

D/08/14

**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 has no basis that is within the jurisdiction of the Certification Officer and therefore has no reasonable prospect of success.

**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 11<sup>th</sup> December 2013.
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 non-adherence by the Union to its own members' complaint procedure.
3. Through an exchange of correspondence and communication with my office, the applicant confirmed his position on his internal complaint to the Union which he intended to process and pursue to a conclusion. By letter of 17<sup>th</sup> December from my office the applicant was advised:

**'Under Article 90B of the 1995 Order, the Certification Officer can refuse your claim until she is satisfied that all internal processes have been exhausted.**

**Therefore, the Union will be afforded the opportunity to complete the process internally before the Certification Officer will consider your case under the terms of Article 90A'**

4. The Union was advised by a letter from my office dated 17<sup>th</sup> December of the potential for a complaint arising from the applicant's internal complaint but that the Certification Officer would not take any further action until the internal process had been dealt with by the Union. In the absence of a satisfactory conclusion of the internal process by the Union, the applicant had informed my Office that he reserved the right to pursue a complaint against the Union for any alleged non-adherence of the Union to its own rules and policy on the handling of internal complaints under the terms of the applicable legislation.
5. By correspondence of 8<sup>th</sup> January 2014 my office was advised by a letter from Eugene McGlone on behalf of the Union that the Union regarded the internal complaint to be closed.
6. By letter to the applicant dated 6<sup>th</sup> February I granted the applicant some time to make a reply to the Union's position set out in its letter of 8<sup>th</sup> January and my office requested further and specific particulars of his complaint and sought confirmation from the applicant relating to the specific rule breaches alleged and further supporting information in respect of each alleged rule breach. The applicant was provided with a guidance leaflet on how to present his complaint and he was provided with references to online resources on the website of the Certification Officer to assist him, if required.
7. On 18<sup>th</sup> February my office received a document from the applicant setting out his response to the Union and his particulars concerning his complaint in respect of the Union and its alleged non-adherence to its policy on internal complaints during the processing of the applicant's internal complaint by the Union.
8. Once I had confirmed that both parties had nothing further to add to the information previously supplied to me I considered the case in accordance with the applicable statutory provisions as to whether I should treat the case as an actionable complaint under the terms of Article 90A. I carefully considered all of the information submitted to me by both the applicant and the Union. I concluded that the complaint had no basis under the terms of Article 90A and I advised the applicant by letter of 10<sup>th</sup> March 2014 as follows:

**There are very limited circumstances when the Certification Officer has jurisdiction to make a judgement in respect of alleged rule breaches on the part**

**of Trade Union. I cannot look at any and all alleged breaches of rules. The alleged breach must arise as a result of any of the following situations:**

- 1) The appointment or election or the removal of a person from office**
- 2) Disciplinary proceedings by the Union**
- 3) The balloting of members on any issue other than industrial action**
- 4) The constitution or proceedings of any executive committee or of any decision making meeting.**

**I have carefully considered the content of your letters. I understand that you are aggrieved because you believe that the Union did not progress your complaint efficiently appropriately or fairly. However, there is no evidence linking your allegations about the way in which the Union has allegedly breached its complaint procedure to any of the four statutory grounds pursuant to Article 90A as set out above. There must be a link between the facts of your complaint and one or more of these statutory grounds in order to give the Certification Officer the necessary lawful jurisdiction to consider the complaint.**

**In the absence of such evidence I find that your complaint falls outside the remit of Article 90A and I am sorry to say that I cannot progress the case any further.**

9. I further advised the applicant in my letter of 10<sup>th</sup> March that he would be given an opportunity to show just cause as to why I should not strike out his complaint 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.

10. 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 complaint to be struck out on the grounds that it has no reasonable prospect of success.

(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 there is no reasonable prospect of success of the applicant's complaint.

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**