

D/12-13/22-23

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

Lowe

V

National Education Union

Date of Decision

11 July 2022

Contents

Decision	3
Background	3
The Relevant Statutory Provisions	4
108A Right to apply to Certification Officer	4
256ZA Striking out	5
The Relevant Rules of the Union	5
Appendix A.....	6
Considerations and Conclusions	6
Complaints 1 and 2	6

Decision

1. Upon application by Mr Tony Lowe (“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 complaints below on the grounds that the complaints, as advanced by the claimant, have no reasonable prospect of success.

Background

2. Mr Lowe submitted an application to make a complaint on 15 December 2021.
3. Mr Lowe is a member of the National Education Union (“NEU” or “the Union”). The Union began disciplinary action against him in 2021,
4. Following correspondence with my office, Mr Lowe, confirmed his complaints of breaches of natural justice as follows:-

Complaint 1 - breach of Rule Appendix A, Section 3.4

Insufficient time was given to me to present my case and rebut complaints. Protests by me about this were ignored. My representative and I repeatedly stated that we would need a whole day for the NDC hearing, especially because we had to rebut over 90 pages of complaint material, with the involvement of 5 complainants and their representative.

We were assured by Pauline Buchanan that we would be given a full day for the hearing. However, a few days beforehand, we were informed that we would only have 3 hours. Due to this, it was almost guaranteed to overrun, which it did. I was left unrepresented for the last hour, because my representative had to leave at a specified time for a pre-arranged appointment to represent another member.

There is no rule specifically stating how much time should be allocated but allocating woefully inadequate time shows that the NDC panel were biased and unfair and failed to provide me with a fair opportunity to present my case. This behavior was also against the principle of Natural Justice, which the union claims to uphold.

Complaint 2 – Alleged breach of Rule Appendix A, Section 4.6

I raise the following malpractice, which resulted in a failure to deliver fair, unbiased treatment, in keeping with the principles of Natural Justice:

- Insufficient time allocated to either hearing, resulting in inability to present significant evidence and me being unrepresented for significant periods of both hearings.

The Appeal panel did not give me a 'fair opportunity to present my respective case.'

The Relevant Statutory Provisions

5. 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.

(6) An application must be made—

(a) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or

(b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in subsection (7).

(7) Those days are—

(a) the day on which the procedure is concluded, and

(b) the last day of the period of one year beginning with the day on which the procedure is invoked.

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

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

Appendix A

3 National Disciplinary Committee

3.4 The conduct of National Disciplinary Committee proceedings shall be in accordance with the rules of natural justice. The member making the complaint and the member being complained about have the right to a fair hearing, without bias, conducted with reasonable promptness consistent with fair opportunity to present their respective cases. Before a National Disciplinary Committee, the parties may call witnesses of relevance to the matters in dispute.

4 National Appeals Committee

4.5 Operation of the penalty of the National Disciplinary Committee shall remain suspended pending the decision of the National Appeals Committee which shall be final.

4.6 The conduct of National Appeals Committee proceedings shall be in accordance with the rules of natural justice. The parties involved in the appeal have the right to a fair hearing, without bias, conducted with reasonable promptness consistent with fair opportunity to present their respective cases.

Considerations and Conclusions

Complaints 1 and 2

7. The National Disciplinary Committee panel (“NDC”) held a disciplinary hearing against Mr Lowe, by videoconference, on 25 February 2021. The National Appeal Committee panel (“NAC”) held a hearing on 6 June to hear Mr Lowe’s appeal against the findings of the NDC held on 25 February 2021. At both hearings Mr Lowe raised concerns with the relevant panels about the time allocated to him to present his case.
8. Mr Lowe and his representative told the Union that they would need a full day for the NDC hearing. The Union refused his request, allocating 4 hours for the hearing. He says that this was insufficient and did not give him a fair opportunity to present his case.

9. Mr Lowe accepts that there is no Union rule which states how much time should be allocated to disciplinary hearings or requires them to accede to applications from defendants asking for more time. Instead, he argues that the principles of natural justice are implicit in the disciplinary rules and that the failure of the Union to provide him with the time he requested is a breach of those principles.
10. I have previously set out my position to natural justice in the context of union disciplinary charges in [Simpson v Unite the Union \(2\) -D/23-25/20-21](#). My view is that only the following principles apply to a union member facing disciplinary charges:
- a. The member has a right to be heard by an unbiased tribunal
 - b. He has a right to be given notice of any charges of misconduct, and
 - c. He has a right to be heard in answer to these charges.
11. Mr Lowe's position appears to be that, by limiting the time available for the hearing, he has not had a right to be heard. My office has asked him to explain why this is the case; however, he has not done so. He has not, for instance, explained what additional evidence or argument he would have presented at either hearing. Nor has he argued that he did not have the opportunity to call a witness or properly question witnesses.
12. The Union told me that the NDC panel had received and read a large bundle of documents submitted by both parties, including Mr Lowe's detailed response to the charges beforehand. They considered the time allocation before the hearing, and on the day itself, and considered that the time allocation was sufficient and equitable. The panel did not consider it necessary to extend the time available for submissions to clarify Mr Lowe's case. The NAC panel also considered the question of time allocation was further reconsidered at the National Appeals Committee hearing on 7 June 2021. The panel were satisfied that sufficient time for oral submissions had been allocated.
13. Turning to the NAC hearing the Union told me that that the timing and format of the hearing was set at a Preliminary Review Meeting ("PRM"). Mr Lowe raised

the timing issue at the beginning of the NAC meeting but the NAC were satisfied that sufficient time had been allocated to hear his appeal.

14. Given that the Union have explained that the timing issues were raised and considered by the NDC and NAC and that Mr Lowe had not explained to me how the time allocation prevented him from making his case I am satisfied that his complaint has no reasonable prospect of success. It is important to note that Mr Lowe has been given an opportunity to respond to the Union's position but has not done so.
15. The Union has also asked me to consider whether Mr Lowe submitted his complaint to my office in time given that the Appeal Hearing, which is the final stage in the Union's appeal process was held on 7 June 2021.
16. Mr Lowe further appealed the decisions of the NDC and NAC to the General Secretary on 10 August 2021. Rachel Curley, Deputy General Secretary responded on 18 August 2021 confirming that that Rules 3.4 and 4.6 of Appendix A had been met and that there was no basis for her or the joint General Secretaries to intervene. She also confirmed that the decision of the NAC is final under Rule 4.5 of Appendix A.
17. I have been informed by Mr Lowe that he did not receive the decision (report) of the National Appeal Committee until 1 July 2021. On that basis, his complaint to me, which was made on 15 December 2021, was within the statutory time limit.
18. Section 256ZA of the Act 1992 Act requires me to send notice to the party against whom 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 Lowe on 7 June 2022. This letter stated that, having considered the application and further correspondence, I was minded to exercise my powers under section 256ZA of the 1992 Act to strike out his complaints on the grounds that they had no reasonable prospect of success or were otherwise misconceived. The letter invited Mr Lowe to provide written representations as to why I should not strike out the complaints.

Mr Lowe e-mailed on 13 June 2022 confirming that he had received the NAC report on 1 July 2021. He did not, however, provide any further comments on the substantive complaints by the deadline for providing a response. My officer wrote again on 23 June 2022 seeking a reply to the letter of 7 June 2022. Mr Lowe did not reply to that e-mail within the deadline.

19. Consequently, I am satisfied that the complaints to me have been submitted on time but have no reasonable prospect of success.

A handwritten signature in black ink, appearing to read "Sarah Bedwell", written over a horizontal line.

Sarah Bedwell
The Certification Officer