

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

MISS A ELLIOTT
AND
SOCIETY OF GRAPHICAL AND
ALLIED TRADES 1975 (SOGAT)

Date of hearing: 10 June 1982
Date of decision: 29 September 1982

The complainant appeared in person.

The Union was represented by Mr J Fulbrook, Counsel, instructed by
Messrs Robin Thompson and Partners.

1. Miss A Elliott, a member of the Society of Graphical and Allied Trades 1975 (SOGAT) ("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. Miss Elliott said that she was complaining because she strongly objected to the Union's political levy being deducted from her wages. She had given notice in accordance with the rules of the Union and she objected to contribute to the Union's political fund and she was in consequence exempt from contributing to that fund ("an exempt member"). Her complaint was that her exemption had not been effected in accordance with those rules because the political levy

was still being taken out of her wages.

3. Miss Elliott referred me to rules 3 to 7 of the Union's "Rules For Political Fund". They read as follows:-

"3. Any member of the Society may at any time give notice on the form of exemption notice referred to in Rule 4, or on a form to the like effect, that he objects to contribute to the Political Fund. A form of exemption notice may be obtained by, or on behalf of, any member, either by application at, or by post from, the Head Office of the Society, or any Branch Office of the Society or from the Certification Office for Trade Unions and Employers' Associations, Vincent House Annexe, Hide Place, London SW1P 4NG.

4. The form of exemption notice shall be as follows:-

Society of Graphical and Allied Trades 1975
Political Fund (Exemption Notice)

I hereby give notice that I object to contribute to the political fund of the Society of Graphical and Allied Trades 1975 and am in consequence exempt, in manner provided by the Trade Union Act, 1913, from contributing to that fund.

Signature

Name of Branch

Address Date

5. Any member of the Society may obtain exemption by sending such notice to the Secretary of the Branch to which the member belongs and, on receiving it, the Secretary shall send an acknowledgement of its receipt to the member at the address appearing upon the notice, and shall inform the General Secretary of the Society of the name and address of the member.

6. On giving such notice, a member of the Society shall be exempt, so long as his notice is not withdrawn, from contributing to the Political Fund of the Society as from the first day of January next after the notice is given, or, in the case of a notice given within one month after the date on which a new member admitted to the Society is supplied with a copy of these Rules under Rule 12 hereof, as from the date on which the member's notice is given.

7. (a) The National Executive Council shall give effect to the exemption of members to contribute to the Political Fund of the Society by making a separate levy of contributions to that fund from members of the Society who are not

- exempt, namely, the sum of 2p per week for all members.
- * No moneys of the Society other than the amount raised by such separate levy shall be carried to the Political Fund of the Society.

No levy shall come into force as respects a new member until the expiration of one month from his/her being supplied with a copy of these Rules under Rule 12 hereof on admission to the Society.

(b) The contributions to the Political Fund shall be allocated as to 60% to the Central Political Fund, and 40% to the Branch Political Fund".

4. Miss Elliott's complaint is technically a complaint of a breach of rule 7(a) on the ground that, since the political levy was being deducted from her wages, the National Executive Council had not given effect to the exemption of members to contribute to the political fund "by making a separate levy of contributions to that fund from the members of the Society who are not exempt".

The Facts

5. The facts are not in dispute. Miss Elliott works in Barrow for the Bowater Scott Corporation. She has been a member of the Union since she joined the Company in 1968. With her agreement, her employer deducted her union contributions from her wages and paid the contributions directly to the Union. She had signed a form authorising her employer to use this "check-off" system. At that time Bowater Scott would not collect the political levy through the check-off, and members who contributed to the political fund paid the political levy directly to the Union's branch secretary. Miss Elliott was herself a contributor to the political fund for some time; she paid the levy, then 1p per week, to the branch secretary every quarter.

6. In June 1980 the Union's conference decided to raise the political levy from 1p to 2p per week. Following the conference, the branch secretary of the Barrow branch of the Union, Mr B D McAllister, who gave evidence before me, approached the management side at Bowater Scott and asked whether the Company would collect two different rates of union contribution through the check-off - a lower figure from exempt members and a higher figure from members who paid the political levy. Mr McAllister said that he was told that this would be impossible because the check-off was operated by a computer and there was not space on the computer to take a two-tier system. However the Company did agree

to deduct the higher figure as a single standard union contribution from all members, and to leave it to the Union to make appropriate arrangements to refund the political levy to exempt members. This was the first time that the Company had agreed to collect the political levy on behalf of the Union. The new system came into operation on 3rd October 1980.

7. On the first pay day in October 1980, Miss Elliott saw that the political levy had been deducted from her wages. She then gave notice in accordance with rule 3 of the Union's "Rules For Political Fund" that she objected to contribute to the political fund. Her notice was received by the Union on 27th October 1980 so that, under rule 6, she was exempt from contributing to that fund as from 1st January 1981.

8. Mr McAllister took advice from the Union's head office about the refund of the political levy and informed his branch committee at a meeting in November 1980 that a refund in respect of the levy collected would be paid to exempt members at the end of each quarter. According to Miss Elliott, exempt members were told that they could collect their refunds from the branch office of the Union. A member's signature was, apparently, needed before the branch secretary could pay out money from Union funds. Mr McAllister explained to me that the refunds come out of the general fund account because all contributions are paid into that account. The only moneys which are transferred to the political fund account are the amounts received from non-exempt members in respect of the political levy. One effect of this arrangement is to ensure that no moneys received from exempt members reach the political fund.

9. Miss Elliott did not go to the Union's branch office to collect her refund, and no attempt was made by the Union to refund any money to her until 27th January 1982. On that date Mr McAllister approached her and asked her to sign for an amount of money which he was offering her as a reimbursement of the political levy. The precise sum offered was not established but it seems that it covered not only an amount in respect of the political levy already paid but also, as a payment in advance, an amount in respect of the political levy that would be deducted from Miss Elliott's wages during the forthcoming quarter.

10. It is clear that Mr McAllister approached Miss Elliott after receiving new instructions from Mr Keys, the General Secretary of the Union. These instructions were a consequence of Miss Elliott's complaint to me. Miss Elliott refused to sign for the money pending the outcome of her complaint because

Mr McAllister told her that the levy of 2p per week would continue to be deducted from her wages. On 28th March 1982, on the instructions of Mr Keys, Mr McAllister sent Miss Elliott a postal order for £2 with 8p attached in stamps. This amounted to payment of 2p per week for two years, which would cover the period from 1st January 1981 to 31st December 1982.

11. At the hearing the Union produced a letter dated 7th June 1982 from Mr M D Cain, Personnel Manager at Bowater Scott's to the Union's solicitor. Paragraph b) of that letter said:-

"b) With regard to your request for a 2-tier deduction, namely 69p and 71p, I must inform you that at this point in time the Company would prefer to deduct at a single standard rate for the reasons previously outlined. However, in October of this year, an updated computerised payroll package will be introduced at Barrow Mill, and at that time the administrative complexities related to a 2-tier deduction will be greatly reduced. On this basis the Company would be only too willing to accommodate such a system in accordance with the agreed check-off procedure if the Society still desire such a deduction".

Mr McAllister said that the two-tier system which the Company could operate from 1st October 1982 was desirable from his point of view because it would make his job a lot easier. Mr Fulbrook made it clear that the Union did desire that the two-tier system should be instituted and that the new system would therefore come into operation from 1st October 1982. Miss Elliott said that she would be satisfied with the two-tier system as from October. In addition, the Union offered to pay in cash at the hearing such sums as would be deducted from Miss Elliott's wages up to 1st October 1982. Miss Elliott was not prepared to accept that offer.

The Union's Response

12. For the Union, Mr Fulbrook argued that there could be no conceivable breach of the rules as from 1st October 1982. As for the period before that date, the Union had done all within its power to comply with its rules, but it was not able to insist on a two-tier system of deductions through the check-off because the computer was controlled by the employer. Miss Elliott had not been placed under any disadvantage by reason of her being an exempt member because a

refund of the money to be deducted from her wages in respect of the political levy had either been paid in advance of the deductions being made, or there had been an attempt by the Union acting in good faith to pay in advance. Further, the system used by the Union ensured that no money collected from exempt members was ever taken into the political fund. The claim that the Union had acted in breach of its rules should therefore not succeed.

Reeves v Transport and General Workers Union

13. Mr Fulbrook referred me to the decision of the Employment Appeal Tribunal in REEVES v TRANSPORT AND GENERAL WORKERS' UNION 1980 ICR 728 ("the Reeves decision"). It seems from the facts, the correspondence and the arguments put forward at the hearing that the Union was under the impression that the Reeves decision meant that it would not be in breach of its rules if appropriate arrangements were made for Miss Elliott to be reimbursed for the deductions from her pay in respect of the political levy. At first the Union arranged that the repayment could be collected at the end of the quarter (ie. in arrears). Later, after the Union had looked again at the Reeves decision, Mr McAllister was instructed to pay Miss Elliott in advance.

14. The Reeves case was another where the deductions in respect of union contributions from the wages of an exempt member included an amount equivalent to the political contribution because the employer could not or would not alter his computer system to allow for collection through the check-off of different rates of union contributions from exempt and non-exempt members. The Employment Appeal Tribunal held that in those circumstances such deductions may be made without a breach of the relevant rule, provided that the equivalent of the political contribution is repaid to the exempt member in advance of the deduction or, if it is not possible to pay in advance, as soon as reasonably possible after the date of the deduction.

15. Strictly, however, this part of the Reeves decision is not applicable to the Union's check-off problem or to this complaint at all. This is because the relevant political fund rule is different. The rule interpreted in the Reeves decision provided for exemption by relieving exempt members from paying the political fund portion of their periodical contribution to the union. Rule 7(a) uses the other method of providing for exemption laid down in section 6 of the Act, which is by a separate levy of contributions to the political fund from

members who are not exempt. The Reeves decision turned on an interpretation of the words "relief shall be given as far as possible to all members who are exempt on the occasion of the same periodical payment". These words appear in the standard rule used for providing exemption through relief from paying part of the normal union contribution but do not appear in rule 7(a) or in the rules of other unions which provide for exemption by a separate levy.

16. Another passage from the Reeves decision was cited by Mr Fulbrook in support of his argument that, since the Union had made or tried to make a payment in advance, Miss Elliott had not been placed under any disadvantage. The passage was to the effect that an exempt worker is not placed under a disadvantage compared with other members of the Union by a deduction from his wages in respect of the political contribution if the money is repaid in advance of the deduction or as soon as reasonably possible thereafter. However it is not necessary for me to determine whether Miss Elliott was placed under a disadvantage because Miss Elliott did not allege that she had been, nor did she complain to me about things which might in a general way amount to a disadvantage. Moreover, it is rule 8 of the Union's "Rules for Political Fund" which, pursuant to the requirements of section 3(1)(b) of the Act, states that members must not be placed under any disability or disadvantage, and rule 8 was not among the rules to which Miss Elliott referred me. Accordingly, this aspect of the Reeves decision is not relevant to my decision.

The Decision

17. The decision that I must reach is whether the Union gave effect to the exemption of members "by making a separate levy of contributions to that (the political) fund from the members of the Society who are not exempt", as required by rule 7(a).

18. I have no hesitation about agreeing with Mr Fulbrook that under the system which will be instituted as from 1st October 1982 there will be no breach of the rule. The Union will be making a separate levy of contributions to the political fund from non-exempt members. If the computer had been programmed to deal with two different rates of union contribution from 3rd October 1980 when the employer began to collect the political levy on behalf of the Union, it is clear that Miss Elliott would have had no grievance and there would have been no ground to justify a complaint.

19. However, from 1st January 1981 deductions equivalent to the political levy as well as the normal union contribution were made from Miss Elliott's wages. Under the check-off system which the Union arranged with the employer and which came into force on 3rd October 1980, union contributions which included the political levy were collected from all members. Exempt members were to be reimbursed. Could it be said that the Union was making a separate levy of contributions from members who were not exempt?

20. It would seem right that the system of exemption through reimbursement which is available to unions operating one method of providing for exemption should also be available to unions operating the other method. Although the Reeves decision is not directly relevant to unions with a separate levy, I have therefore considered whether it is open to me to reach a similar result so as to allow such unions to use systems of reimbursement which satisfy the conditions laid down in the Reeves decision. Reluctantly, I am forced to the conclusion that I am precluded from doing so by the words of rule 7(a).

21. It seems to me that, whether or not Miss Elliott was being reimbursed in advance or in arrears, I would not be giving the words of rule 7(a) their natural meaning if I held that a separate levy was being made from non-exempt members when, under arrangements made by the Union, an amount which included the political levy was being deducted from the wages of Miss Elliott, an exempt member, and paid to the Union. In my view if the same deduction is made from the pay of both exempt and non-exempt members a separate levy of non-exempt members is not being made and the exemption of exempt members is not being effected in the manner required by rule 7(a). Nor is this position altered by any form of reimbursement or by a system which ensures that the money collected from exempt members does not reach the political fund. Accordingly, I find that the Union was in breach of rule 7(a) of its "Rules for Political Fund" and that Miss Elliott's complaint is justified.

22. I recognise that one effect of my decision is that whereas unions which provide for exemption by relieving exempt members from paying the political portion of their union contribution may in the circumstances covered by the Reeves decision use check-off systems which result in deductions equivalent to political payments being made by the wages of non-exempt members, unions which provide for exemption by making a separate levy from non-exempt members may not. However, this difference is in my view inherent in the different words

used in section 6 of the Act to describe the alternative methods of providing for exemption that are available to unions.

23. Mr Fulbrook did not attempt to persuade me that the Union was making a separate levy of contributions from members who were not exempt, nor did he suggest that there is any argument to support that proposition. His submission was that the Union had done all within its power to comply with the rule, but that the computer was in the hands of the employer. However, the requirement in rule 7(a) that the Union must make a separate levy is, to use Mr Fulbrook's words, mandatory. There would therefore be a breach of the rule, whatever the mitigating circumstances, if the Union tried but failed to comply.

24. Moreover, it is not the case that the Union had no alternative but to fail to comply with its rules, nor even that - as in the Reeves decision - it could only comply by abandoning the check-off system. In the Reeves decision, where the computer would have had to make complicated and occasional calculations in order to collect the normal union contribution without the political contribution, the choice was between collection of the whole union contribution through the check-off, including the political contribution, and no check-off system at all. The choice before the Union was between retaining a check-off system which collected only the normal contribution - as before 3rd October 1980 - and introducing a check-off system which collected the political levy as well but did so from exempt as well as non-exempt members. The Union chose the latter. It could have chosen the former and thereby continued to collect the political contribution as a separate levy by requiring non-exempt members to pay to their branch secretaries; that would have ensured that exempt members did not have deductions in respect of political contributions taken from their wages.

25. I do, however, accept that the Union was trying to comply with its rules by making arrangements for reimbursement of the political levy in accordance with the Reeves decision. I have little doubt that the Union assumed that the Reeves decision applied and genuinely sought to carry it into effect. I also accept that any failure to do so resulted from a misunderstanding of its guidelines and was unintentional. Nevertheless it is clear to me that even if that decision had applied there would for two reasons have been a breach of the relevant rule in respect of the deductions from Miss Elliott's pay between 1st January 1981 and 27th January 1982 when Miss Elliott was first offered a payment in advance. First, the Reeves decision does not allow refunds in arrears

unless it is not possible to pay in advance and in this case there is no evidence to suggest that payment in advance was impossible. Second, the Employment Appeal Tribunal made it clear that it is important that the repayments should be made automatically without the exempt member having to make application for them and the payments were not made automatically to Miss Elliott.

The question of an order

26. Since I have decided that a breach of rule 7(a) has been committed, I am empowered by section 3(2) of the Act to make such order for remedying the breach as I think just under the circumstances. In view of the nature of the breach an order would be necessary if the Union was intending to continue to operate the arrangement whereby an amount equivalent to the political levy is taken out of Miss Elliott's wages. However, in the circumstances of this case I do not think that an order is necessary to remedy the breach. Under the new system which will come into effect on 1st October 1982 the deductions to which Miss Elliott objects will cease. I also take into account the fact that there was no question of any deliberate breach by the Union, which arranged the check-off system which came into effect on 3rd October 1980 under the mistaken belief that the Reeves decision applied to its own rules and under a misunderstanding of that decision.

27. The only matter which remains is the money which will have been deducted from Miss Elliott's wages in respect of the political levy between 1st January 1981 and 1st October 1982. The Union should ensure, and will no doubt wish to ensure, on receipt of this decision that any amount outstanding is paid to Miss Elliott. For her part, Miss Elliott should accept the money that is refunded. However, as the Union offered to pay this money to Miss Elliott at the hearing and since the whole amount is less than the £2.08 which she was sent by way of a postal order in March, I do not doubt that an order in respect of this money is not required and would not be appropriate.