

D/9/19-20

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

Simpson

v

Unite the Union

Date of Decision

20 June 2019

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Decision

1. Upon application by Mr Tom Simpson (“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 Mr Simpson’s complaint 3 of his application on the grounds that the complaint, as advanced by him, has no reasonable prospect of success and/or is otherwise misconceived.

Findings of fact

2. Mr Simpson first contacted my office in November 2018. He told me that the Union had breached its rules when handling a complaint made by him and in taking forward disciplinary action against him. Following correspondence with my office, Mr Simpson confirmed 3 complaints. Complaints 1 and 2 were struck out in my decision of D/5-6/18-19.
3. With regards to Mr Simpson’s Complaint 3, as set out in the attached annex, Mr Simpson alleged that the Union breached rule 27 when it investigated his complaint to the Union about the alleged defamatory and abusive behaviour of two other members of Unite the Union. Mr Simpson alleged that the Union’s investigation was not fair and was not conducted within the principles of natural justice.

The Relevant Statutory Provisions

4. 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, she 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

RULE 27. MEMBERSHIP DISCIPLINE

27.1 A member may be charged with:

- 27.1.1 Acting in any way contrary to the rules or any duty or obligation imposed on that member by or pursuant to these rules whether in his/her capacity as a member, a holder of a lay office or a representative of the Union.
- 27.1.2 Being a party to any fraud on the Union or any misappropriation or misuse of its

- funds or property.
- 27.1.3 Knowingly, recklessly or in bad faith providing the Union with false or misleading information relating to a member or any other aspect of the Union's activities.
- 27.1.4 Inciting, espousing or practising discrimination or intolerance amongst members on grounds of race, ethnic origin, religion, age, gender, disability or sexual orientation.
- 27.1.5 Bringing about injury to or discredit upon the Union or any member of the Union including the undermining of the Union, branch or workplace organisation and individual workplace representatives or branch officers.
- 27.1.6 Obtaining membership of the Union by false statement material to their admission into the Union or any evasion in that regard.
- 27.1.7 Breach of the Union's policies on diversity, bullying and harassment in the workplace, which will include cyber bullying and harassment.
- 27.2 Disciplinary Hearings shall be organised and conducted under directions issued by the Executive Council. These directions ensure that the process is fair and conducted in accordance with the principles of natural justice.
- 27.3 A charge under this rule may be heard by a Branch, Branch Committee (where so determined by the Branch), Regional Committee or the Executive Council. The Executive Council may delegate to a sub-committee of the Executive Council. It would be usual practice that disciplinary charges would be heard at branch level in the first instance. Disciplinary charges deemed to be of a serious nature may be initiated by the Regional committee or Executive Council.
- 27.3.1 Serious allegations of breach of Clauses 27.1.1. to 27.1.7 may be referred directly to the General Secretary. The General Secretary will appoint a senior employee of the Union to conduct an investigation which may lead to disciplinary charges being laid on behalf of the Executive Council.
- 27.3.2 Allegations of serious breaches of clauses 27.1.1 to 27.1.7 which are subsequently shown to be vexatious, malicious or defamatory may be considered a breach of Rule and liable to be referred to this disciplinary procedure.
- 27.4 The Executive Council or the relevant Regional Committee may suspend a member charged under this rule from holding any office or representing the Union in any capacity pending its decision. A member shall be given written notice (or, if the member was informed verbally confirmation in writing) of any such suspension as soon as is reasonably practicable. In cases of a serious nature, as a precautionary measure, a member under investigation prior to disciplinary charges being laid may be suspended from holding office or representing the union in any capacity.
- 27.4.1 A member under disciplinary investigation or charged with a disciplinary offence, including workplace representatives or branch officers suspended from holding office, may not attend:
- Meetings of his/her own branch;

- Meetings of other branches of the Union; or,
- Constitutional committee meetings of the Union

Other than as part of the disciplinary process as set out in this Rule.

27.4.2 If allegations against a member are proven to be unfounded they will be restored in good standing. If appropriate, their credentials will be restored.

27.5 The range of disciplinary sanctions shall include the following:

- 27.5.1 censure;
- 27.5.2 withdrawal of workplace credentials;
- 27.5.3 removal from office;
- 27.5.4 barring from holding office and
- 27.5.5 expulsion.

27.6 The full range of disciplinary sanctions shall be available to the Executive Council and Regional Committees; however the range of disciplinary sanctions for other bodies shall be limited to the following:

27.6.1 Branch, shall have the power to censure;

27.7 Appeals

27.7.1 A member shall have the right to appeal against any disciplinary sanctions.

27.7.2 In the case of a sanction imposed by a Branch, or Branch Committee, the appeal shall be to the Regional Committee, whose decision shall be final.

27.7.3 In the case of a sanction imposed by a Regional Committee the appeal shall be to the Executive Council, whose decision shall be final.

27.7.4 In the case of disciplinary action initiated by the Executive Council the appeal shall be to an Appeals Committee elected from the Policy Conference, whose decision shall be final. Such an Appeals Committee shall be constituted on the basis of at least one delegate from each Region, under a procedure to be agreed by the Executive Council. There shall be an eligibility criterion to serve on the Appeals Committee of at least 5 years continuous membership of the Union.

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

Considerations and Conclusions

Background

Complaint

5. Rule 27 sets out in detail the Union's procedure for member discipline. The Union conducted an investigation into Mr Simpson' complaints, about Mr Stoddart and Mr

Morrison, and decided that the matter did not merit disciplinary proceedings. The procedure at rule 27 therefore did not apply to Mr Stoddart and Mr Morrison because no disciplinary proceedings were initiated as the complaints made by Mr Simpson were closed following the investigation. No charges were laid under Rule 27 and no disciplinary proceedings were initiated.

6. It is therefore hard to see how Rule 27 can be breached as expressed in Mr Simpson's complaint. Consequently, there has been no breach of Rule 27. I, therefore, find that this complaint has no realistic prospect of success.

Conclusions

7. For the reasons given above I am satisfied that the complaint to me is misconceived and that there is no reasonable prospect of success.
8. 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 Simpson was therefore invited, on 23 May 2019, to provide representations as to why complaint 3 of his application should not be struck out.
9. Mr Simpson replied by a letter dated 6 June 2019. However, Mr Simpson did not address any of the issues in my letter as to why the rules were engaged in his complaints. No new relevant information was provided to support his case.



Sarah Bedwell

The Certification Officer

Annex

Complaint 3

Between 2nd March 2018 and 4th September 2018, the union breached rule 27 because the process for investigating the complaints by Mr Simpson against Mr Morrison and Mr Stoddart was not fair and was not conducted within the principles of natural justice for the reasons set out below:

- a. Unite officials and the Unite executive committee failed to ensure a fair investigation of Mr Simpson's complaints against Mr Thomas Morrison and Mr Keith Stoddart. Unite's acceptance and invitation of involvement and interference of the Communist Party of Britain and a number of Communist Party members that resulted in the production of a biased and prejudicial investigation report.
- b. Ms Elaine Dougall unfairly used information from the Communist Party in the formulation of her report without disclosing information obtained from the Communist Party and members of the Communist Party to Mr Simpson. Mr Simpson was denied a fair opportunity to make comment and answer any allegation or comment on any inaccuracy prior to Ms Dougall's formulation of her report and conclusion.
- c. Unite official, Elaine Dougall, conducted an improper investigation through the application of bias that included the ignoring of presented evidence in support of Mr Simpson's complaints and failure to access evidence that was in support of Mr Simpson's complaints. In so doing Ms Dougall and the union displayed prejudice in favour of the Communist Party and its members Mr Thomas Morrison and Mr Keith Stoddart.
- d. Elaine Dougall showed bias by falsely claiming that she could find "no evidence that Mr Stoddart passed on any defamatory" information whilst having knowledge that Mr Stoddart did exactly this. Ms Dougall compounded this bias by attempting to excuse Mr Stoddart's damaging behaviour).
- e. Ms Dougall displayed bias through ignoring evidence provided in the submitted Communist Party document 'Report of Investigation into complaint made by Comrade Simpson and other evidence provided by Mr Simpson.
- f. Ms Dougall displayed bias and prejudice in presenting a contradictory and false statement "I can find no evidence that Mr Stoddart passed on any defamatory or

incorrect information". Firstly it is acknowledged in Ms Dougall's letter dated 29-06-2018 that Mr Stoddart 'disseminated information to Communist Party members'. Ms Dougall was aware that some of those people were and are Unite members in positions of influence. Secondly it is irrelevant for Ms Dougall to refer to "internal" Communist Party procedure. Thirdly it is wrong to present a defence of 'only following orders' in relation to Mr Stoddart's damaging behaviour. Unite failed to recognise that Mr Stoddart is responsible for his damaging and unethical behaviour towards a Unite member notwithstanding any instruction to him by the Communist Party General Secretary as cited by Ms Dougall."

- g. The union failed to ensure a fair investigation of Mr Simpson's complaints by instructing Elaine Dougall to continue to conduct an investigation where she felt transparency and impartiality would be compromised.
- h. Elaine Dougall showed bias by falsely concluding that no evidence could be found to substantiate Mr Morrison's inappropriate behaviour where in fact Mr Morrison had admitted in writing and advised Ms Dougall in person of his violent and aggressive behaviour towards Mr Simpson.
- i. Ms Dougall displayed bias in not addressing all points in Mr Simpson's letters of complaint dated 02-03-2018 and 16-03-2018.