

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

Rhys Davies Logistics

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 27 January 2014 that it should be recognised for collective bargaining by Rhys Davies Logistics (the Employer) for a bargaining unit comprising “All weekly paid staff including Drivers, Warehouse Staff and Fitters based at Taffs Well”. The CAC gave the parties notice of receipt of the application on 28 January 2014. The Employer submitted a response dated 3 February 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 John Purcell, Chairman of the Panel, and, as members Ms Bronwyn Mckenna and Mr Paul Wyatt. The Case Manager appointed to support the Panel was Linda Lehan.

3. By a decision dated 6 March 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. In an exchange of e-mails from the Union and Employer dated 10 and 11 April it was confirmed that a bargaining unit described as "Distribution Fleet and Trunkers; Away Fleet; Shunters – Days; Carpet Fleet; Warehouse A – Days; Warehouse A – Nights; Warehouse B – Catnic and any other RDL staff not protected under Hempel Paints TUPE; Garage – Days; Garage – Nights and Garage- Vehicle Wash based at Taffs Wells" had been agreed. In correspondence received from both parties it was confirmed that the agreed bargaining unit differed to that originally proposed by the Union in that the Administration, Flexi Drivers and those within one category (Hempel Paints) who had terms and conditions protected under TUPE legislation were excluded.

4. As the determined bargaining unit differed from that proposed by the Union in its application, the Panel was required by paragraph 20 of Schedule A1 to the Act (the Schedule) to decide whether the Union's application was valid or invalid within the terms of paragraphs 43 to 50 of the Schedule. By a decision dated 12 May 2014 the Panel determined that the application was valid for the purposes of paragraph 20 and that the CAC would therefore proceed with the application.

Issues

5. 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

6. In a letter dated 12 May 2014 the Union submitted that it had majority membership of the bargaining unit and therefore wished to claim automatic recognition. The Union felt that to hold a ballot would worsen industrial relations as parties may take adversarial positions in the run up to the ballot. The Union confirmed that it was not aware of any evidence existing of the type referred to in the second and third qualifying conditions as set out above and stated the reason it had such levels of support was because members wanted their terms and conditions to be improved and understood collective bargaining was the only means by which that could be achieved.

Summary of the Employer's submissions

7. The Union's submissions as to why it should be granted recognition without a ballot were copied to the Employer and its comments were duly invited. In an e-mail dated 15 May 2014 the Employer asked the Panel to also take into consideration the points previously made by them in relation to the topics (sic).

8. The Employer once again stated that it was uncomfortable with the wording of the declarations submitted by the Union. The Employer stated that it had made no case to colleagues, negatively or otherwise, in relation to the topic of recognition and felt that they were missing the opportunity to make the case for alternatives to employees. The Employer did not agree the Union's comment that employees felt the need for statutory recognition because members wanted their terms and conditions to be improved and understood that collective bargaining was the only means by which that could be achieved as, on the contrary, voluntary works council meetings had been held in 2013 and the topic of terms and conditions was clearly on the agenda.

9. Finally the Employer stated that fundamentally it would welcome a ballot and an opportunity to engage further with employees on their issues and feelings which was clearly

conducive to good industrial relations and, if the Union's view was correct, would satisfy the business that this was what the majority of colleagues wanted.

Union's comments on the Employer's submissions

10. In a letter dated 19 May 2014 the Union stated that the only relevant comment made by the Employer related to industrial relations and the Panel already had their comments on that issue as stated in their letter dated 12 May 2014. The Union reiterated their position stating that 64.38% of the bargaining unit were Unite members and then went on to outline what they had previously stated in their letter of 12 May 2014 (see paragraph 6 above). Finally the Union stated that they believed that a substantial and growing majority of the agreed bargaining unit were clearly in favour of Unite being awarded recognition and that there was no need to for a ballot.

Considerations

11. As set out in paragraph 5 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.

12. 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. The Case Manager's membership check carried out to assist whether the application was valid following agreement on the bargaining unit showed that 64.38% of the workers in the bargaining unit were members of the Union. Therefore, in the absence of any evidence to the contrary, the Panel is satisfied that the majority of the workers in the bargaining unit are members of the Union.

Paragraph 22(4)(a)

13. The first condition requires the CAC to order a secret ballot, even when there is a majority membership in the bargaining unit, where it is satisfied that to do so would be in the interests of good industrial relations. In the Panel's considered view, the Employer has not provided any persuasive evidence or argument to show why a ballot should be held in the interests of good industrial relations. The Union has a high level of membership and the Panel has received no indication that employees who are members do not want recognition, nor that they have been induced to become members due to discounted or zero membership fees. The Panel feel that a ballot would just delay matters and stir up difficulties in campaigning and that the parties should now start to concentrate on building a constructive relationship. The Panel is, therefore, satisfied that this condition does not apply.

Paragraph 22(4)(b)

14. 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. The Employer has submitted no credible evidence to show that a significant number of the union members within the bargaining unit do not want Unite to conduct collective bargaining on their behalf. The Panel's conclusion is that this condition does not apply.

Paragraph 22(4)(c)

15. 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. The Panel does not consider that such membership evidence has been produced. The Panel is therefore satisfied that this condition does not apply.

Declaration of recognition

16. 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 are 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 on behalf of the bargaining unit comprising “Distribution Fleet and Trunkers; Away Fleet; Shunters – Days; Carpet Fleet; Warehouse A – Days; Warehouse A – Nights; Warehouse B – Catnic and any other RDL staff not protected under Hempel Paints TUPE; Garage – Days; Garage – Nights and Garage-Vehicle Wash based at Taffs Wells”.

Panel

Professor John Purcell, Chairman of the Panel

Ms Bronwyn Mckenna

Mr Paul Wyatt

22 May 2014