D/1-9/02

DECISION OF THE CERTIFICATION OFFICER ON APPLICATIONS MADE UNDER SECTION 108A(1) OF THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

Mr DAVID BEAUMONT

v

THE MANUFACTURING SCIENCE AND FINANCE UNION

Date of Decision: **16 January 2002**

DECISION

Upon application by the Applicant under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") for declarations that the Manufacturing, Science and Finance Union ("The Union" or "MSF") acted in breach of the rules of the Union:

1. I make the following declarations:-

   1.1 The Union breached rule 17(a)(iii) of the rules of the Union by the General Secretary not preparing for the Applicant a full set of papers in respect of the hearing of his case by the Union's Appeal Court.

   1.2 The Union breached rule 17(b)(iii) of the rules of the Union by the General Secretary not drawing the Applicant's attention to the *"provisions of Rule"* upon receipt of his appeal from his Branch Secretary.

   1.3 The Union breached rule 17(b)(vii) of the rules of the Union by convening an Appeal Court to hear the Applicant's appeal without the NEC having previously considered and made a decision upon that appeal. As a consequence, the decision

reached by the Appeal Court on 30 May 2001 is a nullity.

2. I refuse to make the declarations sought that the Union acted in breach of rules 14(c), 17(b)(vi), 17(b)(viii), 18(b) and 18(e). In respect of rule 18(e) the Applicant made two complaints.

3. I make the following enforcement order:

> *"The Union shall progress the Applicant's appeal against the decision of the National Executive Council of 13 November 1999 to suspend him from office, in accordance with the rules of the Union. In particular, by 12 April 2002 , the Union will submit the Applicant's appeal to the National Executive Council for its consideration in accordance with rule 17(b)(vii)."*

REASONS

4. By an application dated 29 May 2001, Mr Beaumont made eight complaints against his union, the Manufacturing, Science and Finance Union. On 15 June 2001, the Applicant requested that a further complaint be added to his application. The nine complaints are that MSF breached its rules in respect of disciplinary proceedings, these being matters within the jurisdiction of the Certification Officer by virtue of section 108A(2)(b) of the 1992 Act. The alleged breaches are that:-

4.1 The Union failed to provide a full set of papers for the Applicant in respect of an Appeal Court hearing, in breach of rule 17(a)(iii);

4.2 The Union's General Secretary failed to draw the Applicant's attention to *"the provisions of Rule"*, in breach of rule 17(b)(iii);

4.3 The Union's National Executive Council failed to make a decision in respect of the Applicant's appeal, in breach of rule 17(b)(vii);

4.4 The Union's General Secretary delegated the post of Secretary to its Appeal

Court to an official of the Union, in breach of rule18(b);

4.5 The Appeals Court in respect of the Applicant's appeal was not chosen in rotation, in breach of rule 18(e);

4.6 The Appeals Court, in respect of the Applicant's appeal, comprised members who had been involved in previous proceedings relating to the same issues, in breach of rule 18(e);

4.7 The Union beached rule 14(c) which provides, inter alia, that an office holder facing disciplinary action under rule 16 may be suspended from office pending an appeal;

4.8 The Union breached rule 17(b)(vi) which provides, inter alia, that the relevant Branch Secretary shall forward a copy of any appeal to the General Secretary for the attention of the NEC;

4.9 The Union beached rule 17(b)(viii) which provides that a request to pursue the complaint to the Appeals Court must be received within 30 days.

5. I investigated these matters in correspondence. As required by section 108B(2) of the 1992 Act, the parties were offered the opportunity of a formal hearing and such a hearing took place on 13 December 2001. The Union was represented by Mr Colin Ettinger of Irwin Mitchell, solicitors. Mr A McKenna and Ms L Anderson (MSF Officers), attended as witnesses. Mr Beaumont acted in person and called no witnesses. A bundle of documents was prepared for the hearing by my Office which consisted of relevant exchanges of correspondence with the parties, together with their enclosures. This decision has been reached on the basis of the representations made by the Applicant and the Union, together with such documents as were provided by them.

Findings of Fact

6. Having considered the representations made to me and the relevant documents I make the following findings of fact:-

7. In the election for the position of Mayor of London in 2000 the Labour Party held a ballot to elect members of an electoral college which would then elect its candidate. In respect of trade unions, participation in the ballot was dependent on them being affiliated to the Greater London Labour Party in 1998 and to have paid their 1998 affiliation fees by 31 December 1998. The affiliation fee for 1998 for the London Region of MSF was not paid until 31 July 1999, resulting in the members of the London Region of MSF who had contributed to the union's political fund being declared ineligible to participate in the ballot.

8. On Wednesday 10 November 1999 the London Regional Council of MSF caused solicitors to write a letter before action to the Labour Party challenging its decision to declare the London Regional Council of MSF ineligible to participate in the ballot. This letter required a response by Friday 12 November. On Thursday 11 November the MSF General Secretary wrote to the secretary of the London Regional Council, Mr MacGrillen, advising him that no legal action could be taken on behalf of MSF without the authority of the NEC and that the rules of the Union did not allow a Regional Council to use funds for such a purpose. The NEC was due to meet on Saturday 13 November when this matter was discussed. As the threat of legal action by the London Regional Council had not been removed, the NEC decided to freeze the accounts of the London Regional Council and to suspend its president, Ms Michie, its secretary, Mr MacGrillen and its treasurer Mr Beaumont, the Applicant. The NEC also decided to set up an investigation committee to look into these events and appointed Ms Anderson to be its secretary. During the whole of these events, the Applicant was on holiday and the writ which was eventually issued against the Labour Party was in the name of six individual members of MSF, including Ms Michie and Mr MacGrillen but excluding the Applicant. The Applicant was notified by the General Secretary of his suspension by letter dated 19 November 1999.

9. An issue arose as to under which rule the officers of the London Regional Council had

been suspended. In an earlier decision (**Michie v MSF** (D/38-42/01) - 14 March 2001) my predecessor as Certification Officer stated that the union *"got itself into a terrific muddle about which rule was being followed"*. Reference had been made to rules 3(d), 14(c), 16(b) and 39(d). Following advice from the union's solicitors dated 13 April 2000, it was clarified that the suspension of the Applicant was under rule 16(b). Until that time at least the Applicant cannot be criticised for not knowing the rule under which he was suspended.

10. On 23 December 1999, Mr Beaumont submitted an appeal against his suspension to his Branch (Hounslow & Feltham), of which he was also the Chairman. On 29 December 1999, the Applicant's Branch Secretary, Mr Mayer, wrote to the General Secretary of MSF advising him of Mr Beaumont's appeal, in accordance with rule 17(b)(iii). At a branch meeting on 13 January 2000 the branch upheld the Applicant's appeal and on 14 January Mr Mayer wrote to MSF's General Secretary, in accordance with rule 17(b)(vi) stating that the branch was satisfied that Mr Beaumont had not been in breach of the rules quoted at the time of his suspension and asking that *"the NEC should fulfill its obligations in a timely fashion under rule 17(b)(vii)"*.

11. On 14 January 2000, the action by the six MSF members against the Labour Party came to court and was dismissed.

12. On 12 March 2000, the Applicant's Branch Secretary wrote to the General Secretary expressing concern that the General Secretary had not *"drawn the Appellant's attention to the provision of Rule"*, as provided for in rule 17(b)(iii) and stated that the Applicant was still awaiting a decision of the NEC as provided for under rule 17(b)(vii).

13. At a meeting of the NEC of the union on 15 April 2000 an initial report from the NEC investigation panel was considered and a number of recommendations were endorsed, including *"that with immediate effect the current officers of the London Regional Committee as defined by rule 39d are suspended under rule 16b from holding Office or representing the Union in any capacity and that the disciplinary procedure under rule 16(a)(i) and 16(a)(ii), 16(a)(iii), 16(a)(iv) is now invoked"*. The NEC also endorsed the recommendation that *"the NEC records that using its powers under rule 3(d) all appeals*

in this case currently lodged or are lodged in the future are held in abeyance until the cessation of the Rule Book disciplinary procedures".

14. On 8 May 2000, Ms Michie, one of the suspended officers of the London Regional Council, submitted a complaint of breach of rules by the Union to the then Certification Officer. She complained that in suspending her from the office of President and subsequently from all offices within the Union, MSF had acted in breach of rule. A formal hearing took place on 19 December 2000 and the decision was given on 14 March 2001. The Certification Officer stated that:-

Para 3.7 *"I am satisfied that the rules of the union clearly provide for the right of appeal and that right of appeal, in the matters of suspension, are set out in both Rule 14 c) and Rule 17. The union have accepted that Rule 3 d) did not permit the NEC to override clear provisions in the rule book (para. 2.36). The rules on appeal are quite clear. The right provided by those rules is meaningless if the union has a right to overrule it sine die. In deferring the appeal the NEC were effectively rejecting that appeal. Once the disciplinary procedures had been completed, the individuals would either be cleared or would face a penalty. In either instance an appeal against the original suspension during the investigation would be academic."*

Para 3.9 "*The right of appeal against suspension is set out in Rule 14 c) and Rule 17 and neither of these rights have been permitted. Both rules dealing with suspension envisage a right of appeal to a body consisting of lay members. Those members would be better positioned to judge whether, in the context of the union's overall practice, suspension was a reasonable response. The decision of the NEC to defer the appeal was in effect a decision not to allow the appeal to proceed. I therefore find against the Union in that, by postponing Ms Michie's appeal until all relevance of that appeal had been lost, the Union effectively denied her the right of appeal."*

The Certification Officer also made an enforcement order. This was in the following

terms:-

> *"That all suspensions in respect of Ms Michie be lifted from the date of this decision until such time as an Appeals Court has considered the question of these suspensions under Rule 17. Such an Appeals Court should be properly constituted under rule to hear Ms Michie's appeal within two months".*

15. Although the enforcement order only related to the case of Ms Michie, the Union decided that the appeals of all those from the London Regional Council who had been suspended should be held within this same period of two months. The NEC of MSF meets on a six weekly cycle and it was not considered appropriate to call an emergency NEC. The decision about how to comply with the enforcement order was therefore left to the General Purposes and Finance Committee ("GPFC"). At its meeting on the 5 April the GPFC endorsed the recommendation that the four outstanding appeals be scheduled for 26/27 April 2001.

16. On the 12 April 2001 the Union wrote to the Applicant informing him that an Appeal Court had been convened to consider his appeal on 27 April. This letter was written by Mr Alex McKenna who described himself as *"Assistant to the Appeals Court"*. The letter was headed *"Appeals Court Hearing: David Beaumont (Suspension from Office - Rule 14c)"*. The reference to rule 14(c) caused some confusion to the Applicant. He considered that this rule could only be used to suspend an office holder after he or she had been disciplined. At that stage, however, the Applicant did not take any point on the reference to rule 14(c) and was content for the appeal to proceed, as arranged by the Union. This is apparent from the Applicant's e-mail to the Union of the 21 April in which he raised no objection to the appeal taking place but advised that he would be unable to attend a hearing on 27 April as he had fallen the day before and broken a rib. In this e-mail the Applicant goes on to make the point that his appeal was made under rule 17(b) and that the General Secretary was in breach of rule for not having brought his attention to *"the provisions of Rule"* and for not having informed him of his right to pursue his complaint to the Appeal Court.

17. On 1 May Mr McKenna wrote again to the Applicant advising him that the Appeal Court hearing had been re-scheduled to Wednesday 30 May 2001. The heading of this letter was the same as on Mr McKenna's earlier letter of the 12 April, referring to *"Suspension from Office - Rule 14c"*.

18. On 23 May the Applicant responded to Mr McKenna, describing Mr McKenna as the *"Secretary to the Appeals Court"*. This letter became the source of much subsequent confusion. The Applicant states:-

> *"I hereby withdraw any appeal that may have been lodged on my behalf under rule 14(c). I will not attend the appeal you have constituted under this rule and I insist that you do not hear such an appeal in my absence". ... "My original ultra vires appeal, submitted over a year ago and which I do not withdraw was under rule 17 and about suspension, not discipline."*

The Applicant has since explained that this letter was intended to make a point about the constitutional position of the Appeal Court which was due to sit on 30 May. He considered that if it had been called to determine a rule 14(c) issue it could not have been called to consider his rule 17(b) complaint and that, in any event, it had been improperly convened as there had been no prior decision of the NEC as required by rule 17(vii). He described the purported appeal under rule 14(c) as being an appeal of the Union's own creation and not the appeal that he had originally lodged. This letter caused the Union some confusion. The Appellant had been ready and willing to attend an Appeal Court on 27 April based on a letter which contained a reference in the heading to rule 14(c) but he was not prepared to attend an appeal on 30 May based on a letter with a similar heading. The significance attributed by the Applicant to the reference to rule 14(c) escaped the Union at the time. This is partly explained by the Union's concession at the hearing before me that the reference had been made in error. However, I find that the source of this confusion was the Union's own muddle about the rule under which the suspension had been originally imposed.

19. The confusion was compounded when the union purported to refuse the applicant permission to withdraw his appeal on the grounds that it had been submitted by his branch

and that it could therefore only be withdrawn by his branch. I find that the events concerning this purported withdrawal of the appeal to be a red herring. Upon a careful reading, the Applicant's letter of 23 May did not withdraw his appeal under rule 17(b). It attempted to make a much more subtle point. This may or may not have been raised disingenuously but it resulted in considerable confusion.

20. The Applicant's letter of 23 May served two purposes, having eliminated from it the confusing withdrawal of a non-existing appeal. It confirmed that the Applicant wished his rule 17(b) appeal to proceed and it set out for the first time the alleged breaches of rule which were later to form the basis of this application.

21. The Appeal Court met on 30 May. The Applicant did not attend. The relevant part of the ruling of the Appeal Court states, *"In conclusion, the Appeal Court has considered the appeal by David Beaumont and rejects the appeal, believing that the NEC was correct in its decision of 13 November 1999 in suspending David Beaumont"*.

22. On 1 June the Certification Office received the Applicant's registration of complaint form in relation to eight breaches of rule by the Union and on 15 June the Applicant added a further complaint, namely the alleged breach of rule 17(b)(vi).

The Relevant Statutory Provisions

23. The provisions of the 1992 Act which are relevant for the purpose of these applications 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) ...
> (b) disciplinary proceedings by the union (including expulsion);
> (c) ...
> (d) ...
>
> (3) -

(4) -
(5) -

(6) An application must be made -

(a) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or

(b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in subsection (7).

(7) Those days are -

(a) the day on which the procedure is concluded, and

(b) the last day of the period of one year beginning with the day on which the procedure is invoked."

24. Section 108B(2) of the Act empowers me to make such enquiries as I think fit and, after giving the applicant and the union an opportunity to be heard, to make or refuse to make the declarations asked for. I am required, whether I make or refuse the declaration sought, to give reasons for my decision in writing.

The Union Rules

25. The Union rules relevant to the Applicant's complaints are as follows:

Rule 14. Removal from Office

a) -
b) -
c) An office holder facing disciplinary procedures under Rule 16 (Disciplinary Procedures) may be suspended from office pending an appeal. If the appeal is unsuccessful, the NEC shall have the authority to exclude the member from office.

Rule 16. Disciplinary Procedures

a) The NEC shall have power to terminate the membership of, or fine or remove from office any member who, in its opinion, without reasonable excuse:
i) -
ii) -
iii)Misappropriates or fraudulently receives any money, funds or property of the Union or makes any false declaration in regard thereof;
iv) -
v) - In his/her capacity as a member of the Union, supports or speaks on behalf of organisations concerned with the dissemination of racist propaganda and/or himself/herself undertakes actions against others, whether members of the Union or not, designed to discriminate on the grounds of race, creed, ethnic origin, nationality, sexuality or sex.

b)In cases referred to the NEC under a) iii) and a) v) above, the NEC shall have the authority to suspend the member immediately from holding office or representing the Union in any

capacity pending the outcome of an investigation. In the event of a complaint under a) iii) above being upheld, and in the absence of any other penalty, the member concerned shall continue to be barred from holding office until outstanding monies have been recovered and for a further period not exceeding five years.

c) to q) -

Rule 17. Appeals Machinery

a) **Individual Discipline**

i) -

ii) -

iii) The General Secretary shall prepare a full set of papers for each member of the Appeals Court and the appellants. This shall consist of all written material received from the Branch and the appellant relating to the original investigation, the National Executive Council decision and the request that the Appeals Court should consider the complaint.

iv) The Appeals Court shall normally meet within two months and consider only the written material before it except that the appellant has the right to address the Court. The appellant may be accompanied by a member of the Union who shall be entitled to assist in the presentation of his/her case. If the appellant chooses not to appear or fails to appear without reasonable excuse, the Appeals Court shall proceed to consider the case.

v) The decision of the Appeals Court shall be final. It shall be communicated to the appellant, Branch and the NEC and shall be reported to the next Annual Conference.

b) **Allegation that the NEC or Conference has acted *ultra vires* the Rules**

i) The appeals machinery as outlined in succeeding paragraphs shall be used only in respect of an appeal by a member that the NEC or Annual Conference has acted *ultra vires* the Rules in a manner which affects the member as an individual, or affects a category of members of which the member is a part, or affects the whole membership, and providing always that the decision which is the subject of the appeal is still, operative.

ii) An appeal shall in the first place be addressed in writing to the Branch Secrtary

iii) Upon receipt of an appeal, the Branch Secretary shall inform the General Secretary who shall draw the appellant's attention to the provisions of Rule

iv) The Branch Secretary shall include the appeal as a special item of business on the next monthly Branch General Meeting notice.

v) The Branch shall consider the appeal as submitted and determine any recommendation or report it wishes to make for the attention of the NEC.

vi) Within 14 days of the Branch meeting, the Branch Secretary shall forward a copy of the appeal, together with a copy of the original complaint, a copy of the notice calling the Branch meeting, a copy of the relevant Branch decision and any report.....to the General Secretary for the attention of the NEC.

vii) The NEC shall consider the material and make a decision which shall be conveyed to the Branch and to the appellant by the General Secretary, who shall also inform the appellant of the right to pursue the complaint to the Appeals Court, notwithstanding any view which the National Executive Council might hold as to the validity of the complaint.

viii) A request to pursue the complaint to the Appeals Court must be received within 30 days.

ix) The matter will then be dealt with in accordance with a) iii) to v) above.

Rule 18. Appeals Court

a) -

b) The General Secretary, or an Assistant General Secretary, will be Secretary to the Court without a vote.

c) -

d) -

e) The Appeals Court shall be chosen from the panels in rotation and subject to availability. No member who has been involved in previous proceedings relating to a particular case shall serve

on the Appeal Court dealing with that case.
f) -
g) -
h) -

The Complaints

The Rule 14(c) Complaint

The Applicant's Submission

26. The Applicant contended that there had not been any decision by the Union against him under rule 14(c), that he had not appealed against a decision made under 14(c) and that if the Appeal Court had considered an appeal under rule 14(c) on 30 May it had acted ultra vires. However, the Applicant conceded that if the Union were to accept that there should have been no reference to rule 14(c) in the letters from Mr McKenna of 12 April and 1 May 2001 then this complaint could not progress.

The Union's Response

27. The Union accepted that the reference in Mr McKenna's letter to rule 14(c) was an administrative error and asserted that the appeal which was in fact progressed was the Applicant's appeal under rule 17(b). On this basis, the Union contended that this application was misconceived.

Conclusion

28. It is unfortunate that the administrative error of referring to rule 14(c) occurred, having regard to the confusion to which it later gave rise. I find that the appeal which was heard by the Appeal Court purported to be the Applicant's appeal under rule 17(b) and that accordingly there is no basis for a complaint to be made by the Applicant of a breach of rule 14(c). I therefore refuse to make the declaration sought by the Applicant.

The Rule 17(a)(iii) Complaint

The Applicant's Submission

29. Rule 17(a)(iii), provides, *"The General Secretary shall prepare a full set of papers for each member of the Appeals Court and the appellants. This shall consist of all written material received from the Branch and the appellant relating to the original investigation, the National Executive Council decision and the request that the Appeals Court should consider the complaint"*. The Applicant agreed that he had been provided by the Union with a 109 page bundle of documents, being the bundle to be presented to the Appeal Court, and that the bundle could not contain the NEC decision (as the NEC had made no decision) or the request that the Appeal Court consider the complaint (as no such request had been made). However, he complained that the Union had prepared one bundle for all four appeals and that accordingly the bundle contained many documents irrelevant to his case. More specifically, he complained that the bundle did not contain the letter from his Branch Secretary dated 14 January 2000, which the Branch Secretary had sent in compliance with rule 17(b)(vi). The letter stated, *"This branch is satisfied that Mr Beaumont, by his actions, has not been in breach of any of the rules quoted .... Accordingly, we strongly recommend that Mr Beaumont should be reinstated as London Regional Treasurer, with immediate effect, and that the National Executive should apologise to him for the inappropriateness of their actions in this matter"*. The Applicant considered that the omission of this letter was significant and that, by its omission, the Union was in breach of rule 17(a)(iii).

The Union's Response

30. The Union argued that rule 17(a)(iii) required there to be prepared for the appellant *"a full set of papers"*. It was submitted that this did not mean every single piece of paper in the case had to be prepared but a comprehensive set of papers. The Union contended that the omission of a single letter did not lead to the conclusion that the set of papers was not *"full"*.

Conclusion

31. Rule 17(a)(iii) is clear in its requirement as to what constitutes a full set of papers.

Amongst other documents it requires the bundle to contain *"All written material received from the branch and the appellant relating to the original investigation"*. The letter from the Applicant's branch secretary of 14 January 2000 was clearly a letter which the rule envisaged being placed before the Appeal Court. Further, it was a letter which expressed the views of the branch on the Applicant's appeal and was therefore a letter of some importance. To have omitted this letter constituted a breach of rule 17(a)(iii) and I therefore uphold this complaint and make a declaration in the following terms:-

> *"The Union breached 17(a)(iii) of the rules of the Union by the General Secretary not preparing for the Applicant a full set of papers in respect of the hearing of his case by the Union's Appeal Court".*

The Rule 17(b)(iii) Complaint

The Applicant's Submission

32. Rule 17(b)(iii) provides that *"Upon receipt of an appeal, the Branch Secretary shall inform the General Secretary who shall draw the appellant's attention to the provisions of Rule"*. The Applicant states that his Branch Secretary informed the Union of his appeal by a letter dated 29 December 1999 but that the General Secretary failed to draw his attention to *"the provisions of Rule"*.

The Union's Response

33. The Union accepted, as it had to, that the General Secretary had not written to the Applicant after receipt of his Branch Secretary's letter of 29 December 1999 in order to draw his attention to *"the provisions of Rule"*. However, it was argued that this complaint was out of time having regard to the six month time limit on claims to the Certification Officer under section 108A(6) of the 1992 Act. Mr Ettinger acknowledged that the terms of rule 17(b)(iii) do not provide a clear date from which the limitation period could be calculated. He submitted, however, that it could not be right that there was no limitation period and that it should be taken to begin either after a reasonable period from the date the General Secretary was informed of the appeal or, on the facts of this case, by the 15 April 2000 when the NEC decided that the Applicant's appeal be held in abeyance until the cessation of the rule book disciplinary procedures.

Conclusion

34. In order to be effective any limitation period must have a start date which is capable of being identified with precision by the parties and any relevant third party. In the absence of a date upon which the breach can be identified as having occurred, the breach can properly be described as being continuous in nature. I accordingly find that the breach of rule 17(b)(iii) in this case, which is not contested by the Union, is a continuous breach and that accordingly the complaint made by the Applicant in respect of that breach on 1 June 2001 was not out of time. I make a declaration in the following terms:-

> *"The Union breached rule 17(b)(iii) of the rules of the Union by the General Secretary not drawing the Applicant's attention to the "provisions of Rule" upon receipt of his appeal from his Branch Secretary."*

The Rule 17(b)(vi) Complaint

The Applicant's Submission

35. Rule 17(b)(vi) provides; *"Within 14 days of the Branch meeting, the Branch Secretary shall forward a copy of the appeal, together with a copy of the original complaint, a copy of the notice calling the Branch meeting, a copy of the relevant Branch decision and any report or recommendation as determined under (v) above, together with other relevant material to the General Secretary for the attention of the NEC"*. The Applicant explained that he made this complaint in order to demonstrate that the NEC were wrong in their contention that an appeal could only be withdrawn by the branch, not by the appellant himself or herself. He pointed out that it was the duty of the Branch Secretary to forward a copy of the appeal to the General Secretary and argued that this did not have the effect of constituting the appeal as being one made by the branch. The Applicant had therefore raised this complaint to establish that the Union should have allowed his application to withdraw the (non-existing) appeal under rule 14(c).

The Union's Response

36. The Union stated that this rule placed an obligation on the Branch Secretary to forward

material to the General Secretary. It did not place any requirement on the Union as such and that accordingly this rule was not capable of being breached by the Union itself.

Conclusion

37. This rule clearly places an obligation on the Branch Secretary to forward a copy of any appeal to the General Secretary and the Applicant's Branch Secretary complied with this requirement by his letter of 14 January 2000. The rule does not impose any requirement on the General Secretary or the Union. There has been no breach of rule 17(b)(vi) and the complaint is misconceived. I therefore refuse to make the declaration sought.

The Rule 17(b)(vii) Complaint

The Applicant's Submission

38. Rule 17(b)(vii) provides: *"The NEC shall consider the material and make a decision which shall be conveyed to the Branch and the appellant by the General Secretary, who shall also inform the appellant of the right to pursue the complaint to the Appeals Court, notwithstanding any view which the National Executive Council might hold as to the validity of the complaint"*. The Applicant contended that the NEC neither considered the material relating to his appeal nor made a decision upon his appeal. Consequently, no decision was conveyed to either him or the branch and he was not informed of his right to pursue the complaint to the Appeals Court. As a consequence of this breach, the Applicant contended that the Appeal Court had not heard his appeal in accordance with rule and that, in effect, its decision is a nullity. He submitted that an Appeal Court could only be constituted under rule 17(b) if the NEC had made a decision, if that decision had been communicated to the appellant and if the appellant had made a request to pursue his complaint to the Appeals Court within 30 days. As none of these events had taken place the Appeals Court was improperly convened to consider his appeal.

The Union's Response

39. The Union accepted that the NEC had not specifically and in detail considered the merits of the Applicant's appeal with a view to reaching a substantive decision on whether the

appeal should be allowed or rejected. However it submitted that the Applicant's appeal was considered by the NEC at its meeting on 15 April 2000, at which meeting the NEC received the initial report of the Investigation Panel into the activities of the London Regional Council and agreed to endorse various recommendations, including the recommendation to hold the appeals in abeyance pending the conclusion of the disciplinary procedures. In making this submission the Union relied upon the decision of the Certification Officer in **Michie v MSF** which it was argued found as a fact that the meeting of the NEC on 15 April 2000 had not only considered the Applicant's appeal but had reached a decision on it within the meaning of rule 17(b)(vii). It was submitted that this finding was conclusive of that particular issue.

40. The Union further contended that the Appeal Court was properly convened having regard to the enforcement order made by the Certification Officer in the Michie case. The enforcement order required that Ms Michie's appeal be heard within two months of the 14 March 2001. The Union feared that if it did not hear all four of the outstanding appeals within two months it would face similar applications to the Certification Officer by the other suspended officers from the London Regional Council. Accordingly, the Union decided that the appropriate course to take was to convene an Appeals Court which could hear all four appeals at about the same time. In considering the rule book difficulty this might present, the Union considered that it was between a rock and a hard place and that, in this situation, its principle duty was to comply with the enforcement order of the Certification Officer.

Conclusion

41. In the case of **Michie v MSF**, the Certification Officer found that the Union had acted in breach of rule by deciding to hold in abeyance Ms Michie's appeal against her suspension pending the conclusion of the disciplinary proceedings, thereby suspending her indefinitely. In paragraph 3.7 of that decision the Certification Officer found, *"The rules on appeal are quite clear. The right provided by those rules is meaningless if the union has a right to overrule it sine die. In deferring the appeal the NEC were effectively rejecting that appeal"*. Later in that decision, at paragraph 3.9, the Certification Officer

found, *"The right of appeal against the suspension is set out in Rule 14(c) and Rule 17 and neither of these rights have been permitted .... The decision of the NEC to defer the appeal was in effect a decision not the allow the appeal to proceed"*. In neither paragraph is there an express finding of fact by the Certification Officer that the Union had made a decision on the Applicant's appeal sufficient to satisfy the requirements of rule 17(b)(vii).

42. Indeed it would be illogical if a decision to hold suspensions in abeyance were found to be a decision reached in compliance with rule 17(b)(vii). A consequence of a rule 17(b)(vii) decision is that the decision must be communicated to the appellant in order that he or she can decide whether or not to make a request to proceed to the Appeals Court within 30 days. A decision to hold appeals in abeyance cannot by its nature be a decision which is intended to be the foundation or start-point for a request being made to proceed to the Appeals Court. Furthermore, the decision of the Certification Officer in the Michie case does not purport to find that the recommendations endorsed by the NEC on 15 April 2000 was such a decision. In paragraphs 3.7 and 3.9 of the Michie case the Certification Officer found that the effect of the decision to hold Ms Michie's appeal in abeyance was to reject it or not allow it to proceed. He did not find in terms that the decision to hold Ms Michie's appeal in abeyance was a rule 17(b)(vii) decision. Indeed, the correct interpretation and application of rule 17(b)(vii) was not a matter in dispute in the Michie case nor was a finding on these issues necessary to the decision reached in that case. I therefore find that I am not constrained in reaching my decision on the proper interpretation and application of rule 17(b)(vii) in this case by anything contained in the Michie case.

43. Unconstrained by the Michie case, I find that the decision reached by the NEC on 15 April 2000 to hold the suspensions in abeyance was not a decision reached in compliance with rule 17(b)(vii) for the purpose of the Applicant's appeal. I therefore find that there was no such decision made by the NEC. It follows that the Applicant could not, and he did not, request to pursue his complaint to the Appeals Court within 30 days of the decision of the NEC, as required by rule 17(viii). There was accordingly no basis for the matter to proceed to the Appeal Court.

44. The submission that the Union was obliged to hold an Appeal Court hearing into the Applicant's case by reason of the Certification Officer's decision in the Michie case is without foundation. The Michie case only imposed an obligation on the Union with regard to the case of Ms Michie. In these circumstances the Union was not caught in a dilemma as to which of two conflicting obligations it should fulfill. The only obligations upon the Union with regard to the Applicant's appeal were those contained in its rule book. I find that the Union did not comply with these obligations and the undoubted convenience to the Union of holding all four appeals at the same time is insufficient reason for not having done so.

45. I therefore uphold the Applicant's complaint and make a declaration in the following terms:-

> *"The Union breached rule 17(b)(vii) of the rules of the Union by convening an Appeal Court to hear the Applicant's appeal without the NEC having previously considered and made a decision upon that appeal. As a consequence, the decision reached by the Appeal Court on 30 May 2001 is a nullity."*

46. I also make the following enforcement order:

> *"The Union shall progress the Applicant's appeal against the decision of the National Executive Council of 13 November 1999 to suspend him from office, in accordance with the rules of the Union. In particular, by 12 April 2002, the Union will submit the Applicant's appeal to the National Executive Council for its consideration in accordance with rule 17(b)(vii)."*

The Rule 17(b)(viii) Complaint

The Applicant's Submission

47. Rule 17(b)(viii) provides that *"A request to pursue the complaint to the Appeals Court must be received within 30 days"*. The Applicant stated that he was unable to make such a request as the NEC had not made a rule 17(b)(vii) decision. He further argued that an

Appeals Court could only be properly convened if a request had been made by him pursuant to rule 17(b)(viii).

The Union's Response

48. The Union submitted that this rule did not impose any obligation on the Union and that accordingly the Union could not be held to be in breach of it. Accordingly the Union submitted that this complaint was misconceived.

Conclusion

49. I accept the Union's submission. The rule does not impose any obligation on the Union. Its purpose is to require the appellant to pursue his or her complaint within the specified time period. I find that the complaint is misconceived and refuse to make the declaration sought.

The Rule 18(b) Complaint

The Applicant's Submission

50. Rule 18(b) provides that, *"The General Secretary, or an Assistant General Secretary, will be Secretary to the Court without a vote"*. The Applicant contended that for the purpose of his appeal Mr Alex McKenna was the Secretary to the Appeals Court and that as he was neither the General Secretary nor an Assistant General Secretary the Union was in breach of rule 18(b).

The Union's Response

51. The Union stated the General Secretary was at all relevant times the Secretary to the Appeals Court and that there was no Assistant General Secretary at the relevant time. It was explained that the role of Mr McKenna was purely administrative and that the responsibility for the Appeals Court rested throughout with the General Secretary. It was argued that the General Secretary had overall administrative responsibility for the Union but that he could not be expected to personally administer each aspect of its activities.

Specifically, he could not be expected to personally administer the arrangements that were necessary for an Appeals Court to be convened. Mr McKenna gave evidence that the General Secretary had not delegated his responsibilities as the Secretary to the Appeals Court although he had required others to carry out the administrative tasks that were required.

Conclusion

52. I accept that there is no requirement that the Secretary to the Appeals Court must personally carry out each administrative act connected with the activities of the Appeals Court. It is not only appropriate but necessary that someone in the position of the General Secretary should rely on others to carry out necessary administrative tasks. In requiring Mr McKenna to carry out these tasks I find that the General Secretary did not relinquish his responsibility as Secretary to the Appeals Court. Indeed, when writing to Mr Beaumont on 12 April and 1 May Mr McKenna was careful to describe himself as being the *"Assistant to the Appeals Court"*. The only description of Mr McKenna as being the Secretary to the Appeals Court appears in the Applicant's letter to Mr McKenna of 23 May 2001. The Applicant's Branch Secretary did not make a similar mistake. In a letter dated 7 June 2001 he referred to Mr McKenna as being the Assistant to the Appeals Court. I find that there has been no breach of rule 18(b) and refuse to make the declaration sought.

Rule 18(e): First Complaint

The Applicant's Submission

53. The first sentence of rule 18(e) provides that *"The Appeal Court shall be chosen from the panels in rotation and subject to availability"*. The Applicant stated that the Appeals Court which heard his appeal was the same Appeals Court which had earlier heard the appeals of the three other officers of the London Regional Council who had been suspended. He argued that these were each separate appeals and that the Appeals Court

should have been differently constituted, by rotation, in each case.

The Union's Response

54. In his evidence Mr McKenna described the process by which the members of the seven appeal panels are elected from the different industrial sectors and how the members of the subsequent Appeals Courts are selected. He stated that 39 members are elected to be on the appeals panel and that there are normally twelve members from the appeals panel on each Appeals Court, although a quorum of only six is required. Accordingly, it was argued, that with four members being subject to similar discipline (the three suspended in November 1999 and one other), there would need to be 48 members of the appeal panel if a differently constituted Appeals Court were to sit in each case. He also gave evidence that the Appeals Court had only been called upon to sit on twelve cases (including the present appeals) since 1988. The Union contended that the rule permits an Appeals Court with the same members to sit on a number of different cases with essentially the same facts. It was argued that this was not only administratively more convenient and less expensive but that it prevented unnecessary repetition of the same evidence and avoided conflicting decisions on the same point. Mr Ettinger submitted that in both the civil and criminal courts it was not unusual for cases on identical facts to be heard together.

Conclusion

55. Rule 18(e) does not require that membership of the Appeals Court be chosen only by application of the rotation principle. Regard must also be had to the availability of members of the panel. Furthermore, the rule does not state in terms that each case must be decided by a differently constituted Appeals Court. The requirement imposed by the rule is that whenever a new Appeals Court is selected, its membership will be chosen by an application of the principle of rotation. Having regard to the practicalities explained by Mr McKenna in evidence and the language of the rule, I find that there is no requirement that each individual case considered by the Appeals Court must be considered by an Appeals Court which is differently constituted. Rule 18(e) is not inconsistent with the Union retaining a discretion to select an Appeals Court with the same members to sit on a number of cases which arise out of the same facts and which require decisions common to all those cases to be reached. However, the Union's discretion is limited to

such situations and rule 18(e) does not enable an Appeals Court with the same membership to be selected to sit on cases which do not have the characteristics set out above. I therefore reject this complaint and refuse to make the declaration sought.

Rule 18(e): Second Complaint

The Applicant's Submission

56. The second sentence of rule 18(e) provides: *"No member who has been involved in previous proceedings relating to a particular case shall serve on the Appeals Court dealing with that case"*. The Applicant submitted that there was considerable overlap between this and his earlier complaint under rule 18(e). He argued that as the Appeals Court which heard his case had previously heard the appeals in the other three cases they had *"been involved in previous proceedings relating to a particular case"* and should therefore have been excluded from sitting on the Appeals Court which heard his appeal.

The Union's Response

57. The Union submitted that the purpose of the second part of rule 18(e) was to ensure that an individual was not tried twice by the same person. It was explained that the rule was to prevent a member who had heard a disciplinary case or who had been present at the branch meeting or the NEC at which an appeal had been discussed from being a member of the Appeals Court. It excluded only those members who had been involved in the individual case under appeal, not on other similar cases. Mr McKenna gave evidence that the members of the Appeals Panel are all lay members of the Union and that no member of the Appeal Court who sat on the Applicant's appeal had been involved in any earlier decision regarding the Applicant's suspension.

Conclusion

58. The second part of rule 18(e) specifically excludes from the Appeals Court any member who has been involved in previous proceedings relating to a <u>particular</u> case. I find that this excludes members who have previously been involved in proceedings relating to the particular Applicant but does not exclude members who have sat on the Appeals Court hearing appeals involving cases which arise out of the same facts and which require

decisions to be reached common to all these cases. I do not consider that the appeals brought by the other members of the London Regional Council who were suspended can properly be described as *"previous proceedings relating to a particular case"*. Those appeals concerned similar facts to the Applicant's appeal but they were not proceedings relating to his case. I therefore reject this complaint and refuse to make the declaration sought.

Observation

59. I note that on the 1 January 2002 MSF amalgamated with the Amalgamated Engineering and Electrical Union to form a new union, Amicus. The rules of Amicus provide that the former rules of MSF shall continue to apply to the former members of MSF, insofar as they are consistent with the rules of Amicus, and that references to the National Executive Council of MSF are now to be to the National Executive Council of the MSF Section of Amicus.

D COCKBURN
Certification Officer