

30 December 2014

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
J W Filshill Ltd

Introduction

1. RMT (the Union) submitted an application to the CAC that it should be recognised for collective bargaining by J W Filshill Ltd (the Employer) in respect of a bargaining unit comprising “All Drivers and Warehouse Staff, excluding Supervisory and Management Grades” located at Hillingdon Road, Glasgow, GS2 4HE. The application was received by the CAC on 1 December 2014. The CAC gave both parties notice of receipt of the application on 2 December 2014. The Employer submitted a response to the CAC dated 4 December 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 Mr Chris Chapman, chairing the Panel, and, as Members, Mrs Maureen Shaw and Mr Sandy Boyle. The Case Manager appointed to support the Panel was Linda Lehan.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 15 December 2014. The acceptance period was extended to 31 December 2014 in order to allow time for a membership check to take place, for the parties to comment on the subsequent report and for the Panel to consider these comments before arriving at a decision.

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. The Union stated that it had submitted its formal request for recognition to the Employer on 13 October 2014, a copy of which was enclosed. The Union stated that the Employer was not prepared to give them voluntary recognition and disputed the proposed bargaining unit.

6. The Union stated that following receipt of their request the Employer agreed to ACAS being requested to assist and that there had been contact with ACAS through e-mails and phone calls regarding the bargaining unit.

7. The Union stated that there were 100+ workers employed by the Employer, of which 65-70 were in the proposed bargaining unit. Out of the 65-70 workers in the bargaining unit 38 were members of the Union. When asked to provide evidence that a majority of the workers in the bargaining unit were likely to support recognition for collective bargaining, the Union stated that they had 38 members who had joined since August 2014 when they started the campaign for recognition and they also had a confidential petition which consisted of 60 signatures of workers in the bargaining unit supporting recognition for RMT.

8. The Union stated that the reason for selecting the proposed bargaining unit was that those were the workers who had approached them and the bargaining unit was based on clearly defined areas of the workplace.

9. The Union stated that the bargaining unit had not been agreed with the Employer and confirmed that it held a current certificate of independence.

10. The Union confirmed that it had not made a previous application for workers in the proposed bargaining unit or a similar unit and that it was not aware of any existing agreement which covered any of the workers in the proposed bargaining unit.

The Employer's response

11. The Employer stated that it had received the Union's written request letter on 14 October 2014. The Employer enclosed a copy of its response which was a letter dated 21 October 2014 stating that it was unwilling at that stage to accept the Union's request for recognition as set out in the Union's letter of 13 October. The Employer stated that it was willing to negotiate with the Union in relation to trying to agree the appropriate bargaining unit and also whether the Union would be entitled to conduct collective bargaining on behalf of that bargaining unit. The Employer proposed that ACAS be asked to assist in negotiations.

12. The Employer confirmed that it had received a copy of the application from the Union on 1 December 2014.

13. The Employer stated that it had not agreed the bargaining unit before it received a copy of the application form from the Union and the reason for its objection to the proposed unit was that it excluded warehouse and transport staff who did not manage or supervise staff.

14. The Employer stated that it proposed ACAS be requested to assist and that a meeting took place with ACAS, representatives of the Employer and their Solicitor on 7 November 2014. The Employer enclosed a copy of an e-mail sent to ACAS on 19 November 2014 from their Solicitor which stated that they had spoken to their clients in relation to the composition of the bargaining unit and the Employer remained concerned that it would be inappropriate and essentially discriminatory not to allow the rest of the Warehouse Staff to be part of the proposed bargaining unit. The Solicitor stated that the Employer would be prepared to accept a bargaining unit provided all Warehouse Staff who were not "Supervising Staff" were included which included Stock Managers whose responsibilities were for product location, rotation and movements and did not have any staffing responsibilities. The Solicitor also

stated that the bargaining unit would include Cash and Carry Staff, Transport Routing Staff and Marshalling Staff.

15. The Employer stated that it did not agree with the number of workers in the bargaining unit, as defined in the Union's application, and stated that 110 would be the correct number (not 65-70) and that the Union were appearing to be discriminating against warehouse and transport staff who were not RMT members and also some who were RMT members.

16. The Employer stated that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

17. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit and reason for disagreeing, the Employer attached a summary of the 110 staff who they felt should be included in the bargaining unit.

18. As to whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that all staff were approached at the entrance gates by the Union and issued with literature, copies of which they attached. The Employer advised that 21 grievance letters had been received and more than 50% were retracted on sight of the unauthorised use of company images.

Union's comments on Employer's response

19. In a letter dated 9 December 2014 the Union responded to the Panel's request for its comments on the Employer's response specifically on the number of workers in the bargaining unit.

20. The Union explained that they based their figure of how many employees were in the proposed bargaining unit on the information given to them by their members. The Union stated that they had again asked their members what their view was of the Employer's figures and stated that their members were unable to reach the same total as the Employer even when they included Agency Staff, Management and

Supervisory Grades.

The Membership and support Check

21. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the bargaining unit are members of the union (paragraph 36(1)(a)) and whether a majority of the workers in the 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 bargaining unit, and of the petition. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, date of birth and job titles of workers within the bargaining unit, and that the Union would supply to the Case Manager a list of its paid up members within that unit (including their full name and date 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 11 December 2014 from the Case Manager to both parties. The information from both the Union and the Employer was received by the CAC on 11 December 2014. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

22. The Union provided a list of 39 members and the Employer provided a list of 117 workers. The job titles given for the workers by the Employer were Warehouseman–Reach Truck Operator, Warehouseman-Ancillary, Warehouseman Counterbalance Operator, Warehouse>Returns Clerkess, Warehouseman-Missed Sales-Stock Checks, Warehouseman–Reach Truck Operator–Stock Management, Warehouseman-Check Out Operator, Warehouseman>Returns, Warehouseman–Truck Operator–Returns/Damages/Waste Cleaning, Warehouseman-Order Picker, Transport-Clerk Routing, Transport-LGV Driver, LGV Driver, Transport-Clerkess and Transport Van Assistant.

23. The Union's petition consisting of 60 signatories was set out as follows:

CONFIDENTIAL

PETITION FOR RECOGNITION OF THE RMT FOR THE PURPOSES OF COLLECTIVE BARGAINING.

WE THE UNDERSIGNED EMPLOYEES OF JW FILSHILL Ltd, HILLINGTON ROAD, GLASGOW, G52 4HE, ASK THAT THE NATIONAL UNION OF RAIL MARITIME AND TRANSPORT WORKERS BE RECOGNISED BY OUR EMPLOYER FOR THE PURPOSE OF COLLECTIVE BARGAINING.

NAME PRINT	NAME SIGN	JOB	DATE
.....
.....

THIS PETITION WILL NOT BE DISCLOSED TO YOUR EMPLOYER AND WILL ONLY BE SEEN BY RMT OFFICIALS, CAC MEMBERS AND ACAS

24. The membership check established that there were 38 members of the Union within the bargaining unit; a membership level of 32.47%. The result of the comparison of the Union’s petition with the Employer’s list of workers revealed that a total of 59 workers had indicated that they wanted the Union to represent them, which corresponded to 50.43% of the bargaining unit. 34 of the 59 were union members (29.06%) and 25 were non-members (21.37%).

25. A report of the result of the membership check was circulated to the Panel and the parties on 12 December 2014 and the parties were invited to comment on the result.

Union’s comments on membership and support check

26. A response was received from the Union dated 15 December 2014 stating that, using either the management’s definition of the bargaining unit or their own definition of the bargaining unit, their current membership exceeded the 10% membership required.

27. The Union stated that using either definition of the bargaining unit they also had a clear majority of workers wishing to be covered by a collective bargaining agreement. The Union advised that they had made it clear to all members and potential members that that was what they were seeking.

28. Finally the Union stated that their members were still advising them that Management and Supervisory Grades were being included in the proposed bargaining unit: for example Stock Managers were a Management Grade and Routers were a Supervisory Grade.

Employer's comments on membership and support check

29. In an e-mail dated 16 December 2014 the Employer stated that the only comment it wished to make was regarding the petition as they were not aware when it had taken place. The Employer stated that their concern was whether the petition took place around the time all 21 LGV Drivers handed in an identical grievance letter and if the petition was to take place now they would expect the numbers voting in favour of Union recognition to be less.

30. A further e-mail was received from the Employer dated 17 December 2014 querying the difference in numbers that they thought to be in the proposed bargaining unit and the Union's figure. The Employer also stated that a number of employees had indicated to them that when signing the Union's petition they did not understand what they were signing and others stating they were pressurised into signing and asked if we could establish how many employees would still be in agreement to signing the Union's petition. The e-mail was cross copied to the Union for information purposes only.

Considerations

31. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 4 above are satisfied. The Panel has considered carefully the submissions of both parties and all the evidence in reaching its decision.

32. The Panel is satisfied that the Union made a valid request to the Employer within the terms of paragraphs 5 to 9 of the Schedule and that its application was made in accordance with paragraph 12. Furthermore, the Panel is satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and paragraphs 37 to 42 of the Schedule. The remaining issues for the Panel to decide are whether the admissibility criteria contained in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

Paragraph 36(1)(a)

33. Under paragraph 36(1)(a) of the Schedule an application is not admissible unless the Panel decides that members of the union constitute at least 10% of the workers in the proposed bargaining unit.

34. The Panel noted the Union's comments concerning the discrepancy in respect of Management and Supervisory Grades being included by the Employer for the check. Even based on the higher figures provided by the Employer the membership check conducted by the Case Manager showed that 32.47% of the workers in the proposed bargaining unit are fully paid up members of the Union. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties. The Panel has therefore decided that members of the union 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)

35. The test in paragraph 36(1)(b) is 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. This is not a test of actual support, rather a threshold requirement whereby the Panel must be satisfied that a majority of the workers in the bargaining unit would be likely to favour recognition. Therefore, for the purposes of paragraph 36(1)(b) it is not necessary that a majority of workers actually do show support. The Schedule provides

that, if appropriate, a test of actual support in the bargaining unit follows acceptance of an application and it is the level of that actual support which will determine whether or not recognition is awarded.

36. The Panel again noted the Union's comments concerning the discrepancy in respect of Management and Supervisory Grades being included by the Employer for the check. Notwithstanding this query, the Case Manager's check of the Union's petition against the list of 117 workers provided by the Employer indicated that 59 of the petition signatories were workers from within the proposed bargaining unit, a support level of 50.43%. The Panel also noted the Employer's argument that some workers had indicated to them that they did not understand what they were signing when signing the petition and others had said they were pressurised into signing the petition but no evidence to support this was received.

37. Therefore, despite the apparent discrepancy in numbers, given the level of Union membership and support demonstrated by the petition, the Panel is satisfied that, in accordance with paragraph 36(1)(b) of the Schedule, a majority of the workers in the proposed bargaining unit would be likely to favour recognition of the Union.

Decision

38. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance to with paragraph 12 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

Mrs Maureen Shaw

Mr Sandy Boyle

30 December 2014