

D/24/18-19

Decision of the Certification Officer on an application made under Section 108A(1) of
the Trade Union and Labour Relations (Consolidation) Act 1992

Armstrong

V

Unite the Union

Date of the Decision

15 October 2018

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Decision

1. Upon application by Mrs Margaret Armstrong (“the applicant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

I refuse to make a declaration that on or around 5 February 2018 the union breached its rule 27.8 by suspending Mrs M Armstrong as a lay member branch equality representative for the WM6090 Branch of the union when the charge against her was in connection with her performance as an employee of the union.

Reasons

The Facts

2. Mrs Armstrong brought this application as a member of Unite the Union (“Unite” or “the Union”). She did so by a registration of complaint form received at the Certification Office on 1 March 2018.
3. Following correspondence with my office, Mrs Armstrong confirmed her complaint as follows:-

That on or around 5 February 2018 the union breached its rule 27.8 by suspending Mrs M Armstrong as a lay member branch equality representative for the WM6090 Branch of the union when the charge against her was in connection with her performance as an employee of the union.

4. At the hearing before me, Mrs Armstrong was represented by Mr Gerard Coyne. A written witness statement and oral evidence was provided by Mrs Armstrong. The Union was represented by Mr Michael Potter. A written witness statement was provided by Mr Howard Beckett for the Union. He did not attend the hearing and so did not give oral evidence. There was also in evidence two bundles.
5. Bundle one included 132 pages containing correspondence and information provided by the parties. Bundle two consisted of the rules of the Union from

2011 and 2018 together with the 2018 EC Guidance on the implementation of rules revised consequential to the 2nd Rules Conference. Both the Applicant and the Union provided skeleton arguments.

Findings of Fact

6. Having considered the written and oral evidence and the representation of the parties, I find the facts to be as follows:-
7. Mrs Armstrong is a Member of Unite the Union. She is a member of West Midlands 6090 Branch. She was elected as Branch Equalities Officer on 20 January 2018. She was employed by Unite the Union from 2008 until 3 April 2017.
8. Mr Beckett, Acting Regional Secretary for the West Midlands, wrote to Mrs Armstrong on 5 February 2018 informing her that there were a number of alleged financial irregularities relating to the affairs of the branch at a time when she was employed by the union. At the same time Mr Beckett informed Mrs Armstrong that she had been suspended from holding office in the Union under Rule 27.4.

The Relevant Statutory Provisions

9. 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

10. The rules of the union which are relevant for the purposes of this application are:-

RULE 27 MEMBERSHIP DISCIPLINE

27.4 The Executive Council or the relevant Regional Committee may suspend a member charged under this rule from holding any office or representing the Union in any capacity pending its decision. A member shall be given (or, if the member was informed verbally confirmation in writing) of any such suspension as soon as is reasonably practicable. In cases of a serious nature, as a precautionary measure, a member under investigation prior to disciplinary charges being laid may be suspended from holding office or representing the union in any capacity.

27.8 An employee may not be charged under this rule in respect of any alleged act or omission in connection with the performance of his/her duties as a full-time officer and/or employee of the union. Complaints against employees shall be investigated under the Members' Complaints Procedure agreed by the Executive Council and if disciplinary action is deemed appropriate this shall be executed under the procedures negotiated with employees' representative bodies for that purpose.

Considerations and Conclusions

11. There is little dispute on facts. The Union decided to investigate what it perceived to be potential irregularities around the payments made from the funds of Branch WM 6090. Part of that investigation was into Mrs Armstrong's role and the Union decided to suspend her from holding office whilst the investigation took place. This meant that she was suspended from her elected role of Branch Equalities Officer. On the day of the hearing I was told that the investigation was ongoing and the suspension remained in place. The investigation and the suspension are being conducted under Rule 27 of the Union.
12. The issue for me is whether the Union had the power to undertake the investigation and to impose the suspension under Rule 27 bearing in mind that Mrs Armstrong was employed by the Union at the time that some of the alleged irregularities arose. That is a narrow issue within the context of the Union's investigation. In deciding this complaint, it is not my role to consider whether the investigation or suspension were justified; my role is simply to consider whether, in taking this action, the Union were acting within Rule 27.
13. Mr Coyne informed me that, in 2015, the Union changed the wording of Rule 27.8 following the decision in [*Hicks v Unite the Union* \(D/32-39/14-15\)](#). In his view it did so to prevent any disciplinary action being taken against employees and full-time officers under Rule 27. He argued that the Rule change was to ensure that employees were subject to the agreed staff disciplinary procedures in place at the relevant time. He stated that the agreed changes prevented an investigation, suspension or charge being taken forward against any employee of the Union, whether or not the issue being considered was related to the performance of the individual's duties. He further argued that the core focus of the investigation was into payments which were authorised at a Branch meeting in May 2016 whilst Mrs Armstrong was employed by the Union. He stated that the letter of 5 February 2018 which Mr Beckett sent to Mrs Armstrong to inform her of the suspension supported this position because it referred to

“a number of alleged financial irregularities relating to the affairs of the branch at a time when she was employed by the union”.

14. Mr Potter took a different view. He argued that Rule 27.8 does not preclude the Union from taking any disciplinary action against a member who is an employee or full-time officer of the Union under Rule 27. Rather it, prevents an individual being charged under Rule 27;

“in respect of any alleged act or omission in connection with the performance of his/her duties as a full-time officer and/or employee of the Union”.

15. He further argued that the issues under investigation in this instance were not connected to Mrs Armstrong’s performance of her duties as an employee within the Union and that, in any event, she had not been charged under the Rule. The investigation is ongoing. Finally, he told me that Rule 27.4 enabled a member to be suspended as a precautionary act before being charged.

16. My reading of Rule 27.8 is consistent with Mr Potter’s view. It is clear to me that this prevents the Union from charging an employee of the Union under Rule 27 where the charges arose in connection with their performance of their duties as an employee or full time officer. My view is that this is the only logical reading of Rule 27.8 and I find it hard to see how the Rule can be read in any other way. If the Union had intended that Rule 27.8 should prevent any action being taken against an employee under this Rule then there would be no need to include the phrase:

“in respect of any act or omission in connection with the performance of his/her duties as a full time officer and/or employee of the Union”

17. From my reading Rule 27 enables the Union to take action, under that Rule, against a Member of the Union who is also an employee. Such action would include suspension from holding office as a precautionary measure under Rule 27.4. Rule 27.8 limits this power only in relation to any charges, and consequently any suspension after charge, where the charge relates to the

performance of their duties as an employee or full-time officer. It is important to note this distinction. The Union is able to investigate all issues which might lead to a charge under Rule 27.1 but may not charge any employees under this Rule where the charge relates to their performance of duties as an employee or full-time officer.

18. I can understand why the Union would adopt this approach as it enables equity between members whilst also taking into account their own employment procedures. It would, for instance, potentially be unfair if two members faced similar allegations in respect of their activities as a Member of the Union, but action could not be taken against one simply because of their, unrelated, employment with the union. Nor would it be appropriate to take forward issues relating to a Member's employment under the Member disciplinary procedures when there is an agreed staff disciplinary procedure in place.

19. On that basis I refuse to make a declaration that on or around 5 February 2018 the Union breached its rule 27.8 by suspending Mrs M Armstrong as a lay member branch equality representative for the WM6090 Branch of the Union when the charge against her was in connection with her performance as an employee of the Union.

20. Having reached that conclusion I do not need to consider whether the potential irregularities under investigation relate to Mrs Armstrong's performance as an employee or her activities as a Member. This would be an issue for the Union, and Mrs Armstrong, should the Union proceed with a charge.

21. In reaching my conclusion I have noted Mr Coyne's argument that the alleged irregularities, once identified, should have been taken forward under the Members' Complaints Procedure. I do not think this can be right since the issues appear to have been identified by Union employees during the course of their Union business. I would not expect the Union to require them, even if they are Members of the Union, to raise a complaint under this procedure rather than deal with it in the course of their duties.

22. Finally, it is clear from the evidence today that this investigation has been ongoing for more than eight months. Mrs Armstrong has been suspended from her elected role for the whole of that period. I was told that no decision as to whether to bring a charge has been made. I have been given no evidence as to why the investigation has taken so long although I note from the record of the interview with Mrs Armstrong on 30 August that the investigator appears to have been appointed in June.

23. I strongly encourage the Union to take all steps necessary to expedite the process. This will give Mrs Armstrong certainty about any charge which is to be taken forward or, if no charge is to be made, she can return to her elected role in her Branch. If it is not possible to expedite the process then, in my view and unless it has already done so, the Union should review the suspension to identify whether it remains necessary. In recommending this I take no view as to what the outcome of that review should be.

A handwritten signature in black ink, reading "Sarah Bedwell". The signature is written in a cursive style and is underlined with a single horizontal line.

Sarah Bedwell

The Certification Officer