

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

M J DOUBLE
AND
ELECTRICAL ELECTRONIC
TELECOMMUNICATION AND PLUMBING UNION

Date of hearing: 18th May 1982
Date of decision: 28th July 1982

The complainant appeared in person.

The Union was represented by Mr C Edelman, Counsel, instructed by
Messrs Lawford & Co.

1. Mr M J Double is a member of the Electrical Electronic Telecommunication and Plumbing Union ("the Union") who is exempt from the obligation to contribute to the political fund of the Union ("an exempt member"). He complained to me under section 3(2) of the Trade Union Act 1913 ("the Act") that the Union had acted in breach of one of its political fund rules, rule 28(9).

2. Each union with political fund rules has a rule in the same or similar terms as rule 28(9) ("the disability or disadvantage rule"). Rule 28(9) reads:-

"A member who is exempt from the obligation to contribute to the Political Fund of the Union 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. Mr Double contended that there had been a breach of this rule in that he had been placed under a disability or disadvantage when he was not allowed to vote on a motion before a meeting of his branch of the Union because he was an exempt member. The meeting was held in the Stirchley Branch on 12 October 1981 and the motion was:-

"That the Secretary's action be endorsed and that Brother Spellar be the nominee from this Branch to Northfield Constituency Labour Party in the General Election and that he, Brother Spellar, be invited to Stirchley Branch before 4 November 1981."

4. The action of the branch secretary referred to in the motion was the nomination of Mr Spellar for selection as the parliamentary candidate of the Labour Party in the Northfield Constituency. It was necessary for the nomination form to be in the hands of the secretary of the Northfield Constituency Labour Party before the branch meeting of the Union took place and so the branch secretary had made the nomination on behalf of the branch contingently on his action being endorsed at the next branch meeting. He had made it clear to Mr Spellar that the nomination would be withdrawn if it was not endorsed.

5. The Stirchley Branch of the Union was entitled to nominate an individual for selection as parliamentary candidate of the Labour Party in the Northfield Constituency because the branch was affiliated to the Northfield Constituency Labour Party. The necessary affiliation fee had been paid out of the Union's political fund, and it was not disputed that the right to nominate existed only because of the expenditure of money from that fund. Nevertheless, Mr Double alleged that the Union was not entitled to exclude him from voting on the motion even though he had chosen not to contribute to the political fund.

6. This is not the first complaint under the Act about an exempt member being deprived of a vote on a matter which arose for voting only because of expenditure from the political fund. In *EML PARKIN v ASSOCIATION OF SCIENTIFIC, TECHNICAL AND MANAGERIAL STAFF* ("the Parkin case") decided in 1979 my predecessor Mr Edwards considered whether the exclusion of an exempt member from voting on such a matter

*Unreported. Copies are obtainable from the Certification Office.

amounts to a breach of the disability or disadvantage rule. In the Parkin case this rule was rule 36 (j); a Mr Page appeared for the complainant and the relevant motion, which was called motion 640 and was before the annual conference of the respondent union, was in these terms:-

"This Annual Conference regrets the error made by the AUEW in casting its votes on the issue of re-selection of MPs at the Labour Party Conference. The Conference requests the Labour Party NEC to waive the 3 year rule on this issue so that a decision that is seen to be fair may be reached."

7. The relevant paragraphs of the decision in the Parkin case are paragraphs 22-30 and in particular paragraph 27 which deals with the proper construction of the words "control or management of the political fund" in the disability or disadvantage rule. Paragraph 27 reads:-

"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."

8. Mr Double was aware of the Parkin case before he came to the hearing, but he did not seek to argue that the decision in that case was wrong. His argument was that the Parkin case was not sufficiently similar to his own case for the decision to be relevant to his complaint. He made several submissions to try to show the difference. He said that the motion at issue did not solely relate to the internal affairs of the Labour Party and he cited four matters which members would consider in voting on the motion which were not solely the internal

concern of the Labour Party. The first was whether the branch should endorse its secretary's action in making a nomination on behalf of the branch without the prior approval of the branch. Mr Double did not criticise the branch secretary and he emphasised that he was not arguing that the secretary had acted in breach of the rules, but he pointed out that his action was not clearly covered by them. The second was that Mr Spellar the prospective nominee had not presented himself at a branch meeting before seeking nomination. According to Mr Double this was contrary to common practice. The third was that the meeting was being asked whether Mr Spellar should be the nominee of the Stirchley Branch of the Union as a whole and not just the nominee of those members of the branch who contributed to the political fund. The fourth was that the identity of the parliamentary candidate of the Labour Party was a matter of interest to persons outside the Labour Party since he would, if elected, be representing all his constituents whatever their political beliefs. In addition, Mr Double argued that he was placed at a disadvantage not only by being deprived of a vote but also by being deprived of his rights as a branch member under rule 10(1)(a) of the Union's rules, which enshrines the right of a member to vote at branch meetings.

9. I have, as he asked me to do, considered all Mr Double's submissions separately and carefully, but I have no hesitation in reaching the conclusion that the differences to which he drew my attention do not affect the position that under the reasoning in paragraph 27 of the decision in the Parkin case he was being excluded only from the "control or management of the political fund" in not being allowed to vote on the motion. For my part, I agree with the views expressed by my predecessor in that paragraph. Matters of policy in respect of which a union has a decision to take only because of the expenditure of money from the political fund are matters within the expression "control or management of the political fund". Any disability or disadvantage suffered by Mr Double therefore related to the control or management of the political fund and there was no breach of rule 28(9).

10. It is quite clear that the motion was before the Stirchley Branch only because money had been spent from the political fund to affiliate the branch to the Northfield Constituency Labour Party. The essence of the motion was the decision as to whether or not Mr Spellar should be nominated by the branch. The other elements in the motion arose only because that decision fell to be taken. They were no more than procedural incidents of that decision - present only because of the expiry of the deadline for the receipt of nominations before the branch meeting and because Mr Spellar had not yet presented himself formally to a branch meeting -

and they therefore related to the control or management of the political fund. In my view a procedural matter relates to the control or management of the political fund if it arises from a decision which a union has to take only because of expenditure from that fund and if it does not have any application to matters which do not relate to the control or management of that fund. There is therefore no breach of the disability or disadvantage rule where exempt members are excluded from voting on procedural matters of this sort.

11. Mr Double placed most emphasis on his submission that he should not have been excluded from a vote on a nomination which was to be made in the name of the Sturchley Branch of the Union as a whole, and not just of the non-exempt members of the branch. He argued that since the nominee was presented as a branch nominee all members of the branch would be seen by outsiders as being associated with the nomination and perhaps with the views of the nominee and he contended that he should therefore have been entitled to vote on the nomination.

12. While I have some sympathy with Mr Double on this point the fact that the nomination was in the name of the branch does not alter my view that any disadvantage suffered by Mr Double in not being allowed to vote was related to the control or management of the political fund. A trade union with a political fund established under the Act is entitled to make political payments or to affiliate to a political party in its own name and there is no breach of the disability or disadvantage rule if it excludes exempt members from voting on such matters. Accordingly the Act and the Union's rules contemplate the very situation in which Mr Double finds himself.

13. I do not think that I need to say much about the submission concerning the interest of persons outside the Labour Party in the identity of a Labour Party parliamentary candidate. The activities of the Labour Party are of interest to, and may affect, people outside that party, but that does not mean that people who are not members of the Labour Party should be entitled to a say in how it runs its affairs or that there is a breach of the disability or disadvantage rule if an exempt member is excluded from a vote on a nomination of an individual for selection as a parliamentary candidate.

14. I turn now to Mr Double's final argument. A complaint about a breach of a rule that is not a rule made under Section 3 of the Act cannot, of course, be made to me and I should therefore not be taken as deciding whether rule 10(1)(a) was broken when Mr Double was not allowed to vote. Even if that rule was broken

I could not accept the argument that in being deprived of a right to vote which existed under the Union's rules Mr Double was placed under a disability or disadvantage which was in any way different from any he suffered simply by not being allowed to vote. If he was placed under any disability or disadvantage at all it was by being precluded from voting on the motion and this related to the control or management of the political fund.

15. Since I have decided that any disability or disadvantage suffered by Mr Double would have related to the control or management of the political fund, I do not need to consider whether a disability or disadvantage was in fact suffered. Nor do I need to consider a submission made by Mr Edelman, who appeared for the Union. This was that the motion related to the control or management of the political fund for another reason in that it indirectly involved a decision as to whether or not expenditure should be made from the political fund because Mr Spellar would receive help from the Union's political fund towards his election expenses if he was selected as a parliamentary candidate for the Labour Party. I would, however, add that the evidence did not show clearly the circumstances in which payments towards election expenses would be made. The connection between such payments and the nomination of Mr Spellar by the Sturchley Branch was therefore unproven.

16. For these reasons, I find the complaint not justified.