

D/2/91

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

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IN THE MATTER OF A COMPLAINT AGAINST THE  
SOCIETY OF GRAPHICAL AND ALLIED TRADES 1982

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DATE OF DECISION

31 July 1991

DECLARATION

Under section 5 of the Trade Union Act 1984 (the Act) I am empowered to make, or refuse to make, a declaration on the application of any person who claims that their trade union has failed to comply with one or more of the provisions of Part I of the Act.

For the reasons which follow I declare that the Society of Graphical and Allied Trades 1982 has failed to comply with section 1(1) of the 1984 Act, in that the Society failed to secure that Mr G Beattie and Mr J Mitchell, each a non-voting member of the Society's principal executive committee by virtue of holding a position as a General Officer of the Society, did not hold those positions for more than five years after the dates on which they were respectively elected without having been re-elected in accordance with the requirements of Part I of the 1984 Act.

The Application

1. On 5 October 1990, on the application of a member of the Society of Graphical and Allied Trades 1982 I made a declaration against the Society in respect of three members of its principal executive committee (Decision D/3/90). On 5 April 1991 I received a further complaint from the same member, alleging that the Society had by then failed to ensure that two further members of that committee had been elected to their posts within the previous five years. The two named were Mr J Mitchell, Organising Secretary, and Mr G Beattie, General Officer for Papermaking, Boardmaking and Conversion.

2. A formal hearing into this complaint was held on 3 July 1991. The applicant appeared in person. The Society was represented by its General President and General Secretary, and by Mr Christopher Makie, Counsel, instructed by Messrs Robin Thompson and Partners.

### Jurisdiction

3. The Society disputed that this applicant was a member who was entitled to make a complaint under the 1984 Act. The same point had been raised by the Society on the previous application. At that time I considered carefully all the relevant factors and came to a decision that he was so entitled. This time, however, the Society wished to re-open the jurisdictional issue on the basis of arguments presented by Counsel. I therefore considered the matter afresh.

4. Section 5(1) of the 1984 Act, which confers the right to apply to me, provides -

"A person who claims that a trade union has failed to comply with one or more of the provisions of this Part ... may apply to the Certification Officer or to the court for a declaration to that effect if -

(a) ...

(b) in any other case, he is a member of the union at the time when the application is made".

5. The Society's rulebook contains a number of relevant provisions. Rule 3 provides -

"Where 'full member' appears in these Rules it shall mean members free to all benefits in accordance with their scale including unemployed members who are signing the book and not working and whether or not they are seeking work at the trade, in receipt of benefit or have exhausted their entitlement, but will not include Retired, Out-of-Trade and Honorary members".

6. Rule 4(1) provides

"The Society shall consist of all those persons in the Printing, Graphical, Paper, Board, Conversion, Media Personnel and Allied Trades".

7. Schedule B to the Rules provides (on page 55 of the rulebook) -

"All members retiring from the trade on reaching the age of 60 who have completed 20 years' continuous full membership inclusive of sick contributions, shall be enrolled as honorary over-age members and be exempted from any further payment. They shall be eligible for funeral benefit".

8. Also of relevance is Rule 26 which provides for the grant to members, at the absolute discretion of the Society's National Executive Council, of convalescent benefit, ie. entitlement to convalesce after illness in one of the two homes run for this purpose by the Society. Rule 26(1) says in part -

"Registered retired free members and those paying reduced contributions to enable them to retain their funeral entitlement, shall only be granted this benefit during the winter period, i.e. October to April. This shall also apply to the spouses of such members and to the widows or widowers of such members".

9. The following facts, found in my earlier decision, were not disputed. The applicant was a member first of NATSOPA and then of the Society from 1938 to 1986, when he retired from work. On his retirement he was given a certificate, signed by the General Secretary, which states - "This is to certify that [the applicant] having completed at least 20 years' full membership has been granted free membership". This is consistent with the provisions of Schedule B to the Rules quoted above. The applicant is entitled to funeral benefit and to apply for convalescent benefit during the winter months. The applicant is not accorded a vote within the Society's structure and has no say in its administration.

10. Since my earlier decision the Society has held a ballot on a proposed amalgamation with the National Graphical Association (1982). Retired

members, including the applicant, were given a vote in that ballot. The Society's General Secretary explained to me that the present Society was the result of many past mergers and that it was a long-standing tradition in the Society that retired members were accorded a vote in such ballots. The tradition related solely to amalgamation ballots and was not to be taken as implying that retired members were regarded as full members. However that may be, I was interested to note the wording of a leaflet distributed to retired members before the amalgamation ballot entitled "SOGAT - retired members and amalgamation". This contained a foreword by the General Secretary, and began -

"At last SOGAT, the trade union that represented you during your working life, and to which you still belong as a retired member, is all geared up to join with the NGA ... All members will get a chance to give their verdict on the plan. And that includes you, as a retired member". (My emphasis).

It concluded as follows -

"Many retired members are a little reticent about voting on matters affecting the union's future, feeling that because they are no longer in employment they really should not have their say. They are quite, quite wrong. SOGAT has about 30,000 retired members and we value very highly their experience and knowledge of the industry, and of union matters, regarding them as the bedrock of our organisation. You are entitled to a vote. So make sure you use it". (My emphasis).

11. The applicant is what is commonly called a retired member of the Society, though the rule book variously uses the terms "retired member" "registered retired free member" and "honorary over-age member". For the Society, Mr Makie observed that the applicant was a retired, non-working and non-paying member and argued that such a person was not entitled to complain under the 1984 Act. The term "member of the union" in section 5(1) of the Act is not defined. Mr Makie submitted that it meant "working member", or an unemployed member of working age. The right to complain under the Act, he said, should apply only to members who are able to take part in the union's day-to-day activities - who are, for example, entitled to vote and to participate in chapel activities. The intention of the Act

was to allow complaints to be made where infringement of the Act affected the union's day-to-day activities, and it was those who participated in such activities who should have the right of complaint. If this construction was too narrow and "member" could include people such as trainees and those out of work, as in section 2(2) of the Act, nevertheless in his submission the draftsman of sections 2 and 5 did not have in mind retired members such as the applicant.

12. Mr Makie paid particular attention to the fact that the applicant was no longer a contributing member and that Schedule B of the rulebook uses the term "honorary over-age member". The right to funeral benefit arose out of a past contractual relationship, he said, and the applicant's present status was a purely honorary one. The term "member" should not be regarded as covering such an honorary status. He also referred me to a High Court decision to the effect that past members of a building society are not liable for its debts on winding up - In re West Riding of Yorkshire Permanent Benefit Building Society (1890) 45 Ch.D. 463. In that case the judge held that once the member's savings had been withdrawn or his loan fully repaid the relationship between the member and the Society was in law a "stated account", and all future responsibilities ceased. I confess I do not find that case of much assistance. There can be no suggestion that the relationship between a trade union and its members is a purely financial one, as was the relationship in that case.

13. In my view, the underlying issue is much simpler than Mr Makie made it appear. I am not being asked to rule on whether the applicant is entitled to a vote in the Society's elections or other ballots, or is entitled to participate in the union on the same basis as working members, or would have any financial interest or responsibility if the union were dissolved. As I said in my earlier decision section 5(1) of the 1984 Act embodies a simple principle: those within the union are to have the right of complaint about performance of the statutory duty to hold elections; those outside it are not. Nothing in that principle requires any special or narrow meaning to be given to the word "member". The union is really arguing that its observance or non-observance of Part I of the Act relating to elections to its principal executive committee is none of the applicant's business. I cannot agree.

14. The Act itself contains significant indications that section 5(1) is concerned with setting a simple baseline for a person's standing to make a complaint under the Act. First, there is the language of section 5(1) itself which appears to be primarily concerned with the date on which the applicant was a member. Secondly, as Mr Makie conceded, one would expect "member" to have the same meaning throughout Part I of the Act unless the particular context indicates otherwise. Sub-sections 2(1) and 2(2) require that entitlement to vote in elections to a union's principal executive committee be given equally to all members, except that the union may exclude certain classes of members. These are "members who are not in employment", members in subscription arrears, trainees, students and new members. Clearly, the draftsman had in mind a meaning of "member" which could embrace all of these categories. Despite this, section 5(1) does not restrict the right of complaint to a member who is entitled to vote at such elections, nor does it exclude any of the classes mentioned in section 2(2). Finally, one must also take account of the requirements in section 4 of the Act to compile and maintain a register of members. The union's argument would mean that only working members of a union would be covered by those registration requirements. As I said in my earlier decision, I can see no logic in that result.

15. It is not disputed that the applicant was a retired member of the Society at the relevant time. I have described the circumstances of that membership above. In my view he has a sufficient connection with the Society to enable him to present a complaint under section 5 of the Act. I must therefore hear and decide this application.

#### The Facts

16. The Society agreed that the National Executive Council (NEC) is their principal executive committee. Rule 7 clause 1 provides -

"There shall be a National Executive Council comprising 36 representatives to be elected in accordance with Schedule A at the end of these Rules, together with the General Officers". Clause 2(b) provides -

"No members in the employment of the Society, other than elected officers, shall be eligible for election to the National Executive Council".

17. Rule 11 clause 1 provides in part -

"(a) The General Officers shall consist of a President, Secretary, Organising Secretary, a General Officer with particular responsibility for papermaking, boardmaking and conversion industries, and four other General Officers ... They shall be elected by a ballot of the whole membership and remain in office during the pleasure of the Society, as expressed through the Delegate Council ...

(b) No official shall continue in office after reaching the age of 65 years.

(c) The General Officers shall be responsible to, and under the directions of, the National Executive Council through the General Secretary".

18. Mr Beattie took up office as General Officer (Papermaking, Boardmaking, Conversion) on 22 April 1985. His duties are covered by Rule 15 -

"The General Officer with particular responsibility for papermaking, boardmaking and conversion industries shall deal with matters relating to these industries and the discharge of other duties allocated by the General Secretary. His office shall be at the Society's headquarters. He shall attend all Delegate Council Meetings with a right to speak on any question but not to vote".

19. Mr Mitchell took up Office as Organising Secretary on 9 April 1986. His duties are covered by Rule 14 -

"The Organising Secretary shall be responsible for the organising work of the Society which shall be his priority under the directions of the National Executive Council through the General Secretary. He shall supervise and control the work of the Organisers, who shall report to him regularly in accordance with Rule 19 and submit a summary of the same and a report to the National Executive Council. He shall attend all Delegate Council Meetings with the right to speak on any question but not to vote".

Reasons for making the declaration

20. Section 1(1) of the 1984 Act provides -

"... it shall be the duty of every trade union (notwithstanding anything in its rules) to secure -

(a) that every person who is a member of its principal executive committee holds that position by virtue of having been elected as such a member at an election [complying with the legislation] and

(b) that no person remains such a member for a period of more than five years without being re-elected at such an election".

21. I accept that these two officers have no vote on the NEC. If they are nevertheless members of the NEC within the terms of the amendments made to Part I by section 12 of the Employment Act 1988 then they are covered by the transitional provision in section 12(3) of that Act, which means that they could continue until the expiry of five years after the dates on which they were elected to their positions. It is clear that those five year periods have expired and that no fresh elections have been held for the two positions.

22. Subsection (6A) of section 1 of the 1984 Act, as inserted by section 12(1) of the 1988 Act, provides -

"(6A) For the purposes of this section a person is a member of the principal executive committee of a trade union if he is a voting member of that union's principal executive committee or [subject to irrelevant exceptions] if -

(a) that person is, under the rules of the union, a member, other than a voting member, of that committee (whether by virtue of his holding any position in the union or otherwise); or

(b) that person may, under the rules or practice of the union, attend and speak at some or all of the meetings of that committee otherwise than for the purpose of providing the committee with factual information or with technical or



professional advice with respect to matters taken into account by the committee in carrying out its functions".

23. The Society argued that neither Mr Beattie nor Mr Mitchell were in fact members of the NEC. Their argument was usefully summarised in a letter from the General Secretary dated 18 June 1991 -

"Both Mr Beattie, as Papermaking Secretary and Mr Mitchell, as Organising Secretary, although attending meetings of the National Executive Council of SOGAT, take no part in policy making. Additionally, the only time they make any contribution to discussion in the NEC is by way of a report to the Executive Council at the specific request of the General Secretary through the General President who chairs meetings of the NEC. Although rule 11 of the SOGAT General Rules refers to General Officers, Mr Mitchell is covered by General Rule 14: Duties of Organising Secretary and Mr Beattie is covered by General Rule 15: Duties of General Officer, Papermaking, Boardmaking, Conversion".

24. During the hearing the General Secretary was asked to comment on the apparently clear words of Rule 7 clause 1 of the Society's rulebook which states that the NEC consists of, among others, the General Officers. She replied that it was never the practice for the General Officers to be full participating members of the NEC. The rules were drawn up by members and not by lawyers, and might be open to interpretation; but it was never intended that they should have the status of full NEC members.

clause 1 as plain and unambiguous in making the General Officers members of the Society's NEC. Clause 2(b) of the rule provides an added indication that this result is not unintended, and I see no indications in the rulebook pointing the other way. As I said in my earlier decision I see no anomaly in the idea that a person who reports to a committee may have

approved by a majority of members in both unions. I have therefore sought to ensure that nothing in this decision is capable of being used in a way that might further impede the amalgamation. I am aware that my earlier decision indirectly resulted in the postponement of the effective date of the amalgamation from 1 July to 30 September. I make no apologies for that. As I observed at that time, the difficulties have been of the Society's own making. Quite simply, they stem from the Society's seeming reluctance to comply fully with the election provisions of the 1984 Act until compelled to do so.