

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION  
MADE UNDER ARTICLES 57 ( 2 ) AND 71 ( 3 ) OF THE TRADE UNION  
AND LABOUR RELATIONS (NORTHERN IRELAND) ORDER 1995**

**IN THE MATTER OF A COMPLAINT  
AGAINST THE MANUFACTURING, SCIENCE  
AND FINANCE TRADE UNION**

**Date of Decision :**

**8 November 1996**

## INTRODUCTION

1. Under Article 57 ( 3 ) of the Trade Union and Labour Relations (Northern Ireland ) Order 1995 ( " the 1995 Order" ) I am empowered to make an order on the complaint of a member of a trade union who claims that he is aggrieved by a breach of any rule made in pursuance of Article 57 of the 1995 Order concerning rules as to political funds.
2. Between 1 May 1996 and 3 June 1996 I received 16 complaints from members of the Manufacturing, Science and Finance trade union ( " MSF" or "the union" ) concerning the inclusion within their trade union subscription of a contribution towards the union's political fund, which they had not authorised as required by Article 59(1) of the 1995 Order.
3. The complainants also provided me with written evidence in the form of background correspondence.

## DECISION

4. For the reasons which are set out later, I find that the Manufacturing, Science and Finance Union breached the requirements contained in Part V of the 1995 Order by -  
  
making deductions of political fund contributions without proper signed authorisations in respect of each of the 16 complainants contrary to article 59 of the 1995 Order.

## ORDER

5. The union must take immediate steps to :
  - (1) stop all unauthorised deductions of political fund contributions from the 16 complainants;

- (2) refund to the complainants all unauthorised deductions made over the period April 1993 to the date on which such deductions ceased;
- (3) provide each complainant with a written statement explaining the basis of the refund and the reason for it;
- (4) provide a report to the Certification Office within a period of three months from the date of this Order confirming that the actions stipulated above have been completed or, where any requirement remains uncompleted, the reasons for non - completion and an undertaking of when the action will be completed.

#### BACKGROUND TO THE COMPLAINTS

6. All sixteen complaints concerned unauthorised deduction of political fund contributions by the union.
7. Each of the complainants advised me that they had not, at any time, provided the union with the necessary signed authority required by law to allow these deductions from their wages.
8. From the supporting written evidence submitted by the complainants, it appeared that unauthorised deductions began in April 1993.
9. I wrote to the union's general secretary on behalf of the complainants to seek copies of any relevant signed authorities, together with his confirmation that these authorities had not subsequently been withdrawn.
10. In an exchange of correspondence over an eight week period from 1 May to 26 June 1996, the signed authorities I had initially sought were not directly referred to by the union, nor were copies furnished.

11. I then advised the union and the complainants that I intended to hold a formal hearing.

12. At the hearing, on 14 August 1996, four of the sixteen complainants attended. They were represented by two colleagues, Mr Bolton and Mr Doherty.

13. Similarly the union was not legally represented. Mr J Nicholl, a Regional Officer, formally represented MSF. Before the hearing the union had given an assurance that Mr Nicholl would be able to give evidence on all aspects of the union's case.

#### REQUIREMENTS OF NORTHERN IRELAND LEGISLATION

14. Article 59 of the 1995 Order deals with contributions to the political fund by members of a union. The relevant parts of that article state:

" 59.-(1) It shall not be lawful to require any member of a trade union to make any contribution to the political fund of a trade union unless he -

- (a) has given to the union notice in writing of his willingness to contribute to that fund; and
- (b) has not withdrawn that notice in accordance with paragraph (2).

(2) A member of a trade union who has given notice under paragraph (1)(a) may withdraw that notice by giving written notice of withdrawal to the union".

#### UNION'S NORTHERN IRELAND POLITICAL FUND RULES

15. The political fund rules of MSF are specified in Rule 59 of its 1994 Rule Book. The rules applicable to Northern Ireland, so far as they are material, provide that:

"No member of the Union in Northern Ireland shall be required to make any contributions to the Political Fund of the Union unless he/she has delivered, as provided in Section f), at head office or some Branch office of the Union, notice in writing in the form set out in Section d), of his/her willingness to contribute to that

fund, and has not withdrawn the notice in manner provided in Section e). Every member of the Union who has not delivered such a notice or who, having delivered such a notice, has withdrawn it in the manner provided in Section e), is to be deemed for the purposes of these Rules to be a member who is exempt from the obligation to contribute to the Political Fund of the Union."

#### THE COMPLAINANTS' CASE

16. The complainants alleged that deductions in respect of the union's political levy had been made from their wages since April 1993, although they had not provided the union with the relevant signed authority to allow such a deduction.

17. Their subscriptions to the union are collected by deduction at source. This system is commonly known as "check - off", where the employer deducts a sum representing an employee's union subscription from his wages and pays it to the union.

18. The complainants stated that since the unauthorised deductions began in April 1993 local union officials had tried to resolve the matter with the union, both in telephone calls and in writing, but without success. To support these claims, they provided me with copies of a considerable amount of correspondence with the union from August 1993 onwards.

19. I was given information about MSF subscription rates for the period 1978 to 1996. This covered two rates - "Full (in)" and "Full (out)". It was explained that the Full (in) rate applied to members who had agreed to pay the political fund levy, while the Full (out) rate applied to members who did not pay the levy. Also included were two photocopied extracts of union contributions dated 1 February 1993 and April 1993. Both were headed "Short Brothers PLC - PAYWRITER".

20. My attention was drawn to the totals column in each extract. The February 1993 extract showed 1512 members paying a monthly contracted-out rate of £5.98, and 69 members paying a monthly contracted-in rate of £6. 24. The April extract showed 1649 members paying a monthly contracted-in rate of £6.24. It did not show any members paying the monthly contracted-out rate.

21. In the opinion of the complainants these figures demonstrate their change in status to political fund contributors in April 1993.

22. In a letter dated 9 August 1993 from MSF Head Office to a branch official at Shorts, the union confirmed that the political levy was being deducted from all members in the Branch. ( My emphasis ) It also sought a list of members who wished to pay the political levy so as to verify its records and asked the local official to inform the wages/payroll department of Shorts of those didn't wish to pay the levy.

23. In the complainant's view, this is a clear admission by the union that it was deducting political fund levy from all members of that Branch at Shorts, despite the requirements of Northern Ireland law and the union's own rules.

24. On 19 April 1995 a branch union official wrote to MSF about subscription deductions. There are three matters raised in this correspondence which I shall refer to :

- 1.) "the amount we remitted to you ... represents 12 months' subscriptions ... this includes an overpayment of approx. £6,000 for this period. A similar excess amount was paid for the previous year. Repeated phone calls to head office over the last year have not achieved a solution.
- 2.) Your reluctance to deal with our questions suggest that you are incapable of relating money received to each individual member.
- 3.) We believe that only about 250 members have agreed to pay the political levy and the implications of deducting subscriptions at the political levy rate will be obvious to you."

25. The complainants' consider they have demonstrated that the union knowingly breached the requirements of Part V of the 1995 Order and did not take steps to remedy the breach.

## THE UNION'S RESPONSE

26. In correspondence prior to the hearing MSF claimed that unauthorised deductions of political levy occurred because Shorts Bombardier Plc misinterpreted a standard union notification relating to subscription deductions. It stated "this misinterpretation apparently occurred some years ago and we are currently trying to identify at which exact point in time this mistake occurred." (My emphasis).

27. The union advised that it held its own investigation in 1995/96 and denied that any moneys had been transferred into its political fund account "during or after this process of formal investigation". (My emphasis) Mr Nicholl was unable to say whether any money had been transferred prior to the union's investigation.

28. At the hearing MSF denied that it had breached the law in relation to fourteen of the complainants arguing that the deductions were purely overpayments of subscriptions initiated by the employer. Furthermore, the union asserted that overpayments were not uncommon and the complainants could, at any time, have applied for a refund of the overpayment.

29. In relation to the remaining two complainants, it claimed that one had contacted the employer direct to change his subscription status to the "contracted-out" rate and the other was paying the "contracted-in" rate because he had provided the union with the necessary signed authority. Mr Nicholl conceded that these actions had taken place at some dates after April 1993.

30. From the available evidence the union accepted that the overpayments began in April 1993. It also agreed that all MSF members in the concerned branch at Shorts Bombardier plc were paying the political levy in August 1993. (My emphasis).

31. The union stated that it currently has 396 members in Shorts Bombardier plc who have contracted to pay the political levy. To support this statement it provided four computer print - outs dated August 1996, - two each from the union and the employer - listing those members who had "contracted-in" to the political fund and those who had "contracted-out".

32. Mr Nicholl outlined how MSF deals with applications from new members and provided a sample application form. When a completed application is received in MSF headquarters, the information is transferred to a computerised record held in its membership section and the application form is returned to the local branch. The application form makes no reference to the union's political fund or to Northern Ireland law relating to political funds.

33. Mr Nicholl advised that MSF retains signed political fund authorisations for a maximum of three months. They are then destroyed and the union relies thereafter on the accuracy of its computerised recording system. The union considers this practice is reasonable, given the volume of paperwork which it processes. Accordingly, the union could not provide signed authorities for any of the sixteen complainants.

34. Mr Nicholl contended that the unauthorised deductions were, in effect, overpayments that derived from an administrative error and there was no basis for the complaints that had been made.

#### STATEMENT BY EMPLOYER

35. A representative from the Personnel Division of Shorts Bombardier Plc attended the hearing and with the agreement of both parties made a statement, which comprised the following points :

- 1.) A large number of MSF members began paying the "contracted-in" rate in early 1993.
- 2.) The company was unable to find any documentation which would explain the reasons for this change.
- 3.) A subscription rate change would occur only with the authority of the union.



## REASONS FOR MY DECISION

36. What I have to decide is whether the deductions made from each complainant was an unauthorised deduction of political fund contribution and that a breach of Part V of the 1995 Order has occurred.

37. Although it has not been possible to prove conclusively how or why the change in subscription rates occurred, all three parties agree that the change did occur in early 1993. I am satisfied from the evidence provided that the change occurred in April 1993.

38. It is clear from the union's published subscription rates that it has two separate rates, one for those wishing to "contract-in", the other for those who "contract-out". Each of the complainants was levied to pay the "contracted-in" rate from April 1993 even though they had never signed the proper authorisations.

39. The letter from MSF headquarters dated 9 August 1993 confirmed that the union was aware at that date that all its members in the company were paying the political fund levy although it had not received the proper authorisations.

40. There was no evidence that the union had ever approached the employer to check the deductions being made even though it knew from its own sources and communications from its members that a substantial number were improperly paying the political levy.

## REMEDIES

41. Subsequent to the hearing, I met the Assistant General Secretary of MSF and informed him of the decision I had reached and the Order I proposed to make. This was to enable the union to consider what remedial steps it could take to meet the terms of this Order.

42. The union later wrote to me explaining that it proposed to take the following actions.

- (1) The issue of instructions to its Head Office staff to ensure that all political fund contribution authorisation forms and membership application forms completed by its members in Northern Ireland are retained permanently on the union's files.
- (2) Written explanations to be issued to all MSF members in Northern Ireland clarifying the position with regard to contributions to the union's political fund.
- (3) Where it appears any contributions have been made without the proper authority, all moneys deducted will be refunded.
- (4) All deductions improperly made since April 1993 from members of the union branch at Shorts Bombardier Plc of which the complainants are members will be refunded and a written statement explaining the reasons for the refund issued to each member.
- (5) Every effort will be made to trace former members who have left the Branch since April 1993 and, where appropriate, refunds made to them.
- (6) A certificate will be provided by an independent auditor confirming that no deductions improperly collected were placed in the union's political fund.
- (7) A new membership application form and political fund payment authorisation form will be printed for all Northern Ireland applicants for membership.
- (8) Greater efforts will be made to keep the union's central records up to date with regard to its Northern Ireland members.

43. I welcome the remedies proposed by the union which meet both the terms of the Order I have made and problems which may affect members of the union beyond the sixteen who made formal complaints to me. The remedies are constructive and, if fully implemented, should avoid any repetition of the circumstances which gave rise to the complaints.

A handwritten signature in black ink, appearing to read 'A H McALISTER', written in a cursive style.

**A H McALISTER**

8 November 1996