

D/4-8/21-22

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

Parry

v

Union of Shop Distributive and Allied Workers

Date of Decision

22 September 2021

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Decision

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

I make the following declaration:-

Complaint 1

The complaint is dismissed upon withdrawal.

Complaint 2

I find that the Union breached Rule 20, Section 4a on 1 June 2020, by failing to hold an election in the KO97 Branch when Chris Bason, Health and Safety Officer’s two-year term expired. The union still recognise him as a Health and Safety Officer without holding a re-election.

I do not consider it appropriate to make an enforcement order for the reasons explained at paragraphs 16 to 19 of this decision.

Complaint 3

I find that the Union breached Rule 20, Section 1b on 28 April 2020, by failing to hold an election in the KO97 Branch when Jack Ryan, Learning Rep’s two-year term expired. The union still recognise him as a Learning Rep without holding a re-election.

I do not consider it appropriate to make an enforcement order for the reasons explained at paragraphs 16-19 of this decision.

Complaint 4

The complaint is dismissed upon withdrawal.

Complaint 5

Pursuant to section 256ZA of the 1992 Act, I strike out the applicant's complaint five in his application on the grounds that the complaint, as advanced by the applicant, has no reasonable prospect of success.

Reasons

2. Mr Parry submitted an application to make a complaint on 22 January 2021.
3. Following correspondence with my office, Mr Parry, confirmed his complaints as follows:-

Complaint 1

The Union breached its Rule 20, Section 4a on 28 April 2019 by failing to hold an election in the KO97 Branch when Chris Bason, Daytime Shop Steward's two-year term as daytime shop steward expired. The union still recognise him as a shop steward without holding a re-election.

Complaint 2

The union breached Rule 20, Section 4a on 1 June 2020, by failing to hold an election in the KO97 Branch when Chris Bason, Health and Safety Officer's two-year term expired. The union still recognise him as a Health and Safety Officer without holding a re-election.

Complaint 3

The union breached Rule 20, Section 1b on 28 April 2020, by failing to hold an election in the KO97 Branch when Jack Ryan, Learning Rep's two-year term expired. The union still recognise him as a Learning Rep without holding a re-election.

Complaint 4

The union breached Rule 20, Section 2 on 1 July 2020 by not allowing Mr Parry to stand as a shop steward when there was no reason for Andy Bailey to exclude Mr Parry.

Complaint 5

The union breached Rule 20, Section 4a on 3 June 2020 by Carl Turner, Area organiser accepting the repeatedly defaced night shift shop steward nomination then solely carrying out the ballot vote(s) knowing that the nomination two names in the seconder box were non-union members. Also excluding many union members, the opportunity to cast their vote.

4. The Union conceded a breach of complaints two and three. Mr Parry does not seek an Enforcement Order; however, I have addressed this issue at paragraphs 16 to 19 below. Mr Parry withdrew his complaints one and four. Complaint five is dealt with at paragraphs 9 to 15 below.

Complaint Five

Findings of fact

5. Mr Parry is a member of the K097 branch (the branch) of the Union of Shop Distributive and Allied Workers (“USDAW” or “the Union”).
6. On 5 June 2020 the Union opened nominations for Night Shift Shop Steward. The nominations closed on 20 June 2020.

The Relevant Statutory Provisions

7. 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;

108B Declarations and orders

(3) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements—

- (a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;
- (b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.

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 Rule of the Union

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

16. Branch Government

Section 2. Branches shall elect their own officers and committee, subject to the provisions of Rule 20, and the term of office shall be two years in each case from the time of election; the committee to have power to fill up vacancies till the next election. Branches shall accept responsibility for the election of safety representatives and lay union learning representatives and may also arrange, subject to the provisions of Rule 20, for the appointment of shop stewards to represent sections of membership and to assist the branch officebearers. Where in any branches the National Executive Council consider it necessary for the proper conduct of the administrative and/or the financial arrangements of the branch or branches concerned, they may engage, discharge, control and fix the remuneration and conditions of whole-time branch secretaries or accounts clerks, and in all such cases the provisions of this Section as to election and limitation of term of office of branch secretary shall not apply.

20. Branch Committee, Shop Stewards, Safety Representatives and Lay Union Learning Representatives

Section 4 (a). Where branches decide that shop stewards shall be appointed the membership at the establishment concerned shall be divided into sections as shall from time to time be determined by the branch committee, each section to be represented in accordance with Rule 16, Section 2, by one or more shop stewards. Nominations for the election of a shop steward shall be drawn from amongst that section of membership to be represented. The election of a shop

steward shall take place at a sectional meeting of those members whom she/he will directly represent. The members of each section shall only be entitled to vote in the election for the shop steward to represent that section.

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Considerations and Conclusions

Background

9. In June 2020 Mr Parry and, a colleague, Mr Marshall stood for the post of night shift Shop Steward in the K097 branch of the Union. It is not disputed that the relevant notice went up on the noticeboard 5 June 2020 for nominations for a Night Shift Representative. Mr Parry alleges that the completed nomination form accepted by the Union was defaced as (a) two names were entered in the seconder box for Mr Marshall (b) neither of the names entered, T Paul and A Murry, were members of the Union; and (c) even if, A Murry was a member of the Union he was not a member of the section that would be represented by the Night Shift Shop Steward. Mr Parry believes that this should have prevented the Union from accepting the nomination form.

10. The Union's position is that the nomination process is not covered in any of the Union's rules and is, therefore, outside my remit. In addition, the Union argues that the names put forward were night shift members and the seconders were union members as required by Rule 20 4(a). The Union acknowledge that T Paul was not a member but told me that A Murray was a member and that, as a result, the nomination was valid. The Union accept that Mr Murray's name was mis-spelt on the nomination form. They explained that this was a spelling error as Mr Murray was off sick at the time of the nomination and asked a colleague to complete the form on his behalf. The Union further submit that there is no rule of the Union which requires the nominee to complete the form themselves.

Conclusions

11. Mr Parry has not identified a rule that covers the nomination process or the form. Nor has he provided any evidence which contradicts the Union's position that Mr Murray is a member of the Union or that a colleague entered Mr Murray's name on his behalf. Nor have I been able to identify a Rule which sets out the nomination process.
12. Rule 20 4(a) does not, in my view, prevent a member asking a colleague to make nomination on their behalf. Nor does it require the candidates for shop steward to be nominated by someone who is a member of a particular section. For the avoidance of doubt, I have also considered Rule 16 section 2 which is referenced within Rule 20 4 (a) and can see no reference to the nomination process. On that basis I consider that the complaint has no reasonable prospect of success as Rule 20 4 (a) could not have been breached in the manner described.
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 Parry was therefore invited, on 27 July 2021, to provide representations as to why this complaint should not be struck out
14. Mr Parry replied by e-mail on 17 August 2021 stating that T Paul and A Murry were not members of the Union and should therefore not be eligible to take part in the elections. This was put to the Union who responded on 27 August 2021 confirming that T Paul was not a member, but that A Murray was however his name on the nomination form was incorrectly spelt as 'Murry'. The Union's response was sent to Mr Parry for further comment. Mr Parry responded on 17 September 2021. Although he provided me with a copy of the nomination criteria and form, he did not provide me with any new relevant information which caused me to reconsider my opinion that Rule 20 4(a) could not have been breached in the manner complained about.
15. Consequently, I strike out the applicant's complaint five on the grounds that the complaint, as advanced by the applicant, has no reasonable prospect of success.

Enforcement Order

16. 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 complaints two and three. 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.
17. The Union do not believe an Order is necessary because the election process for the posts of Health and Safety Officer and Learning Representatives are already underway.
18. My Office sought Mr Parry's views on the need for an Enforcement Order. He confirmed that he does not seek an Enforcement Order.
19. As the election process for these posts is already underway, I do not consider it appropriate for me to make an Enforcement Order.

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

Sarah Bedwell

The Certification Officer