

D/15-17/20-21

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

Alam

v

Unite the Union

Date of Decision

27 October 2020

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Decision

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

Complaints 1 and 2

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

Complaint 3

I find that, between 5 March 2018 and 5 June 2019 the Union breached its rule 17.7 by allowing Mr Taj Salam to continue to hold both the post of the Branch Secretary and Equalities Officer having determined that he could not hold both posts at the same time.

Reasons

2. Mr Alam brought this application as a member of Unite the Union (“the Union”). He did so by a registration of complaint received at the Certification Office on 2 October 2019.
3. Following correspondence with my office, Mr Alam confirmed his complaints on 31 March 2020, as follows:

Complaint 1

That on or around 6 April 2018, and continuing, the Union breached its Rule 6.5.4 of the EC Guidance on the implementation of the rule revised consequential to 2nd rules conference when it treated Mr Alam unfairly by offering to run a new election for the post of Equalities Officer in the NE302/7 Branch having determined that Mr Taj Salam could not hold both the post of Branch Secretary and Equalities Officer instead of giving the post to Mr Alam who was the only other nomination.

Complaint 2

That on or around 6 April 2018, and continuing, the Union breached its rule 6.5.5 of the EC Guidance on the implementation of the rule revised consequential to 2nd rules conference by not electing Mr Alam as an unopposed candidate for the post of the Equalities Officer in the 2018 Branch elections having determined that Mr Taj Salam could not hold both the post of Branch Secretary and Equalities Officer.

Complaint 3

That on or around 6 April 2018, and continuing, the Union breached its rule 17.7 by allowing Mr Taj Salam to continue to hold both the post of the Branch Secretary and Equalities Officer having determined that he could not hold both posts at the same time.

4. The Union has conceded Complaint 3 and accepted that rule 17.7 was breached between 5 March 2018 and 5 June 2019.

Findings of Fact

5. Mr Alam is a member of the NE302/7 Branch of Unite the Union.
6. In 2018, the
7. NE302/7 Branch conducted an election with balloting for contested posts on 1 March 2018. Mr Alam made a complaint to me about decisions taken after that election.

The Relevant Statutory Provisions

8. 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

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

Rule 6.5.4

Prior to any election, the members in the workplace should be informed of the pending election and invited to volunteer for election or nominate a colleague for election. The precise mechanics of informing the members on the workplace, and dealing with nominations and the election may vary from workplace to workplace, but any such case will be a fair procedure. In the event of dispute the Regional Officer should be contacted and the Regional Secretary informed.

Rule 6.5.5

In the event of nominations having been invited from the relevant workplace, and only one candidate having been nominated, or volunteered, that candidate may be declared elected unopposed.

Rule 17.7

Each Branch shall have for its management a Chair, a Treasurer, an Equality Officer and a Secretary and such other officers as the Branch may elect. They shall be elected at a Branch meeting by show of hands, or by ballot, if so decided by the meeting. The election shall take place at a branch meeting held between 1st January and 31st March in each third year and the elected candidates shall take office for three years. Casual vacancies may be filled at an ordinary Branch meeting, but notice of the impending election must be given to members of the Branch on the notice convening the meeting. The positions of Secretary and Treasurer may be held by the same member if the Branch so chooses.

Rule 18

At each workplace, the members employed at that workplace, shall elect from amongst themselves, at least every 3 years, 1 or more of the following representatives:

- 18.1.1 Shop stewards/workplace representatives
- 18.1.2 Safety representatives
- 18.1.3 Learning representatives
- 18.1.4 Equality representatives
- 18.1.5 Environment representatives

The election shall take place at a meeting held between 1st January and 31st March in each third year, and the elected candidates shall take office for three years. Such workplace representatives as listed above shall be entitled to attend the triennial Regional Industrial Sector Conference

Considerations and Conclusions

Background

10. In February 2018 Mr Alam and Mr Taj Salam were nominated for the post of Equality Officer in Branch elections. Mr Salam also stood for the role of Branch Secretary and was, I understand, elected unopposed. I should add for clarity that the post of Equality Officer is also referred to as Equalities Officer. I have used the term Equality Officer in this decision as that is how it is described in the Union's Rules.

11. Mr Alam believed that Mr Salam should not be allowed, under the Union's Rules, to hold both posts and raised this with the Regional Office. I have seen correspondence which shows that the Regional Secretary, Ms Karen Reay appears to have agreed and requested that Mr Salam withdraw from the Equality Officer election and that the election should be re-advertised. I have also seen the minutes of a branch meeting on 27 February 2018 where Mr Salam explained that the Regional Secretary had advised him to stand down and that he would do so. Mr Salam did not, however, withdraw from the election and the ballot went ahead on 1

March as planned. Mr Salam was successful in the election. Mr Alam has told me that Mr Salam undertook the Branch Secretary and Equality Officer role for a period of time; this forms part of his third complaint to me which the Union has conceded.

12. On 6 April 2018 Mr Alam complained to the Union's General Secretary about the election process. Consideration of that complaint was put on hold because of a dispute between the Union and the employer. It was eventually resolved by Mr Weir, the Union's Assistant Chief of Staff and then, following an appeal, by Mr Beckett, Assistant General Secretary on 6 February 2020.

Complaint 1

13. Mr Alam's complaint is that he was not treated fairly during the election process. He refers to decisions taken on or around 6 April 2018. This is the date on which he complained to the Union about a number of issues around the election. The ballot itself, and the decisions taken ahead of the ballot are, therefore outside the scope of this complaint. I cannot, therefore, consider whether the decision to ask Mr Salam to stand down and to re-advertise the post was within the Rules. Nor can I consider the fact that the election went ahead despite Ms Reay's decision that it should not.
14. It is worth noting that I have seen no evidence that any decision was taken by the Union on or around 6 April 2018. That date appears only to be relevant in that it was the date on which Mr Alam complained to the General Secretary. Mr Alam has, however, described this as a continuing breach and so I have considered the actions which were taken after 6 April 2018 insofar as they relate to the decision not to treat Mr Alam as if he had been elected unopposed.
15. Mr Alam's view is that he was treated differently to a candidate in the Vice Chair election. That is because there were originally two candidates for Vice Chair. One withdrew shortly before the ballot and so the other was appointed to the role as an uncontested candidate. Mr Salam did not withdraw from the election for Branch Equality Officer and so the ballot went ahead. This took place before 6 April and so is outside the scope of Mr Alam's complaint.

16. Mr Alam has told me that he should have been elected into the role of Equality Officer following the election because Mr Salam should not have been able to hold two posts. This was the basis of his complaint to the General Secretary on 6 April 2018.
17. The decision to hold a second ballot was not taken until 5 June 2019 because there was a dispute between the Union and the relevant employer. Mr Weir, the Union's Assistant Chief of Staff wrote to Mr Alam on 5 June 2019 to explain that, as the dispute had been resolved, he had reviewed Mr Alam's complaint to the General Secretary. In that letter he explained that Mr Salam had stood down from the post of Equality Officer and that, as some time had passed and there were other potential candidates, the election would be run again.
18. The Union have explained that their view, at this stage, was that it was not appropriate to appoint Mr Alam to the Equality Officer post without a further election. This was because he had been unsuccessful in the first election, and there had been a significant passage of time since that election. Instead, they decided that it would be most appropriate to re-run the election.
19. From the evidence that I have been given there were two occasions when the Union took a decision as to whether to re-advertise the election and run a new ballot. The first was taken in February 2018. That decision does not fall within the scope of this complaint because it was taken ahead of the ballot and, in any event, the decision was not acted upon as Mr Salam did not withdraw from the election and the ballot went ahead.
20. The second was taken by Mr Weir in June 2019. There was a significant delay in the second decision being taken because of the dispute with the employer. Mr Weir explained that the decision to re-advertise was taken because of the passage of time and because others had expressed interest in the role. Mr Alam believes that this decision was a breach of Rule 6.5.4 because it was unfair and has drawn a comparison with the Vice President election in February 2018. That election is, as I have noted, outside the scope of this complaint. Even if it were not, however, I do

not agree that this is a reasonable comparator as there was only one candidate for that election (the other having withdrawn).

21. In the absence of any evidence to show that the decision taken by the Union to re-run the election was unfair and, consequently, in breach of Rule 6.5.4, I can see no reasonable prospect of Complaint 1 being successful.

22. I would add that Mr Alam has told me that he believes that he was treated unfairly because the successful candidate in the Vice President election was white. He has not provided any evidence to support this but, in raising this he draws on the decisions taken in February 2018. Those decisions are outside the scope of his complaint to me; however, I would encourage the Union to consider this issue if they have not already done so.

23. Finally, on this complaint it is worth noting that Mr Alam believes that Mr Salam was ineligible to stand because of the requirement in Rule 17.7 that no Member should hold two branch posts. The question as to whether the Rule prevented Mr Salam from holding the post of Branch Secretary and Equality Officer has been conceded by the Union in its response to Complaint 3. However, the Rule relates only to a Member holding two posts. It does not appear to prevent a member from standing for two posts and, if successful in both, standing aside from one post. I have not taken this into account in reaching my decision because it is relevant only to events ahead of, and immediately after, the first ballot which falls outside the scope of this complaint.

Complaint 2

24. My reading of Rule 6.5.5 is that this is a permissive rule and that it allows the union discretion as to whether to declare an uncontested candidate as elected unopposed.

25. As I have set out at paragraph 17 above the Union have explained their reasons for choosing not to appoint Mr Alam without holding a further election.

26. As this is a permissive Rule and the Union have set out their reasons for re-running the election, I see no reasonable prospect of Complaint 2 being successful.

Complaint 3

27. The Union have conceded that there was a breach of Rule 17.7 between 5 March 2018, when Mr Salam, the Branch Secretary, took up the post of Branch Equality Officer and 5 June 2019 when he stood down as the Equality Officer.

Conclusions

28. For the reasons given above I am satisfied that there is no reasonable prospect of success for Complaints 1 and 2.

29. 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 Alam was therefore invited, on 17 June 2020, to provide representations as to why complaints one and two of his application should not be struck out.

30. Mr Alam replied by way of e-mails on 6 July 2020, 7 July 2020, 26 August 2020 and 7 September 2020. He did not provide me with any new, relevant information which might have caused me to reconsider my opinion that Rules 6.5.4 and 6.5.5 had not been breached in the manner he describes. He did, however, provide information about the conduct of the election, in October 2019, which followed the Union's decision to hold a further election. This does not fall within the scope of these complaints and I have not, therefore, taken this information into account in reaching my decision.

Enforcement Order

31. I need to consider whether it is appropriate for me to make an enforcement order under s108B (3) of the 1992 Act following the Union's concession of complaint 3. My powers enable me to make an Order which requires the Union to take steps to remedy the breach or to prevent a similar breach happening again.

32. The Union do not believe an Order is necessary because Mr Salam no longer holds the post of Branch Equality Officer and because a further election was held on 29 October 2019. Mr Salam did not stand in that election.

33. My Office sought Mr Alam's views on the need for an Enforcement Order. Mr Alam has asked me to make an Order which would provide a framework for the conduct of branch elections in the future. This includes a number of actions, such as requiring postal ballots and determining how votes should be collected or counted. He also seeks an apology and disciplinary action against certain Union staff.

34. All of the actions requested by Mr Alam fall outside my powers. Additionally, Mr Salam no longer holds the post of Equality Officer and the Union has remedied the breach by holding an election. Consequently, it would not be appropriate for me to make an Enforcement Order.

A handwritten signature in black ink, appearing to read 'Sarah Bedwell', is written over a horizontal line. The signature is cursive and somewhat stylized.

Sarah Bedwell

The Certification Officer