

DECISION OF THE CERTIFICATION OFFICER ON A PRELIMINARY POINT RAISED
IN RELATION TO COMPLAINTS ALLEGING BREACHES OF RULES MADE UNDER
SECTION 3(2) OF THE TRADE UNION ACT 1913

J SAKALS

AND

TRANSPORT AND GENERAL WORKERS' UNION

DATE OF HEARING: 24 September 1984

DATE OF DECISION: 18 January 1985

The complainant was represented by Mr G Hartup, National Organiser
of the Freedom Association

The Union was represented by Mr J Bowers, Counsel, instructed
by Messrs Pattinson and Brewer.

1. Mr J Sakals has made a number of complaints to me alleging that the Transport and General Workers Union ("the Union") has acted in breach of its political fund rules.

The preliminary point

2. Under section 3(2) of the Trade Union Act 1913 ("the 1913 Act") I only have jurisdiction to hear a complaint alleging a breach of a political fund rule if it is made by a person who is a member of the trade union in question at the time when he makes his complaint.

3. The Union contends that Mr Sakals was not a member of the union when he made his complaints. Mr Sakals asserts that he was a member at that time. Mr Sakals' complaints were made in a letter dated 14 July 1983 which was received at my Office on 18 July 1983. In order to discover whether I have jurisdiction to hear these complaints I therefore have to decide, as a preliminary point, whether Mr Sakals was a member of the Union on 18 July 1983.

4. It has been necessary for me to hold an oral hearing to decide this preliminary point. Despite requests to do so, neither Mr Sakals nor the Union produced the relevant documents until immediately prior to the hearing. I have in mind, in particular, Mr Sakals' letter of resignation to the Union dated 21 March 1983 and the letter of Mr K A Hempstead, District Officer of the Northampton Area of the Union to the United Counties Omnibus Co. Ltd. ("the Company") dated 5 July 1983.

The facts

5. Mr Sakals worked in a closed shop. He had been a member of the Union since 1962, when he started working for the Company. The closed shop agreement (more formally the "union membership agreement") in force between the Company and the Union lays down a procedure to be followed where an employee wants to leave the

Union. Paragraph 5(b) of the agreement provides:-

"5(b) Termination of Union membership

- (i) If an employee covered by this Agreement voluntarily ceases to be a member of a specified Trade Union, or indicates an intention to terminate his/her membership, the Union shall notify the Company in writing. Arrangements will then be made for the employee to be interviewed by a representative of the management and the Trade Unions as in 4(c) to establish the facts. If the employee continues in his/her action the case will be referred to the Joint Committee.

- (ii) If after examination by the Joint Committee it is held that the employee's reasons for ceasing to be a member of the Union are unacceptable, not being provided for in the relevant legislation, the Company will be required to dismiss the employee from the Company's service."

6. In September 1980 Mr Sakals resigned from the Union, or at least gave notice of his intention to resign. The procedure laid down in paragraph 5(b) was put into effect. It was made clear to Mr Sakals that he would lose his job if he left the Union, and he withdrew his resignation or proposed resignation. In October 1981 Mr Sakals again resigned, or indicated an intention to resign, from the Union. The paragraph 5(b) procedure was again put into operation and Mr Sakals again withdrew his resignation or proposed resignation. In June 1982 Mr Sakals resigned, or indicated an intention to resign, for the third time. After the matter had been considered by the joint committee under paragraph 5(b) he was again told that he would lose his job if he left the Union and he once again withdrew his resignation or proposed resignation.

7. On 21 March 1983, after consulting Mr Gerald Hartup the National Organiser of the Freedom Association, Mr Sakals wrote an unequivocal letter to Mr Hempstead, district officer of his area of the Union. The letter said:-

"Dear Mr Hempstead,

Ref: The last Joint Executive Committee meeting, I attended in your presence, at the Head Office - United Counties Bus Co., Northampton, on the 18.8.1982.

I am hereby giving you notice, that I am resigning and terminating my membership from the T.G.W. Union and that it is to take effect as of the 1.4.1983. I have instructed United Counties to cease deducting union dues from that date.

I have informed Mr R Brundle - Traffic Manager, United Counties Bus Co., of my decision.

Yours sincerely,

J. Sakals."

At the hearing Mr Sakals confirmed that as far as he was concerned his resignation was on the table from that time. Despite being told later than he would lose his job, he never withdrew or intended to withdraw the notice of resignation he had given in that letter. He did not receive a reply to the letter.

8. As he indicated in his letter to Mr Hempstead, Mr Sakals also wrote to the Company on 21 March 1983 informing them of his decision and instructing them to stop deducting union dues from his wages as of 1 April. In fact, contrary to Mr Sakals' instructions and despite a reminder from Mr Hartup on 6 May, union dues continued to be deducted from his wages. An internal memorandum was sent from the Secretary of the Company to the wages department on 20 April, and copied to Mr Hempstead, containing instructions to arrange to cease deducting union subscriptions from Mr Sakals' pay with effect from 3 April, but in view of legal advice received by the Company this instruction was never acted upon.

9. It is, however, clear that, although the Union may have sent no written notice to the Company, both the Company and the

Union proceeded to put into effect, yet again, paragraph 5(b) of the closed shop agreement. Mr Brundle, the Company's traffic manager, wrote to Mr Sakals on 20 April to arrange for him to be interviewed by a representative of management and a representative of the trade union. The interview was held on 26 May with Mr Brundle and Mr Hempstead present. Mr Brundle wrote to Mr Sakals on 8 June to tell him that the matter was being referred to the joint committee. The joint committee met on 24 June. Both Mr Brundle and Mr Hempstead were members, and Mr Hartup was present as an observer. Mr Sakals submitted a written statement and answered questions. On 29 June Mr Brundle wrote again to Mr Sakals and told him that a formal notice would be served terminating his employment unless his request for withdrawal from membership of the Union was itself withdrawn by 5 July.

10. Mr Sakals did not withdraw his notice of resignation. On 5 July, Mr Hempstead wrote to the Secretary of the Company in these terms:-

"Dear Sir

Re: Driver J. Sakals, Corby Depot

I am aware that your Traffic Manager has written to the above indicating that formal notification of termination would be served if a withdrawal of his request to resign from the Union was not made by today. As no such withdrawal has been made, I am requesting that you comply with Driver Sakals' instructions and no longer collect union contributions and that any monies which you hold which were deducted from Brother Sakals' wages for the purpose of union contributions be repaid to him.

Yours faithfully
K A Hempstead
District Officer"

On 6 July, Mr Brundle wrote to Mr Sakals giving notice that his employment would be terminated with effect from 2 October

1983. On 18 July I received Mr Sakals' letter of complaint dated 14 July.

11. Union dues continued to be deducted from Mr Sakals' wage packet. Mr Hartup wrote to the Company again on 1 August asking for this to stop and also for a refund of the contributions deducted since 1 April. Mr Brundle replied that union dues were no longer being deducted and that contributions deducted since 1 April had been returned to Mr Sakals. In fact, the last deduction was made from Mr Sakals' wage packet on 4 August in respect of the pay week ending 23 July. After two further letters from Mr Hartup, Mr Sakals received a cheque from the Company, dated 17 August, for £11.20, which was equivalent to the total of the amounts deducted from his wage packet for union dues since 1 April.

Submissions on behalf of Mr Sakals

12. Mr Hartup, who represented Mr Sakals at the hearing, said that there was no doubt that Mr Sakals wanted to leave the Union. His submission was that although Mr Sakals had resigned categorically from the Union, the Union did not accept that view. Mr Hartup argued that Mr Sakals attempted to resign from the Union, said in terms "I resign from the Union from 1 April" and never altered his mind, but that the Company refused to stop deducting his union dues and refused to accept it as a final resignation from the Union, as did the Union. Mr Hartup thought this was clear from the interviews with Mr Sakals and from the letters written by the Company and by Mr Hempstead on behalf of the Union.

13. As to the attitude of the Union, Mr Hartup pointed out that there had been no written or verbal acknowledgement of the resignation letter of 21 March to Mr Hempstead. Indeed, as Mr Sakals said at the hearing, nobody ever informed him that he was no longer a member of the Union.

14. Mr Hartup also pointed to the language used: Mr Brundle said in his letter of 20 April to Mr Sakals "I am not immediately prepared to accept your withdrawal from the trade union" and "If

the Joint Committee accepts that your beliefs are genuine, membership will be cancelled"; during the interview on 26 May, with Mr Hempstead present, it was clearly implied that Mr Sakals could reconsider his resignation; in his letter of 8 June Mr Brundle referred to "your letter indicating your intention to withdraw from membership" of the Union; at the joint committee meeting, Mr Sakals was not asked why he had terminated his membership, but why he wanted to do so; Mr Brundle's letter of 29 June asked Mr Sakals to withdraw his "request" for withdrawal from membership and under cross-examination from Mr Hartup, Mr Hempstead admitted that it was probably fair comment that Mr Sakals would have been right to believe from this letter that the Union also considered there to have been a request for withdrawal rather than an acceptance that he had left the Union on 1 April; and in his letter of 5 July to the Company Secretary Mr Hempstead, according to Mr Hartup, was himself indicating that Mr Sakals had the right to withdraw his request to resign from the Union.

15. Mr Hartup produced a copy of notes made by a chairman of an industrial tribunal in a case brought by Mr Sakals against the Company. The case was held on 14-16 November 1983. According to the notes, Mr Hempstead gave evidence on that occasion that in his understanding Mr Sakals remained a member under the rules of the Union for 13 weeks after the last deduction from his wages. However, on being shown a letter from the General Secretary of the Union, Mr Moss Evans, stating that Mr Sakals' membership ceased on 1 April 1983, Mr Hempstead is recorded in the notes as saying "If Mr Evans says this it is correct". The chairman's notes also show that the Secretary of the Company gave evidence that the money deducted from Mr Sakals' pay was transferred to the Union and subsequently repaid by the Union.

16. At the conclusion of his presentation of the case, Mr Hartup said in response to a question from me that he could not tell me the exact date on which he considered Mr Sakals' resignation to have taken effect, but that his argument was that Mr Sakals was a member of the Union when he made his complaints to me. He pointed out that union dues were deducted up to and including the week ending 23 July 1983 and that no evidence had been presented

to show either than the Union did not receive these dues, or that they did not keep them. The refund had been made by the Company.

Submissions on behalf of the Union

17. Counsel for the Union, Mr Bowers, referred me to the rule book of the Union and explained that it contains no specific rule concerning resignation from membership. However, he drew my attention to section 7 of the Trade Union and Labour Relations Act 1974 (as amended) ("the 1974 Act") which, he accepted, had the effect of implying into the rules:-

"a term conferring a right on the member, on giving reasonable notice and complying with any reasonable conditions, to terminate his membership of the union."

Mr Bowers also mentioned paragraph (d) of Schedule II to the Union's rules, which contains the words:-

"A member exceeding 13 weeks in arrears, shall be deemed to be no longer a member of the Union unless the branch and/or the district committee, as the case may be, decides by resolution to keep his name on the books."

but he argued that this rule did not apply because this is not a case of arrears, but of resignation.

18. Mr Bowers submitted, by reference to the common law position on resignation from a voluntary organisation, that members are free to resign from a trade union without notice if that lack of notice is accepted by the union. He cited two cases to me:- FINCH v OAKE 1896 1 Ch 409, as authority for the proposition that a member of a voluntary organisation is entitled to leave with whatever notice he wishes to give or does not wish to give subject to any rules of the organisation to the contrary; and BOULTING v ACTT 1963 2QB 606, as stating that a resignation from a trade union takes effect when it is communicated to the union.

19. The term implied by section 7 of the 1974 Act permits a member to resign on giving "reasonable notice" (there is no definition of reasonable notice) and therefore, according to Mr Bowers, it is a question for the trade union official concerned to decide whether on behalf of the union he accepts a particular period of notice.

20. Mr Bowers' submission to me was put in the alternative. Either Mr Sakals' resignation was accepted by the Union as from 1 April 1983 and took effect then; or it was accepted, and took effect, at the latest on 5 July 1983. In either event, the resignation and thus the termination of Union membership took effect before Mr Sakals made his complaints to me.

21. Mr Bowers argued that there were two different ways in which the Union, by accepting the (as he described it) short notice given by Mr Sakals in his letter of 21 March, accepted the resignation as from 1 April. The first way was by not responding to the letter and saying "No, we will not accept your notice with effect from 1 April". The second way was that Mr Hempstead did not act to contradict the internal company memorandum, dated 20 April, instructing the company's wages section to stop deducting Union subscriptions from Mr Sakals' wages with effect from 3 April.

22. But if I was unable to find that the Union accepted the resignation as from 1 April, then I should conclude that it was certainly accepted on 5 July 1983. Mr Bowers put it to me that the letter written by Mr Hempstead to the Company on that date constituted an unequivocal acceptance of the resignation because whatever was thought to have been the position previously, that letter made it clear that the Union regarded Mr Sakals as having ceased to be a member as at that date.

23. Finally, I was invited to the view that the fact that the company continued to deduct Union contributions from Mr Sakals' wages should not be held against the Union. This was so particularly since the company had failed to stop the deductions until the week ending 4 August 1983 despite the clear instruction contained in the Union's letter of 5 July.

My decision

24. I agree with Mr Bowers that the (13 weeks) arrears rule in Schedule II of the Union's rules does not apply to this case of resignation and that the original principles governing resignation from a trade union without a specific rule providing for resignation - as in the two cases he cited to me - must now be read subject to section 7 of the 1974 Act. However, it is not for me in considering this case to declare the precise date on which Mr Sakals' resignation from the Union took effect. The only issue arising on this preliminary point is whether Mr Sakals was a member of the Union on 18 July 1983.

25. It seems to me that at the latest Mr Sakals' membership must have come to an end on the date when the Union accepted his resignation - whether or not the notice given by Mr Sakals on 21 March was "reasonable" in the terms implied into the Union's rules by section 7 of the 1974 Act (and, if it was not, whether or not the resignation took effect on the expiry of a reasonable period after that date - whatever that period might be). As authority for this proposition I rely on *BADGER v TRANSPORT AND GENERAL WORKERS UNION**. The rules of the Union were not materially different when that appeal was heard and the statutory provision then in force was section 65(3) of the Industrial Relations Act 1971, which was in similar terms to section 7 of the 1974 Act (although the right to terminate membership was not incorporated into the contract of membership). Sir Hugh Griffiths, giving the judgment of the National Industrial Relations Court, said (at paragraph 15):-

"The rules of the union make no provision for the resignation of a member. Of course, if a member does wish to resign and says so unequivocally to the union and the union chooses to accept the resignation, the resignation will take effect from the date of acceptance."

26. In this case Mr Sakals' 21 March letter of resignation was unequivocal and, as he confirmed at the hearing, his resignation

always remained on the table as far as he was concerned. Is there evidence to show that the Union accepted this resignation? It is true that Mr Hempstead, who had seen Mr Sakals first resign and then (after the procedure under paragraph 5(b) of the closed shop agreement had been put into effect) withdraw his resignation three times before, confirmed that in practice Mr Sakals would have been treated as still being a member of the Union if he had withdrawn his letter before 5 July. But the letter written by Mr Hempstead to the Company on 5 July is in my view the clearest evidence that at that date the Union accepted Mr Sakals' resignation and no longer regarded him as a member of the Union, whether or not his resignation had been accepted previously.

27. I therefore have no hesitation in finding on the facts that the Union accepted Mr Sakals' resignation on 5 July, whatever may have been the position prior to that date. It was perhaps unfortunate that the Union did not write directly to Mr Sakals to inform him of this, but in view of Mr Brundle's letter of 29 June informing Mr Sakals of the decision of the joint committee (including the Union members), it must have been clear to everyone, and to Mr Sakals in particular, that if he did not change his mind by 5 July, he would be given notice of dismissal and his association with the Union would be at an end. It was no doubt for this reason that Mr Hartup, on Mr Sakals' behalf, wrote to the Company on 1 August asking for a refund of the union dues deducted since 1 April. The fact that, despite the Union's instructions, the company failed to stop the deduction of Union contributions from Mr Sakals' wages until 4 August 1983 and only made a repayment by cheque dated 17 August, cannot of itself, in my opinion, affect the validity or effectiveness of the Union's acceptance of the resignation on 5 July.

28. It follows that my decision is that Mr Sakals was not a member of the Union when he complained to me by his letter of 14 July, received on 18 July 1983. Accordingly, I must conclude that I do not have jurisdiction under section 3(2) of the 1913 Act to hear Mr Sakals' complaints that the Union has acted in breach of its political fund rules.