Case Number: TUR1/957/2016
20 September 2016

CENTRAL ARBITRATION COMMITTEE

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION

DECLARATION OF RECOGNITION WITHOUT A BALLOT

The Parties:

Unite the Union

and

Bombardier Transportation UK Ltd

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 12 April that it should be recognised for collective bargaining by Bombardier Transportation UK Ltd (the Employer) for a bargaining unit comprising "Management grades known as SPMs and SDMs[1]" and the location for which was "Bombardier Transportation Ltd Central Rivers Depot, Barton-under-Needwood, Burton-on-Trent". The CAC gave both parties notice of receipt of the application on 13 April 2016. The Employer submitted a response to the application dated 20 April 2016 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 Linda Dickens MBE, as chair of the Panel, and, as Members, Mr Paul Gates OBE and Mr Mike Regan. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

3. By a decision dated 20 May 2016 the Panel accepted the Union's application. As the parties were unable to reach an agreement on the appropriate bargaining unit, the CAC Panel held a hearing to determine the issue on 27 June 2016. By its decision dated 14 July 2016 the

[1] Which refers to Shift Production Managers and Service Delivery Managers.

Panel determined that the appropriate bargaining unit was "Management grades known as SPMs and SDMs, Outstation Manager, Train Presentation Manager and Modifications Manager based at the Central Rivers Depot". The Panel's decision also stated that for the sake of clarity the bargaining unit excluded the roles of Service Support Manager and Depot Operations Manager.

4. As the determined bargaining unit differed from that proposed by the Union, the Panel was required by paragraph 20 of the Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 (the Schedule) to determine whether the Union's application was valid or invalid within the terms of paragraphs 43 to 50 of the Schedule. By its decision dated 4 August 2016 the Panel determined that the application was still valid and that it would therefore proceed with the application.

Current Issues for the Panel

5. Paragraph 22(2) of Schedule A1 to the Act (the Schedule) requires the CAC to issue a declaration that a union is recognised as entitled to conduct collective bargaining on behalf of a group of workers constituting the bargaining unit if it is satisfied that a majority of the workers constituting the bargaining unit are members of the applicant union, unless any of the three qualifying conditions set out in Paragraph 22(4) are fulfilled. If any of these conditions are met, or the CAC is not satisfied that a majority of workers in the bargaining unit are members of the applicant union, the CAC must give notice to the parties that it intends to arrange for a secret ballot to be held. The qualifying conditions in paragraph 22(4) are as follows:

a) the CAC is satisfied there should be a ballot in the interests of good industrial relations;

b) 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 (or unions) to conduct collective bargaining on their behalf;

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

Union's claim to majority membership

6. By letter dated 5 August 2016, the CAC set out the qualifying conditions to be considered by the Panel (as set out in paragraph 5 above) and asked the Union to confirm whether the Union was claiming that it had majority membership within the bargaining unit and therefore submitting that it should be granted recognition without a ballot. The Union responded by e-mail on 8 August 2016, claiming majority membership and contending that it should be granted recognition for the purposes of collective bargaining on behalf of the bargaining unit without a ballot as none of the qualifying conditions applied.

7. The Union did not believe that a ballot should be held in the interests of good industrial relations because in its view the Employer would not be influenced by such a ballot. The Employer had not engaged in the process until it was compelled to do so and had attempted to propose bargaining units designed to undermine recognition of the group which was now the agreed bargaining unit.

8. The Union stated it believed its current membership represented 61.5% of the workers in the bargaining unit, a proportion which it believed would increase if formal mechanisms were put in place so it could approach the remaining workers. The Union also cited paragraph 25 of the Panel's decision of 5 August 2016 at which the Panel had stated that it was satisfied that the majority of the workers constituting the bargaining unit were likely to favour recognition based on the membership level of 54% established by the Case Manager's membership check.

9. The Union stated there was no membership evidence produced which could lead the CAC to conclude that there were doubts whether a significant number of the Union members within the bargaining unit wanted the Union to conduct collective bargaining on their behalf. The Union's evidence showed sufficient support and a vacant post in the bargaining unit had been accepted by one of the Union's blue collar Union representatives, therefore increasing membership density.

The Employer's submissions on the Union's claim to majority membership and the qualifying conditions

10. On 11 August 2016 the Employer was invited by the CAC to make submissions on both the Union's claim to majority membership within the bargaining unit and on the qualifying conditions specified in paragraph 22(4) of the Schedule (set out in paragraph 5 above). The

Employer responded by e-mail on 17 August 2016 stating that it would like a ballot to be conducted.

11. The Employer accepted that current membership figures showed that 54% of workers within the proposed bargaining unit were members of the Union. It referred to the CAC's initial check of membership and support as reported in the Panel's decision of 20 May 2016 to accept the application which showed a 75% membership but only 50% confirmed that they wished for Unite to conduct collective bargaining on their behalf. Given that the current membership figures were so close to 50% the Employer wanted confirmation that the collective bargaining arrangement was wanted by the majority of workers within the amended bargaining group.

12. The Employer confirmed that a vacant post had been offered to a Union representative but stated that another worker in the bargaining unit had been offered a post in another department not covered by the bargaining unit.

The Union's response to the Employer's submissions

13. In reply to the Employer's submissions, by e-mail to the CAC on 19 August 2016, the Union maintained that, in the context of no direct recruitment within the group and the enlargement of the bargaining unit by determination of the CAC, its membership level in the bargaining unit was high at 54%. The 54% had joined and remained paying members who would want to see a full range of options to engage with their employer for their money.

14. The Union was aware that one worker was in discussions with the Employer to leave the bargaining unit, but had not left as yet. Even if the worker had left the bargaining unit whilst potentially diluting membership density for the bargaining unit as a whole, the Union preferred to view the percentage density of members as being increased when considering the total number of workers who were actually in post at the time of the CAC making a decision.

15. The Union maintained that a ballot would not improve industrial relations any further in this case (on the blue collar agreement there was co-operation and healthy dialogue) and indeed the Employer did not in their email suggest that this would be the case. The Union suspected that the Employer might be seeking to delay and gain an opportunity to encourage people to vote against recognition in a ballot. The aim of a ballot was to show the opinion of workers. However the Employer had not engaged in dialogue before formal processes were started

which suggested to the Union that the Employer was not really concerned with the opinion of the workers in this case.

16. By letter dated 25 August 2016 the CAC informed the parties that the Panel had considered the parties' submissions and was of the view that a formal hearing to determine the matter may not be necessary. Both parties were invited to make any further submissions by 5 September 2016 and to confirm by the same deadline whether they were content that the Panel decided the matter without an oral hearing. It was explained to the parties that should either party consider a hearing necessary, or if the Panel came to that view having seen the parties' final submissions, a hearing would be arranged. Both parties responded to the CAC by 5 September 2016 confirming that they were happy for the Panel to make a decision without a hearing. The Union confirmed it had no new information to submit. The Employer repeated the points made in its e-mail of 17 August 2016 and added the comment that as the bargaining unit had been amended it would like the managers added into the bargaining unit to have the chance to confirm their preference.

Considerations

17. 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 and 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.

18. The Union has asked the Panel to declare recognition of the Union for collective bargaining without a ballot. The results of the Case Manager's membership check undertaken in July 2016 established that 7 workers in the bargaining unit of 13 workers, that is 54% of the total, were members of the Union. Some possible changes of personnel in the bargaining unit have been mentioned by the parties but the Employer has not disputed that the Union has majority membership in the bargaining unit. The Panel is satisfied that the majority of workers in the bargaining unit are members of the Union.

19. We must now consider whether any of the three qualifying conditions stated in paragraph 22(4) (described in paragraph 5 of this decision) applies in this case. In deciding this matter we

have given careful consideration to all the written submissions and taken full account of all the material provided to us during the process of this application. The parties were content for the matter to be decided on the written submissions and evidence without a hearing. Given the nature and clarity of the parties' positions and arguments, the Panel feels its decision was in no way affected by this approach.

20. Although the Employer used the two qualifying conditions as specified in paragraph 22(4)(b) and (c) of the Schedule as headings for its comments, we have received no evidence of the kind required by the Schedule. The Employer noted that not all Union members appeared to have supported the petition presented at an earlier stage in the case. However no evidence was received by the CAC from any Union member within the bargaining unit - let alone credible evidence from a significant number as required in 22(4)(b) - that they do not want the Union to conduct collective bargaining on their behalf. Nor was membership evidence produced relating to the qualifying condition in 22(4)(c).

21. The Employer has not contended that the first qualifying condition under paragraph 22(4) is met, namely that a ballot should be held in the interests of good industrial relations. However in forming our view on this point we have considered all the various comments made by the Employer which may pertain to this, including the fact that the determined bargaining unit is larger than that originally proposed by the Union. We note also the points made by the Union arguing that a ballot would not improve industrial relations. There is nothing in the evidence which would lead us to consider that a ballot should be held in the interests of good industrial relations and we are not satisfied that a ballot should be held on this ground.

22. The Panel is satisfied that none of the conditions in paragraph 22(4) of the Schedule is fulfilled.

Decision

23. The Panel is satisfied in accordance with paragraph 22(1)(b) of the Schedule that the majority of the workers constituting the bargaining unit are members of the Union. The Panel is satisfied that none of the conditions in paragraph 22(4) of the Schedule is fulfilled. Pursuant to paragraph 22(2) of the Schedule the CAC must issue a declaration that the Union is recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit. 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:

Management grades known as SPMs and SDMs, Outstation Manager, Train Presentation Manager and Modifications Manager based at the Central Rivers Depot, with the exclusion of the Service Support Manager and Depot Operations Manager role.

Panel

Professor Linda Dickens MBE, Chair of the Panel
Mr Paul Gates OBE
Mr Mike Regan

20 September 2016