

**DECISION OF THE CERTIFICATION OFFICER ON A COMPLAINT MADE
UNDER SECTION 82(1) OF THE TRADE UNION AND LABOUR RELATIONS
(CONSOLIDATION) ACT 1992 BY A MEMBER OF A TRADE UNION
AGGRIEVED BY A BREACH OF THE ACT IN RELATION TO THE
APPLICATION OF UNION FUNDS**

**IN A MATTER OF A COMPLAINT
AGAINST UNISON - The Public Service Union**

COMPLAINANT MR A G ANTONS-JONES

Date of Decision

25 October 2000

DECISION

1. Under section 82 of the Trade Union and Labour Relations (Consolidation) Act 1992 as amended ("the Act") a member of a trade union aggrieved by a breach of the union's political fund rules made in pursuance of Part I Chapter VI of the Act, may complain to the Certification Officer. If, after giving the member and the union an opportunity to be heard, I consider a breach has been committed I may make such order for remedying the breach as I think just in the circumstances.

The Application

2. On 9th February 2000 I received a complaint from Mr Antons-Jones, a member of UNISON ("the union"), alleging that certain payments in furtherance of political objects had been made out of the general rather than the political fund of the union in contravention of statute.
3. The payments related to the funding of the legal expenses of one of its members, the Chief Executive of Doncaster Council (Mr Taylor) who was being tried for an offence under the Representation of the People Act 1983. Mr Antons-Jones stated that as the case, which he referred to as the "Agenda for Change case", related to political activity by Mr Taylor any costs paid on his behalf by the union should have come from the political fund.
4. I made enquiries of both the complainant and the union. After which I was ready to make my decision but, as required by section 82(3) of the Act, I offered the parties an opportunity of a formal hearing. Both parties agreed such a hearing was unnecessary.
5. For the reasons which follow I have decided that UNISON had not breached its political fund rules in funding the legal expenses of Mr Taylor and I therefore dismissed the complaint and refuse the declaration sought.

The Requirements of the Legislation

6. The provisions of the 1992 Act relevant to this complaint are found in sections 82, 71, 72 and 73. The specific parts of those sections relevant to this complaint are set out in the following paragraphs.

7. Section 82 of the Act provides a requirement for a union wishing to engage in political activities to have rules providing for payment to be made out of a political fund and also an avenue of complaint if these rules are broken. It states:-

"(1) The trade union's rules must provide:-

(a) that payments in the furtherance of the political objects to which this Chapter applies shall be made out of a separate fund (the "political fund" of the union);

(2) A member of a trade union who claims that he is aggrieved by a breach of any rule made in pursuance of this section may complain to the Certification Officer.

(3) Where, after giving the member and a representative of the union an opportunity of being heard, the Certification Officer considers that a breach has been committed, he may make such order for remedying the breach as he thinks just under the circumstances."

8. Section 71 establishes a further requirement on unions wishing to pursue political objects to have in force both a 'political resolution' approving those objects and a rule for making payments in furtherance of those objects from a separate fund. It states:-

"(1) The funds of a trade union shall not be applied in the furtherance of the political objects to which this Chapter applies unless -

- (a) *there is in force in accordance with this Chapter a resolution (a "political resolution") approving the furtherance of those objects as an object of the union (see sections 73 to 81), and*
 - (b) *there are in force rules of the union as to -*
 - (i) *the making of payments in furtherance of those objects out of a separate fund, and*

which comply with this Chapter (see sections 82, 84 and 85) and have been approved by the Certification Officer.
- (2) *This applies whether the funds are so applied directly, or in conjunction with another trade union, association or body, or otherwise indirectly."*

Section 72 of the Act details the political objects to which the restriction given in section 71 applies. It states:-

- "(1) The political objects to which this Chapter applies are the expenditure of money -*
- (a) *on any contribution to the funds of, or on the payment of expenses incurred directly or indirectly by, a political party;*
 - (b) *on the provision of any service or property for use by or on behalf of any political party;*

- (c) *in connection with the registration of electors, the candidature of any person, the selection of any candidate or the holding of any ballot by the union in connection with any election to a political office;*
 - (d) *on the maintenance of any holder of a political office;*
 - (e) *on the holding of any conference or meeting by or on behalf of a political party or of any other meeting the main purpose of which is the transaction of business in connection with a political party;*
 - (f) *on the production, publication or distribution of any literature, document, film, sound recording or advertisement the main purpose of which is to persuade people to vote for a political party or candidate or to persuade them not to vote for a political party or candidate.*
- (2) *Where a person attends a conference or meeting as a delegate or otherwise as a participator in the proceedings, any expenditure incurred in connection with his attendance as such shall, for the purposes of subsection (1)(e), be taken to be expenditure incurred on the holding of the conference or meeting.*
- (3) *In determining for the purposes of subsection (1) whether a trade union has incurred expenditure of a kind mentioned in that subsection, no account shall be taken of the ordinary administrative expenses of the union."*

10. By means of Schedule 3 paragraph 8 of the 1992 Act in effect these political objects are deemed to be part of the rules of a union with a political fund whatever the actual words in the union rule book. In fact in this case UNISON's rule J1.1 replicates these objects.

The Complainant's Case

11. The complainant argued that because of the political nature of the court case in which the union was allegedly supporting the defendant (the Council's Chief Executive, Mr A Taylor) such support should come from the political fund and not the general fund of the union. He explained in correspondence that the charge facing the Council's Chief Executive was for electioneering on behalf of a political party by the manner, timing and distribution of a leaflet, 'Action for Change'. This leaflet, signed by Mr Taylor, and by the Labour Mayor of Doncaster Council and the Labour Council Leader (both of whom were standing for reelection) spoke of changing times at the authority and - in the wake of the Donnygate scandal - apologised to residents for past failings. It had been reported in the press that Mr Taylor in court denied an offence of incurring unauthorised election expenses in relation to the distribution of the leaflet with a view to promoting or procuring the election of Labour candidates at the elections. The case was dismissed at Hull Crown Court, the judge ruled that the prosecution had failed to show that Mr Taylor acted deviously or dishonestly. Mr Antons-Jones stated in correspondence that he disputed this judgement.
12. Mr Antons-Jones also argued that any financial support for Mr Taylor should have come either from the political party in question or be met by the employer in support of its employee. The union, in his opinion had applied the funds of the membership in a matter of no relevance to the union. However in applying its funds in this way, he argued, it was

in breach of section 82(1)(a) which states "payments in the furtherance of the political objects to which this chapter applies shall be made out of a separate fund". It was also, he felt, in breach of section 72(1) which details the political objects and which include the expenditure of money -

- "(a) On any contribution to the funds of, or on the payment of expenses incurred directly or indirectly by, a political party;
- (b) on the provision of any service or property for use by or on behalf of a political party;
- (f) on the production, publication or distribution of any literature, document, film sound recording or advertisement the main purpose of which is to persuade people to vote for a political party or candidate."

13. In Mr Antons-Jones' view the defence costs of Mr Taylor certainly fell into the categories of expenditure covered by (a) and (b). Category (f) was also relevant, he felt, in terms of Mr Taylor's case and with the spirit and purpose of the 1992 Act.

The Union's Case

14. The union argued that it operated a legal advice and assistance scheme (referred to below as "the Scheme") for its members involving employment law, personal injury law and criminal law cases. Mr A Taylor, the Chief Executive of Doncaster Council, a full member of the union being tried at the Crown Court under an offence contrary to the Representation of the People Act 1983, qualified for legal support by the union. This was

a decision in line with Unison's rule to give legal support to a member in full benefit being in need of legal assistance as outlined above.

15. In offering such assistance, it was argued, the union were not thereby supporting the action of the Council's Chief Executive, Mr A Taylor, in either the distribution of the leaflet or by implication supporting the alleged intent of that leaflet to further the interest of the local Labour party. The union assert that UNISON "was not involved in the publication of the leaflet which was the subject matter of Mr Taylor's criminal trial..... Only Council members and the Chief Executive were signatories to the document. Unison's involvement was restricted to the provision of legal representation to Mr Taylor as a member in a normal way and in a manner consistent with the operation of the Scheme". This, they argued could not be construed as 'a contribution to the funds of, or on the payment of expenses incurred directly or indirectly by, a political party. Nor was it expenditure for the provision of any service for use by or on behalf of any political party. Still less was it expenditure of money on the production, publication or distribution of any literature the main purpose of which is to persuade people to vote for a political party or candidate or to persuade them not to vote for a political party or candidate". In other words it was argued, legal assistance was offered to Mr Taylor as a qualifying member of the union and for no other reason. There was therefore, the union argued, no link between the union's assistance and the substance of the matter for which Mr Taylor was being tried and hence it did not involve a political matter in pursuance of section 82(1)(a) of the Act.

Reasons for my Decision

16. The complaint is that the union, by financially supporting a member by the provision of legal assistance under its Scheme, had breached section 82(1)(a) of the Act by allegedly making payments in the furtherance of certain political objects set out in section 72(1)(a) (b) and (f). The complainant has said that the union should have used its political fund in support of a member whose court case turned around activities of a political nature and not general funds under the Scheme to provide legal assistance.

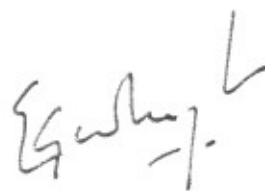
17. In correspondence Mr Antons-Jones placed much weight on the fact that he was being denied legal assistance by the union in a dispute he had with his employer, and contrasted this with the treatment given to Mr Taylor. I have not gone into this as the only issue I have to consider is whether the union has breached those sections of the Act relating to expenditure on political objects. The import of section 82(1) is that payments made by the union 'in furtherance of political objects' shall be made out of 'a separate fund (the "political fund") of the union. I have therefore to determine whether the use of the union's legal assistance Scheme was to further political objectives as set out in section 72(1) (a) to (f) of the Act.

18. It seems to me that the union's Scheme has the aim of assisting members in need of legal support. That of itself is not a political objective and I have not seen any evidence from the complainant to persuade me that the Scheme had the result of furthering political objects as defined by the Act. The complainant would have to establish that the union's expenditure on the Scheme in Mr Taylor's case was in furtherance of political objects as

set out in sections 72(1) (a) to (f) of the Act. The expenditure was not demonstrated to be as a contribution or a service provided to a political party. Neither could it be called expenditure whose *"main purpose was to persuade people to vote for a political party"*.

19. I accept the union's argument that the Scheme activated on Mr Taylor's behalf was being operated solely as support to a member in need of legal assistance that could be given to any other fully paid-up member, regardless of his or her political affiliation or, within the nature of Mr Taylor's alleged offences under the criminal law because I can find no link between the operation of the union's scheme and the political activity in which it is alleged Mr Taylor was engaged. I find that the Scheme was a proper use of the unions' general funds, that is, legal assistance as defined by the Scheme in paragraph 14 above. This is not a political activity as defined in the Act and therefore not within the scope of Chapter VI of the Act.

20. For these reasons I dismiss the complaint.

A handwritten signature in black ink, appearing to be 'E. G. ...', with a large checkmark-like flourish to the right.