D/36-37/01

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

IN A MATTER OF COMPLAINTS AGAINST THE AMALGAMATED ENGINEERING AND ELECTRICAL UNION (AEEU)

APPLICANT: MR SC McALLORUM

Date of Decisions **13 February 2001**

Date Written Reasons Published **2 March 2001**

DECISIONS

1.1 Under section 108A(1) of the Trade Union and Labour Relations(Consolidation)Act 1992 as amended ("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 sub section (2) may apply to me for a declaration to that effect.

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 the declarations asked for. Whether or not I make the declarations 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 so specified with a view to securing that a breach or threat of the same or similar kind does not occur in future.

1.4 On 11 September 2000 I received an application from Mr S C McAllorum, a member of the Amalgamated Engineering and Electrical Union(AEEU) in which he made two complaints under section 108A(2)(b) of the Act which relates to rules governing disciplinary proceedings. The first was that the AEEU was in breach of its rule 20(6), in that it did not provide Mr McAllorum with information as regards finding of fact, to enable him to appeal against the union's decision within 28 days following disciplinary proceedings. Secondly, that contrary to AEEU rule 20(7), the union did not provide for an appeal against its disciplinary decision to be heard by an independent Disciplinary Appeals Committee consisting of three individuals nominated by the Chairman of the Advisory Conciliation and Arbitration Service (ACAS).

1.5 I investigated the complaints in correspondence and on 6 February 2001, held a formal hearing of argument on these complaints. The union was represented by Mr A Burns of Devereux Chambers. Mr Mark Tami, head of the union's policy unit was also in attendance. The applicant appeared in person and Mrs B Ellison attended as a witness on his behalf.

1.6 For the reasons set out below I dismiss these two complaints.

1.7 In the light of an impending Employment Tribunal case involving the union and Mr McAllorum I communicated my decision to the parties in a letter dated 13 February 2001.

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 in this decision. The relevant statutory requirements are as follows:-

> "Section 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)."*

The matters in these two complaints fall under section 108A(2) (b) of the Act, which refers to breaches or threatened breaches of union rule in relation to:

> *"Disciplinary proceedings by the union(including expulsion)."*

Complaint One, that the union was in breach of its rule 20(6) in that it did not provide Mr

McAllorum with information as regards finding of fact to enable him to appeal against the union's decision within 28 days following disciplinary proceedings.

The Applicant's Case.

2.1 AEEU Rule 20(6) states that:

> *'A member against whom a charge is found proven may appeal against that decision by giving written notice setting out the grounds of the appeal to be received by the General Secretary of the union within 28 days of the member having been informed of the Executive Council's decision on the charge.'*

2.2 The background of the applicant's case giving rise to this complaint is that Mr McAllorum was charged by the Executive Council of the AEEU with bringing about injury to, or discredit upon, the union and its members, contrary to AEEU rule 20(1)(b). The Executive Council("the EC") established a sub-committee under rule 20(5) to deal with this charge and a disciplinary hearing subsequently took place at the union's Training College at Esher on 23 May 2000. At this hearing Mr McAllorum was given the opportunity to answer the charges brought against him by the union. The Union's decision was that one of the five charges against Mr McAllorum was proven and it decided to ban Mr McAllorum from holding certain union offices for a period of three years. McAllorum was informed of the union's decision and the appeal he subsequently lodged was heard on 5 October 2000.

2.3 At the outset, Mr McAllorum acknowledged that AEEU rule 20(6) was silent on the

question of finding of fact and simply set out the requirement to appeal within 28 days following disciplinary proceedings against a member of the union. He contended, however, that it was not possible to appeal against the union's disciplinary decision without full, written reasons for that decision. In this respect, he thought that the rules of natural justice had not been followed in not supplying him with a statement of fact upon which to base his appeal. Mr McAllorum further alleged that he had informed the disciplinary panel that he expected to receive written reasons for any decision they made and had gained the impression that the union would comply with this request, but they did not do so. This was, Mr McAllorum said, to fill the gap left by AEEU rule 20(6) in not providing for finding of fact in the union's rules.

2.4 Mr McAllorum further contended that the union's note of the disciplinary hearing on 23 May 2000 was inaccurate and therefore represented flawed evidence from which it would not be possible to make an appeal.

The Union's Response

2.5 The union replied that its rule 20(6) clearly set out the mode of appeal to the general secretary following a disciplinary decision against a member, and that rule 20(4) established that the Executive Council '*shall set its own procedures for dealing with charges under this rule.'*

2.6 In its letter of 26 May 2000 to Mr McAllorum, the union summarised the findings of its disciplinary hearing against Mr McAllorum and informed him of his right of appeal. The union had followed its own procedure correctly, it said. Rule20(6) was silent both as

regards the format of an explanation for its decision or on the requirement to provide any explanation or finding of fact for its disciplinary decisions. The appeal was, in the union's view, set up according to its procedures and subsequently the union dealt quite properly with Mr McAllorum's appeal.

2.7 With regard to Mr McAllorum's argument that the evidence at his 23 May disciplinary hearing was flawed, the union said that the charges were clearly laid out by the union in their letter to Mr McAllorum of 31 March 2000. Mr McAllorum's written response to the union on 3 April 2000 did not question the union's letter. Further details of the charges were provided to Mr McAllorum at his request on 18 April. The report of the disciplinary hearing, the union argued, was an accurate description of what took place, against which Mr McAllorum had not been able to provide any evidence to the contrary. In the context of Mr McAllorum's complaint to me, the disciplinary hearing of 23 May was not, in any case, relevant. The union were satisfied that they had answered the complaint to me of breach of its rule 20(6) and that in any case, no rule of natural justice had been breached.

Reasons for my Decision

2.8 It is common ground between the parties that there is nothing in rule 20(6) requiring the union to provide written reasons for its disciplinary decisions to be given to an appellant prior to a union appeal hearing. However, I think it is not unreasonable for appellants to expect to know what charges are being made against them and the grounds of the union's disciplinary decision, to enable them to make an appeal against any such decision.

2.9 I am satisfied that both rule and natural justice were applied by the union in this matter.

To my mind, there is clear evidence that Mr McAllorum was made fully aware of the disciplinary charges brought by the union and given ample opportunity(which he took) to answer those charges. He was also told how to make an appeal against the disciplinary decision to ban him from holding certain union offices for three years. He was given, but did not avail himself of, the opportunity to submit his own record of the disciplinary hearing if he did not agree with the union's version, and he did not attend his own appeal hearing. I find that the union's procedures were perfectly acceptable and for the reasons stated above, I dismiss this complaint.

Complaint two, that contrary to rule 20(7) the AEEU did not provide an appeal against its disciplinary decision to be heard by an independent Disciplinary Appeals Committee consisting of three individuals nominated by ACAS.

2.10 AEEU rule 20(7) states that:

> *'An appeal shall be heard by an independent Disciplinary Appeals Committee Consisting of three individuals nominated by the chairman of ACAS. The Disciplinary Appeals Committee shall have power to quash the Executive Council's decision that the charge was proven or to uphold that decision and either confirm or vary the penalties imposed pursuant to this rule. Unless or until quashed or varied by the Disciplinary Appeals Committee the decision of the Executive Council shall remain in full force and effect.'*

2.11 Mr McAllorum contended that the independent Disciplinary Appeals Committee had not been nominated by the ACAS Chairman because ACAS, in a letter of 11 July, asserted that it did not possess the statutory authority to intervene in appeal hearings. By implication, neither ACAS nor its Chairman could therefore be involved in the nomination

process. Moreover, this correspondence came from an ACAS employee and not directly from the ACAS Chairman himself. This point was reinforced by Derek Evans', (ACAS Chief Conciliator's) letter to Mr McAllorum of 21 August 2000, which also stated that ACAS did not possess the statutory authority to intervene, and that ACAS had no jurisdiction to interfere in internal trade union matters. The three individuals who formed the independent Disciplinary Appeals Committee were chosen by the union and not by ACAS. In Mr McAllorum's view, Rule 20(7) had not been followed to the letter because neither the ACAS Chairman nor ACAS as such, had nominated the individuals who sat on that Committee. The Committee was formed of those individuals chosen by the union from an ACAS provided list which contained six names.

2.12 Further, Mr McAllorum argued that the independent Disciplinary Appeals Committee could not be truly independent because the union had paid the Committee's fees and expenses and could therefore influence the Committee's decision in its favour. He referred to section 5 of the Trade Union and Labour Relations(Consolidation)Act 1992 to define the meaning of independent in relation to trade unions as "not liable to interference." He believed that on this definition the Disciplinary Appeals Committee was not independent. Moreover, the union, not ACAS, had informed Mr McAllorum of possible dates for his appeal hearing which he felt detracted from the independence of the Committee.

2.13 The Disciplinary Appeals Committee was eventually formed of those individuals chosen by the union from a list provided by ACAS in its letter to the union of 11 July 2000. Mr McAllorum argued that another reason for potential bias in the union's favour by this Committee was that one of the Committee members was an AEEU member, or had close personal connections with a member of the union, and could not therefore be impartial and

objective in the matter of his appeal against his union's disciplinary decision.

The Union's Response

2.14 The Union argued in response that it had proceeded in accordance with rule 20(7) to provide for an appeal to be heard by an independent Disciplinary Appeals Committee consisting of three individuals nominated by the Chairman of ACAS. In fact, the union stated that ACAS had nominated six individuals from its panel of independent individuals willing to act as arbitrators in these matters. The union had chosen three individuals from this list. Rule 20(7) had therefore been followed to the letter in that the three individuals chosen by the union had come from an ACAS nomination of six individuals. Rule 20(7) did not prevent the union from choosing those individuals, whose identities were made known to the union from an ACAS nominated list. Thus, it was an ACAS, not a union nomination.

2.15 On the question of the arbitrators nominated by ACAS not being truly independent in this matter, the union stated that it was 'stretching belief ' to assume that ACAS would nominate a biased arbitrator. Mr McAllorum, they said, had no evidence either of the fact of any connection between the panel member whom Mr McAllorum alleged had AEEU credentials or that this panel member had acted in a biassed manner in the proceedings of the Disciplinary Appeals Committee. The union reminded Mr McAllorum that the Committee had overruled the penalty laid down by the union's Executive Committee by reducing his ban from three years to eighteen months. This was hardly in their view, evidence of bias.

2.16 The fact of the independent Disciplinary Appeals Committee being paid by the union for their work did not compromise their independence, the union said. ACAS nominated the panel members, so it was independent and it was not unreasonable that they should expect to receive costs and expenses for their services. This was a union appeal and therefore it would not be proper to expect taxpayers, complainants or anyone else to absorb these costs.

2.17 Mr McAllorum, the union said, had no evidence at all for his assertions of collusion between the ACAS panel and the union. The union concluded that the Disciplinary Appeals Committee had been nominated by ACAS (a fully independent body) in compliance with AEEU Rule 20(7). There had not therefore been a breach of rule as alleged by Mr McAllorum, or at all.

Reason for my Decision

2.18 In his complaint to me of breach of AEEU rule 20(7), Mr McAllorum has made a number of points in support of his argument of breach of this rule: that neither the ACAS Chairman nor ACAS were involved in the nomination process because the union chose the appeal panel members; that the panel was somehow biased in the union's favour by the presence of an AEEU friendly representative amongst its members and by the fact that the union had paid the panel its fees and expenses.

2.19 It is my view that Mr McAllorum has relied on too literal an interpretation of rule 20(7) to claim a breach in this matter. The fact that it was ACAS employees who corresponded with the parties rather than the ACAS Chairman does not obviate the Chairman or ACAS'

involvement. It is perfectly usual for employees to act with the authority of their Chairman or Chief Executive.

2.20 ACAS nominated six individuals from their panel of independent industrial relations practitioners from which the union chose three members. Thus, the nomination had been made by ACAS not by the union, as required by rule. I here emphasise that to nominate does not mean to appoint. Rule 20(7) refers to nomination, which then places the onus on others to accept or reject those nominated. ACAS offered six arbitrators from which the union chose three, and there is nothing in union rules to prevent them from doing so. Moreover, I am aware, this is the way ACAS invariably proceed to nominate for arbitration from its list of independent industrial relations practitioners, who may emanate from a variety of disciplines. The ACAS Council itself is tripartite in the composition of its members, in that it consists of members appointed from independent sources, together with trade union and employer representatives, to achieve a balance of all interests in matters of dispute resolution. I am not persuaded that ACAS acted in anything other than an independent and impartial manner in putting forward names for the independent Disciplinary Appeals Committee or that the presence of a trade union representative of any union on the appeal panel is indicative of bias by that panel. No evidence was offered by either side as to the supposed links of one panel member to the AEEU, nor could Mr McAllorum point to an instance of bias by any panel member in this matter. That the appeal panel reduced Mr McAllorum's ban from three years to eighteen months is further indication of the panel's impartiality and integrity.

2.21 Mr McAllorum was concerned by the fact that the independent Disciplinary Appeals Committee members being paid by the union might result in bias in the union's favour. It

is my view that in cases of this type it is absolutely standard practice for arbitrators to be remunerated for their work. Arbitrators have to be paid for by someone and it is not a reflection on their independence. Three possible parties could pay the arbitrators: the union, the appellant or the taxpayer. It would be inappropriate to expect the taxpayer to 'foot the bill' and there is no statutory basis for this. If the appellant had to pay, it would act as a bar to the ability of that individual to appeal. This leaves only the union, who, in this case rather unusually in my experience, have sought to ensure impartiality by using only people nominated by ACAS. Many, if not most, union appeals are heard by panels of lay members of the union.

2.22 For all these reasons, I find that no breach has occurred and I dismiss this complaint.

E G WHYBREW

Certification Officer