

D/1/87

DECISION OF THE CERTIFICATION OFFICER ON APPLICATIONS MADE
UNDER SECTION 5 OF THE TRADE UNION ACT 1984

Applicants: J W Whiteman and others

Trade Union: Amalgamated Union of Engineering Workers
- Technical, Administrative and Supervisory Section

DATE OF DECISION

3 February 1987

DECLARATIONS

Under section 5 of the Trade Union Act 1984 I am empowered to make a declaration applied for by any person who claims that a trade union has failed to comply with one or more of the provisions of Part I of the Act. In making the declaration I am required to specify the provisions with which the Trade Union has failed to comply.

For the reasons set out below I make the following declarations -

A. I declare that in relation to the election in 1986 of Mr J B Seager to be the West Midlands Regional Representative on the National Staff Committee of the Amalgamated Union of Engineering Workers - Technical, Administrative and Supervisory Section("TASS"), who by virtue of that position automatically became a voting member of the Executive Committee of the Union, the Union failed to secure that the result of the election was determined solely by counting the number of votes cast directly for each candidate at the election by those voting as required by section 2(8)(b) of the Trade Union Act 1984.

B. I also declare that, in relation to the election in 1986 of Mr C Groom, a lay member of the National Craft Committee, to be a voting member of the Executive Committee of TASS, the Union failed to secure that entitlement to vote was accorded equally to all members of the National Craft Sector of the Union as required by section 2(1) of the Trade Union Act 1984.

The Applications

1. On 9 July 1986, I received a letter signed by Mr J W Whiteman and five others, whose names are listed in the Appendix to this decision. All were members of TASS, and they asked me to treat their letter as a complaint under section 5 of the Trade Union Act 1984 ("the Act"). The gist of their complaint was that the voting positions on the Executive Committee of TASS had not been filled by methods complying with Part I of the Act.

2. I decided to treat the applicants' letter as a number of separate complaints. It was argued by the Union's legal representative that I should issue decisions on all the complaints simultaneously. There is nothing in the Act which requires me to do this and I am not persuaded that I should do so. In view of the complex structure of the TASS Executive Committee, such an approach could have meant prolonged delay before any decision could be issued. In the event, I completed first my enquiries on two positions on the Executive Committee held, at the time of the applications, by Mr J B Seager and Mr C Groom. This decision therefore relates to those two applications.

The Facts

3. There is no disagreement as to the essential facts in these two cases. It is not disputed that the TASS Executive Committee is the principal executive committee of the Union. The Executive Committee's voting membership consists of the President of TASS, the Vice-President and lay members representing the sectors into which the TASS membership is divided. Mr Seager was, at the time

of the application, a voting member of the Executive Committee by virtue of being a member of the National Staff Committee representing the West Midlands Region of the National Staff Sector. All 12 members of the National Staff Committee automatically serve on the TASS Executive Committee. Mr Groom is one of 4 representatives from the National Craft Sector on the TASS Executive Committee. He is a member of the National Craft Committee and was selected from within that Committee to serve on the Union's Executive Committee.

The case concerning Mr Seager

4. As already indicated Mr Seager represented the West Midlands Region of the National Staff Sector on the National Staff Committee and was last elected to this post in May 1986. As a result he automatically became a member of the TASS Executive Committee. His full term of office would have been three years but he resigned his position on the Executive Committee on 20 November 1986. At the time of his election to the National Staff Committee, Mr Seager was opposed by another candidate, Mr Jones. The Union's legal representative told me that the choice was made between them in accordance with the rules of the National Staff Sector, that is to say on a count of Branch votes, each Branch within the Region having one vote. Twenty-one Branches had given their first preference to Mr Seager and only three to Mr Jones.

Reasons for making the declaration

5. I will deal first with a preliminary argument put to me by the Union's legal representative, to the effect that in view of Mr Seager's resignation from his position on the Executive Committee I should regard the matter of his election as closed. I was given a copy of Mr Seager's letter of resignation and note that he comments that he had " ... become increasingly concerned that the challenge to my election to the Executive Committee is causing the Union financial and administrative disruption."

It was argued that, as a result of Mr Seager's resignation, there is for the present no person holding that voting position in circumstances which require the Union to have satisfied Part I of the 1984 Act. That is obviously the case, but I do not find it a satisfactory answer to the application in question. Section 5(1) of the 1984 Act allows a member of a trade union to make application to me claiming that a trade union has failed to comply with one or more of the provisions of Part I and section 5(4) requires that I specify the provisions with which the union has failed to comply. If a complaint has been made in good time and I am satisfied that the union had failed to comply with Part I in filling a voting position, I am clear that the legislation provides for me to declare that there had been that failure, whatever may have happened subsequently.

6. I now turn to the substance of the matter. As I have already stated, Mr Seager obtained his voting position on the TASS Executive Committee by virtue of being a lay member of the National Staff Committee. Section 1(2) of the Act provides that where a person is a voting member of the principal executive committee of a trade union by virtue of holding some other position in that union, subsection (1), which sets out the duty of a trade union to hold elections for certain positions, shall apply as if references to a voting member of that committee were references to the holder of that other position. It was therefore Mr Seager's appointment as a member of the National Staff Committee that needed to comply with the election requirements of section 2 of the Act.

7. Mr Seager was elected by the Branches in the Staff Sector in the West Midlands Region. Section 2(3) of the Act permits a trade union to restrict entitlement to vote at an election to members of the union who fall within, inter alia, a class determined by reference to any geographical area or a class which is by virtue of the rules of the union treated as a separate section within the union. I am therefore satisfied that TASS could properly restrict entitlement to vote in this election first to members of the

National Staff Sector, as a class which by virtue of the Union's rules is treated as a separate section of the Union, and second to those members of that Sector who fell within the geographical area defined as the West Midlands Region.

8. However, the Union have acknowledged that Mr Seager was elected by a branch block voting system. I have no evidence as to the actual arrangements for voting within the Branches. Nevertheless, it is clear in any event that the block voting system reduced each Branch's response to a single vote, and had the effect that no individual member's vote was directly taken into account in determining the result of the election. Accordingly, I find that the Union did not comply with section 2(8)(b) of the Act, which provides that the ballot is to be conducted so as to secure that the result of the election is determined solely by counting the number of votes cast directly for each candidate at the election by those voting.

The case concerning Mr Groom

9. TASS rules provide that four lay members of the National Craft Committee shall be voting members of the Executive Committee of TASS. The rules also provide that the selection of those four (from among the larger number on the National Craft Committee) shall be made by the National Craft Committee alone. Mr Groom was opposed by another candidate for selection as one of the National Craft Sector's representatives on the Executive Council, and was elected by a show of hands at a meeting of the National Craft Committee.

Reasons for making the Declaration

10. The Union's legal representative asked me to have regard to the election by which Mr Groom became a member of the National Craft Committee. The members of the National Craft Committee were, according to the rules, elected by ballot vote of the ordinary members of the National Craft Sector. He said it was known to members of the Sector when they voted for those who would represent them on the National Craft Committee that four of those

elected would subsequently go forward on to the Executive Committee. That may be so, but ordinary members voting would be unlikely to know which four of those who succeeded in gaining election to the National Craft Committee would go on to become members of the TASS Executive Committee. Section 1(1)(a) of the Act is quite explicit in requiring a union to secure that every person who is a voting member of the principal executive committee of the union holds that position by virtue of having been elected as such a member in accordance with the requirements of section 2.

11. The Union's legal representative also urged that the election onto the National Craft Committee should be regarded as the relevant election because of the operation of section 1(2) of the Act cited in paragraph 6 above. I cannot accept that section 1(2) applies in this instance. It seems to me that while it may be a pre-condition of becoming a representative of the National Craft Sector on the TASS Executive Committee that one is a member of the National Craft Committee, it is only by virtue of the selection which takes place within that Committee that a member of it becomes a member of the TASS Executive Committee.

12. I cannot therefore accept either of the arguments advanced on behalf of the Union in the case of Mr Groom. Accordingly I find that in restricting to members of the National Craft Committee entitlement to vote in the contest between Mr Groom and another for one of the positions of representative of the National Craft Sector on the Executive Committee, the Union failed to comply with section 2(1) of the Act.

Remedial Steps

13. I discussed the question of remedial steps with the Union's General Secretary who was accompanied by the Deputy General Secretary, an Assistant General Secretary and by the Union's legal representative. In relation to the vacancy on the Executive Committee caused by the resignation of Mr Seager, I was assured that before any ballot to elect a successor was held, the representatives of the Union would come to see me again. In relation to Mr Groom and more generally, assurances were given that any observations or recommendations made by me under section 6(2) of the Act would be

carefully considered by the Executive Committee of TASS without delay, with a view to bringing them to the attention of the Union's Annual Conference in April. The Union representatives told me they were not in a position to say more than that.

Observations

14. As to the assurances which the Union representatives were prepared to give, as recorded in the previous paragraph, my observations and recommendations can be expressed very simply. If, as the legal representative of the Union maintained, the Union wishes to avoid confrontation with the law relating to union elections, then it should take action as quickly as possible to amend its procedures so as to secure compliance with the requirements of Part I of the 1984 Act.

15. I have to make that statement of the obvious because of the reluctance of the senior representatives of the Union to say anything more positive than is recorded in paragraph 13 above. I understand their arguments that the complex structure of TASS and its Executive Committee, which arises from a succession of mergers involving historically autonomous organisations, presents genuine difficulties when it comes to making changes to accommodate new legal requirements. But I am bound to point out that Part I of the 1984 Act came into force as long ago as October 1985, and that no evidence was produced to me on behalf of the Union of any steps taken or even contemplated since then to resolve the difficulties which they see, and to move towards meeting the law's requirements. Until corrective steps are taken where appropriate, the Union is vulnerable to legal action by any member wishing to seek, in any relevant case, an enforcement order from the Court.

APPENDIX

Applicants

J W Whiteman

A Barry

B R Harris

V Malo

J W Mead

P W Mills