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:

GMB

and

TRS Cash & Carry Limited

Introduction

1. GMB (the Union) submitted an application to the CAC dated 8 January 2019 that it should be recognised for collective bargaining by TRS Cash & Carry Limited (the Employer) for a bargaining unit comprising “All hourly paid employees in TRS Cash & Carry, Southbridge Way, The Green, Southall, Middx UB2 4AX”. The application was received by the CAC on 11 January 2019. The CAC gave both parties notice of receipt of the application on 14 January 2019. The Employer submitted a response to the CAC dated 15 January 2019, with a covering letter dated 17 January 2019, 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 Gillian Morris, Chair of the Panel, and, as Members, Mr Len Aspell and Mr Keith Sonnet. 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 25 January 2019. The acceptance period was extended to 1 February 2019 in order to allow time for the parties to comment on the results of a membership check 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.

**Summary of the Union’s application**

5. In its application to the CAC the Union stated that it had sent its formal request for recognition to the Employer on 20 December 2018. On 4 January 2019 the Employer wrote to the Union rejecting its request. A copy of the Union’s letter and of the Employer’s response was attached to the application. The Union also attached a copy of a letter it had sent to the Employer dated 8 January 2019 stating that the request had been made on the basis that the Union had met the required 10% and that the Union would have agreed to Acas being involved to verify the level of membership. The Union also stated in that letter that whilst it was submitting an application to the CAC it remained committed to entering into a voluntary agreement throughout the process.

6. The Union stated that it had made two previous applications under the Schedule for workers in the proposed bargaining unit or a similar unit. The first application had been withdrawn on 2 May 2018, the second on 20 December 2018. The Union stated that, following receipt of the request for recognition, the Employer had not proposed that Acas should be requested to assist the parties.

7. The Union stated that the total number of workers employed by the Employer was 59. The Union stated that there were 56 workers in the proposed bargaining unit, of whom 33 were members of the Union. When asked to provide evidence that a majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining the Union stated that it could supply its membership list to the CAC on a confidential basis.
8. The Union stated that the reason for selecting the proposed bargaining unit was because the majority of members in the bargaining unit were hourly paid. The Union stated that the bargaining unit had not been agreed with the Employer. The Union said that there was no existing recognition agreement of which it was aware which covered any of the workers in the bargaining unit.

9. The Union confirmed that it held a current certificate of independence. The Union stated that it had copied its application to the CAC, and supporting documents, to the Employer on 8 January 2019.

Summary of the Employer’s response to the Union’s application

10. In its response to the Union’s application the Employer stated that it had received the Union’s written request for recognition on 20 December 2018. The Employer stated that the request had been rejected by a letter dated 8 January 2019. The Employer attached a copy of this letter which was dated 4 January 2019, not 8 January 2019 as stated in its response.

11. The Employer confirmed that it had received a copy of the Union’s application form from the Union on 14 January 2019. The Employer stated that it had not, before receiving a copy of the application form from the Union, agreed the bargaining unit with the Union and that it did not agree it. The Employer stated that it currently employed 62 workers, 57 of whom were paid by the hour, weekly; the remainder were salaried and paid monthly. The Employer stated that it failed to see why the bargaining unit should not include all its employees. The Employer stated that, following receipt of the Union’s request, it had not proposed that Acas should be requested to assist.

12. The Employer stated it did not agree with the number of workers in the bargaining unit as defined in the Union’s application. The Employer said that it had 62 workers. The Employer stated that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

13. In answer to the question whether it disagreed with the Union’s estimate of membership in the proposed bargaining unit, the Employer said that the Union had not as yet provided
this information. The Employer asked that the Union provide the information on a confidential basis. When invited to give its reasons if it did not consider that a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that it had no evidence that 33 of the workers were union members and that, if they were, they would support recognition.

14. The Employer stated that previous applications under the Schedule for statutory recognition for workers in respect of this or a similar bargaining unit were made by the Union on 24 April 2018, withdrawn on 2 May 2018, and on 5 October 2018, withdrawn on 20 December 2018.

**The Membership Check**

15. To assist in the application of the admissibility tests 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 names, dates of birth and job titles of 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 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 18 January 2019 from the Case Manager to both parties. The information from the Employer was received by the CAC on 21 January 2019 and from the Union on 22 January 2019. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

16. The list supplied by the Employer indicated that there were 54 workers in the proposed bargaining unit. The list of members supplied by the Union contained 34 names. According to the Case Manager’s report, the number of Union members in the proposed bargaining unit was 30, a membership level of 55.56%.
17. A report of the result of the membership check was circulated to the Panel and the parties on 23 January 2019 and the parties were invited to comment on the result.

The parties’ comments on the result of the membership check

18. In an e-mail to the CAC dated 25 January 2019 the Employer stated that it noted the findings of the independent review of Union membership. The Employer stated that it was concerned, however, that a few forceful characters amongst its employees had exerted undue influence over some of their more vulnerable colleagues to persuade them to join the Union when, in fact, they did not want to do so. The Employer also stated that, as many of the employees did not speak English to a very good standard, if at all, they may not have understood what they were signing up to. The Employer said that it felt it important to establish that the employees in the bargaining unit who were Union members had agreed to join of their own free will and volition.

19. No comment on the result of the membership check was received from the Union.

Considerations

20. 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.

21. 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 11. 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)

22. 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.

23. The membership check conducted by the Case Manager (described in paragraphs 15 and 16 above) showed that 55.56% of the workers in the proposed bargaining unit were members of the Union. As stated in paragraph 15 above, the Panel is satisfied that this check was conducted properly and impartially and in accordance with the arrangements agreed 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.

24. The Panel notes the Employer’s comments that some vulnerable workers may have been subject to undue influence from a few forceful colleagues to persuade them to join the Union when they did not wish to do so. The Panel also notes the Employer’s comments that many employees may not have understood what they were signing up to. However the Panel has not received, from either the Employer or any workers within the proposed bargaining unit, any form of documentary evidence from individuals the Employer alleged to have been subjected to undue influence to substantiate these allegations. The Panel is therefore content to take at face value the result of the Case Manager’s membership check.

Paragraph 36(1)(b)

25. Under paragraph 36(1)(b) of the Schedule, an application is not admissible unless the Panel decides 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. For the reasons given in paragraphs 23 and 24 above the level of union membership is 55.56%. The Union did not provide any additional evidence of support for recognition, such as a petition, but the Panel considers that, in the absence of evidence to the contrary, union membership provides a legitimate indicator of the views of the workers in the proposed bargaining unit as to whether they would be likely to favour recognition of the Union. No such evidence to the contrary was received in this case. On the basis of the evidence before it, the Panel has decided 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

26. For the reasons given in paragraphs 21 to 25 above, the Panel’s decision is that the application is accepted by the CAC.

Panel

Professor Gillian Morris, Chairman of the Panel
Mr Len Aspell
Mr Keith Sonnet

30 January 2019