

D/10/21-22

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

Morley

v

UNISON: The Public Service Union

Date of Decision

13 October 2021

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## Decision

1. Upon application by Mr Paul Morley (“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 Complaints 1 and 2 of the claimant’s application on the grounds that they have no reasonable prospect of success and/or are otherwise misconceived.

## Reasons

### Background

2. Mr Morley is a member of Unison. He was a candidate for the position of secretary of the UNISON Lancashire branch in February 2021. I received an application from him on 15 July 2021 which was incomplete and was resubmitted on 24 July 2021.

3. Mr Morley’s complaints are that the Union breached its rules as follows:

### Complaint 1

**Rule breached:** 11.4 page 66 (under week 3) Code of Good Branch Practice

I was nominated to the role of branch secretary of UNISON Lancashire branch. As there were 2 nominees a ballot needed to take place.

It is normal for the branch admin team to send emails out to groups of branch members around a range of day-to-day matters. There are 3 branch admin staff who use the WARMS membership database to send out these emails. In the run up to the ballot the branch admin staff sent an unusual amount of emails that were signed off by the incumbent branch secretary Elaine Cotterell (who was the other member nominated for election of branch secretary). Under normal circumstances some/most of these emails topics were not usually signed off by Elaine Cotterell.

I investigated a similar time period the year before (when no ballot) and the amount of emails signed off by Elaine Cotterell was considerably less. I believe a deliberate effort

was made to bring Elaine Cotterell's name to the forefront of branch member's minds in order to increase the number votes for her.

### Complaint 2

**Rule breached:** 11.4 on page 64 of Code of Good Branch Practice

I was nominated to the role of branch secretary of UNISON Lancashire branch. As there were 2 nominees a vote needed to take place. This vote was to be taken by the branch members and as highlighted in the Code of Good branch practice in section 11.4 on page 64 an independent scrutineer should have been appointed to oversee the ballot process.

The ballot process was actually overseen by James Rupa who is a Regional Organiser who is a paid employee of UNISON. Further to this Lancashire branch is one of the branches that James Rupa is employed by UNISON to oversee and manage. James Rupa has a vested interest in who is appointed as Lancashire Branch Secretary as this could directly affect his employment and workload. Although I have no indication that James Rupa had any unfair influence in the outcome I don't believe he can be classified as an independent scrutineer.

## **The Relevant Statutory Provisions**

4. 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**

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

**11.4 page 64 (5 bullet point) Code of Good Branch Practice**

Branch officers must ensure:

an independent scrutineer is appointed to oversee the ballot process

**11.4 page 66 (under week 3) Code of Good Branch Practice**

Existing post holders should not use branch facilities or time off arrangements to enhance their campaign, if these facilities are not made to other candidates.

## **Considerations and Conclusions**

### Complaint 1

6. Mr Morley's complaint is that a significant number of emails were sent by Elaine Cottrell (the recently re-elected Branch Secretary) during the election period and that this resulted in a breach of a rule in the Code of Good Branch Practice which requires that, "Existing post holders should not use branch facilities or time off arrangements to enhance their campaign, if these facilities are not made to other candidates."
7. He told my office that the amount of emails sent out from the branch, which were signed by Ms Cottrell, considerably increased during the campaign period. Also, that there were emails signed by Ms Cottrell during this period, which had previously been unsigned and by signing them Ms Cottrell appeared to raise her profile. He argued that the details of the emails that were not signed by her in a similar period the year before when no ballot was taking place which again demonstrated that she was raising her profile. Taken together he believed that her actions, in issuing the emails, demonstrated an attempt to enhance Ms Cottrell's campaign. He also explained that he did not have the ability or access to sending out similar emails.
8. Mr Morley has not, however, provided any documents which support his assertion that the Rule was breached. He has not, for instance, provided any evidence which supports his view that the emails were designed to enhance Ms Cottrell's campaign; nor has he provided any evidence that the emails in question enhanced her campaign. In particular, I have not seen copies of the emails which Mr Morley believes breached Rule 11.4. I have, however, seen a schedule of the emails, produced by Mr

Morley, which gives a description of their content. I have also noted that, in considering Mr Morley's complaint to them, the Union identified that the emails were not campaigning emails and that it was reasonable for the Branch Secretary to have sent them. Mr Morley has not provided any evidence which contradicts that finding.

9. Mr Morley has explained that he does not, in his view, need to provide evidence to support his view that the campaign was enhanced by the emails to show that the Rule was breached. I agree with him that the Rule appears to prevent attempts to enhance a campaign; however, I have not seen any documents which support Mr Morley's belief that there was such an attempt. If this complaint were to proceed to a Hearing Mr Morley would need to demonstrate that it was more likely than not that the emails in question breached Rule 11.4. As he has been unable to provide any documents which support his view that this was the case I believe that this complaint has no reasonable prospect of success.
10. Mr Morley has not been able to demonstrate with evidence or with any supporting documents that the increased number of emails sent by Ms Cottrell during the election was intended to enhance her campaign or that it did enhance her campaign. Nor has he been able to show any detriment to him as a result of the emails. On that basis it is difficult to see how the rule can have been breached, whether or not he was in a position to send out emails to branch colleagues.
11. Consequently, Mr Morley has not provided me with any evidence to support his assertion that rule 11.4 was breached in the manner that he has described. On that basis I am satisfied that Mr Morley's complaint to me has no prospect of success.

#### Complaint 2

12. Mr Morley believes that the union breached Rule 11.4. of the Code of Good Branch Practice when it appointed Mr James Rupa as an independent scrutineer because, in Morley's view, he was not independent and had an interest in the outcome of the election. Mr Morley has also told my office that he has no indication that Mr Rupa had any unfair influence in the outcome of the election.
13. Mr Morley has not provided any evidence to suggest that Mr Rupa, in his role as independent scrutineer had an unfair influence on the outcome of the election. Nor

has he offered any evidence to support his assertion that Mr Rupa's role as a Regional Organiser and a paid employee of UNISON, meant that he was not independent. He has, however, provided a copy of the Union's response, dated 3 June 2021, to his complaint on this issue. In that response the Union explains that Rule 11.4 requires that ballot papers should not be returned to branch officers involved in the elections and advises branches to seek assistance from the Region or from the Electoral Reform Society. The Union also advised that by using the Regional Organiser as the Scrutineer, which is common across Unison, the branch complied with the Rule 11.4.

14. Mr Morley has not provided any evidence to suggest that it is not common practice for Regional Organisers to act as scrutineer for branch elections. Nor has he offered any evidence that Mr Rupa was not independent of the branch or had any influence on the elections. He has explained, however, that he does not believe that he needs to demonstrate that Mr Rupa had unfair influence on the proceedings to demonstrate he was not independent. Instead, Mr Morley appears to believe that ERS, or a similar body, should have been used as a scrutineer for this election. I agree with him that this would have been an option open to the Union; however, I cannot see that it is required by 11.4. On that basis, and because Mr Morley himself acknowledges that there is no evidence that Mr Rupa had any unfair influence on the elections. I consider that this complaint has no reasonable prospect of success.

15. Consequently, Mr Morley has not provided me with any evidence to support his assertion that rule 11.4 was breached in the manner that he has described. On that basis I am satisfied that Mr Morley's complaint to me has no prospect of success.

16. 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 Morley on 21 September. This letter stated that, having considered Mr Morley'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 complaints 1 and 2 on the grounds that they had no reasonable prospect of success or were



otherwise misconceived. The letter invited Mr Morley to provide written representations as to why I should not strike these complaints out. In response he maintained that he needs only to demonstrate that the rules have been broken and that he does not need to demonstrate that he has suffered disadvantage as a result of the increased emails. He did not, however, provide any additional evidence or information to support this argument. Consequently, I have seen no evidence to support his assertion that the emails were an attempt to enhance Ms Cottrell's election campaign.

17. With regards to Complaint 2, he states that the fact that Mr Rupa is the Regional Organiser for Lancashire Branch and that any legal claim or industrial dispute from the branch goes through him meant that his own individual workload and or working relationships would be affected by the outcome of the election of branch secretary. He believes this means that Mr Rupa is not independent. Mr Morley did not, however, take issue with the Union's position that it is common practice for the Regional Organiser to act as an independent scrutineer for branch elections as they are considered to be independent from the branch.
18. Mr Morley's response did not, therefore, provide me with any new evidence, information or argument to show that his complaints have a reasonable prospect of success.

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

Sarah Bedwell

The Certification Officer