

D/15/21-22

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

Meechan and Others

v

British Air Line Pilots Association

Date of Decision

24 November 2021

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## **Decision**

1. Upon application by Mr Ben Meechan and Mr Furness on behalf of all members of the Virgin Atlantic Company Council (“the Applicants”) 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 each of the complaints set out at paragraph three below on the grounds that the complaints, as advanced by the Applicants, have no reasonable prospect of success and/or are otherwise misconceived.

## **Reasons**

### **Background**

2. Mr Meechan submitted an application on 20 May 2021. I received a further application from Mr Furness on behalf of all the members of the Virgin Atlantic Company Council on 28 June 2021. On 11 August 2021 the Applicants confirmed the combined complaints to be taken forward. It was agreed by the parties that Mr Meechan would act as lead applicant.
3. Following correspondence with my office, Mr Meechan, confirmed the complaints as follows:-

#### **Complaint 1: Breach of union rule 26.1**

As per the NEC Decision Paper PDF dated 3rd March 2016, the term of Brian Strutton commenced with immediate effect upon that date. Had rule 26.1 been complied with his term should have ended on the 2nd March 2021. Instead the NEC extended his term (as can be seen in Paper 1 dated 2nd December 2021) without any due consideration for, or in compliance with this rule. Several Company Councils complained to the NEC about this breach but were informed that the term of Brian Strutton could be extended to 31st May 2021 in an email dated 5th May 2021. The rationale for this being that Mr Strutton did not commence in the office of General Secretary until 1st June 2021. However, this clearly contradicts both the Decision of the NEC in March 2016 that the

appointment commenced with immediate effect on that date and rule 26.1 which explicitly states that the five-year term of the General Secretary commences on the date of declaration. This rule has further been breached as the NEC have failed to appoint a General Secretary despite the fact that Claire Hood had been legitimately nominated as per rule 26.2.2 and is to all intents and purposes an unopposed candidate.

### **Complaint 2: Breach of union rule 26.7**

The NEC of BALPA have stated that Martin Chalk will take over from the current acting General Secretary Brian Strutton as General Secretary of BALPA. This is for an undefined period as the NEC state it will be as per their election timetable which is a document yet to be disclosed to either the members of the union or all of the staff of the union. Rule 26.7 makes it explicitly clear that the NEC can appoint an interim General Secretary if the position is vacant but also makes it clear that it can only be an elected member of the NEC. Martin Chalk is not an elected member of the NEC and is not in fact even a co-opted member of the NEC, therefore it is a clear breach of rule 26.7 to try and appoint him to such role.

### **Complaint 3: Alleged breach of 28.1**

It has come to light that Martin Chalk is a BALPA Custodian Trustee and therefore this could result in a further breach of BALPA Rules. 28.1 clearly states that no person can be a member of the NEC and a Custodian Trustee at the same time.

## **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, 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**

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

### **Rule 26 THE GENERAL SECRETARY**

26.1 The General Secretary shall be appointed by the NEC after a ballot of the membership undertaken in accordance with the provisions of this Rule, Rule 32 and APPENDIX 1. The General Secretary shall thereafter be appointed by the NEC for a period of 5 years commencing upon the date of the declaration of the result of the election. The General Secretary need not necessarily be a member of BALPA.

26.2.2 Any one or more properly established Company Councils whose total joint numerical membership of BALPA exceeds 500 may together nominate one candidate for the post of General Secretary to stand in an election under this Rule.

26.7 If the position of General Secretary is vacant at any time, the NEC may appoint an elected member to temporarily act as General Secretary. An elected NEC member temporarily holding the office of General Secretary will not be entitled to vote at any NEC meeting.

### **Rule 28 BALPA CUSTODIAN TRUSTEES**

28.1 There shall be 4 BALPA Custodian Trustees, who must be BALPA members as defined in Rules 7 and 8. Upon appointment each Trustee will become a Director of BALPA Custodian Trustees Ltd for the duration of their appointment as a Trustee. They shall be appointed by the ADC for a period of 3 years. They shall be eligible for re-election for a second term of office, but no Trustee shall remain in office for a consecutive period of more than 6 years and shall be eligible for re-election 3 years after the last 6 years in office. No paid employee of BALPA shall act as Trustee. No person can be both a member of the NEC 18 and a Custodian Trustee at the same time. The ADC shall also have the power by resolution to appoint a Bank or other Trust Corporation as a Custodian Trustee.

## Considerations and Conclusions

### Complaint 1

6. The Applicants complaint is that the National Executive Committee (NEC) breached Rule 26.1 when they extended Mr Strutton's term of office as General Secretary to 31 May 2021. They claim that his term of office should have ended on 2 March 2021.
7. Both parties agree that Mr Strutton was appointed General Secretary in 2016. His term of office began on 3 March 2016; however, he did not take up that role until 1 June 2016 when he became an employee of the Union. His term of office ended on 2 March 2021. The Union has provided me with a copy of the NEC's Decision Paper which records that this was the case. The Applicants have not provided any evidence which contradicts this. Their argument appears to be that Rule 26.1 does not empower the Union to extend a General Secretary's term of office and so the Union was in breach of Rule 26.1 by extending Mr Strutton's employment.
8. The Union have told me that they extended Mr Strutton's term of office under Rule 26.7 and so they were not in breach of Rule 26.1. They have provided me with an extract of the agenda of an NEC meeting on 20 December 2020, in closed session, which includes an item for discussion around the General Secretary's role after the end of Mr Strutton's term of office. The NEC decided to extend Mr Strutton's term of office, to 31 May 2021, and varied his employment contract by consent on 16 February 2021. I have not seen any evidence from the Applicants which contradicts this.
9. The Applicants have told me that this alleged breach has been exacerbated by the fact that Ms Claire Hood has been nominated as a candidate for General Secretary by a Company Council. I understand from the Union that this is part of an election process which is currently underway but has not yet concluded. The Applicants have not offered any evidence or argument as to how this contributes to a breach of Rule 26.1.

10. For these reasons I believe that this complaint has no reasonable prospects of success.

11. It is worth noting that the Applicants have subsequently argued that Mr Strutton was not an elected member as required by Rule 26.7 and so the Union did not have any power to appoint him as an Acting General Secretary. However, their complaint, as set out above, does not include an allegation of a breach of Rule 26.7. Consequently, I have not considered this aspect of their argument in relation to this complaint. For the same reasons, I have not considered his appointment as Acting General Secretary for June and July 2021.

## **Complaint 2**

12. The Applicants argue that Martin Chalk, who was a Custodian Trustee, was not an elected member at the time of his appointment as Acting General Secretary and, consequently, was ineligible for appointment under Rule 26.7.

13. Rule 26.7 allows the NEC to appoint 'an elected member to temporarily act as General Secretary'.

14. The Union have told me that Mr Chalk was elected, unopposed, at an Annual Delegates Conference. They have provided the wording of the Standing Orders which provide for the election of Custodian Trustee. Although they acknowledge that Rule 28.1 uses the terms appointed and elected interchangeably, it is clear to me that Custodian Trustees are subject to elections.

15. The Applicants have not provided me with any evidence that the role of Custodian Trustee is not an elected position; nor have they provided any evidence that Mr Chalk was not elected at an Annual Delegates Conference. Their argument appears to be that those drafting the Rules were referring to elected members of the Union's NEC rather than to all elected members of the Union. They argue that this is the natural meaning of Rule 26.7. They have not, however, provided me with any evidence which supports their view; nor have they offered any examples of custom and practice within the Union which supports their view.



16. My reading of Rule 26.7 is that it imposes only one limitation on who can be appointed as an Acting General Secretary which is that they must be an elected member of the Union. The Rules of the Union do not define "elected member" and I have been given no evidence which suggests that this was intended to refer only to elected members of the NEC. Nor have I been shown any evidence of custom and practice which might suggest that this Rule has been interpreted in this way by others.

17. On that basis I am satisfied that the Applicants' complaint to me has no reasonable prospect of success.

### **Complaint 3**

18. Rule 28.1 states that no person can be both a member of the NEC and a Custodian Trustee at the same time. The Union have explained that Martin Chalk resigned as a Custodian Trustee on his appointment as Acting General Secretary and prior to taking up his post on the NEC as part of that role. He did not, therefore, hold both posts at the same time.

19. The Applicants have not provided me with any evidence which contradicts this. On that basis, I am satisfied that the Applicants' complaint to me has no reasonable prospect of success.

20. Section 256ZA of the Act 1992 Act requires me to send notice to the party against who the strike out order shall be made giving them an opportunity to show cause why the order should not be made. My office wrote to Mr Meechan on 2 November. This letter stated that having considered the applications and further correspondence, I was minded to exercise my powers under section 256ZA of the 1992 Act to strike out their complaints on the grounds that they had no reasonable prospect of success or were otherwise misconceived. The letter invited Mr Meechan to provide written representations as to why I should not strike out the complaints. In response, Mr Meechan raised a number of points which I have addressed above. He did not provide me with any additional evidence or

argument which showed that these complaints had a reasonable prospect of success.

A handwritten signature in black ink, appearing to read "Sarah Bedwell", written in a cursive style. The signature is positioned above a horizontal line that extends across the width of the signature.

Sarah Bedwell

The Certification Officer