

# UCDSU INDEPENDENT APPEALS AND DISCIPLINARY BOARD

Appeal No. 17/01

**Barry Murphy, Niall Torris and Robert Sweeney**

Appellants

and

**The Returning Officers**

Respondents

## DECISION

### **1 Background**

1.1 The three Appellants are sabbatical officers of the Union within the meaning of Article 10 of the Union Constitution.

1.2 Article 10.2.4 provides as follows:

*“Request for holiday entitlements must be approved by the President at least one week in advance. In the case of the President approval must be sought from the Executive.”*

1.3 A referendum is due to take place on 25<sup>th</sup> and 26<sup>th</sup> October 2017 and the Appellants wish to take leave to campaign in this referendum. They are willing, if necessary, for this leave to be unpaid.

1.4 The referendum was called on 10<sup>th</sup> October. On 3<sup>rd</sup> October (a week previously), the President obtained the approval of the Executive to take annual leave to campaign in the referendum.<sup>1</sup>

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<sup>1</sup> pg. 5 of minutes, Executive Meeting No.3 – 3rd October 2017: “[KA] Seeking annual leave approval, as per constitution pending if referendum petition is accepted. Annual leave Approved”

- 1.5 The President designated Barry Murphy (one of the Appellants) as the acting or deputised president of the Union for the duration of her leave. (Although “*Acting President*” is not necessarily a precise description of the role, that term is used to describe it hereinafter for ease of reference.) Eoghan Mac Domhnaill was also Acting President for a time during that period, when Barry Murphy was himself on leave.
- 1.6 The foregoing took place on foot of Article 10.3.6 which provides:
- “They [The President] shall nominate in writing one of the sabbatical officers to deputise for them in their absence.”*
- 1.7 It appears that the Appellants did not ask either the President or the Acting President for permission to take annual leave, and they were not granted leave at least one week in advance.
- 1.8 Instead, the Appellants sought permission to take annual leave from the Executive. The Executive agreed to this at a meeting on 23<sup>rd</sup> October 2017.
- 1.9 The issue came to the attention of the Returning Officers in general terms on Saturday 21<sup>st</sup> October when they received an email at 10:35pm from Barry Murphy which stated that the *“other sabbats and I are strongly considering taking annual leave this coming week to campaign”* and asking a series of detailed questions about the applicable Referendum Rules in that regard.
- 1.10 The Deputy Returning Officer replied on behalf of the Returning Officers on Sunday 22<sup>nd</sup> October at 3:12pm stating *inter alia* that the biggest issue which arose related to the constitutional requirement that a *“request for holiday entitlements must be approved a week in advance”*. [Emphasis as per original.] Attention was drawn to Article 10, and specifically Article 10.2, of the Union Constitution.
- 1.11 On Monday 23<sup>rd</sup> October, a post was placed on the official UCDSU Facebook page announcing that the Appellants would be taking annual leave. This was subsequently removed.
- 1.12 At 5:30pm on Monday 23<sup>rd</sup> October, the Executive held a meeting at which approval was given to the Appellants *“to take annual leave to campaign”*.

1.13 At 11:14am on Tuesday 24<sup>th</sup> October, the Returning Officers contacted the sabbatical officers by email to state that, as per a previous ruling, a request for holiday entitlements must be approved a week in advance.

1.14 This appeal was lodged at 2:44pm on Tuesday 24<sup>th</sup> October.

## **2 Question to be determined**

2.1 The question that arises in this appeal is whether *the Executive* could approve leave *at one, two or three days' notice* notwithstanding the requirement of the Constitution that leave must be approved by *the President* (or presumably in this case the Acting President) and *at least one week in advance*.

2.2 In other words, the question to be determined falls into two elements:

- (a) Whether the leave could be approved by the Executive instead of the President or Acting President; and
- (b) Whether the leave could be approved after the expiry of the "*at least one week in advance*" deadline.

## **3 Grounds of Appeal**

3.1 The two grounds of appeal are set out in full in the email of Barry Murphy of 2:44pm on 24<sup>th</sup> October 2017.

3.2 They are, in brief summary:

- (a) That in the interest of fairness, the Appellants should be permitted to take leave approved by the Executive in the same manner as the President; and
- (b) That the Appellants should be entitled to take **unpaid** leave with the approval of the Executive.

## **4 Preliminary Statement of Opposition**

4.1 The preliminary statement of opposition was received from the Returning Officers at 9:55pm on 24<sup>th</sup> October.

4.2 In brief summary, it sets out a chronology and makes the following three points:

- (a) The ruling itself was made in keeping with Article 10.2.4 of the Union Constitution. This provides that any request by a Sabbatical Officer (other than the President) for leave is subject to approval by the President and must be so approved at least one week in advance;
- (b) The referendum was publicly called by the Returning Officers on 10<sup>th</sup> October and the dates for the referendum have been extensively advertised since that time; and
- (c) The Constitution does not grant any discretion to the Returning Officers in relation to Article 10.2.4 or grant any power to waive the requirements of this provision. The Returning Office at all times has a duty to carry out referenda in accordance with the provisions of the Constitution and the ruling the subject matter of the within appeal was made further to this duty.

## 5 Decision

5.1 The unanimous decision of the IADB is to **DISMISS** the appeal on the grounds that it is without merit in accordance with Article 16.7.

5.2 Under this provision, a preliminary judgment is made based on the grounds of appeal submitted by the Appellants and the preliminary statement of opposition of the Respondent. If the preliminary judgment is that the appeal is without merit (or that the matters complained of are immaterial), that preliminary judgment can in effect be agreed to unanimously by the members of the IADB. In such a case, the appeal is dismissed.

5.3 The preliminary judgment made in the appeal (under Article 16.7.1) is that the appeal is without merit and that decision has been agreed to unanimously by the members of the IADB. The appeal is therefore dismissed.

## 6 Reasons for Decision

6.1 Article 10.2.4 provides as follows:

*“Request for holiday entitlements must be approved by the President at least one week in advance. In the case of the President approval must be sought from the Executive.”*

6.2 That provision makes clear that the leave for sabbatical officers other than the President must be approved:

(a) By the President or Barry Murphy or Eoghan Mac Domhnaill as Acting President;  
**and**

(b) At least one week in advance.

6.3 The Appellants seek to rely on leave that was approved:

(a) By the Executive, not Barry Murphy or Eoghan Mac Domhnaill as Acting President or the President; and

(b) At a meeting held at 5:30pm on 23<sup>rd</sup> October 2017.

6.4 It has been argued that fairness should allow for an exception to me made because the President was granted leave by the Executive. This argument is without merit for the following reasons:

(a) The Appellants had from 3<sup>rd</sup> October (when they attended the Executive meeting which approved the President’s leave) until the 17<sup>th</sup> October in which to apply for leave. They did not do so.

(b) From 10<sup>th</sup> October to 17<sup>th</sup> October, leave could have been granted for 25<sup>th</sup> / 26<sup>th</sup> October by Barry Murphy (one of the Appellants) to the other two Appellants, or by Eoghan Mac Domhnaill to all three Appellants, when each of them was fulfilling the role of Acting President.

(c) No unfairness exists, as the Appellants had exactly the same opportunity to apply for leave on 25<sup>th</sup> / 26<sup>th</sup> October as the President; they simply chose not to apply for leave until after the relevant deadline expired.

- (d) The President applied for leave from the Executive because the Constitution requires the President's leave to be approved by the Executive. Other sabbatical officers' leave must be approved by the President or in this case the Acting President.
- (e) The decision to grant the President annual leave was made on 3<sup>rd</sup> October. That decision has not been appealed to the IADB. The question of whether the "*at least one week in advance*" provision applies to the President, or just the other sabbatical officers, does not arise in this appeal and is not considered in this appeal.
- (f) If any substantial issue of fairness did arise, it would not alter the clear and unambiguous requirements of Article 10.2.4. The foregoing provision does not contain any discretionary element.

6.5 The second argument raised is that the Appellants should be permitted to take **unpaid** leave. This argument is without merit for the following reasons:

- (a) No distinction is made in the Constitution between the approval of holidays which are paid and those which are unpaid.
- (b) The question posed in this appeal is whether the Executive's decision is valid or not. For the reasons set out above, the said decision is not valid. It is not open to the Appellant's to take unpaid leave without it being approved at least a week in advance.

## **7 Joinder of the Executive in the Appeal**

7.1 It is noted that at a meeting held at 5:50pm on 24<sup>th</sup> October the Executive in effect made a formal decision to join in this appeal with the Appellants. This was communicated to the IADB by way of an email of 8:04pm on that date. The decision of the Executive is noted by the IADB, but it does not change the question of whether the appeal itself has merit.

- 7.2 A significant question arises as to whether the Executive can lodge an Electoral Appeal but it is not necessary to resolve that issue in this appeal, as the addition of the Executive as an appellant does not change the merits of the Appellants' case.
- 7.3 For the avoidance of doubt, the Appellants' case has been considered by the IADB at its height and on the assumption that their appeal has the support of the Executive.

## **8 Conclusion**

- 8.1 The appeal is **DISMISSED** as being without merit in accordance with the procedure set out in Article 16.7. The preliminary judgment to that effect has been agreed to unanimously by all of the members of the IADB.
- 8.2 The Constitution is explicit in requiring the Appellants' annual leave to be approved at least a week in advance by the President or Acting President. The Executive cannot approve leave for the Appellants and the Appellants could not be granted leave at less than seven days' notice.
- 8.3 The referendum was called on 10<sup>th</sup> October. It was open to the Appellants to be granted leave by the President or Acting President up to 17<sup>th</sup> October. They chose not to apply for leave before that deadline, and as such are not now entitled to take paid or unpaid annual leave on 25<sup>th</sup> & 26<sup>th</sup> October.
- 8.4 The IADB wishes to clarify that *bona fide* compassionate leave, sick leave or urgent family emergency "*force majeure*" leave which would necessitate a sabbatical officer being unexpectedly absent from campus are **not** subject to the constraints of Article 10.2.4 which relates to holiday or annual leave, whether paid or unpaid.

**25<sup>th</sup> October 2017, 8:00am**

**-Ends-**