

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

MRS M McCREADY

v

NASUWT

Date of Decision

14 May 2007

DECISION

Upon application dated 7 July 2006 by the applicant under Article 90A(1) of the Trade Union and Labour Relations (Northern Ireland) Order 1995 (as amended) ("the 1995 Order"):

1. I declare that in taking 13 months to inform the applicant that a disciplinary complaint had been made against her, the union breached rule 26(2)(b) of its rules. I consider it inappropriate to make an enforcement order in respect of this declaration, as the union has since taken steps to prevent the recurrence of the same or a similar kind of breach.
2. I dismiss, on withdrawal by the applicant, the applicant's complaint that the union breached section 3.2 of the "Protocol for progressing complaints under NASUWT Internal Association Discipline", in that with respect to the Ex-President's preliminary investigation, the Ex-President did not contact the applicant in any way, and did not make her aware of deadlines for contacting him, or of the necessity of doing so.

REASONS

1. By an application dated 17 July 2006, the applicant, Mrs M McCready, complained of two alleged breaches of rule by her union, the National Association of Schoolmasters Union of Women Teachers (NASUWT) or the

...es related to disciplinary proceedings taken by
McCready. This is a matter potentially within the
jurisdiction of the Certification Officer by virtue of Article 90A(1)(b) of the
Trade Union and Labour Relations (Northern Ireland) Order 1995. Mrs
McCready's complaints, in substance, were:

- (i) That the union breached rule 26(2)(b) of its rules by taking over 13 months to notify her that a disciplinary complaint had been made against her by another member.
 - (ii) That the union breached section 3.2 of the "Protocol for progressing complaints under NASUWT Internal Association Discipline", in that with respect to the Ex-President's preliminary investigation, the Ex-President did not contact Mrs McCready in any way, and did not make her aware of deadlines for contacting him, or of the necessity of doing so.
2. These matters were investigated in correspondence. In a letter dated 8 March 2007 to my office from its Assistant General Secretary (Regional Development and Support), NASUWT accepted that complaint (i) was well founded. It expressed its regrets for distress and inconvenience caused to Mrs McCready by its failure to deal with the complaint in accordance with the rules. While conceding the breach of rule, it submitted that I should not make an enforcement order in respect of it.
3. With regard to complaint (ii), NASUWT argued in the same letter that the Protocol referred to by Mrs McCready was not a rule of the union, but an administrative protocol, the aim of which was to ensure efficient processing of internal disciplinary complaints. It argued further that, in any case, the decision whether to seek further information from either or both parties to a complaint was left by section 3.2 to the discretion of the Ex-President, who was therefore not required to take the actions that Mrs McCready complained he did not take. My office sent a copy of the union's reply to Mrs McCready, who by letter dated 10 May 2007 indicated that she did not wish to pursue complaint (ii).
4. In the circumstances, it was not considered necessary to hold a hearing on these complaints. I have therefore made this decision on the basis of the written representations of the parties and the documents supplied by them.

Findings of Fact

5. On the evidence before me I find the facts to be as follows.
6. On 7 March 2005 the Secretary of the Erne local association of NASUWT, Mr D McCaul, sent a formal complaint about Mrs McCready to the General

Mrs McCready was NASUWT's school representative at Royal School in Enniskillen, Co Fermanagh. Mr McCaul's letter, which was of four pages and had 26 documents attached, made a number of allegations against Mrs McCready in her role as school representative. It is not necessary to go into the details of these, since they are not significant for this decision.

7. Mr McCaul's letter was received at NASUWT headquarters on 10 March 2005. It was passed to the then Assistant General Secretary, Mr J Bartlett, but no immediate action was taken on it, and it was subsequently overlooked and forgotten. A year passed and Mr McCaul then e-mailed NASUWT to enquire why there had been no progress on his complaint. The original complaint could not be found at NASUWT headquarters (it did turn up in due course), and Mr McCaul was asked to resubmit it, which he did on 31 March 2006.
8. On 12 April 2006 Ms Keates wrote advising Mrs McCready that a disciplinary complaint under rule 26 had been made against her. She enclosed the complaint and the accompanying documents and asked Mrs McCready to notify her within 14 days whether the complaint was admitted or denied.
9. Mrs McCready replied on 20 April 2006, emphatically denying the complaint. She noted that it had been made more than 13 months before and pointed out that, under rule 26(b)(2) of NASUWT's rules, a copy of any complaint made was to be sent to the respondent "upon receipt". She asked for an explanation as to why it had taken so long to inform her of the existence of the complaint.
10. Ms Keates wrote back on 25 April explaining that the complaint had been mislaid and apologising to Mrs McCready for the unacceptable delay. She asked Mrs McCready to provide a response to the complaint for submission to the Ex-President of NASUWT, who would investigate whether the complaint should proceed.
11. Further correspondence ensued, in which Mrs McCready argued that the delay had put her at a disadvantage in preparing her defence, because some colleagues had left the school in the meantime and memories generally had faded; and that, in any case, pursuit of the complaint after such a period was entirely improper. Ms Keates did not accept these arguments. The Ex-President duly considered the papers and advised in June 2006 that the Disciplinary Committee should hold a hearing to determine the complaint. Mrs McCready made application to the Certification Officer on 7 July 2006.
12. The Disciplinary Committee issued its findings on 13 October 2006. On one of the four parts into which the complaint was divided, the Committee found that Mrs McCready had not followed correct procedure, but it considered that

stances and attached no disciplinary sanction to finding three parts of the complaint as not found. It expressed concern that a situation had been allowed to develop to the extent that a complaint was made, and recommended measures to avoid a recurrence in future.

The Relevant Statutory Provisions

13. The provisions of the 1995 Order that are relevant to this application are:

90A.-

(1) *A person who claims that there has been a breach of 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)

(b) *disciplinary proceedings by the union (including expulsion);*

(c)

(d)

Declarations and orders

90B.-

(3) *Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an 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 so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.*

14. The union rules that are relevant to this application are:

26. Internal Association Discipline

(2) Disciplinary Complaint

- (a) *If a member believes another member (the respondent) has committed a disciplinary offence and that member wishes to make a complaint, he/she shall submit his/her complaint in writing setting out details of the respondent's conduct to the General Secretary.*
- (b) *Upon receipt of such a complaint the General Secretary shall send a copy of the complaint to the respondent who shall within 14 days of the date it was sent to him/her notify the General Secretary in writing whether the complaint is admitted or denied.*

The Protocol

Protocol for progressing complaints under NASUWT Internal Association Discipline.

- 3.1 The Ex-President will normally conduct a preliminary investigation by reviewing the correspondence submitted by the complainant and respondent unless s/he is unavailable, in which case the immediate Past-President will be asked to conduct the investigation.
- 3.2 If the Ex-President considers that further information is required she/he will obtain this from the parties in writing. Secretarial assistance will be identified by the General Secretary to support the process.

Conclusion

15. Under rule 26(2)(b) of the NASUWT rules, the General Secretary must send a copy of any disciplinary complaint to the member concerned "upon receipt". In her correspondence with Ms Keates, Mrs McCready acknowledged that the term "upon receipt" is imprecise, but argued that a 13-month delay could in no circumstances be considered acceptable. I agree with Mrs McCready. There is one specific time-limit laid down in rule 26(2), namely, 14 days for the respondent's reply to a complaint. The words "upon receipt" appear three times in rule 26 (2), along with "whereupon" (twice) and "upon conclusion" (once). Reading the rule as a whole, it is clear that the intention of those who

...y complaints should be progressed with a degree of what one would expect. "Upon receipt" might therefore be reasonably interpreted to allow a period of a few days for taking the action prescribed, but cannot justify a lengthy delay. As mentioned in paragraph 2 above, the union accepted in a letter of 8 March 2007 that the delay in the present case constituted a breach of rule 26(2)(b).

16. Accordingly, for the reasons given above, I declare that by taking 13 months to inform Mrs McCready that a disciplinary complaint had been made against her, NASUWT breached rule 26(2)(b) of its rules.
17. Where I make a declaration, I must, unless I consider it inappropriate, make an enforcement order requiring the union to remedy the breach and/or to secure that a similar breach does not occur in future. The breach consisted in the union's failure to act promptly on a complaint made in 2005. That is not a matter that can be remedied now.
18. As to prevention of similar breaches in future, the union's Assistant General Secretary (Regional Development and Support), in a letter of 20 April 2007, gave my office details of steps that had already been taken to this end. Having concluded that part of the problem was that the original single Assistant General Secretary post was overloaded, the union has created additional posts at that level and allocated responsibility for rule 26 complaints to the holder of one of these. It has provided extra members of staff to assist that person and is currently preparing to appoint another whose job it will be to deal solely with member complaints including internal union discipline.
19. In the circumstances, I consider that it would be inappropriate for me to make an order.

R Gamble

Certification Officer for Northern Ireland