

D/13/21-22

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

Embery

v

Fire Brigades Union

Date of Decision

17 November 2021

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## Decision

1. Upon application by Mr Paul Embery (“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 that the Union breached its rule C13 on the grounds that it has no reasonable prospect of success and/or is otherwise misconceived.

## Reasons

### Background

2. Mr Embery is a member of the Fire Brigades Union. I received an application from him on 28 August 2021. Mr Embery made three complaints. I have accepted two of these complaints which have been listed for a hearing.
3. Mr Embery’s third complaint is that the Union breached its rule C13. He sets out his complaint as follows:

In not empowering the standing orders committee to adjudicate on the dispute over the interpretation of rules, the union breached rule C13.

Rule C13 provides for disputes over interpretation of rules to be considered by the executive council or one of its sub-committees. Where, following that process, the dispute remains unresolved, it must be placed before the standing orders committee for ultimate adjudication.

I believed that the disciplinary investigation had been conducted, and the hearing convened, in breach of established rules. The executive council nominated its disciplinary committee to hear the dispute in advance of the disciplinary hearing taking place.

I disagreed with the position adopted by the disciplinary committee at its meeting and wished to exercise my right to take the matter to the standing orders committee for adjudication. However, the union refused to empower the standing orders

committee to adjudicate on the dispute. Instead, the disciplinary committee, after considering the matter and adopting its position, immediately convened again to proceed with the disciplinary hearing. In doing so, it was breaching rule C13 and acting ultra vires.

## **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:-

Rule C13

### **INTERPRETATION OF RULES**

In the event of a dispute arising on the interpretation of any of the rules which cannot be satisfactorily settled by the Executive Council or any sub-committees thereof, the Standing Orders Committee shall be empowered to adjudicate on the dispute.

## **Considerations and Conclusions**

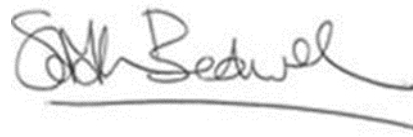
6. It is clear from the documents submitted by Mr Embery to support his application that he had raised a question about whether the investigation into his conduct was within the Union's Rules. The Executive Committee

delegated that question to its Disciplinary Sub Committee which also considered the disciplinary case against Mr Embery. The minutes of that meeting on 26 March 2021 show that the “President stated for the records that the Disciplinary Committee had voted 3 to 1 to dismiss Bro Embery’s dispute in relation to the interpretation of the rule”

7. The matter of the interpretation of the rules therefore seems to have been resolved by the Disciplinary Sub Committee.
8. However, Mr Embery states that “in the event the dispute between me and the president/vice-president remained unsettled following the meeting that was being convened under rule C13, I expected the standing orders committee to be empowered to adjudicate on the matter”.
9. Mr Embery’s complaint therefore appears to be that when a union member feels that the interpretation of rules has not been satisfactorily resolved, they have the right to raise the matter themselves with the Standing Orders Committee. However, Mr Embery has not identified a Rule which enables him, or any other member of the union, to require the issue to be resolved by the Standing Orders Committee.
10. My view is Rule C13 empowers the Standing Orders Committee to adjudicate on disputes on any interpretation of the union’s rules which have not been settled by the Executive Committee or one of its sub-committees. The rules do not appear to set out explicitly how a dispute should be referred to the Committee. Instead, they appear to empower the Committee to adjudicate on a dispute which has not been settled by the Executive Committee or any sub-committee. The rule does not explicitly give an individual member of the union the right to raise an issue with the Standing Orders Committee.
11. In Mr Embery’s case the Executive Committee delegated the matter to its disciplinary sub-committee who appear to have resolved the issue. I

understand that Mr Embery does not agree with their decision; however, he has not referred me to a Rule which would enable him to engage rule C13 himself.

12. Consequently, I consider that rule C13 is not capable of being breached in the way that Mr Embery has set out. On that basis, I consider that Mr Embery's complaint has no prospect of success and is 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 order should not be made. My office wrote to Mr Embery on 22 September. This letter stated that, having considered Mr Embery'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 complaint on the grounds that it has no reasonable prospect of success or is otherwise misconceived. The letter invited Mr Embery to provide written representations as to why I should not strike his complaint out. In response. Mr Embery maintained that in his view the matter was not satisfactorily resolved by the Disciplinary Committee and therefore the matter should have gone to the Standing Orders Committee. My office wrote to Mr Embery on 25 October giving Mr Embery a further opportunity to identify a rule that enables a member to require the Standing Orders Committee to consider and unresolved questions about the interpretation of union rules. Mr Embery has not provided me with such a rule. Consequently, Mr Embery's complaint, as presently submitted to me, has no reasonable prospect of success.



Sarah Bedwell  
The Certification Officer