

D/21/20-21

Decision of the Certification Officer on an application made under Section 72A of the
Trade Union and Labour Relations (Consolidation) Act 1992

Jennings

v

GMB

Date of Decision

3 December 2020

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Decision

1. Upon application by Ms Maria Emilia Jennings (“the complainant”) under section 72A 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

Background

2. Ms Jennings brought this application as a member of GMB’s (“the Union’s”) Islington Haringey 135 Branch. She did so by a registration of complaint received by the Certification Office on 20 July 2020.
3. Following correspondence with my office, Ms Jennings confirmed her complaint on 3 August 2020, as follows:

In breach of section 71(1) of the 1992 Act, GMB made a payment of £40 to Islington Labour Group on 6 November 2017 and made a payment of £200 to Islington North Labour Party on 8 March 2018. Both of these payments were made from the Islington Haringey 135 branch general account, number 20037943

4. The Union explained that, having checked the branch accounts there had been a breach of rule 63 (2) of the Union's political fund rules. This was because the payments which Ms Jennings had identified were made from the General Fund. They should have been made from the political fund because they were intended to reimburse members for expenses incurred in the attendance of Labour Party events.
5. The Union did not accept that there had been a breach of section 71(1) of the 1992 Act. They explained that, at the time the payments were made there was a political resolution, and political fund rules, in place which complied with section 71 (1).
6. The Union stated that it had arranged reimbursement of the amount of £240 from its political fund to the general fund. The Union also stated that it had:
 - provided additional guidance to branches regarding the political spending rules, and
 - given training to staff of the Union's National Administration Unit which monitors the online branch accounting system.
7. Ms Jennings told me that, notwithstanding the Union's response, she wished to pursue her complaint. She argued that her complaint to the Certification Officer was a complaint of breach of statute rather than a complaint that the union had breached its rules.

The Relevant Statutory Provisions

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

Under Chapter VI Application of funds for political objects

Section 71 Restriction on use of funds for political objects.

(1) The funds of a trade union shall not be applied in the furtherance of the political objects to which this Chapter applies unless—

(a) there is in force in accordance with this Chapter a resolution (a “political resolution”) approving the furtherance of those objects as an object of the union (see sections 73 to 81), and

(b) there are in force rules of the union as to—

(i) the making of payments in furtherance of those objects out of a separate fund, and

(ii) the making of contributions to that fund by members,

which comply with this Chapter (see sections 82, 84 and 85) and have been approved by the Certification Officer.

Section 72 Political objects to which restriction applies.

(1) The political objects to which this Chapter applies are the expenditure of money—

(a) on any contribution to the funds of, or on the payment of expenses incurred directly or indirectly by, a political party;

(b) on the provision of any service or property for use by or on behalf of any political party;

(c) in connection with the registration of electors, the candidature of any person, the selection of any candidate or the holding of any ballot by the union in connection with any election to a political office;

(d) on the maintenance of any holder of a political office;

(e) on the holding of any conference or meeting by or on behalf of a political party or of any other meeting the main purpose of which is the transaction of business in connection with a political party;

(f) on the production, publication or distribution of any literature, document, film, sound recording or advertisement the main purpose of which is to persuade people to vote for a political party or candidate or to persuade them not to vote for a political party or candidate.

(2) Where a person attends a conference or meeting as a delegate or otherwise as a participator in the proceedings, any expenditure incurred in connection with his attendance as such shall, for the purposes of subsection (1)(e), be taken to be expenditure incurred on the holding of the conference or meeting.

(3) In determining for the purposes of subsection (1) whether a trade union has incurred expenditure of a kind mentioned in that subsection, no account shall be taken of the ordinary administrative expenses of the union.

(4) In this section—

“candidate” means a candidate for election to a political office and includes a prospective candidate;

“contribution”, in relation to the funds of a political party, includes any fee payable for affiliation to, or membership of, the party and any loan made to the party;

“electors” means electors at an election to a political office;

“film” includes any record, however made, of a sequence of visual images, which is capable of being used as a means of showing that sequence as a moving picture;

“local authority” means a local authority within the meaning of section 270 of the Local Government Act 1972 or section 235 of the Local Government (Scotland) Act 1973; and

“political office” means the office of member of Parliament, member of the European Parliament or member of a local authority or any position within a political party.

Section 72A Application of funds in breach of section 71

(1) A person who is a member of a trade union and who claims that it has applied its funds in breach of section 71 may apply to the Certification Officer for a declaration that it has done so.

(2) On an application under this section the Certification Officer—

(a) shall make such enquiries as he thinks fit,

(b) shall give the applicant and the union an opportunity to be heard,

(c) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,

(d) may make or refuse the declaration asked for,

(e) shall, whether he makes or refuses the declaration, give reasons for his decision in writing, and

(f) may make written observations on any matter arising from, or connected with, the proceedings.

(3) If he makes a declaration he shall specify in it—

(a) the provisions of section 71 breached, and

(b) the amount of the funds applied in breach.

(4) If he makes a declaration and is satisfied that the union has taken or agreed to take steps with a view to—

(a) remedying the declared breach, or

(b) securing that a breach of the same or any similar kind does not occur in future,

he shall specify those steps in making the declaration.

(5) If he makes a declaration he may make such order for remedying the breach as he thinks just under the circumstances.

(6) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application

notwithstanding that the information has not been furnished to him by the specified date.

(7) A declaration made by the Certification Officer under this section may be relied on as if it were a declaration made by the court.

(8) Where an order has been made under this section, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.

(9) An order made by the Certification Officer under this section may be enforced in the same way as an order of the court.

(10) If a person applies to the Certification Officer under this section in relation to an alleged breach he may not apply to the court in relation to the breach; but nothing in this subsection shall prevent such a person from exercising any right to appeal against or challenge the Certification Officer's decision on the application to him.

(11) If—

(a) a person applies to the court in relation to an alleged breach, and

(b) the breach is one in relation to which he could have made an application to the Certification Officer under this section,

he may not apply to the Certification Officer under this section in relation to the breach.

82 Rules as to political fund.

(1) The trade union's rules must provide—

(a) that payments in the furtherance of the political objects to which this Chapter applies shall be made out of a separate fund (the "political fund" of the union);

(b) that a member of the union who is not a contributor (see section 84) shall not be under any obligation to contribute to the political fund;

(c) that a member shall not by reason of not being a contributor —

(i) be excluded from any benefits of the union, or

(ii) be placed in any respect either directly or indirectly under a disability or at a disadvantage as compared with other members of the union (except in relation to the control or management of the political fund);

(ca) that, if the union has a political fund, any form (including an electronic form) that a person has to complete in order to become a member of the union shall include—

(i) a statement to the effect that the person may opt to be a contributor to the fund, and

(ii) a statement setting out the effect of paragraph (c); and

(d) that contribution to the political fund shall not be made a condition for admission to the union.

(2) A member of a trade union who claims that he is aggrieved by a breach of any rule made in pursuance of this section may complain to the Certification Officer.

(2A) On a complaint being made to him the Certification Officer shall make such enquiries as he thinks fit.

(3) Where, after giving the member and a representative of the union an opportunity of being heard, the Certification Officer considers that a breach has been committed, he may make such order for remedying the breach as he thinks just under the circumstances.

(3A) Where the Certification Officer requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

(4A) Where an order has been made under this section, any person who is a member of the union and was a member at the time it was made is entitled to enforce obedience to the order as if he had made the complaint on which it was made.

(4B) An order made by the Certification Officer under this section may be enforced—

(a) in England and Wales, in the same way as an order of the county court;

(b) in Scotland, in the same way as an order of the sheriff.

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

Political rule 63(2) Political Fund

Any payments in the furtherance of such political objects shall be made out of a separate fund (hereinafter called the “political fund” of the union).

Considerations and Conclusions

10. I agree with the Union that section 71 (1) of the Act requires the Union to have a political resolution and political fund rules in place before making any expenditure on defined political purposes. The Union explained that they have such a resolution and rules in place and that these were in place at the time the expenditure was made. My office's records confirm this. The Union has not, therefore, breached Section 71(1) of the 1992 Act as set out in the complaint. Consequently, Ms Jennings has no reasonable prospect of succeeding in her complaint.

11. Ms Jennings' concern appears to have been that expenditure for political purposes was made from the general fund rather than the political fund. It is worth noting that Section 82(2) of the 1992 Act provides a route for members to complain to me in these circumstances. Although this is not how Ms Jennings expressed her complaint to me, it is worth recording here that the Union have acknowledged that there was a breach of their political fund rules, have remedied that breach and have taken steps to prevent it reoccurring.

Conclusions

12. For the reasons given above I am satisfied that the complaint has no reasonable prospect of success or is otherwise misconceived.

13. 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 complaint should not be made. My office wrote to Ms Jennings on 22 October 2020 providing my preliminary view and inviting her representations, by 6 November 2020, as to why her complaint should not be struck out.

14. Ms Jennings did not reply to that letter. Nor did she reply to an email of 13 November 2020 explaining that, in the absence of any representations from her, I would assume that she did not wish to comment further and would proceed to a decision in the absence of a reply from her.

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

Sarah Bedwell
The Certification Officer