

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

Ms B Todd

v

Unite the Union

Date of Decision:

19 May 2015

DECISION

Upon application by Ms Bianca Todd (“the claimant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”).

And pursuant to section 256ZA of the Trade Union and Labour Relations (Consolidation) Act 1992.

I strike out the claimant’s five complaints that Unite the Union breached rules 5.1, 5.2 on or about 9 July 2014, and breached rules 14.8.6 and 14.10 of its rules on or about 16 and 17 October 2014 on the grounds that her complaints have no reasonable prospect of success and/or are otherwise misconceived.

REASONS

1. Ms Todd brought this application as a member of Unite the Union (“Unite” or “the Union”). She did so by a letter dated and sent by email on 24 November 2014. Following correspondence Ms Todd confirmed that she wished to pursue the following five complaints:

Complaint 1

“That on or about 9 July 2014 the union breached rule 5.1 of its rules because the General Secretary, Mr McCluskey, an Assistant General Secretary, Mr Turner and Chief of Staff Mr Murray did not comply with the rules of the union and/or did not comply with a duty or obligation imposed pursuant to the rules of the union. In particular Mr Murray took a decision to prevent Miss Todd from speaking to the National Industrial Sector Committees about a campaign in which she is active; this decision was outside Mr Murray’s authority to make in a member led union. Further the General Secretary denied Miss Todd the right of appeal to the Executive Council which is in breach of rules 14.8, 14.8.6, 14.10.1 and outside his authority.”

Complaint 2

“That on or about 9 July 2014 the union breached rule 5.2 of its rules because the lack of clarity to officers and members of the union about the decision of Chief of Staff Mr Murray referred to in complaint 1 brought discredit on Miss Todd as a member and on the campaign.”

Complaint 3

“That on or about 17 October 2014 the union breached rule 14.8.6 because it did not provide Miss Todd with an opportunity to appeal to the Executive Committee about the decision to prevent her from speaking to the National Industrial Sector Committees about the campaign she is active in.”

Complaint 4

“That on or about 16 October 2014 the union breached rule 14.8.6 because it did not provide Miss Todd with an opportunity to appeal to the Executive Committee about the decision of Mr Turner to dismiss the complaint which she raised with the General Secretary about Mr Murray’s decision in the above matter.”

Complaint 5

“That on or about 17 October 2014 the union breached rule 14.10 of rule union’s rules by the General Secretary denying Miss Todd the right of appeal to the Executive Council in respect of the complaint about Mr Murray which she raised with the General Secretary.”

2. During the course of correspondence with my office, Ms Todd was asked to explain the basis upon which she considered rules 5.1 and 5.2 were within my jurisdiction under sections 108A(2)(a) to (d) of the 1992 Act and how she considered that rule 14 and its sub-rules were capable of being breached in the manner she alleged. By a letter dated 26 February 2015 I caused the complaints to be sent to the Union to obtain its comments on them. The Union responded by letter dated 3 March from Mr Andrew Murray, Chief of Staff of Unite. Mr Murray denied each of the alleged breaches. He provided the Union’s explanation for the actions complained about which he asserted did not constitute a breach of the union’s rules. By a letter from my office dated 11 March Ms Todd was invited to provide her comments on Mr Murray’s letter. She did so by a letter of 11 March.
3. On 18 April 2015, my office sent a show cause letter to Ms Todd, pursuant to section 256ZA(4) of the 1992 Act, giving her an opportunity to show why her complaints should not be struck out on the basis that the complaints had no reasonable prospect of success and/or were otherwise misconceived. Ms Todd responded by letter dated 1 May.

The Relevant Statutory Provisions

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

Section 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).

(2) The matters are -

- (a) the appointment or election of a person to, or the removal of a person from, any office;*
- (b) disciplinary proceedings by the union (including expulsion);*

- (c) *the balloting of members on any issue other than industrial action;*
- (d) *the constitution or proceedings of any executive committee or of any decision-making meeting;*
- (e) *such other matters as may be specified in an order made by the Secretary of State.*

Section 256ZA Striking out

(1) *At any stage of proceedings on an application or complaint made to the Certification Officer, he may-*

- (a) *order the application or complaint, or any response, to be struck out on the grounds that it is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived,*

....

(3) *An order under this section may be made on the Certification Officer's own initiative and may also be made-*

- (a) *if the order sought is to strike out an application or complaint, or to amend or strike out anything in an application or complaint, on an application by the respondent, or*
- (b) *if the order sought is to strike out any response, or to amend or strike out anything in any response, on an application by the person who made the application or complaint mentioned in subsection (1).*

(4) *Before making an order under this section, the Certification Officer shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made.*

The Relevant Rules of the Union

5. The rules of the Union which are relevant for the purposes of this decision are as follows:-

RULE 5

OBLIGATIONS OF MEMBERS

5.1 *A member of the Union must comply with these rules and with any duty or obligation imposed on that member by or pursuant to these rules whether in his/her capacity as a member, a holder of a lay office or as a full time officer.*

5.2 *A member must not knowingly, recklessly or in bad faith provide the Union with false or misleading information relating to a member or any aspect of the Union's activities.*

RULE 14

EXECUTIVE COUNCIL

14.8 *The Government, management and control of the Union shall be vested in the Executive Council collectively, which may do such things consistent with the rules and objects of the Union as it may consider expedient to promote the interests of the Union or any of its members. In particular and without limiting the general powers conferred on it by these rules the Executive Council shall have the power to:*

...

14.8.6 *Consider all appeals and resolutions addressed to it, subject to where it deems appropriate the Council shall have the power to refer such appeals and references to Regional or National Industrial Committees.*

...

14.10 *In addition to any express powers in these rules provided, the Executive Council shall have power generally to carry on the business of the Union, as it may deem necessary, and do such things and authorise such acts, including the payment of moneys, on behalf of the Union, as it, in the general interests of the Union, may deem expedient, and to delegate to any*

person or persons the power to represent and to act on behalf of the Union. Between Executive Council meetings the Executive Council's powers under clause 8 above and this clause are delegated to the General Secretary save the following:
14.10.1 regarding appeals and resolutions
14.10.2 regarding delegation of powers from the Executive to any committee
14.10.3 regarding Executive Council procedures

Conclusions

Complaint 1 and Complaint 2

6. Ms Todd's first and second complaints are in the following terms:

Complaint 1

"That on or about 9 July 2014 the union breached rule 5.1 of its rules because the General Secretary, Mr McCluskey, an Assistant General Secretary, Mr Turner and Chief of Staff Mr Murray did not comply with the rules of the union and/or did not comply with a duty or obligation imposed pursuant to the rules of the union. In particular Mr Murray took a decision to prevent Miss Todd from speaking to the National Industrial Sector Committees about a campaign in which she is active; this decision was outside Mr Murray's authority to make in a member led union. Further the General Secretary denied Miss Todd the right of appeal to the Executive Council which is in breach of rules 14.8, 14.8.6, 14.10.1 and outside his authority."

Complaint 2

"That on or about 9 July 2014 the union breached rule 5.2 of its rules because the lack of clarity to officers and members of the union about the decision of Chief of Staff Mr Murray referred to in complaint 1 brought discredit on Miss Todd as a member and on the campaign."

7. Rules 5.1 and 5.2 provide as follows:

RULE 5

OBLIGATIONS OF MEMBERS

5.1 A member of the Union must comply with these rules and with any duty or obligation imposed on that member by or pursuant to these rules whether in his/her capacity as a member, a holder of a lay office or as a full time officer.

5.2 A member must not knowingly, recklessly or in bad faith provide the Union with false or misleading information relating to a member or any aspect of the Union's activities.

8. Section 108A of the 1992 Act provides my jurisdiction to determine complaints from a member of a trade union who seeks to complain that his or her union has breached or threatened to breach one or more of its rules. My jurisdiction is limited to complaints about rules which relate to the four areas of the rules of the union specified in sections 108A(2)(a) to (d). Rules 5.1 and 5.2 of the rules of Unite are not rules which prima facie relate to any of those four areas.
9. In correspondence, however, Ms Todd argued that rules 5.1 and 5.2 are rules which relate to "the constitution and proceedings of any executive committee or decision-making meeting" within section 108A(2)(d). She developed this in her response to the show cause letter by stating,

"All members of the executive committee are members of the union and therefore must comply with the rules of the rule book. Rule 5 outlines the obligations of the members of the union and rule 5.1 clearly instructs the members of the executive committee who are also first and foremost members of the union to carry out all powers given to them through the all rules contained within the rule book, including rule 14."

10. I am not persuaded by Ms Todd's submission that the approach I adopted in *Fradley v TSSA* (D/28-30/03) is wrong. That case explains that, expressed shortly, section 108A(2)(d) refers to rules which set out how an "executive committee" or "decision making meeting" is constituted and/or how it should be run. Ms Todd had been supplied with a copy of my decision in *Fradley v TSSA*. On Ms Todd's construction of section 108A(2)(d), I could be called upon to determine judicially any complaint by a member of any action by a member of an executive committee or decision making meeting. That is patently not the intention of section 108A of the 1992 Act.
11. For the above reasons, I find that Ms Todd has advanced no arguable case that her first and second complaints are within my jurisdiction and, accordingly, I strike them out on the grounds that they have no reasonable prospect of success and/or are otherwise misconceived.

Complaint 3 and Complaint 4

12. Ms Todd's third and fourth complaints are in the following terms:

Complaint 3

"That on or about 17 October 2014 the union breached rule 14.8.6 because it did not provide Miss Todd with an opportunity to appeal to the Executive Committee about the decision to prevent her from speaking to the National Industrial Sector Committees about the campaign she is active in."

Complaint 4

"That on or about 16 October 2014 the union breached rule 14.8.6 because it did not provide Miss Todd with an opportunity to appeal to the Executive Committee about the decision of Mr Turner to dismiss the complaint which she raised with the General Secretary about Mr Murray's decision in the above matter."

13. Rule 14.8.6 of the Union's rules provides as follows

14.8 ...the Executive Council shall have the power to:

14.8.6 Consider all appeals and resolutions addressed to it, subject to where it deems appropriate the Council shall have the power to refer such appeals and references to Regional or National Industrial Committees.

14. In the show cause letter sent to Ms Todd by my office on 18 April 2015 it was noted that rule 14.8 provides the Union with a power to act in certain circumstances but not a duty to act in those circumstances. The letter explained my provisional view that there was no breach of rule by the Union not exercising a discretionary power. In her response of 1 May 2015, Ms Todd argued that, *"The obligation / duty on the EC or union to act is not provided through this rule, it is provided through rule 5. Specifically rule 5.1 provides the obligation for all members to act on all rules which are contained within the rule book"*.
15. In my judgement, rule 14.8 of the rules of the Union provides the Executive Council with certain powers. It does not impose upon it a requirement or a duty to act in any specific way in defined circumstances. On the facts of this case, rule 14.8 does not impose upon the Executive Council a duty to consider all appeals or any particular type of appeal and its failure to do so is therefore not a breach of that rule.

16. For the above reasons, I strike out Ms Todd's third and fourth complaints on the grounds that neither complaint has any reasonable prospect of success and/or is otherwise misconceived.

Complaint 5

17. Ms Todd's fifth complaint is in the following terms:

Complaint 5

"That on or about 17 October 2014 the union breached rule 14.10 of rule union's rules by the General Secretary denying Miss Todd the right of appeal to the Executive Council in respect of the complaint about Mr Murray which she raised with the General Secretary."

18. Rule 14.10 of the Union's rules provides as follows:

14.10 In addition to any express powers in these rules provided, the Executive Council shall have power generally to carry on the business of the Union, as it may deem necessary, and do such things and authorise such acts, including the payment of moneys, on behalf of the Union, as it, in the general interests of the Union, may deem expedient, and to delegate to any person or persons the power to represent and to act on behalf of the Union. Between Executive Council meetings the Executive Council's powers under clause 8 above and this clause are delegated to the General Secretary save the following:

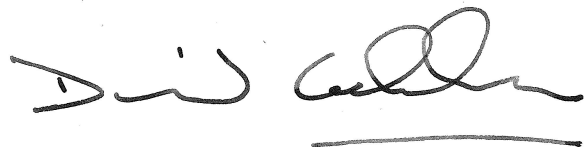
14.10.1 regarding appeals and resolutions

14.10.2 regarding delegation of powers from the Executive to any committee

14.10.3 regarding Executive Council procedure.

19. The show cause letter sent to Ms Todd by my office on 18 April 2015 explained that this complaint relies on a premise that the EC was under a duty to act in a certain way whereas rule 14.10 provides it with a discretionary power. In her response of 1 May Ms Todd referred to the submission she had made in respect of complaints three and four. I find that this complaint falls to be determined in accordance with the same reasoning as complaints three and four. It is not arguable that rule 14.10 imposes an obligation on the Executive Council to act as Ms Todd submits.

20. For the above reasons, I strike out Ms Todd's fifth complaint on the grounds that it has no reasonable prospect of success and/or is otherwise misconceived.



David Cockburn
The Certification Officer