

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DETERMINATION OF THE BARGAINING UNIT

The Parties:

RMT

and

Pullman Rail Limited

Introduction

1. RMT (the Union) submitted an application to the CAC dated 29 January 2014 that it should be recognised for collective bargaining by Pullman Rail Limited (the Employer) for a bargaining unit comprising “Unskilled, Apprentices, Semi-Skilled, Skilled, Inspection/Technical Support Staff but excluding Managers and Admin Staff”. The location of the bargaining unit was given as Pullman Rail Limited, Train Maintenance Depot, Leckwith Road, Cardiff, CF11 8HP. The CAC gave the parties notice of receipt of the application on 29 January 2014.

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, Chairman of the Panel, and, as Members, Mr Dennis Scard and Mr Michael Shepherd. For the purposes of this decision and henceforth Mr Scard has been replaced by Mr Malcolm Wing. The Case Manager appointed to support the Panel was Adam Goldstein.

3. By a decision dated 24 February 2014 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. As no agreement was reached, the parties were invited to supply the Panel with, and to exchange, written submissions relating to the question of the determination of the appropriate bargaining unit. A hearing was held on 4 April 2014 and the names of those who attended the hearing are appended to this decision.

4. The Panel is required, by paragraph 19(2) of the Schedule to the Act (the Schedule), to decide whether the Union's proposed bargaining unit is appropriate and, if found not to be appropriate, to decide in accordance with paragraph 19(3) a bargaining unit which is appropriate. The initial decision period ended on 8 April 2014. The decision period was extended until 17 April 2014 in order to allow time for the Panel's written decision to be prepared.

Matters clarified at the beginning of the hearing

5. At the beginning of the hearing the Panel Chairman asked the parties to clarify which categories of worker they understood to fall within the scope of the Union's proposed bargaining unit. After discussion both parties accepted that the categories of worker within the Union's proposed bargaining unit were those listed in paragraph 3 of the Case Manager's membership check report dated 12 February 2014.

Summary of the submissions made by the Union

6. The Union submitted that its proposed bargaining unit was an appropriate bargaining unit which met the requirements of paragraph 19B of the Schedule. The Union stated that the workers in that unit were all hourly paid; the majority were expected to work day and night shifts with the payment of appropriate shift allowances; they were all engaged on shop floor duties; and they were a clearly defined group which had been described by the Employer itself in its comments on the membership check as 'shop floor workers', in contrast to administration and middle management workers. The Union submitted that it made industrial sense for this group of workers to be treated as a distinct and coherent group for negotiation and representation purposes. The Union estimated that its proposed bargaining unit covered around 84% of the workforce.

7. The Union stated that the administrative and managerial staff excluded from the proposed bargaining unit were salaried rather than hourly paid; had different duties and responsibilities to those in that unit; and tended to have different managerial and reporting structures. The Union also stated that a number of those staff negotiated their salaries individually. The Union submitted that it would not be fair to those staff to include them in a bargaining unit with shop floor workers and it would, in its experience, be very unusual to do so.

8. The Union submitted that its proposed bargaining unit would be compatible with effective management. The Union disagreed with the Employer's contention that the exclusion of managers and administrative staff would create division and resentment between colleagues; there were already two 'layers' of staff under the existing arrangements. The Union did not accept that it would make reaching agreement on terms and projects impossible; make it more time consuming and costly to make and communicate decisions affecting staff; or impose prohibitive costs on the Employer's HR, finance and payroll systems. The Union submitted that the current Employee Committee, covering all workers, constituted a forum for information and consultation rather than collective bargaining and its proposed bargaining unit would not, therefore, create two bargaining fora. The Union stated that it was not uncommon for information and consultation arrangements to co-exist with collective bargaining.

9. The Union disagreed with the Employer's submission that the Union's proposed bargaining unit would create small, fragmented bargaining units. The Union stated that its proposed bargaining unit was a 'standard' bargaining unit that included all appropriate grades of employee and covered a significant majority of the workforce. The Union submitted that there were fundamental differences between the workers within its proposed bargaining unit and those outside it, including their roles and the ability of those outside the proposed bargaining unit to negotiate as individuals on their contracts of employment. The Union submitted that the bargaining unit proposed by the Employer, in covering all workers including those at director level (see paragraph 11 below), would be unworkable as there would then be no-one outside that bargaining unit with whom senior managers could negotiate. The Union stated that it thought that the Employer's proposed bargaining unit had been advanced in order to dilute the Union's membership density.

Summary of the submissions made by the Employer

10. The Employer explained that it had been established over 20 years ago to provide heavy maintenance to the rail industry and had been acquired by the Colas Rail group of companies in 2012. The Employer said that it and the industry generally had experienced difficulties in recent years but the Employer's business was now growing and new workers were being recruited. The Employer stated that under its previous ownership workers had been afraid to voice their opinions but that there had been a culture change and it was now recognised that it was important to encourage individuals to speak and to operate as a single team. The Employer stated that the Employee Committee had been established at the request of employees. Its remit covered the pay, hours, holidays and other terms and conditions of all staff

11. The Employer stated that any bargaining unit should include all workers, including those at director level. The Employer stated that it ran its business as one team and one unit and that the business would not succeed if the workforce was split. The Employer stated that it was a relatively small company with a workforce unified behind the same goals and processes; splitting the workforce would undermine that position and be incompatible with its ethos. The Employer stated that there were no differences between staff from a practical point of view. The Employer submitted that all staff, including managers, could be categorised as shop floor; its Commercial Director had recently worked on the shop floor making components, for example.

12. The Employer stated that some workers were hourly paid and others salaried for operational reasons only. The Employer stated that holiday entitlements were the same for all staff, varying only according to length of service. There were also common sick pay; pension; and disciplinary and grievance arrangements for all staff. The Employer stated that many staff were promoted within the organisation and a manager may remain on an hourly rate for a short time after promotion. In answer to questions from the Panel the Employer explained that workers within the Union's proposed bargaining unit were paid a fixed hourly rate according to a pay structure which the Employer had established following research and were eligible for shift allowances and overtime pay. Pay increases for these workers were not

dependent on individual performance; performance issues would be dealt with by other means. For workers outside the Union's proposed bargaining unit pay was negotiated individually on appointment within a limited range, with pay increases dependent on individual performance, although Employer-wide productivity bonuses were paid to everyone. No overtime or shift allowances were paid to salaried workers.

13. The Employer submitted that the Union's proposed bargaining unit was incompatible with effective management and must therefore be considered inappropriate. The Employer submitted that the exclusion of managers and administrative staff would create at least two 'layers' of staff which would create division and resentment between colleagues and would render the Employer's current mechanism for dealing with pay, hours and holidays redundant. The Employer stated that a requirement for it to negotiate separately in respect of these two layers would absorb more time and cost, to the detriment of everyone. The Employer also submitted that the exclusion of managers and administrative staff from the bargaining unit would make reaching agreement on terms and projects impossible; make it much more time consuming and costly to make and communicate decisions affecting staff; and undermine its current systems for HR, finance and payroll necessitating investment in updated systems at a cost which the Employer could not afford, thereby putting recruitment, pay and jobs at risk.

14. The Employer specifically addressed the matters set out in paragraph 19B(3) of the Schedule. Regarding the views of the parties the Employer submitted that its view was more credible and informed than that of the Union. The Employer stated that it understood the composition and character of the workforce whilst the Union had had little or no exposure to it and based its proposal on speculation and assumptions. The Employer stated that this had been reflected in the fact that the categories within the Union's proposed bargaining unit did not reflect the categories of worker at the Employer and that many of those excluded were employed on identical or similar terms to those within the proposed bargaining unit. The Employer strongly submitted that the bargaining unit should include all workers.

15. The Employer submitted that there were existing bargaining arrangements in place in the form of the Employee Committee, which covered all staff. The Employer stated that the Employee Committee had been very active in negotiating improvements for all staff: it had negotiated increases in annual leave; a sick pay scheme; health and safety improvements; and

percentage increases in pay above the average for the industry. The Employer said that the Employee Committee was currently meeting once a week. The Employer emphasised that the Employee Committee was engaged in negotiation, not merely in consultation as the Union had contended.

16. The Employer submitted that the exclusion of managers and administrative staff from the bargaining unit would lead to small fragmented bargaining units. It would create at least two layers of staff among those who worked closely together within a small undertaking and result in a need to negotiate terms and implement decisions separately with each layer, resulting in unfair outcomes for some groups and a lengthy, costly process for the Employer. The Employer submitted that there was no sound reason for excluding managers and administrative staff from the bargaining unit as those included and excluded were equally central to the operation of the company.

17. The Employer submitted that the characteristics of the workers included and excluded from the Union's proposed bargaining unit were very similar. This was due to the Employer's relatively small size and the fact that all workers were united behind joint aims and processes. The Employer stated that many or all of those excluded worked in the same areas as those included; were paid on the same basis and had similar or identical terms of employment; were equally integral to the Employer's production activities; and were managed under the same structures. The Employer stated that all its workers were based on a single site and most were based in its workshops and on the shop floor.

18. The Employer submitted, in conclusion, that the Panel should take a global approach in considering whether the Union's proposed bargaining unit was appropriate and should not focus unduly on the differential pay structures of those within and outside that unit. The Employer emphasised the importance of its ethos of togetherness and of everyone working side by side. The Employer stated that the Employee Committee engaged in negotiation and had achieved significant wins, and that the Union's proposed bargaining unit would inevitably lead to fragmentation of the workforce. The Employer submitted that the Panel should therefore conclude that the Union's proposed bargaining unit was not appropriate and that the appropriate bargaining unit was one which covered all workers.

Considerations

19. The Panel is required, by paragraph 19(2) of the Schedule to the Act, to decide whether the proposed bargaining unit is appropriate and, if found not to be appropriate, to decide in accordance with paragraph 19(3) a bargaining unit which is appropriate. Paragraph 19B(1) and (2) state that, in making those decisions, the Panel must take into account the need for the unit to be compatible with effective management and the matters listed in paragraph 19B(3) of the Schedule so far as they do not conflict with that need. The matters listed in paragraph 19B(3) are: the views of the employer and the union; existing national and local bargaining arrangements; the desirability of avoiding small fragmented bargaining units within an undertaking; the characteristics of workers falling within the bargaining unit under consideration and of any other employees of the employer whom the CAC considers relevant; and the location of workers. Paragraph 19B(4) states that in taking an employer's views into account for the purpose of deciding whether the proposed bargaining unit is appropriate, the CAC must take into account any view the employer has about any other bargaining unit that it considers would be appropriate. The Panel must also have regard to paragraph 171 of the Schedule which provides that "[i]n exercising functions under this Schedule in any particular case the CAC must have regard to the object of encouraging and promoting fair and efficient practices and arrangements in the workplace, so far as having regard to that object is consistent with applying other provisions of this Schedule in the case concerned." The Panel's decision has been taken after a full and detailed consideration of the views of both parties as expressed in their written submissions and amplified at the hearing.

20. The Panel's first responsibility is to decide, in accordance with paragraph 19(2) of the Schedule, whether the Union's proposed bargaining unit is appropriate. The Panel considers that the Union's proposed bargaining unit is compatible with effective management. All the workers within that unit are hourly paid and eligible to receive overtime payments, and their roles are part of an established pay structure based on a fixed rate for the job. The Panel appreciates that there are other terms and conditions, including holiday entitlements, that are not exclusive to workers within the proposed bargaining unit and apply to all workers employed by the Employer but does not consider that the existence of such terms and conditions prevents the proposed bargaining unit from being compatible with effective management. The Panel notes the Employer's submission that the exclusion of managers and administrative staff from the bargaining unit would create at least two 'layers' of staff.

However the Panel also notes that the current arrangements incorporate two ‘layers’ and does not consider that the Union’s proposed bargaining unit would complicate payroll, HR or other matters unduly. The Panel understands that the Employer wishes to retain an Employee Committee which represents all its workers but emphasises that the Union’s proposed bargaining unit does not inhibit the Employer from having a consultative committee for all staff should it wish to do so.

21. The Panel has considered the matters listed in paragraph 19B(3) of the Schedule, so far as they do not conflict with the need for the unit to be compatible with effective management. The views of the Employer and the Union, as described earlier in this decision, have been fully considered. In relation to national or local bargaining arrangements, the Panel has noted the Constitution and Terms of Reference of the Employee Committee, together with its activities, but does not consider that the Employee Committee constitutes a barrier to the Union’s proposed bargaining unit being appropriate in this case. The Panel does not consider that the Union’s proposed bargaining unit, given its size and coherence, would give rise to small fragmented bargaining units within the undertaking. As far as the characteristics of workers are concerned, those within the proposed bargaining unit are hourly paid, eligible for overtime, and paid a fixed rate for the job whereas those outside that bargaining unit are not. All the workers in the proposed bargaining unit are located at a single site. The Panel is satisfied that its decision is consistent with the object set out in paragraph 171 of the Schedule.

Decision

22. The Panel's decision is that the appropriate bargaining unit is that specified by the Union in its application, namely "Unskilled, Apprentices, Semi-Skilled, Skilled, Inspection/Technical Support Staff but excluding Managers and Admin Staff". "

Panel

Professor Gillian Morris, Chairman of the Panel

Mr Michael Shepherd

Mr Malcolm Wing

14 April 2014

Appendix

Names of those who attended the hearing:

For the RMT

Mr Andy Robertson - Regional Administration Manager

Mr Dave Marshall - RMT Organiser

For the Employer

Mr Dane McDonagh - General Manager, Pullman Rail

Ms Amanda McLaughlin-Jones - Human Resources Manager, Pullman Rail

Mr David Lorimer - Associate, Hill Hofstetter