

D/08/2015

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

Ms. Christine Ozdemir

Mr. Patrick Lynch

And

Mr. Hubert Milne

V

GMB

Date of Decision:

9 September 2015

DECISION

TAKE NOTICE THAT upon the direction of the Certification Officer of Northern Ireland under Article 70ZA of The Industrial Relations (Northern Ireland) Order 1992, as amended by the Employment Relations (Northern Ireland) Order 2004 and further to previous decisions in these cases issued on 29 July 2015, Complaint 1, as brought by all three of the applicants, and as amended by the Certification Officer pursuant to her decision of 29 July 2015, will be struck out for the reasons contained herein:

REASON

1. The complaint had been amended to reflect the statutory rules regarding time limits as the complaint was originally framed in a way that was outside the applicable time limits and was thus found to be partially misconceived.

The complaint as amended reads:-

That between 18th June 2012 and May 2014 GMB failed to ensure Branch 242 held any elections thereby breaching its Rules 35(7), 35(17) and 35(1). The relevant Rule Book is that of 2011/12. This alleged rule breach relates to Article 90A(1) Category (a) the election of officials.

2. The union responded to the amended Complaint 1 as follows:

We note that the Union has been directed to address the Certification Officer on the issue of whether branch elections were held in accordance with Union Rules during the period commencing 18th June 2012 and ending on the 18th December 2012.

In light of the direction we have taken further instructions from our client.

Our client instructs that during the relevant period two meetings were convened. At the 7th September 2012 meeting, the Equality Officer and Youth Officer were elected.

A further meeting was held on the 19th November 2012, as a decision had been made by the regional secretary to amalgamate two branches (242 & 284) under Rule 35(14).

Further enquiries have confirmed that Branch 242 was dissolved prior to this meeting. Mr Peter McMurray was nominated as branch secretary of the amalgamated branch which would also be known as Branch 242. There was also a proposal that the current committee members would carry on without objection. Mr McMurray was elected by a show of hands from the members. The proposal that the committee members carried on was also agreed by way of a show of hands from the members.

3. The Union's response to the amended Complaint 1 was forwarded to the Applicants for consideration and requesting any comment, challenge or response they wished to make. The date by which the Applicant's response was to be received was fixed by the Certification Officer as 1 September 2015.
4. By 1 September 2015 no response had been received from the Applicants to this request.
5. At the date of this decision no further communication has been received from the applicants. The Certification Officer therefore finds on the basis of the evidence submitted, the Complaint has no reasonable prospect of success and an insufficient case to answer has been made. The complaint therefore will be struck out pursuant to Article 70 ZA (1) (a).

The Relevant Statutory Provisions

The provisions of the 1992 Order as amended by the 2004 Order which are relevant for the purposes of this application are as follows:-

Article 70ZA Striking out

70ZA.—(1) At any stage of the proceedings on an application or complaint made to the Certification Officer, he may—

- (a) order the application or complaint, or any response, to be struck out on the grounds that is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived,
- (b) order anything in the application or complaint, or 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 on behalf of the applicant or complainant or (as the case may be) respondent has been scandalous, vexatious, or unreasonable.

Conclusions

For the reasons set out above I intend to strike out complaint 1 brought by all three applicants pursuant to Article 70ZA (1) (a) of the 1992 Order, as amended.

Dated this 9th day of September 2015



Sarah Havlin
Certification Officer for Northern Ireland