

RESERVED JUDGMENT



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH
BEFORE: EMPLOYMENT JUDGE HALL-SMITH
MEMBERS MS BC LEVERTON
MR S BLAKE
BETWEEN:

Mr M Dooley

Claimant

AND

UCATT

Respondent

ON: 14, 15, 16, 17 June 2011; 27, 28 July 2011;
(Chambers) 7, 8, 27 September 2011

Appearances:

For the Claimant: In person

For the Respondent: Mr Andrew Hogarth QC, Leading Counsel

RESERVED JUDGMENT

1. The Claimant was unfairly dismissed by the Respondent. The Claimant contributed to his unfair dismissal to the extent of 50%.
2. The Claimant's complaints that he was subjected to detriments by the Respondent on grounds of his union membership or activities are not well founded and are accordingly dismissed.
3. The Claimant's complaints that he was unjustifiably disciplined by the Respondent as an individual who is a member of a trade union are not well founded and is accordingly dismissed.
4. The Claimant's complaint that he was dismissed on grounds related to union membership or activities is not well founded and is accordingly dismissed.

5. A Remedy Hearing will be listed.

REASONS

1. By claim forms presented to the Tribunal on 19 February 2010 and 1 February 2011 the Claimant Mr Michael Dooley brought complaints under various sections of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") and complaints of automatic unfair dismissal and unfair dismissal against the Respondent The Union of Construction Allied Trade and Technicians ("UCATT").
2. At the hearing the Claimant appeared in person and gave evidence before the Tribunal. The Claimant called the following witnesses on his behalf Terence Abbott, Regional Organiser, Mr Steve Headley, Development Officer, David Beaumont, James Gamble, Member of the Disciplinary Panel, Mr Richard Hawes, UCATT Shop Steward, David Short, Full Time UCATT Official.
3. The Respondent was represented by Mr Andrew Hogarth, QC, who called the following witnesses on behalf of the Respondent,
 - Mr George Guy, North West Regional Secretary
 - Mr John Thompson, UCATT President

There was a bundle of document before the Tribunal contained in a core bundle and two lever arch files paginated from 1 to 719. The Claimant also produced a small bundle of documents, page numbered from 655 to 698.

The Issues

4. The issues to be determined by the Tribunal were considered at a pre-hearing review on 26 October 2010. In relation to the Claimant's first claim form the relevant statutory provisions under the 1992 Act involved section 64 of the Act namely the right not to be unjustifiably disciplined as a member of the trade union, section 146 of the Act involving Claimant complaint of detriment on grounds related to union membership or activities.
5. In relation to the second claim form the Claimant complained of unfair dismissal on grounds of trade union activities and or because he had made protective disclosures and or asserted statutory rights. The Claimant's first claim form raised complaints under the following statutory provisions, namely section 146(1)(b) of 1992 Act, section 146 (b)(a) of the 1992 Act, section 64(2)(d) and (f), and 65(2)(c) of the 1992 Act. At a Pre-Hearing-Review on 26 October 2010, the Tribunal helpfully summarised and identified the background incidents relevant to the Claimant's first Tribunal claim form as follows:
 - Witney Oxfordshire

- Kosovan Paviors
 - Hudsons
 - Morning Star Article
 - Black and Veatch
 - May Day complaint
 - Claimant's request for union assisted advice
 - Complaints and grievances
 - B Lawrence Ltd
 - Building worker magazine
 - Grievance hearing
 - Charter Community Housing
 - Christmas Lunch
 - Holiday request
6. In addition the Employment Judge at the Pre-Hearing Review identified the statutory provision or section under the 1992 Act relevant to each of the Claimant's individual complaints. By way of example the complaint labelled 'Hudsons' was identified as falling under the scope of sections 146(1)(b), 64(2)(f) and 65(2)(c) of the 1992 Act.
7. In relation to the Claimant's second claim form, the Claimant's complaints involved dismissal for taking part in trade union activities, dismissal of employer representative. The Claimant further contended that he had been dismissed under section 103A of the Employment Rights Act 1996 namely on the grounds of making a protected disclosure the protected disclosure involved an allegation of disclosure being made to auditors and to the police.
8. The Claimant's complaints also related to the conduct of investigations into a number of grievances raised by him. The Claimant's first grievance dated 16 July 2009 named the President of the Union, Mr Thompson and the Executive Committee. The Claimant raised a subsequent grievance on 12 October 2009. The Claimant's complaints involve allegations that his first grievance was not allowed to be heard and that an appeal and later grievances and a further appeal had not been dealt with.
9. By amendment the Claimant also alleged that he had been dismissed on grounds of asserting a statutory right under section 104 of the Employment Rights Act 1996. The Claimant withdrew his complaint under section 103(1)(b) of the Employment Rights Act 1996 namely that he be dismissed for asserting a statutory right.
10. There were also time jurisdiction issues in relation to a number of the Claimant's complaints. The Respondent contended that most of the Claimant's complaints were out of time, apart from the incidents identified as Hudsons, Complaints and Grievances and Grievance Hearing (limited to the grievance on 11 December 2009 not being heard, B Lawrence Ltd, Charter Community Housing, the Christmas Lunch and the Holiday Request issue.

11. The Claimant contended that all his claims should be treated as a single act. The Pre-Hearing-Review on 26 October 2010 determined that it was for the Tribunal at the full merits hearing to determine on evidence whether individual instance amounted to discrete acts altogether constituted an act extending over a period for the purposes of section 147(2) of the 1992 Act.

The Facts

12. The Respondent UCATT is a union involved with the construction industry. 80% of its members worked in the public sector in Local Government maintenance programmes.
13. The union is divided into nine regions and each region has a number of branches and a local regional council who nominate a lay member to the executive committee and the general council of the union.
14. The Claimant Mr Michael Dooley commenced his employment with the Respondent as a regional officer on 3 May 1999. The Claimant was based in the Respondent's London Regional Office. At the material time the membership of union was about 130,000 members. Because of the nature of the construction industry union membership of some workers was of short duration.
15. It was not challenged that in common with other unions union membership of the Respondent's union was in decline.
16. In June 2004 the Claimant stood for election as General Secretary of UCATT. The previous holder of the post was retiring and the Claimant was one of four candidates for the position. The Claimant progressed in the election process through to a run off with one of the other candidates, Mr Alan Ritchie, but the Claimant was ultimately unsuccessful and Mr Ritchie was elected to the post of General Secretary of the Respondent union.
17. The Claimant alleged that during the election period a number of serious allegations had been made against him, involving allegations of assaulting a colleague, committing fraud, responsibility for election malpractice and bringing the union into disrepute through writing a letter to a newspaper. The allegations were not pursued after the election and the Claimant was informed by the outgoing holder of the post of General Secretary, Mr George Brumwell, that he was kicking the allegations into 'the long grass'.
18. There was no issue that the Claimant was active in the union and until the matters involved in the Claimant's Tribunal claims surfaced, the Claimant enjoyed a clean disciplinary record. We accepted the Claimant's evidence that he was a diligent employee and that he derived great satisfaction from his role as the employee of the Respondent.
19. It was the Claimant's involvement with a company, Hudson Building Services

Limited ("Hudsons"), which founded the Respondent's allegations of misconduct against the Claimant in the disciplinary and subsequent dismissal process of the claim.

20. It was not in dispute that Hudsons Building Services Limited was a "payroll" company, a building industry term, which is applied to companies involved in arrangements whereby their employees by various schemes or stratagems' involved in the working relationship are denied the rights and protections afforded to employees and workers in the building industry.
21. Clearly such arrangements which were and are aimed to reducing workers rights challenged the ETHOS of the union who is primary intention was to protect the rights of its members.
22. The Claimant accepted that Hudsons was a payroll company and he became involved following an enquiry from a member who sought his advice in circumstances where he had been given a choice of working PAYE. The Claimant accepted in his witness statement that Hudson was a payroll recruitment company.
23. The Claimant sought advice from his line manager, Mr Jerry Swain the regional secretary, who told the Claimant that he could set up a meeting with Hudsons. We found nothing sinister about such proposal in circumstances where it was part of the Claimant's responsibilities to have a dialogue with companies and individuals in the construction industry.
24. According to the Claimant a meeting with Hudsons took place towards the latter end of 2007 at which Mr Jerry Swain the Claimant's line manager was also present.
25. At the meeting there were discussion about establishing a check-off arrangement with Hudsons check-off was an arrangement whereby the employer company would pay the union dues of its workers directly to the union and which would be deducted from pay due to the worker. The advantage to the union for such an arrangement was that the union dues would be paid on a regular basis and there was no scope for arrears or non-payments by its members. As with all unions finance was an obvious consideration and regular payments as a source of income for union reflected well on the union officials who achieved such.
26. Including in the Tribunal bundle at pages 177 and 178 were two standard form contracts between Hudsons and its operatives. The contract at page 177 included the following

your contract with us is one for service by the self employed."

27. The contract at page 178 the operative was asked to tick one of the following field boxes,

- I am a sole trader

- I am a partner in a firm
- I am a company.

28. It was the Respondent's case that it ought to have been obvious to the Claimant that the contracts were designed to remove the operative from the scope of protection afforded to employees and to workers. The contract at page 177 also included the following

the inland Revenue do not permit our acceptance of self employment status where the contractual matrix workplace circumstances are such that the engagement must be treated as one of employment. In such circumstances the Inland Revenue require that we make schedule E tax (PAYE) and class one National Insurance contribution deductions "as though" operatives were employees.

29. The Tribunal considered that the terms of the contract at page 177 did corroborate the Claimant's evidence that he understood Hudsons' position as affording its operatives a choice between employment status and PAYE or self employed status. The Claimant further contended that as a matter of fact many workers actively seek non-pay arrangements in circumstances where their take home pay was better. The Claimant maintained that this meeting with Hudson had not alerted him to the possibility that Hudsons contractual arrangements with its operatives was such as to undermine their operatives' rights and that their agreement with their operative was no different from the arrangements of other companies with whom the union had long term standing relationships.

30. The Claimant had a second meeting with Hudsons in February 2008 when Hudson agreed to a check-off arrangement. At the meeting the Claimant was accompanied by his line manager at the regional secretary, Gerry Swain.

31. The Claimant had a third meeting with Hudsons on 11 August 2008. On 23 September the UCATT's Northern Region arranged a check-off agreement with Hudsons, page 135. Mr D Short, UCATT regional organiser wrote the following letter to Mr I Anfield the contracts director of Hudsons on 23 September 2008 page 135

with reference to our meeting at our regional office and subsequent telephone conversation we are pleased that Hudson contract Services Limited has agreed to setting up the check off facility for UCATT members and to that I will now forward the information our General Office require.

Should you require any further assistance with the implementation of this check off facility please contact me on the above number and I will be happy to assist.

We look forward to a good working relationship with you and your

company.

32. Accordingly the Claimant had the support of other union officials in relation to his involvement with Hudsons.
33. In about February 2008 the Claimant received fifty membership application forms from Hudsons which had been completed by them. Photocopies of the forms were available for the Tribunal. Inspection of the forms clearly indicated that they could not be genuine as the signature on each of the forms was almost identical, they were undated and they failed to indicate the status of the individual namely whether trade or craft which was a relevant classification for the determination of the appropriate union due. Each form bore the Claimant's sort code GR008.
34. The Claimant noted that full details of the proposed members would follow, page 127, and he passed the forms onto the Regional Secretary's office.
35. In July 2008 the Claimant received a further 23 application forms for union membership from Hudsons. The forms appeared to have been individually signed, but did not contain details of the trades of the applicants. It was the Claimant's case that he had spoken to Mr Ingleton about the forms, namely that he was proposing to return the forms to the individual applicants, but Mr Ingleton took the forms saying that he would process them. Some of the addresses on the forms were false. In a memo to Mr Ingelton, Office Manage, Mr Swain, the Claimant's line manager, dated 10 October 2008, small bundle page 659, Mr Swain wrote the following,

Please find attached forms for the above Company. I understand the Northern Region have registered this Company, but have not submitted any Forms.

You will note from the date on the Forms and the fact they have passed backwards between us that this Region has been dealing with the Company for sometime. However, it appears that we operate differently from the rest of the Union in the fact that we do no seek Company codes or register Companies with yourself prior to submitting Forms.

I would suggest with the dates on the Forms and the fact that you are aware there have been ongoing discussions between the Region and Hudsons tha the Company is London Regional Check-Off Company.

I have spoken to John Scott and I am waiting for him to get back to me.

36. The Tribunal considered that the contents of Mr Swain's memo clearly evidenced the fact that he was well aware of the forms, had taken some responsibility for them and did not indicate any disapproval of involvement with Hudsons.

37. In September 2008 the Claimant had been informed by the Construction Safety Campaign, a Cross Union Safety Campaigning Group, that a man had died in a building site in Witney, Oxfordshire. In circumstances where the building site was in the Claimant's region the Claimant dealt with a request from the Construction Safety Campaign for UCATT assistance in organising a vigil outside the building site. The Claimant cleared the request with his line manager Jerry Swain and organised the vigil which included a press release.
38. On 9 September 2008 the Claimant received a call from Jerry Swain that he had had instruction from the Respondent's Executive President, Mr John Thompson that the Claimant was not to speak to the press. The Claimant was embarrassed by such instruction because he was the UCATT representative on the site and radio and television crews had been set up to speak to him. A press statement was issued by UCATT but neither the Claimant nor Jerry Swain were mentioned but the name of the General Secretary was attached to the press release. The Claimant contended that the Respondent's conduct amounted to a detriment within the meaning of section 146(1)(b) of the 1992 Act namely that he had been prevented or deterred from taking part in the activities of an independent trade union at an appropriate time.
39. The Respondent had had a long established practice to ensure that press that press issues were dealt with consistently through the union's General Office. On 26 June 1997 the then General Secretary had issued instructions to all full time officials relating to national press statements, page 194, which was followed up by a letter to the Respondent's employees including regional officials dated 22 August 2005 page 225. The letter included the following
- it has been raised at the executive meeting as a matter of concern regarding the amount of press quotes by Regional Organisers. I have been asked by the EC to reiterate past instructions.**
- No regional official is to release or comment to the media without clearing the statement with the Regional Secretary.**
- The regional secretary official will not comment on national issues (see C G Brumwell's letter) and refer the media to General Office.**
- The EC has made it clear that this must be strictly adhered to.**
40. It was the Respondent's case that the Claimant had failed to comply with the union's procedures. In any event the Claimant made no complaint about his treatment at the time. We found that the instruction to the Claimant in relation to the Witney matter was wholly appropriate having regard to the practice of the union.
41. On 27 November 2008 the Respondent's Executive Council was made aware that Hudsons were claiming to be associated with UCATT and were using the UCATT logo on their website. The Executive Council asked the General Secretary to look

into the authenticity and status of Hudsons and report back at a future meeting.

42. On 15 January the Executive Council received a response from its Yorkshire Regional Secretary namely that he had never entered into any corporate agreement with Hudsons and that a number of Employment Tribunal applications had been lodged against Hudson for holiday pay and unfair dismissal. The Respondent's General Secretary stated that he would seek legal advice on Hudsons assertion that UCATT was one of the associates of Hudsons, page 718.
43. It was the Claimant's contention that he had never had any involvement in the matter involving Hudsons logo.
44. On 1 December 2008 the Claimant put his name to a press release headed Kosovan Mafia which stated that six Kosovan Pavours were claiming racial and trade union discrimination by their ex-employer at an Employment Tribunal and that they had been picked on because they were Kosovans and because they had joined a trade union. It was the Respondent's case that the press release had not been cleared with the Respondent's General Offices press officer in accordance with its procedures and that it also contained inaccurate information. On 17 December 2008 the General Secretary Alan Ritchie wrote the following letter to the Claimant, page 209

at the Executive Council meeting held recently, the attention was drawn by a press release UCATT had supposed to circulated concerning a forthcoming Employment Tribunal where we were representing six Kosovan workers. As the press release was not issued from General Office, a copy of the said press release, which I am enclosing herewith for your reference, was obtained from the media.

Having looked at press release I have to advise that it contains a large number of factual inaccuracies. It is also potentially damaging to UCATT as it is titled Kosovan Mafia and suggested that UCATT is claiming for racial discrimination for the workers and that they have been sacked on trumped up charges of extortion and blackmail. In fact UCATT is supporting their claims for trade union activity and unfair dismissal.

I note the press release was sent on 1 December, prior to the case being heard on December 3 and 4. Normal circumstances we would only just circulate a press release, following result in the Employment Tribunal. We would also seek the works permission to assess what level of publicity they are prepared to be involved in.

As you know, we have a press officer of General Office, who coordinates all press releases and the Executive Council has asked me to seek your observation on this press release so do

we give further consideration to this matter.

45. The Claimant failed to reply to that letter and a follow up letter was sent by Alan Ritchie to the Claimant on 23 January 2009 page 318. The letter asked the Claimant whether he was now in a position to respond to the earlier letter of 17 December. It was not until 18 February 2009 that the Claimant replied to Alan Ritchie and he raised issues relating to a threat by Mr Ritchie that in the event of the Claimant failing to respond the executive cuts would have no alternative but to invoke the response disciplinary procedure against him. The Respondent did not take any action against the Claimant as a result of the Kosovan "press release".
46. The Tribunal considered that the Respondent was justified in requesting a response from the Claimant in a relation to the Kosovan press release having regard to its processes and that the Claimant ought to have replied to the General Secretaries' initial letter which was unfrontational in its terms particularly against the background of the Witney press release.
47. In the light of the Claimant's failure to reply to a letter, we did not conclude that pointing out to the Claimant that her failure to respond to the Executive Council's request would leave them with no alternative but to invoke disciplinary procedure against him, could involve a detriment within the meaning of section 146(1)(b) of the 1992 Act.
48. On 26 February 2009, page 719 small bundle, the Respondent's Executive Council decided to defer action concerning the Hudsons logo until after a forthcoming election for the post of General Secretary.
49. The Claimant was a candidate in the election for the post of General Secretary in 2009 and nominations for the post were made by branches at meetings in March 2009. On 15 June 2009 the results of the elections were announced and Mr Alan Ritchie was successful.
50. On 24 June 2009 Mr John Thompson the Respondent President, wrote to the Claimant, page 335, in relation to an allegation that the Claimant had spoken at a May Day rally in Clerkenwell, London at which the Claimant was alleged to have said the following

if I bankrupt the union I don't care. The Union has done nothing for its members.

51. Mr Thompsons letter continued

these comments have caused concerns to myself and other members of the Executive Council of this union to enable me to investigate, I would be grateful if you could confirm that you spoke at the rally in question and that those were the words that you used.

I am simply investigating the issue at present and this letter does not form any disciplinary procedure. Nevertheless, I would be grateful for your response.

52. The Claimant replied on 4 July 2009 page 338 in which he enquired who had made the complaint, asked to be directed to the rule or procedure under which Mr Thompson had been acting and stated that he was prepared to assist the investigation but he had no wish to create a precedent as to how investigations are carried out. The Claimant's letter continued

furthermore I am recording my objections in this investigation which I feel is more designed to harass and victimise me because I stood as a candidate in the election than to achieve any benefit for UCATT members.

When I have had a satisfactory response to my request I will answer your enquiries.

53. The Tribunal found the Claimant's response unhelpful and uncooperative to what, we found, had amounted to a polite and courteous enquiry by Mr Thompson.
54. Mr Thompson replied to the Claimant on 9 July 2009, page 339, in which he denied that his earlier letter had been designed to harass and victimise the Claimant and requested a detailed response to his letter of 24 June 2009 without further delay.
55. On 7 July 2009 at a meeting of the Respondent's Executive Council it was agreed that the Claimant should be asked to confirm or deny that he made these statement. There followed correspondence between the Claimant and Mr Thompson in which the Claimant raised a number of procedural reasons which he wanted addressed before he assisted in the investigation
56. In a letter to Mr Thompson dated 15 July 2009, page 340, the Claimant began his letter with the following

I am sorry that you are upset by the tone of my previous letter, it's not my intention to unduly upset you or anyone else. However because of the serious nature of the allegations, and for clarity I feel it is best to be candid, which I understand, can sometimes seem unpalatable.

57. On 10 August 2009 Mr Thompson wrote to the Claimant, page 350, pointing out that the Claimant had failed to respond to concerns raised in his letter to the Claimant 24 June 2009. The letter continued,

The issues raised in that letter are serious. I have been asked by the Executive Council of this union to investigate them. To do this I require your comments on the allegations. I have to complete my investigations for the next Executive Council meeting which is due to

take place on 27 August 2009.

58. A further letter was sent to the Claimant on 26 August 2009, pages 354-355, in which Mr Thompson pointed out that he disagreed that the Claimant had not been procrastinating or obstructive in circumstances of attempting to obtain a straight answer from for two months.
59. On 22 September 2009 the Claimant wrote to Mr John Thompson pointing out that Mr Thompson refused to inform him who had made the complaint against him and stating that after taking advice he didn't feel that it was right for him to assist in a charge against himself.
60. On 19 June 2009 Black and Veatch Limited wrote a letter of complaint to Mr Alan Ritchie, pages 333 to 334 about the Claimant's alleged conduct towards Black and Veatch general foreman on 19 June 2009. It was alleged that the Claimant had been abusive over the telephone.
61. Jerry Swain, regional secretary was asked to investigate the matter and on 3 September 2009 he wrote the following letter to Mr Ritchie.

I attach for information Michael Dooley response to the claim. I have also discussed the matter with Brother Dooley. It would appear from what he has told me thereby that his actions to the meeting were in the interest of our members. He was concerned that our members, after being told that they would be made redundant, did not say anything that could jeopardise any possible appeal. This would appear to be the correct course of action.

With regards to the telephone conversation Brother Dooley had had with a site foreman, unfortunately in the private sector of the construction industry employers or their representatives are not always as polite and courteous as we would wish. In fact on occasions they appear to deliberately set out to obstruct UCATT officials. Therefore when seeking to visit a site the reaction of the employers does on occasions dictate that our officials are forceful.

It is my view from the information I have at my disposal, brother Dooley has done nothing that will bring the unions reputation into disrepute.

62. No disciplinary action was taken against the Claimant in relation to the Black and Veatch matter and the May Day issue did not proceed further.
63. On 4 August 2009 the Claimant had been written to in relation to Mr Guy's enquiry into Hudsons, page 346. In his letter Mr Swain pointed out that as both he and the Claimant had met with Hudsons Mr Guy had requested to meet both on 11 August 2009.

64. On 15 July 2009 the Claimant had raised a grievance, page 341 in which he alleged that he was being harassed and victimised because he had taken part in a trade union activity namely standing as a candidate against the General Secretary in a recent election for the position of General Secretary. The grievance was against the President of the union Mr John Thompson and those he was acting for on behalf of the executive committee. In his grievance the Claimant referred to three complaints, namely the issue of a press statement of the previous year, the May Day allegation, and the Black and Veatch incident.
65. In his grievance the Claimant alleged that he saw a pattern emerging whereby as a candidate against Alan Ritchie he was being harassed and subject to complaints which in his view were unfounded and designed to harass him and to paint a picture of him as an unsavoury character who had had a series of disciplinary complaints on record but none of which had stuck,
66. At a meeting on 10 August 2009 between Mr George Guy the Claimant and Mr Swain, the Claimant stated that he had met Hudsons on four occasions between the 1 November and 15 October 2008 and that the purpose of the meetings was to discuss membership and to obtain a check off agreement. The Claimant also confirmed that he had submitted the 50 forms in February 2008 and that they had been returned to him unprocessed.
67. On 14 September 2009 the Claimant had visited a building site occupied by Brian Lawrence Limited. The Claimant was accompanied by three UCATT members who alleged they had been dismissed by Brian Lawrence Limited and the Claimant went to meet a company official to discuss the matter.
68. A complaint was received from Brian Lawrence Limited that the Claimant had been organising unlawful industrial action against them. There appears to have been no truth in the allegation but the Respondent was concerned in circumstances that Brian Lawrence Ltd was threatening to take legal action when no ballot had been held. Accordingly Mr Thompson the Union President instructed the regional secretary to inform the Claimant to stop unofficial action.
69. It was the Respondent's contention that it had not acted to undermine the Claimant but that faced with a threat to legal action, the possibility of an injunction and threat to union funds it had no option but to take steps to repudiate the action.
70. On the same day 14 September 2009 Mr Thompson wrote to the Claimant stating that following communication from Brian Lawrence Limited he was writing to inform the Claimant that the union repudiated any recent industrial action taken in respect of such company. The letter continued your union has repudiated a call (or calls) for industrial action to which this notice relates and will give no support to unofficial industrial action taken in response to it (or them). If you are dismissed while taking unofficial industrial action, you will have no right to complain about unfair dismissal.
71. A letter in identical terms was also written to the Regional Secretary Mr Jerry Swain on 14 September 2009 page 368.

72. On 29 September 2009 the Claimant wrote to Mr Thompson, page 372, requesting that the repudiation letter should be removed from his file. The letter stated "I feel that rather than seek an explanation with regards B Lawrence you have sent me the repudiation letter unfairly. This type of letter, now my person file could assist in painting me as new responsibly employed. I am requesting that you remove the letter and any references to it from my file and apologise to me for your misunderstanding."
73. On 12 October 2009, page 277 the Claimant raised a further grievance in which he complains that the Respondent had failed to consider his earlier grievance complaining about the instruction he had been given in relation to the alleged unlawful industrial action and that he had no response in relation to his report concerning the Black and Veatch complaint.
74. On 29 October 2009 Mr Ritchie wrote to the Claimant pages 391 to 395 informing him of the outcome of his grievance which was rejected.
75. The Claimant complained that following his successful election Mr Alan Ritchie in an article he wrote for the Respondent's own journal building worker criticised the Claimant, although the Claimant was unnamed in the article. The article, page 337, referred to anonymous leaflets which had been in circulation and were alleged to have contained highly personal vitriolic attacks on him and the article alleged the following

At the other end of the political scale we also saw leaflets circulated that were fascist in content. Such vile, ill informed and dangerous material, also attacking the Executive Council and myself, is contemptible and reveal "the depth to which these people were prepared to sink.

76. The Tribunal considered that the remarks just quoted could only have referred to the Claimant. Indeed further on in the article Mr Richie picked up on a point raised in his opponent's (the Claimant's) election address. The Tribunal considered that any observations by Mr Ritchie in the article, however hostile they were perceived to be, were referred to the Claimant as an unsuccessful opponent in the election, and not to the Claimant's status as an employee of the Respondent.
77. On 26 November 2009 the Claimant sent an internal memo to Barry Ingleton, Office Manager requesting the following

"this is an urgent request for the address labels of all members in Charter Community Housing/Sanctuary Housing Group.

I believe that there are around 40 members who are currently being harassed by their management with letters being sent to their homes threatening them with dismissal unless they accept cuts to their terms and conditions.

I need to urgently counter these management letters to ensure that our members stay solid in resisting these cuts.

I have been given permission to make this request from the regional secretary on 26 November 2009.

Can you please respond as a matter of urgency.

78. The Claimant was not provided with the address labels as he had requested. At the Tribunal hearing Mr Thompson contended that the union had offered to send the letters to the members once they had seen the terms of the Claimant's letter.
79. On 15 December 2009 the Claimant submitted a complaint to the Certification Officer, relating to breaches of the union rules relating to the ballot for the post of General Secretary of the Union. On 11 March 2011 the Certification Officer upheld the Claimant's complaint and ordered the union to re-run the election for General Secretary.
80. The Claimant was not invited to the Respondent's annual Christmas dinner 2009. On 17 November 2009 the Claimant wrote the following to Jerry Swain, regional secretary

I have been informed by the press secretary, Maggie King, that I will not be invited to the annual Christmas dinner this year.

Could you please clarify with me if this is true or not?

Can I take the opportunity of reminding you that the Christmas Dinner has formed part of my terms and conditions over the last 10 years. It is tradition that I enjoy and look forward to, therefore I would like to get the full facts on the issue before considering what, if any further action to take.

81. The Tribunal accepted the Respondent's explanation that in response to a request from the Respondent's London and South East Regional Secretary that his region be treated no different from any other region, it was decided that only General Office staff could attend the General Office Christmas lunch. None of the London and South East Region officials and staff were invited to the General Office Christmas lunch and accordingly the Claimant had not been solely excluded from attending such luncheon.
82. The Claimant complained that his holiday requests had been ignored by the Respondent. On 18 January 2010 to 21 January 2010 the Claimant attended an Employment Tribunal hearing in which he was a Claimant. The Claimant's requested his line manager Jerry Swain for permission to be allowed this time as holiday and was told that he could not consider such request and that he would need to seek the permission from the General Secretary Alan Ritchie.

83. On 19 January the Claimant wrote the following memo to Alan Ritchie

unfortunately I was ill during the recent holiday period. I submitted a doctor's certificate dated Tuesday 29 December 2009 for two weeks. I returned to work on Monday 11 January 2010.

I am requesting those days I was certified as sick and being reinstated as holiday.

I have an Employment Tribunal to attend regarding the black list for four days dated 18 to 21 January 2010 I hope to take those days from some of the holiday.

Alternative to this, can I take the time at the Employment Tribunal paid or unpaid leave.

I apologise for the delay in my request, the Tribunal that was as you know transferred to Manchester. Its only recently transferred back to Central London after an application was made to the Manchester Tribunal. Thank you for considering my request.

84. Mr Ritchie did not reply to the Claimant's request. It was the Respondent's contention that Mr Ritchie had passed the Claimant's request to the Regional Secretary Mr Swain. The Claimant contended that Mr Swain had denied receiving such a request.

85. The Claimant had submitted a third grievance on 11 December 2009 page 402 to 404. The Claimant raised a number of issues which had been raised in his earlier grievance and included the Christmas dinner matter, the fact that he had been unable to use these services of the union solicitor the allegation relating to unlawful industrial action.

86. On 18 December 2009 the Claimant wrote a letter of appeal to Mr Alan Ritchie appealing against Mr Ritchie's rejection of his grievance in his letter dated 29 October 2009.

87. The Claimant complained that he was unable to use the services of the union Solicitors in June 2009. The Claimant was informed that there was a conflict of interest in circumstances where the solicitors acted for the Respondent and that the services of the Respondent's Solicitors were only available to members of the union and not to its employees. The Claimant complained that Mr Ritchie had failed to give him advice about what he should do in the circumstances.

88. Mr Guy's report into Hudsons was received by the Respondent in January 2010. The report at pages 102 to 116 investigated which regions had had dealings with

Hudsons. The Northern region responded that the regional secretary, John Scott, and Dave Short, regional organiser had dealt with Hudsons, the London South East region responded that the regional secretary Jerry Swain had dealt with the company and the North West region revealed that Andy Fisher Regional Organiser had had dealings with Hudsons.

89. During the course of the investigation Mr Guy asked her the same questions of the individuals involved and he saw both the Claimant and Mr Swain on 10 August 2009. Mr Guy also had conversations with the managing director and the contacts director of Hudsons on 9 October 2009. The report also considered the applications forms, namely 50 forms in February and 23 forms in July which had been submitted by the Claimant.

90. Mr Guy's conclusions included the following

it appears – based on my meeting with the company and their subsequent correspondence to me – it was never their intention to enter into a bona fide cheque of agreement for the following reason;

No real membership involved – names and or addresses on application forms are fictitious. During my meeting with Hudson, Mr Ian Anfield indicated that the company would simply submit the amount of money each month/portable?? It is difficult to comprehend why any company would wish to operate in this manner. I can only assume that it was to forge a relationship which they felt would benefit them.

No formal agreement had been entered into. Correspondence were sent by Dave Short (referred to under heading associates – UCATT above) to Mr Ian Anfield indicating that a conversation had taken place between themselves and that it was agreed the setting up of a check off of facility. There does not appear to be any formal response from the company. Check off was arranged, though some months later – initiated by the Northern region. At the time this was set up, no application forms had been submitted by the Northern Region.

It was at this stage that – following meetings between the company, Jerry Swain and Michael Dooley – Michael Dooley submitted application forms. Jerry Swain informed me that it was he as regional secretary, who insisted that check off with Hudson be administered by the London South East Region.

91. Mr Guy's report then went on to make a number of recommendations in relation to the need to be selective with regard to the companies the Respondent met whether the intention was to form any relationship. There were also recommendations relating to application forms, namely that they should be

scrutinised by the officer concerned, ensuring that all acquired information is completed. Mr Guy also stated that against the background of what he described as a significant difference between the Claimant's recollection of events and that of Hudsons that such matters should be subject of a separate investigation."

92. The Tribunal never heard any satisfactory explanation as to why the Respondent was particularly concerned about who had instructed the removal of the logo if indeed it was the Claimant, particularly in circumstances where the Respondents real objection was the logo on Hudsons website in the first place.
93. Mr Guy's report was submitted to the Respondent's Executive Council which requested Mr Guy by letter dating 15 February 2010 to undertake a disciplinary investigation involving four officers of the union, namely John Scott, regional secretary Northern Region, Dave Short, Regional Organisation Northern Region, Jerry Swain, Regional Secretary London and South East Region and the Claimant Regional Organiser London and South East Region.
94. On 15 February 2010 page 417 to 419 Mr Alan Ritchie wrote to the Claimant informing him that the Executive Council had decided to carry out disciplinary investigation into the following allegations namely,
- (i) that in early 2008 you attempted to submit 50 membership forms to the union in respect of members employed by or contracted to Hudson Contract Services Limited. These applications were false as they related to non-existent members of fictitious addresses.
 - (ii) That in the summer of 2008 you submitted 23 membership application forms for individuals allegedly employed by/or contracted to Hudson Contract Services Limited subsequent investigations found names of the alleged members and/all those addresses were fictitious.
 - (iii) That you caused the union to enter into arrangements with Hudson Contract Services Limited which directly contradicted the unions policies on the representation of members, dealings with the employers, and the issue of both self employment.
 - (iv) That you impliedly gave permission for Hudson Contracts Services to use the UCATT logo on its website, thereby presenting the company's partner with this union, without authority or permission despite the fact that the company's employment practices are entirely inconsistent with the Union's positions on both self employment.
 - (v) That you, on a date unknown to the union requested that Hudson Contract Services Limited remove the UCATT logo

101. The investigatory interview was rescheduled for 27 July 2010. On 23 July 2010 Mr Guy received an email from Terry Abbott a regional official from a London South East Region which indicated that the Claimant had not been meeting anyone in relation to work related matters as he was unwell.
102. In circumstances where Mr Guy had endeavoured since February 2010 we arrange an investigatory meeting with the Claimant but was unsuccessful, and as it appeared to Mr Guy there was no prospect of meeting the Claimant in the foreseeable future he presented the executive committee with all the information that he then held.
103. Mr Guy presented his report on the four officers in December 2010, pages 138 to 153.
104. On 9 September 2010 Mr Ritchie wrote to the Claimant informing him that having considered the contents of Mr Guy's report the Respondent's Executive Council believed that the Claimant should answer the same charges which were the subject of Mr Guy's investigation with the exception of the charge that the Claimant had authorised Hudsons use of the UCATT logo on their website. Mr Ritchie's letter also pointed out the following

it is regrettable that you chose not to take part in the investigation. Although you were given several opportunities to meet Mr Guy, you chose not to do so. In view of the interest of all the officials involved in the investigation, Mr Guy has had to complete his reply without your input.

- * 105. We considered Mr Guy's approach to the Claimant inconsistent with his approach to the other union officials he was investigating, in particular Mr Swain . In relation to one charge against Mr Swain namely that *'he had permitted or allowed Mr Dooley to enter into arrangements with Hudson Contract Services Limited when he knew – or ought to have known – that the company's approach to employment issues were entirely contradictory dealings to the Union's stance on bogus self employment'* Mr Guy's report stated that he could not support such allegation.
106. Mr Swain was the Claimant's line manager and in circumstances where Mr Guy found that there was a case to answer in relation to the allegation that the Claimant had entered into arrangements with Hudson Contract Services Limited which contradicted the union's policies on the representation of members, Mr Guy concluded that the Claimant should have established the company's role within the industry which directly contradicted the union's policies. The Tribunal considered that the same consideration ought to have applied to Mr Swain and we concluded that there was a very significant inconsistency between the Respondent's treatment of Mr Swain and that of the Claimant, particular against the background of the Claimant's expressed views that Mr Ritchie was out to get him. The Tribunal noted that in his evidence in chief Mr Short, Regional Organiser Northern Region stated that it was common knowledge that Mr Ritchie was out to get the Claimant

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and in cross examination when it was put to him it was not true, replied that it was common banter amongst UCATT officials.

107. A disciplinary hearing was scheduled for 8 November 2010 but was adjourned at the Claimant's request on grounds of sickness. A further hearing was scheduled to take place on 15 and 16 December 2010. The day before the proposed hearing the Claimant wrote to Alan Ritchie on 14 December 2010 page 488 requesting a postponement of the hearing on grounds that the Claimant had instigated legal proceedings against the Respondent (Employment Tribunal claim form presented February 2010) and that there were outstanding grievances which had yet to be heard. The application for the postponement was refused.

108. The Claimant attended the hearing on 15 December 2010. The panel included nine members of the Respondent's Executive Council and the chair of the panel was Mr Thompson. Mr Ritchie, the Respondent General Secretary was present to outline the charges against the Claimant. The Claimant was accompanied by a Ms King who took notes. The Tribunal noted that both the Claimant and Mr Ritchie replied no to the question of whether they would be calling bringing any witnesses to the hearing. Mr Guy was also present to clarify any points on his reports.

109. The disciplinary hearing lasted for about 15 hours, from 10.00am until 21.15 pm on the first day, 15 December 2010. Mr Alan Ritchie presented the case on behalf of the Respondent against the Claimant. The Tribunal was concerned about the length of the hearing particularly in circumstances when a number of the panel members had come from various parts of the United Kingdom and we consider there was some force in the Claimant's evidence that they were tired and that they exhibited signs of falling asleep during the hearing. The Claimant was accompanied by Ms King who unfortunately had to leave at about 6pm.

✱ 110. We accepted the Claimant's evidence that he was badgered throughout the hearing and that because of tiredness and his mental state at the time he found it difficult to keep up and that consequently he felt that he was unable to properly defend himself.

111. The Claimant's position at the hearing was that he thought a check-off agreement with Hudsons was in place as soon as the forms had been received from Hudsons and he made the point that his line manager, Mr Swain had been with him on three of the four meetings with Hudsons and should have overseen the process and assisted him if he had done anything wrong. We noted the following exchange at page 169

"Claimant – How can you accuse me for doing something wrong when my line manager was with me during the meetings we had with Hudsons? You have exonerated Joey Swain. Joey Swain has not been charged with gross misconduct. I am.

?
Mr Ritchie: he has also been asked to attend the disciplinary hearing tomorrow.

Claimant: If at a glance the forms appear to the fraudulent why would I have submitted the forms which are so recognisable. It is normal for a regional organiser to fill in forms. It is not different in the London and South East Region. We in the region have always completed the bottom part of the forms. You will see that this is not completed. It is evident that I have not seen the forms.

Mr Flynn (panel member): but you have said that the forms were sent back to you

Claimant: they were given back to me, when I noticed the same signature, I sent them back to the company.

Mr Ritchie: again when you submitted the 23 forms, there was still not check-off in place. Why did you not request check-off from Hudsons?

Claimant: I thought Hudsons had agreed to check-off agreement. It appeared that the Northern Region had agreed to a check-off arrangement with Hudsons."

112. It was the Claimant's case that he had sent the forms back to Hudsons and that they had not in fact been processed as membership forms by the Respondent union.
113. The disciplinary hearing continued on 16 December 2010. At the conclusion of the hearing the Claimant was told that the disciplinary panel would return to consider the evidence and that he would be advised of the outcome as soon as possible. Unfortunately it was not until 20 January 2011 that the Executive Council of the union met to consider its decision in relation to the Claimant. The reason given for the delay was because of the Christmas holiday shut down.
114. The Tribunal was further concerned that when the Executive Council reconvened on 20 January 2011 two members of the panel who had been present at the hearing on 15 and 16 December 2010 were not present. One of the absent members Mr Dennis Doody apparently had travel problems in getting to London and the other member Mr Jim Gamble, was apparently away. Two members of the Executive Council asked for these proceedings to be adjourned in their absence.
115. The Tribunal considered a postponement of the hearing to ensure that all members of the panel were present would have been wholly reasonable. However Mr Thompson stated that it had been difficult enough to fix a date when all members of the Executive Council could be present and that the council was effectively quorate in the absence of Mr Doody and Mr Gamble. Mr Thompson's proposal that the council members present should continue and consider the outcome of the disciplinary hearing. According to Mr Thompson the Claimant was found guilty on all charges, in relation to some the council was unanimous and in relation to others

which were not identified to the Tribunal, the vote was five to two in favour of the Claimant's guilt. The Executive Council decided to summarily dismiss the Claimant for gross misconduct by a majority. One member of the Council in the minority, voted for a final written warning. Mr Gamble had he been present, would not have voted for the Claimant's dismissal and in his evidence to the Tribunal when he was asked about whether he might have brought other members of the panel round to his position stated the following

I would like to think that people did not have closed minds. There were other issues I wanted to address and there was the possibility of convincing them.

116. The Tribunal found that the reason why the Executive Council did not reach its decision on 16 December was because a number of the members wanted to hear the disciplinary of Mr Swain which had been scheduled after the Claimant's disciplinary hearing. Mr Gamble himself told the Tribunal that he would have preferred a decision about the Claimant to have been earlier and no arrangements had been made for the disciplinary panel to reconvene although a date had been set for a meeting of the Executive Council.
117. On 20 January Mr Alan Ritchie wrote to the Claimant informing him of his dismissal, page 228. The letter included the following

having reviewed the evidence and considered the documentation the Executive Council decided that you are guilty on all counts they have taken the decision to dismiss you for gross misconduct.

The Executive Council decided you had submitted what you knew to be false membership performance to the union. Those membership forms contain fictitious names and/or addresses. This was done in relation to Hudson Contract Services, a payroll company, whose aims and interests are directly contrary to those of the union. This means that you produced information which could have rendered the union's membership figures inaccurate, gave the union the impression that you were recruiting more members than was actually the case and may have placed the union into a difficult and potentially embarrassing position with regard to payroll company.

As your dismissal is for gross misconduct you are not entitled to notice or pay in lieu of notice. Your employment with this union terminates as from today's date, 26 January 2011.

118. By letter to the Respondent dated 31 January 2011, page 608, the Claimant appealed against the decision to dismiss him. The Claimant's letter included the following

my grounds for appeal are that the procedures relating to the charge of gross misconduct were not followed.

That the decision was reached not for the reasons given but for other reasons.

119. On 2 February 2011 the Claimant made a complaint to the police in relation to an allegation of fraud on the part of the union involving paying affiliation fees based on a union membership of 130,00 some of whom were in arrears with their union dues, rather than based on those members who were not in arrears. The Claimant made a similar complaint to the union's auditors.
120. On 15 February 2011 Mr Gamble wrote to Alan Ritchie, page 644 to 645 expressing his concern at the procedure adopted in relation to the Claimant's dismissal. Mr Gamble complained that a vote relating to the Claimant had taken place at the January Executive Council meeting to dismiss the Claimant and that the Executive Council agenda he had received made no mention of disciplinary issue as an agenda item. Mr Gamble's letter continued

it came to my attention on returning from my holiday that a vote had taken place at the date of the January Executive Council meeting to dismiss Michael Dooley case.

At no time was I informed that the disciplinary panel would be reconvened, in fact the Executive Council agenda I received made no mention that the disciplinary issue as an agenda item. I have since discovered I was not the only panel not in attendance at the vote which is in direct contrast of the original instructions given that all Executive Council members must be in attendance at all stages of the disciplinary panel meetings. It is with great regret that I have to write the statements that I strongly support my union but my conscience tells me that every employee deserves a fair hearing and wholeheartedly I do not believe this to be the case with Michael Dooley.

121. The Claimant provided more detailed grounds of appeal, page 646.
122. The Claimant pointed out that the matters which had been dismissed had taken place in October 2007 and December 2008 and that at the time the Respondent knew about such matters but had taken no action, he was the only person charged with misconduct to be suspended he had not been allowed to see all the evidence against him. The Claimant also contended that a different panel rather than executive committee should have decided his case.
123. The Claimant's appeal hearing took place on 23 May 2011 it was chaired by Mr Tony Dubbins, referred to in the minutes of the appeal hearing pages 656 to 677 as an independent chair person. The Claimant was represented by Mr Terry Abbott. The Respondent's case was presented by Mr John Thompson, Chair of the Executive Committee.

124. By letter to the Claimant dated 26 May 2011 on page 719 Mr George Guy informed the Claimant that the appeal panel had decided to uphold the decision of Executive Council and dismiss your appeal. The letter continued

The appeal panel endorsed the Executive Council's decision that you were dismissed for no other reason than for submitting what you knew to be fictitious membership application forms.

The appeal panel also consider that your contention that the proper procedure were not followed by the Executive Council. Having taken due note of document being submitted and the personal presentation you made the appeal panel decided that there were no grounds for your appeal to be upheld.

Submissions

125. The Tribunal heard submissions from Mr Hogarth QC on behalf of the Respondent and from the Claimant. The Tribunal also had written submissions from both parties. The parties' submissions are not repeated in these reasons.

The Law

126. At the conclusion of the Tribunal hearing the Claimant's complaints had essentially been categorised by him as complaints under section 146 of the 1992 Act namely allegations of harassment commencing with the Witney matter in September 2008 up to his allegation that the General Secretary had failed to treat his attendance at an Employment Tribunal on 19 January 2010 as annual leave together with the disciplinary investigation into his role with Hudsons.

127. In relation to the Claimant's complaint of unfair dismissal the Claimant alleged that the reason for his dismissal was his trade union activities. The Claimant very helpfully refined his allegations in his typed written submissions to the Tribunal covering 24 pages. The Claimant also contended that his dismissal was unfair within the meaning of section 98(4) of the Employment Rights Act 1996. Section 146(1)(b) of the Trade Union and Labour Relations Consolidation Act 1992 provides:

(i) a worker has the right not to be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place before the sole or main purpose of –

(b) preventing or deterring him from taking part in the activities of any independent trade union at an appropriate time, or penalising him for doing so;

Section 146(b)(a) of the 1992 Act provides

- (i) *a worker has the right not to be subjected to any detriment as an individual by any Act, or any deliberate failure to act, by his employer the act or failure takes place for the sole or main purpose of –*
- (b)(a) *preventing or deterring him from making use of trade union services at an appropriate time, or penalising him for doing so, or*

Section 152 of the 1992 Act provides

(1) the dismissal of an employee be regarded as unfair if the reason for it (or, if more than one, the principal reason was that the employee –

(a) was or proposed to become a member of an independent trade union

(b) had taken part or proposed to take part in the activities of an independent trade union at an appropriate time

(ba) had made use of or proposed to make use of trade union services at an appropriate time.

(bb) Had failed to accept an offer made in contravention of section 145 A or 145B or

(c) was not a member of a trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused, or proposed to refuse, to become or remain a member.

128. In the circumstances of this case the substantive issue between the parties was the Respondent's motive in dismissing the claim. The Respondent contended that the Claimant had been fairly dismissed for the potentially fair reason of misconduct under section 98(4) of the Employment Rights Act 1996 in relation to the fictitious membership forms, whereas the Claimant contended that the real reason for his dismissal was the fact that he had stood against Mr Ritchie in the election for General Secretary of the Respondent union and that the union and the union hierarchy were in the words of his witness 'out to get him'.

129. The Claimant further contended that the Respondent's treatment of him had been inconsistent with the treatment of other union officials, particularly Mr Swain who had accompanied him on three occasions to Hudsons and that the sanction of dismissal was too severe or outside the range of reasonable responses available to a reasonable employer.

130. There were also time jurisdiction issues in relation to the Claimant's complaints of detriments for taking part in the trade union activities. There is no concept of

continuing acts in relation to complaints under section 64 of the 1992 Act, but there is in relation to complaints under section 146 of the Act.

131. The Respondent contended that the Claimant had been dismissed for the potentially fair reason of gross misconduct. The role of the Tribunal in the case of alleged unfair dismissal on grounds of gross misconduct is to consider the process adopted by the Respondent which led to the reason to dismiss and determine whether the Respondent acted as a reasonable employer in dismissing the employee concerned. The guidelines in ***British Home Stores Limited v Burchell [1980] ICR 303, EAT***, are relevant.
132. The Tribunal has to determine whether the Respondent employer has shown that he held a genuine belief on reasonable grounds that the employee concerned was guilty of the misconduct alleged and that at the time it reached such belief it had carried out a reasonable investigation into the matter. Further the sanction of dismissal had to be within the range of reasonable responses available to a reasonable employer and the range of reasonable responses test applies to the whole process leading to the decision to dismiss the Claimant. The Tribunal must remind itself that it is not its role to consider what it might have done in the circumstances had it been the Claimant's employer at the material time.
133. The statutory framework for unfair dismissal is contained in section 98(4) of the Employment Rights Act 1996 which provides:

(4) *....the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*

(a) *depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*

(b) *shall be determined in accordance with equity and the substantial merits of the case.*

Conclusions

134. The Tribunal reached its conclusions having regard to the totality of the evidence, to the parties' submissions and to the relevant law.

Detriments on grounds related to union membership or activities and the right not to be unjustifiably disciplined, sections 64 and 146 of the 1992 Act.

135. The Claimant's complaints related to treatment he alleged he received as a result of his activities involved in the matters identified as the following:

- Whitney Oxfordshire
- Kosovan Paviers
- Hudsons
- Morning Star Article
- Black and Veatch
- May Day complaint
- Claimant's request for union assisted advice
- Complaints and grievances
- B Lawrence Ltd
- Building worker magazine
- Grievance hearing
- Charter Community Housing
- Christmas Lunch
- Holiday request

136. The Tribunal concluded that the Respondent gave satisfactory explanations for its approach and involvement in such matters. We concluded that it was reasonable for the Respondent to have asked the Claimant, where relevant, for an explanation as to his involvement and we noted that the Claimant himself was obstructive and uncooperative on occasions when he was, as we found, reasonably requested to provide a response. We found there was no causal link between the treatment complained of by the Claimant and his trade union activities or membership. .
137. By way of example, in relation to the Christmas lunch issue, it had been decided that only General Office staff could attend the General Office Christmas lunch, and that none of the London and South East Region officials and staff were invited. Again no disciplinary action against the Claimant had been taken in relation to the Black and Veatch matter and the May Day issue. We concluded that the incidents involved did not form a series of acts and that most of the matters complained of by the Claimant were out of time, with the exception of the Christmas lunch issue, B Lawrence Ltd issue, Charter Community Housing issue and the holiday request issue, having regard to the date of presentation of the Claimant's claim form on 19 February 2010.
138. Further although the Claimant was clearly dissatisfied about the grievance and appeal process and the fact that some of them were ongoing, we did not conclude that the Respondent's treatment of the Claimant and its approach in relation to such, on the evidence, involved breaches of section 64 of the Act, namely the right of a member of the union not to be unjustifiably disciplined, or of section 164(1)(b) of the Act, namely the right not to be subjected to any detriment by his employer on grounds related to union membership or activity. We did not find any causal link between the treatment complained of and the Claimant's activities or union membership or that he had stood for election as General Secretary of the union.
139. The Tribunal accepted the submission of Mr Hogarth that the scope of section 64(2)(d)(f) of the 1992 Act related to the rights of a member of the union not to be unjustifiably disciplined and did not relate to the rights of an employee of the union.

We did not conclude that the treatment about which the Claimant claimed had been on grounds of nor was linked to the fact that he was to stand or had stood for election as General Secretary of the Respondent union.

140. The Claimant's complaints of detriment on grounds related to union membership or activities and relating to being unjustifiably disciplined as a member of a trade union or activities are not well founded and are accordingly dismissed.

Unfair Dismissal

141. The Claimant contended that the reason for his dismissal was his trade union activities. The Claimant did not pursue his complaint under section 103A of the Employment Rights Act 1996, namely that he had been dismissed on grounds of making a protected disclosure to the Certification Officer and to the union's auditors and to the police. The Claimant's complaint to the police was essentially one of fraud in circumstances where the union should not have paid an affiliation fee based on 130,000 members but should have limited their affiliation fee to one based upon membership of those who were not in arrears of union dues of more than 26 weeks.
142. In relation to the Certification Officer the Claimant's approach appeared to have been inconsistent with his complaint to the union's auditors and to the police and was founded upon his contention that the union had 130,000 members and that they were all entitled to vote. The Respondent accepted that the Certification Officer had ordered the 2009 election to be re-run.
143. Although the Claimant did not pursue his allegations of dismissal on grounds of making protected disclosures at the hearing, we concluded that such disclosures were not connected to the reasons for his dismissal and that accordingly he had not been dismissed on such grounds.
144. The Tribunal considered that there were wholly justifiable grounds for the Respondent to undertake an investigation into the Claimant's conduct in circumstances where the Claimant had received a significant number of membership application forms for the union which were not genuine in the sense that the signature on each was almost identical, that they were undated and that they failed to indicate the status of the individual namely whether the applicant was trade or was craft, classifications relevant for the determination of the appropriate amount due to the union from the applicant. The Respondent's grounds for investigating the Claimant were on grounds of his conduct and not on grounds connected to his union activities or membership. It was unfortunate that the Claimant himself failed to contribute to the investigatory process undertaken by Mr Guy.
145. The Tribunal did have concerns about the procedure adopted by the Respondent at the disciplinary hearing. We noted that on the first day of the hearing the proceedings continued until 9.15 p.m. and we accepted the evidence of the Claimant that the panel members who had come from all over the UK were falling

asleep.

146. The charges against the Claimant were serious and we considered that a reasonable employer would have allowed sufficient hearing time rather than risking the very real possibility that the disciplinary process could be compromised by what the Tribunal considered was an unreasonably prolonged hearing on the first day. ✓ The Claimant and two members of the panel had requested that the proceedings should be halted but such requests were denied by the Chairman. ✱

147. The Tribunal concluded that the Respondent had failed to act as a reasonable employer in its conduct of the disciplinary hearing. We considered there was some force in the Claimant's contentions that he was badgered throughout the hearing and that because of tiredness and his mental state at the time that he found it difficult to keep up and that he felt he was unable to properly defend himself. The Tribunal also considered that a reasonable employer would not have involved Mr Ritchie the General Secretary of the union in the process in circumstances where the animosity between the Claimant and Mr Ritchie had been ongoing for some years.

148. Mr Ritchie presented the Respondent's case against the Claimant, and it was well known that there was a long standing background of animosity between Mr Ritchie and the Claimant. The involvement of Mr Ritchie in the process against whom the Claimant had made a number of allegations, seriously undermined any contention on the part of the Respondent that the disciplinary hearing was balanced in its approach to the Claimant. Mr Ritchie who had had close involvement in the issues involving the Claimant did not attend the Tribunal hearing and was not called as a witness.

f 149. The Tribunal noted that the Claimant was asked why he had not established the nature of Hudsons as a company. Although there was a dispute on the evidence between the number of times the Claimant's line manager Jerry Swain, had accompanied the Claimant to meetings with Hudsons, it was nevertheless common ground that Jerry Swain had accompanied the Claimant to meetings with Hudsons. Jerry Swain was the Claimant's line manager and accordingly there could have been no reasonable grounds for the Respondent treating Jerry Swain's involvement with Hudsons as less serious than that of the Claimant.

150. The Tribunal further concluded that no reasonable employer would have continued with the decision making process in relation to the Claimant in the absence of two of the EC members on 20 January 2011. Two members had requested that the proceedings should be deferred but it was by a majority of five to two that it was decided to go ahead and reach a conclusion on the outcome of the disciplinary hearing. Our concerns about the process were reflected in Mr Gamble's letter to Mr Ritchie in February 2011, in which he stated that he did not believe the Claimant had received a fair hearing. We again reproduce the contents of Mr Gamble's letter.,

it came to my attention on returning from my holiday that a vote had

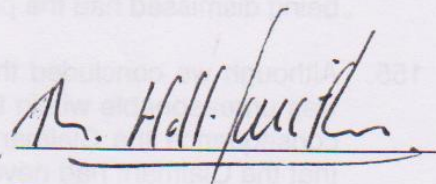
taken place at the date of the January Executive Council meeting to dismiss Michael Dooley case.

At no time was I informed that the disciplinary panel would be reconvened, in fact the Executive Council agenda I received made no mention that the disciplinary issue as an agenda item. I have since discovered I was not the only panel not in attendance at the vote which is in direct contrast of the original instructions given that all Executive Council members must be in attendance at all stages of the disciplinary panel meetings. It is with great regret that I have to write the statements that I strongly support my union but my conscience tells me that every employee deserves a fair hearing and wholeheartedly I do not believe this to be the case with Michael Dooley.

151. The panel was not unanimous in its decision to dismiss the Claimant summarily for gross misconduct in that one member of the Executive Council present voted for a final written warning.
- * 152. The Tribunal concluded that the absence of the two members at the hearing fundamentally flawed the process. In his evidence Mr Gamble said that he would like to have thought that people did not have closed minds and that there was a possibility of convincing them.
153. We concluded for the above reasons that the disciplinary process leading to the Claimant's dismissal was substantively unfair and accordingly unreasonable within the meaning of section 98(4) of the 1996 Act. Further we considered that there was some inconsistency involved in the Respondent's approach to Mr Jerry Swain's involvement with Hudsons and the Claimant's involvement. Mr Jerry Swain was the Claimant's line manager and he was not disciplined.
154. We concluded that this was not a case where it would have been appropriate to make a *Polkey* reduction on the basis of the percentage chance of the Claimant being dismissed had the process not been substantively unfair, as we found.
155. Although we concluded that the disciplinary process adopted by the Respondent was unreasonable within the meaning of section 98(4) of the 1996 Act and that in consequence the Claimant was unfairly dismissed by the Respondent, we found that the Claimant had nevertheless contributed to his dismissal. The Claimant had been closely involved with a significant number of application forms which were clearly false, having regard to the fact that they were incomplete and the signatures appeared to be very similar. The Claimant accepted that the forms were defective and we found that it was reasonable for the Respondent to have investigated the circumstances.
156. It was never suggested that the Claimant was himself responsible for making any entries on the forms and in relation to the 50 application forms provided in February 2008 the Claimant returned them to Hudsons. As the Claimant pointed

out in his submissions that at the time copies must have been taken of the application forms but that no action had been taken at that stage.

157. In relation to the 23 application forms provided in June 2008 by Hudsons, we accepted the Claimant's evidence that he did not himself process the application forms, and that they were taken from him by Mr Ingleton, the Office Manager.
158. We consider that the most serious allegation against the Claimant was in relation to the application forms. However the Claimant was not responsible for completing them or making the entries on them and in relation to the Claimant's involvement with Hudsons he had been accompanied by his line manager on the majority of occasions.
159. We do not consider that a reasonable employer, without more, would have concluded that the Claimant had acted fraudulently and/or dishonestly. Nevertheless we conclude that there was conduct on the part of the Claimant in relation to the forms, which were demonstrably fictitious, which contributed to his dismissal. We also conclude that the Claimant's conduct by his failure to cooperate with Mr Guy's disciplinary investigation as blameworthy. We assess the Claimant's contribution to his dismissal at 50%.
160. In circumstances of the Claimant's involvement with Hudsons and the fictitious application forms, we have concluded that there were justifiable grounds for the disciplinary process. We did not conclude on the evidence that the Claimant had been dismissed on grounds relating to his union membership or trade union activities. The Claimant had been subjected to the disciplinary process as an employee of the union,
161. It is the unanimous judgment of the Tribunal that the Claimant was unfairly dismissed by the Respondent within the meaning of section 98(4) of the Employment Rights Act 1996 and that the Claimant contributed to his unfair dismissal to the extent of 50%.



Employment Judge Hall-Smith
Date: 3 November 2011

Judgment sent to the parties and entered in the Register on: 4th November 2011
E. Coates for Secretary of the Tribunals