

D/25/19-20

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

Jones

V

UNISON

Date of Decision

4 December 2019

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## **Decision**

1. Upon application by Mr John Jones (“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 applicant’s complaint on the ground that the complaint, as advanced by the applicant, has no reasonable prospect of success and/or is otherwise misconceived.

## **Reasons**

2. Mr Jones submitted an application to make a complaint on 16 July 2019.
3. Following correspondence with my office, Mr Jones, confirmed the complaint as follows:-

### **Complaint**

That on or around 15 February 2019, UNISON breached its rule 19(d) of the 2019-2021 NEC Election Procedures by accepting the nomination of Pam Sian for the Water, Environment & Transport Service Group (WET) seat on the NEC from branches where no meetings of WET members were held to agree the branch nomination. The branches being North West Gas, East Sussex Area and Western Energy.

## **Findings of fact**

4. Mr Jones is a member of the United Utilities/Water, Environment & Transport (WET) branch of UNISON.
5. In February 2019 the Union conducted a number of elections. Mr Jones was a candidate for the WET seat on the NEC along with Ms Pam Sian. Ms Sian was nominated by her own Branch, which was within the WET service group, and three branches who were not (Non-WET branches).
6. Nominations closed on 15 February.
7. Mr Jones was successfully elected for the WET seat on the NEC.

8. On 25 April 2019 Mr Jones made two complaints to the Returning Officer. The first asked ERS to check that the branches nominating Ms Sian had WET members and that appropriate nomination meetings were held. The second complaint is outside my jurisdiction and so does not form part of this decision.
9. On 16 May the Returning Officer e-mailed Mr Jones informing him that the Union had confirmed that the nominating branches had members in the WET group and asked for evidence to assist him to determine the complaint.
10. On 17 May, Mr Jones e-mailed the ERS stating that he had forwarded evidence that the branches in question only had four WET members between them.
11. On 7 June, having considered the evidence provided by Mr Jones the Returning Officer rejected his complaint.

## **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, 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**

13. The Rule of the Union which is relevant for the purposes of this application is:-

#### **National Executive Council 2019-2021 Election Procedures**

##### **19 Nominating process:**

d. Within a regional self-organised group or branch, only the members of the service group, region or regional self-organised group, for which nominations are sought, can take part in the nominating process including any voting to decide which candidates to nominate.

## **Considerations and Conclusions**

### **Considerations**

14. It is agreed that Ms Sian received nominations from three non-WET branches that had WET members. Mr Jones' view is that there should have been a meeting of the WET members in each branch to nominate a candidate for the WET seat on the NEC. He has also argued that it is highly unlikely that as each of the nomination branches had so few members it is unlikely that such a meeting was held. He has not, however, provided any evidence which supports this view. Nor has he identified a Union Rule which requires this.

15. Mr Jones alleges a breach of Rule 19d of the 2019-21 NEC Election Procedures. My reading of Rule 19d is that within a regional self-organised group, such as the three non-WET branches who nominated Ms Sian, only the WET members of each Branch service group should have taken part in the nomination process including any voting to decide which candidate to nominate. Mr Jones has not provided any evidence to support his claim that non-WET members participated in the nominations process. He has argued that, as one Branch only had one candidate, it could not have held a nomination meeting. However, the Rule does not require a meeting of only WET members and nor does it preclude a nomination going forward where there is only one member supporting that nomination.

### **Conclusions**

16. Mr Jones has been unable to offer any evidence to support his allegation that nomination meetings were not held in accordance with the Union Rules.

Consequently, I am satisfied that the complaint is misconceived and there is no reasonable prospect of success.

17. Section 256ZA (4) of the 1992 Act requires me to send notice to the party against who the strike out order shall be made giving an opportunity to show cause why the order should not be made. Mr Jones was therefore invited, on 26 November 2019, to provide representation as why the complaint should not be struck out.

18. Mr Jones replied by letter e-mail dated 29 November 2019. He did not provide me with any new relevant information which caused me to reconsider my original opinion that Rule 19d of the NEC 2019-2021 Election Procedures had not been breached.

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

Sarah Bedwell

The Certification Officer