

DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE  
UNDER ARTICLE 90A OF THE TRADE UNION AND LABOUR  
RELATIONS (NORTHERN IRELAND) ORDER 1995

IN THE MATTER OF A COMPLAINT MADE AGAINST THE TRANSPORT AND  
GENERAL WORKERS UNION

APPLICANT

MR JOHN MC KAY

Date of Hearing

18 October 2002

Date of Decision

29 November 2002

DECISION

- 1.1 Under Article 90A(1) of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (as amended) ("the 1995 Order") 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 paragraph 90A(2) of that Order, may apply to me for a declaration to that effect.
- 1.2 Article 90B of the 1995 Order empowers me to make such enquiries as I think fit and, after giving the applicant and the union an opportunity to be heard, to make or refuse to make the declaration asked for. Whether or not I make the declaration sought, I am required to give the reasons for my decision in writing.
- 1.3 Where I make a declaration under Article 90B I am required, unless I consider it inappropriate, to make an enforcement order on the union. My enforcement order is required to impose on the union one or both of the following requirements
  - (i) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;
  - (ii) to abstain from such acts as may be specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.

- 1.4 On 7 November 2001, I received an application from Mr John Mc Kay, a member of the Transport & General Workers Union (the union) who, at that time, was Chairman of the union's Irish Regional Committee (IRC). Mr Mc Kay claimed the union had breached six of its rules, including a breach of rule 8(3). The union denied it had breached any of its rules and also disputed my jurisdiction to hear Mr Mc Kay's complaints. Consequently, I held a jurisdictional hearing on 18 July 2002 (D/2002/02). At the beginning of that hearing the union accepted I had jurisdiction to hear Mr Mc Kay's complaint of an alleged breach of rule 8(3).
- 1.5 Mr Mc Kay alleges that the union breached rule 8(3) of its rules by refusing to convene a meeting of the IRC despite there being a requisition by a majority of IRC members, and by subsequently declaring the IRC meeting, held on 13 August 2001, to be unconstitutional.

**Rule 8(3) states:**

*"The Regional Committee shall meet once a quarter or oftener if, in the opinion of the Regional Secretary the business renders it necessary, or by requisition of a majority of the members."*

- 1.6 The relevant parts of the legislation are attached in Appendix 1. The rules of the union relating to Mr Mc Kay's alleged complaint are set out in the April 2000 edition of the union's rulebook, the relevant parts of which are attached in Appendix 2. The allegation, that the rules of the union had been breached relating to matters mentioned in Article 90A(2)(d) of the 1995 Order, i.e. the constitution or proceedings of any executive committee or decision-making meeting, was accepted by me as a complaint under Article 90A(1) of that Order.
- 1.7 I investigated the complaint in correspondence. As required by Article 90B(2) of the 1995 Order, the parties were offered the opportunity of a formal hearing, and this took place on 18 October 2002. My Office prepared a bundle of documents for the hearing, consisting of the exchanges of correspondence with the parties, together with their enclosures. The applicant submitted two further documents at the start of the hearing. Mr Mc Kay, attended, and was represented by Mr John Curran, IRC member; Mr Michael O' Reilly (former Irish Regional Secretary) attended and gave evidence. The union was represented by Mr Simon Auerbach, Pattison & Brewer, solicitors. Mr Ray Collins, the union's Assistant General Secretary responsible for administration and services, Mr James Elsby, acting Irish Regional Secretary, and Mr Ben Kearney, acting Regional Organiser, were in attendance and gave evidence. My decision was reached on the basis of the representations made by the applicant and the union, together with the documents presented by them.

## Declaration and Order

- 1.8 After careful consideration of all the documents, evidence and arguments put to me and the relevant rules of the union:

**"I declare that the Transport and General Workers Union breached rule 8(3) of its rules by refusing to convene a meeting of the Irish Regional Committee notwithstanding a requisition by a majority of the Irish Regional Committee members requiring the meeting in accordance with rule 8(3)."**

**"I declare that the Irish Regional Committee meeting held on 13 August 2001 was a constitutional meeting for the purposes of rule 8(3) of the rules of the Transport and General Workers Union."**

**"I order the Transport and General Workers Union to pay, in full, the expenses of those Irish Regional Committee members who attended the Irish Regional Committee meeting, held on 13 August 2001, and such payments are to be paid by 31 December 2002."**

The reasons for my decision are set out below.

### **The relevant facts.**

- 2.1 Following the suspension of the Irish Regional Secretary and the Irish Regional Organiser in June 2001, the union's general secretary, Mr Morris, wrote (26 June) to officers and staff in the region and to members of the General Executive Committee (GEC) saying he had temporarily appointed Mr Elsby to the Irish region to ensure "no disruption to the administration of the region's affairs, or the service the union provides to its members." On 29 June, Mr Elsby wrote to thank Mr Mc Kay for his guidance at an IRC meeting on 27 June, which had ensured that "service to members continued", he also said he intended working closely with him, as Regional Chair, to ensure the region "operates normally."
- 2.2 On 1 July 2001, 12 members of the union's GEC wrote to Mr Morris following the suspensions in the Irish region, advising that sensitivity was needed between London and the union's Irish structures as Irish members "had seen two senior officers being summarily sent home and told not to talk to anyone by a delegation from London." They said the message conveyed to those members is liable to do "serious and irreparable damage to the standing of our union in Ireland."
- 2.3 Prior to a meeting of the Regional Finance & General Purposes Committee (F&GPC) on 24 July 2001, Mr Elsby was asked by a number of IRC members if he was organising an IRC meeting to discuss the circumstances surrounding the suspensions in the Irish Region and if expenses for attending the meeting

would be paid: he replied in the negative to both questions. At the F&GPC meeting he asked Mr Mc Kay if he had called an IRC meeting. When Mr Mc Kay said he had, Mr Elsby held firmly to the view that Mr Mc Kay did not have the power to call this meeting.

- 2.4 Mr Elsby wrote to Mr Mc Kay (25 July 2001) to express "deep concern" about him asking IRC members to attend a special meeting that week. He said Mr Mc Kay had no authority to call any constitutional committee meeting, adding that this responsibility was "vested" in him, as the General Secretary had instructed him to administer the region. Mr Elsby advised Mr Mc Kay he would raise these matters through the F&GPC and the IRC, and claimed these actions directly challenged his and the General Secretary's authority. The same day, Mr Elsby wrote to IRC members confirming that expenses would not be paid to anyone attending this meeting.
- 2.5 On 5 August 2001, Mr Mc Kay wrote to Mr Morris alleging that Mr Elsby had "deliberately and wilfully" ignored union rules. He said the Region did not have a Regional Secretary (following his suspension) and as Mr Elsby had not been so "designated" the only way a special IRC meeting could be called was by a majority requisition. He said Mr Elsby knew 13 IRC members had asked for a meeting and by cancelling it Mr Elsby had deliberately disregarded union rules. Mr Mc Kay said Mr Elsby's view (on who could call constitutional meetings) was another example of him deliberately ignoring the union's rules and his actions undermined the union's lay democratic principles.
- 2.6 On 8 August 2001, Mr Mc Kay and Mr Curran went to the union's regional office in Belfast with individually written requests from 13 IRC members requiring an urgent IRC meeting. They were told that Mr Elsby was on holiday and that Mr Kearney was there temporarily performing his duties. When Mr Mc Kay informed him that a majority of IRC members requested a meeting, Mr Kearney requested proof and telephoned Mr Collins, who agreed that sight of the requisitions was required and these were faxed to him. The requisitions, each addressed to Mr Mc Kay, and dated August 2001, read as follows:

*"This is to confirm that I am demanding an emergency meeting of the Regional Committee, no later than Tuesday 14<sup>th</sup> of August (2001), to deal with the present crisis."*

- 2.7 Hearing nothing further from the union's administration, the IRC went ahead and held its emergency meeting in its Dublin office on 13 August 2001; 11 IRC members attended. The IRC had arranged for an employee from that office to take minutes of the meeting, but Mr Kearney, who was present in the Dublin office, intervened and instructed the staff member not to do so.
- 2.8 On 24 August 2001, Mr Morris wrote to Mr Mc Kay in support of Mr Elsby. He said he copied the correspondence to Mr Elsby to advise the IRC and Mr Mc Kay of the "correct constitutional position" adding that the union would

"vigorously defend its position" if its rules were legally challenged.

- 2.9 On the 29 August 2001, Mr Elsby called an extraordinary IRC meeting with a single item agenda "about a breakaway union." Mr Elsby prepared a statement entitled "Publicity around a Breakaway Union" for discussion at the meeting. It said; Mr Mc Kay had "no authority" under rule to call an IRC meeting; the IRC can only be called, with proper notice, by the regional secretary, and in the case of a meeting by "majority requisition" they must "state the reasons for such a meeting to the regional secretary, who has responsibility for convening it" (my emphasis); the IRC meeting of 13 August "was unconstitutional; the IRC discussed matters in the prerogative of the union's GEC which were being dealt with under union procedures and subject to legal process which protected those suspended; it was contrary to rule and natural justice for the IRC to debate matters relating to individuals subject to this process."
- 2.10 Under the heading 'Regional Chairman' the statement said that Mr Mc Kay "had no statutory authority under rule" to act in the IRC's name, citing in support paragraph 3 of schedule 1 to the union's rules, viz: *"Any member now in office, or any member accepting or being elected to office in the union shall conduct all matters relating to the union or the functions and purpose thereof through the branch or the appropriate committee or body connected with the union and only through the union. Members violating this rule shall be removed from office and their position declared vacant."* Summarising, the statement said the IRC had a duty to support Mr Elsby in administering the union on behalf of members and in line with the general secretary's letter and instructions.
- 2.11 On 23 October 2001, Mr Mc Kay wrote to Mr Morris expressing his disappointment at not receiving a reply to his letter (5 August). On 22 November he wrote to my Office claiming various breaches of union rules. In regard to rule 8(3), he said Mr Kearney and Mr Collins both refused to convene an IRC meeting despite a majority (13 out of 24) so requisitioning it and thereby satisfying that rule. He claimed rule 8(3) "effectively contradicted Mr Elsby's claim, that only the Regional Secretary had the power to convene constitutional meetings."
- 2.12 On 9 January 2002 Mr Morris wrote to my Office. He accepted entirely that, a majority of IRC members may requisition a meeting under rule 8(3). He said the Regional Secretary's functions included acting as IRC secretary, preparing agendas, sending out notices for meetings, ensuring minutes were taken, and associated administration work, including payment of expenses. He said it was not a function of a Regional Chairman to take such steps and this applied to both requisitioned and routine meetings.
- 2.13 Mr Morris said Mr Elsby learned in July (2001) that Mr Mc Kay had written to IRC members "purporting to convene" an IRC meeting. He said Mr Mc Kay had no authority or power to do so, and Mr Elsby's letter (25 July) was correct and he confirmed that Mr Elsby had also convened a special IRC

meeting (29 August) following his return from leave and after consultation with the Regional F&GPC on 23 August.

- 2.14 On 23 January 2002, Mr Mc Kay wrote to my Office saying he had received phone calls from several IRC members in July 2001. They were concerned at the negative impact events were having on their standing in the union movement and the community. He said, as Regional Chairman, he decided to seek their views and he wrote to every member and although some were on holiday he got replies from a majority seeking an extraordinary meeting to discuss events and, in particular, the suspensions of the two most senior employees in the region. He said Mr Elsby's extraordinary IRC meeting (29 August) had only one item on its agenda and not the matters the IRC wanted to discuss, therefore, he said the IRC was, for a second time, prevented from discussing matters, which initially led to it requisitioning its meeting (13 August).
- 2.15 On 19 March 2002, Mr Morris wrote to my Office. He said Mr Mc Kay had confirmed that it was he who had collated the requisitions for the IRC meeting (13 August), and it was common ground that Mr Mc Kay raised the matter with Mr Kearney, who referred it to Mr Collins, who in turn, advised Mr Elsby to convene an IRC meeting on his return from holiday, and Mr Elsby did so.

#### The Applicant's case

- 3.1 Mr Curran told me that Mr Mc Kay had been a union member for 41 years, serving most of that time on the Branch Committee, and as well was IRC Chairman for a period totalling 16 years. He said the union is a lay democracy, with decision - making processes in the power of democratically elected, properly constituted, lay committees. He said the IRC is the most powerful elected body in Ireland and under the union's rules its elected members have the power and authority to make decisions. He said the IRC represents 50,000 Irish members, with a duty under rule 8(1) and paragraph 3 of schedule 1, to carry on the union's business in the region. He said the evidence in this case would show that rather than facilitating an urgent IRC meeting, paid officials deliberately interfered with and tried to prevent it taking place; when it did take place, the proper administrative service that should have been provided, and indeed had been arranged, was withdrawn and the meeting was subsequently ruled unconstitutional.
- 3.2 Mr Curran said that following the suspensions in June 2001, IRC members received many enquiries by phone and in person, which were naturally directed to Mr Mc Kay, as Regional Chair. Mr Curran said there was a great deal of confusion and rumours about the suspensions and also about wider concerns for the reputation of IRC members and the union. He described events at the time as "catastrophic", and against the ethos of the union, and outside the control of the democratically elected committees, to such an extent that it impacted on the union's supreme policy making body the Biennial Delegate Conference (BDC) and, inter alia, the union lost its seat on

the Executive of the Irish Congress of Trade Unions (ICTU) and representation on the Northern Ireland Economic Forum. He said the ethos of the union can be found in Rules 4(3) and (4), viz:

“Rule 4

#### BIENNIAL DELEGATE CONFERENCE

- 3 *No member of the General Executive Council, permanent or full - time officer, or permanent or full - time member of the staff of the Union, or retired officer or member of the Union, or any member who is in receipt of a pension from any of the funds of the Union, and no member who is employed on Union business on a full-time basis with remuneration paid from funds which are raised from special contributions paid by Branch members as distinct from Union contributions, shall be eligible for nomination as a delegate to the Biennial Delegate Conference.*
- 4 *The General Executive Council shall be represented by not more than three of its members at any Biennial Delegate Conference, and its representatives may speak upon but shall not vote on any subject.”*

- 3.3 Mr Curran said; many IRC members were deeply concerned at the events surrounding the suspensions and urgently pressed Mr Mc Kay to call a special meeting; Mr Mc Kay did not decide himself to call a meeting, rather pressure was put on him to do so by IRC members; Mr Mc Kay decided in the circumstances to seek the views and advice of the IRC and despite it being the holiday period he got responses from a majority of IRC members asking for a meeting.
- 3.4 Mr Curran told me he accompanied Mr Mc Kay to the regional office to ask Mr Elsby to make administrative arrangements for the IRC meeting. As he was on holiday they spoke to Mr Kearney who was covering his duties. Mr Curran said Mr Kearney had no difficulty with their request but asked for proof of the requisitions and said he needed to consult with someone “higher up”. Mr Mc Kay told Mr Kearney the rules were clear and he did not need to do so, however, Mr Kearney phoned Mr Collins, who also sought proof, and so the requisitions from the 13 IRC members were faxed to him. During their conversation Mr Kearney advised Mr Collins that everything was in order and he would contact Mr Mc Kay again once he heard further from Mr Collins, expecting it would either be later that day or the next day.
- 3.5 Continuing, Mr Curran said, as Regional Chair, Mr Mc Kay was in the regional office every day and despite enquiring daily about progress, no-one contacted him to facilitate the IRC’s request. Mr Curran said, at one point Mr Mc Kay spoke to Mr Kearney and was told Mr Collins hadn’t called back. Mr Curran said Mr Mc Kay formed the view that nothing would happen and, as the senior elected lay person in the region, acting on the urgent request for a meeting by a majority of IRC members, he decided to proceed. He said Mr Mc Kay was open in what he did; he clearly told Mr Elsby (on 24 July) of his intention to call a meeting and he also did so in writing.

- 3.6 Mr Curran told me he believed rule 8(3) to be simply constructed and although Mr Morris claimed the Regional Chairman had no power to call an IRC meeting he said the absence of a specific power in the rules cannot mean that any Regional Chairman, or for that matter, any other committee member, must never call such a meeting if he or she has a majority requisition of members. He said, if I accepted the union's argument I would turn the ethos of this lay membership union on its head and make the work of such committees difficult, and possibly render their work inoperable for long periods of time. Referring to evidence given by Mr Auerbach at the jurisdictional hearing of this case (D/2/2002) Mr Curran said he agreed with Mr Auerbach, when he said union rules were not pieces of statute, and must be read in a reasonable and common sense way.
- 3.7 He said the union's interpretation of rule 8(3) cannot be its natural interpretation, nor, he suggested, would it be how ordinary members would understand it. Mr Curran said it cannot be reasonable to argue that elected Regional Chairmen in a lay democracy based union cannot call nor facilitate any IRC meeting and this was especially so given the background to this particular and unusual case.
- 3.8 Mr Curran said the union's rules are clear; a Regional Secretary is a paid official who cannot sit on such committees; he has no voting rights and his function and that of his staff is to facilitate elected lay members. Mr Curran said the failure of the union's administrators to assist the IRC to fulfil its duties under rules 8(1) and 8(3), was a breach of union rules and the breach amounted to interference under Article 90A(2)(d) of the 1995 Order. He argued that rule 8(3) cannot reasonably be interpreted to mean that a Regional, Assistant or General Secretary of the union can prevent, delay, thwart or otherwise interfere with a properly requisitioned regional committee meeting, as was the case here.
- 3.9 Mr Curran dismissed as nonsense, the union's claim that an IRC meeting could prejudice its position and offend natural justice in regard to the suspended employees, at such an early stage in that process, particularly as the IRC meeting occurred less than 8 weeks after their suspensions, and before any material investigation took place. He felt administrators tried to prevent the IRC meeting because they "second guessed" what it would discuss and as well as breaching it's rules, and the 1995 Order, the actions of the union's employees acted against natural justice.
- 3.10 Mr Curran said he took natural justice to mean fair play. He said the IRC wanted its share of fair play and the IRC's right to exercise the rules of the union is a matter of fair play. He said "Mr Morris deliberately used natural justice as an argument to create uncertainty." He said the meeting called by Mr Elsby, (29 August 2001) was irrelevant as it did not deal with the many issues that were concerning the IRC.
- 3.11 Mr Mc Kay told me that as an elected lay officer holding the highest



Regional office, he had power to requisition an IRC meeting under rule 8(3). He said the decision to do so was in response to demands from IRC members, as many of them were being questioned at branch meetings and were unable to provide answers. He said the situation was further confused by articles in the London Evening Standard and questions about union funds. He said his decision to requisition a meeting was a matter for the Irish region's administration, and not for staff based in London. He told me the Regional Secretary took instructions from him and as Regional Chair he made the decisions. He also said the IRC meeting on 13 August was a constitutional meeting; Mr Kearney had prevented a member of staff from taking minutes at the IRC meeting; and Mr Elsby had no authority to refuse to pay IRC members their legitimate expenses.

- 3.12 Mr O Reilly told me he was a union member for 40 years and had been a union organiser for 23 years, and its Republic of Ireland Secretary and its Irish Regional Secretary. He represented the union on the Executive Council of ICTU, the Civic Forum, the Irish Labour Party and the Economic Council. He said he saw himself "as a servant to the IRC not its master." He said rule 8(3) was a simple, straightforward rule and there was not a lot to think about. In his view if the IRC wanted a meeting he organised it. He said as Regional Secretary he did what the IRC asked him to do and where it made a request, he conformed with it.
- 3.13 Mr O Reilly said the situation in the Irish Region around the time of the suspensions was so serious that the General Secretary told the union's bi-annual conference it was "the greatest crisis in the union since 1922." He agreed there was nothing unusual in committee meetings having one - line agendas and that this was the first time in his experience where a Regional Committee had requisitioned a meeting.
- 3.14 Mr O Reilly said it usually took 10 days to organise an IRC meeting and he estimated the cost at £2,000. He likened rule 8(3) to a stool with three legs: the first leg deals with the normal "statutory" meeting; the second leg depends on the Regional Secretary's judgment, if he believes there is business to be dealt with he has the power to call an extra-ordinary meeting. The third leg of the rule makes provision for a majority of IRC members to requisition a meeting. He said "as the IRC had decided to requisition a meeting, you have to ask yourself under what circumstances are they going to invoke the third leg and the answer is fairly obvious; they were having a row with the administration and that's what I think "

#### The union's case

- 4.1 Mr Auerbach turned first to Mr Kearney, and invited him to give his evidence. He told me he had been a member of the union for 52 years as a full time official and officer and had replaced Mr O' Reilly as Republic of Ireland secretary. He confirmed; he was familiar with the work of Regional committees; as a general proposition the administration at IRC meetings was handled by the Regional Secretary; the Regional Secretary has responsibility

for the region; however in the Regional Secretary's absence he stressed that he was not the Acting Regional Secretary.

- 4.2 Continuing, he told me that when Mr Mc Kay asked him (8 August) to organise the IRC meeting he did not have the authority to do so in Mr Elsby's absence and, as a result he immediately contacted Mr Collins to put Mr Mc Kay's request in motion. He said he spoke to Mr Collins on three occasions on that day, and Mr Collins did, eventually come back to him sometime later after phoning Mr Elsby (who was on holiday) but he could not recall when that was. He said he was not opposed to the meeting taking place, but he thought it important that the Regional Secretary attended. He said a lot of work went into arranging IRC meetings, citing advance notice and payment of expenses to members, and arranging accommodation overnight. He added that an IRC meeting cost in the region of £4,000, and this needed Regional Secretary approval.
- 4.3 Mr Kearney said Mr Mc Kay wanted the meeting organised as soon as possible, but regardless of the fact that Mr Kearney had put this request in motion, Mr Mc Kay went ahead to organise it. Mr Kearney said he learned through "the grapevine" that the meeting would take place on 13 August 2001; on that morning he was in the Dublin office, in his capacity as Republic of Ireland secretary. When members of the IRC came in to go to the boardroom some (not Mr Mc Kay) "pressed very firmly" about secretarial services and expenses; he told them that secretarial services would not be provided nor would expenses be paid as he did not have permission to pay these. He confirmed that the IRC was provided with a meeting room and refreshments, but not secretarial services and that the situation that day was "highly charged."
- 4.4 Mr Kearney said that during this time there was a lot of discontent in the union and there were "rumours and wars going on all over the place" and that it was important to note that circumstances were very difficult and "we had to keep this organisation afloat. Even though the two chief officers were suspended, we had to endeavour to keep the union going in Ireland. And that was the most important function of my life, I can tell you that. It's most important. As I said earlier, I'm 52 years a member of this Union, I joined it at 14 and 3 months old and I think, for instance, for to allow it to deteriorate, to allow it to go down the tubes, even for a short time that I was there, I was going to try and keep the show on the road."
- 4.5 Mr Elsby then gave evidence and told me he had been a union member for 33 years as shop steward, convenor, branch and district secretary, regional organiser, regional secretary and assistant general secretary. He said the General Secretary asked him to administer the Irish region as its regional secretary and regional organiser following the suspension of two senior officers. Mr Elsby said he did not receive his appointment in written terms from the General Secretary; rather his appointment was verbal. Mr Elsby said he had direct responsibility for financial expenditure, staff supervision, and he was accountable for all industrial, political and other matters in the

region, whereas, the Regional Chairman was a "figurehead" constitutionally responsible for chairing IRC and F&GPC meetings.

- 4.6 Mr Elsby told me the IRC held a routine meeting on 27 June 2001, coincidentally, the day after the suspensions, and he gave a full report on the suspensions to the IRC. He said there were difficulties to be faced and he agreed the entire situation was "highly charged."
- 4.7 Mr Elsby said he knew a special (sic) IRC meeting had been called before he attended the F&GPC meeting on 24 July 2001 as he had been contacted by some IRC members. Some members asked him if expenses would be paid, others thought he had called it. Mr Elsby said he asked Mr Mc Kay (on 24 July) if he had called the meeting and he confirmed he had, adding that neither of them could agree on who had the "power" to call an IRC meeting. In reply to a question from Mr Auerbach, Mr Elsby confirmed that on 24 July he did not have, nor was he shown "any formal requisitions" nor was he aware of any request to the regional administration to organise such a meeting.
- 4.8 Continuing, Mr Elsby told me he received a phone call from Mr Collins, whilst on holiday in Cyprus telling him the IRC had requisitioned a special meeting. Mr Elsby said this was the first he knew of any such requisition. He said he decided to forgo part of his holiday to arrange the special meeting. He rang his secretary from Cyprus to arrange an F&GPC meeting for the 23 August. On his return he said Mr Kearney briefed him on the situation. He said Mr Mc Kay refused to participate in that F&GPC meeting, so it proceeded with a temporary chairperson. It was decided at the meeting to hold an extraordinary IRC meeting as soon as possible, and it took place on 29 August 2001. Mr Elsby said the IRC meeting on 29 August was attended by 24 people and although it had a one item agenda there had been a very wide discussion on a number of issues.
- 4.9 Giving his evidence, Mr Collins said there are checks and balances in the constitution and there are limits to everyone's authority. There are limits to the authority of the GEC and that is obviously governed by either laws or other restraints. The powers and responsibilities of any committee, including the IRC, are either governed by decisions of the GEC or by what is provided for in rule; or what is provided by the statutes or laws. There are certain matters that can only be decided by a particular committee and that might appear in rule. The governance of the union lies with the GEC which delegates authority to the General Secretary; such delegation is contained in the rules and it is made more explicit by resolution of the GEC every two years.
- 4.10 Mr Collins said this was a novel situation as it was the first requisitioned meeting in his 30 years experience. He said the Regional Secretary was responsible for organising any meeting and the union's GEC had laid down the authority and responsibilities of the Regional Secretary. He said the rulebook had been in existence since 1922 and had undergone substantial

amendment. In his view it was a "very short" rulebook to deal with a lot of procedures and custom and practice in the union. He said the Regional Secretary always convened ordinary IRC meetings and he could not see the difference in an ordinary and a requisitioned meeting as a meeting of the Regional Committee was a meeting of the Regional Committee and there is only one sort of Regional Committee meeting. Mr Collins said the rules were silent on how Regional Committee meetings are convened and organised.

- 4.11 Continuing Mr Collins said the only requisitions for the IRC meeting, that he was aware of, were all dated 8 August 2001, and some were faxed to Mr Mc Kay that day before being faxed to him. He said there was no evidence to show that Mr Mc Kay had approached the Regional Administration before this date to organise an IRC meeting.
- 4.12 In cross examination, Mr Elsby told Mr Curran that whilst he knew Mr Mc Kay had invited IRC members to an unconstitutional meeting on 24 July 2001, he had nothing in writing to confirm this when he wrote to IRC members on 25 July. He suggested that it was his letter that caused those IRC members calling for the meeting to realise that by not providing written requisitions they had "made a blunder" and the written requisitions were only subsequently submitted after he went on leave.

#### Reasons for my decision

- 5.1 The parties agreed that the suspensions in the Irish region in June 2001 caused a crisis in the union to the extent that a majority of IRC members felt compelled to demand an emergency IRC meeting to discuss the situation, under rule 8(3), before 14 August 2001.
- 5.2 The parties also agreed that the union knew of Mr Mc Kay's intention to call a "special" IRC meeting on 24 July 2001. From the evidence before me I note that Mr Elsby reacted to this by saying Mr Mc Kay had no power to call such a meeting and if he did so he made it clear in writing that he would not pay any expenses and that he considered such a meeting unconstitutional. I was not shown any evidence to support Mr Elsby's claims.
- 5.3 Although rule 8(3) is silent about how IRC meetings are organised I was told that quarterly meetings could be organised in ten days and an IRC meeting on 29 August 2001 had been arranged only six days before it took place. Whilst I accept that no precedent existed for any regional committee members requisitioning a meeting I would have expected such a meeting to have been arranged in a similar timeframe, if not more quickly, given the circumstances of this case.
- 5.4 I do not believe it is acceptable to use the absence of written requisitions as an excuse for delaying or denying the IRC its meeting in this case and I am in no doubt that the meeting requisitioned by the IRC could have been organised fairly quickly had the administration co-operated with the IRC.

- 5.5 I believe that Mr Kearney and Mr Collins were entitled to ask for proof of the requisitions for their records to ensure rule 8(3) was being complied with, but that being so the union should have explained this to Mr Mc Kay at an early stage. In my view, there was nothing to stop the process of organising the meeting going ahead in parallel with Mr Mc Kay gathering the necessary proof that a majority of IRC members had requisitioned the meeting.
- 5.6 I believe that the effect of Mr Elsby's decision on 24 July 2001 frustrated, rather than facilitated, the will of the lay membership. It also left a void, and little appeared to happen in the intervening fortnight until Mr Mc Kay approached Mr Kearney on 8 August 2001 with thirteen signed requisitions. Even then the evidence showed that little, if anything, happened and it is evident to me that the union was delaying and thereby denying the majority of the IRC members the meeting they had properly requisitioned. I note from the evidence that the union's general secretary appointed Mr Elsby (albeit verbally) to ensure that there was no disruption to the administration of the region's affairs, and the service provided to members; in my view by not co-operating with the Regional Chairman he failed to do so.
- 5.7 Mr Mc Kay gave the union reasonable notice of his intention to call this meeting. He was the most senior elected lay member in the region, and he was right to expect the union to support him. In the circumstances of this case I find that he had no other course of action left open to him other than to go ahead and organise the meeting in Dublin on 13 August 2001 and I find that this meeting was a constitutional meeting under rule 8(3) of the union's rules and Article 90(A)(2)(d) of the 1995 Order and should be recognised as such by the union.
- 5.8 After receiving requisitions from Mr Mc Kay on 8 August 2001, the union organised an IRC meeting on 29 August 2001 following Mr Elsby's return from leave and argued that this "fulfilled the demands" in the requisitions. I note that the minutes of this meeting record that Mr Elsby's statement (referred to in the relevant facts at 2.9 & 2.10) were read out. The minutes record "there then followed a full discussion with various members of the committee expressing their points of view. After full and careful consideration it was agreed that there was no support for the idea of setting up a breakaway union and that the regional Committee should agree a suitable press statement to be released condemning such a proposal and reinforcing the union's commitment to upholding and maintaining the interests of ATGWU members in Northern Ireland and Republic of Ireland." In my opinion these minutes do not constitute sufficient evidence to support the union's claim that this meeting addressed the IRC's stated reason for requisitioning a meeting, viz: "to deal with the present crisis" and, accordingly, I find it did not fulfil the demands in the requisitions.

A handwritten signature in black ink that reads "Scott McElroy". The signature is written in a cursive style and is underlined with two parallel lines.

S Mc Elrea  
Northern Ireland Certification Officer