

D/22/20-21

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

05 January 2021

**Contents**

Decision ..... 3

Reasons ..... 3

Findings of fact ..... 3

The Relevant Statutory Provisions ..... 4

The Relevant Rules of the Union ..... 5

Considerations and Conclusions ..... 5

## **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 applicant’s complaint on the grounds that the complaint, as advanced by the claimant, has no reasonable prospect of success and/or is 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 five complaints. I struck out four of those complaints on 29 October 2019 (D/20-23/19). The remaining complaint is dealt with in this decision.

### **Complaint**

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.

## **Findings of fact**

4. Mr Hussain is a member of the South East No.5 (SE5) Branch (the branch) of the Communication Workers Union (“CWU” or “the Union”).
5. On 12 October 2018 the Union opened nominations for the Branch Officers 2018 Election. The nominations closed on 2 November 2018.

## The Relevant Statutory Provisions

6. 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;

### **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**

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

### **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.

## **Considerations and Conclusions**

### **Background**

8. It is agreed that nominations for the Branch Officer elections closed on 2 November 2018. Mr Hussain alleges that the relevant notice inviting nominations was first displayed on 15 October 2018. If he is right, then the elections would be in breach of Rule 1 of Appendix B SE5 Branch Constitution which requires that the notice inviting nominations shall allow 21 clear days in which to propose nominations.
9. The Union's position is that the notice was displayed on 12 October 2018 which, if they are right, would be compliant with the relevant Rule.

## Conclusions

10. This complaint was listed for a hearing on 15 December 2020. Ahead of the Hearing, the Union submitted three written witness statements which supported the position that the relevant notice was displayed, on the workplace noticeboard, on 12 October 2018. The statements explained that the notice was prepared and dated by Mr Moorey the Branch Secretary, that it was put up on the noticeboards on 12 October 2018, by Mr Virk the Area Processing Representative for the relevant workplace, and that, on 13 October 2018, Mr Virk asked Mr Payne, a Branch Member, to check that the notice was still displayed. Mr Payne confirmed that it was on display on the noticeboard on 14 October 2018. Mr Virk's evidence also stated that, by way of providing evidence to Mr Moorey that the notice remained on the noticeboard, he had annotated the notice as 'displayed on 15 October 2018' and signed it. I have seen a copy of that notice with Mr Virk's annotation.
11. Mr Hussain has not provided me with any witness statement, from himself or anyone else, which states that the Notice was not displayed on 12 October 2018. His argument appears to rely only on the annotation made on 15 October 2018 by Mr Virk. His view appears to be that this demonstrates that the Notice was not displayed until 15 October 2018.
12. I understand why Mr Hussain may have read Mr Virk's annotation in this way. Mr Hussain has not, however, provided me with any witness statement which supports his view that the notice was first displayed on 15 October 2018. The Union has provided three witness statements which support their position that it was displayed, in accordance with Rule 1, on 12 October 2018 and that it remained on display on 14 and 15. Consequently, I find that Mr Hussain's complaint has no reasonable prospect of success and I strike it out.
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 order should not be made. Mr Hussain was therefore invited, on 8 December

2020, to provide representations as to why his October 2018 complaint should not be struck out.

14. Mr Hussain replied by e-mail on 22 December 2020. He did not provide me with any new relevant information which caused me to reconsider my opinion that Rule 1 of Appendix B SE5 Branch Constitution had not been breached in the manner complained about.

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