

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Public Law Division

2020/PUB/jrv/21

BETWEEN

DWAYNE WOODS (as President)

JEREMAIH STORR (as Vice-President)

ANISHKA FERGUSON-BOWE (as Secretary-General)

NEKO ALBURY (as Assistant Secretary General)

CHRISTINE ROLLE (as Treasurer)

MICHAEL HANNA (as Assistant Treasurer)

DWIGHT MOSS (as Trustee)

ADVADO MALCOM (as Treasurer)

KOSYGEN FORBES (as Trustee)

Applicants

AND

JOHN PINDER (as Registrar of Trade Unions) (1)

THE ATTORNEY GENERAL OF THE BAHAMAS (2)

Respondents

Hon Mr. Justice Ian R. Winder

Appearances: Wayne Munroe QC with Krystian Butler and Regina Bonaby
for the Applicants

Kayla Green-Smith with Yolantha Yallop for the Respondents

17 and 27 August 2020

JUDGMENT

WINDER J

This is an application for judicial review of the decisions of the Registrar of Trade Unions: (1) to refuse to certify a poll for the election of officers of the Bahamas Utilities Services & Allied Workers Union (the Union) held on 30 June 2020; and (2) to direct that a new poll be conducted by him.

[1.] The Applicants describe themselves as the “*recently elected executive board of [the Union] by the elections which occurred on the 30th day of June 2020*”. Leave was granted by this Court on 29 July 2020 to apply for judicial review in accordance with Order 53 of the Rules of the Supreme Court.

[2.] The Applicants case is supported by the four affidavits of the First Applicant Dwayne Woods (Woods) dated 20 July 2020, 22 July 2020, 14 August 2020 and 21 August 2020. The Respondents relied upon the affidavits of the First Respondent, John Pinder (Pinder) of 29 July 2020 and 21 August 2020. Pinder was subject to cross examination on his affidavits on 27 August 2020.

Background

[3.] I adopt, with minor modifications, the summary of this matter as contained in the submissions of the Respondents.

[4.] The last election of officers of the Union was held, supervised and certified in May, 2017. Officers hold office for three years. For the 2020 election cycle, the Registrar facilitated an election of officer’s poll for the Union based on the notice received from the Union. The notice included the poll date of June 30th, 2020, with a scheduled time between the hours of 9:30 am to 5:00pm at the following locations: (i.) Abaco; (ii.) North Andros; (iii.) Acklins; (iv.) South Andros; (v.) Bimini; (vi.) Cat Island; (vii.) Crooked Island; (viii.) Eleuthera; (ix.) Exuma; (x.) Long Island; (xi.) Mayaguana; (xii.) Inagua and (xiii.) San Salvador.

- [5.] The notice also advised specifically where each polling station would be. The notice stated that members may vote at the Department of Labour and where there is no Department of Labour, voting would take place at the Commissioner's Office.
- [6.] In order to facilitate the supervision of the election of officer's poll and in accordance with section 20(4) of the Act, the Minister of Labour, Senator, the Honourable Dion A. Foulkes, executed designation certificates for the polling stations in accordance with the Union's notice. Designated Certificates were prepared for and distributed to the Department of Labour's public officers and the respective Family Island Administrators who would be supervising the poll.
- [7.] On the morning of the election, June 30th, 2020, the designated officer at the Department of Labour's office in Exuma, Mr. Leslie Curtis notified the Registrar of Trade Unions that he was not in receipt of any of the union's ballots. It was discovered shortly before the polls closed, that the ballots were actually sent to the Island Administrator's Office in Exuma and the Island Administrator was in possession of the union's ballots and supervised the Exuma poll. He did not have the requisite statutory authority to supervise the poll as no designation certificate was prepared for him.
- [8.] Woods says that the polling place in Exuma was changed by him as the members in Exuma preferred using the Island Administrators Office instead of using the Department of Labour Exuma Office.
- [9.] The Registrar says that on the day of the election, he received multiple calls from Designated Officers, from both New Providence and the family islands, who expressed member's concerns about the integrity of the poll as they recognized that the back of each ballot was stamped with an election team symbol. This symbol was the symbol of Woods' team.

[10.] On 2 July 2020 a Presidential candidate wrote to the Registrar with concerns about an election team stamp being placed on the back of the ballot. He thought that it was unfair and that it gave that election team an advantage.

[11.] On 8 July 2020 Woods sent the Minister a telephone message via WhatsApp. The exchange was as follows:

Woods: Good morning Minister, I am calling to request your intervention in the certification of the BUSAWU polls please before it gets out of hand.

Minister: Will check on it.

Woods: Thanks Bro, Adrian is attempting to interfere.

[12.] On July 13, 2020, The Registrar held a meeting with the Presidential candidates and advised those in attendance that he could not certify that the poll was properly taken in accordance with the Industrial Relations Act (the Act). The Registrar issued a letter to each candidate detailing his decision not to certify the poll. The said letter provides:

[13.] The decision contained in this letter forms the subject of the judicial review challenge.

[14.] On 30 July 2020, following the grant of leave the day earlier, after the Respondents raised objections that the Applicants did not exhaust the remedy of appeal, Woods wrote formally to the Minister as follows:

I write further to our Appeal sent to you via whatsapp message of 8th and 19th July 2020 to which we have not received a response.

The matter has not been referred to the Supreme Court due to the fact that the Union has not received a response to our Whatsapp appeal. ... We request that you kindly review the matter of the Registrar's non-certification of the BUSAWU's electoral poll dated the 30th June 2020. Upon your review of this matter, we would be grateful if you can please certify this poll.

In this connection I impose upon your good graces to intervene with a view to advising the Office of the Attorney General and the Registrar of

Trade Unions to withdraw from the matter due to the fact that the reasons for not certifying the Poll are frivolous and vexatious.

It is not the wishes of the Union to be contentious with the Government but think it is prudent for both parties to assess the matter at hand to avoid further costs as the matter is set for Trial on 17 August 2020.

[15.] The Statement filed in support of the application identified the following grounds for judicial review:

- (1) The Registrar of Trade Unions having conducted the elections in question with the ability and obligation to determine a proper election, it would be irrational for him now to say that the election was not properly conducted.
- (2) Illegality with regards directing the polling of a fresh election on 31st July 2020 contrary to the Constitution of BUSAWU Article 5 (3) which provides for elections to only be carried out in the months of May or June and the Industrial Relations Act section 21 (1) and (2).
- (3) No reasonable Registrar properly directing would refuse to certify the ballot based on the appearance of the ballot when initially his officials had received, inspected and determined to conduct the elections using the same ballots.
- (4) No reasonable Registrar properly directing himself would rely on the polling in Exuma having been conducted by the Administrator where only five (5) voters voted and the majority voted against the Applicants as refusing to certify the poll.
- (5) No reasonable Registrar properly considering his duties and the facts of this poll would refuse to certify the poll on the basis of the votes in Exuma as even if all votes were taken away from the Applicants and credited to the closest loser the applicants would still all have succeeded.
- (6) No reasonable Registrar properly considering his duties and the facts could not justify refusing to certify the poll based on the Exuma poll when all voters in Exuma voted.

[16.] The Applicants sought an order of mandamus to compel the Registrar to certify the poll of 30 June 2020 and for an order of certiorari quashing the decision to direct a new election be conducted.

Preliminary Challenge

[17.] As indicated, the Respondents raised the preliminary attack on the application for judicial review, that the Applicants have not exhausted alternative remedies before seeking judicial review. The law in this area is fairly well settled. The legal principle is simply that judicial review is a remedy of last resort and not first recourse and the Court will exercise its discretion to refuse to hear applications for judicial review where there are available alternative remedies. (See **Isaacs JA** in **Moxey v Bahamas Bar Council and others [2017] 1 BHS J. No. 125**)

[18.] According to the Respondents:

“It is critical to note that it is a fundamental principle of Judicial Review Proceedings that an Applicant must exhaust all appeals or other means of challenging a decision before they approach the court for Judicial Review Proceedings. ...

“Parliament made provisions for an appeal to the Minister of Labour of a decision of the Registrar of Trade Unions not to certify the election poll. The Applicants did not pursue their primary remedy in accordance with Section 13 of the Industrial Relations Act....

“The appeal process within the Ministry of Labour has always taken the form of a formal letter addressed to the Minister with the contents clearly stating that it is an appeal and the reason for the appeal. There is no evidence before this Honourable Court that the Applicant made the appropriate application pursuant to Section 13. It is humbly submitted that the Applicants should have exhausted this avenue of appeal before approaching this Honourable Court. “

[19.] Section 13 of the Act provides:

13. Any person aggrieved —

(a) by any decision of the Registrar — (i) not to register a trade union under this Act; or (ii) to cancel the registration of a union; or (iii) not to register an amendment of the constitution, or a change of name, of a trade union; or (b) by the refusal of an officer of the Ministry to certify any ballot as having been properly taken, may appeal in respect thereof to the Minister, who may, with effect from the date of the determination of the appeal, reverse the decision of the Registrar or officer or confirm it.

[20.] The Applicants claim that the section does not apply to these facts and that if it did there was in fact an appeal which was made by Woods to which the Minister did not respond. I did not find that either of the arguments of the Applicants were sustainable and would exercise my discretion to refuse to entertain the judicial review as there was a viable appeal process under the Act by which the Minister was empowered reverse or confirm the decision. Indeed it offered a better alternative than the recourse to judicial review as the court is not empowered to substitute its own decision as the Minister is, by the Act, empowered to do. (See ***Moxey v Bahamas Bar Council and others***)

[21.] The decision being challenged was clearly a decision to refuse to certify the ballot as having been properly taken and fell within the contemplation of Section 13 of the Act. Whilst the decision to direct a fresh poll is not mentioned in Section 13 of the Act it is so closely connected to the decision to refuse certification it is impracticable that it should not abate the appeal of the Registrar's decision to the Minister

[22.] Woods claims that the WhatsApp message sent to the Minister on 8 July 2020 amounted to an appeal under the provisions of the Act. He says that he should be allowed to pursue the judicial review application as there was no response to that appeal by the Minister. In my view this "note" to the Minister was not an appeal, of the decision to refuse to certify the ballot, as contemplated by the Act. It appears to me that, at best, the appeal was in fact only launched after judicial review had been sought. This is evident in the fact that the WhatsApp message contained no

reference to the word “appeal” or that Woods was seeking to exercise any right under Section 13 of the Act.

[23.] It is also a fact that there had not, at the time of the WhatsApp note, been the communication by the Registrar of the decision to refuse to certify the poll. This did not occur until 13 July 2020. It is only in the letter dated 30 July 2020, sent immediately following the Respondents objections to the leave application, it seems that Woods sought to suggest that the WhatsApp message was an effort to launch an appeal. Whilst the Act does not set out a framework by which the appeal is to be launched, the informalities suggested by the Applicants could not be countenanced. The evidence of Pinder is that the practice has been to simply write a letter to the Minister seeking the appeal. In my view the formalities could not be reduced any further. As the appeal has now been launched, by the 30 July 2020 letter, that process should be allowed to proceed as contemplated by the Act.

[24.] Notwithstanding my decision as to the availability of an alternate remedy I will nonetheless consider the grounds for judicial review in the event I am wrong as to the exercise of my discretion.

The Registrar’s decision to refuse to certify the officers’ poll

[25.] The regime for the taking of the officer’s ballot is provided in section 20 of the Act, which provides:

20. (1) The constitution of every trade union registered under this Act shall provide for the taking of a secret ballot for all of the following purposes, namely —

- (a) the election or removal of any officer or member of its executive committee or other governing body;
- (b) the amendment of its constitution, including any change of name;
- (c) where the union is a union of employees, the taking of strike action,

and the Registrar shall not approve any such constitution unless he is satisfied that every member of the union has thereunder an equal right

and a reasonable opportunity of voting, and that the secrecy of the ballot is properly secured thereby.

(2) Whenever any trade union proposes to take any ballot for any of the purposes referred to in paragraph (a) or (b) of subsection (1), not less than seven days' notice in writing shall be given to the Registrar of the intention to take the ballot, and of the time and place at which it will be taken and the ballot shall be taken under the supervision of the Registrar or a designated officer, who shall attend at the time and place; and unless the ballot is so taken and is certified by the Registrar or a designated officer as the case may be to have been properly taken, the ballot shall be void and of no effect and the Registrar or a designated officer shall direct a further ballot to be taken.

(3) Whenever a trade union proposes to take any ballot for the purpose of determining on strike action, not less than two days' notice in writing and shall be given to the Minister of the intention to take the ballot, and of the time and place at which it will be taken, and the ballot shall be taken under the supervision of an officer of the Ministry, who shall attend at that time and place; and, unless the ballot is so taken and is certified by that officer to have been properly taken, the union concerned shall not be deemed to have determined upon strike action in accordance with the provisions of this section.

(4) For the purposes of this section and section 21 "designated officer" means a public officer designated in writing by the Minister for the purpose.

[26.] The Applicants case is one of irrationality or unreasonableness. They say in their written submissions at paragraphs 5-10 as follows:

5. The essence of the irrationality of the Registrar is embodied in the Supplemental Affidavit of Dwayne Woods filed herein on the 14th day of August 2020. The Registrar stated that:

"We are only there to kind of conduct the affairs, I mean conduct the Union elections." (See Exhibit D.W. 1 at Tab 1 paragraph 1 of Supplemental Affidavit of Dwayne Woods filed herein on the 14th August 2020).

6. The Registrar along with the Department of Labour ought to have known that the way in which they conducted this election would have a bearing on the outcome. It was incumbent on the Registrar to ensure that all procedures were adequately carried out before the elections as the conductors of same.

7. The two contentions raised by the Registrar in his letter dated the 13th July 2020 in relation to his decision to not certify the electoral poll; were the Exuma voting discrepancies and the integrity of the poll due to a symbol on the back of the ballots. (*See Exhibit D.W. 1 at Tab 1 of Supplemental Affidavit of Dwayne Woods filed herein on the 21st July 2020*).
8. Additionally, during the same meeting he stated,
 “... part of the role of the Department of Labour was to ensure that there was no advantage or disadvantage on either side. ...“We were satisfied that we could go on with the election.”
9. We submit the number of votes on the island of Exuma was a total of five votes that demonstrated that all registered voters participated in the elections. It must be noted that the votes tallied in Exuma were not in favor of the duly elected officers. Additionally, if the Exuma votes are excluded in the overall tally due to irregularities as purported by the Registrar, the duly elected executive would still have won their respective offices given the total votes on other islands.
10. The Registrar by not certifying the ballots of the June 30th, 2020 elections is irrational in the sense that he conducted and not supervised the elections. It is therefore irrational for the Registrar having conducted the election in a manner that he no doubt would have considered fair to now hold the position that it is not rational for him to certify the election when in fact there were representations made that he saw no issues with regards these aspects, signifying that the elections were conducted properly.

[27.] The Respondents say that:

42. Further, even if the rationale of the First Applicant was safeguarding ballots, a general union stamp could have been used instead of his election team stamp which we humbly submit was used to influence voters and denied all candidates an equal and unbiased election process. The placement of an election team stamp on the back of each ballot was a significant irregularity and there is no way to quantify how the results were or were not affected hence the influential ballot substantially distorting the election.
43. The First Applicant as President had the sole responsibility of election ballot preparation. The ballots were not made available to be viewed by the candidates.
44. The candidates were never given an opportunity to view the ballots, even though the ballots were already sent to the Family Islands days

before the election. The Candidates were only able to view the ballots on the morning of the election. It is humbly submitted that this demonstrates unfairness on the part of the First Applicant who wanted to avoid the probably of an objection raised to the influential ballot.

45. The First Applicant used his position as President to unduly influence voters by placing his election team stamp on the back of each ballot. The Department of Labour doesn't permit campaign paraphernalia around any designated voting area, as guided by the Parliamentary Election procedures, in order to maintain electoral fairness. The First Applicant attempted to circumvent this procedure.

...

58. The decision making process of the Registrar of Trade Unions is sound, rational and reasonable as it is firmly within legislation and instructive case law. Statute provides a clear provision for every member of a trade union to have an equal right to vote and a reasonable opportunity of voting. Despite the five (5) votes not affecting the outcome of the election, even if one (1) member was denied their equal right and reasonable opportunity to vote the ballot cannot be certified as being properly taken.

[28.] There was much contention between the parties as to whether Pinder, as Registrar, conducted the election or supervised it. In respect of this election poll, I accept that it had become difficult to appreciate where the Union's participation ended and the Labour Department's participation began. The Applicant argues that Pinder conducted the elections and therefore was obligated to certify it, in which case any other decision by him was unreasonable. Supervision is not a defined term in the Act and it did appear that the Registrar did much more than just show up and observe the process, as some of the authorities suggest his role is (See: ***Bahamas Hotel Catering & Allied Services Union, et al. v Registrar of Trade Unions, Commonwealth of The Bahamas, et al –[2010] 1 BHS J No. 63, per Newman JA***). The evidence was that Pinder (or his agents) was involved in verifying eligibility of electors to vote, handing out ballots to electors and giving voting instructions to electors as to the manner of casting their ballots.

[29.] Whilst the Registrar may have had an extended role the Union nonetheless also played a major role in the process on Election Day. It was that role which the

Registrar took issue and upon which he says that he refused to certify the ballot. At the very least, both the Union and the Registrar participated in the conduct of the elections. It was the Union which prepared the ballots and brought them to the polling place. The Registrar had not seen the ballots prior to this. It is not in dispute that the ballots had been prepared and each impressed, at the back, with a stamp displaying the symbol of the Applicants' team. Additionally, it was the Union which initially identified the polling places to be designated by the Minister and it was Woods who unilaterally relocated the Exuma polling place, resulting in the Exuma poll being conducted outside of the scope of the Act. It was not supervised by a person designated under the Act.

[30.] The failure to follow the statutory requirement is not a matter to be taken lightly. In ***Davis v. Bahamas (Director of Labour) [1994] BHS J. No. 85***, Osadebay J. stated at paragraphs 46- 48 as follows:-

46. I agree with the submissions of Counsel for the Applicant that the provisions of Sections 20 (4) and 20 (2) of the Industrial Relations Act are mandatory and non-compliance with the provisions of Section 20(4) means that that officer appointed or designated cannot properly exercise the powers conferred on him by Sections 20 (2) and 21 of the Industrial Relations Act, and since Mr Bert Edgecombe who purportedly exercised those powers was not properly appointed or designated under the provisions of Section 20(4) his purported exercise of such powers of supervision and certification was not valid and therefore the ballot purportedly taken could not be certified by him as required by Section 20(2) of that Act.

47. It therefore follows that the ballot for the election of the Officers of the BCPOU taken on the 16th March, 1994, is not valid and by the provisions of Section 20 (2) the ballot as void and of no effect.

48. In addition to the above and for reasons already given I also hold that the said election of the officers of BCPOU held on the 16th March, 1994, is not in compliance with Articles 8 and 11 of the Constitution of BCPOU and therefore not valid.

[31.] Albeit this is not national elections, fairness and the appearance of fairness in any election is also not a matter to be taken lightly. This is aptly demonstrated by the Jamaican case of ***The Representation of The People Act v The Election***

Petitions Act, eta SUIT NO. M001/98. At page 12 of the decision, **Wolfe CJ** stated as follows:

The following dictum in Re Taniona Puten' lohme State Ekcttm Petition; Abdul Razak Bin Ahmad v. Datuk MD Yunos Bin Salaimon & Anor (1988) MLJ Lexis 545; (1988) MLJ III (Wan Yahya J) is instructive:

"To my mind; an election does not merely symbolize the citizens' right to free franchise but entails public participation in selecting the government of their choice through a process which not only guarantees absolute fairness, secrecy, impartiality and regularity but which also encompasses public trust and confidence in the manner in which the process is carried out. For these reasons, various legal guidelines have been enacted to regulate the formalities of an impartial election. Any serious departures from these procedures will strike at the very foundation of our free and democratic system of political representation and affect public confidence in the impartiality of our election."

Further, at pages 59-60, **Langrin J**, stated:

The irregularity to achieve the effect of voidance must be one that would lead to a substantial distortion or subversion of the process of free and fair elections. To establish this ground the evidence need not affect the majority obtained by the winner. It would be sufficient to show that the process of free and fair elections would be substantially distorted or subverted by the irregularity. An election is not to be upset for an informality or for a triviality. The irregularity must be something substantial which is calculated to affect the result of the election even though it may not actually affect it. The Court must look to the substance of the case and to ascertain whether the irregularity is of such a nature as to be fairly calculated to produce a substantial effect upon the election.

However, a failure to observe statutory requirements for the conduct of the poll must be met by stiffer penalties. No matter how trivial an irregularity may be, it must never be condoned as a mere irregularity. The punishment provided in the Act must be sufficient to act as a deterrent.

In my judgment, a proper construction of Section 37(e) of the Election Petitions (Amendment) Act 1977, is that any irregularity which would lead to a substantial distortion or subversion of the process of free and fair elections whether it affects the result of a majority or not would be void both at common law and under the statute.

[32.] The Respondents' say in their submission:

“The Registrar of Trade Unions made both a rational and reasonable decision based on legislation and instructive case law not to certify the poll as being properly taken. It is statutorily mandated that the election poll be properly supervised by a designated officer this was not done in the case of the Exuma voters. Further by the First Applicants placing his election team stamp on the ballot the election process was substantially distorted. In other words by the First Applicants’ conduct in changing location of the poll in Exuma in contravention of the Industrial Relations Act and further by placing his election team stamp on the Ballot it is humbly submitted that he has interfered with and call into question the integrity of the election process and therefore the poll cannot be certified in these premises.”

[33.] In determining reasonableness, the test for the Court is not whether the Court would have made such a decision but the wider one of whether the decision is so unreasonable that no decision maker in similar circumstances, properly directing himself, would make such a decision (See: ***Council of Civil Service Unions v Minister for the Civil Service (GCHQ case) [1984] 3 All E R 935***). In all the circumstances, I am not so satisfied that it can be said that the decision taken by the Registrar is one which no reasonable Registrar would take in similar circumstances. Whilst the 5 votes in Exuma would not have affected the overall outcome of the elections it cannot be said that issue, having regard to the authorities, is a trite one. When considered in conjunction with the issue of the Applicants’ marking of the ballots with their team’s stamp, the overall fairness of the election is called into question.

[34.] Even if the election had been conducted fully by the Registrar and he later learns of irregularities which renders the poll unfair or unlawful, I am not satisfied, as the Applicants suggests, that the Registrar is obligated to certify it. In all the circumstances I will not grant the order for mandamus as sought by the Applicants.

Decision of the Registrar directing the taking of a new poll

[35.] The Applicants' say that:

13. In the present case, the Registrar in his letter dated the 13th July 2020 stated that he is directing that a ballot be taken in accordance with the IRA Section 21 (1) and (2) when in fact the Union had carried out elections which took place on the 30th June 2020, which stands as the time prescribed by their Constitution. The Union therefore did not fail to carry out elections. We therefore submit that the Registrar exceeded his jurisdiction in deciding to hold fresh elections pursuant to section 21 (1) and (2). This section of the IRA is not applicable to the circumstances of the present case.

...

16. Therefore, we humbly submit that the decision of the Registrar not to certify the polls of the 30th June 2020 elections and to hold fresh elections pursuant to section 21 (1) and (2) is a direct demonstration of the Registrar exceeding his jurisdiction given under statute.

17. The Constitution and Bylaws of the Union article 5 provides,

“All nominations of officers shall be made in open Annual Convention and elections shall be by secret ballot where there is more than one candidate for any office, the said Convention shall be held in May or June, and all officers of the Union will be elected at this time with the exception of Shop Stewards.”

18. As mandated by their Constitution and Bylaws, election of officers is to take place in the months of May and June. The construction of this article is of a mandatory nature and the construction thereof reflects the intention of the drafters of the document.

[36.] I did not accept this submission as I am not satisfied this is a fair interpretation of the effect of either Section 21 of the Act or Article 5 of the Union's Constitution.

[37.] Section 21 of the Act provides:

(1) Where a trade union which is registered under this Act fails to take a secret ballot for the purpose of the election of any officer or member of its executive committee or other governing body at the time set forth in its constitution, the Registrar or a designated officer may direct that a ballot shall be taken under his supervision and cause notice of the ballot

to be published in the Gazette and in at least one daily newspaper printed and circulated in The Bahamas.

(2) *A notice under subsection (1) shall specify the day on which and the time and place at which the ballot is to be taken.*

[38.] In the ***Bahamas Hotel Catering & Allied Services Union, et al. v Registrar of Trade Unions, Commonwealth of The Bahamas, et al*** –[2010] 1 BHS J No. 63, ***Newman JA*** stated at paragraphs 8- 9 of the decision as follows:

8. As to the balloting process, the role of the Registrar is specifically provided for by Section 20(2), but it is for the union to decide to take a ballot. Once it has so decided, not less than seven days' notice must be given to the Registrar of the intention, and the time and place at which the ballot will be taken. Thereupon, the Registrar or a designated officer must supervise the ballot by attending at the time and place and if satisfied the ballot was properly taken, to certify that to be the case.
- 9 A ballot not properly taken and not certified shall be void and of no effect. In that circumstances, the Registrar or designated officer must direct a further ballot be taken.

[39.] As ***Newman JA*** states, a ballot not properly taken and not certified shall be void and of no effect. So when the Applicants say that “the Union had carried out elections which took place on the 30th June 2020” and that “the Union therefore did not fail to carry out elections”, the submission does not take into account that the ballot was “*void and of no effect*”. The ballot was void, it is a nullity, in law it did not happen. The section must be read:

*Where a trade union which is registered under this Act fails to take a **valid** secret ballot for the purpose of the election ...*

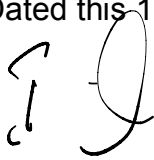
A void ballot could not have been intended to satisfy the requirements of Section 21.

[40.] Whilst the framers may have intended the holding of election in May and June it could not reasonably be contended that the members intended a slate of officers would remain in office for a further three years, or until the following May or June, without a mandate from the electors. Such an interpretation would lead to an

absurdity and should be avoided. (See *R. v Boundaries Commission et als ex parte Lightboun and Rollins [2017] 1 BHS J. No. 50*)

[41.] In all the circumstances therefore, I will dismiss the application for judicial review. I am satisfied that it is open to the Registrar to set a new date for the conduct of the officer's poll for the Union. The Respondents shall have their reasonable costs to be taxed if not agreed.

Dated this 16th day of September 2020

A handwritten signature in black ink, appearing to read 'I. Winder', written in a cursive style.

Ian R. Winder

Justice