

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

R N COLEMAN
AND
POST OFFICE ENGINEERING UNION

DATE OF HEARING 4 August 1981
DATE OF DECISION 2 September 1981

The complainant appeared in person.

The Union was represented by Mr F Reynold, barrister.

1. Mr Coleman, who is a member of the Post Office Engineering Union ("the Union"), complains to me under section 3(2) of the Trade Union Act 1913 that the Union has acted in breach of its political fund rules.

The complaint

2. Mr Coleman's complaint is about the payment of an affiliation fee to the Canterbury and District Trades Council Campaign Against the Cuts (which I shall call "the Campaign") by the Canterbury branch of the Union from the general funds of the Union administered by the branch. He complains that literature distributed by and meetings held by the Campaign were respectively political literature and political meetings within the meaning of rule 25.1(e) of the Union's rules. Accordingly rule 25.2 required the affiliation fee to be paid from the Union's political fund and the Union acted in breach of rule 25.2 in paying it from the general fund.

3. The relevant parts of Rules 25.1 and 2 are in the following terms:

25.1 The objects of the Post Office Engineering Union shall include the furtherance of the political objects to which section 3 of the Trade Union Act 1913 applies, that is to say, the expenditure of money:-

.....

- (e) on the holding of political meetings of any kind, or on the distribution of political literature or political documents of any kind, unless the main purpose of the meetings or of the distribution of the literature or documents is the furtherance of statutory objects within the meaning of the Act, that is to say, the regulation of the relations between workmen

and masters, or between workmen and workmen, or between masters and masters, or the imposing of restrictive conditions on the conduct of any trade or business, and also the provision of benefits to members.

2. Any payments in the furtherance of such political objects shall be made out of a separate fund (hereinafter called the Political Fund of the Union). The Political Fund of the Union shall be administered by the Executive.

Background and facts

4. The Canterbury branch of the Union (the "Branch"), which is the branch to which Mr Coleman belongs, formally resolved to affiliate to the Campaign at a meeting held on 31 March 1980; the accounts of the Branch show that on 1 April 1980 the affiliation fee of £8 was paid to the Campaign from the general funds of the Union administered by the Branch.

5. Earlier Mr Coleman had learned of the proposal that the Branch should affiliate to this Campaign and had told Mr Margrie, the Branch Secretary, that he thought the matter was political. Concerned at this, Mr Margrie telephoned Mr Norman, the Treasurer of the Union, who expressed the view that the fee could be paid out of the general funds; in particular he referred to a provision in the rules expressly allowing branches to use funds to support properly sponsored appeals from Trades Councils to which the branches are affiliated. The Branch is affiliated to the Canterbury Trades Council and as the name of the Campaign suggests, the Campaign is supported by the Trades Council.

6. According to Mr Fenyo, the Campaign's present Chairman, the Campaign was started as the result of informal meetings which took place in or about October 1979. It was then decided that the Campaign should if possible come under the umbrella of the Trades Council because this would make it easier to involve local trade union branches.

7. In late 1979 or early 1980 the Campaign became formally associated with the Trades Council and became known by its present name. At about the same time it acquired a constitution under which it is run by an Executive Committee which includes one person nominated by the Trades Council. The Campaign is therefore a separate organisation from the Trades Council. Mr Fenyo states that the Campaign includes individuals who are not members of the Labour Party and unions which are not affiliated to the Labour party.

8. The Campaign's objects as set out in rule 1 of its constitution are as follows:

- "1. (a) To campaign against the government's public spending cuts and vigorously defend and demand an improvement and expansion of our health, education, housing and other social services.
- (b) To campaign against the government's overall economic policies which are designed to benefit only the rich and the owners of private industry.
- (c) To join with all other individuals, organisations and trade unions in pursuing these objectives".

9. In furthering its cause the Campaign published a number of leaflets of which a selection was produced in evidence. I accept assurances that the selection was a fair representative sample. The leaflets attack the particular cuts in local social services being proposed at the time; they also attack the reductions in public service employment and in the wages of public service employees which might be expected to result from cutting social services under the present Government's policy of imposing cash limits on the spending of local authorities.

10. The leaflets do however contain some material which might be considered to have a more general political flavour. The following passages are taken from a leaflet issued by the Campaign;

"WHAT CAN WE DO?"

We must through our trade union branches demand that our union leaders organise united action by private and public sector unions against the government. The strategy should be to apply economic sanctions through industrial action in the private and public sectors. In the private sector, strike action will hit most directly and effectively at private capital - at profit. In the public sector, workers as well as taking action to protect their wages and jobs could participate by aiming their action at the government economically - thus, for example, workers would refuse to take fares on buses and trains while keeping the services running; similarly in the gas, water, electricity and telecommunications industries workers would refuse to disconnect services to the public for non-payment of bills and/or refuse to collect on bills; in the health service similar action would be taken by refusal to collect prescription charges and to work in any way with private beds.

WE MUST PRESS FOR THIS STRATEGY THROUGH OUR BRANCHES - PUT RESOLUTIONS TO YOUR LOCAL BRANCH - INSIST THAT THE TUC BROADEN THE STEEL STRIKE AND BACK THE WELSH TUC IN ITS DEMAND FOR ALL-OUT ACTION AGAINST THE GOVERNMENT ON THE ISSUES OF JOBS, LIVING STANDARDS AND PUBLIC SERVICES.

We all know that the return of a Callaghan/Healey Labour government would be no solution to our problems. Their only contributions would be to provide a different face for the same policies as the present government.

WE MUST MAKE IT CLEAR THAT WE WILL REJECT ANY GOVERNMENT OF WHATEVER PARTY THAT TRIES TO MAKE US PAY FOR THE PROFIT OF THE FEW AT THE EXPENSE OF OUR NEEDS AND THOSE OF THE COMMUNITY".

11. The Campaign also held regular meetings, in public houses, which were open to members of the public. Under one of its rules it distributed a monthly newsletter to Campaign members.

Submissions on behalf of the Union

12. Mr Reynold; appearing for the Union, submitted that in order to decide the complaint I had to ask myself a series of questions which he formulated in the following terms:

(i) did the Branch's decision to affiliate to the Campaign have an essentially political purpose?

(ii) if the answer to that question was "yes", did the decision have a political purpose encompassed by the "political objects" contained in rule 25.1(e)?

(iii) if the answers to both the first and second questions were "yes", did the proviso in rule 25.1(e) relating to the furtherance of the "statutory objects" apply?

It would of course follow that if the answer to either of the first two questions was "no", the complaint should be dismissed.

13. The first of Mr Reynold's questions is of course subjective in nature in that it requires the intention of the Union when making the payment to be ascertained; Mr Reynold submitted strongly that only the application of a subjective test made sense in the context. He went on to say that on the evidence the Branch had no political purpose in deciding to affiliate. Mr Reynold's second question "did the decision to affiliate have a political purpose encompassed by the "political objects" contained in rule 25.1(e)" is also subjective in character.

14. In the case of Richards and the National Union of Mineworkers,* counsel for the union made a rather similar submission; he argued that in the light of the House of Lords decision in Express Newspapers v McShane, ** - in which it was held that the expression "an act done by a person in contemplation of furtherance of a trade dispute" in section 13(1) of the Trade Union and Labour Relations Act 1974 was to be interpreted subjectively by looking at the intention of the person doing the act - the word "furtherance" in the rule of the NUM corresponding to the Union's rule 25.2 should be given a subjective interpretation. My predecessor as Certification Officer, Mr J L Edwards, disagreed for reasons which I find compelling. he said:

"There is, I consider, a substantial difference between "action" in furtherance of a trade dispute when "action" is without limitation and therefore covers any kind of act and "payments in the furtherance" of specific and detailed matters where a payment falling even marginally outside those matters is not covered. My view therefore remains that Parliament did not intend that the issue on complaints of this sort should turn only on the intention of the union in accordance with a subjective interpretation of the words "in the furtherance". If it had, there would be little point in the detailed description of the

political objects that appears in the list in section 3(3) and rule 47(1), because the intention could only be determined by an assessment of whether the union had a general political intention and not by reference to the detail of the listed political objects".

15. The rule I have to interpret, rule 25.2 starts by saying "Any payments in the furtherance of such political objects shall be made out of a separate fund (hereinafter called the Political Fund of the Union)". There is no requirement in the rules that two different tests, whether subjective or objective, are to be applied. There is a single test and the test is whether the payment in question was "in the furtherance" of the political objects.

16. In the result, I agree with the views expressed by the Certification Officer in the Richards case; in my opinion rule 25.2 requires me to determine objectively whether the Union made payment directly or indirectly on one of the political objects set out in rule 25.1 and does not require me to determine the matter by reference to the intention or motive of the Union in making the payment.

The matters for decision

17. It follows from my rejection of the subjective tests that I must ask myself whether the Union made a payment in the furtherance of the distribution of literature or the holding of meetings and, if so, whether the literature or meetings were "political" within the meaning of the 1913 Act and the rules. It is I think convenient to consider the first of these questions before discussing the meaning of "political".

18. In the circumstances of this case I think the first question itself has two elements which it is necessary to consider separately:

(i) did the Campaign make any payments on the distribution of literature or the holding of meetings (whether or not the literature or meetings were political)?

(ii) was the payment to the Campaign a payment in the furtherance of the distribution of

literature or holding of meetings bearing in mind that the payment by the Union was an affiliation fee and was not therefore made directly on the distribution of literature or holding of meetings?

19. On the first element, I am satisfied from the evidence of Mr Fenyo that the Campaign did make payments for the hire of rooms to hold its monthly meetings and that these were payments on the holding of meetings. The distribution of literature is a little more complicated; in McCarthy and Association of Professional, Executive, Clerical and Computer Staff (APEX)* the Certification Officer held - following the decision of the Chief Registrar of Friendly Societies in Forster and the National Amalgamated Union of shop Assistants Warehousemen and Clerks (reported in Part 4 of the Chief Registrar's Annual Report for 1925) - that "distribution" referred only to the cost of actual distribution and not to production costs. Mr Reynold seemed disinclined to accept that "distribution" excluded production costs but for present purposes I think it is sufficient for me to say that while many of the leaflets and newsletters issued by the Campaign were distributed by hand, I am satisfied that some of the literature issued by the Campaign was distributed by post and accordingly that there were payments on its distribution.

20. Turning to the second element, in the Richards case the Certification Officer held, following the decision in Forster's case mentioned earlier, that a payment made by a union to an intermediate body which spent money on a political object was, in principle, within the political objects, but was not in fact within them if, when the union made the payment, it was unaware that the intermediary was likely to spend money on a political object. I agree with that reasoning. Applying it to the present case, I am satisfied that the Branch knew, when it affiliated to the Campaign that the Campaign was likely to spend money on distributing literature and holding meetings.

21. Having considered the two elements, I therefore conclude, in terms of rule 25.1(e) that there was here a payment by the Branch in furtherance of the distribution of literature and the

holding of meetings. The outcome of the complaint therefore turns on whether those meetings were "political" within the meaning of the 1913 Act and the rules of the Union.

Were the literature and meetings political?

22. It is difficult to define "political". The Chief Registrar's view in the Forster case was that, in the context of the 1913 Act, "political" meant the adjectival form of "party politics" and not of "polity". Mr Reynold submitted he was right; but Mr Coleman argued that he was not because the word in the 1913 Act was simply "political"; further he said that in the Richards case the Certification Officer had used the term "political" rather than "party political" and in his opinion the Certification Officer's view was to be preferred.

23. So far as the Richards case is concerned it seems clear to me that the Certification Officer used "political" rather than "party political" because the meetings in question were held by the Labour party in protest against the policies of the Government and were therefore "political" on any interpretation of the word. There was no need for the Certification Officer to go into the precise meaning of political and I do not consider that he did so; accordingly Mr Coleman is, I am afraid, mistaken in thinking that the Certification Officer was disagreeing with the approach taken by the Chief Registrar in Forster's case.

24. I agree with the Chief Registrar's distinction but he did not define closely what he meant by "party political". Unfortunately this complaint demands that I must try to do so. Mr Reynold submitted that "political" must be interpreted having regard to the mischief with which the 1913 Act was intended to deal, that mischief being expenditure in relation to Parliamentary elections. I think that is a strong submission although in the end I think section 3(3)(e) of the Act and rule 25.1(e) take the matter rather wider; in my view that section and rule are primarily aimed at expenditure on literature or meetings held by a party which has or seeks to have members in Parliament, or directly and expressly in support of such a party. The fact that sections 3(3)(a) to (d) of the Act

all relate to electoral matters does in my view give further support to that interpretation.

25. Should the meaning of "political" extend beyond these narrow confines? It is difficult to see where wider boundaries can be set with any conviction. For example, it seems to me to be unsatisfactory to hold that opinions which support or oppose one or more of the various matters which form Government policy or policies of other political parties are by definition "political". I do not think it would be right to conclude that people expressing a view on matters of public concern - whether politically controversial or not - are necessarily expressing a "political" view. Nor do I think the strength with which it is expressed alters the position. If a campaign expresses a number of opinions which oppose or support those of a government or political party it may be possible to identify its political stance and some of its views may have political overtones. But I cannot accept as a general proposition that it is always "political" in the terms of the 1913 Act for people merely to distribute literature or hold meetings at which views on matters of public concern are expressed. I do not however rule out that particular cases or particular circumstances could create exceptions to this conclusion.

26. I cannot say with certainty that the view which I have expressed on the meaning of 'political' corresponds with the view of the Chief Registrar but I think it must be close to doing so. It is a view which imposes severe limitations in its application and it may invite scepticism in the world of today; but it is in my opinion the correct view in the light of the intention and meaning of the 1913 Act.

27. Turning to the facts of this case, I think many people would consider that the literature distributed and the meetings held by the Campaign show an identifiable political standpoint. Some but by no means all the literature shows a bias against private industry and capitalism. The leaflet quoted in paragraph 10, invites industrial action and contains criticism directed at both the present Government and the previous Labour Government from a position more likely to appeal to those on the left

unions not affiliated to the Labour party, coupled with the variety of its targets and professed aims, exclude its activities from falling within the definition of "political" which I have attempted in para 24. Accordingly, while I understand the 1913 Act or the rule and I therefore find the complaint not justified.

The "statutory objects" proviso

29. It is not strictly necessary for me to say anything on this matter but I think it may be helpful to unions if I do so. Mr Reynold submitted that if I found against the Union on all other grounds then the Campaign's purpose in distributing literature and holding meetings was, in the last resort the furtherance of the statutory objects and that accordingly there was no breach of rule. I do not need to decide that question but unions should realise that the proviso in Section 3(3)(e) of the Act relates to the purpose of the body distributing literature or holding meetings and not the purpose of the union in making a payment to the body in the first place.

30. By their nature, bodies which are not trade unions are less likely to distribute literature or hold meetings for a purpose within the statutory objects. Since, on the view I take, it is incorrect to apply a subjective test, that is to say, to look at the intention of the union in making the payments when considering whether the payment is in furtherance of the political objects, it follows that unions need to be careful about paying money to other bodies likely to spend the money on political objects; the "statutory objects" escape route is unlikely to be open to unions in those circumstances.