

D/1/19-20

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

Newton

v

Musicians' Union

Date of Decision

1 April 2019

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## **Decision**

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

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

## **Reasons**

2. Mr Newton brought this application as a member of the Musicians’ Union (or “the Union”). He did so by a registration of complaint form received at the Certification Office on 4 December 2018.
3. Following correspondence with my office, Mr Newton confirmed his complaint as follows:-

The union breached rule XVII (2) (c) (i) on 7 May when it took disciplinary action despite no sexual harassment having taken place. The alleged incident in Manchester in May 2018 was an example of a play on words. Other matters considered by the disciplinary panel related to allegations that are alleged to have occurred 7-8 years ago.

4. During initial inquiries regarding his complaint, Mr Newton told my office that the complaints investigated by the Union were hearsay and that several statements had been made up.
5. Mr Newton provided copies of correspondence from the Union’s Disciplinary Sub-Committee and Appeals Sub-Committee, including copies of witness statements provided to the Disciplinary Sub-Committee. He also provided character references.

6. Mr Newton has not complained to me about a breach of process in relation to the investigation, disciplinary or appeal process. His complaint, as set out above, is that the Union breached its Rule XVII (2) (c) (i) when it took disciplinary action despite no sexual harassment having taken place.

### **Findings of fact**

7. Mr Raymond Newton is a member of the Musicians' Union.
8. On 29 May 2018 the Union received a complaint alleging sexual harassment by Mr Newton on 8 May 2018.
9. The complaint was investigated by the Union, under Rule XVII, a Disciplinary Sub-Committee hearing was held on 12 July 2018 and their decision issued shortly afterwards. Mr Newton appealed the decision. The appeal hearing was held on 14 August 2018. The Appeal Sub-Committee focused on the procedure followed by the Disciplinary Sub-Committee, the decision it had reached, and the sanctions it had imposed. Mr Newton had provided a written submission and made oral representation to the Appeal Sub-Committee.
10. The Appeal Sub-Committee found that the investigation report had been fully and properly considered by the Disciplinary Sub-Committee, was procedurally correct and that the decision had been correctly reached given the evidence which had been made available.
11. Mr Newton has not complained about a breach of process in relation to his disciplinary or appeal hearings to this office.

### **The Relevant Statutory Provisions**

12. The provisions of the 1992 Act which are relevant for the purposes of this application are as follows:-

#### **108A Right to apply to Certification Officer**

(1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).

(2) The matters are –

(a) the appointment or election of a person to, or the removal of a person from, any office;

(b) disciplinary proceedings by the union (including expulsion);

(c) the balloting of members on any issue other than industrial action;

(d) the constitution or proceedings of any executive committee or of any decision-making meeting;

(e) such other matters as may be specified in an order made by the Secretary of State.

### **256ZA Striking out**

(1) At any stage of proceedings on an application or complaint made to the Certification Officer, he may—

(a) order the application or complaint, or any response, to be struck out on the grounds that it is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived,

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

(c) order the application or complaint, or any response, to be struck out on the grounds that the manner in which the

proceedings have been conducted by or on behalf of the applicant or complainant or (as the case may be) respondent has been scandalous, vexatious, or unreasonable.

...

(4) Before making an order under this section, the Certification Officer shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made.

### **The Relevant Rules of the Union**

13. The Rules of the Union which are relevant for the purposes of this application are:-

#### **Rule XVII: Disciplinary procedures**

2 Disciplinary action may be taken against any member who does any of the following (including doing so as a member of a political party):

c Commits:

(I) Any act of discrimination or harassment on grounds of age, colour, disability, marital status, race, religion, sex or sexual orientation; or

....

4 Where a complaint of an alleged disciplinary offence is made to the General Secretary within 28 days of the alleged offence and there appear to the General Secretary to be reasonable grounds to think that a member might be guilty of a disciplinary offence the General Secretary shall investigate whether charges are justified.

5 It shall be open to the General Secretary to delegate all or part of the investigation to such person or persons as the General Secretary thinks fit.

6 The General Secretary shall consider the result of such investigation and consider whether there are reasonable grounds to think that a member might be guilty of a disciplinary offence and whether charges are justified and should be brought.

7 If the General Secretary considers that a charge (or charges) should be brought the General Secretary shall appoint an Assistant General Secretary (or other official) to prepare and prosecute the case on behalf of the MU and a different Assistant General Secretary (or other official) to act as a secretary to the Disciplinary sub-committee appointed in accordance with Rule V.16.

8 A disciplinary charge shall be heard by the Disciplinary subcommittee of the EC appointed in accordance with Rule V.16.

9 Where the Disciplinary sub-committee considers a disciplinary charge is proved against a member it may impose any one or more of the following penalties:

....

## **Considerations and Conclusions**

### **Background**

14. The complaint received by the union on 29<sup>th</sup> May stated *'Mr Newton came up behind me and put a hand on my shoulder and whispered the following in my ear: "Come on [X], you can't ignore Big Dick. That Big Dick is too big even for me to handle. Can you handle Big Dick", and 'this comment was the 'straw that broke the camel's back' so to speak'. At the appeal hearing on 14<sup>th</sup> August Mr Newton accepted that, 'with hindsight, it had been the wrong phrase to use'.*
15. On receipt of the complaint the Union initiated proceedings under Rule XVII and identified that it had received a complaint about conduct which had breached Rule XVII 2 c (i). Mr Newton's complaint to me is not about the conduct of the investigation, disciplinary or appeal process. It is about whether the Union was right to use those processes in the first place.

16. Mr Newton's complaint makes reference to some of the matters considered by the Disciplinary Committee being 7 or 8 years old. He has not, however, complained about a breach of Rule XVII 4 and I have not, therefore, taken into account the age of those allegations in reaching my decision. I note, however, the Disciplinary Sub-Committee's findings that those witnesses who came forward during the investigation and provided statements about earlier incidents 'did not provide any direct support to the events in question, although they were indicative of the defendant's overall character and behaviour'.
17. I have no role in considering whether the Union's decision was reasonable. Nor do I have any power to order that the complainant and other witnesses withdraw their statements (an outcome that Mr Newton is seeking). It is not my role to act as a further appeal hearing. My role is limited to considering whether the Union breached Rule XVII 2 c (i) by initiating the disciplinary proceedings.
18. I am satisfied that the complaint to me is misconceived and there is no prospect of success. This is because the Union received a complaint of sexual harassment, Mr Newton has acknowledged that the incidents complained about took place and he has not complained about how the Union conducted the disciplinary process
19. Section 256ZA (4) of the 1992 Act requires me to send notice to the party against whom the strike out order shall be made giving an opportunity to show cause why the order should not be made. Mr Newton was therefore invited, on 6 March 2019, to provide representations as to why the application should not be struck out in whole given that a complaint of sexual harassment had been received by the Union, the Union had acted within its rules in taking the matter forward and that Mr Newton had admitted the allegations.
20. Mr Newton replied by letter dated 17 March stating that witness statements must be withdrawn and as an elected member of the Executive Committee, he believed he had a duty to approach a member of staff and request that she button up her top and that many companies had a moral code of conduct/dress. This was in reference to one of the earlier incidents that had come to light rather



than the original complaint. No new relevant information was included in that reply which has caused me to reconsider my original opinion that rule XVII (2) (c) (i) has not been breached. Nor was any additional complaint made about a breach of Rule XVII (4).

A handwritten signature in black ink, appearing to read "Sarah Bedwell", with a horizontal line underneath it.

Sarah Bedwell

The Certification Officer