

D/04/2024

Decision of The Certification Officer for Northern Ireland

In the matter of an application pursuant to Article 90A of The Trade Union and Labour Relations (Northern Ireland) Order 1995 ('the 1995 Order').

Mr Ashton Shields (Applicant)

V

Ulster Teachers Union (UTU) (Respondent)

Date of Decision:

22 August 2024

DECISION

Upon application by Mr Ashton Shields (the Applicant) under 90A of the 1995 Order a single complaint was lodged alleging a breach of Article 90A(2)(b) of the 1995 Order governing disciplinary proceedings by the union (including expulsion).

My decision is that the above-mentioned complaint is upheld:

DECLARATION

I hereby issue a declaration that the Respondent breached Article 90A(2)(b) of the 1995 Order.

I have also determined that an Enforcement Order is not required.

REASONS

General Background

1. Mr Shields (the Applicant), a member of the Ulster Teachers Union (the Respondent), registered a single complaint with my office on 23 December 2023.
2. The Applicant alleges that the Respondent breached union rules when conducting a disciplinary process relating to three anonymous complaints that he had not participated in strike action on 21 February 2023.
3. I assessed the Applicant's complaint against the following tests:
 - Was the complaint lodged with the statutory time limits;
 - Did the complaint fall within the scope of the Certification Officer's authorities as established in the 1992 & 1995 Orders; and
 - Based on the information provided by the Applicant, was there a potential case to answer.
4. The complaint was lodged within the statutory time limits, fell within the scope of the governing legislation, and was accepted on the basis that the Applicant had presented an arguable case.
5. The Respondent provided an initial response to the Applicant's complaint on 8 March 2024. Following further consultation with the Applicant my office wrote to the Respondent on 12 June 2024 seeking additional clarification on matters covered in its initial response, the Respondent provided a follow-up response on 28 June 2024.
6. Article 70 of the 1992 Order provides for the Certification Officer to regulate the procedure to be followed on any complaint made to him.
7. Given the very narrow focus of the complaint I advised both parties of my intention to determine the case based on written submissions.

The Complaint

8. The Applicant has alleged a breach of Article 90A(2)(b) of the 1995 Order governing disciplinary proceedings by the union (including expulsion).

9. The Applicant is a longstanding member of the UTU and at the time of the complaint was Chair of the Southern Area Group and the Future in Teaching (FIT) Committee.
10. The following timeline is supported by the various written submissions provided by both parties.
11. On 6 March 2023, the Respondent's General Secretary wrote to the Applicant advising that the:
 - Three complaints had been received that the Applicant had not observed the UTU instruction for a half-day strike on 21 February 2023 and that this action may constitute 'bringing the union into disrepute'.
 - Central Executive Committee (CEC) had determined that the matter merited further investigation in line with UTU's Disciplinary Code set out in its Rules and Constitution.
 - Applicant should respond to the complaints within seven days.
12. On the 13 March, the Applicant provided a response to the complaints set out in the General Secretary's letter of 6 March 2023 in compliance with the stated seven-day deadline. He asked the General Secretary who would be dealing with his response.
13. The General Secretary replied on 13 March 2023 advising that she had only a Secretariat function in relation to the disciplinary process; and that the complaint and the Applicant's response would be considered by a sub-committee of the CEC in line with UTU's Disciplinary Code.
14. The Applicant's response strayed into other matters that had no relevance to the disciplinary process; however, the Applicant did state that he was 'on action that morning' which would suggest that he was contending that he had observed UTU's direction to strike. He did however concede that he was in school but did not carry out any teaching or non-teaching duties on the day of the strike action.
15. On 30 March 2023, the Applicant emailed the General Secretary to advise that he would not be attending the UTU's annual delegate conference, the Respondent did not respond.
16. The next contact from the General Secretary was on 22 November 2023 after the Applicant had reached out to one of UTU's organising officers about

arrangements for the FIT AGM. In that email the General Secretary indicated that the disciplinary sub-committee established by the CEC had stepped back from any further engagement relating to the disciplinary process because of the Applicant's non-attendance at the March 2023 Annual Conference and lack of contact with the Central Executive Committee on general FIT matters.

17. In a further email exchange on 4/5 December 2023 the General Secretary advised that the disciplinary process was deemed closed by the sub-committee because of the Applicant's previous communications indicating that he was stepping back from FIT and CEC activities.

Considerations

18. In reaching a determination I have taken account of the various submissions provided by both parties and the provisions of UTU's Disciplinary Code (**The Code**) to establish whether due process had been observed.

19. The timeline and evidence set out above (paras 7-18) are not in dispute.

20. On 12 June 2024, my office wrote to the Respondent seeking clarification on the following issues:

- Was the UTU's Code initiated by the letter of 6 March 2023;
- Which rule is the Applicant alleged to have breached; and
- Why did UTU not inform the Applicant of the disciplinary sub-committee's decision to take no further action in line with 6.2 of the Code.

21. The Respondent replied to my office on 28 June 2024 confirming that the letter of 6 March 2023 did initiate disciplinary action in line with the Code; but that the notification requirement at 6.2 of the Code is only invoked when the member is found guilty of one or more charges. The Respondent did not confirm which union rule the Applicant was alleged to have broken.

22. The Respondent refutes the allegation that it has breached any of its rules and specifically the Code.

23. The central issue is whether the Respondent has demonstrated that it followed its own procedures, in this instance the Code.

24. Section 2.1 of the Code states that ‘the Executive may resolve at any time to investigate the conduct of any member who appears to be in breach of any rules of the union’ and under Section 2.2 ‘if the Executive so resolves the General Secretary shall then carry out a preliminary investigation and shall immediately notify the member whose conduct is being investigated of the Executive’s decision and the reason for that decision’.
25. The General Secretary’s letter of the 6 March 2023 did, in part, comply with sections 2.1 and 2.2 in communicating the nature of the complaint and requesting a reply within seven days.
26. The Applicant did meet the seven-day requirement in responding to the alleged charge of not observing the union’s direction to strike on 21 February 2023.
27. The Respondent has failed to provide evidence that a preliminary investigation had been completed in line with Section 2.2 of the Code; the General Secretary’s email to the Applicant of 13 March 2023 stated ‘I am only directed by CEC to ask you to respond to the complaint. I’m like the Secretariat. The complaint and your response are then passed to a small sub-committee to consider whether anything further is required.’
28. This representation of the General Secretary’s role in this particular disciplinary process is at odds with the general requirements of section 2.2 of the Code which expressly requires the General Secretary to carry out a preliminary investigation.
29. My responsibility is to determine whether due process had been followed and not to critique the conduct of a preliminary investigation; however, as a first step, it may have been helpful to have asked the Applicant to evidence the assertion in his response of 13 March 2023 that he was ‘on action’ on the day of the UTU strike. The applicant did indeed aver in an email of 13th March to the General Secretary; *‘whilst I was on action that morning, I was organising the Northern Ireland v Scotland schoolboy international. A match that not only provided the opportunity of international football to schoolboys’ but also provided hundreds of free tickets to school children as well as the CEC members in attendance.*’
30. Confirmation that the Applicant was or was not on strike would certainly have brought a sharper focus to the disciplinary process.
31. In the Respondent’s letter of 28 June 2024 to my office the General Secretary underscored the importance of the preliminary investigation in stating:

'The Union were not aware whether in fact Mr Shields had supported the strike action. The complainants were entitled to have their complaints investigated and that was the purpose of the letter of 6 March 2023'.

32. The sub-committee decided not to lay any charges against the Applicant, but that decision was not informed by the outcome of a preliminary investigation conducted by the General Secretary in line with section 2 of the Code. Instead, the sub-committee's decision was influenced by the General Secretary's advice that the Applicant had indicated his intention to step back from his various leadership roles.
33. It is concerning that the Respondent did not communicate with the Applicant about the disciplinary process from 13 March to 23 November 2023; and the catalyst for that communication was the Applicant's message to an Organising Officer about arrangements for the upcoming FIT AGM.
34. It is accepted best practice that organisations should seek to complete a disciplinary process against a member/employee as soon as is practicable and take the lead in any communication.
35. The Respondent contends that they had not breached its Code as the notification provisions at section 6 of the Code are only invoked if a member is found guilty of one or more charges. I accept that point, but it is not unreasonable to expect an organisation to inform a member at the earliest opportunity of the decision to discontinue the disciplinary process. This would have avoided a lot of stress for both parties, and, particularly, the Applicant.
36. Contextual factors such as the Applicant indicating his intention to step back from his various leadership roles within the union should not have influenced the Respondent's decision-making regarding the extant disciplinary process. Those considerations may have had some relevance in determining the appropriate penalties if the alleged charges had been proven.

Final Conclusions

37. My decision to uphold the Applicant's complaint rests on two issues:

- The General Secretary did not complete a preliminary investigation as required under section 2.2 of the Code, and
- The Respondent failed to notify the Applicant of the decision taken around the end of March 2023 to discontinue the disciplinary process until November 2023, and only after the Applicant had made an enquiry about the arrangements to Chair the FIT AGM.

38. I have acknowledged that the Respondent did not breach the notification provisions at section 6 of the Code; however, that does not absolve the Respondent from its responsibility to comply with Natural Justice principles in providing early notice to a member of a decision to stop a disciplinary process.

39. I have also determined that an Enforcement Order is not required, preferring to leave it to the Respondent to determine whether there is a need to make an amendment to its Disciplinary Code that would require the Union to inform affected members at the earliest opportunity of a decision to stop a disciplinary process.

Tom Evans OBE

A handwritten signature in black ink, appearing to read 'T Evans', with a stylized flourish at the end.

Certification Officer for Northern Ireland