

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 A COMPLAINT MADE AGAINST THE TRANSPORT AND
GENERAL WORKERS UNION (T&G)

APPLICANT MR A THOMPSON

Date of decision :

25th September 2000

DECISION

- 1.1 The Trade Union and Labour Relations (Northern Ireland) Order 1995 was amended, on the 15 December 1999, by Article 90A and schedule 6 of the Employment Relations (Northern Ireland) Order 1999. One of the effects of the 1999 Order was to insert, into the 1995 Order, Articles 90A to 90B.
- 1.2 Under Article 90A-(1) of the 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 sub - paragraph (2) of Article 90A may apply to me for a declaration to that effect.
- 1.3 The matters referred to in Article 90A-(2) are set out in paragraph 1.10 below.
- 1.4 Under Article 90B(2) of the Order I am empowered to make or refuse to make the declaration sought. I am required to make such enquiries as I think fit and,

before I make, or refuse to make, the declaration asked for, to give the applicant and the trade union the opportunity to be heard, and whether I make or refuse the declaration sought, I am required to give reasons for my decision in writing.

1.5 Where I make a declaration, I am required, unless I consider to do so would be inappropriate, to make an enforcement order imposing on the union one or both of the following requirements -

- (a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;
- (b) 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 the future.

1.6 On the 12 April 2000, following correspondence with Mr Alexander Thompson, a member of the Transport & General Workers Union, I accepted a complaint from him that the union was alleged to be in breach of its rule 1, Schedule 1, on pages 59 and 60 of the T&G rule book (printed in April 2000) which sets out the nomination requirements for members selected to sit on the union's Belfast District Committee (the complaint). I was satisfied that Mr Thompson had tried to resolve the matter internally with officials of the union, without success.

1.7 I investigated the complaint in correspondence and the union's general secretary, Mr Morris, confirmed to my office in a letter, dated 27 April 2000, that Mr Thompson was wrongly declared ineligible for nomination in an election. The letter stated that :

“... the union accepts that Mr Thompson was wrongly declared ineligible for nomination to the Belfast District Committee...”

1.8 Following further consultations with the parties I decided that a formal hearing, to hear arguments on the complaint, should be held. The hearing was held on the 6 September 2000. The union was represented by Mr Ray Collins, its assistant general secretary, with responsibility for administration and services and Ms Irene Dykes, senior assistant with responsibility for maintaining the rules of the union. The applicant, Mr Thompson attended the hearing and spoke for himself.

1.9 For the reason(s) which follow:

“I declare that the Transport and General Workers Union was in breach of its rule 1, Schedule 1 by wrongly declaring Mr Thompson ineligible for nomination in an election to the Belfast District Committee, and that this was a matter referred to in Article 90(A)(2)(a) of the Order”

After careful scrutiny of the documents and evidence submitted I decided to make the enforcement order sought by Mr Thompson, requiring the union to re - run the election. My enforcement order states:

“I order that the Transport and General Workers Union must hold a fresh election, in accordance with its rules, for the Belfast District Committee, and for members to be informed of the result by 31 December 2000”.

Requirements of the Legislation and the relevant union rules

1.10 It may be helpful, at this point, if I set out the relevant statutory requirements of the Order to which I have referred to in this decision and the union rules which have a bearing on this application. The relevant statutory requirements 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 sub paragraph (2) may apply to the Certification Officer for a declaration to that effect, subject to sub 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) disciplinary proceedings by the union (including expulsion);*
 - (c) the balloting of its members on any issue other than industrial action;*
 - (d) the constitution or proceedings of any executive committee or of any decision-making meeting;*
 - (e) such other matter as may be specified in an order made by the Department.*
- (3)”.*

1.11 The union's rules regarding election to any office in the union are set out in schedule 1 under the heading eligibility and requirements of delegates, officers, etc. At the hearing both sides referred to rules 1 and 5 of schedule 1 and rule 20, clause 12, under the heading membership. It may also be helpful if I set out the provisions of rules 1 and 5 of Schedule 1 and rule 20, clause 12:

rule 1, Schedule 1 states

"Every candidate for any office in the Union, i.e., officers, whether paid or not, or delegates to a Delegate Conference, the Rules Conference, or for membership of the General Executive Council, or of a national trade group, or section, or a Regional Trade Group, or district, or a Regional Committee or other constitutional committee, shall have been a financial member of this Union for at least two years immediately preceding the date of application or nomination subject to the provisions of rule 16, Clause 1, (my emphasis), in the case of the General Secretary, and the Executive Finance Director, respective-ly (sic). A candidate must be employed in or in connection with the trade they desire to represent provided always that for the purpose of suitable and efficient discharge of the duties of a paid officer of the General Executive Council may, at its discretion, invite applications from other or all sections of the membership. 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".

rule 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”.

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”.

1.12 That is the background, relevant legislation and union rules. I now set out the complaint, and arguments put to me by the parties to the complaint and the reasons for my decision.

The Applicant’s Case

- 2.1 On 13 October 1999, the applicant’s branch (3/30) received a letter from the union’s Irish Regional Secretary, Mr Michael O’ Reilly, inviting it to elect delegates to the Belfast District Committee. His letter said “results of your Branch’s elections must be returned....not later than (sic) 1st post on Thursday 25th November 1999...all candidates...must be eligible to hold office as set out in Schedule 1, which must be read out to the meeting before nominations are taken”.
- 2.2 Mr Thompson’s branch elected him to take a seat on the Belfast District Committee on 13 November 1999, however, following receipt of his nomination at Transport House, Belfast, the union’s Regional Organiser in Northern Ireland, Mr Eugene McGlone, informed him that he was ineligible. In a letter to Mr Thompson dated 25 November 1999 (the closing date for nominations)

Mr McGlone said "unfortunately as you are aware you are not eligible to hold office out beyond the branch. I have advised your branch secretary... a substitute delegate has been offered on behalf of your branch". According to Mr Thompson, the grounds for Mr McGlone's decision were that he was "on remission of contributions", meaning he was paying reduced contributions to the union, and he had been doing so for more than 12 months.

- 2.3 Mr Thompson told me that Mr McGlone explained the position to him and also confirmed that several other members had also been found ineligible (my emphasis). Mr McGlone told Mr Thompson that he was not disbarred from full participation in his branch and that he could discuss the matter with Mr O' Reilly, the Regional secretary.
- 2.4 Initially Mr Thompson said he accepted Mr McGlone's interpretation of the rules, that he was not entitled to stand, as he was paying a reduced rate of contribution. He told me he felt duty bound to comply with the rules of his union.
- 2.5 Mr Thompson also told me that as he understood it (and indeed as it was commonly understood in the region) to be considered a financial member one had to be paying a "full" contribution rate. Anyone paying reduced contributions, for example an unemployed member, was not deemed a financial member and in these circumstances were not allowed to stand for election per rule 1 of schedule 1.
- 2.6 Mr Thompson was subsequently informed (11 December 1999) that the general secretary, Mr Morris, had granted a special dispensation to a member from

another branch (3/83) of the union, a Ms M Lavery, allowing her to take her seat on the Belfast District Committee.

- 2.7 In correspondence and during the hearing, Mr Thompson claimed Ms Lavery was also ineligible for nomination because, like him, she was not a financial member. He claimed she had not paid any contributions over the relevant time whilst he had, at least, paid reduced contributions, and that her "card" contained false entries, indicating contributions had been paid when they had not. He said Ms Lavery had appealed to the union's general secretary, Mr Morris, and that the union's general secretary gave her a "special dispensation" under "natural justice" to stand, which had effectively discriminated against him in favour of Ms Lavery. He said the general secretary's written decision did not say that the region had misapplied a rule of the union.
- 2.8 Mr Thompson further argued that the general secretary took this decision without consulting the union's general executive council, that he did not have any such power under the rules to make this decision and that this decision caused a further breach of union rules.
- 2.9 According to Mr Thompson, the general secretary's decision allowed Ms Lavery to take a seat on the Belfast district committee and subsequently to stand as a candidate for the General Executive Council (GEC) in February 2000. Mr Thompson said that whilst she was not successful in the GEC election she continued to serve on a number of committees including the Belfast district. Mr Thompson felt that she should have been disbarred under union rule 5 of schedule 1 and he questioned why this had not happened.

2.10 Mr Thompson told me that he had written to the general secretary about his position in a bid to resolve the matter internally, but had got no response. During the hearing he said he found the rules for election difficult to understand as they were written, that it was clearly causing confusion among senior officials and it needed clarification and simplification.

The Union's Response

- 2.11 Mr Collins, on behalf of the union, confirmed to me that Mr Thompson had been wrongly declared ineligible to stand for election to the Belfast District Committee and that Mr Thompson was a financial member of the union. He explained that there are currently four contribution rates and a benefit rate. The contribution rates are £1.95, £1.80, £0.83 and a youth rate of £0.25.
- 2.12 Continuing, Mr Collins said the benefit rate, which is not deemed a contribution, is also £0.25. The rules describe the benefit rate as "remission of contribution". Mr Thompson was paying the "remission" sum and he had to be a financial member to be allowed to pay it. Mr Collins said that members who were sick or unemployed could go on remission of contributions to enable them to maintain membership of the union and he emphasised remission is a benefit, not a scale of contribution; just because a member is sick or unemployed they should not be denied their rights to participate in the union.
- 2.13 Mr Collins said that the error in understanding the rule occurred at Regional level; Mr McGlone had wrongly interpreted rule 1, schedule 1 with regard to Mr Thompson. He also confirmed that the incorrect interpretation had been upheld, in the first instance, by the Regional Secretary, Mr O' Reilly. On cross examination by Mr Thompson, Mr Collins said " I personally do not know how

someone could interpret remission of contribution, for which you have to be a financial member to get, then makes you ineligible, I personally find it difficult to understand how someone reached that conclusion, but they did”.

- 2.14 Mr Collin's advised me that immediately prior to attending the hearing he had met with the union's Irish Regional officials and had learned that at least a further three other members of the union had been denied their right to stand for election by the Regional office (my emphasis). He also confirmed that this was the first time he was aware of a mis - application of this sort (rule 1, Schedule 1).
- 2.15 Mr Collins pointed out that he could not find any trace of Mr Thompson's letter to the general secretary and on seeing a copy (at hearing) he pointed out that it had not been dated. Mr Collins said that the first time the union was aware that there was a difficulty regarding Mr Thompson, was on receipt of a letter from my office (26 April 2000) which contained a copy of Mr Thompson's complaint. He added that the union had moved its headquarters in December 1999 and had experienced a number of logistical problems, particularly in the two months following the move. He said whilst this wasn't an excuse for being unable to locate Mr Thompson's letter, it was a factor he wanted to bring to my attention.
- 2.16 I was told by Mr Collins that the general secretary had acted within his powers in relation to an appeal made directly to him by Ms Lavery and, at the time, she was - like Mr Thompson - a financial member of the union. He stressed that Ms Lavery's contribution status was not as Mr Thompson had claimed but, as the matter was the subject of a Tribunal case he did not want to provide any further details in that regard. I accepted this.

2.17 In answer to the question about the general secretary's power of delegated authority to deal with appeals, such as that made by Ms Lavery, Mr Collins drew my attention to rule 6, paragraph 16, on page 24 of the rule book. On examination of this rule Mr Collins accepted that the general secretary's powers seemed to flow from rule 6, paragraph 18 on page 25.

2.18 Mr Thompson and Mr Collins agreed with me that the only remedy in this matter was for the union to re - run the election in accordance with its rules. Mr Collins went further, proposing to re - run all of the elections effected by the misapplication of the rules. He proposed writing to every branch to say that irrespective of the scale of contribution paid, irrespective of whether a member is unemployed and on remission of contribution, they are eligible to stand for election. He also gave me an undertaking that the union's central office will take responsibility for supervising these ballots.

Reasons for my Decision

2.19 Mr Collin's submission convinced me that the union had misapplied rule 1 schedule 1 in respect of Mr Thompson and that such misapplication amounted to a breach of a union rule under Article 90A (2) (a) of the 1995 Order.

2.20 I have some sympathy with Mr Thompson's point that he found the rule difficult to understand and this was further borne out, to some extent, as Mr Collin's could not fully explain the reason for the misinterpretation of the rule by senior officials in the Irish region. I believe, therefore, the rule is not having the effect the union intends.

2.21 In all the circumstances I decided to make the declaration sought and to issue an enforcement order.

2.22 For these reasons I upheld this complaint.

OBSERVATIONS

- 3.1 Article 22(5) of the 1995 Order gives me powers to make observations on any matter arising from or connected with the proceedings. I do so in this case.
- 3.2 During the hearing it became evident that considerable confusion surrounded the meaning of the rules of the union in relation to the rights of members to stand for election at regional level. This went beyond Mr Thompson's application and effected, I was told, at least three other union members in different districts.
- 3.3 Although the explanation given by the union's representative at hearing, regarding the meaning of financial member was clear, there was confusion at regional level to the extent that Mr Thompson and three other unnamed members were wrongly declared ineligible for nomination in union elections. Moreover, I was also told that the regional officer (Mr O' Reilly) had, in relation to another member (Ms Lavery) advised the general secretary on three occasions that she was eligible to stand for election and on a fourth occasion, just before a ballot was due to commence, that she was not. These matters are of particular concern to me, as the union must take responsibility throughout its regions for ensuring proper application and administration of its rules.

3.4 I believe the union understands that clarification of its rules is needed and this should be done in such a way as to better secure the union's objectives in a more transparent way. As part of this, I expect the union's central office to ensure that its rules are properly applied in respect to the election which I have ordered it to re-run, and also in respect to those other elections which it determines have to be re-run.

A handwritten signature in cursive script, appearing to read 'S. Mc Elrea', written over a horizontal line.

S. Mc Elrea

Northern Ireland Certification Officer