

D/20/20-21

Decision of the Certification Officer on an application made under Section 108A(1) of
the Trade Union and Labour Relations (Consolidation) Act 1992

Kidd

V

Musicians' Union

Date of Decision

3 December 2020

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Decision

1. Upon application by Mr Michael Kidd (“the applicant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

Pursuant to section 256ZA of the 1992 Act, I strike out the claimant’s application on the grounds that the complaint, as advanced by Mr Kidd, has no reasonable prospect of success.

Findings of fact

2. Mr Kidd made an application to this office dated 17 June 2020. Following correspondence with my office, Mr Kidd confirmed his complaint as follows:

Complaint

Horace Trubridge was elected General Secretary of the Musician’s Union (MU) on 27 March 2017 for a five-year term ending on 27 March 2022. On the 5 February 2020, the Executive Committee passed a motion granting an extension to this term without holding an election until 15 January 2025. This motion constitutes a threatened breach of MU Rule VIII(8) in two ways:

The eligibility requirements of Section 58 of the Trade Union Labour Relations Act 1992 are not met by MU Rule VIII(8), and there is no other MU Rule which makes reference to a mechanism for an exemption from the requirement for re-election according to Section 58 of TULRCA.

Notwithstanding the above, MU Rule VIII(8) states that the General Secretary shall hold office for the maximum period provided by law. TULRCA S.58(3), states that the retirement age must be the earlier of either the age fixed by, or in accordance with, the rules of the union for him to retire from the position in question, or the age which is for the time being pensionable age in accordance with the Pensions Act. The MU rules do not fix a retirement age for the General Secretary so the latter would apply. In this case, the date would be 15th Jan 2023, two years earlier than the date fixed by the EC in this motion.

The Relevant Statutory Provisions

3. The provisions of the 1992 Act which are relevant for the purposes of this application are as follows: -

46 Duty to hold elections for certain positions.

(1) A trade union shall secure—

(a) that every person who holds a position in the union to which this Chapter applies does so by virtue of having been elected to it at an election satisfying the requirements of this Chapter, and

(b) that no person continues to hold such a position for more than five years without being re-elected at such an election.

(2) The positions to which this Chapter applies (subject as mentioned below) are—

(a) member of the executive,

(b) any position by virtue of which a person is a member of the executive,

(c) president, and

(d) general secretary;

58 Exemption of certain persons nearing retirement.

(1) Section 46(1)(b) (requirement of re-election) does not apply to a person holding a position to which this Chapter applies if the following conditions are satisfied.

(2) The conditions are that—

(a) he holds the position by virtue of having been elected at an election in relation to which the requirements of this Chapter were satisfied,

(b) he is a full-time employee of the union by virtue of the position,

(c) he will reach retirement age within five years,

(d) he is entitled under the rules of the union to continue as the holder of the position until retirement age without standing for re-election,

(e) he has been a full-time employee of the union for a period (which need not be continuous) of at least ten years, and

(f) the period between the day on which the election referred to in paragraph (a) took place and the day immediately preceding that on which paragraph (c) is first satisfied does not exceed five years.

108A Right to apply to Certification Officer

(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 subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (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 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 matters as may be specified in an order made by the Secretary of State.

256ZA Striking out

(1) At any stage of proceedings on an application or complaint made to the Certification Officer, she may—

- (a) order the application or complaint, or any response, to be struck out on the grounds that it is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived,
- (b) order anything in the application or complaint, or in any response, to be amended or struck out on those grounds, or
- (c) order the application or complaint, or any response, to be struck out on the grounds that the manner in which the proceedings have been conducted by or on behalf of the applicant or complainant or (as the case may be) respondent has been scandalous, vexatious, or unreasonable.

(4) Before making an order under this section, 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.

The Relevant Rules of the Union

Rule VIII: The General Secretary

8. The General Secretary shall hold office for the maximum period provided by law or until death, cessation of membership, resignation or removal from office, in accordance with the provisions of the Rules. In the event that the General Secretary dies in office, retires or is removed without completing their term of office, an election for a successor shall be held as soon as practicable. A person so removed from office without completing their term of office shall not be eligible to stand for any future election for any office.

Considerations and Conclusions

Background

4. The General Secretary of the Musicians' Union, Horace Trubridge, was appointed on 27 March 2017 for a five-year term ending on 27 March 2022. The Union's Executive Committee met on 5 February 2020. At this meeting the following motion was passed with regards to the General Secretary's terms and conditions of employment:

Motion: (cu) "Having regard to Rule VIII of the rules of the Union and the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 and to legal advice received, the Executive Committee unanimously resolved that the age fixed in accordance with the rules of the Union for the current General Secretary, Horace Trubridge, to retire from the position shall be on his 68th birthday, 15 January 2025; that his term of office shall end on that date; and that in accordance with Rule VIII (1) of the Union's rules the terms and conditions of employment and term of office of the General Secretary shall be amended accordingly; and that the Chair of the Executive Committee shall write to the General Secretary to secure his written acceptance of this variation to his terms and conditions of employment.

5. Soon after passing this motion the Union announced, to their members, the EC's endorsement of the extension of the General Secretary's term of office. The announcement also stated that the decision was taken in full receipt of legal advice covering the required conditions to be fulfilled under the 1992 Act and the Musicians' Union's Rules.

Reasons

6. This complaint was listed to be heard on 18 November 2020. On 11 November 2020, Thompsons, solicitor to the Union, wrote to my office saying that the Union's Executive Committee had met that morning and decided to rescind its decision of 5 February 2020 about the General Secretary's term of office. They explained the reasons for that decision and confirmed that the next election for the role would go ahead at the end of his current term of office on 27 March 2022.
7. Importantly, the Union did not concede that extending Mr Trubridge's term of office as originally planned would have amounted to a breach of Rule XIII as claimed by Mr

Kidd. Their decision, however, removed the alleged threatened breach and confirmed that the next election for the General Secretary role would go ahead as originally planned at the end of his current term of office. This would mean that Mr Trubridge would not remain in post beyond his current five year term without re-election.

8. My view, at that stage, was that the Union's action had returned the Union to the position where there was no longer an allegation of a threatened breach for me to adjudicate. My office contacted Mr Kidd to discuss the options that were available to him to conclude his complaint. Mr Kidd explained that I should adjudicate on his complaint to ensure that the Union did not subsequently change its position and seek to extend Mr Trubridge's term of office at some point in the future. He has also argued that the Act gives me a power to adjudicate on a threatened breach of statute where action has been taken by the Union to remove any threat of a breach.
9. I do not agree with Mr Kidd. The purpose of my powers to determine complaints is, in my view, to remedy any breach which has already taken place, to remove the threat of a breach or to prevent a breach, or threatened breach, occurring again. In this case there are no longer grounds for alleging that there is a threatened breach. The Union have reversed the decision which led to Mr Kidd's complaint to me. It is not within my role to adjudicate upon why the Union reversed their decision.
10. Mr Kidd has also suggested that, by not adjudicating on his complaint, the Union will be able to change its position again and proceed to breach the Act. If it does so then it is open to Mr Kidd, or any other aggrieved member, to raise a complaint about that decision. I will then be able to adjudicate on that complaint. Unless that happens, however, I remain of the view that there are no grounds upon which Mr Kidd can pursue this complaint and consequently no grounds for me to decide upon. The Union's recent decision means that the grounds for Mr Kidd's complaint no longer exist.
11. Consequently, I consider that Mr Kidd's complaint has no reasonable prospect of success. The Union no longer intends to pursue the decision which led to Mr Kidd's

complaint that it was proposing to breach its Rules. There is, therefore, no longer an issue on which I can adjudicate.

Conclusions

12. For the reasons given above I am satisfied that the complaint to me has no reasonable prospect of success.
13. Section 256ZA (4) of the 1992 Act requires me to send notice to the party against whom the strike out order shall be made giving an opportunity to show cause why the complaint should not be made. Mr Kidd was therefore invited, on 19 November 2020, to provide representations as to why his complaint should not be struck out.
14. In Mr Kidd's response dated 22 November 2020, he set out why he believes I have jurisdiction to determine his complaint. However, having considered his reasoning, the arguments he advances do not persuade me that I have the jurisdiction to determine his complaint as there is no longer a threatened breach for me to determine.
15. For the avoidance of doubt, I have made no determination as to the substance of Mr Kidd's complaint.

A handwritten signature in black ink, appearing to read 'Sarah Bedwell', with a horizontal line underneath it.

Sarah Bedwell

The Certification Officer