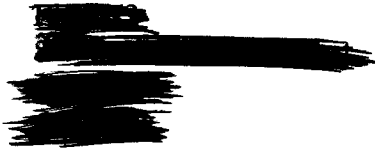


# Morning Star


Editor Richard Bagley    PPS Secretary Tony Briscoe  
William Rust House, 52 Beachy Road, Bow London E3 2NS

Rory MacKinnon



April 30 2014

Dear Rory,

You and your NUJ representative  attended a hearing on Tuesday April 29 at which I considered your appeal against a final written warning for gross misconduct. I conducted the hearing while Richard Bagley, as the manager who conducted the original disciplinary hearing, made the case against the appeal.

I have considered your grounds for appeal along with the evidence presented to the original hearing, which you did not challenge except in point 2) below. My consideration of your grounds for appeal is as follows:

1) You argue that there was a “significant and unexplained deviation from established disciplinary procedure”.

At the appeal hearing you explained that this referred to point 12 of the PPS disciplinary procedure — “Disciplinary charges will normally be brought by the employee’s line manager or that manager’s superior.” You argued that Tony Briscoe, as a non-journalist, did not have the expertise to bring charges and that this prevented the charges from being brought without prejudice.

Richard Bagley argued that the key word in the procedure is “normally” and that this permits flexibility.

The disciplinary procedure as worded clearly does not bind management with regards to who does and does not bring or hear disciplinary charges. I do not find therefore that selecting Tony Briscoe as the charging manager and Richard Bagley as the deciding manager was a significant deviation from procedure. Nor does the disciplinary procedure oblige management to explain why a particular individual has been chosen.

I find no evidence that selecting Tony Briscoe as the charging manager meant that the charges themselves were unfair or any different to charges that might



TEL: (020) 8510-0815 FAX: (020) 8573-6997  
EMAIL: reception@peoplespress.com WEB: www.morningstaronline.co.uk

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hypothetically have been brought by your line manager. The charges stand by themselves — their wording and substance is clear. The charges were judged on the evidence by Richard Bagley, so the suggestion that Tony Briscoe may not be qualified to judge proper journalistic etiquette is irrelevant.

**I therefore reject this ground for appeal.**

2) You argue that there was a “failure to ensure the disclosure of crucial evidence in line with Acas guidance”.

At the appeal hearing you explained that this referred to the original hearing’s failure to consider the complaint from RMT which gave rise to the disciplinary charges. You also argued that there was no evidence the Morning Star had been brought into disrepute and that such a claim was merely speculation.

Richard Bagley argued that your own statement provided the substantive evidence on which his findings were based.

I find no evidence that RMT’s complaint was anything more than the spark which triggered the Morning Star’s own investigation of the incident, including the Morning Star’s own evidence-gathering process. The facts of what happened on March 8 2014 are not in dispute. RMT’s complaint therefore only has potential relevance to the question of whether your actions brought the Morning Star into disrepute.

It is clear from the evidence that you were ejected from the conference of a union with which the Star has a valuable relationship. It is also clear that you were ejected for asking a question while present as an observer, and that you then publicly challenged — on a Twitter account clearly linked to the Morning Star — the RMT’s right to eject you.

I concur with the original findings that this in itself constitutes behaviour which could reasonably be construed as bringing the paper into disrepute. **There is therefore no reason to consider the RMT’s complaint “crucial evidence” in the original hearing and I reject this ground for appeal.**

3) You argue that there was a “failure to give full and fair consideration” to your defence and that no Morning Star policy was cited to support “reasonable expectations” of your behaviour.

At the hearing you reiterated your defence that the Morning Star lacks concrete policies, particularly regarding social media, that point 8 of the NUJ Code of Conduct safeguarded your conduct and that your tweets were factual statements that did not imply you had been ejected because you had asked a question about domestic violence allegations. You further argued that Richard Bagley’s findings failed to acknowledge the need for the Star’s management to put in place such policies.

Richard Bagley argued that no workplace can provide policies for every conceivable situation, and that in any case a journalist who has been at the Star for



three years should understand the behaviour expected of them. He argued that a reasonable reader would understand your tweets to imply cause and effect.

I find that the absence of formal policies covering journalists' conduct or use of social media does not mean that anything goes. Instead we fall back to the classic test of what behaviour a reasonable person might consider reasonable. In this case — getting yourself ejected from the conference of a union with which the Star has a valuable relationship, then publicly criticising that union — it is impossible to see how a reasonable person could consider your behaviour reasonable for an experienced Morning Star reporter. Likewise a reasonable person would clearly understand your tweet to imply you had been ejected because of your question.

I do not find that Richard Bagley failed to give full and fair consideration to your defence. It is clear from his findings that he considered your defence in detail. **I therefore reject this ground for appeal.**

4) You argue that the original findings introduced new allegations “without specific explanation of how this constituted a ‘breach of trust and confidence’.”

At the hearing you argued that this, too, reflected a lack of concrete policies on the behaviour expected of a Morning Star reporter.


Richard Bagley argued that the paragraph you cited — claiming a “fundamental failure to grasp the Morning Star’s news focus” — was not a new allegation but a step in his reasoning while coming to his conclusions. He also pointed to a lack of contrition or recognition of wrongdoing on your part beyond acknowledging your mistake in asking a question at a delegate conference.

I do not find any reason to agree with your assertion that this paragraph constitutes a new allegation. It is clearly a rewording and summing-up of the evidence and issues at hand — your own statement in the original hearing that you felt your question was on a topic which was “newsworthy and in the public interest, which related to the interests of the Morning Star”; Tony Briscoe’s argument that your behaviour “raises a question about your approach”; and Richard Bagley’s own explanation of his understanding of what constitutes reasonable behaviour.

The paragraph is an explanation of why you have been found guilty of the substantive charge of breaching the paper’s trust and confidence, not a new charge in itself. **I therefore reject this ground for appeal.**

**I therefore uphold the original hearing’s decision to find you guilty of gross misconduct and impose a final written warning. This decision is final and concludes the PPS’s disciplinary procedure.**

Yours sincerely,

  
James Eagle  
Deputy editor

