

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

Mr Terry Brough

v

Union of Construction, Allied Trades and Technicians

Date of Decision

29 July 2015

DECISION

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

I refuse to make the declaration sought by the claimant that the Union of Construction, Allied Trades and Technicians breached rule 26(4) of its rules by bringing a charge against Mr Brough more than 28 days after its discovery of the relevant facts.

REASONS

1. Mr Brough brought this application as a member of the Union of Construction, Allied Trades and Technicians (“UCATT” or “the Union”). He did so by a registration of complaint form which was received at my office on 5 January 2015.
2. Following correspondence with my office, Mr Brough confirmed his complaint in the following terms:

“On or around 15 October 2014 the Union breached rule 26, clause 4 of its rules by processing a charge against Mr Brough under rule 25 clause 1(i) for acting against the interests of the Union. The charge was in respect of Mr Brough's alleged comments at a Branch Officers' and Shop Stewards' (BOSS) meeting dated 16 July 2014 and his alleged failure to explain or withdraw those comments. The charge was made by the North West Regional Council and sent by the North West Regional Secretary to the General Secretary, for the attention of the Executive Council, on 15 October. This is more than 28 days after the 16 July 2014 BOSS meeting and therefore in breach of rule 26, clause 4. Subsequently, the Executive Council decided to hear the charge.”

3. I investigated the complaint in correspondence. Following receipt of written argument and documentary evidence from Mr Brough and the Union I asked the parties whether they required a formal, oral hearing or whether they were content to have the complaint adjudicated based on the information before me. Mr Brough stated he was so content. The Union stated that it was content for me to determine liability without the need of a formal hearing but that, should I uphold the complaint and be contemplating an enforcement order, it would wish to make oral representations on any proposed enforcement order.

4. The parties were notified by a letter from my office dated 17 June 2015 that I would adjudicate upon the matter of liability on the papers submitted by the parties without an oral hearing but that, should I find for Mr Brough and should I be considering an enforcement order, I would convene an oral hearing and allow argument on the question of an enforcement order only. My staff prepared a 68 page bundle of documents for me from the material and correspondence submitted by the parties which I considered together with the rules of the Union.

FINDINGS OF FACT

5. Having considered the evidence and submissions from the parties I find the relevant facts to be as follows.
6. Mr Brough is, and was at the time of the alleged breach of the Union's rules, a member of the St Helens No1 UD 431 branch within the North West region of UCATT.
7. On 16 July 2014 Mr Brough attended one of the Union's Branch Officers'/Shop Stewards' (BOSS) meetings within his Region.
8. Another attendee at that meeting, an unnamed branch secretary, subsequently wrote to the Regional Secretary of the North West Region, Mr Andy Fisher, for the attention of the Regional Council. The copy of this letter provided to me by Mr Brough does not disclose the identity of its author. The signature appears to have been redacted. The letter is date stamped as having been received on 18 July 2014 and reads as follows:-

"Dear colleague,

At the BOSS meeting on 16th July we heard the Regional Secretary give a report on the article in the Liverpool Echo on John Flanagan and the Certification Officers decision that cleared UCATT of any wrong doing.

After the Regional Secretary gave the report a heated discussion took place and Bro Terry Brough of St Helens Branch stated Everton Branch was to blame for the cause of the unrest by not supporting a motion on Margaret Thatchers funeral cost. In the debate that followed Bro Brough said that the Regional Secretary should apologise for his actions. I feel that Bro Brough is saying that the Regional Secretary has done something wrong, as he also said that he could not charge him as he cannot charge a full time official.

This is a slur against the Regional Secretary and is carrying on the allegations made that the Certification Officer cleared UCATT of. I think Bro Brough should withdraw what he said and explain his reasons for still making accusations. This should be done in front of the Regional Council.

Yours sincerely"

9. On 6 August 2014 the North West Regional Council met and considered the letter from the anonymous branch secretary. It decided to invite Mr Brough to its next meeting on 12 September to explain the comments he had allegedly made at the BOSS meeting and also the comments he had allegedly made earlier, which had been the subject of previous correspondence with the branch. Mr Fisher informed Mr Brough of the decision of the Regional Council by a letter of 8 August, inviting Mr Brough to contact him if he needed further clarification.
10. By a letter to Mr Fisher of 17 August 2014, Mr Brough asked the Regional Secretary which rule of the Union he was relying upon.

11. Mr Fisher responded by a letter of 27 August 2014 which stated, inter alia,

"In response to your letter, dated 17th August 2014 and in order to clarify the request for your attendance at the Regional Council meeting, by them – there is no General Rule which covers such matters and is simply, as stated, a request....The Regional Council felt that they have a duty to investigate potential wrongdoing by any Officer of the Region – which your comments suggest is the case."

Mr Fisher's letter concluded by asking Mr Brough to confirm whether or not his intention was to attend the meeting as requested.

12. Mr Brough replied to Mr Fisher on 9 September 2014 stating,

"Unfortunately, I will have to decline the request made by the North West Regional Council. The invitation ... comes when my spare time is at a premium, with there being very little indication of any immediate abatement in that respect..... I am puzzled as to why, at the BOSS meeting on the 16 July 2014, with an allegedly concerned, albeit anonymous Branch Secretary, three Regional Council members, the Regional Secretary and three Regional Organisers present, not one of them thought it necessary at the time to ask for clarification of any of my comments."

13. By a letter of 22 September, Mr Fisher conveyed the Regional Council's "disappointment" that Mr Brough could not attend the meeting of 12 September and asked, on the Regional Council's behalf, for clarification on the following:

*"1. If you wish to retract your inference of wrong-doing by the Regional Secretary – stated at an official BOSS Meeting
2. To ask you to clarify – in writing – what was meant by the comments by you at the said meeting – for their consideration at the next Regional Council Meeting"*

Mr Fisher reiterated that the Regional Council wished to make it clear that they had a responsibility to investigate the allegations and were simply asking Mr Brough to explain his comments and that it would be acceptable for him to do so in writing. Mr Brough appears not to have replied to this letter.

14. At a meeting of the North West Regional Council on 10 October 2014, it was decided that Mr Fisher should write to the General Secretary charging Mr Brough in respect of the comments he had made at the BOSS meeting and his failure to explain or withdraw the comments. Mr Fisher's letter to the Steve Murphy, the General Secretary, of 15 October 2014, states:

*"Dear Steve
CHARGE OF BROTHER T. BROUGH – ST.HELENS, UD, 431
Following its meeting on 10th October, 2014 – the North West Regional council have asked that I write to yourself and the Executive Council to charge Brother T. Brough in respect of comments made at a BOSS Meeting and his failure to explain or withdraw the comments.
The Regional Council have made various attempts to obtain either the withdrawal or an explanation of the comments but Brother Brough has failed to do so. The comments made were in light of the recent Certification Officer's Decision from an expelled member's claim and suggests some form of wrong doing by the North West Regional Secretary in that matter. The Regional Council considered it their responsibility to investigate the matter but Brother Brough has failed to comply with the reasonable requests of the Regional Council. Therefore, by his actions, he has brought the Union into disrepute.
They believe the comments made and the failure to respond are an unacceptable slur on the character of the Regional Secretary and that Brother Brough should give evidence to support his clear allegation or withdraw the comments. He has been given several opportunities to do this but – as of their meeting on 10th October, 2014 – he has failed to do so.
The Charge, under Rule, is:-
Rule 25(1)(i)*

“by his or her conduct acts against the interest of the union”

The Regional Council would also like to point out that Brother Brough’s continued behaviour in not reasonably responding to the Regional Council’s requests are in, and of, themselves part of the charge made...”

15. Mr Murphy sent a copy of the above letter to Mr Brough on 5 November, stating that he would write to him again on this matter in due course.
16. The Executive Council of the Union considered this matter on 18 December 2014. It decided that the hearing of the charge against Mr Brough would take place on 19 January 2015. Mr Murphy wrote again to Mr Brough on 23 December 2014 to inform him of this decision. The letter confirmed that he could attend the hearing with witnesses.
17. On 5 January 2015, Mr Brough wrote to the General Secretary pointing out that the charge against him had been brought out of time. He noted that it concerned his actions at a BOSS meeting on 16 July 2014 and that by rule 26(4) a charge has to be made within 28 days of the discovery of the relevant facts. Mr Brough observed that the charge against him, dated 15 October 2014, was brought almost three months after the 16 July BOSS meeting. He considered that the Union was threatening to breach rule 26(4). Mr Brough also indicated that he would be asking his branch at its next meeting on 13 January to appeal to the Executive Committee under rule 27(4) against the apparent decision of the North West Regional Council to charge him and to appeal to the General Council against the decision of the Executive Council to hear the charge. Mr Brough concluded the letter by stating that he had made an application to the Certification Office in respect of the threatened breach.
18. Mr Brough’s registration of complaint form was received at my office on 5 January 2015
19. The Regional Committee heard the complaint against Mr Brough on 19 January 2015. Mr Brough attended the hearing.
20. Mr Murphy wrote to Mr Brough on 22 January 2015 with the outcome of the hearing. The letter, headed “North West Regional Council’s Charge” stated as follows:

“ ...Further to your attendance at General Office on Monday 19th January 2015, when the North West Regional Council’s charge against you was deliberated by the Executive Council, I have been asked to advise you by the Executive Council, having taken full account of all the arguments put forward by both parties, decided to dismiss the Regional Council’s charge for the following reasons:

 - a. Although the letter from the Regional Secretary to the Executive Council dated 15th October 2014 clearly stated that his Regional Council had decided to proffer a charge against you, there is no clear evidence in the North West Regional Council Minutes to confirm this fact.*
 - b. The Executive Council acknowledged that the Regional Council has charged you for your failure to respond to a reasonable request for you to explain or withdraw the comments that you have been alleged to have made at the BOSS meeting on the 16th July 2014. However, as the main source of the charge was based on an incident that took place some four months ago, the Executive Council decided that the charge was in breach of Rule 26 Clause 4.*

... I am sure you will admit that had you simply responded to the Regional Council’s request in the first place, the whole episode of the charge hearing could have been avoided.....”
21. Mr Brough wrote to Mr Murphy on 4 February 2015, stating that he welcomed the decision of the Executive Council to dismiss the charge. He stated that,

“The bulk of the information, which I used on 19 January 2015 in order to prove a breach of Rule 26, clause 4 was previously made available to you and the Executive Council...A brief telephone call from you to the Regional Secretary would have established the actual date of the BOSS meeting in question, thereby exposing the ineligibility of both the North West Regional Council’s case in charging me and the Executive’s Council’s decision to hear the charge. This... could and should have avoided the need for the hearing on 19 January 2015...”

22. Mr Brough’s subsequent appeal to the Executive Council against the decision of the Regional Council to commence the disciplinary procedure was rejected. By a letter dated 24 February, Mr Murphy informed Mr Brough that as the charge against him had been dismissed his appeal to the Executive Council was superfluous.
23. Mr Brough’s other appeal to General Council against the decision of the Executive Council to hear the charge brought by the Region was also rejected. Mr Brian Rye, the Union’s National Secretary wrote to Mr Brough on 24 April, stating:

“The General Council acknowledged that the Executive Council was duty-bound to comply with Rule 26 Clause 8 and hear the complaint and the member charged so that it could reach a proper judgement.”

THE RELEVANT STATUTORY PROVISIONS

24. 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).

(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.*

THE RELEVANT RULES OF THE UNION

25. The rules of the Union which are relevant for the purposes of this matter are as follows:

Rule 25 Disciplinary Powers

1. The EC shall have power to impose a fine not exceeding £75, suspend from all or any benefits or from holding any office, or exclude from the Union, any member, who in the opinion of the EC:

- (i) by his or her conduct acts against the interests of the Union; such conduct to include racist or sexist behaviour*
- ii)-(v).*

Rule 26 Procedure for Dealing with Charges

1. The EC, any Regional Council, any Branch, Branch Committee or member of the Union may charge any member with any offence alleged to have been committed against Rule 25 or against any other Rule of the Union.

2. The EC shall be competent to deal with all charges made under the Rules of the Union.

3. Any Regional Council or Branch shall be competent to deal with such charges made under the Rules of the Union as come within its local jurisdiction.

4. Any such charges must be made and received by the appropriate Council within 28 days of the discovery of the relevant facts.

5. The Secretary of the Union authority before whom the charge is made shall give to the member charged written notice of the charge, specifying the facts on which the charge is based. S/he shall notify in writing the complainant and the member charged of the date and place of the hearing and of their right to address the Union authority and to produce evidence, including a witness or witnesses, in order to support or rebut the charge or charges. Such notice shall constitute a summons to the complainant and to the member charged to attend at the time and place stated in the notice.

...

8. The union authority before whom the charge is made shall give to the complainant and to the member charged a full and fair hearing of their case at the time and place stated in the notice. It shall consider such documentary and, in so far as it is reasonably practicable, oral evidence as is produced by both sides

...

13. If the charge is not proved to the satisfaction of the competent authority, a minute to that effect shall be made and the charge shall be dismissed.

...

17. Any member seeking to redress a grievance in any manner other than that provided for in these Rules before having exhausted the procedure laid down therein, shall be liable to be excluded from the Union but nothing in this or any other Rule shall be construed as placing on any member any restriction in respect of his/her instituting, prosecuting or defending proceedings.

...

CONSIDERATION AND CONCLUSIONS

26. Mr Brough's complaint is in the following terms.

“On or around 15 October 2014 the Union breached rule 26, clause 4 of its rules by processing a charge against Mr Brough under rule 25, clause 1(i) for acting against the interests of the Union. The charge was in respect of Mr Brough's alleged comments at a Branch Officers' and Shop Stewards' (BOSS) meeting dated 16 July 2014 and his alleged failure to explain or withdraw those comments. The charge was made by the North West Regional Council and sent by the North West Regional Secretary to the General Secretary, for the attention of the Executive Council, on 15 October. This is more than 28 days after the 16 July 2014 BOSS meeting and therefore in breach of rule 26, clause 4. Subsequently, the Executive Council decided to hear the charge.”

SUMMARY OF SUBMISSIONS

27. Mr Brough submitted in correspondence that the Union breached rule 26(4) by processing a charge received from the North West Region. He noted that the charge related to events that had occurred on 16 July 2014 but that it was only put to the Executive Council on 15 October 2014. He argued that this was a breach of the rule that requires such charges to be made no later than 28 days after the discovery of the relevant facts. In Mr Brough's submission the date of such discovery was on or shortly after 16 July 2014. Mr Brough submitted that the facts surrounding the charge against him should have been known to the Executive Council at the time of its meeting on 18 December 2014 when it decided to process the charge of the Regional Council. If the facts were not known at that time, a simple phone call from Mr Murphy to Mr Fisher would have established that the charge was out of time. Mr Brough submitted that he should have never been called to the hearing. Mr Brough stated that his complaint to my office of 5 January 2015 was intended to give the Union an opportunity to cancel the hearing on 19 January and so avoid breaking rule

26. Mr Brough maintained that the Union had attempted to extend the time limit by requiring him to take part in a fact finding exercise following the Regional Council's receipt of the anonymous allegations. Mr Brough submitted that, in this way, the Union had contrived to extend the starting point of the 28 day period under rule 26(4) beyond the 16 July 2014 BOSS meeting. Mr Brough submitted that his position as a known critic of UCATT's leadership influenced the decision to pursue the matter of the original charge against him to a hearing.

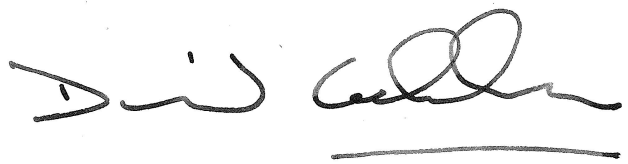
28. The Union submitted in correspondence that it did not breach rule 26(4)(1) on 15 October 2014 by processing the charge against Mr Brough. It maintained that the Executive Council had jurisdiction to consider whether the charge was or was not in time and that the hearing to determine whether it was a valid charge was valid and within the scope of rule. In the Union's submission, the Regional Secretary's letter of 15 October 2014 was prompted by Mr Brough's refusal to cooperate with the Region's enquiries into the events of 16 July and that there was a prima facie case that it was his refusal to do so that triggered the 28 day period within the meaning of rule 26(4). The Union noted that the Executive Council had dismissed the charge against Mr Brough partly on the grounds that it had been brought out of time. It commented that the Executive Council had considered whether Mr Brough's refusal to cooperate with the enquiries of the Regional Committee was a continuing act but had concluded that the main basis of the charge related to the events of 16 July and so the charge was made out of time.

CONCLUSION

29. Mr Brough alleges that the charge against him was brought out of time and that accordingly the Union breached rule 26(4) of its rules by processing that charge.

30. In my judgment, this complaint is misconceived. It is a matter for the tribunal or body determining a complaint to determine if it has been brought out of time. In this case the Executive Council considered this question and dismissed the charge against Mr Brough partly on the grounds that it had been brought out of time. It would be a rare case indeed for a charge which is manifestly out of time to be brought maliciously and hopelessly. The facts of this case are far removed from that hypothetical situation. The letter from the Regional Secretary to the General Secretary of 15 October 2014 makes it clear that the charge related not only to the events at the BOSS meeting on 16 July but also to Mr Brough's subsequent conduct; namely his failure to explain his comments, his failure to comply with the allegedly reasonable requests of the Regional Council and his failure to withdraw those comments. This was material that merited being considered by the Executive Council and accordingly the Union acted properly in processing this matter for determination in accordance with the rules. The Executive Council heard the arguments of Mr Brough and accepted his submission that in substance the charge related to the events of 16 July 2014 and was therefore out of time. It rejected any notion of a continuing act. In so doing, the Executive Council acted properly and within the discretion that it is afforded by the rules.

31. For the above reasons, I refuse to make the declaration sought by Mr Brough that the Union breached rule 26(4) of its rules by bringing a charge against him more than 28 days after its discovery of the relevant facts.

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

David Cockburn
The Certification Officer