

EMPLOYMENT APPEAL TRIBUNAL
FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 30th October 2018

Before

THE HONOURABLE MRS JUSTICE SIMLER DBE (PRESIDENT)

(SITTING ALONE)

THE PROFESSIONAL TRADES UNION FOR PRISON, CORRECTIONAL AND SECURE PSYCHIATRIC WORKERS (“THE POA”) APPELLANT

MR M ROLFE

RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant

MR OLIVER SEGAL QC
(of Counsel)
Instructed by:
Thompsons Solicitors
Congress House
Great Russell Street
London
WC1B 3LW

For the Respondent

MR MICHAEL ROLFE
(The Respondent in Person)

SUMMARY

CERTIFICATION OFFICER

The Appellant, The Professional Trades Union for Prison, Correctional and Secure Psychiatric Workers (referred to as the Union), appealed from a Decision of a Certification Officer made pursuant to section 108A(1) **Trade Union and Labour Relations (Consolidation) Act 1992** (“the 1992 Act”), granting an application by Mr Rolfe for a declaration that on or about 3 May 2017, the Union breached Rule 10.9 of its Rules by disqualifying Mr Rolfe from holding a position on the Union’s National Executive Committee until May 2026.

The question whether or not there had been a breach turned on whether Mr Rolfe, resigned from his office as National Chair of the NEC during his elected term. The Certification Officer held that he did not resign but instead, ceased to be a member of the NEC by virtue of his resignation as a Prison Officer and not being eligible for membership of the Union.

The Employment Appeal Tribunal held that the Certification Officer erred in law in reaching that conclusion by misconstruing the Union’s Rules, and failing properly to interpret the letter dated 3 May 2017 by which Mr Rolfe made clear that he was standing down from his position as National Chair. On a proper construction of the Rules, Mr Rolfe could have resigned from employment as a Prison Officer but remained a full member of the Union employed as its National Chair. Furthermore, the language used by Mr Rolfe in the letter of 3 May 2017 was clearly and unambiguously language communicating his decision to stand down from his position as National Chair and reasonably understood by the Union as a letter of resignation.

A **THE HONOURABLE MRS JUSTICE SIMLER DBE (PRESIDENT)**

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Introduction

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1. This is an appeal from the Decision of the Certification Officer, Mrs Sarah Bedwell, under section 108A(1) of the **Trade Union and Labour Relations (Consolidation) Act 1992** (“the 1992 Act”) granting Mr Rolfe a declaration. The Certification Officer declared that on 3 May 2017 the Respondent Union breached Rule 10.9 of the Union’s Rules by disqualifying him from holding office on the National Executive Committee (“the NEC”) until 2026, when he had not in fact resigned pursuant to Rule 10.9, but rather had simply ceased to be a member of the NEC by virtue of his resignation from his employment as a Prison Officer and thereby became ineligible to remain as a member.

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2. Before the Certification Officer, and indeed before me, it is common ground that the question whether a member of the Union’s NEC who holds a paid office in the Union is an employee was dealt with by the Employment Appeal Tribunal in **Prison Officers Association and others v Gough and another** (2009) UKEAT/0405/09. The Employment Appeal Tribunal held that such a person is an employee. Mr Rolfe knew of that particular case and understood that he could have remained as National Chair by reason of his being an employee of the Union in that capacity. I shall return to that point in due course when I deal with the Certification Officer’s findings.

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3. The Union appeals contending that the Certification Officer erred in law in making the declaration and reaching the conclusions she did on the following grounds. First, she misunderstood and or misconstrued the nexus between Rules 4.1, 10.8(b), and 10.9. Secondly,

A she erred in law in interpreting Mr Rolfe’s letter of 3 May 2017 as not constituting a voluntary
decision to stand down from his post as National Chair of the Union. Thirdly, if the Union is
B wrong about the proper construction of the Rules, in the alternative it contends that the
Certification Officer was wrong to construe Rule 10.9(a) as not applying to a person who has to
leave their office as an NEC member as the automatic consequence of their decision to resign
C from employment with the Prison Service within the meaning of Rule 4.1(a) and thus ceasing to
be a full member of the Union pursuant to 10.8(b). The correct position is that Rule 10.9(a)
properly construed, was intended to and does apply to such a case. A fourth ground of appeal
was permitted to proceed but the Union does not pursue it, accepting that the Certification
D Officer was bound by the decision in **Prison Officers Association and others v Gough and
another**.

4. The Union is represented by Mr Oliver Segal QC, who did not appear below. Mr Rolfe
E who resists this appeal and contends that the Certification Officer was correct for the reasons
she gave, appeared in person as he did below.

The Facts

F 5. The facts can be taken from the Certification Officer’s Decision. Mr Rolfe was a Prison
Officer and a member of the Union. He was elected as National Chair in November 2015, with
a term of office running until the end of the Union’s conference in 2021. In 2017, he decided to
G stand for election as a Parliamentary candidate in the General Election. There was no dispute
that once his candidature was accepted, he was required to resign from his role as a Prison
Officer. By an email dated 3 May 2017, Mr Rolfe informed the NEC of his candidature, his
H resignation from the Prison Service and the fact that he would no longer be a full member of the
Union, nor a member of the NEC. Although the Certification Officer did not set out the terms

A of the email of 3 May 2017, it seems to me to be important to do so. As far as relevant it reads as follows:

"I'm am writing to you today ahead of your NEC meeting to ensure that you have clarity for the POA going forward.

B My candidacy for the Labour Party at the forthcoming General Election requires me to resign from the civil service. That resignation will be submitted to HMPPS today with immediate effect due to the strict guidance on impartiality that civil servants are expected to abide by during election periods.

I recognise that in doing so I will no longer meet the requirements of 4.1(a) of our rules and constitution and therefore rule 10.8 will apply. I also recognise that by associating myself so prominently with the Labour Party that this is not in keeping with the POA's politically neutral position and that many members have differing views from that of my own.

C This decision has not been an easy one and it is with an extremely heavy heart and deep regret that I have chosen to pursue this direction at this time. I recognise that many people will be disappointed with this decision and that timing couldn't have been worse with conference around the corner. I had hoped that I could stay in position to ensure that any departure would see us past our annual conference.

I do feel that I owe all of our members an explanation and believe I should give this explanation if the Executive will allow me at this years conference.

D I believe that the POA is a strong campaigning Union, that POA members get fantastic local representation and that despite all the difficulties the NEC work extremely hard to try and achieve on behalf of the membership. This work often goes unnoticed.

At every level of POA office I have held I have done so by request of my friends, colleagues and associates, to try and make a difference and I have never seen any personal gain by pursuing the course that I have followed. In fact my work, as with many committed representatives, has often led to significant personal detriment.

E I would hope that once the dust settles on all of this the people that spurred me on to attain higher office would now support me in making my choice to stand for parliament where, if successful, I can continue to fight social injustice and become a voice for our members.

I recognise that this will be a big personal gamble and that I took on the role of National Chair to see a new direction for the POA. I did so with absolutely honourable intentions and did not envisage making this decision at this time. There was still much work for me to both internally and externally within the POA.

F I know the work of the POA will continue, that there are many good and capable people at both NEC and local level which will only serve to make the POA stronger. I hope that I have served the NEC well for the last 4 years and that after the shock, disappointment and anger that people will remember the good work that I did and that the POA is in a stronger more united position than before.

G I have no disloyalty to the POA. I believe in the Union, what it stands for and what it endeavours to achieve. I also believe that every worker should belong to a union and support their union when tough decisions are made. Unity and togetherness are key to success and it saddens me when I see people that would rather spend time talking down the union's ability than to collectively build a stronger voice. Without unions workers would be much worse off.

I have always believed that the POA should be politically focussed, that much of our work is done through convincing parliamentarians to support the POA message either through detailed dialogue or by using the media and public to get the required outcome. I also believe that the POA should put forward candidates in every election, local or national as driving the narrative and ensuring that our members work is at the top of the priority list is key to success.

H I have chosen this course as I see it as the only viable option try and get for our members what they rightly deserve. I will make every effort to get elected in to parliament and if successful I

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will then pursue every possible role and position to hold the power and use it to fight social injustice for our members and beyond.

Finally I would like to thank the NEC, FTO's, local reps, POA staff and also our members for all the support that they have shown me over the last 4 years. Without that support I do not believe The POA would be in such a strong position."

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6. The Union treated the letter of 3 May 2017 as Mr Rolfe's resignation as National Chair.

Thereafter, Mr Rolfe was unsuccessful in the General Election, returned to work in the Prison

Service and re-joined the Union. On 19 June 2017, Mr Rolfe queried the Union's use of the

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word, "*Resignation*", in a circular to members (59 of 2017) issued on 3 May 2017 and headed,

"Resignation as National Chair". He said that he did not resign from the Union, nor from his

role as National Chair. The Union considered his views at the NEC meeting on 28 June 2017

and subsequently confirmed its view that Mr Rolfe had indeed resigned as National Chair. The

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Union also told Mr Rolfe that as he had resigned as National Chair, Rule 10.9 was engaged and

that he was accordingly not eligible to stand for election to the NEC until 2026.

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7. At the hearing below Mr Rolfe told the Certification Officer that he understood that he may have been able to remain a member of the Union under Rule 4.1(b) as a consequence of

Prison Officers Association and others v Gough and another. Mr Rolfe did not however,

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wish to rely on Rule 4.1(b) to maintain his membership of the Union as he understood there to

have been a confidence motion passed some years earlier, but after 2009, which endorsed the

Union's view that paid officers were not employees of the Union. Mr Rolfe also told the

Certification Officer that it would have been open to the NEC to have offered him the

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opportunity to remain within the Union as an employee of the Union, but it did not do so.

8. The General Secretary of the Union, Mr Gillan, gave evidence and the Certification

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Officer recorded that he accepted that Mr Rolfe could have remained a full member of the

Union under Rule 4.1(b) having left his employment with the Prison Service. Mr Gillan told

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A the Certification Officer that the NEC had considered that as an option alongside the option of
employing Mr Rolfe in another capacity. When asked about that Mr Gillan explained that it
would have been difficult for Mr Rolfe to remain as National Chair whilst standing for
B Parliament because of the Union's politically neutral stance. The Union sought advice from
lawyers who advised that Mr Rolfe's letter of 3 May 2017 could be accepted as a resignation.
Having considered that advice and the options available, the NEC took the unanimous decision
to treat the letter as a resignation letter and accepted it as such.

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9. The Certification Officer referred to **Prison Officers Association and others v Gough**
and another and at paragraph 34 agreed with both parties that until 3 May 2017, Mr Rolfe was
D an employee of the Union, whether or not he believed it appropriate or a status he wished to
rely upon, and could have remained a member of the Union under Rule 4.1(b), even after he
had resigned from the Prison Service. She regarded that as important context for the NEC
E discussion which followed Mr Rolfe's letter of 3 May 2017. Moreover, she recorded that both
parties accepted it would have been open to the NEC to enable Mr Rolfe to remain a member of
the Union under that Rule and that his letter of 3 May 2017 was written without any reference
to that option. She found, "*His view was that he did not wish to rely on this route but, from his*
F *submissions and the evidence, I have to assume that he may have been open to this option had*
the NEC offered it to him".

G 10. At paragraphs 36 and 37, the Certification Officer described the letter of 3 May 2017 to
which I have referred and that it made explicit reference to Rule 4.1(a) and Rule 10.8, which
supported the view that Mr Rolfe believed that at the point at which he resigned from the Prison
H Service, he would cease to be a member of the Union and hence cease to be an NEC member
and National Chair. She noted that the letter did not make any reference to Rule 4.1(b); nor did

A it explain that Mr Rolfe had considered Rule 4.1(b) as an option but chosen not to rely on it.
She also noted that the only reference to resignation in the letter of 3 May 2017, related to Mr
B Rolfe’s resignation from the Prison Service. Nonetheless, she recorded that the letter contained
a number of expressions of regret from Mr Rolfe as to his ineligibility to remain in post as
National Chair. The NEC read those as expressions of regret around his resignation as National
Chair.

C **The Union Rules**

11. The relevant Rules as revised at the Union’s annual conference in 2016 are as follows.
Rule 4 deals with full membership and the qualification for full membership:

“Qualification

Rule 4.1

The qualification for full membership is employment: -

- (a) **Any penal or secure establishment, Special Hospital, associated training establishment, Prison Service establishment, secure units, Private Sector Escort or Custodial Services in England, Wales, Northern Ireland, Scotland or the Isle of Man; or**
- (b) **as a paid Officer of the Union.**
- (c) **As a worker within the Criminal Justice System, Home Office or for an organisation providing services to any of the establishments described in Rule 4.1(a).**

Rule 4.2

If a full member’s employment which qualifies under Rule 4.1 terminates:

- (a) **with the member’s agreement;**
- (b) **without the member’s agreement and the member has not appealed against the termination within 3 months; or**
- (c) **without the member’s agreement and the member has exhausted all rights of appeal; full membership ceases automatically.”**

12. Rule 7 deals with recruitment and resignation and provides by Rule 7.7, *“A member may resign by giving at least one month’s prior written notice to the General Secretary”*. In light of
the other Rules, it seems to me that relates to ordinary members of the Union.

A 13. Rule 8 deals with subscriptions and Rule 8.8 (headed Lapse of Membership) makes clear that if the subscription payable by a member is unpaid for at least 2 months, membership lapses automatically and lapsed members cannot re-join the Union unless they complete a direct debit for future payments.

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14. Rule 10 deals with the National Executive Committee. At 10.1 it identifies the members of the National Executive Committee as including (a) the Chairman, (b) the General Secretary, **C** (c) the Vice Chairman, (d) the Deputy General Secretary and the National Executive Committee Members (NEC). There are Rules dealing with election and eligibility but it is unnecessary to set these out.

D 15. Rules 10.7, 10.8 and 10.9 provide as follows:

“Rule 10.7

Any member of the Union who lapses in, or is suspended or expelled from, membership cannot be elected as a National Executive Committee member until 5 years after rejoining full membership of the Union.

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Rule 10.8

A National Executive Committee member:

(a) may retain office even if promoted or transferred to another rank and/or establishment

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(b) ceases to be a National Executive Committee member automatically on ceasing to be a full member of the Union.

Rule 10.9

(a) Any National Executive Committee Member who resigns from office during their elected term or after the commencement of any national ballot that they are candidates in, will be disqualified from holding any National Executive post for a period of five years after the position would be due for re-election.

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(b) It is incumbent upon any member of the Union, who is a successful candidate in any national election to take up office. Failure to do so will deem them to have resigned and will automatically de-bar them from holding any national office for a period of five years after the day when he/she would have been due for re-election.”

H 16. Although Mr Rolfe did not agree, it seems to me that Trade Union rules are to be construed in accordance with ordinary principles of contractual construction. First, terms of a

A Union's rulebook which are essentially its contract with its members must be construed as a whole. Secondly, in so far as the terms of the rulebook permit, those terms should be construed so as to give effect to the established purpose and intention behind them. Thirdly, Trade Union rules are... "not to be construed literally or like a statute, but [are] to be given a reasonable interpretation which accorded with their intended meaning bearing in mind their authorship, their purpose and the readership to which they were addressed", (see **Jacques v AEEU** [1986] ICR 683). In this case there is no dispute about the intention and purpose of Rule 10.9 in particular. As the Certification Officer held at paragraphs 26 and 51, consistently with the judgment of Lloyd J in **Prison Officers Association v McLaren and Others** (Ch 1996 P. No.6188), the purpose of the Rule is to prevent members from opting in and out of elected NEC posts causing additional costs to the Union and disruption to Union business.

17. The word resign or resignation is an ordinary English word. It means to voluntarily leave a job or office. The word resign need not be used to communicate a resignation or for a resignation to take effect. A resignation can be effected by conduct, for example by walking out and not coming back. What matters is not the undisclosed subjective intention of the person resigning. Rather what matters are the words or conduct used, construed in their proper context, and how those word, or conduct are reasonably understood by the other party.

18. Section 108A of the **1992 Act** affords the right to apply to the Certification Officer for a declaration to a person who claims there has been a breach, or threatened breach, of a Trade Union's rules relating to the appointment, election, or removal of the person from any office (see section 108A(2)(a)).

A The Decision

19. Mr Rolfe’s case to the Certification Officer is summarised by her at paragraphs 14 to 20 and the Union’s case to the contrary effect is summarised at paragraphs 25 to 29. I do not set those paragraphs out. The Certification Officer’s conclusions start at paragraph 30, but the heart of her reasoning is at paragraphs 38-44 and 46-48 as follows:

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“38. The NEC, clearly considered that Mr Rolfe’s membership need not automatically cease on his resignation from the civil service because they considered other options which would have enabled Mr Rolfe to remain a member under Rule 4.1(b) and Rule 2.2(c) either by remaining as National Chair or in another, employed role within the Union. I have, however, seen no evidence that these options were communicated with Mr Rolfe before the NEC took the decision to accept his letter as a resignation. Bearing in mind the clear statement from him, within the letter, that he was ceasing to be a member under Rule 4.1(a) and the fact that he would remain a member if he continued either as a member of NEC or in some other employed role, I would have expected the NEC to have made some effort to discuss Rule 4.1(b) and its impact. This is particularly significant because of the consequences of Rule 10.9 if Mr Rolfe was resigning as National Chair.

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39. Once the NEC had reached the decision to accept the letter of 3 May 2017 as a resignation, from the Union and from Mr Rolfe’s role as National Chair, they took steps to end his Union membership immediately and to inform members that Mr Rolfe had resigned. Mr Rolfe’s view was that this action implied that the NEC accepted that he had automatically ceased to be a member of the Union under Rule 4.1(a); had the NEC considered that he had resigned under Rule 7.7 then he would have needed to give a month’s notice and would have remained a member of the Union until 3 June 2017. I have some sympathy with that argument. Although I accept that Rule 7.7 may not be a member’s only route to resignation, the NEC’s actions in taking immediate steps to end Mr Rolfe’s membership suggest that they were treating him as having ceased to be a member of the Union.

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40. There is a contrary view, that this was the NEC’s response to an immediate resignation from the Union and from Mr Rolfe’s position as National Chair rather than as resignation under Rule 7.7. As I have reflected above, however, Mr Rolfe’s letter of 3 May 2017 refers only to his resignation from the civil service. As I see it, there must have been some doubt as to the meaning of the letter because the NEC took legal advice on its contents and discussed the options available including Mr Rolfe remaining within the Union. The NEC, did not however, take any steps to clarify Mr Rolfe’s position with him. I find it hard to understand why they did not do so. I would add at this point that I have not seen the legal advice that was given to the NEC; I understand, from Mr Gillan’s evidence, that it was given orally and indicated that the NEC was entitled to treat this letter as resignation.

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41. Had the Union discussed with Mr Rolfe the possibility of him remaining in the Union at the time they considered his letter of 3 May, and had Mr Rolfe declined that offer then I would find in favour of the Union. This is because Mr Rolfe would have been seen to have made a clear decision to leave the Union and his post as National Chair. Similarly, had he clearly chosen to remain in the Union but relinquish his position as National Chair and take on another position as an employee then I would regard him to have resigned as National Chair.

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42. But, the NEC did not take steps to clarify Mr Rolfe’s position with him. In my view it is reasonable to have expected them to have done so because Mr Rolfe’s letter referred only to the automatic consequences of a resignation from the civil service. The NEC were aware that other options were available but did not seek to clarify with Mr Rolfe whether he had considered those options. As the consequences of Mr Rolfe resigning his post as National Chair were significant and far-reaching I do not think that this was a reasonable approach by the NEC. Consequently, I agree with Mr Rolfe that he ceased to be a member of the Union under rule 4.2 having become ineligible for membership under Rule 4.1(a).

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43. Once Mr Rolfe’s membership of the Union had ceased I agree with him that he was not in a position to resign from being a member of the NEC or National Chair. Rule 10.8 is clear that his membership of the NEC ceased automatically on him ceasing to be a full member of

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the Union. Consequently, I find that his letter of 3 May could not have been a resignation letter as he would cease to be National Chair as soon as he ceased to be a Full Member. The NEC's actions after its meeting on 3 May support this as it immediately took steps to exclude him from Union Membership and his role as National Chair.

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44. It is worth reflecting here that I understand why the NEC treated Mr Rolfe's letter as a resignation letter as the language used and, in particular, the expressions of regret, are similar to those used by someone who is reluctantly resigning a post. In this context, however, my view is that the NEC should have been alert to the fact that Mr Rolfe referenced specific rules which pointed to him leaving the Union immediately as a direct consequence of his resignation from the civil service. The NEC was clearly aware that Rule 4.1(b) need not have led to Mr Rolfe's Union membership having ended and, in my view, it should have taken steps to clarify this with Mr Rolfe before reaching a decision as to the status of the letter. Consequently, I do not agree with Mr Edwards that it was reasonable, taking into account the context and Mr Rolfe's actions, for them to have accepted the letter as a resignation without first seeking to clarify the position with Mr Rolfe.

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46. Having decided that Mr Rolfe did not resign from the Union I now need to consider whether Rule 10.9 applies to him. I agree with Mr Rolfe that there is a distinction between Rule 10.8 and Rule 10.9. The Rules use different words, which have different meanings in common usage, and so I must assume that the class of NEC members caught by each Rule is different. The class of Members covered by Rule 10.8 seems to be much wider than that at Rule 10.9.

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47. Rule 10.8 is directed at those NEC members who have ceased to be full members of the Union. I agree with Mr Rolfe that the use of the word "cease" here must mean those members whose full membership has ended. That includes those whose full membership has ended for a range of reasons; for instance, because they no longer qualify under Rule 4.1, have resigned from the Union under Rule 7.7 or otherwise, or their membership has lapsed under Rule 8.8.

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48. Rule 10.9 is directed at those NEC Members who resign from office during their NEC term or before they take up that term. I consider that "office" in this context must mean their membership of the NEC. I agree with Mr Edwards and Mr Rolfe that "resign their office" must mean that they are voluntarily giving up that office. As I have already found that Mr Rolfe did not resign from his office as National Chair it follows that Rule 10.9 does not apply to him and that he is eligible to stand in future NEC elections."

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20. To summarise, the Certification Officer concluded as follows:

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(1) having invoked Rules 4.1(a) and 10.8 Mr Rolfe ceased to be a member of the Union under Rule 4.2, having become ineligible for membership under Rule 4.1(a).

(2) Once his membership ceased, he *"Was not in a position to resign with the NEC"*. Rule 10.8 clearly states that his membership of the NEC simply ceased automatically.

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(3) Consequently, the letter of 3 May 2017, *"Could not have been a resignation letter because he would cease to be the National Chair as soon as he ceased to be a full member"*.

(4) Rules 10.8 and 10.9 are directed at different classes of NEC member. 10.8 is wider than 10.9, and is directed at NEC members who cease full membership of the Union, whereas 10.9 is

A directed at NEC members who resign from office during their term. Resignation means voluntarily giving up office.

(5) Since Mr Rolfe was found not to have resigned, Rule 10.9 did not apply to his case.

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The Appeal

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21. Against that background, I turn to consider the grounds of appeal noting that the Employment Appeal Tribunal has a limited statutory jurisdiction. It can correct errors of law by the first instance decision-maker but cannot interfere with, or make, further findings of fact. That is the province of the first instance decision-maker and absent any argument based on perversity, the Employment Appeal Tribunal is bound by the findings of fact made by the first instance decision-maker, here the Certification Officer.

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Grounds 1 and 2: errors in approach to the relevant Rules and/or the letter of 3 May 2017

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22. Grounds 1 and 2 can properly be taken together because, to a large extent, they interconnect and overlap. Mr Segal QC submits in summary that the Certification Officer failed properly to understand the relevant nexus between Rules 4.1 and 10.8 and 10.9 and as a consequence, asked herself the wrong question. She asked herself whether the Union acted reasonably in not discussing with Mr Rolfe the possibility of remaining in post as NEC Chair in response to the letter of 3 May 2017. That was the wrong question and was legally irrelevant to the question she had to decide. On a proper construction of the Rules and a fair reading of the letter of 3 May 2017, he submits it is plain that Mr Rolfe resigned from his post as chair of the NEC and Rule 10.9 was accordingly engaged. The Union was therefore, not in breach of its Rules in treating his case as falling within Rule 10.9 and the Certification Officer erred in law in reaching her conclusion.

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A 23. Against that, in clear measured submissions, Mr Rolfe makes the following points.
First, he says he never resigned as Chair but simply ceased to be Chair as an automatic
B consequence of resigning from the Prison Service. Secondly, having effected his resignation
from the Prison Service, only Rule 10.8 applied to his case. That was his intention and it was
the only Rule to which he referred under Rule 10. Thirdly, the letter of 3 May 2017 made
C reference to a single resignation only, namely, resignation from the Prison Service. Mr Rolfe
knew his position as Chair would come to an end too; but his intention in what he wrote was
that this should simply cease automatically. Although Mr Rolfe accepted that Rules 10.8 and
10.9 could both be in play depending upon the facts, here he submitted the facts are clear and
only Rule 10.8 is and was engaged. Rule 10.8 had been viewed and applied in isolation in that
D sense. Finally, the Certification Officer's Decision was consistent with his case and his
complaint that he resigned as a Prison Officer not as National Chair; that he ceased to be a full
member of the Union and therefore also ceased to be the National Chair; that there was no
E requirement for him to have resigned from the Union and he did not do so at any point. Her
Decision was therefore correct as a matter of law and the appeal should be refused.

F 24. During the course of his submissions, Mr Rolfe referred to a number of items of
evidence in an additional bundle provided and to other matters of evidence that did not make
their way, for whatever reason, into the Certification Officer's findings. I have already
indicated, I am bound by findings of fact made by the Certification Officer and cannot myself
G stray beyond them, whether by reference to new material or to material that was available to the
Certification Officer but not relied on by her. I do not address that material accordingly.

H 25. Having considered the competing submissions and the Decision of the Certification
Officer, I have concluded that she did make an error of law in dealing with this case. My

A reasons follow. First, Rule 10.8(b) covers the situation where an NEC member ceases to be
eligible for full membership of the Union under Rule 4.1, and provides for NEC membership to
cease automatically at that point. The word cease covers a range of ways in which full
B membership can come to an end, and may include lapse by reference to unpaid subscriptions,
expulsion, and termination. In a case where a member is eligible for full membership of the
Union by reason of employment with an employer and paid office of the Union itself (Rules
4.1(a) and (b)) as was the case here, a person may cease to enjoy the status of full membership
C by virtue of Rule 4.1(a), having lost his or her employment with the Prison Service, but
nonetheless retain the status of full membership by reason of employment in the paid office of
the Union under Rule 4.1(b). In such a case that person would remain a full member of the
D Union and neither Rule 10.8(b) nor Rule 10.9(a) would be engaged.

26. Rule 10.8(b) might apply to a situation where a person who is both an employee of the
Prison Service and an ordinary member of the NEC, but not employed in any paid post of the
E NEC loses employment with the Prison Service. In such a case Rule 10.8(b) would operate so
that having ceased to be a full member of the Union under Rule 4.1, that individual would
automatically cease to be an NEC member. Rule 10.9 is narrower and applies only where an
F NEC member resigns from office. It applies regardless of eligibility for full membership of the
Union so that a person can remain a Union member, but nevertheless resign from office. Rules
4.1 and 4.2 do not determine whether or not Rule 10.9 applies.

G 27. Moreover, I see no reason why a person cannot cease to be a full member of the NEC,
under 10.8 and at the same time resign from office of the NEC under Rule 10.9. I accept Mr
H Segal's argument that the identification of which Rule is most apposite will inevitably depend
on the facts of the particular situation, and that as a matter of language and common sense, Rule

A 10.8 is not immediately apposite to a situation where the reason for ceasing to be a full member is that the individual has resigned from an NEC office. As a matter of ordinary language and common sense, that situation is specifically covered by Rule 10.9 and therefore the specific Rule is taken to exclude the general Rule from being applied.

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C 28. It seems to me that what matters when dealing with the question whether or not there has been a resignation under Rule 10.9 (and the question accordingly for the Certification Officer) is whether the words or conduct used, read fairly and in context, amount to a resignation from the office of National Chair and are reasonably understood as such. The Certification Officer did not address that question. Instead she treated her finding that Rule 10.8 applied as meaning that the letter of 3 May 2017 could not have been a resignation. That was to allow the Rules to dictate the facts rather than the other way around. Moreover, in answering that question it was irrelevant whether the Union should have sought to persuade Mr Rolfe to stay on as Chair or not, yet that failure appears to have been the single factor relied on by the Certification Officer in coming to the Decision she did.

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F 29. Given that on the proper construction of Rules 4.1, 10.8(b) and 10.9, Mr Rolfe could have resigned from employment as a Prison Officer and remained a full member of the Union employed as its National Chair as he accepted before the Certification Officer, the letter of 3 May 2017 had to be construed by looking at the words he used and how those words should be properly understood. In that regard the Certification Officer found at paragraph 9(c), that the letter informed the NEC that Mr Rolfe would no longer be a member of the NEC. At paragraph 16 the Certification Officer set out the fact that Mr Rolfe well-understood the position set out in **Prison Officers Association and others v Gough and another** that as a paid officer of the Union, he could have remained a full member of the Union under Rule 4.1(b) but chose not to

A do so being mindful of the confidence motion to which he has referred. At paragraph 23, she
made clear that was the Union’s interpretation too. At paragraph 31, she confirmed that
B position was understood by both parties and at paragraph 35, she recorded the fact that although
both parties accepted that it would have been open to the NEC to enable Mr Rolfe to remain in
the Union, under Rule 4.1(b) that was not his wish and he did not wish to rely on that route and
made no reference to that option in his letter of 3 May 2017.

C 30. As far as the language and the terms of the letter of 3 May 2017 are concerned, the
following points emerge. Firstly, Mr Rolfe set out expressly his recognition that by associating
himself so prominently with the Labour Party, this would not be “in keeping with the POA’s
D politically neutral position” and thereby, in effect, acknowledged that whatever the strict
position in the Union Rules or the legal position, he could not properly remain as National
Chair once he stood as a Parliamentary candidate for the Labour Party.

E 31. Secondly, Mr Rolfe recognised that people would be disappointed with his “decision
and said the timing could not have been worse with the conference around the corner”. He
continued that, “I had hoped that I could stay in position to ensure that any departure would see
F us past our annual conference”. That was a clear and unambiguous acknowledgement that he
had taken a decision to stand down from his position as National Chair and that he had taken
that decision notwithstanding the problems and the disappointment that would inevitably be
G caused.

H 32. Thirdly, he recognised that this was a big personal gamble. He expressly said that he
had taken on the role of National Chair to seek a new direction for the Union with honourable
intentions, envisaging, no doubt, that he would see out his term. He did not envisage “making

A this decision at this time”. Again, the decision to which he repeatedly referred was clearly and unambiguously the decision to stand down as National Chair, which he had not foreseen having to do at the time he ran for that office.

B 33. In addition to the language used by Mr Rolfe in the letter of 3 May 2017, it is clear from other documents that his letter was clearly and unambiguously understood by its readers as a resignation. That is clear from Mr Gillan’s acknowledgement, also dated 3 May 2017 and
C headed “Resignation as National Chair.” It is evidenced by the letter written to Mr Rolfe, again dated 3 May 2017, by the Head of Prison and Probation Services Employee Relations
D Department, Mr Francis Stuart. He responded to Mr Rolfe’s resignation from the Prison Service and the last paragraph of the letter said, “In acknowledging that you have also stepped down from the POA Chair role as of today, I wanted to put on record my personal thanks for the constructive work and relationship...”. In both cases, having received those letters on or
E about 3 May 2017, Mr Rolfe did not correct them.

Conclusion

F 34. It seems to me that fairly and properly construed, this was a clear and unambiguous resignation from the office of National Chair. Why else was it necessary for Mr Rolfe to write to the NEC, as he did? It seems to me that the Union was entitled to and acted reasonably in reading it as such. Grounds 1 and 2 therefore succeed and it is unnecessary to deal with the
G alternative argument advanced by Mr Segal in ground 3.

H 35. For all those reasons, this appeal is allowed. The Certification Officer’s declaration at paragraph 49 is set aside. The Union did not breach Rule 10.9. Instead, it properly treated Mr

A Rolfe as having resigned and Rule 10.9 as applicable to his circumstances. That decision will be substituted accordingly.

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