

D/9/2021-2022

Decision of the Certification Officer on an application made under Section 108A (1)
of the Trade Union and Labour Relations (Consolidation) Act 1992

Wilson

v

Unison

Date of Decision

7 October 2021

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Decision

1. Upon application by Mr Mick Wilson (“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 claimant’s application on the grounds that it has no reasonable prospect of success.

Reasons

Background

2. Mr Wilson is a member of Unison. He was a candidate in the Derbyshire County Branch election for the Branch Secretary position in February 2021. I received an application from him on 29 July 2021.

3. Mr Wilson’s complaint is that the Union breached the Derbyshire County Unison Branch Rule item 6 because

“During the Election period the Branch Secretary who, I was standing against, arranged for two Mailouts to all members. This was designed and distributed using Unison staff and facilities. The information in this mailout included photos and contact details plus statements from the Branch Secretary. Although I was a Branch Official at the time my details were excluded. This had no other or new information that hadn’t already been sent out or available on multiple sources. I believe this is a Breach of the Branch rules and gave the Secretary an advantage in the election”

4. My office wrote to Mr Wilson asking him to set out how the rule had been breached as alleged by him. By way of reply to that letter, on 12 August Mr Wilson emailed as follows:

“My further contention about the breach of rule 6 of the branch rules are

- 1 The mailouts were a deliberate attempt for the branch secretary to enhance her chances to win the election

- 2 The information in the mailouts had previously been circulated to all members and was readily available on multiple platforms.

3 At the time of the mailout I was a senior officer of the Branch and my picture plus details etc were omitted.

4 Branch facilities were used to produce the mailouts.

5 there was no Democratic mandate to organise timings of the mailouts but just a whim of the Branch secretary. “

5. My office has been in correspondence with Mr Wilson to identify whether he has any evidence, documentary or otherwise, which supports his assertion that the mailouts in question were in breach of Rule 6. He has provided two sets of guidance which were sent to branch members. Both appear to include updated guidance on the current pandemic and include photographs and details of some branch officers, including the Branch Secretary. Mr Wilson has not, however, explained how the mailouts, were in breach of Rule 6.

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;

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

Derbyshire County Unison Branch Rule item 6 which

“prohibits candidates from issuing publicity material etc in addition to their election address that is used with the ballot paper.”

Considerations and Conclusions

8. Derbyshire County Unison Branch Rule item 6 prohibits candidates from issuing publicity material in addition to their election address that is used with the ballot paper. The Rule does not, however, appear to prevent the branch secretary from sending other mailouts during the election period.

9. Mr Wilson has provided me with two mailouts, both of which include guidance on the current pandemic, to support his complaint. Mr Wilson asserts that the mailouts were a deliberate attempt to enhance the branch secretary's election campaign. In doing so he references the fact that the material was already available to members and that the mailout included photographs of some branch officials, including the branch secretary. He has not, however, provided me with any evidence which demonstrates that this was an attempt to influence the campaign. It appears, from Mr Wilson's correspondence, that the ballot was originally due to be concluded in February 2021, but did not go ahead until later that year. Neither of the mailouts, which were sent in February 2021 and May 2021, make any reference to the election.

10. Consequently, Mr Wilson has not provided me with any evidence to support his assertion that Rule 6 has been breached in the manner he has described. On that basis I am satisfied that Mr Wilson's application to me has no prospect of success.

11. 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. My office wrote to Mr Wilson on 22 September. This letter stated that, having considered Mr Wilson's application and further correspondence I was minded to exercise my powers section 256ZA of the Trade Union and Labour Relations (Consolidation) Act 1992 to strike out his application on the grounds that it has no reasonable prospect of success or is otherwise misconceived. The letter invited Mr Wilson to provide written representations as to why I should not strike out his application. In response Mr Wilson provided the mailouts I have described above and

explained that he was not consulted about their content even though his role was relevant to the content. As I have explained above, however, he has not explained why the relevant mailouts amount to publicity. Nor can I see anything in Rule 6 which would require consultation ahead of a branch mailout. Mr Wilson's response did not, therefore, provide me with any new relevant information which caused me to reconsider my opinion that Rule 6 had been breached in the manner complained about.

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

Sarah Bedwell

The Certification Officer