



EMPLOYMENT TRIBUNALS

Claimant

Mrs Karen Mills

Heard at: Watford

Before: Employment Judge Bedeau
Mrs A Brosnan
Mr A Scott

Appearances

For the Claimant: Mr D Bheemah, Counsel
For the Respondent: Mr B Cooper QC

Respondent

Unite the Union

On: 23-26 April 2018
29-31 May 2018
(In Chambers)

v

AMENDED JUDGMENT

It is declared that the claimant's claim that she was unjustifiably disciplined by the respondent is well-founded.

REASONS

1. By a claim form presented to the tribunal on 31 May 2017, the claimant made claims under section 64 Trade Union and Labour Relations (Consolidation) Act 1992, in that she had been unjustifiably disciplined as a union member. To these claims the respondent denies liability and asserts that the claimant was not unjustifiably disciplined under the Act.

The issues

Discipline

2. Was the claimant disciplined within the meaning of s.64(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 ('TULR(C)A')?

- a. Do any of the alleged acts set out at (i-v) below constitute acts of discipline within the meaning of TULR(C)A, ss64(2)(a-f), for example, under (f), a detriment:
 - i. The email communications from BASSA of 3, 5, 13, 14, 15, 16, 17 March and 3, 4 and 21 April 2017 (as per the claim form)?
 - ii. Unspecified commentary on social media at page x of the bundle?
 - iii. The communications (including any links) on union sponsored Twitter revealing the claimant's membership of the union and her involvement with the Certification Officer case?
 - iv. The alleged denial of access to BASSA/Unite Website?
 - v. Alleged denial of access to other membership services?
 - vi. The change to the BASSA Branch Constitution made on 3 April 2017?
- b. If any of the alleged disciplinary acts (i-v) constitute discipline for the purposes of section 64, was a detriment made or purportedly made as required by section 64(2) in respect of the same?

Unjustifiable discipline

3. If the claimant was disciplined under section 64, was the discipline 'unjustifiable discipline' for the purposes of section 65?
 - a. Does the conduct for which the claimant was disciplined fall within section 65(2)(a-j) (3) or (4)? and/or
 - b. Did the union believe the conduct for which the claimant was disciplined fell within 65(2)(a-j) (3) or (4)?
4. Does the reason or one of the reasons for the discipline fall within section 65(5) and/or 65(6)?

Remedy issues (if relevant)

5. If the Tribunal finds the claimant's complaint to be well-founded:
 - a. She is entitled to a declaration to the effect pursuant to TULR(C)A, s66(3);
 - b. Any further issues in relation to the remedy will not be capable of determination at the hearing given the time frame pursuant to TULR(C)A, s67(1), s67(3) and s66(3).

The evidence

6. The claimant gave evidence and called Mr Lewis Cox, BASSA member and Mr David Beaumont, an acquaintance.
7. On behalf of the respondent evidence was given by Mr Sean Beatty, Chair of BASSA; Mr Paul Mease, Unite Director of IT; and Ms Trudi Lanigan, Chief of Staff - Cabin Crew.
8. In addition to the oral evidence the parties adduced a joint bundle of documents comprising more than 367 pages. References will be made to the documents as numbered in the bundle.

Preliminary applications

9. At the preliminary hearing held on 22 August 2017, it was noted that the respondent had prepared a draft list of issues but that the claimant wanted time to consider it and to take legal advice. It was ordered by this judge that the parties shall agree a list of both the legal and factual issues by not later than 4 pm 6 November 2017. An agreed list of issues was sent to the tribunal on the said date.

10. In the claimant's claim form regarding allegations of bullying and harassment, she wrote:-

“Denied access to the BASSA website and its associated membership services 11 May 2017.

Denied access to Union sponsored discussion forum on 12 May 2017.” [Page 10 of the joint bundle]

11. Mr Bheemah, counsel for the claimant, submitted that it was never the claimant's intention to restrict herself to those two dates.
12. As neither the claimant nor Mr Bheemah prepared a written amendment to her claim form, the tribunal gave him time, overnight, to draft the amendment. The following day, 24 April 2018, he produced a three-page document in which he asserted that the claimant was denied access to the BASSA website and its associated membership services from 20 May 2016 onwards. Reliance was placed on page 124 in the bundle, a document that gives the dates on which the claimant attempted to access the website but was, allegedly, denied. There were also further unsuccessful attempts going into 2017
13. He submitted that determinations were made on the dates when the claimant was denied access. The determinations took place in secret somewhere, but the claimant could not identify with precision when they were taken. Although her password was reset, she experienced the same problems. Each response amounted to a new determination or purported determination

14. The claimant's case, submitted Mr Bheemah, is that after raising the issue of a £500,000 "sundries" entry in the BASSA accounts before the Certification Officer, she had been denied access to the website.
15. He told the tribunal that when he received the papers the previous Thursday and after taking instructions from the claimant, it was agreed that he should apply to amend her claim. In relation to the time point, he relied on s.66(2)(b)(ii) "within such further period as the tribunal considers reasonable."
16. As regards being denied access to the Un-official XXXX Facebook Page, Mr Bheemah said that the claimant was denied access from 6 May 2016 onwards in what was otherwise a straightforward action of having to click on a link with a mouse enabling her to access the forum, but it never happened because she was considered unsuitable. Those who raised questions about the £1/2 million in the accounts described as "sundry" were vetted and considered unsuitable. In relation to pages 116 to 118 of the bundle, on 22 July 2016, the respondent purported to show that control of the XXXX Facebook Page was going to be moved to Ms Elizabeth Malone, former Chair BASSA Branch. This was, Mr Bheemah further submitted, simply a relabelling exercise as behind the scenes BASSA union officers were pulling the strings. There was no need for an adjournment of the hearing to enable the respondent to carry out an investigation into these alleged determinations as its case is that there were no determinations.
17. Mr Cooper submitted in relation to the denial of access to the website, that this was a substantial amendment. The claimant's pleaded case being that she had been denied access on the 11 May 2017. The proposed amendment starts from the 20 May 2016 and adds new facts to the pleaded facts. It alleges denial of access over a period of two years on 27 further separate occasions.
18. With regard to the time limits, under s.64(2) an individual is disciplined by a trade union if a determination is made or purportedly made under the rules of the union or by an official of the union or a number of persons including an official. "Purportedly made" does not mean what appears to the claimant to be a determination but when the union actually takes a decision that is outside its authority. The time limit runs from the date of that determination not notification to the claimant.
19. He quoted section 66(2)(a) which states that a complaint should be presented within three months beginning with the date of the determination or

“(b) Where the tribunal is satisfied –

(i) That it was not reasonably practicable for the complaint to be presented before the end of that period, or

(ii) That any delay in making the complaint is wholly or partly attributable to a reasonable attempt to appeal against the determination or to have it

reconsidered or reviewed, within such further period as the tribunal considers reasonable.”

20. Mr Cooper further submitted that there is no ‘continuing act’ provision under TULR(C)A 1992. The time limit should be strictly applied and that there is no general discretion to extend time “within such further period as the tribunal considers reasonable.”
21. ACAS was notified and a certificate issued on 31 May 2017. Three months prior to the 31 May 2017 takes it up to 1 March 2017. From 20 May 2016 to 28 February 2017, those matters relied upon by the claimant are out of time.
22. In any event, there is no reasonable prospect of establishing that determinations were made. “Web Web” on page 124, shows the system generating an automatic output. There is no evidence of a decision or determination having been taken. The only personal input is when a name appears in the screenshot on page 124, for example, Ms Nicola Wilkinson changed the password on 8 June 2016 and on 5 June 2017.
23. In relation to the timing and manner of the application, Mr Cooper submitted it was made late in the day without any explanation being given. Further, the claimant did not say who made the determinations, by what means, and how they had access to the technology. She was not entitled to bring wholly speculative claims based on how the evidence is borne out. There is a lack of specificity in its formulation. There is no evidence of the claimant accessing the website from 20 May 2016 to 7 March 2017. There would need to be further investigation by the respondent in relation to these dates by accessing the metadata.
24. In relation to the Facebook Page, Mr Cooper submitted that this is a substantial amendment from the one occasion the claimant referred to in her claim form. She is alleging that many determinations were made but they are out of time as her case is that she was blocked from 6 May 2016. Page 68 in the bundle has nothing to do with Facebook and no determination was made. The basis of the claimant’s case is a miscellaneous list of documents with no specificity as to when, who and where? She cannot point to a single document that shows the BASSA representatives were responsible for denying her access to the Facebook page. They did not have access to the Facebook tools. The respondent’s case is that it had no involvement after 22 July 2016. This was the claimant’s third attempt at drafting her amendment and it is still not adequately pleaded.

Conclusion on the application to amend

25. We have considered the following: rule 29, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 on the tribunal’s case management powers; the Presidential Guidance - General Case Management, January 2018; and the case of Selkent Bus Co v Moore [1996] ICR 836, a judgment of the Employment Appeal Tribunal.

26. We have concluded in relation to the denial of access to the BASSA website, that what the claimant was proposing amounted to a substantial amendment to the pleaded facts as it covered 27 dates over a period of two years. With regard to the time limit, she was and still is, a member of BASSA and the respondent union. She had access to Mr Beaumont, who is familiar with tribunal proceedings and this area of union law. She was aware that the appeal in her Certification Officer case was heard at the Employment Appeal Tribunal, therefore, had some familiarity with time limits. We were not satisfied that a good and sufficient reason had been given for the delay.
27. From the documents referred to us there was no evidence of any determinations having been made denying the claimant access to the website prior to 1 March 2017. The Web Web computer system simply generates an automatic response. The claimant was unable to say who made the determinations, by what means, and whether they had access to the website technology? Further, it was unclear whether she was accessing the website from 20 May 2016 to the 7 March 2017. The respondent would need to access the metadata information to establish whether she tried to access the website but was denied and was not certain that this information would be available in any event due to the passage of time and the detailed information required.
28. The opportunity was given to the claimant by this Employment Judge at the preliminary hearing, to consider the respondent's draft list of issues and to take appropriate legal advice by 6 November 2017. By that date and after having taken legal advice, she should have put in her application to amend.
29. Having taken the time limit, the timing and the manner of the application, the nature of the amendment and the prejudice to the respondent, we have concluded that it was reasonably practicable for her to have presented these earlier matters in time. Acts relied upon prior to 1 March 2017 are out of time and we do not exercise our discretion to extend time on the basis that it was not reasonably practicable for the claim to have been presented in time. Accordingly, this application is refused.
30. In relation to being blocked from accessing the Facebook Page, this was again a substantial amendment she was proposing as previously her claim was limited to just one occasion and she was saying that many determinations were made. We were not taken to evidence that determinations were made. The claimant has provided a list of dates with little information as to who took the decision, when and where? The respondent's position is that after 22 July 2016, it had no involvement in the management of the Facebook Page.
31. We have taken into account the factors in Selkent and have come to the conclusion that the claimant's application amounted to a substantial proposed amendment to the facts as pleaded, made on the first day of this hearing and is likely to cause the respondent prejudice in having to consider

the various dates given and to ascertain whether or not there is evidence that determinations were made in relation to denying access to the Facebook Page. No good and sufficient reason had been given for the delay and we rely on the approach we have taken in relation to the other application to amend. For these reasons this application to amend is also refused.

Section 65(5) TULR(C)A defence

32. On the final day of the hearing, Mr Bheemah raised the issue of the respondent being entitled to refer to s.65(5) of TULR(C)A as it is not in its pleadings, therefore, it would need to apply to amend.

33. Section 65(5) states the following:-

“This section does not apply to an act, omission or statement comprised in conduct falling within subsection (2), (3) or (4) above if it is shown that the act, omission or statement is one in respect of which individuals would be disciplined by the union irrespective of whether their acts, omissions or statements were in connection with conduct within subsection (2) or (3) above.”

34. Mr Cooper acknowledged that s.65(5) is not referred to in the response. He submitted that pleadings are not the final word. At the preliminary hearing in August 2017, in the respondent’s draft list of issues, s.65(5) is referred to in paragraph 3. At the time the claimant was represented by Mr Beaumont who brought an unsuccessful unjustifiably disciplined claim and s.65(5) was an issue in his case. The point should have been taken by him at the preliminary hearing. The defence provided by s.65(5) allows the respondent to argue that it would have taken similar action in similar circumstances.

35. The parties were ordered by this judge to agree a list of both the legal and factual issues by 6 November 2017. The list was agreed by the stated date and it included s.65(5) in paragraph 3.

36. By rule 64 Employment Tribunals (Constitutional Rules of Procedure) Regulations 2013, what the parties agreed to was an order by consent to include s.65(5). Although the claimant did not have access to a qualified lawyer, Mr Beaumont, as we have already stated, has a detailed knowledge of this area of union law. The defence was flagged up in the respondent’s draft list of issues and it was agreed to by the claimant and her representative in November 2017. In our view, there was no prejudice to the claimant as she and her representative had advance notice of this defence prior to the commencement of this hearing. The respondent is allowed to rely on this defence.

Findings of fact

37. BASSA is the acronym for British Airways Stewards and Stewardesses Association which is affiliated to Unite the Union. It has approximately 9,000 members and operates like a union within a union.

38. BASSA, London Eastern Branch (LE 2000) is a branch of Unite the Union and is one of the respondent's over 3,000 branches. The Branch is made up of cabin crew staff employed by British Airways based at Heathrow.
39. In 2009 the respondent was engaged in a protracted dispute with British Airways which led to strike action in 2010 and was eventually settled in 2011, though not without controversy.
40. During the dispute with British Airways, it was rumoured that British Airways in-house investigators had improperly accessed union officers' emails and phone calls in 2010 but we received no evidence in support of this rumour. There were rumours that senior officers of BASSA (LE 2000) were paid, in total, £1,000,000 in compensation because of British Airways allegedly improperly accessed their communications during the dispute.
41. At a members' branch meeting on 12 August 2013, Ms Lizanne Malone, Branch Chair, informed the members that the allegations of an out of court personal settlement involving the Branch's union officers, were false. Her attempts at dispelling the rumours were not fully accepted by the membership as a small but vociferous group remained sceptical.
42. The claimant told the tribunal and we do find this fact that she was content with outcome of the settlement of the dispute between British Airways and the respondent in 2011.
43. In order to understand the genesis of the claimant's case against the respondent, we would need to refer to section 30, TULR(C)A. This provides that a trade union member has the right to request access to any accounting records of the union which are available for inspection or related to periods including a time when he or she was a member of the union. Section 30(2) states;
 - (2) Where such access is requested, the Union shall –
 - (a) Make arrangements with the member for him to be allowed to inspect the records requested before the end of the period of 28 days beginning with the day the request was made,
 - (b) Allow him and any accountant accompanying him for the purpose to inspect the records at the time and place arranged, and
 - (c) Secure that at the time of the inspection he is allowed to take, or is supplied with, any copies of, or extracts from, records inspected by him which he requires.
 - (3) The inspection shall be at a reasonable hour and at a place where the records are normally kept, unless the parties to the arrangements agree otherwise.”
44. What prompted the claimant to go to the Certification Officer was her concern about fume vents. There are fume vents inside an aircraft and the fumes can cause crew members to become ill. If a crew member is given a card, the size of a credit card, to show to hospital staff that they have been

exposed to fumes inside an aircraft, this would be similar to the malaria card a crew member carries with him or her. It was suggested that crew members of between 9,000 to 10,000, should have a fume card but the official union representatives of BASSA said that they did not have any money for that purpose. At that point the response the claimant said, “piqued” her interest. It led her to put in a request in January 2014, under s.30 of TULR(C)A to the Branch seeking access and disclosure of the Branch’s accounts covering the period from 2008 to 2013 and to take copies. The accounts were not disclosed in compliance with s.30, therefore, the claimant referred the matter to the Certification Officer under s.31(1) of TULR(C)A. The request was received on 14 March 2014.

45. The Certification Officer, Mr David Cockburn, investigated the breaches in correspondence and held two hearings, on 9 April and 11 November 2015. In his judgment dated 12 January 2016, he ordered the respondent to give the claimant access to the accounting records of the BASSA Branch (LE/2000). He stated:

“Unite the Union is ordered to give the claimant access to the accounting records of the BASSA Branch of the Union (LE/2000) which show the individual transactions which together constitute the aggregate amounts that are entered in the quarterly and annual accounts of the branch for the years 2008 to 2013 under the headings ‘stand down’ or ‘stand down allowance’. The accounting records are to include the date each payment was made, the identity of the recipient and the brief description of the expenditure category of that payment or other reason for payment in accordance with the accounting conventions of the Union. The accounting records may be print outs of the information retained electronically, or in such other form as discloses the above accounting records.”

46. Mr Cockburn further ordered that the inspection should take place on or before 26 February 2016 or such later date as the parties may agree. The respondent was ordered to allow the claimant to be accompanied at the inspection by an accountant, being a person eligible for appointment as a statutory auditor under Part 43, Companies Act 2006. The accountant, he noted, should agree with the respondent the terms in relation to protecting the confidentiality of the records. Failing that, the respondent would not be obliged to allow the accountant to accompany the claimant. It was also ordered that the respondent would ensure that at the time of inspection, the claimant would be allowed to take, or be supplied with, any copies of, or extracts from, records inspected by her which she may request.
47. We have referred earlier to a group of the BASSA Branch (LE/2000) members not prepared to accept the statements made by Ms Malone, that group was known as “Crew Defence”. This name was taken from a group that had organised the raising of funds to legally challenge British Airways’ conduct during the dispute over the removal of staff travel. It raised more than £100,000. Some of its members have remained in employment with British Airways and some have now left but continue to utilise social media to criticise the BASSA Branch. Although the industrial dispute was settled through negotiation and voted on by members and endorsed by 90% of the

membership, a small number of members and ex-members were unhappy with the outcome and sought to challenge the settlement. They also challenged and opposed some of the decisions of the BASSA Branch and its elected representatives. These challenges included: the restructuring of the allowance system; the bidding system for work; pensions; the electoral process covering representatives; balloting process; the updating of the constitution; the accounting records and pay awards. Some of the challenges were made directly to the respondent and were widely publicised on social media, in the print media and by applications to the Certification Officer.

48. The BASSA Branch officers considered several individuals, by their actions, as being part of this group: Ms June Freeman stood against Mr Sean Beatty, Chair of the branch on two occasions; Mr Aidan Duffy stood for Branch Secretary; and others in this group stood as union representatives. All were unsuccessful in their attempts, but their activities did not go unnoticed by the Branch officers and elected representatives, as well by some of the BASSA membership who were of the view that the Crew Defence's actions were part of a concerted campaign to undermine BASSA, the respondent and its representatives. The claimant was seen as part of the Crew Defence group, but she denied any involvement in it. She stated that she was aware of Crew Defence as this group tried to explore legally the ways in which they could get staff travel restored.
49. We find that there was a considerable amount of bad feeling exhibited by some members of the BASSA Branch directed at the officers. Mr Aidan Duffy was dismissed by British Airways because he made several offensive and disparaging statements about Ms Lizanne Malone, Chair of the BASSA branch at the time in 2014. Mr Duffy later brought a claim against British Airways alleging that he had been unfairly dismissed but the Employment Tribunal found that his dismissal was fair. It was Mr Duffy who put the claimant in contact with Mr David Beaumont. [94 to 96B].
50. We have made reference earlier in this judgment to Mr David Beaumont and his involvement with the claimant. In or around 1999 Mr Beaumont set up a website to "expose corruption and lack of democracy in the union". He stated in evidence that the information he publishes about the union is obtained from media sources, whistleblowers, his own experience and from the public Certification Officer hearings he had been involved in. He described himself as a thorn in the side of the bureaucracies running the unions. He asserted that there is little grassroots democracy, turnout is around 6% for executive elections and the ruling factions will have a 'slate' of chosen candidates. He had put in many requests for inspection of union accounting records under rule 19.10 of the respondent's rules and under s.30 TULR(C)A. He is not a BASSA member.
51. We have already found that Mr Beaumont is knowledgeable when it comes to trade union law and trade union activities and understands the formal means of holding unions to account via the unions' rules and the Certification Officer. He has represented union members before the

Certification Officer. At the Certification Officer hearing on 9 April 2015, he represented the claimant when he was described in the judgment as a “friend” and a member of the respondent, paragraph 4. On 11 November 2015, the claimant represented herself but Mr Beaumont accompanied her. The Certification Officer, however, gave him leave to make certain submissions on her behalf.

52. Mr Beaumont admitted to having posted the BASSA Branch’s accounts on his website detailing the sundry expenses of £523,940 as he believed that large amounts of the Branch’s money had been misappropriated. He said that to record over £1/2 million as sundries did not show, in detail, how that money had been spent.
53. Several disparaging articles were published by the press about the Branch’s accounts and the alleged “unaccountable” £500,000. Some were published in Private Eye in July 2015, March 2017 and April 2017 [41-45].
54. Although some of the articles referred to the claimant by name, there was no evidence that she was the source of the information disclosed to the press other than having made the initial request for the disclosure of the Branch’s accounts.
55. There were similar publications in the Daily Mail as well as on social media sites.
56. The issue for the disgruntled members was that the £523,940 described in the accounts as “sundries” did not explain how that money had been spent and that in turn gave rise to suspicions and rumours.
57. The respondent appealed against the Certification Officer’s decision in the claimant’s case, to the Employment Appeal Tribunal. The hearing was held on 8 November 2016 and the judgment was handed down on 9 February 2017. Mrs Justice Slade at the EAT held that the Certification Officer did not err in holding that the respondent had failed to comply with s.30(1) TULR(C)A, by not giving the claimant access to accounting records showing payments to each trade union official of her Branch which together totalled a substantial monthly amount. Under ss.28 and 29, the respondent was obliged to keep available for inspection accounting records of its transactions necessary to give a true and fair view of the state of affairs of the trade union and to explain its transactions. Further, on the facts, the Certification Officer did not err in holding that the cumulative amounts in the accounts relating to stand down payments which had been made available, did not comply with this obligation. In addition, the Certification Officer did not err in refusing to redact the names of the officials in receipt of such payments.
58. Article 8 of the European Convention on Human Rights was considered by the EAT. The respondent argued, unsuccessfully, that it was entitled to keep its financial affairs confidential to avoid inadvertent disclosure to British Airways which may give it an unfair advantage in discussions.

59. Moreover, the EAT held that the Certification Officer did not err in refusing the application by the claimant for access to bank statements when she had been given access to the accounting records regarding sundries to which they relate. The Certification Officer had ruled that bank statements were not accounting records within the meaning of s.30 TULR(C)A.
60. It is the claimant's case that as a result of taking her case to the Certification Officer she had been unjustifiably disciplined by officers of the BASSA Branch.
61. The elected officers of BASSA give most of their time to BASSA union duties and their employer is British Airways. They are cabin crew staff who, by the nature of their work, travel all over the world. Mr Sean Beatty is currently the Chair of the BASSA Branch and he told us he works 85% of his time on union duties.
62. The elected representatives meet during the first three days at the beginning of the month and they are: Mr Beatty; Mr Aidan Smith, Branch Secretary; Mr Marcel Devereux, Treasurer; Mr Chris Harrison, Deputy Industrial Director; Mr Nigel Stott, Industrial Director; Ms Trudi Lanigan, Chief of Staff; Mr Paul Taylor, Agreement Secretary for Worldwide BASSA; and Ms Debbie Warren-Price, Europe Fleet Agreement Secretary. The agenda is sent out in advance of the meeting.
63. Every quarter the members of BASSA would meet with the elected officers.
64. According to Mr Beatty, despite BASSA accounting records being disclosed, incorrect allegations that over a £500,000 had gone missing from the accounts, caused uproar amongst members with the matter being frequently raised with representatives of the Branch including him. There were also requests from within the Branch committee, for both representatives and members to hear the full story as questions were being raised regarding the integrity and honesty of the representatives. They were again raised by members following the hearing of the case in February 2017. He stated that there was clearly an overwhelming desire from the majority of the members for a response from the Branch. There were also discussions amongst the Branch committee members over the telephone on how the issue should be addressed. The officers and the representatives were clear that they had a duty to publish a factual account of events and protect the representatives who were being singled out and identified on social media. They discussed the possibility of disciplining the claimant but after having taken legal advice, decided not to.
65. Of note was that on 3 March 2017, the elected representatives sent an email to the 9,000 BASSA Branch membership which, according to Mr Beatty, was an attempt at setting the record straight. It referred to the court cases and specifically to the claimant's case as well as to the Castillo v Unite case. In relation to the claimant's case, the representatives were of the view that trade union representatives were excluded from the European

Convention on Human Rights in terms of personal privacy because of the EAT judgment in her case. They asserted that the press, employers and the government would have access to their accounts. They also stated;

“In short, this is a major blow for every trade unionist in the country, brought about by a handful of *our own members*. For those who feel some sympathy for their cause, please reflect on the damage this will bring about to the entire Trade Union movement under this anti-Trade Union Government.

For them it is quite simply manna from heaven. They will be grateful to Ms Mills.”

66. In the Castillo v Unite case referred to above, 30 claimants brought proceedings before the Certification Officer, the lead claimant being Mr Miguel Fernandez Castillo. They alleged that the 2015 BASSA Branch elections were conducted in breach of the union’s rules. Out of the five matters raised, the Certification Officer only found one in their favour. He made a declaration that during the 2015 Branch elections, the respondent breached bullet-point five of the Branch Balloting Protocol by not publishing on the Branch’s website the electoral addresses of the candidates.
67. The email also referred to the case having been heard the previous week and published the names of 21 of the claimants including the claimant’s name. At the end a full list of names of the BASSA Branch representatives is given [68-73].
68. In response to the BASSA email, Mr Guy Hewitt, a member of BASSA, emailed on 4 March 2017 the following:-

“I see the BASSA filth are up to their usual, disgusting tactics ... AGAIN!”
69. In response to this the BASSA representatives wrote on 5 March 2017 citing Mr Hewitt’s email as an example of an ongoing campaign against the BASSA representatives which had lasted for several years and considered it an example of “BASSA bashing”. The claimant was not referred to in Mr Hewitt’s email. At the end of the representatives’ email they wrote:-

“We aren’t all cyber warriors and nor would we want to be, there is life outside Facebook, but despite the protestations the simple fact remains that ‘actions have consequences’. Thanks to Ms Karen Mills the entire Trade Union movement is now under financial scrutiny from anyone. That is her legacy and something that only she can live with, regardless of her original intention(s). No-one else is to blame for the outcome of that ruling, except maybe those that for their own ends encourage her to do so.” [74-76]
70. In another of the representatives’ emails dated 13 March 2017, entitled “A Dummies Guide To Financial Records (Part 1)” referring to financial records, they made specific reference to the claimant who at that stage had not inspected the Branch’s financial records. They referred to her having taken her case to the Certification Officer and wrote:-

“Ms Mills took a case to require branches to submit accounting records far in excess of the union to which they belong, in that she wished to inspect every aspect of expenditure behind the quarterly accounting figures. Individual receipts, bank accounts and reps’ personal, financial information etc.

Please take into account that Unite has a financial department, BASSA does not and neither does any other branch. We are ordinary members who work for BA. In other words, the branch and potentially every other branch in the union, will be burdened with maintaining accounting records going back years that are in excess of that required by the main union!” [77-80]

71. In a further email by the Branch officers entitled “A Dummies Guide To Financial Records (Part 2)”, sent on 14 March 2017, it reproduces the Private Eye article dated 14 March 2017 with reference to the claimant’s case and the £523,940 unaccounted for as sundries. There is a commentary on the article with specific references to the claimant. The bold and underlined are as set out in the text. It stated;

“We have been asked to share with you a reply posted by a rep to Karen Mills, who wrote as to her motivation on the unofficial BASSA Facebook page through a third party. Numerous members found it helpful and asked us to share the post with all members.

Ms Mills professed that her motives were, entirely philanthropic, that it was her right to do so and so must be for the good of the Union. Yet as you will understand from the background we have given and the press article above, it does beg the question: **how did the information from a statutory member enquiry to look over the union’s finances to see how members money is used, ends up being portrayed in the national press in such a predictably sensational way?**

Ms Mills may well claim not to have been directly involved, that maybe true but it was undoubtedly the pursuit (however unintended) of such information that has led to the situation where a hostile press, is able to distort information for their own ends.

We have also had enquiries along similar lines from The Sun newspaper. Most of the establishment press will always try and inflict as much damage to the union’s reputation as possible: exactly as we said it would if this kind of information is made easily available to them.

That this article is untrue, will not bother the press one jot. British Airways must also be rubbing their hands with glee as a group of members pull apart the union in a way they could not.”

72. There then followed an open reply to the claimant from a representative of the BASSA Branch committee. It is replete with references to the claimant and is highly critical of her and personal. An example is the following:-

“Here is the rep’s open reply to Ms Mills :-

“Thank you for posting the usual one sided version of events from Ms Mills. Unfortunately for Ms Mills, myself & the rest of the BASSA Reps will not let her selective amnesia go unchallenged any longer.

Ms Mills was provided with the Branch accounts which detailed all income and expenditure, to the same level of detail as the Unite’s main accounts registered and displayed on the Certification Officers own website.

Ms Mills knows full well (as it was explained to her numerous times in the various hearings) and in the end she had to ACCEPT that “sundries” is only used because the accounting template provided from Unite as a format, is basic and limited in scope and because of that, was used to record the additional division of funds between Eurofleet and worldwide once Branch monies were received from Unite.

Ms Mills was represented by serial complainer David Beaumont (not a BASSA member or BA employee) who by his own admission specialises in taking out as many complaints as possible against Unite in the hope that he wins some. He is part of an ultra-left group called the Grass Roots Alliance.*

The information re “sundries” was leaked to Private Eye (this does not refer to the article above but a previous article) in a misleading manner designed to imply that monies were unaccounted for when they were not and posted on Mr Beaumont’s own website.

For this he was formally disciplined by Unite and expelled.

Ms Mills states again she wants accounts to be “lowest level” even down to taxi receipts. This is correct and it is this that is so damaging. It means anyone with a vested interest in the Union can poke around in every detail of the union’s accounts to try to find something to discredit the union with. This is confirmed entirely by the above article.

An easy example of this is that Ms Mills and or Mr Beaumont inferred that BASSA had funded a Hair dressers in Southampton – it was in reality a software provider for our messaging service and was simply called Salon Advantage software.

Also, that BASSA had spent thousands on art prints when the new Unite Heathrow airport offices were opened at Bath Rd. BASSA was generously donated a whole floor of office space free of charge by Unite (we used to have to pay £30K a year). BASSA helped provided furniture and union history art work, in the shape of old BASSA newsletter covers, for the building to get it up and running (all of which we were later reimbursed for by Unite) but never letting the truth get in the way of a good story, these examples show how those with intent can easily misrepresent and make mischief.

YES, absolutely we had a top Human Rights QC because the Unison recognised the dangers to the entire Unite movement of losing this case and did not want to do so, however we lost. Ms Mills won this case and she has won the right for anyone and everyone to pour over all unions’ finances that no company has the right to do. Ms Mills has placed a burden on Trade Unions that most will not be able to fulfil and at ENORMOUS cost of members’ money.

All Branch accounts are already audited by the Branch Treasurer, independent auditors and then again by Unite's financial audit team. Ms Mills fought for the right to demand to know all reps private information ... this is akin to going to BA and demanding to be able to inspect colleagues wage slips in detail but with this ruling, the right to inspect anybody's wage slips in any part of the union, whether you are a member or not and to take copies and distribute it how you wish. Quite rightly Unite fought that tooth and nail.

What can we expect next? Cue a campaign from this same grouping (named last week, but remember their names were already in the public domain) urging you NOT to vote for BASSA reps in the upcoming Executive Council Elections? Somehow, in their distorted version of reality, they will believe BASSA – and therefore YOU – will somehow be best served by having NO BASSA members on our own Unite Executive Council! That you will be best represented by having none of our reps but political appointees from elsewhere. No, we don't understand it either, but these members and ex-members are nothing if not predictable.

We will bet money on it! (Not from the accounting records of course..!)
WATCH THIS SPACE” [81-85]

73. The above passage gives the claimant the benefit of the doubt in relation to the publication of the information in the press, yet it refers to her by name.
74. In a further email dated 15 March 2017 entitled “Is it all over? (Not Quite...)” the BASSA Branch representatives referred to the fact that the accounting records sought by the claimant were being compiled and would be made available to her the following month:

“After she inspects them she will do what she wishes to do with them. It will show nothing more than it should, despite Ms Mills and others wishful thinking: there are no great secrets that will be ‘revealed’.”

75. It is difficult to understand why it was necessary to publicise the name of the claimant and the fact that she would be given copies of the BASSA Branch's financial records [86-87].
76. Mr Adrian Smith, Branch Secretary, emailed the claimant and copied in BASSA Branch representatives and Ms Tanya Katrine Cumming, of the Branch's Finance Committee, on 27 March 2017, in which he wrote that on 7 April 2017, the claimant would be attending Unite, Bath Road Offices to view the accounting records as she had requested. Further into the correspondence, he wrote:-

“Quite rightly your information is private and confidential between you and your employer and is protected by data protection laws and so only noted in the public accounting record in general terms as part of overall expenditure. Ms Mills has secured the right through the certification office, to the removal of any privacy and to place a far greater burden on Trade Unions than is required of Public Limited Companies and that all of those details could be made public.

We have always stated there is absolutely nothing to hide, but we have already seen the mischief that will be made by an anti-union press in regards to the Trade Union movement.

Ms Mills has always protested that her motives for doing so were honourable, on 7 April we will find out. Ms Mills can inspect the records for as long as she wishes to do so, and ensure that they are to her satisfaction. However, one thing is certain; those records will *willingly* be made available *exclusively* to Ms Mills *on that particular date*, and if they do later appear in the press or social media in some sensationalised distorted form, i.e. the Private Eye article nonsense, or used or referenced by British Airways, then there can only be one possible source from which they have originated – Ms Mills. *Any* protestations to the contrary would appear distinctly hollow.

Naturally we would like to remind our members that the books are available for inspection after the branch meeting on Monday 3 April – *as they always have been at every branch meeting!*” [97-98]

77. In a further email from the representatives under the sub-heading “Background” dated 6 April 2017, reference was made to the Branch’s accounts being made available to the claimant for her personal inspection. It repeated their concerns about information being leaked to the press or having been misrepresented. It stated that the respondent’s legal department advised that a legal letter be issued to the claimant prior to her inspection and this was reproduced in the email under the sub-heading “Draft letter to Karen Mills” and contained the text of the amendment to the Branch’s rules passed at the meeting on 3 April 2017. This stated that the branch would take any breach of the rule extremely seriously and would not hesitate to pursue the claimant by taking disciplinary action and action in the civil courts. This was in respect of any disclosure of information to third parties. It set out the amendment to the Branch’s constitution;

“The information contained in accounting records is sensitive and confidential both to the union and its members. Members in receipt of accounting records are required to maintain the privacy and confidentiality of said information. No member who has obtained copies or extracts of accounting records may disclose such records (or information contained therein) to a member or non-member, or take any steps to facilitate such disclosure. Publication of said records in any form would be viewed as disclosure.” [99-101]

78. We were very concerned that a private communication between the Branch and the claimant was circulated to its 9,000 members.
79. On 31 May 2017, the claimant presented her claim form to the Employment Tribunal [4-15].
80. On 4 October 2017, the branch representatives sent a report of a branch meeting to discuss pensions. Notwithstanding that subject matter, the document referred to the respondent being required to disclose its accounting records. It stated the following:-

“Much store has been placed on an entitlement to expect every penny that the

Union spends on members' money, to ensure that in their opinion, it is being spent prudently. However, the irony that those same "accounting records" may in the future reflect a substantial sum of members' money being paid out as damages, appears lost." [106-107]

81. We find that the above passage was a reference to the claimant's Certification Officer case and her Employment Tribunal claim.
82. Mr Beatty told the tribunal that at the monthly Branch Committee meetings, the composition of the emails sent to the members was a joint effort with everyone "chipping in bits and pieces" although he could not remember exactly who wrote what. He confirmed that the emails were all authorised by the Branch Committee. In our view the style and content of the emails suggests to the tribunal that they were written by one person. Also, they appeared throughout the month and not just for the first three days in the month when the Branch Committee would meet. Contrary to what Mr Beatty said the emails, in our view, went far beyond challenging the factual assertions made by those who they perceived to be working against the interests of the Branch. We find that the emails specifically targeted the claimant in ways which went beyond simply setting the record straight.

The un-official BASSA Facebook Page

83. We have referred to the BASSA XXXX Facebook Page. The "XXXX" notation was the unofficial symbol of those who had participated in industrial action. It originated from a code placed on a crew member's roster to show they had taken strike action instead of flying duty. When the industrial dispute ended, there was still the desire to discuss the strike's aftermath and one of the things founded was a Facebook group called "XXXX" which began as a place for people to share their experiences but gradually became something entirely different. This had no connection with the respondent and was simply a group of people expressing themselves. The membership was around 5,000. It appeared that this Facebook group was used to attack the then Chair of the branch, Ms Lizanne Malone. An example of this was Mr Duffy who made various rude, unpleasant and disparaging comments about Ms Malone and, as a consequence, was dismissed by British Airways.
84. The BASSA Branch decided to reinstate its involvement in social media by creating its own Facebook group page. This was done in May 2016 and was called the BASSA XXXX Group. It was set up to challenge the XXXX Facebook Page. [110]
85. The BASSA Branch's Facebook Group was monitored and run by volunteers but at the June 2016 Branch Committee meeting it was agreed that the volunteer strategy was not working. The representatives also had a discussion with the respondent about the use of Facebook and they put together a strategy and staffing plan to assist the volunteers. By the time of the July 2016 Branch Committee meeting, the Committee decided that it would no longer be involved in Facebook as it was not working and too

much work was required to run it properly. The members did not have the time and the resources to staff it. They also could not supervise who were moderating it and what members were saying. Another consideration was that the respondent did not want to have uncontrolled Facebook and social media sites being set-up for which they had responsibility. [243]

86. In July 2016 the BASSA Facebook Page was closed. At that time Ms Malone, by then the former Chair, set-up another Facebook group outside of the respondent for which BASSA played no part. From 22 July 2016, Ms Malone was in charge of this new Facebook page without BASSA's involvement. It was called the Un- official BASSA XXXX Page. It invited members to apply to the administrator in the normal way or by email to join. Existing members who were part of the former Facebook Group automatically became part of the new Facebook set-up by clicking on the appropriate link. [116-118]
87. The claimant's position is that she had been denied access to this new Facebook Page following the Certification Officer case. Although she is competent in accessing social media, we have not seen one posting from her.
88. In March 2017, Ms Axelle Ozou-Messenger, posted a message from the claimant after the claimant complained that she was blocked from accessing the Facebook Page. In the message the claimant gave her account of the chronology of events leading to her reference to the Certification Officer and the EAT Judgment. [46-48]
89. There was a response, may be from someone on the BASSA Committee, having regard to the style of language used, who challenged the various assertions made by the claimant via Ms Ozou-Message. In the penultimate paragraph the following was written:

“As Ms Mills confirms she has managed to secure a ruling that all TU Reps are not covered in terms of privacy by the Human Rights Act, a victory an employer could only dream of ... and one that even our elected politicians enjoy whereas Reps don't. Well done Ms Mills ...

And for clarity ... I will be posting this separately on its own thread, in case you decide to delete this one when you are challenged.” [49-50]

90. The claimant sent her response to the above post via Ms Ozou-Messenger. Her account was not emotive and was largely factual. [51-57]
91. We were taken to several Facebook postings. Of note were the ones by Ms Marie-Louise Elliott, Worldwide Fleet Elected Representative. She wrote in one of her postings, amongst other things, the following:-

“Ms Mills has placed a burden on Trade Unions that most will not be able to fulfil and at enormous cost of members' money.”

“As Ms Mills confirms she has managed to secure a ruling that all TU Reps are

not covered in terms of privacy by the Human Rights Act, a victory an employer could only dream of ... and one that even our elected politicians enjoy whereas Reps don't. Well done Ms Mills ..."

92. Mr Ian Boden posted:-

"At last ... a bit of clarification ... although I must say the attitude towards Ms Mills does seem to be a bit unprofessional."

93. This was responded to by Ms Elliott who wrote:-

"Why unprofessional Ian Boden? Ms Mills has taken BASSA to court and everything we have published is a matter of public record. We have a duty to protect our members interests and let you know what's going on – once we were allowed to by the Certification Officer.

There is nothing that we have said that any person in the land cannot gain access, so I'm not sure why it seems "unprofessional" to you when the implications of Ms Mills' case affects the whole of the TU movement in the UK."

94. From the documentary evidence before us, it would appear that Ms Elliott was the only BASSA Branch representative who challenged the claimant on Facebook. [331-367]

95. The claimant wrote to Mr Aidan Smith complaining about not being able to join the Un-official XXXX Facebook forum and invited him to look into her complaint as there appeared to be no logical excuse for her exclusion. She also referred to being denied access to BASSA's website as it did not accept the generic password. [126]

96. A post from "Dija Ait" referred to the claimant as having been banned from the Facebook Page. Significantly, this statement was not challenged by Ms Elliott in response. Dija Ait wrote:-

"I don't get why Ms Mills is banned from this conversation page, instead of shouting the messenger (Axelle), it will be far clearer for everyone to have this person here and to explain directly to fellow colleagues her process and reason?" [363]

97. Ms Elliott responded;

"We have made our point and you have made yours. BASSA has thirty years of good will in the bank of looking out for members interests and so we are happy for our members to be the judge of what it [is] right and what is wrong now that we can tell them what's going on.

The simple fact remains that every action has a consequence & it doesn't matter how Ms Mills dresses it up, thanks to her the entire Trade Union movement is now under financial scrutiny from anyone. That is her legacy and something **that** only she can live with, regardless of her supposed intentions." [364-365]

98. We find, having regard to the postings by Axelle Ozou-Messenger, that the claimant was blocked from accessing the Facebook Page notwithstanding the new arrangements under Ms Malone. Miss Ozou-Messenger specifically referred to the claimant having been blocked from and wrote on her behalf.
99. Following the instructions given by the BASSA Branch in relation to the new set-up, it was a straightforward procedure to follow to gain access to the Facebook Page. Ms Elliott in her posts did not challenge the statements that the claimant had been denied access.
100. The claimant's case is that she had been denied access to the Facebook Page since May 2016.

Access to the website

101. The Branch's website is designed and hosted by an external company. The content is produced by the Branch. Although the Branch runs the website, the login process is connected to the respondent's membership systems by what is known as an Application Programming Interface. This means that the password that is utilised for the login to the respondent's website, is that which is also used for the BASSA website. The respondent would provide the automated and manual password reset function. A login is a mechanism to access the site and the information which the respondent hosts on the membership. This is called "My Unite" and it allows the member to update their address, contact details, preferences and so on.
102. Access to the BASSA website requires both a login and a password. The login is normally but not necessarily the members' email addresses. This can be changed via the login process. If the member does not know the password, he or she can request a new one and it is automatically generated. There is no human operator involved in the process. We find that the operators of the BASSA website have no ability to lock or interfere with the login process. The process is under the remit of the respondent and not the Branch or any company that hosts the Branch's website.
103. In relation to access to the website, on 20 May 2016, the claimant was given her login details, namely her user name and password. [130]
104. The tribunal heard evidence from Mr Paul Mease, the respondent's Director of Information Technology, who has been in that post for approximately five years. We found his evidence to be convincing, cogent and credible. He looked at the claimant's user history on 11 May 2017, the date alleged by her that she was denied access to the website. On that date a request for a password reset was made by her and she was provided with a new password and login details. There was, according to Mr Mease, no reason why she was unable to access to both BASSA's and the respondent's websites utilising the new login and password. No individual can be blocked from doing so as it is an automated process. [138]

105. We further find that the renewal of passwords and login details is a regular occurrence, on average around 20 to 30 times a day. Some individuals we were told do it every time they use the site. In Mr Mease's view the claimant regularly applied for new login details. If she had tried and for whatever reason, failed to access the respondent's site using the details supplied in the email, the My Unite site has a contact number for the respondent's Helpdesk which could manually undertake the exercise and inform the member of the new password.
106. On 3 June 2017, someone by the name of Valdemar Gomes, wrote to the claimant that access to the website had been denied due to her many failed login attempts. He, however, asked that the respondent should unlock her account and that she be sent a new password. He invited her to let him know by the end of the week if she did not hear anything. [127]
107. On 8 June 2017, an email was sent to her by a Ms Nicola Everley on behalf of the respondent in which she wrote:-
- “Dear Karen,
- If you enter the wrong password five times your login is automatically deactivated, this is what has happened to you.
- I can confirm that this has now been reactivated and your password reset to BASSA followed by your staff number, with no spaces. Please let me know if you have any further problems.”
108. We find that if a member enters the wrong password five times their login would automatically be deactivated. [129]
109. There are two ways in which someone in the respondent's IT Department can block access to the website, that is either by altering the password and/or removing the account.
110. We were provided with a screenshot of the claimant's user history and this shows that on 20 May 2016, she made five unsuccessful attempts to login. Mr Beatty wrote to her on 8 June 2016, stating that she had put in an incorrect password which could only be reset by the respondent and he had copied in Ms Everley.
111. Ms Nicola Everley, formerly Wilkinson, updated the claimant's login details on 8 June 2016.
112. It was not until 7 March 2017, nine months after she was sent her new login details by Mrs Wilkinson did the claimant make a further unsuccessful attempt to access the website. There were more unsuccessful attempts on 6 April and 24 April 2017. [124]
113. On 11 May 2017, following another unsuccessful attempt, she emailed the BASSA Branch Secretary. She wrote;

“Dear Adrian,

I have been trying to access the BASSA website but unfortunately without success. I have, of course, gone through the appropriate resetting of the password a few times but to no avail. The website does not even accept the password that is generically sent. It seems that this is an unlikely glitch as others have tried the same without any problem. I do hope that this is not a denial of my Union facilities as has been and still is with the unofficial XXXX Forum. I have been denied membership from this Union platform since the onset and to date never been given any reasonable reason as to why. Can you please look into this issue for me as there seems to be no logical excuse for the above ... I would appreciate a response to the above within seven days.” [126]

114. On 5 June 2017, Mrs Wilkinson emailed the claimant;

“Your password had been reset to BASSA followed by your staff number.”
[128-129]

115. From the evidence we find that the claimant was not blocked from accessing the BASSA website on the 11 May 2017.

116. In relation to the Un-official Facebook page, however, she was unable to access this on 12 May 2017 and this was the position up to the hearing of this case.

117. After sending the email entitled “Court Cases and The Public Record” dated 3 March 2017, to the Branch members, the Branch then put the communication on Twitter on 4 March 2017. The followers were invited to access official websites where the cases have been reported. From the tweets which followed it appears that some individuals took exception to this communication being tweeted. [68-73, 108]

118. The claimant told us, and we do find as fact that it was her daughter who drew her attention to the tweet on 23 March 2017. We find that the claimant did not give permission to the Branch to disclose the information to the union members.

Amendment to the constitution

119. The BASSA Branch Committee members were concerned about the Branch’s financial records being disclosed to the press and to other third parties with information in relation to union activities being misrepresented by the press. They took advice from a Queen’s Counsel who advised that there should be an amendment to the constitution.

120. On the 24 March 2017, the BASSA members were notified of a meeting to be held on 3 April 2017 together with an agenda and order of business. Under Item 9 “Any other business”, in brackets is the word “notified”. No details were given on the matters to be discussed under “Any other business” (145G to 145H). This was to be a members’ branch meeting of the officers and members of the branch.

121. In the minutes of the Branch meeting held on 3 April 2017, a range of issues were discussed. Under “Any other business” it states the following:-

“Unite Legal advised us to add to rule regarding accounts. Added to Rule 6 under Branch Fund Constitution – Inspection of books. Rule is read out by Chairman replicated below, will become Rule 6c, 6d, 6e and 6f. Appropriately proposed and seconded by two members.

- (c) The accounting records of the Union under s.38-31 of the 1992 TULRC Act contained financial information of a sensitive and confidential nature. Members are entitled to inspect accounting records under the said legislative provisions. They may be accompanied by an accountant to assist them if the accountant enters into an agreement to protect the confidentiality of the records. Members are entitled to obtain copies or extracts of accounting records.
- (d) The information contained in accounting records is sensitive and confidential both to the Union and its members. Members in receipt of accounting records are required to maintain the privacy and confidentiality of said information. No member who has obtained copies or extracts of accounting records may disclose such records (or information contained therein) to a member or non-member, or take any steps to facilitate such disclosure. Publication of said records in any form would be viewed as disclosure.
- (e) Prior to terminating their membership of the Union, any member who holds any copies or extracts of accounting records, or information obtained therefrom, must return same to his or her branch secretary or destroy said records or information.
- (f) Should any member breach this Rule and thereby breach Union confidentiality, he or she shall be guilty of an offence and the Union reserve the right to initiate legal action in the civil courts and/or disciplinary action.”

122. The Chairman asked who were in favour of the proposed change to the financial constitution; 41 were for, none against. There were no abstentions. The motion was duly carried and formed part of the rules of the respondent. [146-151]

123. The claimant had a meeting on 7 April 2017, to inspect the documents pursuant to the order of Mrs Justice Slade at the Employment Appeal Tribunal. Before the meeting commenced she was asked to sign her acknowledgement of the constitutional change but refused four times stating that she was there following the order of the Judge. The last day in which to comply with the Judge’s Order was the 7 April 2017.

124. We bear in mind that the Order made by Mrs Justice Slade was that the respondent should comply with the Order made by the Certification Officer “Eight weeks from the seal date of the Order of the Employment Appeal Tribunal be given or such other date as may be agreed by the parties or further Order.” The judgment was handed down on 9 February 2017. The expiry date, assuming that the parties were

not present on the 9 February 2017 when the judgment was handed down, was 7 April 2017.

125. We find that there is some credence in the claimant's assertion that, considering the speed with which the proposed amendment took place, that it was directed at her to restrict her use of the information as she was due to meet with the BASSA representatives on 7 April 2017. There is also the proposed letter the committee members agreed on 6 April 2017 that they were going to send to her threatening her with disciplinary action or civil action should she fail to comply with the proposed amendment.
126. We make note of the following statements made in Ms Elliott's various postings. She wrote;

“Unfortunately for Ms Mills, myself and the rest of the BASSA Reps will not let her selective amnesia go unchallenged any longer.” [331]

“Yes, absolutely we had a top Human Rights QC because the Union recognised the dangers to the entire Unite movement of losing this case and did not want to do so, however we lost.” [333-334]

“Ms Mills has taken BASSA to court and everything we have published is a matter of public record. We have a duty to protect our members' interests and let you know what's going on – once we were allowed to by the Certification Officer.” [336]

“TU Reps – it has been ruled thanks to Ms Mills – are not covered by the Human Rights Act in terms of privacy – we have no right to privacy apparently because we are reps ... politicians are elected and are covered but TU Reps are not.” [344]

127. The BASSA Branch officers made no attempt to meet with the claimant to discuss her concerns and whether she had been involved in disclosing information about the Branch to the press and on social media. Instead what we have is an unhelpful dispute played out on social media in which she had clearly been singled out for unfavourable comment and criticism.
128. We have taken into account the written and oral submissions by Mr Bheemah, Counsel on behalf of the claimant and by Mr Cooper QC, Counsel on behalf of the respondent. We do not propose to repeat their detailed submissions herein having regard to Rule 62(5) Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, as amended. In addition, we have also taken into account the authorities they have referred us to. Their written submissions can be referred to as their submissions in this case.

The law

129. Section 64(1) Trade Union and Labour Relations (Consolidation) Act 1992, provides;

“An individual who is or has been a member of a trade union has the right not to be unjustifiably disciplined by the union.”

130. Section 64(2) states;

“For this purpose an individual is “disciplined” by a trade union if a “determination” is made, or purportedly made, under the rules of the union by an official of the union or a number of persons including an official that...”

131. It then lists six prohibited conducts including,

(d) he should be deprived to any extent of, or of access to, any benefits, services or facilities which would otherwise be provided or made available to him by virtue of his membership of the union, or a branch or section of the union,

(f) he should be subjected to any other detriment;

and whether the individual is “unjustifiably disciplined” shall be determined in accordance with section 65.”

132. Section 65(1) provides that an individual is unjustifiably disciplined by a trade union if,

“the actual or supposed conduct which constitutes the reason, or one of the reasons, for disciplining him is –”

133. Then subsection 2 lists 12 protected activities which would constitute an individual being unjustifiably disciplined. Of relevance, it includes the following:-

“(c) asserting (whether by bringing proceedings or otherwise) that the union, any official or representative of it or a trustee of its property has contravened, or is proposing to contravene, a requirement which is, or is thought to be, imposed by or under the rules of the union or any other agreement or by or under any enactment (whether passed) or any rule of law;”

“(j) requiring the union to do an act which the union is, by any provision of this Act, required to do on the requisition of a member.”

134. Section 65(5) gives the union a defence. It states;

“This section does not apply to an act, omission or statement comprising in conduct falling within subsection (2), (3) or (4) above if it is shown that the act, omission or statement is one in respect of which individuals would be disciplined by the union irrespective of whether their acts, omissions or statements were in connection with the conduct within subsection (2) or (3) above.”

135. Section 65(3) provides;

“This section applies to conduct which involves the Certification Officer being consulted or asked to provide advice or assistance with respect to any matter whatever, or which involves any person being consulted or asked to provide

advice or assistance with respect to a matter which forms, or might form, the subject-matter of any such assertion as is mentioned in subsection (2)(c) above.”

136. Subject to section 65(5), it is only necessary for the member to show that one of the reasons for the disciplinary action fell within section 65, Unison v Kelly [2012] IRLR 442, a judgment of the Employment Appeal Tribunal. In that case Supperstone J also held:

“There is an important public interest in s.65(2)(c); rather than threatening the right of trade unions generally to administer their own affairs, it protects against the maladministration of union affairs contrary to the union’s own rules or the law. Thus, Article 11(1) is not violated by s.65(2)(c). Even if it infringed Article 11(1), it would be justified under Article 11(2). It is necessary in a democratic society to protect the rights of members of unions to hold their unions to account for breaching the union’s own rules, where the members act in good faith. The right to freedom of expression entitles a union member to reasonably express his opinions on internal union matters generally and the right to freedom of association must entitle members of the union to influence the policies and actions of their union. The disciplinary measures that had been imposed on the claimants plainly had had a serious effect on the exercise of their freedom of expression and their freedom of association and that of their members who had voted for them.”

137. The disciplinary act does not need to have been carried out in order to give the member the right to make a claim. It is sufficient that a determination is made that the member should be disciplined. In the case of Transport and General Workers’ Union v Webber [1990] ICR 711, the EAT held that a determination in accordance with the Act must be something that finally disposes of the issue. Accordingly, a recommendation by a member of an executive committee that a member be expelled did not amount to discipline as the recommendation still had to be implemented.
138. A determination is made on the date the union made its decision and not on the date of notification of it, National and Local Government Officers’ Association v Killorn and Simm [1990] IRLR 464, EAT. In that case Mrs Killorn was suspended from membership of NALGO on 10 July 1989 by her branch secretary for crossing a picket line during a pay dispute. On the same day a circular was sent to all branch members naming her and others as having been suspended for strike-breaking and that information on the pay claim or any other information relating to the branch or the union, should not be sent to those named. Mrs Simm was informed of her suspension from membership on 14 July 1989. A circular sent to branch members the previous day had included her name as one of those automatically suspended from membership for strike-breaking.
139. Mrs Killorn and Mrs Simm and the other suspended members, wrote to the branch chairman on 27 July 1989, questioning the action taken against them. They presented their claims to an employment tribunal alleging that they had been unjustifiably disciplined by the union under section 3 Employment Act 1988, the predecessor to sections 64 and 65 of TULR(C)A. An issue arose as to whether their claims were in time and the tribunal found in their favour. The tribunal held in deciding whether or not there had been a determination

under section 3(5), that suspension from union membership was depriving the member of the benefits accruing from such membership, section 3(5)(d). In addition, the publication of the names of the strike breakers in a branch circular which was intended to cause embarrassment, could reasonably be described as subjecting them to a detriment such as in Mrs Simm's case, section 3(5)(f). The union appealed.

140. The EAT held, Lord Mayfield giving judgment;

“29. This appeal tribunal also agrees with the conclusion of the Industrial Tribunal that suspension from membership of a trade union inevitably means being deprived of the benefits which accrue from such membership. As we have said, the branch members were advised to withhold information on the pay claim and any other activities of the branch or the union from those who had been suspended for strike-breaking. In our view, the Industrial Tribunal were entitled to hold that suspension inevitably deprived a member from any benefits, services or facilities provided by the union. The purpose of being a member of a union is to provide a member with certain benefits, and if the member's benefits are suspended we agree that it follows that the member has been deprived of those benefits.

30. As regards detriment, it is clear from the evidence of Mrs Duffy that one of the reasons for suspending Mrs Simm and the others concerned was to cause them embarrassment. Again we agree with the Industrial Tribunal's conclusion that the publication of a member's name in a circular or newsletter circulated to all branch members, naming the respondents and others as strike breakers, with the intention of causing them embarrassment, could reasonably be described as subjecting those individuals to detriment. In our view, whether or not a member suffered deprivation or detriment is the sort of question that Industrial Tribunals, with their expertise on industrial matters, are peculiarly suited to answer.”

141. “Subjected to any other detriment” in section 64(2)(f) is not defined under the Act. “Subjected to” is the wording in section 47B(1) Employment Rights Act 1996, a public interest disclosure detriment. It means “ ‘caused’ the ongoing detriment”, Abertawe Bro Morgannwg University Health Board v Ferguson [2014] IRLR 14, Langstaff J, President paragraphs 18-20.

142. Detriment means putting someone at a disadvantage. An unjustifiable sense of grievance would not be sufficient, Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337, House of Lords, Lord Hope, paragraph 34.

143. A claimant must establish that there had been a disciplinary determination not more than three months before the date of the presentation of the claim, Wood J, Medhurst v N.A.L.G.O [1990] ICR 687, EAT, headnote.

Conclusion

144. The claimant is a cabin crew member and there is no dispute that she was at all material times a member of the respondent union and is a member of the BASSA Branch.

145. Section 64(2) 1992 Act states that an individual is disciplined by a trade union if a determination is made or purportedly made under the rules of the union or by an official of the union or a number of persons including an official. We are satisfied, having regard to section 65(5), that the claimant's conduct was in her request for the disclosure of the Branch's accounts. She was asserting her right under section 30. Such conduct falls within section 65(2)(c) and (j).
146. Mr Beatty told us and we found as fact that the email correspondence sent to the membership of the Branch, were drafted and sanctioned by the Branch Committee members and they included officers. We are satisfied that they took the decision on or around the 3 March 2017, to refer to the claimant's case and its impact on the union as well as on the trade union movement generally, in the email of the same date specifically targeting and blaming her for the "damage this will bring about to the entire Trade Union movement under this anti-Trade Union Government....They will be grateful to Ms Mills." Details of her case were also tweeted on 4 March 2017. There then followed further emails. In the email dated 5 March 2017, the Branch Committee wrote, "Thanks to Ms Karen Mills the entire Trade Union movement is now under financial scrutiny from anyone. That is her legacy and something that only she can live with, regardless of her original intention(s). No-one else is to blame for the outcome of that ruling, except maybe those that for their own ends encourage her to do so."
147. In the email dated 13 March 2017, they wrote:
- "Ms Mills took a case to require branches to submit accounting records far in excess of the union to which they belong, in that she wished to inspect every aspect of expenditure behind the quarterly accounting figures. Individual receipts, bank accounts and reps' personal, financial information etc."
148. In the 14 March 2017 email the claimant was again referred to by name notwithstanding the fact that the Branch representatives accepted that she may not have been involved in disclosing information to the press. Her motives in calling the Branch to account were also questioned.
149. The emails were sent to the 9,000 membership and had the effect of isolating and blaming her for the lack of privacy protection afforded to trade union officers under the European Convention for the Protection of Human Rights and Fundamental Freedoms; for leaks to the press; for the weakening of the union, and for the weakening of the union movement.
150. In the email from Mr Adrian Smith sent on 27 March 2017 and in the one dated 6 April 2017, the implication is that the claimant was responsible for the leaks to the press and that a letter would be sent to her threatening action if the Branch's financial records were disclosed.
151. It is, in our view, clear from Mr Beatty's evidence and from the above extracts that a determination was made on or around the 3 March 2017 by Branch's union officials regarding how the claimant should be treated. This was in response to the negative press and rumours. Thereafter the documents referred to above are consistent with there being further determinations on how to deal with the claimant. These placed her at a disadvantage in that she was named when there was no need to do so and blamed for the alleged

weakening of the unions. She was isolated and a target for attack for having to exercise her right to inspect the accounts under section 30. We are satisfied, having regard to section 65(5), that the claimant's conduct was her requesting the disclosure of the Branch's accounts. Such conduct falls within section 65(2)(c) and (j).

152. We accept that the Branch's representatives and officers wanted to address the rumours and negative press coverage. There was no evidence that they decided to formally discipline the claimant although there was a discussion about it which was not pursued. We are, however, satisfied that a determination was made on or around 3 March 2017 that she should suffer a detriment, in that she would be identified and blamed for the consequences to the union and the union movement in having taken her case to the Certification Officer and the consequences for the union and officials considering the EAT judgment. The email of 3 March, the Twitter tweet and the subsequent emails referred to above specifically referred to the claimant by name rather than as a member of the Branch or of the union. We, therefore, have come to the conclusion that the claimant had been unjustifiably disciplined in respect of the email communications from the branch. Each communication sent to the membership followed a discussion by the union officers and amounted to a determination. As such section 64(2)(f) is satisfied and the claimant was unjustifiably disciplined. Paragraph 2a(i) of the List of Issues in relation to the specific correspondence referred to above, is well-founded.
153. If we are in error in concluding that the above communications constituted determinations and the claimant was unjustifiably disciplined, we do conclude, in the alternative, that a determination was made on or around 3 March 2017, when the Branch Committee decided that it was time to address the rumours and negative publicity by referring to the claimant in their communication with the membership. The subsequent communications referred to above, directly followed on from the decision taken on or around the 3 March. In that respect she was unjustifiably disciplined.
154. We accept that union officials have the right to engage in political and legal discourse in relation to matters affecting their interests and/or the interests of their union or the union movement. It is perfectly legitimate to do so and this is what the membership would have expected from their union, particularly when a union and/or its officials face a negative press and rumours on social media. There is, however, a boundary that any union should be wary of crossing and that is when the member becomes victimised by the body that is there to protect them. As Mr Justice Supperstone held in the Kelly case, "It is necessary in a democratic society to protect the rights of members of unions to hold their unions to account for breaching the union's own rules, where the members act in good faith." The claimant was exercising her right as a union member when she requested disclosure of the Branch's accounts. It was not necessary to name and to target her in the Branch's emails and in other communications in the manner in which the Branch did.
155. The "unspecified commentary in social media at page X" paragraph 2a(ii) of the List of Issues, while the tribunal accepts that posts on social media websites can

generally be said to represent an individual's point of view, we note that Ms Marie Louise Elliott, Worldwide Fleet Elected Representative for the BASSA Branch, consistently used the pronoun "we" and used information she was privy to in her capacity as a union representative. She was most anxious to put over the Branch's points of view in her posts during discussions. We, therefore, conclude that these posts were determinations made by a union official acting in that capacity under s.64(2). The posts were detriments in that they increased the claimant's isolation from her colleagues and attributed bad motives to her in bringing the Certification Officer case.

156. We make note of the following statements made in Ms Elliott's various postings and repeat paragraph 126 in our judgment above in which she wrote:-

"Unfortunately for Ms Mills, myself and the rest of the BASSA Reps will not let her selective amnesia go unchallenged any longer." [331]

"Yes, absolutely we had a top Human Rights QC because the Union recognised the dangers to the entire Unite movement of losing this case and did not want to do so, however we lost." [333-334]

"Ms Mills has taken BASSA to court and everything we have published is a matter of public record. We have a duty to protect our members' interests and let you know what's going on – once we were allowed to by the Certification Officer." [336]

"TU Reps – it has been ruled thanks to Ms Mills – are not covered by the Human Rights Act in terms of privacy – we have no right to privacy apparently because we are reps ... politicians are elected and are covered but TU Reps are not." [344]

157. We have concluded that the claimant was unjustifiably disciplined in relation to Ms Elliott's commentary.
158. The tweet on "Court Cases and The Public Record" on 4 March 2017, gave the link to the document circulated to the members on 3 March 2017 which referred specifically to the claimant and those involved in the Castillo v Unite case. Again, we conclude that this was a determination made on or around 4 March 2017 by the Branch officers that the claimant's case should be referred to in a tweet. This decision was a detriment to her as it further isolated her from her colleagues. We remind ourselves that the nature of the work of the BASSA involves travel all over the world and communication via social media is the principal means of keeping in touch and be seen as part of a team. We again would make the point that it was neither necessary nor acceptable for her to be identified by name and blamed for the alleged damage done to the union and the union movement. We have come to the conclusion that she was unjustifiably disciplined, paragraph 2a(iii).
159. We have not found that the claimant was denied access to the BASSA or the respondent's website. She had inputted her login details incorrectly and we

were not satisfied that anyone had or could block her, paragraph 2a(iv). This aspect of her claim is not well-founded.

160. In relation to being denied access to the Unofficial XXXX Facebook Page, there was an apparent seamless transition from the Branch to Ms Malone on 22 July 2016. Existing members of the group transferred and those who wanted to become members had to apply to the administrator and follow a straightforward procedure to register themselves. This is a benefit to the Branch's members as they are able to receive information and exchange ideas. A member can be disciplined by a trade union if he or she is deprived of access to any benefits, services or facilities which would otherwise be provided or made available to him or her by virtue of their membership of the union, s.64(2)(d).
161. We were not satisfied on the balance of probabilities, that there was a determination by the Branch Committee or any of its officers to deprive the claimant of this benefit. In any event, she complained that she was denied access since 22 July 2016 but her claim is that this was on 12 May 2017. We have come to the conclusion that the operative date is on 22 July 2016. She had up to 21 October 2016 in which she should have presented her claim and did not do so. There is no "course of conduct" or "continuing act" applicable in this case. This claim is out of time by a considerable margin and we do not extend time as she had access to advice from Mr Beaumont or with reasonable diligence she could have found out the time limit through the respondent's officials or legal advisors or by accessing relevant websites, paragraph 2a(iv).
162. We have found that the change to the Branch's constitution, the timing of the amendment and the way in which it was expedited, were targeted at the claimant. The Branch officials and that the Branch were anxious to implement the proposed amendment prior to the claimant inspecting their documents on 7 April 2017. There was a determination on the 3 April 2017. The branch officials only disclosed the nature of the proposed amendment on the day of the meeting on 3 April 2017. Out of the 9,000 members only 41 attended the meeting. The claimant was named in the proposed draft letter to be sent to her with the threat of disciplinary and/or court action should she breach the provisions in the amendment which were in themselves quite restrictive as they do not allow for the claimant to discuss the documents with her legal advisors. Accordingly, she has suffered a detriment as she was targeted, isolated from the membership and restricted in her use of the information, paragraph 2a(vi).
163. In relation to the defence raised by the respondent under s.65(5), namely that the respondent would have disciplined a member in similar circumstances. There was no evidence that the disclosure of the accounts to the press was done by the claimant. It was by Mr Beaumont. The claimant was clearly part of the Certification Officer case in Castillo v Unite as she was one of the claimants. There was no evidence that she had been involved in any of the rumours which were spread about the BASSA Branch officers. She would, therefore, not have been disciplined. All she did was to raise her concerns

under s.30 TULR(C)A before the Certification Officer which was a legal route available to her. We have come to the conclusion that a member would not have been disciplined in similar circumstances.

164. The case will be set down for a remedy hearing on a day that is mutually convenient to the parties and the tribunal.

Employment Judge Bedeau

Date:17.01.19.....

Sent to the parties on: ...18.01.19.....

.....
For the Tribunal Office