

CO/10/24-25

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

Cromwell

v

ADCU

Date of Decision

27 November 2024

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Decision

1. Upon application by Mr Peter Cromwell (“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 application on the grounds that the complaint, as advanced by Mr Cromwell, has no reasonable prospect of success.

Background

2. Mr Cromwell submitted an application to make a complaint, on 5 January 2024, as a former member of the App Drivers and Couriers Union (“the Union” or “ADCU”)
3. Following correspondence with my office, Mr Cromwell confirmed his complaint as follows:

Complaint

On or around 13 December 2023, the union breached rules of natural justice implied in Rule 8, when it expelled Peter Cromwell from membership without giving him notice of the charges against him, and without informing him of any right to be heard in answer to the charges against him.

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;

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 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 8 – Integrity

8.1 The National Executive Committee have the authority to:

- i) suspend or terminate the membership of any member
- ii) suspend or terminate any member from holding union office
- iii) suspend a member from benefit
- iv) suspend or ban a member from attending meetings or participating union activities

8.2 The National Executive Committee can exercise these disciplinary powers if based on evidence they are satisfied a member:

- i) is acting contrary to union rules
- ii) is seeking to harm the interests of the union
- iii) is promoting ideals that contravene any element as defined in Rule 18.5

8.3 Members who have had disciplinary action taken against them by the union may appeal any such decision to the National Executive Committee by making the appeal in writing to the General Secretary within 30 days.

8.4 The National Executive Committee members and all elected officials must serve to the highest level of integrity and accountability to member interests. Union

officials and the National Executive Committee must not overstep their powers and use disciplinary measures to victimise any union member. Such victimisation or vexatious action is grounds for appeal and all members will be advised of their further right to take any such complaint forward to the Annual General Meeting or the Certification Officer.

Considerations and Conclusions

6. Mr Cromwell joined the Union in 2021. In the early part of December 2023, he contacted the Union and was informed that no records could be found regarding his membership. He told my office that he had received no notification of disciplinary action nor any relevant appeals process. He believed that the termination of his membership was a disciplinary sanction and that, in doing so the Union has breached the principles of natural justice implied in Rule 8 of the ADCU Rulebook.
7. In correspondence between my office and the Union, the Union stated that Mr Cromwell's removal from membership was not a disciplinary sanction. The Union explained that it had been the victim of data fraud. There had been a series of data breaches between 1 November 2023 and 22 December 2023, resulting in the loss of around 3000 membership records prompting a police investigation which, I understand, is ongoing.
8. The Union also confirmed to my office that it would contact Mr Cromwell, offering to either reinstate his membership with no interruption to his length of service, or to reinstate his membership from a date of his choosing, along with reimbursement of any membership fees as appropriate.
9. On 19 July 2024, Mr Cromwell shared with my office an email from the Union confirming that these options had been put to him on 1 July 2024.

10. In further correspondence between my office and Mr Cromwell, Mr Cromwell maintained his view that he had been the victim of a deliberate disciplinary sanction, the goal of which was to exclude him from participation in the union. However, Mr Cromwell has provided no evidence in support of his arguments.
11. Instead, Mr Cromwell has asked my office to investigate his complaints directly with the Union, asserting that if such an investigation were to be undertaken, his position would be vindicated. I do not, however, have any powers to investigate such complaints. It is for Mr Cromwell, as the applicant, to bring a complaint to me and to provide the evidence and argument to support that complaint. My team have explained this to Mr Cromwell.
12. It is worth noting that my office has not asked Mr Cromwell to prove his case at this stage. Instead, he has been asked to provide some information, or evidence, which shows that he would have a reasonable prospect of success were his complaint to proceed to a hearing. This could, for instance, be a record of the meeting at which disciplinary action was taken or the evidence from another union member which supports Mr Cromwell's view that disciplinary action had been taken. Mr Cromwell has not provided me with any such information. I am satisfied, therefore, that his complaint to me has no reasonable prospect of success.
13. Section 256ZA of the 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 Cromwell on 24 October 2024. 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 complaint on the ground that it had no reasonable prospect of success.
14. The letter invited Mr Cromwell to provide written representations by 8 November 2024 as to why I should not strike out the complaint. No response to the show cause letter was received.

A handwritten signature in black ink, appearing to read "Sarah Bedwell", is enclosed within a thin black rectangular border. The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Sarah Bedwell

The Certification Officer