

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

Western Greyhound Ltd

Introduction

1. RMT (the Union) submitted an application to the CAC dated 15 July 2014 that it should be recognised for collective bargaining by Western Greyhound Ltd (the Employer) for a bargaining unit comprising “PCV Drivers”. The CAC gave the parties notice of receipt of the application on 17 July 2014. The Employer submitted a response dated 30 July 2014 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 Professor Linda Dickens MBE, chairing the Panel, and, as members Mr. David Coats and Mr Paul Wyatt. The Case Manager appointed to support the Panel was Linda Lehan.
3. By a decision dated 15 August 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.

4. In correspondence received from the Union dated 3 September 2014 it enclosed a copy of a letter written to the Employer confirming that agreement had been reached as to the appropriate bargaining unit being “all those employed as PCV Drivers and those employed under their terms, conditions and rates of pay”. On the 5 September 2014 the CAC wrote to both parties asking them to confirm that the agreed bargaining unit was the same as that proposed by the Union in its application to the CAC. The Employer in an e-mail dated 9 September 2014 confirmed that in principle agreement as to the bargaining unit had been reached with the Union. By e-mail dated 9 September 2014 the Union confirmed that the suggested wording of the bargaining unit met that as proposed by the Union and a copy of this e-mail was sent to the Employer.

5. As the agreed bargaining unit covered the same group of workers as proposed by the Union in its application to the CAC there was no need to apply the validity provisions set out in paragraphs 43 to 50 of the Schedule and the Panel moved to the next stage in the statutory process.

Issues

6. Paragraph 22 of Schedule A1 to the Act (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

7. In a letter dated 16 September 2014 the Union was asked by the CAC if it claimed majority membership within the bargaining unit, and if so, whether it submitted that it should be recognised without a ballot. The Union, in a letter dated 18 September 2014, confirmed that it had a majority membership within the bargaining unit and submitted that it should be granted recognition without a ballot. The Union stated that their membership had increased further since the membership check carried out on 4 August 2014.

Membership and Support Check

8. To assist in deciding whether to arrange for a secret ballot under schedule A1 to the 1992 Act, the Panel proposed a further independent check of the level of union membership in the bargaining unit. The information from the Employer, a list of 154 workers, was received by the CAC on 19 September 2014. The information from the Union, a list of 102 members was also received by the CAC on 19 September 2014. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party and that agreement was confirmed in a letter from the Case Manager to both parties dated 19 September 2014.

9. The result of the check established that 93 names on the Union’s list appeared on the Employer’s list; a membership level of 60.38%. A report of the result of the membership check was circulated to the Panel and the parties on 22 September 2014 and the Employer was invited to submit by close of business on 26 September 2014 any submissions it wished to make on the qualifying conditions contained in paragraph 22 (4) of the Schedule, set out in paragraph 6 of this decision.

10. No response was received by the Employer by the 26th September. Following an inquiry about this made by the Case Manager an email request was received on 29th September asking for more time to reply as the Employer was dealing with family issues. The period of time required was not specified. On 6th October the Case Manager was instructed to write to the Employer, with a copy to the Union, informing them that the Panel considered sufficient time had been allowed for the Employer to reply and that it would proceed to make a decision under paragraph 22 of the Schedule based on the evidence available.

Considerations

11. The Act requires the Panel to consider whether it is satisfied that the majority of the workers constituting the bargaining unit are members of the Union. If the Panel is satisfied that the majority of the workers constituting the bargaining unit are members of the Union, it must then decide if any of the three conditions in paragraph 22(4) are fulfilled. If the Panel considers that any of them is fulfilled it must give notice to the parties that it intends to arrange for the holding of a secret ballot.

12. The Panel is satisfied that the Case Manager's membership check conducted on 19 September 2014, which showed that 60.38% of the workers in the bargaining unit are members of the Union, was properly conducted and in accordance with the agreement reached with the Parties. The Panel is satisfied that the majority of the workers in the bargaining unit are members of the Union.

13. The Panel has given thorough consideration to each of the qualifying conditions laid down in paragraph 22(4) of the Schedule, reviewing all the information and evidence before it. It is unusual to have no representations from an employer concerning recognition without a ballot but we are satisfied that the Employer in this case had sufficient opportunity to make submissions had he wished to do so, even allowing for the fact that this is a relatively small employer facing competing demands on his time.

14. The first condition is that the Panel is satisfied that a ballot should be held in the interests of good industrial relations. No evidence or argument was provided on this condition and the Panel is satisfied that this condition does not apply.

15. 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. No such evidence was received. The Panel concludes that this condition does not apply.

16. 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. No such evidence has been produced, and this condition does not apply.

Declaration of recognition

17. The Panel is satisfied in accordance with paragraph 22(1)(b) of the Schedule that the majority of the workers in 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 met. 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 at Western Greyhound on behalf of the bargaining unit comprising all those employed as PCV Drivers and those employed under their terms, conditions and rates of pay.

Panel

Professor Linda Dickens, MBE

Mr David Coates

Mr Paul Wyatt

7 October 2014