

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

**IN THE MATTER OF COMPLAINTS AGAINST THE
ASSOCIATED SOCIETY OF LOCOMOTIVE ENGINEERS AND FIREMEN
(ASLEF)**

APPLICANT: MR D O' ROURKE

Date of Decisions:

29 June 2001

DECISIONS

- 1.1 Under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992(as amended) ("the Act") any member of a trade union aggrieved by an alleged breach of the union's rules relating to any of the matters mentioned in subsection (2) may apply to me for a declaration to that effect. The matters in subsection (2) include "*the balloting of members on any issue other than industrial action*" and "*the appointment or election of a person to, or the removal of a person from, any office.*" If, after giving the member and the union an opportunity to be heard, I consider such a breach has occurred I may make such order for remedying the breach as I think just in the circumstances.

1.2 On 20 November 2000 I received an application from Mr O' Rourke, a member of ASLEF, complaining of alleged breaches relating to the union's procedures with regard to balloting and the election of persons to an office of the union. The complaints were(1) that:

“ASLEF breached its Rule 10 section B(2) in that the union sent out ballot papers for the election of a Company Council Representative - Scotrail to the Perth and the Stirling Branches of ASLEF and not to the Caledonian Branch, thus denying the vote to the members of the Caledonian Branch”

and that this was matter referred to in section 108A(2)(c) of the Act, and (2) that:

“Contrary to ASLEF Rule 10 section A(14) the union deemed as ineligible the nomination of Mr J D West to stand in the election for the position of District Secretary/Assistant General Secretary”

and that this was matter referred to in section 108A(2)(a) of the Act.

1.3 I made enquiries of Mr O' Rourke and the union, after which I was ready to make a decision but, as required by section 108B(2)(b) of the Act, I offered the parties the opportunity of a formal hearing. Both parties agreed that such a hearing was unnecessary.

1.4 For the reason set out below I dismiss both of these complaints.

Requirements of the legislation

1.5 It may be helpful, at this point, if I set out the relevant statutory requirements of the Act to which I have referred to in this decision. The relevant statutory requirements are as follows:

“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).

(2) The matters are -

- (a) the appointment or election of a person to, or the removal of a person from, any office;*
- (b) disciplinary proceedings by the union (including expulsion);*
- (c) the balloting of members on any issue other than industrial action;*
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;*
- (e) such other matters as may be specified in an order made by the Secretary of State.*

(3) ...”

Complaint One, that ASLEF had breached its Rule 10 section B(2) in that the union sent out ballot papers for the election of a Company Council Representative - Scotrail to the Perth and the Stirling Branches and not to the Caledonian Branch, thus denying the vote to the members of the Caledonian Branch.

The Applicant's case

2.1 I set out below the provisions of ASLEF Rule 10 section B(2) which the applicant alleged had been breached by the union. ASLEF Rule 10 section B(2) states that:

“The method of voting shall be on the block voting system, according to the number of members of the Branch, the number of members involved in any specific election, or the number of members paying the political levy, as appropriate, and forms will be available for any member who disagrees with the candidate selected by the Branch to forward his individual vote direct to Head Office.”

2.2 The background to this complaint was that ASLEF sent out circulars 321/2000 and 323/2000 on 3 August 2000, addressed, inter alia, to the Perth and the Stirling Branches of the union advising members of those branches that nominations for elections to the position of Company Council Representative(Scotrail) were being sought for those constituencies for a three-year term of office commencing on 1 January 2001. Those positions were for union members to act as representatives on the Scotrail Company Council. Successful nominations by means of the branch block voting system were to be received by the union's Head Office no later than 25 September 2000.

2.3 Mr O' Rourke, as the Branch Secretary of the Caledonian Branch no 201 wrote to the General Secretary on 30 May 2000 to advise that the Stirling and the Perth Branches had merged to form the Caledonian Branch. As the two depots involved were in two different Scotrail areas he proposed that the members of the Caledonian Branch should be put into one area. The purpose was that voting would take place for these Company Council Representative posts at the Caledonian Branch, and not individually at the now defunct Perth and the Stirling Branches. This letter was acknowledged by the General Secretary on 2 June and again on 19 June 2000. Mr O' Rourke wrote again to the General Secretary on 6 August, emphasising that on the merger of the Perth and the Stirling Branches to form the Caledonian Branch, the union should have ruled that when voting in union elections, there should be one vote from the Caledonian Branch alone, not one each from Perth and Stirling Branches. He suggested that the nominations for the 'DFC' (Divisional Functional Committee) Company Council Representatives should be held back until the Executive Committee, to whom he had addressed the matter, had made a decision in this respect. The General Secretary replied on 6 September indicating that his letter of 10 July 2000 to Mr O' Rourke (apparently not received by Mr O' Rourke) had ruled that the DFC election *'was not a matter for the Executive Committee to involve themselves with,'* as per EC Resolution 503/408. Mr O' Rourke responded to this on 12 September 2000 saying that the Caledonian Branch could not take part in the DFC Elections (Scotrail) because the Branch ought to have been given the vote as a single branch and not as two separate branches, Perth and Stirling. For the same reason, the LLCs (Local Level Committees) gave notice of their withdrawal (as from 1 January 2001) from the Scotrail machinery. This was because the union allegedly had not given the Caledonian Branch *'its democratic right to vote as one branch.'* In correspondence from the General Secretary on 9 October 2000, the union's Executive Committee ruled that by Resolution 807/410

the matter of the DFC Electoral Area Perth/Stirling: Scotrail, was a matter for discussion between the Company Council and Scotrail management. Not being satisfied with this ruling on the electoral status of the Caledonian Branch in the Divisional Council elections, Mr O' Rourke made a formal complaint to me on 20 November 2000.

- 2.4 Mr O' Rourke asserted that as the Perth and the Stirling Branches had merged to form the Caledonian Branch, votes in those elections should only be received from the Caledonian Branch: the Perth and the Stirling Branches had ceased to exist, he claimed. Thus in Mr O' Rourke's view, ASLEF Rule10B(2) had been breached by the union in that the circulars 321/2000 and 323/2000 invited nominations from the Perth and the Stirling Branches separately, rather than from the single, merged Caledonian Branch. In Mr O' Rourke's view, this denied the vote in these divisional elections to the members of the Caledonian Branch. Mr O' Rourke challenged the union's approach in sending circulars to the Branch Secretary of the Caledonian Branch but inviting nominations from (in his view) two defunct branches, Perth and Stirling. The union circular 70/1994, referred to in correspondence from the union, made reference to separate constituencies being entitled to vote in the event of elections for Divisional Councillors, there being 4 constituencies for Scotrail, each consisting of a number of depots. Those constituencies placed the Perth and the Stirling Branches in different areas for voting purposes. According to Mr O' Rourke, the EC decision to merge the Perth and the Stirling Branches to form the Caledonian Branch postdated and therefore superceded ASLEF Circular No 70/1994, thus according the vote to the Caledonian Branch only. The Caledonian Branch juxtaposed one operating company for DFC electoral purposes and in Mr O' Rourke's view, it did not make sense to attract additional votes from separate constituencies. Mr O' Rourke gave examples of other branches/depots, none of which apparently attracted

two or more votes. He asserted that *'the election boundaries were changed to encompass depots into Branch votes.'*

The Union's response

- 2.5 Initially, the union raised the question of my jurisdiction to hear this complaint. In its view, I should have rejected Mr O' Rourke's complaint at the outset because Mr O' Rourke had not taken all reasonable steps to resolve his grievance by means of the union's internal complaints procedures, ie *'Complaint to the Appeals Committee or a Special or Annual Conference'* as provided for in ASLEF rule.
- 2.6 Without prejudice to the above argument, the union affirmed that ballot papers were sent out to the Caledonian Branch, in accordance with ASLEF Rule 10(b) for Scotrail Company Council elections, one each for the Perth and for the Stirling members of the Caledonian Branch. According to ASLEF, *"the Caledonian Branch for Scotrail Company nominations/elections procedures covers two seats ie two electoral areas. Only members of the Branch in those electoral areas are entitled to vote ie Perth ASLEF Caledonian Branch Members can only vote in the Perth constituency and the same applying for the Stirling members of the Caledonian Branch."* Thus, in the union's view, the Caledonian Branch would not vote as a single entity, as suggested by Mr O' Rourke. The union drew my attention to the terms of circular No 70/1994 which instructed branches on the question of Company Council elections. This circular dealt with revised bargaining machinery: changes in staff side representation in relation to the Society's elected representatives and their role in *'the new train and freight operating companies.'* These arrangements were described in the circular as *'interim solutions.'* The circular provided that, *'in the event of elections for Divisional Councillors only those members*

in each constituency, outlined in the attached appendices will be able to vote. In the union's view that position had neither altered nor been challenged since then. Moreover, the union insisted that these were company- based, not ASLEF positions and could only be changed by the agreement of Scotrail management. Scotrail had never changed the status quo, the union claimed. The attached 'appendices' referred to above, inter alia, recorded that for DFC electoral purposes, Scotrail consisted of 4 electoral constituencies, one of which contained the Perth depot and another the Stirling depot. Each depot would have a vote in the Divisional Council Elections for a company representative. Thus the membership had the opportunity to vote in the Perth and the Stirling constituencies. The fact that the Caledonian Branch could not vote was due to the fact that Mr O' Rourke had himself withdrawn that branch from the elections and not by any action of the union's executive.

Reasons for my decision

2.7 Mr O' Rourke has complained to me that ASLEF breached its Rule 10 section B(2) in that it sent out ballot papers for the election of a Company Council Representative - Scotrail to the Perth and the Stirling Branches of ASLEF and not to the Caledonian Branch, thus denying the vote to the Caledonian Branch. This raises a number of questions: whether the ballot papers should have been issued to the Perth and the Stirling Branches separately as claimed by the union or just to the Caledonian Branch as claimed by Mr O' Rourke; whether the action of the union in sending the ballot papers out to Perth and the Stirling Branches denied the vote to the Caledonian Branch members and finally, the question of my jurisdiction to determine this complaint. I will deal with this latter point first.

2.8 Section 108B(1) of the Act provides that:

“The Certification Officer may refuse to accept an application under section 108A unless he is satisfied that the applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union.”

The union argued that as Mr O' Rourke did not invoke its formal complaints procedures, I should reject his application. I acknowledge that Mr O' Rourke did not go through the union's internal complaints and appeals procedure, under rule, as stated above by the union. The facts are that Mr O' Rourke contacted the General Secretary of the union on a number of occasions to draw his complaint to the union's attention, in letters of 30 May, 6 August and 12 September 2000. However, the union's response, rather than suggest to Mr O' Rourke that he should use the formal complaints procedures, instead informed him, in its letter of 9 October 2000 that this was not a union matter, being, *'for discussion between the Company Council and Scotrail Management.'* In effect, the union's action under its Resolution 807/410 prevented Mr O' Rourke from pursuing the matter with the union any further by any available means. In the circumstances, I am of the opinion that Mr O' Rourke had taken all reasonable steps to raise his grievance, albeit not via the formal complaints route. Section 108B(1) gives me discretion to refuse to accept an application according to my own judgement of the extent to which an applicant may or may not have used 'all reasonable steps' before complaining to me. In that the union closed off Mr O' Rourke's option to complain formally under rule and that Mr O' Rourke had otherwise tried several times to attract the attention of the General Secretary to his grievance, but to no avail, I accepted the complaint as set out above.

2.9 I turn now to the substance of Mr O' Rourke's complaint. The union has argued that though the Perth and the Stirling Branches of the union had merged, this did not alter the voting procedures in respect of Company Council Representative elections. The Union contended that the Caledonian Branch, for the purposes of these elections, covered two seats in two different electoral constituencies. Only the members of the branch in those electoral constituencies would be entitled to vote ie the Perth ASLEF Caledonian Branch members in the Perth Constituency and the Stirling members likewise in their own constituency. According to union circular No 70/1994 the instructions for voting in these constituencies made it clear that *'only those members in each constituency, outlined in the attached appendices will be able to vote.'* The relevant appendices provided a list of depots in Britain attracting votes in Divisional Council elections. In Scotrail's case there were four separate constituencies involving four representatives, the Perth and the Stirling Branches each being situated in separate constituencies, thus requiring two separate votes. The union told me that though these voting arrangements were an interim measure occasioned by the need to revise *'bargaining machinery involving changes in staff side representation,'* this position had not altered since 1994 or been challenged since then. The union insisted that in being Company, not ASLEF positions, these arrangements could only be changed by Scotrail management and they had not done so.

2.10 Mr O' Rourke's argument was that union circular No70/1994 had, de facto, been superseded by the merger of the Perth and the Stirling Branches to form the Caledonian Branch. In his view, the Perth and the Stirling Branches though in separate areas, had effectively merged to form the Caledonian Branch, a single entity for block voting purposes in these elections. However, other than to cite examples of other depots/branches who did not attract separate votes, Mr O' Rourke did not provide me

with any evidence that the merger of the Perth and the Stirling Branches to form the Caledonian Branch had altered the ruling set out in ASLEF Circular No 70/1994. Also, it seems to me that the decision to form the Caledonian Branch was effected for reasons particular to ASLEF and as such had no effect on the arrangements for voting constituencies in the Divisional Council elections.

2.11 I am not persuaded that the action by the union in sending out ballot papers separately in respect of the Perth and the Stirling Branches denied the vote to the Caledonian Branch members. For practical purposes, the membership was afforded the opportunity to vote but not under the Caledonian Branch umbrella as such. More importantly, if the Caledonian Branch membership had been denied the vote, it was not because the union had sent out separate ballot papers but because Mr O' Rourke, as Branch Secretary, had written to the General Secretary on 12 September 2000 withdrawing the Caledonian Branch from the 'DFC' elections. Thus by Mr O' Rourke's own actions, the Caledonian Branch could not vote in the Divisional Council Elections.

2.12 Finally, Mr O' Rourke has made the complaint of breach of union Rule 10B(2) which sets out the procedures for voting in any union elections:

“The method of voting shall be on the block voting system, according to the number of members of the Branch, the number of members involved in any election, or the number of members paying the political levy, as appropriate, and forms will be available for any member who disagrees with the candidate selected by the Branch to forward his individual vote direct to Head Office.”

This rule concerns solely the method of voting on the block principle but is silent as to the identity and location of the voters. Rule 10B(2) does not therefore inform Mr O' Rourke's complaint, which seeks to link the rule on the block voting system with his claim that the Caledonian Branch ought to have had the vote in its own right and not via the Perth and Stirling members of the Branch. Consequently, Mr O' Rourke's claim in this respect is misconceived.

2.13 For the reasons stated in paragraphs 2.7 to 2.12 above, I dismiss this complaint.

Complaint Two, that contrary to ASLEF Rule 10 section A(14) the Union deemed as ineligible the nomination of Mr J D West to stand in the election for the position of District Secretary/Assistant General Secretary.

Background

3.1 This complaint from Mr O' Rourke, brought on behalf of another member of the union Mr J D West, arose from the refusal of the union's Executive Committee ("the EC") to allow Mr West to stand in an election for the positions of Assistant General Secretary and District Secretary ("AGS and DS") on the grounds that he was *'ineligible to run in this election.'* The background was that the General Secretary issued Circular No. 218/2000 to all branches of the union on 7 June 2000, advising that the EC had passed Resolution 489/408 to seek applications for the position of Assistant General Secretary, to be received no later than 20 July 2000. Mr O' Rourke wrote to the General Secretary on 5 July 2000 to appeal against the EC's decision not to allow Mr West to stand in these elections (effected by the EC Decision No. 543/408). Mr O' Rourke subsequently

withdrew that appeal on 16 July by letter which the union acknowledged on 26 July 2000. Following this, the General Secretary issued ASLEF circular No. 364/2000 on 10 August 2000 which advised all members that the General Secretary had been instructed to make the necessary arrangement for the conduct of a ballot for the Assistant General Secretary's position, the ballot papers to be returned no later than 7 September 2000. At the same time, the membership were informed that *'Bro. J.D. West, Caledonian Branch be deemed ineligible to run in this election.'* Mr O' Rourke, as Mr West's Branch Secretary, wrote to the General Secretary on 12 September asking why Mr West had not been allowed to stand in the *' District Sec/AGS '* elections. He also indicated that Mr West would complain to me in the absence of a satisfactory answer. This letter was acknowledged by the General Secretary on 14 September 2000. The Union followed this on 3 October by informing Mr O' Rourke that by Resolution 779/410 (re-affirming union Resolutions 543/408 and 669/408). *"Bro West could not fulfil the terms of rule book requirements."*

- 3.2 Mr O' Rourke clearly disagreed with the union's ruling in 3.1 above and complained to me on 20 November 2000 that the union had breached its Rule 10 A (14) by not allowing Mr West, as a fully paid-up union member, to stand in the Assistant General Secretary/ District Secretary elections.

The applicant's case

- 3.3 ASLEF Rule 10A section (14) states that:

"Every current member paying contributions in accordance with Rule 47, paragraph one and eligible to participate in an election, will be sent a voting paper by post to his home address or any other address which he has asked the

Society in writing to treat as his postal address, and be given a convenient opportunity to return it by post.”

3.4 Mr O' Rourke argued on Mr West's behalf that though Mr West had been retired on ill-health grounds by Scotrail with effect from 17 October 2000, he was eligible to stand for election to these posts. Mr West was a fully paid up (current) member of the union when circular No 218/2000 calling for nominations, was issued. Moreover, in spite of Mr O' Rourke's withdrawal of Mr West's appeal against Resolutions 543/408 and 669/408 deeming him ineligible, Mr O' Rourke said he had made it clear to the General Secretary in correspondence that he was dissatisfied with the EC's ruling not to allow Mr West to stand.

3.5 Mr O' Rourke contended that the union need not have made that decision. The union, he said, had alleged ignorance of the fact that Mr West had left Scotrail's service under protest, despite ample evidence to the contrary. Mr West had failed a Scotrail medical which classified him as medically unfit to be a driver and subsequently Scotrail were unable to find any alternative employment for Mr West. As early as 24 February 2000, Mr O' Rourke stated that he had expressed his concerns about Mr West's impending loss of livelihood to the EC. Mr O' Rourke also argued that the District Secretary (an EC member) had been made aware of Mr West's dispute with Scotrail in 'early July 2000' and had attended Mr West's ill-health retirement appeal in Glasgow. Mr West had advised the District Secretary that if he did not obtain satisfaction over Scotrail's decision he would take legal action against the Company. Mr O' Rourke provided me with evidence by a letter of 6 March 2001 that this had been done as Mr West had instructed solicitors (Messrs: Innes Johnstone) to take Scotrail to an Employment Tribunal for unfair dismissal.

The case was due to be heard on 1 June 2001. Thus, in Mr O' Rourke's view, the union had deemed Mr West's ineligibility to stand as a candidate in the AGS/DS elections in the face of evidence casting doubt on the whole basis for the union's decision in this respect. Throughout the period, the union had been made aware that Mr West did not agree with the decision to retire him and at the least, Mr O' Rourke argued, the union could have reviewed the decision they had made in the light of the information he had provided.

3.6 In summary, according to Mr O' Rourke, the union had pre-knowledge of Mr West's intention to challenge Scotrail's decision in the courts and the Union should not therefore have applied Rule 6(9). This rule says that:

“Any member other than permanent officials having left or been dismissed from the railway service, may continue to be a member of the Society provided that he pays his contributions but will not be entitled to hold any office in the Branch or Society nor represent the Society in any capacity whatsoever.”

The application of this rule, made on the strength of Scotrail's decision to retire Mr West on 17 October 2000, anticipated Mr West's loss of employment which would render him ineligible to stand for the AGS/DS posts or any other union office. Mr O' Rourke concluded that the union had been fully aware that Mr West was unhappy about Scotrail's decision and that this dissatisfaction would lead to legal proceedings in a court which had the authority to restore Mr West to employment. Thus, the union should not have deemed Mr West, as a current union member, ineligible to stand in the AGS and DS elections in the light of this information.

The Union's response

3.7 The union argued that as Mr West had become a retired member of the union on 17 October 2000 that ASLEF Rule 6(9) (see para 3.6) prohibited Mr West from obtaining (and holding) positions within the Society. The positions Mr West had applied for, AGS and DS, did not become available until 1 January 2001 and February 2001 respectively, months after Mr West's retirement from Scotrail employment. According to the union, Mr West had given notice that he was leaving the railway service through ill-health severance arrangements, prior to these positions being advertised. He would thus be ineligible for the AGS/DS posts by virtue of the application of ASLEF Rule 6(9). Further to this, the union said that Mr West had not appealed the matter, nor had Mr O' Rourke on his behalf used the Society's internal appeals procedure to resolve Mr West's alleged dispute with Scotrail about his early retirement.

3.8 Thus, the union argued that Mr O' Rourke's complaint to me was ill-founded on three grounds. Firstly, that Mr West, by Mr O' Rourke's letter of 16 July 2000 had actually withdrawn his appeal to the EC against the union's ineligibility ruling. Secondly, that Mr West had neither appealed nor raised his complaint with anyone at senior level in the union. Thirdly, that Mr West did not take legal proceedings in respect of Scotrail's decision to retire him early on ill health grounds.

3.9 The union said that it had seen a copy of a letter from Scotrail of 8 June 2000 which confirmed the Company's intention to progress Mr West's retirement with effect from 17 October 2000 and that Mr West had been informed of this. The union asserted that it did not know of any appeal by Mr West against Scotrail's decision and ultimately, in its view, he had accepted the employer's decision. Also, *"by July Mr West had withdrawn an*

expressed intention to appeal against the EC decision not to allow him to stand” by Mr O’ Rourke’s letter of 16 July 2000. It was further argued that if Mr West was dissatisfied with the Company’s retirement decision, as claimed by Mr O’ Rourke, the union had not been aware of it. And, if Mr West had intended to complain to the Employment Tribunal against Scotrail, Mr West might have qualified for union representation but neither Mr O’ Rourke nor Mr West had advised the union of an intention to make such a claim.

3.10 The union implied that Mr West, as *‘a long- standing activist of the Society’* would not have fought shy of making a complaint or an appeal if he had been so minded. Moreover, as he had, *‘with the assistance of the union’s lawyers’* recovered £84,000 as a settlement and was considering an argument that working conditions exacerbated his condition, it seemed unlikely that Mr West would simultaneously be taking complaints- action which could militate against his early retirement arrangements.

3.11 As a friend of the General Secretary, the union stated, Mr West apparently did not inform him on a personal level of his intention to challenge Scotrail’s decision. Mr O’ Rourke’s action was limited to making a formal appeal on 5 July which he subsequently withdrew on 16 July 2000, and to asking why Mr West was ineligible to stand in those elections. Thus, the union argued, they made the decision to deem Mr West ineligible to stand for nomination to the AGS and DS positions, unchecked by complaint or formal appeal. They were also ignorant of Mr West’s dissatisfaction with Scotrail’s decision and of Mr West’s consequent Employment Tribunal complaint.

3.12 In the circumstances, it was the union’s view that its decision to deem Mr West ineligible to stand for nomination in the Assistant General Secretary and District Secretary elections

was the correct one and that it had not breached its Rule A 10(14) in this respect, or at all.

Reasons for my decision

3.13 Mr O' Rourke had complained to me that ASLEF breached its Rule 10A(14) by deeming as ineligible Mr West's nomination to stand in the election for the positions of Assistant General Secretary and District Secretary of the union. Rule 10A(14) (see para 3.3) is a peculiar rule for him to have chosen as essentially it concerns the right of members, who are eligible to participate in the election, to receive ballot papers. It does not appear to me to relate to the right of a person to be a candidate in an election or to hold office. On those grounds alone I could dismiss the complaint.

3.14 However, members and unions might find it unsatisfactory if I was to dismiss a complaint solely on the grounds that the wrong rule has been quoted. In this case the union quoted another rule, Rule 6(9) which directly relates to a member's right to stand for office. This rule (para 3.6) makes it clear that a member leaving the industry may not hold any office in the Society. Therefore the issue at the heart of the complaint is "were the union justified in deeming Mr West to be a member who had left the industry." If they were, then the complaint falls on substantive and not just technical grounds.

3.15 It is common ground that Mr West had undergone a company medical examination, the result of which was that Mr West was found to be unfit to continue his employment with Scotrail. Acting upon this information the union decided that it had to apply its Rule 6(9) which provides that union members who leave the railway service would not be entitled thereafter to hold any office of the union. Mr West's ill-health retirement date was set at 17 October 2000. On the face of it, Mr West could not realistically take part in these

elections, having apparently accepted his early retirement, which would take effect months before he could, if elected, assume either the AGS or DS positions.

3.16 But it is also common ground that Mr West was a fully-paid up member of the union when nominations were called for. The question is, therefore, whether the union took the right decision to deem Mr West ineligible in the first place. Having taken that decision, were they aware of Mr West's alleged dissatisfaction with both Scotrail and the union's decisions such that reconsideration by both of them might have restored Mr West's eligibility to stand in the AGS and DS elections ?

3.17 Initially, Mr O' Rourke corresponded with union HQ and appealed against the ineligibility decision. He did not, in my view, inform the union's EC of Mr West's dissatisfaction with Scotrail's decision to retire Mr West or that Mr West had actually initiated proceedings against Scotrail. I accept that there is conflicting evidence on this latter point, but I am not persuaded by Mr O' Rourke's argument on this. He says he made it absolutely clear to the District Secretary in early July that if Mr West did not obtain satisfaction with Scotrail, he would take legal action against them, at an Employment Tribunal. However, there is no evidence that such a claim was made until I received correspondence from Mr O' Rourke dated 6 March 2001 which said that Mr West had engaged solicitors to fight his claim for unfair dismissal against Scotrail at the Employment Tribunal in June 2001. Thus, in my view, the union had no prior knowledge of this action, such that it could have reconsidered Mr West's eligibility status in the light of the Tribunal's powers to restore Mr West to full employment with Scotrail. I cannot therefore accept the letter of 6 March 2001 as proof that Mr West, at the material time leading up to the complaint to me, had legally challenged Scotrail's decision and made it known to the union that he had done so. Thus

in my view it cannot form an argument that the union had prior knowledge which could render its 'deeming ineligible' decision unsound.

3.18 Mr O' Rourke, at Mr West's request, withdrew his appeal against EC Resolution 779/410. Thereafter, Mr O' Rourke's action was limited to questioning the union's decision and warning them of a complaint to me. I do not believe that this represents sufficient action on Mr O' Rourke's part to formally challenge the union's decision, a requirement familiar to Mr O' Rourke as a Branch Secretary and experienced trade unionist.

3.19 According to the union, Mr West was also an experienced trade unionist and would have been quite capable of mounting a timely, serious challenge against both Scotrail and the union's decisions if he had been so minded. I was told that Mr West knew the General Secretary personally and could have made his dissatisfaction known about his retirement. I agree with the union that it seems illogical for Mr West to go through an involved process to gain a retirement package, only to complain that the union, who had assisted him in this settlement, had denied him the opportunity to stand in an election for positions which they both knew he could not occupy, and which, by virtue of his acceptance of early retirement, would not wish to.

3.20 On balance, I prefer the union's argument that for all practical purposes, it had no option but to deem Mr West ineligible to stand in the AGS/DS elections under the terms of its Rule 6(9) because Mr West could not fulfil the requirement to remain in the railway service to qualify as a candidate or to hold the office in question. I am not persuaded that Mr O' Rourke made any information available to the union by way of complaint or otherwise to alter its decision of Mr West's ineligibility and accordingly, I dismiss this

complaint.

E G WHYBREW
Certification Officer