

D/3/2001

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

IN A MATTER OF COMPLAINTS MADE AGAINST THE TRANSPORT
AND GENERAL WORKERS UNION (T&G)

APPLICANT

MR T IRVINE

Date of hearing:

9 October 2001

Date of decision :

14 November 2001

DECISION

1. I have to decide whether I have jurisdiction to hear an application made to me by Mr Irvine of branch 3/83 of the Transport & General Workers Union (T&G), relating to alleged breaches of that union's rules. The rules he referred to are matters mentioned in Article 90A of the Trade Union & Labour Relations (Northern Ireland) Order 1995, (the 1995 Order), namely the appointment, election and removal of the secretary of branch 3/83 and also the constitution or proceedings of that branch.
2. The breaches of union rules alleged by Mr Irvine form five separate complaints. Under complaints 1 and 2 he claims that; the secretary, Ms Lavery, was improperly elected to office in November 1999 because she was

not a financial member of the union and by continuing in office without meeting the union's rules on financial membership requirements the union breached rule 11 clause 4 (a) and Clause 1 of schedule 1.

3. Under complaints 3 and 4, he claims that because branch members were not informed of the branch secretary election on the notice convening the meeting and by her taking office on 1 January 2000, and continuing in office without meeting the union's rules on financial membership, rule 11 clause 4(b) and Clause 5 of schedule 1 have been breached.
4. Under complaint 5 he claims that as Ms Lavery has failed to conduct properly the proceedings of the branch, rule 12 has been breached. Mr Irvine believes that complaints 1, 4 and 5 are ongoing.
5. The union argues that complaints 1 to 4 are out of time and should not be heard by me. In relation to complaint 5 the union argues that I should not hear it, as Mr Irvine did not specifically include it in his application form.
6. In order to decide if the application was made to me within the time limits set by the legislation I decided to hold a hearing on 9 October 2001. Mr Irvine represented himself and was accompanied by Mr G Campbell. The union was represented by Mr R Collins, its assistant general secretary, with responsibility for administration and services, Ms I Dykes, senior assistant

with responsibility for maintaining the rules of the union and Mr S Auerbach, Pattison & Brewer, Solicitors.

7. At the beginning of the hearing I explained that to enable the matter to be considered by me Mr Irvine must have made his application to me within six months starting with the day in which the breach is alleged to have taken place or, if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the dates specified in the legislation. I said I took this to mean that Mr Irvine must have lodged his application with me within 18 months of starting his internal appeal or within 6 months of it being concluded. I also explained that the legislation does not allow me to extend these statutory time limits. I outlined the dates, which were not in dispute; namely that Mr Irvine lodged his complaint to the union on 16 June 2000 and he made his application to me on the 18 December 2000.

8. I also made it clear that I intended to hear rule 12 amongst the alleged breaches of rules because Mr Irvine had referred to it in his letter dated 16 June 2000 to the union, and this letter was attached to his application form to me.

9. My jurisdiction, if any, to hear the application is contained in Article 90A of the 1995 Order. Article 90A of the 1995 Order was inserted by Article 90A of and Schedule 6 to the Employment Relations (Northern Ireland) Order 1999. The relevant parts of Article 90A are attached in appendix 1.

10. The union's rules relevant to the complaints are set out in the union's rules (April 2000 edition). The relevant parts of the rules referred to in correspondence and at hearing are attached in appendix 2.

The Applicant's case

11. Mr Irvine said he first complained to Mr O' Reilly, the Irish regional secretary on 16 June 2000 about a number of breaches of union's rules relating to the nomination, election and subsequent appointment of Ms Lavery as branch secretary and her ongoing failure to conduct properly the duties of branch secretary. He wrote again on 16 November 2000. He received no replies.

12. Mr Irvine's case is that; branch 3/83 members were not properly notified about the meeting convened to elect a branch secretary; Ms Lavery did not meet the union's financial member requirements when she stood for election in November 1999 nor when she subsequently took office in January 2000; (indeed he claimed that as she was at least 13 weeks in arrears with her subscriptions, she was not a member of the union). He said she should have stepped down as branch secretary but has failed to do so and, that she continues to fail to conduct the proceedings of the branch in accordance with rule.

13. Mr Irvine said that the union first became aware that Ms Lavery was not a financial member on 25 November 1999 when Mr O' Reilly wrote to Mr Collins to say that she was ineligible to run in the General Executive Council (GEC) election and invited Mr Collins to "make the necessary administrative arrangements."

14. Mr Irvine referred me to correspondence between the Irish region and the T&G headquarters. This, he said, proved Ms Lavery was not a financial member. He referred me to a series of letters beginning on 29 November 1999 when Mr Morris asked Mr O' Reilly for an explanation for Ms Lavery's change of status (as the region had previously confirmed her eligibility); Mr O' Reilly wrote to Mr Collin's again on 6 December 1999 re-confirming her ineligibility and Mr Morris wrote to Mr O' Reilly on 7 December 1999 expressing his concern that Ms Lavery was confirmed eligible for the GEC election by the region (when she was not). Mr Morris also confirmed her eligibility to stand on this occasion (my emphasis) citing natural justice as his reason. Mr Irvine also referred me to a letter of 23 December 1999, from Mr Morris to Mr Cairns (another union member), where Mr Morris repeats his position and advises that he has pointed out to Mr O' Reilly that in future Ms Lavery should be allowed to pay her contributions by direct debit (which was apparently previously denied to her by the region). Mr Irvine said this shows that Ms Lavery continued in breach of the financial member requirements.

The union's response

15. Prior to the jurisdictional hearing the union's general secretary wrote to me (8 February 2001) to say that as Mr Irvine's application was made to my office on 18 December 2000 I could not, in his opinion, consider any complaint occurring before 18 June 2000. Furthermore, he said that if a continuing breach was being alleged, I should reject it as he had exercised the delegated discretion of the GEC to confirm Ms Lavery's office (my emphasis). In a further exchange of correspondence Mr Morris wrote to me again on 29 June 2001, reiterating his position that Mr Irvine's complaints were out of time and by exercising his discretion under rule 20(7) he had confirmed her candidature for office (my emphasis).

16. At hearing, the union chiefly relied on the discretion it claimed in rule 20(7) of its rules. Mr Collins said the general secretary exercised his discretion on 7 December 1999 to confirm Ms Lavery's candidature for office. He argued that rule 20(7) allowed for retrospective action on the basis that it used the word "confirm" and, in his view, this means it can apply to something that had already happened. He said that this decision clearly validates her election and her continuation in office and as the decision was taken on 7 December 1999, the matters are out of time.

17. Following questioning, Mr Collins confirmed that the general secretary had exercised his discretion specifically in regard to Ms Lavery's candidature for election to the union's GEC in December 1999 and not for the earlier branch 3/83 election in November 1999. Mr Collins claimed that the effect of the

general secretary's decision on 7 December 1999 was that it "cured" any earlier breaches of the union's rules by Ms Lavery.

18. With regard to Mr Irvine's complaint that Ms Lavery had failed to conduct the proceedings of the branch under rule, Mr Collins argued that because he had not listed it in his application to me I should not hear it. He said the reference to this rule in his letter of 16 June 2000 to Mr O' Reilly was not, in itself sufficient for me to treat it as a complaint. Moreover, the union's legal advisor said it would be logically non-sequitur (doesn't logically follow) to include all of the matters complained of in the letter to the union dated 16 June 2000 as complaints to the Certification Officer.

Reasons for my decision

19. The discretion exercised under rule 20(7) on the 7 December 1999 was intended to confirm Ms Lavery's candidature for office to the GEC election later that month. I do not accept that this discretion can also apply retrospectively to the completely separate (and earlier) branch 3/83 election. In my view there is nothing in the union rules, which allows retrospective discretion. It is also clear to me that rule 20(7) allows the GEC to confirm "candidature for office" – not to confirm "office" . I believe the exercise of this discretion can only mean that the member is confirmed as a candidate and eligible to stand in a future election, in specific circumstances.

20. From the evidence before me I am satisfied that Ms Lavery did not satisfy the financial test of the union's rules and in particular that she did not meet this test on 17 December 1999. I agree with Mr Collins that I do not have jurisdiction to hear Mr Irvine's complaints in relation to the alleged breach of rule 11, clause 4 (b) and Clause 1 of Schedule 1, as the event which triggered the six-month time-limit in regard to these was the regional secretary's confirmation on 16 August 1999 of Ms Lavery's eligibility. As Mr Irvine did not lodge these complaints with the union until 16 June 2000 they are out of time.

21. I reject the argument by Mr Collins that I should refuse to hear complaint 5 because it was not specifically included in Mr Irvine's application form. I do not believe I have to restrict applicants in this way. The application form is not prescribed in the legislation and I consider that all of the papers, which Mr Irvine included in support of his complaints form part of his application. Mr Irvine included all of the papers he considered to be relevant with his application to me. My office sent his application and the relevant supporting documents to the union for information and comment – the union did not make any comment in relation to rule 12 in subsequent correspondence. Furthermore, at the beginning of the hearing, I advised the parties that rule 12 was amongst the matters I intended to consider at the hearing. The union raised no objections at that time.

22. I do not accept that the GEC had the retrospective power to confirm either "candidature for office" or "office". On the evidence before me I have decided to accept Mr Irvine's remaining complaints as they appear to me to be of an ongoing nature.
23. Accordingly I have decided I have jurisdiction under Article 90 A.- 6 and 7 of the 1995 Order to hear three of Mr Irvine's complaints viz: complaint 1, alleged breach of union rule 11, Clause 4 (a); complaint 4, alleged breach of union rule Clause 5 of Schedule 1, and complaint 5; alleged breach of union rule 12.
24. The parties were notified of my decision by telephone on 14 November 2001.

A handwritten signature in cursive script that reads "S. Mc Elrea". The signature is written in dark ink and is positioned above the printed name.

S. Mc Elrea

Northern Ireland Certification Officer

APPENDIX 1

The relevant parts of Article 90A* of the 1995 Order pertaining to Mr Irvine's complaints are as follows:

"90A.-(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 paragraph (2) may apply to the Certification Officer for a declaration to that effect, subject to paragraphs (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)

(c)

(d) the constitution or proceedings of any executive committee or of any decision - making meeting;

(e)

- (6) An application must be made –
- (a) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or
 - (b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in paragraph 7.

(7) Those days are-

- (a) the day on which the procedure is concluded, and
- (b) the last day of the period of one year beginning with the day on which the procedure is invoked.
- (c) The reference in paragraph (1) to the rules of the union includes references to the rules of any branch of section of the union” .

*Articles 90A of the 1995 Order was inserted by Article 90A of and Schedule 6 to the Employment Relations (Northern Ireland) Order 1999.

Appendix 2

The union rules referring to Mr Irvine's complaints are set out in the union's rule book (April 2000 edition). The relevant extracts are as follows:

"Rule 11, clauses 4 (a) & (b) state

(a) Each branch ..shall have for its membership a Chair and Secretary, and a committee..except with the consent of the Regional Committee, the Chair and Secretary, and committee members respectively, shall have been financial members of the Union for a period of not less than two years immediately preceding the date of nomination, and each of them shall be nominated at least four weeks before the date of the election. Every officer must at all times be a financial member (my emphasis)...

(b) Branch officers.... shall hold office in accordance with the terms of such appointment) and committees shall hold office for two years...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 and be completed not later than December in each alternate year, and the elected candidates shall take office the following January for two years...

Rule 12 states

1. The branch secretary shall attend all the meetings of the Branch, and shall enter all contributions in the book provided for that purpose.

2. The Secretary shall keep the accounts in a clear and intelligible manner, and keep all documents, accounts, books, receipts and papers (including the receipts from the central or regional office of previous weekly or fortnightly income, and hand the same to the Branch Chair to be read at the following meeting of the Branch) belonging to the Branch in such form, manner and place as the Branch, with the consent of the General Secretary, shall appoint and shall conduct such correspondence as belongs to their office.

3. The Branch Secretary shall draw up and furnish the Chair with a programme of the business to be brought before each meeting.

4. The Branch Secretary is legally responsible for all moneys and property of the Union passing through their hands.

5. The Branch Secretary shall immediately comply with Rule 11, Clause 8, as to moneys received.

6. The Branch Secretary shall notify all members in arrears in the manner prescribed by the General Executive Council.

7. The Branch Secretary shall summon all meetings of the Branch. A written notice, authorised by the Chair and posted in the Branch room and other suitable places two weeks before the quarterly meeting takes place, shall be deemed sufficient notice for such meeting.

Summoned or special meetings must be convened by the Branch Secretary whenever notice is received from the General Secretary, the Branch Committee, or from the members of the Branch, on the following basis: In the case of a Branch where the membership is under 1,000, on the signature of 5% of the

members with a minimum of 20 members: Over 1,000 on the signature of fifty members.

The summons must state the nature of the business and the time and place of the meeting.

8 (a) The Branch Secretary shall prepare at the end of each quarter a report containing a detailed account of the income and expenditure, as provided for in the forms supplied; the numbers of members in arrears, with the amount owing by them; the membership of the Branch; the number expelled, dead, transferred, and the number and names of those admitted during the quarter, with a statement of the financial position of the individual members of the Branch together with any other detailed information required at the central or regional office from time to time. Such reports to be signed by the Branch auditors.

(b) The Branch Secretary shall comply with Rule 11, clause 4(e).

9. If elected by a branch, the branch Secretary must give a month's notice before resigning.

10(a) If a Branch Secretary's conduct be deemed unsatisfactory, the Branch shall appoint a committee of inquiry consisting of not less than three or more than five members (one of whom shall be an officer) who shall have power to demand from the secretary all books paper and other property of the Union: and shall investigate and report to a meeting of the Branch specially convened by such committee (of which fourteen days notice shall be given).

(b) If the Secretary's conduct shall be found by such meeting to be unsatisfactory, the meeting shall, if necessary elect a temporary Secretary

pending the Branch Secretary's appeal, or elect a new Secretary to complete the term of office.

An appeal under this Clause shall be to the Regional Committee and from a decision of the Regional Committee to the General Executive Council. Notice of appeal must be in writing and sent to the Regional Secretary or General Secretary, as the case may be within seven days from the date of the receipt of notification of the decision.

(c) Notwithstanding the foregoing, if a Branch Secretary's conduct be deemed unsatisfactory, the General Executive Council may remove the person from office and instruct the Branch to appoint a temporary Secretary pending the Branch Secretary appeal or to elect a new Secretary to complete the term of office.

An appeal under this Clause shall be to the Appeals Committee. Notice of appeal must be in writing and sent to the General Secretary within seven days of the appellant's removal from office.

Secretary in the Clause means a member following their employment and not a full-time or permanent Secretary appointed by the General Executive Council.

In the event of Branch having a complaint to make respecting the account of conduct of a full-time or permanent Secretary a full report thereof shall be immediately forwarded both to the Central and Regional Offices.

11. Should the Executive Finance Director have cause to complain of the conduct of a Branch Secretary in the execution of the duties in so far as they relate to the keeping of the Branch accounts and the handling of the moneys of the Union, the Executive Finance Director shall bring the matter before the notice of the General Secretary who may suspend the Branch Secretary forthwith and demand the return of all books, papers, moneys and other property of the Union held by the Secretary, and submit the matter to the next meeting of the Finances and General Purposes Committee for determination. Should the Finances and General Purposes Committee uphold the action of the General Secretary they may remove the Branch Secretary from office and begin such proceedings against the person as may be deemed advisable and instruct the Branch to elect a new Secretary to complete the term of office.

12 The Branch Secretary shall not receive the salary of the post until the accounts have been audited and passed by the Central Office.

13 The Regional Secretary shall immediately acquaint the Executive Finance Director of any omission of Branch secretaries to remit money in accordance with Rule 11 Clause 8. The Executive Finance Director, on receipt of such information, shall take immediate steps to discover the cause of such omission and shall act forthwith in conjunction with the Regional Secretary.

14 A branch whose membership is sufficient may make application to the General Executive Council for the appointment of a permanent Branch Secretary. The General Executive Council shall take the matter into consideration, and if the application is approved by them, shall proceed to

appoint some proper person as the permanent and full-time secretary of such Branch.

Rule 20(7) states

It shall be the personal responsibility of the member to maintain contributions and avoid arrears in all circumstances ..the General Executive Council shall nevertheless have discretion to allow payment of benefits or to confirm candidature for office should it be satisfied that the member is not in deliberate or culpable default.

Rule 20, Clause 12 states :

A financial member is a member with not less than 26 weeks' membership, having made 26 weekly payments, and who is less than six weeks in arrears.

Clause 1, Schedule 1 states

Every candidate for any office in the Union..whether paid or not..shall have been a financial member of this Union for at least two years immediately preceding the date of application or nomination... A member who becomes unemployed is eligible to stand for office in the Union after they lose their employment, provided that they still retain their full membership as required by rule and continue to seek employment. Members not seeking employment are not eligible. Notwithstanding this Clause, the General Executive Council shall have the power to allow members who are beyond the age of retirement to continue in post as Branch officials.

Clause 4, Schedule 1 states

Permanent officers, members of the General Executive Council and members of all other constitutional committees of the Union, shall produce their contribution cards when attending meetings of the council or such committees.

Clause 5, Schedule 1 states

Every member holding an official position in the Union, or members of the General Executive Council, or any other constitutional committee, not being in compliance as a financial member of the union as per Rule 20, Clause 12, shall forthwith cease to hold office in the Union for the term for which they were elected” .