

D/15/22-23

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

Taylor

v

National Association of Schoolmasters Union of Women Teachers

Date of Decision

3 August 2022

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Decision

1. Upon application by Seán Taylor (“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 Mr Taylor’s complaint, set out at paragraph 3 below, on the grounds that the complaint, as advanced by the Applicant, has no reasonable prospect of success.

Reasons

Background

2. Mr Taylor made this complaint by an application dated 4 November 2021 as a member of National Association of Schoolmasters Union of Women Teachers (“the Union” or “NASUWT”).
3. Following correspondence with my office, Mr Taylor, confirmed his complaint as follows:-

Complaint re: Section 3.16 of the Rule 27 protocol.

The NASUWT breached this rule on 19 May 2021.

Phil Kemp, the NASUWT President and the complainant in the internal disciplinary process known as Rule 27 remained in a virtual hearing longer than Seán Taylor’s representative Paul Nesbitt, and that this led to one party being present in the hearing room in the absence of the other.

This rule was broken in subsequent hearings on 9th July 2021, 13th July 2021 and 5th October 2021

Seán Taylor’s advocate, Paul Nesbitt attended the 19th May hearing from 11:00 till 11:10.

Phil Kemp, the Complaint Presenter, attended the 19th May hearing from 11:00 till 11:58. He was therefore present in the hearing in the absence of Paul Nesbitt for a period of 48 minutes.

Phil Kemp being present in the 'virtual' hearing room without anyone from Seán Taylor's party being present, is therefore in breach of Rule 27 Protocol 3.16 that states "Neither party may be present in the room allocated for the hearing in the absence of the other".

4. This complaint arose from the Union's disciplinary proceedings against Mr Taylor which included a Disciplinary Committee hearing, held by video-conference, on 19 May 2021. At that hearing Mr Taylor's representative, Paul Nesbitt, made a request to postpone the hearing which was not agreed. The minutes of the hearing recorded that a decision to proceed in Mr Taylor's absence was conveyed to Mr Nesbitt and that,

"the Committee agreed to adjourn until 10:45am to allow the Respondent's Representative to decide whether he wished to attend and present on behalf of the Respondent. The Representative declined. However, a request was made to air further procedural issues at the Chair's discretion."

5. The minutes noted that Mr Nesbitt made his procedural points before withdrawing, and that the hearing continued in Mr Taylor's, and Mr Nesbitt's, absence.
6. Mr Taylor appealed the decision of the Disciplinary Committee. This went ahead on 5 October 2021. Mr Taylor e-mailed the Union, on the day of the hearing explaining that he would not be attending the hearing because his representative could not secure paid release from work. The Appeal Committee decided to proceed with the hearing in Mr Taylor's absence.

The Relevant Statutory Provisions

7. 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

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

Rule 27 Internal Union Discipline

...

(7) Convening of Meetings

(a) Whenever the convening of a meeting is required by this Rule, the procedure set out below shall be followed.

...

(d) If, in the opinion of the Complaint Secretary, the Respondent or the Complainant submits written good cause no less than twenty-four hours before the time of the hearing why s/he cannot attend, the hearing shall be adjourned to a future date. If the Respondent or the Complainant does not attend the hearing, then it shall be for the Chair of the Disciplinary Committee or, as appropriate, the Appeals Committee to determine whether or not the hearing should proceed in the absence of the Respondent and/or the Complainant.

...

(12) Protocol

The National Executive shall adopt and publish a protocol for the progression of Rule 27 proceedings which shall be adhered to by all parties.

**Rule 27 Protocol for Progressing Complaints under NASUWT Internal
Union Discipline**

Appendix 1

**NASUWT Internal Association Discipline
Disciplinary Committee Hearing Procedure**

3. Procedure at the Hearing

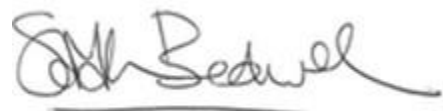
3.16 Neither party may be present in the room allocated for the hearing in the absence of the other.

Considerations and Conclusions

9. Mr Taylor's complaint is that the Union breached section 3.16 of Appendix 1 of the Rule 27 Protocol for Progressing Complaints under NASUWT Internal Union Discipline ("section 3.16") because the other side was present at the hearings for longer than Mr Taylor or his representative, Mr Nesbitt, was present. Section 3.16 sets out that "Neither party may be present in the room allocated for the hearing in the absence of the other."
10. The Union's position is that Rule 27 (7)(d) enabled the Disciplinary Committee and the Appeal Committee to proceed in the absence of one or both parties and that, consequently, section 3.16 of the protocol did not apply. They noted that neither Mr Taylor nor Mr Nesbitt attended the hearings and drew my attention to the fact that Mr Nesbitt took part in the videoconference before the hearing on 19 May 2021. He raised procedural issues on behalf of Mr Taylor but left before the hearing began. I have seen minutes of the meetings which support the Union's position.
11. In my view, Rule 27(7)(d) clearly enables the Disciplinary or Appeals Committee to proceed in the absence of either party should they fail to attend a hearing. It is also clear to me that Section 3.16 of the protocol cannot be engaged where the relevant Committee has decided to proceed in the absence of one party.

12. Mr Taylor has not provided any evidence to suggest that he, or his representative, attended the relevant hearings. Nor has he extended his complaint to the Union's decision to go ahead with the hearings in his absence. Consequently, my view is that the Rule cannot have been broken in the manner described in the complaint and the complaint has no reasonable prospect of success.

13. 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 Taylor on 1 July 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 the complaint on the grounds that it had no reasonable prospect of success or was otherwise misconceived. The letter invited Mr Taylor to provide written representations as to why I should not strike out the complaint. In response, Mr Taylor raised a number of points about the Union's reasons for proceeding in his absence and, in particular, argued that they may have breached the Equality Act 2010 by failing to take into account his disability and make reasonable adjustments. These are important issues but are outside my jurisdiction. I can only consider whether the Union breached the Rules in the manner set out in Mr Taylor's complaint.

A handwritten signature in black ink, appearing to read 'Sarah Bedwell', is written over a horizontal line. The signature is cursive and somewhat stylized.

Sarah Bedwell
The Certification Officer