



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Bell  
**Respondent:** Unite the Union

## AT A HEARING

**Heard at:** Leeds by CVP video conferencing On: 9<sup>th</sup> March 2021 and 10<sup>th</sup> March 2021 (reserved decision on costs in private)

**Before:** Employment Judge Lancaster  
**Members:** C Childs  
EC McEvoy

### Representation

**Claimant:** In person  
**Respondent:** Ms C Meenan, counsel

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was CVP video conference. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing

## JUDGMENT

1. The complaint that the Claimant was unjustifiably disciplined is not well founded.
2. Oral reasons for this decision were given at the conclusion of the hearing on 9<sup>th</sup> March 2021 and written reasons which have been requested by the Claimant will follow in due course.
3. The Respondent's application for costs, limited to £1000.00, is refused.

### REASONS

1. This case has been through three preliminary hearings. At the first of those on 10<sup>th</sup> February 2020 it is expressly noted that the Respondent was not pursuing an application for strike out or deposit, a shad been raised in the ET3. Nor was any such application renewed at either of the subsequent hearings.
2. The potential "protected act" under sections 65 (2) (c) or (3) of the Trade Union & Labour Relations (Consolidation) 1992 has always been clearly established. That is the Claimant bringing a complaint to the Certification Officer in respect of his purported

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removal from the post of Health and Safety Representative. That dispute was resolved on 25<sup>th</sup> June 2019 when the Claimant withdrew his complaint upon his being reconfirmed in post. We do not accept the proposition that in reality the purpose of these proceedings has been to resurrect that complaint about the initial removal from post, which was overturned, rather than the subsequent and final determination. Whilst it is correct that the Claimant did say in evidence that had he received a proper apology from the branch chair at the time of his initial removal he would not have taken the matter further that simply means, in context, that there would have been no complaint to the certification officer which is the necessary foundation of this tribunal claim.

3. Whether or not the further termination of the Claimant's appointment on 8<sup>th</sup> October 2019, and the decision to hold a fresh election before the expiry of his three -year-term of office, did or did not amount to the Claimant having been "disciplined" within the meaning of section 64 (2) of the Act has always been an arguable point.
4. In particular it is at least arguable that the decision of the regional officer, Mr Jessop, to give effect to the workplace petition calling for a vote of no confidence in the Claimant as if it were a request for a new election under the Union rules which automatically therefore triggered his removal in the meantime, amounts to his being subjected to "some other detriment" by a Union official. Certainly, though not in fact material to this manner in which the petition was organised by his workmates, and in related proceedings against his employer, Wincanton, it transpired that the two prime instigators had been disciplined for conducting this process in worktime.
5. In the course of proceedings an issue had also arisen as to whether the Respondent would and/or could rely on a defence under section 65 (5) of the Act. Although it was confirmed that such a defence was still being raised it was noted at the preliminary hearing on 19<sup>th</sup> June 2020 that the nature of the "act" relied upon within that subsection remained unclear to the Claimant and to the Tribunal, but would be addressed in closing submissions. In the event Ms Meenan made no submission on this point, and this defence does not appear to be at all material in the circumstance of this case.
6. Also the statements from the Respondent's witnesses (which were disclosed in advance of the postponed final hearing originally listed on 1<sup>st</sup> July 2020) raised further accusations against the Claimant, which even if not in fact directly relevant to this case, were matters which he was entitled to seek to challenge.
7. It was only at the start of the final hearing that the central issue in the case was clearly identified, that is "the reason why question". Was one of the reasons for the Claimant being "disciplined" -if indeed he was – because he had brought his complaint to the certification officer? It does appear that the Claimant now accepts that he had not fully understood the legal issues.
8. Because that is an issue which requires an examination of the thought processes of the persons involved it is nonetheless, properly a matter to be addressed on the evidence.
9. In the circumstances of this case, even though we have found against the Claimant, this does not mean either that he has conducted the proceedings unreasonably (rule

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76 (1) (a) of the Employment Tribunals Rules of Procedure 2013) or that the claim , from the outset, had no reasonable prospect of success (rule 76 (1) b)).

10. In any event we would not have exercised our discretion to award costs in circumstances where the Claimant has not been represented, where there has been no actual application to question the merits of the claim at a preliminary hearing, and where the Respondent has partly contributed to a lack of clarity in identifying the central issue in advance of the final hearing.
11. Further, whilst the claim for costs is modest, and does not cover all of counsel' s brief fee, we are conscious that the Claimant, whilst in reasonably well paid employment at £38,000 per annum, already has substantial debts of some £60,000 which he is paying off slowly under a debt management programme. His limited ability to pay would also therefore militate against the making of any costs order.

***Philip Lancaster***

EMPLOYMENT JUDGE LANCASTER

DATE 10<sup>th</sup> March 2021

AND ENTERED IN THE REGISTER

DATE 10<sup>th</sup> March 2021