

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

Mr Roger Barton

v

UNISON

Date of Decision

23 January 2015

DECISION

Upon application by Mr Roger Barton (“the claimant”) under section 108A (1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

“By consent, I make a declaration that on or about 13 August 2012 Unison breached rule 5(c)(ii) of the core branch rules of the Greenwich Unison branch by failing to make available on the website of the Greenwich Unison branch nominations forms for elections to an interim branch committee to be held in September 2012”

REASONS

1. Mr Barton brought this application as a member of UNISON (the “Union”). He did so by a registration of complaint form which was received at my office on 10 September 2012.
2. Following correspondence with my office, Mr Barton confirmed his complaint in the following terms:

“On or around 13 August Mr Barton was made aware that Greenwich UNISON had opened nominations for Branch nominations to an interim Branch Committee for branch election to be held in September 2012. At no time were the nominations forms made available through the Greenwich UNISON website. By failing to do so the union breached Rule 5(c)(ii) of the core Branch rules.”
3. I investigated the alleged breach in correspondence and a hearing was initially listed for 9 May 2013.

4. On 15 March 2013, the Union applied for a postponement of the hearing that had been listed. Its grounds for doing so was that an appeal which raised a similar point of law was soon to be considered by the Employment Appeal Tribunal (the "EAT"). This was an appeal brought by Unison against my decision in the case of **Mr and Mrs Street v UNISON (D28-29/12-13)** which I had determined on 9 February 2013. I granted the postponement.
5. The EAT decision in **UNISON v Mr and Mrs Street (UKEAT/0256/13)** was handed down on 28 November 2013. The appeal by Unison was successful. My office has since been trying to identify a list of the issues to be determined in Mr Barton's case having regard to the findings of the EAT. A hearing was set for 28 January 2015.
6. By an email dated 24 December 2014, the union conceded liability. It explained that it was doing so as it was unable to establish to the appropriate standard that the nominations for the interim branch elections were posted on the Greenwich branch website at the relevant time due to the passage of time and IT difficulties experienced at the branch.

The Relevant Statutory Provisions

7. The provisions of the 1992 Act which are relevant for the purposes of this application are as follows:-

108A Right to apply to Certification Officer

- (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).

108B Declarations and orders

- (3) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements –
 - a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;
 - b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.

The Relevant Rules of the Union

8. The relevant rules of the Union are as follows:-

Core Branch Rules of the Greenwich Unison Branch
Rule 5 Branch Officers

- (c) (ii) nominations will be invited 12 weeks before the AGM and nominations forms will be made available through the branch web-site. All nominations must be received in writing at least 7 weeks before the AGM.

Conclusion

9. I accept the Union's concession on liability as having been properly made and accordingly I make a declaration, by consent, that on or about 13 August 2012 Unison breached rule 5(c)(ii) of the core branch rules of the Greenwich Unison branch by failing to make available on the website of the Greenwich Unison branch nominations forms for elections to an interim branch committee to be held in September 2012.

10. When I make a declaration I am required by section 108B(3) of the 1992 Act to make an enforcement order unless I consider that to do so would be inappropriate. Mr Barton does not seek an enforcement order and, on the facts of this case, I consider that it would not be appropriate to make one.
11. In the above circumstances the hearing set for 28 January 2015 was cancelled.

A handwritten signature in black ink, appearing to read 'David Cockburn', with a horizontal line underneath the name.

David Cockburn
The Certification Officer