

04/11/5/11
①
DECISION OF THE CERTIFICATION OFFICER ON A COMPLAINT
MADE UNDER SECTION 3(2) OF THE TRADE UNION ACT 1913

E M L PARKIN

and

ASSOCIATION OF SCIENTIFIC, TECHNICAL AND MANAGERIAL STAFFS

1. Mr. Parkin, who is a member of the Association of Scientific, Technical and Managerial Staffs ("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. Rule 36(j) of the Union's rules reads:

"A member who is exempt from the obligation to contribute to the Political Fund of the Association of Scientific, Technical and Managerial Staffs shall not be excluded from any benefits of the Union, or placed in any respect, either directly or indirectly, under any disability or disadvantage as compared with other members of the Union (except in relation to the control or management of the Political Fund of the Union) by reason of his being so exempt."

3. The substance of Mr. Parkin's complaint is, in particular, that being a member who was exempt from contributing to the Union's political fund he was, in breach of rule 36(j), placed at a disability or disadvantage otherwise than in relation to the control or management of the political fund because at a meeting of his branch (Harrow 85) held on 21 February 1977 he was excluded from proposing an amendment to or voting on a motion proposed on the agenda for the 1977 Annual Delegate Conference of the Union; and generally, that having established the reason for his exclusion, it was equally applicable to a number of other motions proposed on the agendas for the 1977, 1978 and 1979 Conferences and accordingly he would have been excluded from putting forward amendments to these motions had he wished to do so and was in any event excluded from voting on

Background to the complaint

4. In order to explain the implications of Mr. Parkin's complaint it is necessary to describe the Union's practice and procedure for dealing with motions which may be debated at its Annual Delegate Conference. There is a Standing Orders Committee elected by the Conference under rule 24(12)(a), one of whose tasks is to consider the motions proposed for debate at the next Conference with a view to deciding which of them relate to the control or management of the political fund; the Committee does this under Standing Order 7 which reads in part:

"Method of voting

.....voting on motions which demand action relating to the control or management of the political fund or expenditure therefrom shall be by card vote showing branch political membership. Such motions shall be marked on the agenda with the letter 'P'."

This is an expression of rule 36(j) in a slightly different form. The motions which the Committee decides do so relate are designated with a P on a preliminary agenda which includes all the motions proposed; this is then circulated to branches and Divisional Councils of the Union so that they have the opportunity to propose amendments and to mandate their delegates to the Conference as to how they should vote on the motions.

5. Mr. Parkin alleges that the motions he complains about do not relate to the control or management of the political fund and were therefore wrongly designated with a P. Mr. Page, who represented Mr. Parkin at the hearing, maintained that the sole reason for so designating many of the motions complained of was that they requested the Union's Parliamentary Committee, through the National Executive Council, to take some action in support of the policy proposed in the motion. According to the Union's evidence the Parliamentary Committee acts as an advisory body to the NEC, ^{and} consists of members of the Union in both Houses of Parliament; it has no policy making function and its sole job is to receive references from the NEC and take such action on a Parliamentary basis as it sees best to pursue the policies contained in the references.

Motion 278

6. The motion in respect of which Mr. Parkin attempted to propose an amendment was No. 278 on the agenda for the 1977 Conference and reads:

"This Annual Conference instructs the NEC to request the Parliamentary Committee to afford all possible support for parliamentary action which seeks to abolish the House of Lords and substitute there a second chamber of elected representatives."

7. According to Mr. Parkin's evidence the chairman of his branch ruled that he could not propose an amendment to motion 278 because he was an exempt member and the motion had been designated with a P. His evidence was supported by that of Mrs. Daly, Secretary of the London Assurance Branch of the Union, who said it was also the practice at her branch to exclude exempt members from proposing amendments to or voting on P designated motions. I therefore accept that at least in Mr. Parkin's and Mrs. Daly's branches this has been the practice. Mrs. Turner, who is an Assistant General Secretary of the Union and represented it at the hearing, said that there had been no direction to branch chairmen that P designated motions should only be voted on by levy-paying members. I accept this, but the Union cannot divest itself of responsibility simply by showing that no express instructions were given. Also, it is I think only natural that branch chairmen, who may have no special knowledge of the political fund rules, should take their guidance from the way the Standing Orders Committee has designated motions. Further, the part of Standing Order 7 saying that voting "shall be by card vote showing Branch political membership" must make it likely that branches will exclude exempt members from voting at branch level.

8. If the practice of Mr. Parkin's and Mrs. Daly's branches is typical, then large numbers of exempt members may be excluded from proposing amendments to or voting on P designated motions at branch level. Mrs. Turner pointed out that many of the motions which appear on the agenda, including those with P designations, are not debated or voted on at Conference. Further, in 1977 and

1978 some of the P designated motions which were debated had the P removed by the President of the Union who acts as chairman at Conferences. The result was that in 1977 only one P designated motion was voted on at Conference on a political vote. However, the fact remains that at branch level exempt members may be excluded from voting on such a motion at a time when it cannot be known whether it will be voted on at Conference or not. Consequently branch delegates may be mandated according to votes cast by levy-paying members only and not by the membership of the branch as a whole.

9. As regards motion 278, it is clear that Mr. Parkin's exclusion from proposing an amendment or voting placed him at a disadvantage as compared with non-exempt members of the Union who were not so excluded; in general an exempt member must be placed at a disability or disadvantage if he is precluded from proposing an amendment or voting on matters in respect of which non-exempt members are entitled to do these things. I do not consider that a motion relates to the control or management of the political fund simply because it may be a matter of political controversy; nor do I think the fact that this motion requested the Parliamentary Committee to take action affects the issue, since the Committee's activities do not relate in any real sense to the control or management of the political fund. These matters were not disputed by the Union. I therefore hold that a breach of rule 36(j) was committed.

Other motions on the 1977 Conference agenda

10. In his statement of case Mr. Parkin referred to 46 other P designated motions on the agenda for the 1977 Conference which he had not attempted to amend. They fall into 3 categories:-

- (a) 38 motions which dealt with general matters and which were apparently given a P marking solely because they referred to the Parliamentary Committee;
- (b) One motion (No. 191) which similarly dealt with a general matter but did not refer to the Parliamentary Committee;
- (c) Seven motions (Nos. 148-154 inclusive) which were grouped in the agenda under the heading "Political Activity" and dealt either with Labour Party affairs or with other matters which could be said to have some party political content.

11. In my view Mr. Parkin is entitled to complain about these motions, but they were not considered in detail at the hearing, this being the wish of the parties. I therefore make no decision as regards category (c), which could be the subject of argument; but it is apparent that the 39 motions in categories (a) and (b) dealt with matters unrelated to the control or management of the political fund and were wrongly given a P marking. Accordingly I find Mr. Parkin's complaint to be justified so far as it concerns these 39 motions.

Should one or more orders be made?

12. The question then arises as to what, if any, orders I should make on these matters. Section 3(2) of the Act provides that if I consider that a breach of the political fund rules has been committed, I may "make such order for remedying the breach" as I think just under the circumstances. Mr. Parkin asked me to make a number of orders which would have required voting on motions not to be limited to non-exempt members unless the motions dealt with certain specified matters; these matters, as suggested by Mr. Page, would amount to a substantial reinterpretation of the provisions of the Act in accordance with the submissions he made to me on the present complaint. Apart from any question as to the desirability of making such orders, I consider that the Act gives me authority to make an order for remedying a breach of rule only where I have decided that a breach has occurred and not to make orders of the kind proposed by Mr. Parkin affecting the general conduct of a union in the future.

13. As far as the motions for the 1977 Conference are concerned, it seems to me that no order for remedying the Union's breaches of rule can now usefully be made. The breaches occurred more than two years ago and, as noted below, the Union has already taken action to change the policy which led to the breaches taking place.

1978 and 1979 - the question of jurisdiction

14. The position in 1978 and 1979 is complicated by the fact that in about December 1977 Mr. Parkin started contributing to the political fund of the Union and therefore ceased to be an exempt member. Section 3(2) of the Act provides that "if any member of

a trade union alleges that he is aggrieved by a breach of any rule made in pursuance of this section, he may complain to the Certification Officer" and the question arises whether Mr. Parkin remained an aggrieved member entitled to complain to me after he ceased to be an exempt member.

15. Mr. Page submitted that he remained an aggrieved member, first because there were some motions passed by the levy-paying membership which Mr. Parkin disapproved of and which he feels would not have been passed by the membership as a whole, and secondly, because he could not call on the support of exempt members in putting forward points on the matters which he alleges were wrongly categorised as being related to the control or management of the political fund. Mr. Page also contended that in any event the Act meant that any member alleging that he was aggrieved could complain, not that the member complaining must himself be aggrieved.

16. In my view the Act means that I have jurisdiction to entertain complaints only from a member who is himself adversely affected by the action complained of. It may be that some actions, for example the expenditure of money from a union's general funds on political objects, may rightly be said to affect every member, but I do not consider that a complaint that a member is aggrieved by being placed at a disability or disadvantage falls into this category. In commenting on this point Citrine's Trade Union Law (third edition at page 432) says:

"If the issue is whether a member is entitled to exemption, or whether a member who is exempt has been placed under a disability or at a disadvantage as compared with other members, the complainant must show that he has been wronged. A mere allegation of irregularity without disability or disadvantage is insufficient."

While the view there expressed does not necessarily settle the matter, Citrine is an authority not lightly to be ignored and on this occasion I am in agreement with his view; it seems to me that if Mr. Page's contention as to the meaning of the words "alleges that he is aggrieved" is right then those words are unnecessary and the Act could just as well have provided for every member to have a right of complaint.

17. The essence of Mr. Parkin's complaint after he ceased to be an exempt member is that other exempt members were placed at a disability or disadvantage. Mr. Page's submissions amount to

saying that he was indirectly placed at a disadvantage as a result of the direct disadvantage suffered by exempt members. It is true that rule 36(j) covers indirect disadvantage but in my opinion the connection is altogether too tenuous and hypothetical to amount to a disadvantage within the meaning of the rule.

18. Mr. Page also submitted that Mr. Parkin chose to contribute to the political fund only in order to obtain the rights which he should have had anyway as an exempt member and should not therefore lose his right of complaint. In my view Mr. Parkin had a free choice in the matter and I therefore reject this contention.

19. I therefore hold that I have no jurisdiction to entertain Mr. Parkin's complaint in so far as it relates to matters after he had ceased to be an exempt member. However, both Mr. Parkin and the Union told me that they would welcome some general guidance on how rule 36(j) should be interpreted, particularly as regards the words "control or management of the political fund". The paragraphs which follow are added in response to that request.

Motions for the 1978 and 1979 Conferences

20. What I have already said in relation to the motions proposed for 1977 applies equally to those proposed for 1978. It appears that many of the P designated motions were so designated solely because they included a reference to the Parliamentary Committee although their subject matter was general and unrelated to the control or management of the political fund. Consequently the exclusion of exempt members from proposing amendments to or voting on such motions would, in my view, have been in breach of rule 36(j).

21. The Union accepted at the hearing that the Standing Orders Committee's previous practice of automatically giving a P marking to any motion which mentioned the Parliamentary Committee was mistaken and had resulted in the incorrect designation of a considerable number of motions. I was assured that this practice had been discontinued and would not be resumed. In my view this change of policy was entirely correct and was necessary in order to bring the Union's practice into conformity with its rules. Its results are apparent in the agenda for the 1979 Conference, which contains only five P designated motions compared with 51 in

1977 and 39 in 1978.

22. Originally Mr. Parkin alleged that four of these five motions were wrongly designated. At the hearing Mr. Page withdrew that allegation first in relation to one of them and then in relation to two others following an explanation by Mrs. Turner as to why those two would be likely to affect expenditure from the political fund. The one motion about which there is still dispute is No. 640, which reads as follows:

"This Annual Conference regrets the error made by the AUEW in casting its votes on the issue of re-selection of MP's at the Labour Party Conference. Conference requests the Labour Party NEC to waive the three-year rule on this issue so that a decision that is seen to be fair may be reached."

The meaning of "control or management"

23. Mr. Page submitted that the expression "control or management of the political fund" had a narrow and specific meaning and was restricted to matters affecting the amount of expenditure from the fund, changes in the persons managing the fund, changes in auditing arrangements for the fund and changes in the investments of the fund. In support of that proposition he drew my attention to two definitions of the verb "to control" in the Oxford English Dictionary, (1) "to check or verify and hence to regulate (payments, receipts or accounts generally)", and (2) "to exercise restraint or direction upon the free action of; to hold sway over, exercise power or authority over, to dominate, command". He did not refer me to definitions of "manage" or "management", but it seems clear that the verb incorporates the notions of controlling the affairs of a body or relating to an activity, and of administration. "Management" may incorporate the same notions but, on the other hand, it may refer only to the body of persons with the responsibility for running an organisation or activity as in the management, meaning the directors and executives, of a company.

24. Mr. Page also referred me to the dicta of Lord Esher M.R. in the case of Hornsey Local Board v Monarch Investment Building Society (1889 QBD 24 at page 5) where he said "...an Act of Parliament is to be construed as to the ordinary meaning of the words in the English language, as applied to the subject matter,

unless there is some very strong ground, derived from the context or reason, why it should not be so construed". I, of course, accept that as correct statement of the principle of law which it contains and that the principle applies to this complaint. In dealing with the complaint I have to interpret the meaning of rule 36(j) and not the Act but that rule is made in pursuance of section 3(1)(b) of the Act and closely follows its wording.

25. Mr. Page also submitted that as the broad intention of rule 36(j) was to prevent discrimination against exempt members by excluding them from rights and benefits which they would have had if they had not been exempt, it was in accordance with general legal principles that the single exception in the rule to the protection it offered should be interpreted narrowly. I accept this proposition as a general principle but the question remains as to how narrow the interpretation should be.

26. In reply Mrs. Turner, on behalf of the Union, pointed out that motion 640 was solely concerned with the internal affairs of the Labour Party, in which the Union had a voice only because it was affiliated to the Party through payments from its political fund. She also said that as the change in the procedure for selecting and re-selecting Members of Parliament favoured by the motion might lead to an alteration in the frequency of the number of times Members of Parliament would be subject to re-selection, the change could affect the expenditure from the political fund on candidates sponsored by the Union. For these reasons the Union contended that the motion related to the control or management of the political fund.

Conclusion

27. After considering the contentions of the parties I conclude that motion 640 was correctly given a P marking and that it would not have been a breach of rule 36(j) to exclude Mr. Parkin from proposing an amendment to or voting on that motion if he had been an exempt member. I reach this conclusion by two different and alternative routes. First, while I agree with Mr. Page that the words "control or management" should be construed narrowly, I do not agree with his submission that they cover only financial matters. It seems to me that in relation to this motion the argument put forward by the Union that it would have no say in the internal affairs of the Labour Party but for its expenditure

from the political fund is a strong one. I consider that where a union spends money from its political fund in a manner, such as expenditure on affiliation to a political party, which is undoubtedly covered by the political objects in its rules so that it is prohibited by its rules from spending money from its other funds in that manner, then matters of policy in respect of which the union has a decision to take only because of that expenditure, for example decisions which solely relate to the internal decision making of the political party, are matters within the expression "control or management of the political fund". I draw support for my view from the second definition of "control" referred to by Mr. Page which is not limited to financial matters and from the word "management" which does not, in my view, mean only the body of persons managing the fund but extends to cover the limited area of administrative policy making I have described.

28. Secondly, I do not consider that Mr. Parkin, had he been an exempt member, would have been placed at a "disability or disadvantage" within the meaning of rule 36(j) by being excluded from proposing an amendment to or voting on motion 640. An exempt member is, by definition, a person who, knowing that it is the policy of his union to support a particular political party, has chosen, either for reasons of principle or because he has contrary political beliefs, not to contribute to the political fund and, by extension, not to support the political party favoured by his union. It therefore seems odd, to say the least, to suggest that a member who has freely chosen not to support a political party is placed at a disability or disadvantage as compared with other members by being deprived of a vote on matters solely affecting its internal affairs. Further, to give exempt members a voice in such matters would have the paradoxical result that the internal decision making of a political party could be indirectly affected by the votes of union members who were indifferent or hostile to it. I have therefore come to the conclusion that this situation represents an exception to the view expressed earlier that in general an exempt member is placed at a disadvantage if he is precluded from voting on matters in respect of which non-exempt members have the right to vote.

29. In view of the decision I have reached I do not need to express an opinion on the Union's contention that the indirect

effect of the motion might be to increase the expenditure from the political fund on sponsoring Parliamentary candidates and that the motion therefore relates to the control or management of the political fund for that reason also.

30. I have dealt with these matters at some length despite my view that, strictly speaking, the latter part of Mr. Parkin's complaint falls outside my jurisdiction under the 1913 Act. I conclude by expressing the hope that the resulting guidance will be helpful to both parties and that, in accordance with assurances given at the hearing, the Union will take steps to explain the position to its members at branch and Divisional Council level, and to ensure that the effect of the political fund rules is properly understood.