Case Number: TUR1/859/2013
20 March 2014

CENTRAL ARBITRATION COMMITTEE

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION

DECLARATION OF RECOGNITION WITHOUT A BALLOT

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.

3. By a decision dated 20 December 2013 the Panel accepted the Union's application. The parties then entered a period of negotiation in an attempt to reach agreement on the appropriate bargaining unit but no agreement was reached. The parties were invited to supply the Panel with, and to exchange, written submissions ahead of a hearing to determine the appropriate bargaining unit. Following a hearing in Nottingham on 12 February 2014, which the Employer elected not to attend, the Panel, in a decision promulgated 25 February 2014, determined that the appropriate bargaining unit in this matter was that proposed by the Union in its application, namely all drivers employed at the depots in Boston, Skegness, Conningsby and Lincoln.

Issues

4. Paragraph 22 of the Schedule provides that if the CAC is satisfied that a majority of the workers constituting the bargaining unit are members of the union, it must issue a declaration of recognition under paragraph 22(2) unless any of the three qualifying conditions specified in paragraph 22(4) applies. Paragraph 22(3) requires the CAC to hold a ballot even where it has found that a majority of workers constituting the bargaining unit are members of the union if any of these qualifying conditions is fulfilled. The three qualifying conditions are:

> **(i) the CAC is satisfied that a ballot should be held in the interests of good industrial relations;**
> **(ii) the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;**
> **(iii) membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union (or unions) to conduct collective bargaining on their behalf. Paragraph 22(5) states that "membership evidence" is (a) evidence about the circumstances in which union members became members, or (b) evidence about the length of time for which union members have been members, in a case where the CAC is satisfied that such evidence should be taken into account.**

The Union's claim to majority membership

5. In a letter dated 3 March 2014 the Union said that it had submitted evidence of its membership for the check which took place previously and which showed that the Union had

58.6% membership density. Included in the Employer's list at that time were two driver/fitters, one secretary/driver and one director/driver. The final bargaining unit excluded these four positions. The Union had checked its membership records and all of its members had the job description "driver". With this reduction in the bargaining unit, membership density would now stand at 62%.

6. Throughout the campaign, the focus of the members had been to achieve full union recognition and collective bargaining rights. This had been the express message of the Union in its literature and information. Whether the membership density was 62% or 58.6%, this majority in itself showed support for recognition of the Union. Given the Union's past experience, this would also tend to show that other workers in the bargaining unit, even though not at present members of the Union, would nevertheless be likely to support recognition.

7. Given the submissions and responses from the Employer throughout the process, holding a recognition ballot would not be in the interests of good industrial relations. If anything, holding a ballot would be liable to prolong a fairly bitter anti-union campaign by the Employer and could potentially put unwanted and unnecessary pressure on the workers involved.

8. The Union advise caution with any submission from the Employer attempting to make a case that the majority of workers did not favour recognition. The Union referred the Panel to paragraph 27 of the acceptance decision, which highlighted previous methods used by the Employer to survey the workforce and stated that the language used in the survey was far from objective or neutral but instead suggested that recognition of the Union would be detrimental to the workers.

9. The Union had majority membership within the determined bargaining unit and therefore asked the Panel to award recognition without a need for a ballot. It believed that such a decision would be in the interests of both parties and the Union hoped that recognition would allow the Union the opportunity to progress constructively in representing its members' interests with the Employer

The views of the Employer

10. In a letter dated 4 March 2014 the Employer set out the chronology of its dealings with the Union since 2011. It also detailed how a Union member had approached the Employer with a suggestion of creating a JNC. After the Employer had received the letter from the Union in October 2013, with a subsequent follow-up from the CAC accepting the Union's application in November 2013, it thought it entirely proper to give all staff the option through a ballot, as noted in the Panel's decision, to respond to the application, given that the Employer had already begun the JNC process at this juncture.

11. For the Panel to say that was a flawed system was incorrect as all ballots were undertaken anonymously as required. Far from the CAC being cautious about accepting this evidence, it should note that it was quite emphatic. Of the 67 forms sent out, 39 responses were received, one of which was spoilt. The results of the ballot were:

> **Admin 3 responses no Union members**: 2 JNC/1 either or.
> **Fitters 8 responses no Union members**: 1 JNC/2 neither/5 either or.
> **Drivers 28 responses (51% of drivers) of which 20 were Union members**:
> 21 JNC/5 Union/1 neither/1 either or.

The Employer would therefore argue that 75% of the Union members have not supported union recognition.

12. The Employer suggested that any perceived fall in the level of support for the Union could have been driven by the aggressive nature of the Union towards the members' place of work and the actuality was that the membership did not want representing in the manner in which the Union had presented itself.

13. Far from being anti-Union as claimed by the Union, the Employer had continually tried to remain open and objective to discussions on the effects and benefits of union recognition and it was taken aback by the Union leafleting Boston Bus Station in November 2013 saying that the company had been trying every possible means to undermine the Union's application. The Employer found this stance to be unprofessional and an attempt to undermine the company by the use of defamatory tactics, which was entirely underhand.

14. The Employer had always been open and accepting of any team member choosing to join a union, not least for the legal support services it afforded them outside work related issues, and so for the Union to state that it had conducted a prolonged and fairly bitter anti-union campaign was nonsense and any comment the Employer had made was entirely based on a response to their actions. To suggest that a further ballot could potentially put unnecessary and unwanted pressure on the team was poor judgment on the part of the Union and showed a lack of understanding as to how the team worked.

15. The Employer asked again that the Panel took all facets into consideration as an arbitrator as the Employer expected equal consideration to be given as to how it worked with its team. The Panel should also understand that the Employer, as an independent organisation, must take on board the general consensus of ALL its team to create an environment that worked to support everyone.

Union's final comments on the Employer's submissions

16. In a letter dated 13 March 2014 the Union submitted that the Employer, in its letter of 4 March 2014, had made no argument to suggest that a ballot would be in the interests of good industrial relations.

17. The Employer referred again to the results of its workforce ballot to try to argue that that was a lack of support for Union recognition. However, the results of this ballot did not meet the required criteria of credible evidence that a significant number of union members within the bargaining unit did not want the Union to conduct collective bargaining on their behalf.

18. There was no membership evidence that would cast doubt on whether a majority of workers in the bargaining unit wanted the Union to have collective bargaining rights. The Union had majority membership within the bargaining unit – a minimum of 59% - and this showed that a majority of workers within the bargaining unit favoured Union recognition and the Union therefore requested the Panel to grant automatic recognition.

Considerations

19. As set out in paragraph 4 above, the Schedule requires the Panel to consider whether it is satisfied that the majority of the workers in the bargaining unit are members of the Union. If the Panel is satisfied that the majority of the workers in the bargaining unit are members of the Union, it must declare the Union recognised by the Employer unless it decides that any of the three conditions in paragraph 22(4) are fulfilled. If the Panel considers any of the conditions are fulfilled it must give notice to the parties that it intends to arrange for the holding of a secret ballot.

20. The Panel, under paragraph 22(1)(b) of the Schedule, has to be satisfied that a majority of workers constituting the bargaining unit are members of the Union. On 6 December 2013 membership in the bargaining unit stood at 58.6%. In its submissions claiming majority membership the Union also pointed out that the Employer's list of workers provided for this check had included four workers whose main jobs were other than drivers. These workers, it submitted, should not have been included in the comparison as they were not in the bargaining unit as originally proposed by the Union and subsequently determined by the Panel. Excluding these four from the equation, the density of Union members would be greater than the 58.6% established by the Case Manager's check in December 2013. Whilst no membership check has been undertaken since 6 December 2014 the Panel takes into account that, although given the opportunity to challenge the Union's claim to majority membership, the Employer elected not to do so.

21. The Panel accepts that the majority of workers in the bargaining unit are members of the Union. Having so decided, the Panel must now move to consider whether any of the three qualifying conditions set out in paragraph 22(4) applies, given the circumstances of this particular case.

Paragraph 22(4)(a)

22. The first condition is that the Panel is satisfied that a ballot should be held in the interests of good industrial relations. The Employer is not clear on this point but, on a generous reading of its submissions, the Panel will assume that it is arguing that all of its workers should be given the choice as to whether or not the Union gains recognition within

the workplace and that, as such, it would be in the interests of good industrial relations that they be given the opportunity to make this decision. If this is the case, its difficulty is that its argument seems to be solely based on it being an "independent organisation", which is a phrase oft repeated in the Employer's submissions, with no explanation at all as to exactly how the interests of good industrial relations would be best served by the holding of a ballot save for the claim that it had to take on board the general consensus of all of its workers so as to create an environment that supported the whole workforce. This interpretation of the Employer's position is supported by its submission that for the Union to suggest that a further ballot could potentially put unnecessary and unwanted pressure on the team, was poor judgment on the part of the Union and showed a lack of understanding as to how the team worked. We are of the view that the manner in which the team worked would not be compromised by the Union being recognised solely in respect of the drivers. We are not persuaded by the arguments put forward on this point and the Panel is therefore satisfied that this condition does not apply.

Paragraph 22(4)(b)

23. The second condition is that the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union to conduct collective bargaining on their behalf.

24. The Employer put forward the results of a ballot that it conducted as evidence towards the satisfaction of this test. In its submissions it set out the views of those that responded, on an anonymous basis, to the question put by the Employer. This asked whether the person was in favour of a JNC, in favour of union recognition, had no preference or did not wish either option. Those responding were also asked whether or not they were members of the Union. In its letter of 4 March 2014 we were told by the Employer that there were 28 responses from amongst the workers in the bargaining unit and that this represented 51% of the total number of workers therein. Further, 20 of the responses were from members of the Union. According to the Employer, 21 of those responding said that they were in favour of a JNC, five said that they were in favour of the Union being recognised, one of those responding had no preference and one favoured neither option.

25. However, the issue under consideration here is whether there is evidence, which we consider to be credible, from a significant number of the union members within the bargaining unit that they did not want the union to conduct collective bargaining on their behalf. The statutory language is clear. It did not present a series of options and ask that a contest be conducted to identify the workers' preference. It is about whether a significant number of Union members have indicated that they did not favour recognition of the Union. According to the results of the Employer's survey, only one worker from within the determined bargaining unit had indicated that they did not want the Union recognised – the one that favoured neither option. Whether that worker was a member of the Union or not has not been disclosed. It certainly did not amount to a significant number if indeed this person was a member of the Union.

26. Having considered the arguments put before us by the parties the Panel is satisfied that there is no evidence that a significant number of Union members do not want the Union to conduct collective bargaining on their behalf and therefore this condition does not apply.

Paragraph 22(4)(c)

27. The third condition is that membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union to conduct collective bargaining on their behalf.

28. The Employer would appear to infer that members may have joined the Union because of the benefits on offer, such as legal support services for issues outside of the working environment rather than for collective bargaining purposes, but no evidence to support such an inference has been forthcoming. We can identify no other issue in the Employer's submissions that could be construed as pertinent to this condition and so the Panel is satisfied that this condition does not apply.

Declaration of recognition

29. The CAC accordingly declares that the Union is recognised by the Employer as entitled to conduct collective bargaining on behalf of the bargaining unit comprising all drivers employed at the depots in Boston, Skegness, Conningsby and Lincoln.

Panel

Mr Chris Chapman, Chairman of the Panel

Mr George Getlevog

Mr Gerry Veart

20 March 2014