

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:

Aegis the Union

and

JLT Benefit Solutions Ltd

Introduction

1. Aegis the Union (the Union) submitted an application to the CAC dated 19 December 2013 that it should be recognised for collective bargaining by JLT Benefit Solutions Ltd (the Employer) for a bargaining unit comprising "Former employees of Aegon UK who were the subject of a TUPE transfer to JLT Benefit Solutions Ltd in April 2013 and are based at 7 Lochside Avenue Edinburgh". The CAC gave both parties notice of receipt of the application on 7 January 2014. The Employer submitted a response to the CAC dated 13 January 2014 which was 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 Professor Kenny Miller, Chairman of the Panel, and, as Members, Mr Sandy Boyle and Mrs Maureen Shaw. The Case Manager appointed to support the Panel was Nigel Cookson.

3. The Panel extended the acceptance period in this case in order to allow time for it to gather more evidence before arriving at a decision. The initial period expired on 20 January 2014 and this was subsequently extended to 10 February 2014.

Issues

4. 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; and therefore should be accepted.

The Union's application

5. In its application the Union stated that it had made its formal request for recognition to the Employer on 5 December 2013 and that the Employer had replied on 11 December 2013 noting the contents of the Union's letter but making no comment on the request itself. Copies of both letters were attached to the Union's application.

6. According to the Union's figures a total of 2000 workers were employed by the Employer, of whom 95 were in the proposed bargaining unit. The Union said that the Employer did not agree either with the Union's estimate as to the number of workers in the proposed bargaining unit or whether the proposed bargaining unit was an appropriate unit. The Union stated that it had 56% of the proposed bargaining unit in membership and membership records could be made available on request. It added that these members were formerly employed by AEGON UK where the Union had recognition rights. According to the Union, their continued membership was indicative of the likelihood that they would wish the Union to continue to represent them. The Union explained that it had selected its proposed bargaining unit on the grounds that it was one for which the Union had recognition rights prior to a TUPE transfer in April 2013.

7. The Union confirmed that it had made no previous application in respect of this or a similar bargaining unit.

8. Finally, the Union explained that there was currently in place a voluntary agreement between the Union and the Employer but that the Employer had given notice that they no longer wished to continue with this arrangement, hence the Union's application for statutory recognition.

The Employer's response to the Union's application

9. In its response to the Union's application the Employer confirmed that it received the Union's formal request for recognition on 5 December 2013. Its response was to continue with a meeting that had already been scheduled to take place on 11 December 2013 with the Union. During the meeting the parties discussed in further detail the Employer's proposed alternative to recognition as set out in a letter from the Employer to the Union dated 29 November 2013. This letter, a copy of which was enclosed, offered the Union membership of a sub-committee of the Business Partnership Forum in Edinburgh which, the Employer explained, would replace the current recognition agreement. This letter also confirmed that the freeze on the notice period would end with effect from the date of the letter (29 November 2013) and therefore the notice period would now end on 29 January 2014.

10. The Employer confirmed that it had received a copy of the application form from the Union on 27 December 2013. The Employer also confirmed that it had not agreed the proposed bargaining unit, either prior to its receipt of the application form or since, explaining that the ex-AEGON population was no longer an appropriate bargaining unit on the basis that the workers had been fully integrated into JLT. They shared the same management and office location as the rest of the Employer's employees in Edinburgh. In addition, the Employer did not accept that the Union had majority support within the proposed bargaining unit.

11. Although it had not, following receipt of the Union's request, proposed that Acas be requested to assist, the Employer said that it had made such a request on 13 January 2014.

12. The Employer confirmed that it employed a total of 1593 workers and that contrary to the figure given by the Union, there were currently 94 ex-AEGON employees in the Union's proposed bargaining unit due to a worker leaving. When asked whether it disagreed with the

Union's estimate of membership in the proposed bargaining unit the Employer said that it did not have any evidence of trade union membership levels.

13. When asked for its views as to whether a majority of the workers in the bargaining unit would be likely to support recognition the Employer again stated that it had no evidence of trade union membership levels and so was unable to state whether a majority of workers would support recognition.

14. In response to the question as to whether there was an existing agreement in force covering workers in the proposed bargaining unit the Employer answered in the affirmative and referred to a copy of the current recognition agreement dated November 2011 which transferred to the Employer on 7 May 2013 and which was enclosed with its response form. The parties to the agreement were AEGON UK Corporate Services Ltd and Origen Ltd and the Union. The Employer confirmed that it recognised the agreement following the transfer of AEGON employees on 7 May 2013.

15. Finally, the Employer was not aware of any previous application in respect of this or a similar bargaining unit by this or any other trade union.

Union's comments on the Employer's response

16. The documents forming the Employer's response were copied to the Union and its comments invited. In a letter dated 17 January 2014 the Union said that it disagreed with the Employer's comment that the ex-AEGON workers were not an appropriate bargaining unit. They had separate contracts of employment negotiated by Aegis as part of TUPE. These contracts were quite different from other employees who had only recently joined the ex-AEGON staff in the Edinburgh Park office at the end of October 2013.

17. In its response the Employer stated that it did not accept that the Union had majority support within the proposed bargaining unit but then undermined this view by saying that it had no evidence of membership levels. This was also the case when it said that it was unable to say whether a majority of workers would support recognition.

18. The Union confirmed that on 8 April 2013 the workers in the proposed bargaining unit were transferred to JLT Benefit Solutions Ltd and that the recognition agreement transferred over under TUPE. The agreement included a termination clause with a 6 month notice period.

19. On 1 July 2013 the Employer, without warning, served notice in writing terminating the agreement. It was important to point out that when notice was served the ex-AEGON staff were the only staff working at the office in Edinburgh Park. Again, this was confirmation that these workers formed a standalone bargaining unit.

20. On 17 September 2013, following a meeting with the Employer, the notice period was put on hold for 45 days to see if a voluntary agreement could be reached. However, no such agreement was forthcoming. Later in October employees from another office in Edinburgh moved in with the ex-AEGON staff at Edinburgh Park. On 29 November 2013, the Employer rescinded the stay of notice.

21. Finally, the Union confirmed that it was content for Acas to assist reaching a voluntary resolution.

The Membership Check

22. 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 would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit (paragraph 36(1)(b)), the Panel proposed an independent check of the level of union membership within the proposed bargaining unit. It was agreed with the parties that the Employer would supply to the Case Manager a list of the full names, dates of birth and job titles of the workers within the proposed bargaining unit and that the Union would supply to the Case Manager a list of its paid up members within that unit, including dates of birth. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party. These arrangements were confirmed in a letter dated 22 January 2014 from the Case

Manager to both parties. The information from the Union was received by the CAC on 23 January 2014 and from the Employer on 24 January 2014. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

23. There were 50 names on the list provided by the Union and 93 names on the list provided by the Employer. According to the Case Manager's report, the number of Union members in the 88 strong proposed bargaining unit was 47, a membership level of 50.54%. A report of the result of the membership check was circulated to the Panel and the parties on 27 January 2014 and the parties were invited to comment thereon.

Employer's comments on the results of the membership check

24. In an email dated 31 January 2014 the Employer noted that the report provided confirmation that the Union had satisfied the threshold under paragraph 36(1)(a). However, the position set out in its response submitted on 13 January 2014 remained, the Employer had no evidence of membership levels and more importantly, under paragraph 36(1)(b), the CAC's report provided no evidence that a majority of workers in the proposed bargaining unit were likely to support recognition of the Union. The report provided confirmation of paragraph 36(1)(a), not paragraph 36(1)(b).

25. The Employer's position was that further enquiries of the workers in question would be required and it required sight or confirmation of a petition or similar evidence in support of the contention under paragraph 36(1)(b).

Union's comments on the results of the membership check

26. In an email dated 3 February 2014 the Union confirmed that it had no comments on the Case Manager's report.

Considerations

27. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 4 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, in its letter dated 5 December 2013 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 bargaining unit as described in paragraph 1 of this decision.

28. The Panel is also satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 34 and paragraphs 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 starting with the day after that on which the Employer received the request for recognition, the Employer failed to respond to the request. We have taken the view that the Employer failed to respond because the brief letter it did write to the Union on 11 December 2013 was no more than an acknowledgement of the Union's letter. It made no comment on the substantive matter of the request for recognition.

Paragraph 35

29. In its response to the application the Employer submitted that there was in force a recognition agreement covering the workers in the proposed bargaining unit. Under the terms of paragraph 35 of the Schedule an application is not admissible if the CAC is satisfied that there is already in force a collective agreement under which a union is recognised as entitled to conduct collective bargaining on behalf of any workers falling within the relevant bargaining unit.

30. It was common ground between the parties that a TUPE transfer took place in the spring of 2013 – in April, according to the Union, or May, according to the Employer - whereby the business which employed the workers in the Union's proposed bargaining unit was transferred to the Employer and that prior to the transfer there was in force a voluntary agreement between the Union and AEGON UK Corporate Services Ltd, the transferor.

31. It was also common ground that on 1 July 2014 the Employer, which admitted it readily recognised the agreement following the transfer, then gave notice of termination under the terms of the agreement. The notice period was subsequently stayed for a short while to enable the parties to ascertain whether they could resolve their differences. However, no such amicable arrangement could be found and so the Employer lifted the stay and the notice period ran down, finally expiring on 29 January 2014.

32. The Panel is satisfied, on the grounds that the agreement is now no longer extant, that there is not already in force a collective agreement under which a union is recognised to conduct collective bargaining and so the application is not rendered inadmissible in terms of paragraph 35 of the Schedule.

Paragraph 36

33. In accordance with paragraph 36(1)(a) and (b) of the Schedule, the Panel must determine whether members of the Union constitute at least 10% of the workers in the Union's proposed bargaining unit, and whether a majority of the workers constituting the Union's proposed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit.

Paragraph 36(1)(a)

34. The membership check conducted by the Case Manager showed that 50.54% of the workers in the proposed bargaining unit were members of the Union. In its comments on the Case Manager's report the Employer noted that the report provided confirmation that the Union had satisfied the threshold under paragraph 36(1)(a). The Panel is satisfied that the check of membership was conducted properly and impartially and in accordance with the agreement reached with the parties.

35. The Panel finds that members of the Union do constitute at least 10% of the workers in the proposed bargaining unit as required by paragraph 36(1)(a) of the Schedule.

Paragraph 36(1)(b)

36. As set out above, the check conducted by the Case Manager established that 50.54% of the workers in the proposed bargaining unit were members of the Union. The Union relied on its membership level alone as evidence that the majority of workers in the proposed bargaining unit would be likely to favour recognition. On the other hand, when initially asked for its views on this matter, the Employer said that in the absence of any evidence of membership levels it was unable to say whether a majority of workers would support recognition. Then, once the Case Manager had completed his comparison and produced his report establishing the membership density, the Employer said that it provided confirmation that paragraph 36(1)(a) was satisfied but it had provided no evidence at all that a majority of workers in the proposed bargaining unit were likely to support recognition of the Union.

37. In considering this matter the Panel would remind the parties that the test as to whether 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 is not one of actual support for the Union, but a test of "likely" support. Turning to the evidence made available by the parties the Panel must ask itself whether the density of Union membership within the proposed bargaining unit is sufficient evidence that this test is satisfied. In the absence of any evidence to the contrary, the Panel is of the view that trade union membership can be taken as a legitimate indicator of likely support for recognition. We feel that workers that have taken the step of joining a union and commit to paying subscriptions are more likely than not to support a union in its request to be recognised as entitled to conduct collective bargaining on their behalf.

38. In this case, Union members represent a fraction more than a majority of the workers in the proposed bargaining unit. On the basis that Union members would be more likely than not to favour recognition of the Union the Panel concludes that, on the balance of probabilities, a majority of the 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 as required by paragraph 36(1)(b) of the Schedule.

Decision

39. 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

Professor Kenny Miller, Chairman of the Panel

Mr Sandy Boyle

Mrs Maureen Shaw

10 February 2014