

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECISION ON WHETHER TO ACCEPT THE APPLICATION

The Parties:

RMT

and

Brylaine Travel Ltd

Introduction

1. The RMT (the Union) submitted an application to the CAC dated 19 November 2013 that it should be recognised for collective bargaining by Brylaine Travel Ltd (the Employer) for a bargaining unit comprising "all drivers at the above locations" which were listed as Boston, Skegness, Conningsby and Lincoln. The CAC gave the parties notice of receipt of the application on 20 November 2013. The Employer submitted a response to the application on 28 November 2013 which was duly copied to the Union.

2. In accordance with section 263 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the Act), the CAC Chairman established a Panel to deal with the case. The Panel consisted of Mr Chris Chapman, Chairman of the Panel, and, as Members, Mr George Getlevog and Mr Gerry Veart. The Case Manager appointed to support the Panel was Nigel Cookson.

Issues which the Panel has to determine

3. The Panel is required by paragraph 15 of Schedule A1 to the Act (the Schedule) to decide whether the Union's application to the CAC is valid within the terms of paragraphs 5 to 9; is made in accordance with paragraphs 11 or 12; is admissible within the terms of paragraphs 33 to 42 of the Schedule; and therefore should be accepted.

The Union's application

4. In its application the Union stated that it had made a request for voluntary recognition on 24 May 2011 and that the Employer agreed to discussions but no agreement was forthcoming. On 10 October 2013 the Union wrote asking for statutory recognition to which it received no response. Attached to its application was a copy of its letter of 10 October 2013 as well as a copy of a letter dated 19 November 2013 addressed to the Employer and enclosing a copy of its application to the CAC.

5. According to the Union, the Employer employed approximately 65 workers with 54 of these in its proposed bargaining unit. Of these 54 workers, a figure which had not been agreed with the Employer, 35 were members of the Union.

6. When asked to provide evidence that the majority of the workers in the proposed bargaining unit would be likely to support recognition, the Union said that it had a majority within the proposed bargaining unit in membership and that the members had joined specifically for collective bargaining. The Union had a copy of a petition and current membership list which it was happy to provide to the CAC on a confidential basis.

7. The Union explained that it had selected the proposed bargaining unit having been approached by drivers and believed that such a unit made sense as it was a specific group of workers with specific terms and conditions. The Union confirmed that the Employer had not agreed the composition of the proposed bargaining unit.

8. Finally, the Union stated that there was no current recognition agreement that covered any of the workers in the proposed bargaining unit nor had there been a previous application for recognition that covered any of the workers in the proposed bargaining unit.

The Employer's response to the Union's application

9. In its response to the Union's application dated 28 November 2013 the Employer said that it had received the Union's formal request for recognition on 22 November 2013 and when asked as to how it responded said "telephone conversations with Mr Brian Gregg". The Employer said that it had received a copy of the application form direct from the Union on 19 November 2013.

10. The Employer confirmed that it did not agree the proposed bargaining unit explaining that it had always operated a system of total fairness to all and it did not want the workers split into small groups. The Employer said that it employed a total of 72 workers and 54 of these were in the proposed bargaining unit adding that some of its drivers were also fitters.

11. The Employer did not answer the question when asked whether it agreed with the Union's estimate of its members but when asked whether it considered that a majority of the workers in the proposed bargaining unit would be likely to support recognition it said that it had no evidence but that drivers had indicated a preference for a JNC which would incorporate all grades.

12. The Employer did not answer the remaining questions namely if it was aware of any previous applications made by the Union in respect of this or a similar bargaining unit and whether there had been any other applications for statutory recognition in respect of workers in the proposed bargaining unit.

The membership and support check

13. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the proposed bargaining unit are members of the Union (paragraph 36(1)(a)) and whether a majority of the workers in the proposed bargaining unit are likely to support recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit (paragraph 36(1)(b)), the Panel proposed independent checks of the level of union membership in the proposed bargaining unit and the number of workers in the unit who had signed the Union's petition in support of the Union being recognised. It was agreed with the parties that the Employer would supply to the Case

Manager a list of the names, dates of birth and job titles of workers within the proposed bargaining unit, and that the Union would supply to the Case Manager the names and dates of birth of its paid up members within that unit and a copy of its petition to enable comparisons to be undertaken. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and the petition would not be copied to the other party. These arrangements were confirmed in letters dated 3 December 2013 from the Case Manager to the parties. The information from the Union was received by the CAC on 5 December 2013 and from the Employer on 6 December 2013 although the email containing the Employer's information had originally been sent on 4 December 2013 but had not been received. In its email attaching its membership list, the Union said that it had been unable to get hold of the petition referred to in its application. The Case Manager's comparison was therefore conducted in the absence of the petition. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

14. The Union provided a list bearing 37 names and the Employer provided a spreadsheet with the details of 58 workers. In its covering email the Employer said that it had marked those who swapped between driving and other work with two workers noted as Driver/Fitter, one noted as Secretary/Driver and one as Director/Driver.

15. The membership check established that there were 34 members of the Union within the proposed bargaining unit; a membership level of 58.6%. The report of the result of the check of the level of Union membership was circulated to the Panel and the parties on 6 December 2013 and the parties were duly invited to comment on the results thereof.

Union's comments on the result of the membership and support check

16. In an email dated 11 December 2013 the Union said that it had noted that the Employer had marked four posts as swapping between driving and other work. It believed that this could affect the number of workers within the bargaining unit for which it sought recognition and that it would depend on what proportion of their duties formed the majority. For example, if a fitter was also a driver, it could be that they had to drive to a broken down bus in order to effect a repair, so the driving would not amount to a significant part of their duties and could be excluded from the list of drivers. Similarly for the secretary and director,

whom they may use occasionally, such as in an emergency situation, but that would only involve a small amount of time actually driving, so could also be excluded from the list of drivers. If these four posts were not included in the Employer's list of 58, then the proportion of Union members in the proposed bargaining unit would be significantly higher.

17. Since the Union was contacted by drivers over two years ago and asked to seek a recognition agreement with the Employer it had been carrying out visits to the Employer's Depots for the purposes of informing staff of the many benefits of membership, with a view to recruiting them into membership. It had circulated information leaflets which specifically mentioned obtaining collective bargaining with the Employer so the workers would be able to have a say in the day to day issues that matter to them. The Union attached a copy of one of these leaflets for information.

Employer's comments on the result of the membership and support check

18. In an email dated 13 December 2013 the Employer made no comment on the Case Manager's report but did enclose a copy of a letter that it had issued to its workers with their wage slips so as to gauge the feeling of the entire staff. The Employer had received 30 returns from which 19 were drivers, 8 were fitters, 1 from admin and 1 from management with 13 of these being members of the Union. The results so far were; Union representation 4 votes, JNC 12 votes, neither Union or JNC 3 votes, either Union or JNC 10 votes and 1 spoilt paper.

Employer's further submissions

19. In an email received on 13 December 2013 after having sight of the Union's comments the Employer said that it rather resented the Union's inference that the Employer had tried to make the matter go away by ignoring the Union. Rather the opposite. The Union failed to turn up for the meeting in 2011 and ignored an invitation to attend another. The Employer therefore, assumed that its intransigence was a sign that it was no longer interested in representing the workers.

20. On 17 December 2013 the Employer emailed further to say that it had kept the ballot open to the end of play on Friday 13 December 2013 and that more votes came in after its

initial email and the true picture was now; total votes – 39, in favour of union recognition 8, JNC 18, nothing 3, unconcerned either way 9 and 1 spoilt paper.

Considerations

21. In deciding whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 3 of this decision are satisfied. The Panel has considered all the evidence submitted by the parties in reaching its decision. The Panel is satisfied that the Union made a valid request to the Employer within the terms specified in paragraphs 5 to 9 of the Schedule to recognise it for collective bargaining in respect of the proposed bargaining unit as described in paragraph 1 of this decision. The request was made in writing, identified the Union, the proposed bargaining unit, and stated that it (the request) was made under the Schedule. The Panel is also satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and 37 to 42 and that it was made in accordance with paragraph 11 of the Schedule in that, before the expiry of the first period of 10 working days, the employer failed to respond to the request. The remaining issues for the Panel to address are whether the admissibility criteria set out in paragraph 36(1) of the Schedule are met.

Paragraph 36(1)(a)

22. In accordance with paragraph 36(1)(a) of the Schedule the Panel must determine whether or not members of the Union constitute at least 10% of the workers in the Union's proposed bargaining unit. The check of membership and support for recognition conducted on 6 December 2013 established that there were 34 members of the Union in a proposed bargaining unit of 58 workers, a membership density of 58.6%. When invited to comment on this test the Employer did not dispute the results of the Case Manager's comparison. The Panel is therefore satisfied that the 10% threshold test has been met.

Paragraph 36(1)(b)

23. Paragraph 36(1)(b) of the Schedule provides that, for an application to be admissible, the CAC must be satisfied that a majority of the workers constituting the proposed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective

bargaining on behalf of the bargaining unit. The Panel feels that it important that we emphasise that, at this stage in the statutory process, we have to decide whether it is **likely** that a majority of the workers in the proposed bargaining unit will support recognition of the Union. This is the statutory test that must be applied. It is not a question as to whether the Union is actually supported by a majority of the workers in the proposed bargaining unit. Such a test will come in the fullness of time should it be necessary to hold a secret ballot to decide the question.

24. The Union relied on its membership level within the proposed bargaining unit, which has been established as being 58.6%, as evidence that this test was satisfied. It had initially made reference to a petition in support of recognition but did not put this forward at the time that the Case Manager conducted his check of membership and support. In its comments the Union did point out that if the four workers whose main jobs were other than driver (see paragraph 14), then the proportion of Union members in the proposed bargaining unit would be significantly higher than reported. If the Union was right and these workers were to be excluded, and assuming none were members of the Union, then membership density would stand at a fraction over 62%.

25. In its response to the application the Employer, when asked whether it considered that a majority of workers were likely to support recognition of the Union, said that the drivers had indicated a preference for a JNC. The Employer added nothing further when invited to comment on the results of the membership report though subsequently put forward the results of a survey that it had conducted throughout the whole workforce. The results of this survey are set out in paragraphs 18 and 20 above.

26. The question that the Panel must decide is what weight should be placed on the results of the Employer's survey, which it lodged with the CAC after the Case Manager had conducted his report on Union membership in the proposed bargaining unit. The first point we would make is that in considering the test in paragraph 36(1)(b) we have to decide whether the majority of the workers constituting the proposed bargaining unit would be likely to favour recognition of the Union. The emphasis being that it is the views of the workers within the proposed bargaining unit that we have to gauge as the Schedule does not, for the purposes of this test, make allowance for the views of those workers outside the proposed bargaining unit. With this in mind, we note that the Employer conducted its survey across its

whole workforce rather than it being limited to the workers in the Union's proposed bargaining unit. Further, given that the Employer allowed for the survey to be conducted in total anonymity it is impossible to untwine the responses so as to distinguish the views of the workers in the proposed bargaining unit and those outwith. What we can say is that when the Employer first made mention of the survey on 13 December 2013 it said that 19 out of the 58 drivers, that is approximately a third of the proposed bargaining unit, had responded. By the time the survey closed, on 13 December 2013, the total number of respondents had increased by nine although we do not know how many of the nine were drivers and therefore in the proposed bargaining unit.

27. The second point we would make is the language of the survey is couched in terms which suggests that recognition of the Union may well be to the detriment of the workers. For example, when talking about recognition it states it "may fundamentally alter the way our company is managed" whereas the alternative option favoured by the Employer, a Joint Negotiating Committee, "wouldtherefore recognise the valued opinion of the entire staff". The workers were then invited to pick from a list to say whether they preferred union recognition or the JNC with possible answers being "Union/JNC/Neither/Either". The workers were also asked whether they were a driver, fitter, admin or management and whether they were a member of the Union.

28. Having considered the Employer's submissions we are not persuaded that the results of its survey can be taken as indicative of the wishes of the workers in the proposed bargaining unit. The results cannot be subject to a confidential check given that it was conducted anonymously nor was it independently conducted and there is no evidence to suggest that the options put to the workers were fully explained so that the workers could make an informed decision. In particular the survey did not explain that the Union had applied for recognition for the purposes of collective bargaining in relation solely to pay, hours, and holidays.

29. Having set aside the results of the Employer's survey we turn to the evidence offered by the Union. The Panel is of the opinion that union membership can be taken as a legitimate indicator of an individual's view on support for recognition. Certainly, the Employer has not put forward any evidence to convince us that workers have joined the Union for reasons other than a desire to be represented by the Union in dealings with the Employer.

30. Given that the Union has more than half the proposed bargaining unit in membership we are of the view that, on the balance of probabilities, the majority of workers in the proposed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit and so the test set out in paragraph 36(1)(b) of the Schedule is satisfied.

Decision

31. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance to with paragraph 11 and is admissible within the terms of paragraphs 33 to 42 of the Schedule. The application is therefore accepted by the CAC.

Panel

Mr Chris Chapman, Chairman of the Panel

Mr George Getlevog

Mr Gerry Veart

20 December 2013