was needed.
- 2.16 Mr Reeves added that to allow Mrs Knight the right of appeal would damage natural justice to those members who were the original subject of the charge and, he argued, the natural extension of this would be for Mrs Knight to be able to appeal against any sanction imposed (by the NDC). This the union felt would be unreasonable to the charged members and be too onerous on the union to bear.
- 2.17 The right of appeal, Mr Reeves argued, was one side of the scales set against the liability of members to be disciplined. The right of appeal, he stated was there to protect charged members not to give the person bringing the charge a second bite of the cherry.
- 2.18 For the union, Ms Mitchell explained that the NDC of the union, like an employment tribunal, was not an investigatory committee. It was, she continued, a body that makes its decision based on the evidence before it. The NDC's procedures are, she added, laid down in its bye laws which, along with the evidence before it, are also supplied to the charged member. The charged member is given the opportunity to respond to the charge and the decision (of the NDC) she informed me, was sent to all the parties involved.



- 2.19 In response to my questions, Ms Mitchell added that under the union's regulations governing the conduct of the Independent Review Body (IRB) it states, in bye law 5, that an appeal against a decision of the NDC may only be brought by the charged member. However, she added that these regulations were not made available to members under the discipline procedure but were supplied once an appeal had been made to the IRB. A copy of the regulations, I was informed, would be supplied to any member who requested a copy.
- 2.20 Summing up, for the union, Mr Reeves added that an appeal only serves a purpose where a penalty or sanction had been imposed against a member and that it protects members by providing a balance against those bringing the charge.
- 2.21 I was invited, by Mr Reeves, to look closely at rule 14.3 and particularly at the second sentence; "*In all cases of appeal the decision appealed against shall be suspended pending the hearing of the appeal.*". He argued that if there was, as in this case, no case to answer, then that could not be put into suspension. He added that to suspend something a decision in terms of a penalty had to have been imposed.
- 2.22 Finally, on behalf of the union, Mr Reeves felt there should be a common sense approach to the rule. That was, that it had been found that there was no case to answer and that this was not a type of decision that could be put into suspension. Mr Reeves commented that although no weakness in the union's case was admitted the union would not be averse to looking at the rule again in order to see if any clarification would be helpful.

## Reasons for my Decision

2.23 Mrs Knight claims to have a right of appeal under union rule 14.3.

2.24 I was not convinced by the union's argument that if Mrs Knight could appeal she could then also appeal against a penalty imposed on the grounds that it was not tough enough. It is not unusual for cross appeals to be made indeed, the employer and a complainant can appeal to the Employment Appeals Tribunal (EAT) on certain grounds.

2.25 The union did not produce its regulations governing the conduct of the IRB during my investigations or at the hearing of this complaint. Indeed its existence only came to my notice in response to my questioning, using my investigatory powers, of Ms Mitchell. I have, since the hearing, seen a copy and requested (at the hearing ) that a copy also be supplied to Mrs Knight. From this document, which unfortunately was undated, it seems that the practice (and rule) of the union in these matters is that only the charged member may appeal against a decision of the NDC.

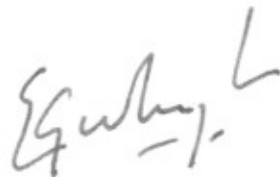
2.26 In questioning the union, I was informed that the same query as Mrs Knight's (the right of appeal against a decision of the NDC) had been raised by, at least, two other members, but that once they had been informed that there was no right of appeal they had taken no further action.

2.27 I found it understandable (as did the union) why, Mrs Knight (and others) thought they had a right of appeal. I agree with her also that greater clarity in the rule would not come amiss

and I commend the union for offering to examine the rule again. Also it would have been helpful if both I and Mrs Knight, had been aware of the IRB regulations before the hearing.

2.28 However, irrespective of those regulations and their provenance I agree with the union that the second sentence of rule 14.3 only makes sense if it relates to circumstances where a penalty has been imposed. In my view, a decision of “no case to answer” cannot be suspended. This, to my mind, puts a clear interpretation on rule 14.3. namely that only an accused person has a right of appeal under the union’s rules.

2.29 It was for these reasons that I dismissed this application.

A handwritten signature in black ink, appearing to read 'EG Whybrow' with a stylized flourish at the end.

EG WHYBREW

Certification Officer