

D/20-23/19-20

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

Hussain (2)

v

Communication Workers Union

Date of Decision

29 October 2019

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Decision

1. Upon application by Mr Azhar Hussain (“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 complaints two to five in his application on the grounds that the complaints, as advanced by the claimant, have no reasonable prospect of success and/or are otherwise misconceived.

Reasons

2. Mr Hussain submitted an application to make a complaint on 10 May 2019 which he revised on 11 May 2019. On 15 May 2019 he confirmed that he wished to take forward his original application of 10 May, and asked me to disregard his revised application.
3. Following correspondence with my office, Mr Hussain confirmed his complaints as follows:-

Complaint 1

That on or around 2 November 2018 the South East No.5 branch of the Communication Workers Union breached its Rule 1 of Annex B by not allowing 21 clear days in which to propose nominations in the 2018 Branch Officers election. The notice for elections was displayed on 15 October 2018 with a deadline for nominations on 2 November 2018.

Complaint 2

That on or around 2 April 2019 the Union breached its Rule 1 of Annex B by allowing more than 21 clear days in which to propose nominations for the position of HWDC Late Shift Processing Representative. The nominations starting on 4 March 2019 and ending on 2 April 2019.

Complaint 3

That on or around 26 November 2018 and 2 January 2019 the South East No.5 branch of the Communication Workers Union breached Rule 3 of Appendix B by the Returning Officer intervening and counting the ballot papers and signing a certificate declaring the results for the 2018/19 Branch elections when that role should have been carried out by the Scrutineer.

Complaint 4

That on or around 20 April 2019 the Union breached Rule 14.2(a) and (b) when Mr Andy Moorey, Branch Secretary failed to discipline Mr Muhammad Ali, HWDC Late Shift, CWU IR Representative for using the CWU Logo to canvas for votes.

Complaint 5

That on 2 May 2019 and 13 June 2019 the Union breached Rule 14.2(a) and (b) when it failed to discipline Mr Andy Moorey, Branch Secretary, for his failure to a) discipline Mr Muhammad Ali as set out in Complaint 4 and b) draw the inappropriate use of the logo to candidates.

4. I have accepted his first complaint and a hearing has been listed to hear this complaint. Complaints two to five are dealt with below.

Findings of fact

5. Mr Hussain is a member of the South East No.5 (SE5) Branch (the branch) of the Communication Workers Union ("CWU" or "the Union").
6. In 2017 the branch conducted a series of elections with ballots held between 14 November 2017 and 5 December 2017. Mr Hussain made a complaint to me regarding this election; the Union conceded the breach. The Union reissued the ballot papers on 5 November 2018 so that the election could be held again. The results were declared on 26 November 2018. Complaint 3 relates, in part, to those elections.

7. On 12 October 2018 the Union opened nominations for the Branch Officers 2018 Election. The nominations closed on 2 November 2018; the Union announced the names of those who had been elected unopposed on the same day. The Union then issued the ballot papers for contested positions and the result was announced on 2 January 2019. Complaints 1 and 3 relate to these elections.
8. In 2019 the Union held elections for the HWDC Late Shift Processing and Health and Safety Representatives. Nominations opened on 4 March 2019 and closed on 2 April 2019. The ballot was due to end on 13 May 2019 but was extended, on 3 May 2019 by the Returning Officer, and closed on 17 May 2019. The ballot was counted, and the results announced, on 20 May 2019. During the election Muhammad Ali, HWDC Late Shift IR Representative wrote to Late Shift branch members, on CWU headed notepaper asking them to support his preferred candidates. Complaints 2, 4 and 5 relate to this election.
9. The Rulebook in force at the time of each of the elections was issued in June 2018.

The Relevant Statutory Provisions

10. 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

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

National Rules (updated May 2016) – (the rules are not included in Rulebook updated June 2018)

Rule 14 Discipline

14.1 General

1. Matters of a disciplinary nature arising from the rules or regulations of the Union affecting Union members shall be dealt with in accordance with this Rule.
2. A member shall be liable to disciplinary action in respect of the following:
 - a) Acting in breach of the Rules of the Union;
 - b) Behaving in a manner contrary to the interests of the Union
 - c)...
 - d)...

Branch Constitution, Appendix B,

1. Nomination

.....

Such written nomination papers shall be sent to the Branch Secretary, or other designated Branch Officer as determined by the Branch Committee, which shall be shown in the notice(s) inviting the nominations. The notice(s) inviting nominations shall clearly state the closing date by which they shall be received which shall allow members 21 clear days in which to propose nominations.

3. Voting Papers

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All Postal Ballots shall be counted by the scrutineers appointed by the Branch Committee under the supervision of the Returning Officer and they will sign a certificate declaring the results, which will then be notified to the membership.

Considerations and Conclusions

Background

Complaint 2

12. It is agreed that nominations for the HWDC Late Shift Processing and Health and Safety Representatives opened on 4 March 2019 and ended on 2 April 2019. Rule 1 of Appendix B SE5 Branch Constitution requires that the notice inviting nominations shall allow 21 clear days in which to propose nominations.
13. Mr Hussain's view is that this imposes a mandatory requirement for members to be allowed 21 days in which to propose nominations. His view is that allowing a nomination period which is greater than 21 days is not permitted and would be a breach of Rule.
14. The Union's view is that the Rule is intended to provide a minimum period for members to seek nominations, not a maximum. Their view is that a nomination period which is greater than 21 days is permissible within the Rules.
15. My reading of Rule 1, Appendix B of the branch constitution is that Members must be allowed 21 clear days in which to propose nominations. As there is no maximum period identified, I agree with the Union that the Rule requires a minimum period of 21 days. Allowing a longer period, as was the case here, will always be consistent with the requirement for 21 clear days whereas allowing a shorter period would always be inconsistent.
16. Consequently, I can see no reasonable prospect of Complaint 2 being successful.

Complaint 3

17. Rule 3 of Appendix B SE5 Branch Constitution requires that postal ballots should be counted by the Scrutineers appointed by the Branch Committee under the supervision of the Returning Officer. It also requires that they sign a certificate declaring the results, which will then be notified to the membership.

18. There is no dispute that the Branch appointed Scrutineers for each of the counts complained about. In each case the Returning Officer was present at the Count, as is required by the Rules. I have not been provided with any evidence to suggest that anybody other than the Scrutineers undertook the count.
19. The results announced on 26 November 2018 were sent out to the membership by the Returning Officer, Mr Andy Moorey. His letter was stamped and signed by the Branch Scrutineers.
20. The results announced on 2 January 2019 were sent out by Mr Martin Collins, the Branch Returning Officer. These results did not contain the scrutineers' certificate; however, there is no Rule that requires the scrutineers' certificate to be included as part of the notice of results.
21. Consequently, there is no reasonable prospect of Complaint 3 being successful.

Complaints 4 and 5

22. These complaints are alleged breaches of National Rules 14.1.2(a) and (b) which formed part of the Union Rule Book updated April 2013 and in May 2016. This Rule Book was revised and a new version adopted in June 2018 which did not include Rules 14.2(a) and (b). Mr Hussain's complaint relates to events on or around 20 April 2019 and consequently cannot be breaches of a Rule which was no longer in place. On that basis there is no reasonable prospect of success.

Conclusions

23. For the reasons given above I am satisfied that complaints two to five are misconceived and there is no reasonable prospect of success.
24. 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 Hussain was therefore invited, on 19 September 2019, to provide representations as to why complaints two to five of his application should not be struck out.

25. Mr Hussain replied by letter e-mail dated 8 October 2019. He did not provide me with any new relevant information which caused me to reconsider my original opinion that the Branch Constitution, Appendix B, Rule 1 and Rule 3 had not been breached in the manner complained about in complaints two and three. Nor did he offer any argument or explanation as to why he believed that Rule 14.2 (a) and (b) of the 2013 or 2016 Rulebook were in place during the 2019 elections for the HWDC Late Shift Processing and Health and Safety Representatives.

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

Sarah Bedwell

The Certification Officer