

## **NATIONAL DISPUTE COMMITTEE – BYELAWS**

### **A. GENERAL**

1. These byelaws are made by the National Executive Council (NEC) pursuant to Rule 14, Section 4, paragraph 2 of the Union's Rules and may be amended or rescinded at any time by resolution of the NEC.
2. At its first meeting after their election the NEC will appoint six of its members, two of which must be female, who will serve as NDC Panel Members. Any three members will constitute a Dispute Committee with the full authority to deal with and determine on all matters calling for resolution action under the rules.
  - (a) A member of the NEC who has any direct personal interest in the outcome of the proceedings shall not be permitted to participate in any such case.
  - (b) It shall not be necessary for the NDC members deciding the *prima facie* case to be the same members as those who subsequently hear the case in full.
  - (c) No member of the NDC hearing a case shall participate in the decision on that case unless they have been present throughout the hearing.
3. Upon receipt of the notification of a charge against a member, the General Secretary shall ensure that the charge is put to the individual, their Branch and the Officer to the NDC, without delay.
  - (a) Within seven days of notification from the General Secretary's Department details of the charge will be considered by the National President or Vice President and the NDC Officer who will determine if the nature of the charge is classified as per National Rule 14.1.3.

If it is determined that the charge is a dispute then it will be dealt with via informal resolution at local level with the assistance of an appropriate CWU representative appointed by the NDC Officer. The aim will be to conduct a meeting with all parties concerned within 14 days.

Informal resolution will only take place when both parties have confirmed that there are no outstanding employers' procedures or application to an external body contemplated or in progress against either of the parties.

In the event a resolution is achieved at local level the matter will conclude at this point.

In the event a resolution is not achieved the charge will revert to the NDC Officer, who along with the National President or Vice President, will consider the details of the informal resolution and will decide one of the following actions.

- 1. Revert case back to local level for further discussions**
- 2. Make an assessment of the charge and in light of the attempted informal resolution make a recommendation for a solution**
- 3. Forward charge to General Secretary's Department to be dealt with under current NDC byelaws.**

The information contained within the informal resolution report shall remain confidential on a without prejudice basis and must not be used as part of the NDC process:

- (b) Any CWU Representative or member of a Branch can instigate a charge. Once the charge has been submitted to the General Secretary under the CWU rules, on receipt of a charge the National Dispute Committee may suspend the individual's credentials or office if appropriate.
  - (c) A charged member shall be supplied with full details of the charge itself, the name of the person or Branch bringing the charge, together with a copy of submissions made in relation to it, the available evidence, a copy of these byelaws, Rule 14 and such other rules as may be appropriate. The charged member will also be invited to make any written submissions in relation to the charge made and to be received by the Officer to the NDC within the appropriate time limit and will be notified of the date of the NDC meeting convened to determine a *prima facie* case.
  - (d) Where a rebuttal of a charge by the charged member(s), in a case that has already been submitted, includes a separate case referral to the General Secretary under the CWU National rule 14 against the charging member(s), the NDC may determine both charges as one.
4. The Officer to the NDC shall convene a meeting of the Committee, without delay, to consider the charges, supporting evidence and submissions made. The Committee shall decide whether to call for an investigation, offer informal resolution, or proceed to determine whether or not a "*prima facie*" case has been made.
- a) At the meeting, the NDC must consider any written submissions made by the charged and charging member.
- Where the NDC calls for an investigation, no decision as to whether or not a *prima facie* case exists shall be made until the investigation report is received.
- b) Where the NDC determines that a *prima facie* case does not exist, the Officer to the NDC shall ensure that all parties are so advised without delay providing a brief summary of the rationale of the NDC decision.
  - c) Where the NDC determines that a *prima facie* case does exist, the parties to the case shall be summoned to a hearing in accordance with Section B of these byelaws, unless the charged member indicates their intention not to defend the case.
  - d) Where a charged member indicates their intention not to defend the case, the NDC will determine the case based on the evidence provided and any mitigation.
  - e) There is no right of appeal against the decision of the NDC on whether a *prima facie* case exists.
5. A hearing of the NDC, convened under byelaw 4(c), shall take place at such time, date and place as the NDC shall determine is fair and reasonable in all the circumstances. Once notified, dates for the hearing, submission of documentation and all other matters will only be varied in exceptional circumstances.
- a) The NDC will meet to decide whether a *prima facie* case exists or whether further investigation is required within 21 days of the Officer to the NDC receiving the charge from the General Secretary.

- b) Where a *prima facie* case exists, the NDC will convene a hearing within 42 calendar days of the *prima facie* case decision.
  - c) Where further investigation is required this will be completed, where possible, within 14 calendar days.
  - d) Not less than 28 calendar days' notice of the hearing shall be given to all parties.
  - e) Where the charged person's own Branch has not brought the charge, any Branch of the members involved with the case shall have a right to be informed of the charge, the name of the members involved, the date of the hearing and the outcome.
  - f) The National Dispute Committee will seek to ensure that all cases are heard and decided upon within 3 months of the charge being laid.
  - g) The National Dispute Committee will always seek to comply with the timescales specified in the byelaws, but it is recognised that it may not always be possible to do so because of exceptional circumstances that may apply. Notice will be given to members of any delay.
  - h) Throughout the NDC process, charging members have a requirement to demonstrate that the rules of the union have indeed been breached in the manner suggested by their case. The NDC will intervene in an appropriate manner if they have reason to believe that the unfounded allegations are being made by either charging or charged parties to a case. In some circumstances this may lead to the NDC themselves referring an alleged breach of the union's rules to the General Secretary under the CWU National Rule 14. If the NDC refers a case it will be considered by a newly constituted NDC.
6. The charged member must notify the Officer to the NDC, within 14 days of receipt of the notice under 5(d), if he/she intends to defend the case or not.
- (a) Such notice must confirm whether an oral hearing is requested or not.
  - (b) Where an oral hearing is not requested, any further written submissions must be received by the Officer to the NDC not less than 14 calendar days before the date of the hearing.
  - (c) If the charged member fails to notify their intention and/or fails to attend the meeting of the NDC, then the NDC shall hear the case in their absence and may make such decision as it sees fit.
7. Any Branch presenting a charge against a member shall nominate a senior elected Branch Officer to represent it at the hearing and no other member shall be permitted to represent the Branch at the hearing. A Branch of the Union may, if it so desires, present a charge and any supporting evidence in writing.
8. A member of the Union who presents a charge against any other member, shall be given the opportunity to present the charge at the hearing. A member who presents a charge may, if they so desire, present the charge and any supporting evidence in writing.
9. Any individual member presenting a charge, or any charged member, may be represented by another member of the CWU.
- (a) No party to a charge or anyone with an interest in a charge may be represented by a Solicitor, Counsel or any other person who is not a member of the Union.

- (b) If a member is to be represented, then they must notify the Officer to the NDC of the name of their representative not less than 14 calendar days before the hearing.
  - (c) For the purpose of these byelaws, the notified representative of a party shall be recognised as that party.
  - (d) The Officer to the NDC, if requested by either party, will appoint a representative to either party of equal standing within the CWU.
10. All relevant documents upon which either party intends to rely must be provided to the Officer of the NDC not less than 14 calendar days before the date of the hearing.
11. The NDC may, at any stage prior to and at the hearing, ask for reports, written statements or summon certain witnesses to attend, as it sees fit in relation to any charge before it.
- (a) Any direction made by the NDC to any member of the Union shall have the status of decision of the NEC.
  - (b) If necessary, the NDC will adjourn the hearing to allow for circulation and consideration of new evidence.
12. An indexed bundle comprising all documents submitted by both sides, a list of witnesses and statements from all witnesses shall be circulated to the NDC and the parties not less than 10 calendar days before the date of the hearing.
- (a) In the event that inclusion of any document or witness is challenged on any grounds by either party, the NDC shall determine which documents or witness/witness statement may be admitted.
  - (b) The Committee's decision to admit or not admit a document or witness statement shall be final.
13. It will be the responsibility of the parties to notify the Officer to the National Dispute Committee of the names, addresses and telephone numbers of all their Witnesses; not less than 14 calendar days prior to the date of the Hearing.
- (a) The Officer to the NDC shall notify all witnesses whom the Committee are calling to appear in person of the date, time and place of the hearing not less than 10 days prior to the hearing.
  - (b) It is the responsibility of the parties to assist the NDC in ensuring that witnesses are in attendance at the hearing.
14. Any witness put forward by either party must be a member or employee of the Union. An employee may only be called where they are the sole or a key witness. Employees cannot be compelled to attend as a witness.
15. The NDC may authorise payment of actual incurred expenses in full or part from Head Office funds for parties, witnesses or others, at its own absolute discretion.
16. If the NDC finds a charge against a member proven to its reasonable satisfaction on the available evidence, it may impose such penalty as provided for under the CWU Dispute Rules as it is reasonably satisfied is just in all the circumstances.
17. An Appeal against a decision of the National Dispute Committee can be made to an Independent Appeal Panel, but can only be brought by the charged member.

**B. HEARING**

1. NDC hearings will be structured so that the charging and charged members make all their submissions and are interviewed by the Committee separately.
2. If the charged member(s) has (have) indicated, under byelaw 6, that they wish to contest the charges, the Committee shall first invite the party presenting the charge(s) to state the grounds for the charge(s) and their submissions.
3. If the charged member does not contest the charges, they shall have the opportunity to make a statement of mitigating circumstances to the Committee. Once any such statement has been made, the Committee shall proceed to consider the penalty (if any) to be imposed.
4. In the event that the member does not admit the charge(s), the Chair will invite the party presenting the charge to make an opening statement, to state the grounds for the charge(s) and to call any evidence in support.
5. After the evidence in support of the charge has been completed, the charged member or their representative will, separately to the charging member and their representative, have the right to make a statement and to present any previously agreed evidence to the NDC.
6. After statements and presentation of evidence by the parties, the NDC will then interview witnesses called to appear in person.
7. Witnesses will be interviewed by the NDC separately from the parties. Notes of the interviews will be provided to the parties.
8. After the interview notes have been provided, the parties separately shall have the opportunity to make further submissions and closing statements to the NDC.
9. The Chair shall conduct the proceedings fairly and ensure that both parties are able to present their respective cases effectively and fully without undue pressure of time.
10. The Committee will then consider the evidence heard and submissions made by both parties, in private. Their decision will be given, in writing and with a brief rationale, to all parties as soon as possible after the hearing.
11. The Committee shall have the ability to provide advice without penalty.
12. The proceedings of NDC hearings will be digitally recorded, with a copy retained securely at CWU HQ for a period of not less than 7 years from the date of the hearing.
13. All parties attending the hearing are entitled to be treated with respect and dignity in line with the CWU Rules. Failure to adhere to any CWU Rules in a hearing may result in a disciplinary charge being laid by the NDC under the CWU National Rule 14.
14. The CWU National Dispute Committee hearings are confidential and it may be an offence under the CWU National Rule 14 if information referred to in a hearing is subsequently used for pursuance of claims against individual members of the CWU with their employer.