

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

Mr Sean Cullen

v

Unite the Union

Date of Decision

02 May 2018

DECISION

Upon application by Mr Cullen ("the Claimant") under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"):

1. Pursuant to section 256ZA of the 1992 Act, I strike out the Claimant's application on the grounds that the complaint as advanced by the Claimant has no reasonable prospect of success and/or is otherwise misconceived

REASONS

The Background

2. Mr Cullen brought this application as member of Unite the Union ("Unite" or "the union"). He did so as a complaint by email which was received at the Certification Office on 15 January 2018.
3. Following correspondence with my office, Mr Cullen confirmed his complaint as follows:-

On or around 31 August 2017, the Union breached rule 6.5 of the Unite the Union Rule Book by removing Sean Cullen from the post of Senior Steward at Sellafield prior to him having completed a full three year tenure

4. Mr Cullen told my office that the position he seeks to complain about is referred to by a number of names (including Senior Shop Site Steward and Senior Site Steward). I have taken these and similar terms to refer to the same position.
5. During initial inquiries regarding his complaint, Mr Cullen confirmed by email to my office on 29 January 2018 that:

The Senior site steward is not a position within one Union as he represents both Unions (Unite/GMB) and all stewards. It was agreed that the Senior steward would have to be a Unite as the Unite membership is 90% of the site members

6. Mr Cullen provided a document titled "Roles and Responsibility of the Senior Steward" which sets out the reporting lines, role and responsibilities of the Senior Steward. The reporting structure shows that the position reports to the Sellafield Site Council and the Company Management/Site Manager and sits above the Shop Stewards Advice Team, to which the Company Shop Stewards report. It also states that:

"The Senior Steward will be democratically elected by those Trades Union accredited Stewards employed on that particular site / project at that particular time and will be employed on the Sellafield Site. . . The term of office for the Senior Steward would comply with the rules and governance of their particular Trade Union."

7. Further, during my office's initial inquiries Mr Cullen stated that he was removed as Unite representative of Shepley Engineers, his notional employer at the site, in August 2017.
8. Mr Cullen has told my office that his removal as a Unite representative was carried out incorrectly. My office has given him the opportunity, both during the formulation of his complaint wording and in correspondence subsequently, to complain to me about his removal as a site representative; however, he has chosen not to do so. His complaint to me is only against his removal from the Senior Steward role.
9. The "Roles and Responsibility" document does not contain any reference to how the Senior Steward can be removed from post. Mr Cullen has provided no union rules which relate to the removal of a person specifically from the Senior Steward role.

The Relevant Statutory Provisions

10. 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;*

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,

(b) order anything in the application or complaint, or in any response, to be amended or struck out on those grounds, or

(c) order the application or complaint, or any response, to be struck out on the grounds that the manner in which the proceedings have been conducted by or on behalf of the applicant or complainant or (as the case may be) respondent has been scandalous, vexatious, or unreasonable.

...

(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 Rule of the Union

11. The rule of the Union which is relevant for the purposes of this decision is Unite the Union Rule 6.5:-

6.5 The electoral period to hold lay office shall be three years unless otherwise provided for under these rules

Considerations and Conclusions

12. It is clear to me from these initial enquiries that, as Mr Cullen himself agrees, the Senior Steward role is not specifically, if at all, a Unite the Union post, but rather one which is elected from the accredited Stewards at the Sellafield Site. These facts remain irrespective of whether or not it has been agreed that the postholder should always be a Unite the Union representative.

13. It is also clear on the facts known to me that, while having been at some point an accredited Unite representative, Mr Cullen was in August 2017 removed from this role.

14. Mr Cullen has provided me with an undated email from a Unite the Union official which sets out the union's explanation as to why Mr Cullen can no longer hold the Senior Steward role. It states:

"The essence of rule 6 is clear that to hold office you must be an 'accountable representative of workers', unfortunately the members within Shepley Engineers

which was your constituency you represented until last Friday have de-selected yourself. Hence you cannot hold office as the NAECI Senior Steward at Sellafield.

The extract from the Senior Steward Roles & Responsibilities further clarifies " The Senior Steward will be democratically elected by those Trades Union accredited Stewards employed on that particular site I project at that particular time and will be employed on the Sellafield Site when elected and remain a full P4 pass holder. The term of office for the Senior Steward would comply with the rules and governance of their particular Trade Union. It is also understood that such an individual will have to comply with NAECI".

So in layman terms the Senior Steward MUST be an elected Steward for their Employer and have confidence of the members within that employer/constituency, as an elected & accredited steward, they can then in a position to be considered for the Senior Steward and this decision will be made by the Accredited Stewards."

15. This accords with my view that, in order to hold the Senior Steward post, Mr Cullen was required to be an accredited union representative. He ceased to be an accredited union representative in August 2017. It follows, therefore, that Mr Cullen ceased to be Senior Steward as he was no longer an accredited representative and, therefore, ineligible to be Senior Steward.
16. Mr Cullen has referred me to a Unite the Union rule which provides for the electoral periods for lay office. As the Senior Steward role is not a Unite the Union post this Rule cannot apply to his removal from that post.
17. On 22 March 2018 my office sent a letter to Mr Cullen to give notice that I was considering using my powers under section 256ZA of the 1992 Act to strike out his application on the grounds that the complaint has no reasonable prospect of success or is otherwise misconceived. In that letter it was explained to Mr Cullen that, as he had pointed out, the Senior Steward role was not a post within Unite the Union and therefore that rule 6.5 of the Unite the Union rulebook did not appear to apply to that role.
18. Section 256ZA(4) of the 1992 Act requires me to send notice to the party against whom the strike out order shall be made giving an opportunity to show cause why the order should not be made. Mr Cullen was therefore invited to provide written representations as to why the application should not be struck out in whole.
19. Mr Cullen replied by email on 4 April 2018. No new relevant information was included in that reply which has caused me to reconsider my original opinion that rule 6.5 does not apply to the Senior Steward post. Nor did Mr Cullen say that he wished to complain about his removal from his role as a Unite the Union representative.

20. Accordingly, I order the application be struck out under section 256ZA of the 1992 Act on the grounds that it has no reasonable prospect of success or is otherwise misconceived.

A handwritten signature in black ink, appearing to read 'Sarah Bedwell', written in a cursive style. The signature is positioned above a long, thin horizontal line that extends to the right.

Mrs Sarah Bedwell
The Certification Officer

