

Judgement of HHJ Denyer

Bristol Civil Justice Centre 21.7.15

The Ct in these proceedings is the retired Chief Constable of Sussex – clearly he numbers railways amongst his list of enthusiasms. The Defendant is the West Somerset Railway Association. That charity exists to promote interest in and enthusiasm for the West Somerset Railway. Actual ownership of the railway is vested in another corporate entity. The charity is a company limited by guarantee. As such the rights of the members as between each other and in respect of the charity are governed by the Articles of Association.

Mr Whitehouse, in common with other members of the trust have become dissatisfied with the way the trust is being run. In particular, they have lost confidence in the Trustees. The AGM of the Trust is due to be held this coming Saturday 25 July 2015. At that AGM certain Trustees will have to stand for re-election and other members will stand for re-election. Clearly they are only eligible for election if one is a member of the trust.

On 5 June 2015 (p38 Tab8) the Company Secretary of the charity wrote to Mr Whitehouse in the following terms: “...”

The Articles of association are behind tab 8 and Article 7.9 deals with termination of membership.

By Article 7.9(d) a member can be removed by resolution at a meeting of the Trustees provided that: “...”

As much as the letter of 5 June purported to be in accordance with Article 7.9 it seems fully clear that the previous day on 4 June his membership had been terminated. There followed correspondence which I am not going to go into in any detail. There was a response drafted by Counsel who now appears for the Claimant who was also a member of the company. In that response she sets out objections to what had been done. A response was received at page 43 and so it goes on. Finally the Trustees announced that they would make a decision on 13 July but for reasons which are not clear, the decision was purportedly confirmed by a decision on an earlier date.

In these proceedings Mr Whitehouse alleges that the process adopted by the trust was unfair, involving failure on the part of the Trustees to comply with Article 7.9. In these proceedings he seeks a number of things but the principal requests are an injunction to restrain the AGM and a declaration that he remains a member. He asks that the AGM be held at a later date when it has been confirmed that he has the right to stand as a Trustee.

As I have already indicated, I am not going into great detail into the matters between Mr Whitehouse and the Trustees, partly by reason of time not having had sufficient opportunity to consider the matter in detail.

It is sufficient to say, at this stage, bearing in mind Article 7.9(d)(ii) there is a requirement to give proper detail of the grounds on which removal is sought. The letter of 5 June is pretty woefully inadequate, woefully lacking in proper detail. ‘actions prejudicial to the orderly conduct of WSRA

business', what on earth does that mean? There is no particularisation of the prejudicial conduct. 'Attempts to bring undue pressure on trustees' cries out for particularisation. It cannot amount to undue pressure simply to criticise the existing management or Trustees. I put it no higher than there seems to me to be a serious question mark around the purported removal of Mr Whitehouse.

And I have to say if things stood there I would have granted the orders that the Claimant seeks.

However, matters do not end there. I should make absolutely plain, I know very little about the law in respect of charities. That law is now codified in the Charities Act 2011. By section 115 (1) "..."

But sub-section 2 provides that no charity proceedings are to be taken or proceeded with in any court unless authority has been given by the Charity Commissioners. By sub-section 8 these are charity proceedings. It is quite clear that these are indeed charity proceedings that Mr Whitehouse seeks to bring – that is conceded to be so.

I will deal in a moment with Ms White's submissions. It is worth looking at the authorities. They show the courts taking a stern line in resisting proceedings where proper consent has not been sought or given. One can see this from the Jt of HHJ Mummery in Muman at 184 B "...."

[The Judge then discussed other authorities.]

The 'escape route' relied on by Ms White is sub-section 115(4) which provides that consent is not required in a pending cause or matter. It is not obvious to me what a 'pending cause or matter' is. It is strange in the context of authorities that the aspect has not been decided, but there is a hint in the judgment of Norris J in Barron, paragraph 13 "..."

Whether this is a 'pending cause or matter' cannot be dependant on whether this application is made ex parte or not, to divide things up in that way would be the worst form of legal pedantry.

With a degree of regret I must decline to grant the relief sought.

[There were then further submissions on costs, the Defendants asking for their costs of £17K on the indemnity basis, the Claimant suggesting no order for costs.]

I bear in mind that this matter has been lost on a point of law, not on the merits and I am underwhelmed with the actions of the Trustees. I make no order for costs, each side shall bear their own.

Robin White

Counsel for the Claimant

24.7.15