

D/07/14

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

**Mr Alan Gordon  
v  
Unite the Union**

**Date of Decision: 28 April 2014**

**DECISION**

Upon the direction of the Certification Officer of Northern Ireland under Article 70ZA (1) (a) of The Industrial Relations (Northern Ireland) Order 1992, as amended by the Employment Relations (Northern Ireland) Order 2004, the applicant's application is hereby struck out on the grounds that the complaint is misconceived.

**REASONS**

1. Mr. Gordon lodged a Notice of Complaint against Unite the Union under Article 90A of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (The 1995 Order) on 23<sup>rd</sup> August 2012.
2. According to the Notice the applicant was a member of Unite the Union at time of the alleged complaint. In his statement attached to the application the applicant alleged certain rule breaches against the Union pertaining to the alleged misconduct of a colleague which allegedly breached Rule 5.5.2 of the Union's Rules:

**'A member must not knowingly or in bad faith provide the Union with false or misleading information relating to a member or any aspect of the Union's activities.'**

3. Through an exchange of correspondence and communication with my office, the applicant was advised of the specific jurisdiction of the Certification Officer and that his complaint about the individual member was a matter outside my

jurisdiction and should be more appropriately dealt with under the Union's internal complaints process.

4. On 20<sup>th</sup> November the applicant made a fresh complaint in this matter and lodged a new Notification based on the Union's failure to follow its own complaints procedure in connection with his grievance about the conduct of a colleague which allegedly breached Rule 5.5.2 of the Union's rules. The new Notification was incomplete and had to be returned to the applicant but was finally accepted by me on 11<sup>th</sup> December 2013.
5. The applicant proceeded with his complaint of 11<sup>th</sup> December 2013 and his original complaint of 23<sup>rd</sup> August 2013 was judged by me to be misconstrued and should therefore be struck out. I advised the applicant by letter of 17<sup>th</sup> December 2013:

**'It is important to note that your earlier complaint to the Certification Officer dated 23<sup>rd</sup> August 2012 has been ruled by the Certification Officer as having been misconceived. Your earlier complaint was in respect of the conduct of your Union representative during disciplinary proceedings in the context of your employment. The Certification Officer intends to strike out this first Notification of Complaint by you.'**

6. Between December 2013 and February 2014 the applicant pursued his complaint against the Union for the alleged non-adherence to its internal rules pertaining to internal complaints.
7. In March 2014 I formed the view of the applicant's complaint of 11<sup>th</sup> December 2013 that it could not proceed as it had no reasonable prospect of success and issued a separate striking out Order as of today's date.
8. The applicant was advised by letter of 10<sup>th</sup> March 2014 that he would be given an opportunity to show just cause as to why I should not strike out his complaints and Mr. John Bennett, Assistant Certification Officer wrote to the applicant on 12<sup>th</sup> March 2014 pursuant to the obligations under Article 70ZA (4) and issued formal notice that the applicant had a final opportunity to show cause why this order should not be made. The final deadline for him to make any such representation was notified as being Friday 21<sup>st</sup> March 2014.
9. At the date of this Order there has been no further contact from the applicant.

### **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, she may—

(a) order the application or complaint, or any response, to be struck out on the grounds that it is misconceived,

(4) Before making an order under this Article, 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.

### **Conclusions**

On the above facts I find that the applicant's complaint was a grievance more appropriately dealt with through an internal complaints process and therefore must be struck out on the grounds that it is misconceived.

For the above reasons, I strike out this complaint pursuant to Article 70ZA (1) of the 1992 Order, as amended.

**Sarah Havlin**  
**Certification Officer for Northern Ireland**