

D/3-4/24-25

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

Alam (2)

v

Unite the Union

Date of Decision

13 May 2024

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## **Decision**

1. Upon application by Mr Manir Alam (“the applicant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

I refuse to make the declarations requested by Mr Alam that the Union had breached Executive Committee Guidance Paragraph 6.5.4 on 22 February 2022 and Rule 18.1 on 24 February 2022.

## **Background**

2. Mr Alam brought this application as a member of Unite the Union (“the Union”). He did so by a registration of complaint received at the Certification Office on 28 December 2022.
3. Following correspondence with my office, Mr Alam, confirmed the complaints as follows:-

### **Complaint 1 – complaint of breach of rule 6.5.4 on 22 February 2022**

It has always been custom and practice at our Branch that the General Elections have been conducted via paper ballot affording members a full day to cast their vote timed between 9am and 4pm. In the February 2022 Elections our Branch decided to conduct Election for the Lay Officials via show of hand at a Branch meeting and allowing time to cast the vote only 5 minutes. Our Branch refused to accept the Rule 6.5.4 which exists in the EC Guidance on the Implementation of the Rule. Rule 6.5.4 clearly states: "The precise mechanics of informing the members of the workplace, and dealing with nominations and the Election, may vary from workplace to workplace but any such case will be a FAIR PROCEDURE." We work in the transport industry as bus driving working continental shifts i.e., different patterns, not every member can cast their vote or even attend a meeting at 19:30pm. As said it was a much more fair procedure when our Branch followed Rule 6.5.4 allowing members a full day to vote at their own leisure.

## **Complaint 2 – Breach of rule 18.1 on 24 February 2022**

Our Branch in the 2022 Main Elections breached Rule 18.1, acted contrary to the Rule when holding the elections for Shop Steward posts. The Rule clearly states, "that the Election shall take place at MEETING held between 1st January and 31st March". Instead it was paper balloted in a canteen area where drivers were influenced who to vote and who not to vote for and I have suffered detriment.

4. A hearing took place by Video Conference on 24 April 2024. Mr Alam represented himself. He submitted a skeleton argument and his own witness evidence. The Union was represented by Mr Michael Potter of Cloisters. The Union submitted a skeleton argument, prepared by Mr Potter and witness statements from Mr Taj Salam, Branch Secretary and Ms Karen Reay, Regional Secretary. Mr Alam, Mr Salam and Ms Reay gave oral witness evidence.
5. There was also in evidence a bundle of documents consisting of 148 pages. The bundle contained correspondence and standing orders. Separately there was in evidence the Union rulebook effective from the Rules Conference 2019 and the EC Guidance on the implementation of rules revised following the 3<sup>rd</sup> Rules Conference.

### **Agreed facts**

6. On 27 January 2022 the Branch Secretary, Mr Salam, emailed branch members, explaining that the branch election nominations had closed. He explained that the branch President had been re-elected unopposed but that there would be a ballot for all other positions. He explained that:

“The Branch Secretary, Vice President, equalities officer, and Branch Treasurer could be elected at the next Branch Meeting if so decided by the meeting by a simple majority, the shop stewards elections will be held on Thursday 24 February 2022 between the hours of 09:00 – 16:30.”

7. On 28 January 2022 Mr Salam emailed the branch providing details of the nominees and explain that the Branch Auditors and President had been elected unopposed. He explained that:

“The Branch Lay Officials/Workplace Reps will be elected at the next Branch Meeting if so decided by the branch; the next branch meeting will be held on 22<sup>nd</sup> February 2022 at 19:30 hours at **Habib’s Restaurant, Killinghall Road, Bradford, BD3 7JD**. The shop Steward/Workplace Reps elections will be held on 24<sup>th</sup> February 2022 in the **Balcony Canteen Area, at the Bradford Interchange, from 0900hrs to 1630hrs**. The ballot count will be held in the canteen area, immediately after close of ballot. All candidates and members are welcome to witness the ballot count.

Members on holidays, sick leave or for any other reason, who are unable to attend in person to cast their vote, on the day of the ballot, can request a proxy vote by [contact details given]”

8. On 8 February 2022 Mr Salam wrote to branch members. He clarified that the Branch Vice President, Secretary, Equalities Officer and Branch Treasurer would be elected at the Branch Meeting on 22 February at Habib’s Restaurant. He also explained that the Shop Stewards/Workplace Reps and Unite Learner Reps would be elected on 24 February 2022, between the hours of 09:00 and 16:30, in the Balcony Canteen at the Bradford Exchange.
9. Mr Alam emailed Karen Reay, the Regional Secretary, and Mr Salam a number of times explaining why he did not think elections held at the restaurant would follow a fair and democratic process. He set out his reasons for this. He also explained that it was custom and practice at the Branch for the elections to be held in the workplace and by paper ballot. He also explained that the election for workplace representatives /shop stewards, must be held at a Branch Meeting.

10. The elections for Branch Officials were held on 22 February 2022 at the Branch Meeting at Habib's restaurant. The meeting was asked to decide whether the vote should take place at the Branch Meeting and whether it should be by secret ballot or show of hands. The meeting voted, by show of hands, to hold the vote at the meeting by show of hands.
11. The election for shop stewards and Unite Learner Representatives went ahead on 24 February 2022 in the Balcony Canteen at the Bradford Interchange.

### **The Relevant Statutory Provisions**

12. 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.

### **The Relevant Rules of the Union**

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

## **NATIONAL RULE 17 - BRANCHES**

17.7 Each Branch shall have for its management branch executive officers consisting of a Chair, a Vice-Chair (where a branch so decides), a Treasurer, an Equality Officer and a Secretary; and such other officers as the Branch may elect. They shall be elected at a Branch meeting by show of hands, or by ballot, if so decided by the meeting. The election shall take place at a branch meeting held between 1<sup>st</sup> January and 31<sup>st</sup> March in each third year and the elected candidates shall take office for three years. Casual vacancies may be filled at an ordinary Branch meeting, but notice of the impending election must be given to members of the Branch on the notice convening the meeting. The positions of Secretary and Treasurer may be held by the same member if the Branch so chooses.

## **NATIONAL RULE 18 - WORKPLACE REPRESENTATION**

18.1 At each workplace, the members employed at that workplace, shall elect from amongst themselves, at least every 3 years, 1 or more of the following representatives:

18.1.1 Shop stewards/workplace representatives

18.1.2 Safety representatives

18.1.3 Learning representatives

18.1.4 Equality representatives

18.1.5 Environment representatives

The election shall take place at a meeting held between 1st January and 31st March in each third year, and the elected candidates shall take office for three years. Such workplace representatives as listed above shall be entitled to attend the triennial Regional Industrial Sector Conference.

## **EC Guidance on the implementation of rule revised following the 3rd Rules Conference**

6.5.4 Prior to any election, the members in the workplace should be informed of the pending election and invited to volunteer for election or nominate a colleague for election. The precise mechanics of informing the members on the workplace, and dealing with nominations and the election, may vary from workplace to workplace, but any such case will be a fair procedure. In the event of dispute the Regional Officer should be contacted and the Regional Secretary should be informed.

## **Considerations and Conclusions**

### **Complaint 1**

14. Mr Alam and the Union agree that it has been custom and practice at the Branch to hold all elections, including the Branch Committee elections, in the workplace canteen. This enabled branch members to vote, at a time convenient to them, throughout the day. Mr Salam told me that there had been a change of practice following a previous complaint about the Branch Committee elections. He explained that this was because Adrian Weir, then Deputy Chief of Staff at the Union, had told him that Rule 17.7 required that Branch Officers should be elected at a Branch Meeting. The 2022 elections had, therefore, been held at a Branch Meeting which was held away from the workplace, in a Restaurant, during the evening.
15. Mr Alam did not agree that Mr Weir had provided this advice. He did not, however, have any evidence to support this. His position was that Paragraph 6.5.4 in the Executive Guidance on the Implementation of the Union's Rules ("the EC Guidance") should take priority over Rule 17.7 and enable the Branch to conduct elections in line with its previous custom and practice.
16. The difficulty with Mr Alam's position is that Rule 17.7 is clear that Branch Officer elections must be held at a Branch Meeting. The EC Guidance is described as being "guidance on the implementation of the Rules". Whilst it gives branches significant autonomy as to how they conduct the meeting, I cannot see how it would enable a branch to ignore the terms of Rule 17.7. In my view the Branch must follow the Rules and the EC Guidance. If there is any conflict between them then the



Rules would take priority. In this case, however, it is not clear that there is any conflict.

17. Mr Alam argued that EC guidance paragraph 6.5.4 required that the election procedure should be fair. He argued that the previous practice was a fair procedure. It gave the branch members, who work shifts, sufficient time to cast their vote and ensured that they could vote in secret. He was concerned about the impact of voting by show of hands which, in his view, might lead to animosity between colleagues as well as potentially causing stress and anxiety. He was also concerned that holding the branch meeting, and hence the election, at a local restaurant prevented some members from attending for a range of reasons including the fact that they would be working in the evening and that some members were unable to attend the restaurant. He told me that he could not attend because the smell of spicy food aggravated his breathing.
18. I understand, and empathise with, Mr Alam's position. It is arguable that the practice of holding the ballot across a whole day in the workplace canteen enables a greater number of branch members to vote. I note, for instance, that the number of participants in the 2022 Branch Officials elections was fewer than in the 2018 elections. Rule 17.7 is clear, however, that the election must take place at a Branch meeting. The fact that custom and practice had developed otherwise does not enable the Branch to ignore Rule 17.7.
19. The question for me, therefore, is whether the process for the elections at the Branch meeting was fair. Mr Potter told me that, even without the EC Guidance, the election process should be fair. I agree with him. He also argued that it was not a question as to whether, in the circumstances of each individual branch, there may be an arguably fairer process. The process itself simply had to be fair.
20. Mr Salam explained to me that proper notice had been given to the Branch about the election and conduct of the meeting. The notification was issued by email on 28 January 2022 and the Branch Meeting took place on 22 February 2022. This should have given members sufficient time to rearrange shifts so that they could attend or

to vote by proxy if they were unable to do so. Whilst Mr Alam challenged whether it was possible to vote by proxy he did not provide any evidence that people had been unable to obtain a vote by proxy. Mr Salam confirmed that no one had applied for a proxy vote.

21. Mr Salam explained to me that, once it became clear that the election had to be held at a Branch Meeting, the Branch Committee took the decision to arrange this offsite with a meal provided after the Branch Meeting. This was because Branch Meetings held offsite, with a social event afterwards, generated more attendees than those held at the workplace. Those present at the meeting were invited first to decide whether the election should be held at that Branch Meeting or in the workplace. Members voted to hold the ballot at the Branch Meeting. Members were then asked to vote as to whether the ballot should be a secret ballot or a show of hands. Members voted to hold the ballot by a show of hands. The elections then went ahead. Mr Salam's evidence is supported by the Minutes of the Branch Meeting.
22. It is worth noting that Mr Salam also explained that, had the Branch Meeting decided to defer the ballot, any proxy votes would remain valid. Should the member then be able to attend the ballot they would be able to withdraw their proxy vote.
23. Whilst, as I have acknowledged above, this process led to a fall in the number of people voting in the election it does appear to be a fair process. Members were given sufficient notice of the meeting so that they could arrange to attend. If they could not attend then they could have used a proxy vote. Ms Reay told me that this approach was common across the Union and that she was satisfied that it was consistent with Rule 17.7 and with EC Guidance paragraph 6.5.4. Consequently, I do not agree with Mr Alam that the Union did not comply with the relevant EC Guidance and I refuse to make the declaration he has requested.
24. It is worth noting, however, that the process the Branch followed resulted in fewer votes being cast than in 2018. Mr Potter acknowledged that this was the case and that there may be room for improvement in the Branch processes. Mr Salam also

told me that it might be possible to hold a Branch Meeting in the workplace, with the elections as the only agenda item and for the meeting to remain open all day. I would encourage the Branch to look at ways of improving their processes, including Mr Salam's suggestion, so that more Branch Members can participate in their democracy. This could also include considering whether using "show of hands" is the best way for this Branch to conduct ballots. Voting this way, is, of course, an accepted practice in many Unions. However, Mr Alam has raised some genuine concerns about its use in this Branch, and the Union may wish to consider these going forward.

## **Complaint 2**

25. This is a more straightforward complaint. Mr Alam and the Union agree that this election, for Shop Stewards/Workplace Representatives and for the Union's Learner Representative was held according to the custom and practice of the Union. It appears, from Mr Salam's evidence, that his process has been followed for at least thirty years. Mr Alam agrees with this. His complaint, however, is that the election did not take place at a meeting as required by Rule 18.1. He acknowledges that this may appear to be inconsistent with the views he expressed in relation to Complaint 1.

26. The Union asked me to look at the wider, common sense, interpretation of the word meeting in the Union Rules. They agree that the ballot did not take place at a Branch Meeting, but Rule 18.1 does not require that. In their view, the arrangements for the ballot could be considered to be a meeting in the wider sense of the word because it resulted in Branch Members coming together albeit that attendance would vary throughout the day. These arrangements were in place to afford the maximum opportunity for members to vote and, therefore, participate in the Union's democracy.

27. I am required to take a commonsense approach when interpreting Union Rules and, where, there is any doubt, I should favour the interpretation which increases democracy within a Union. On that basis, whilst the election was not held at a

meeting, in the narrowest interpretation of the word “meeting”, I am satisfied that the gathering of members over a period time for the sole purpose of voting could be described as a meeting. In reaching this view I am conscious that this Branch appears to achieve a higher participation in the Union’s democracy by holding a workplace ballot over a period of time. It is evident from Complaint 1 that this is the case. I am also conscious that Rule 17.7 requires ballots for Branch Officials to be held at a Branch Meeting whilst Rule 18.1 requires that the Representative elections should be held at a meeting.

28. On that basis I do not agree with Mr Alam that the Union breached Rule 18.1 and refuse to make the declaration he has requested.

### **Observations**

20. Much of the evidence before me was not relevant to the complaints and I have not, therefore needed to resolve some of the disputed issues. That included whether Mr Weir had advised Mr Salam that the Branch Official Elections should be held at a Branch Meeting because it is clear from the Rules that this was the case. It also included an issue as to whether Mr Alam had attended a previous meeting at the Restaurant when a by-election was held.

30. Mr Alam had expressed concern in his correspondence with my office that, during the Shop Stewards/Workplace Representatives and Learner Representative elections some members may have been using videos to encourage others to vote in a certain way. Whilst he has included this within his complaint wording he has only identified a potential breach of Rule 18.1 on the basis that the election was not held at a meeting. I have not, therefore, considered this as part of his complaint.



Sarah Bedwell

The Certification Officer