

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECISION ON WHETHER TO ACCEPT THE APPLICATION

The Parties:

GMB

and

Tempay Limited

Introduction

1. GMB (the Union) submitted an application to the CAC dated 30 April 2014 that it should be recognised for collective bargaining by Tempay Limited (the Employer) for a bargaining unit comprising “Hourly paid employees, at Marks and Spencer’s Distribution Depot, Stirling Road, South Marston Industrial Estate, Swindon, Wiltshire, SN3 4TT”. The CAC gave the parties notice of receipt of the application on 6 May 2014. The Employer submitted a response to the application on 14 May 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 Paul Davies QC FBA, Chairman of the Panel, and, as Members, Mr Roger Roberts and Mr Paul Talbot. The case manager appointed to support the Panel was Adam Goldstein.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 19 May 2014. The acceptance period was extended to 30 May 2014 in order to consider all the evidence and finalise the written decision.

Issues which the Panel has to determine

4. The Panel is required by paragraph 15 of Schedule A1 to the Act (the Schedule) to decide whether the Union's application to the CAC is valid within the terms of paragraphs 5 to 9; is made in accordance with paragraphs 11 or 12; is admissible within the terms of paragraphs 33 to 42; and should therefore be accepted.

Summary of the Union's application

5. In its application the Union stated, amongst other things, that it had sent its formal request for recognition to the Employer on 10 May 2014 and attached to its application a copy of that letter. The letter identified the Union and the bargaining unit and stated that the request was being made under Schedule A1 to the Act (the Schedule). The Employer's response to the request was also attached. This stated, in part, as follows:

Your recognition request (as contained in your letter of 10 April 2014) is not accepted. However, we are prepared to enter into a dialogue with you with a view to exploring the matter and in order that you can better understand the tri-partite relationship that we have with the workers we employ, the employment business to which we supply those workers and that employment business's end user client. In our view, recognition would be inappropriate as a consequence.

Summary of the Employer's response to the Union's application

6. In its response to the Union's application the Employer made a number of points including the following. The Employer referred to its letter of 24 April 2014 (see paragraph 5 of this decision) and argued that, in this letter, it had stated that the request for recognition was not accepted but that it was willing to enter into a dialogue with the Union with a view to exploring the matter (ie to negotiate). Therefore the parties were in the "second period" for negotiations under paragraph 10(7) of the Schedule which stated that such period was for a duration of 20 working days starting with the day after that on which the first period ends or such longer period (so starting) as the parties may from time to time agree. In consequence of this, the date that the second period was due to expire was 29 May 2014. On

this basis, the Employer submitted that the Union was not yet able to make an application to the CAC for statutory recognition.

7. The Employer confirmed that it had received a copy of the application form from the Union for the current application on 1 May 2014.

Summary of the Union's comments on the Employer's response

8. The Employer's response was copied to the Union on 15 May 2014 under a covering letter which invited the Union to comment on the response and, in particular, in respect of the Employer's point summarised in paragraph 6 of this decision. The Union replied by an e-mail dated 19 May 2014 which addressed the Employer's point as follows. The Union's view was that the Employer did not wish to recognise the Union. The response from the Employer was quite clear, that the application for recognition was not accepted and that, because of the nature of the tripartite relationship on the site, the company did not believe that recognition was appropriate.

Considerations

9. In deciding whether to accept the application, the Panel must determine whether the validity and admissibility provisions referred to in paragraph 4 above are satisfied. The Panel has considered carefully the submissions of both parties and all the evidence relating to these provisions in reaching its decision.

10. The Panel is satisfied that the Union made a valid request to the Employer within the terms of paragraphs 5 to 9 of the Schedule.

11. The next issue to address is to determine whether the application is made in accordance with paragraphs 11 or 12. Paragraph 11 applies if before the end of the 10 day statutory period the employer either fails to respond to the request or informs the union that the employer does not accept the request (without indicating a willingness to negotiate).

12. The Union's request for recognition was received by the Employer on 11 April 2014. The first period of 10 day working days, as set out in paragraph 10(6), therefore commenced on 14 April 2014 and ended on 29 April 2014. The Employer's letter of 24 April 2014 fell within the first period.

13. The parties had differing opinions as to intention of the Employer's letter. The Union argued (see paragraph 8 above) that the letter indicated that the Employer did not accept the Union's request for recognition. The Employer (paragraph 6) held that it had fulfilled the requirements of paragraph 10(2) in its letter. This was because, although it had stated that it did not accept the Union's request, it had also indicated a willingness to negotiate. This meant, in the Employer's view, that the second period which is set aside for negotiation had been triggered (and should have ended on 29 May 2014) and that the Union's application to the CAC, being dated 30 April 2014, was therefore too early.

14. Having carefully considered the wording of the Employer's letter of 24 April 2014, the Panel has decided that the Employer's letter does satisfy the provisions of paragraph 10(2) and so the second period of 20 working days came into effect. This second period commenced on 30 April 2014 and will expire on 29 May 2014. Therefore the Union's application sent on 30 April 2013 was made before the second period expired. Accordingly, the Panel finds that the application is not made in accordance with paragraph 11 or 12 and as a consequence falls at this hurdle. The Panel makes no decision as to the further statutory tests set out in paragraphs 33 to 42 of the Schedule.

Decision

15. For the reasons given above, the Panel's decision is that the application cannot be accepted by the CAC.

Concluding observations

16. As the Panel has decided that the Union's request for recognition is valid in relation to paragraph 8 of the Schedule, the Union can reapply to the CAC at any time after 29 May 2014 without the need to lodge a fresh request to the Employer.

Panel

Professor Paul Davies QC FBA, Chairman of the Panel

Mr Roger Roberts

Mr Paul Talbot

30 May 2014