

**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:**

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.
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. The CAC Panel extended the acceptance period in this case. The initial period expired on 31 July 2014. The acceptance period was extended to 13 August 2014 in order to allow time for a membership check to take place, for the parties to comment on the subsequent report, and for the Panel to consider these comments before arriving at a decision and again to 18 August 2014 to allow for the decision to be written up.

## **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 of the Schedule; and therefore should be accepted.

## **The Union's application**

5. The Union stated that it had sent its request for recognition to the Employer on 1 July 2014 a copy of which was enclosed. The Union also enclosed a copy of the Employer's response dated 8 July 2014 rejecting the request.

6. In its application the Union stated that there were approximately 190 workers employed by the Employer of whom approximately 151 - 155 were in the Union's proposed bargaining unit. The Union stated that the bargaining unit, in which it claimed 77 members, had been selected on the grounds of a request from union members for Union recognition.

7. Regarding evidence demonstrating that the majority of workers in the bargaining unit were likely to support recognition for collective bargaining, the Union stated that up until January 2014 they only had a few members (approximately 10) but since then a further 69 people had joined and had information that further applications were forthcoming. As evidence the Union attached an extract of their membership list, showing work locations but not names. The Union further stated that at a meeting on 30 June 2014 with employees of the Employer to discuss recognition they were instructed by those in attendance to seek Union recognition to enable RMT to negotiate wages and terms of conditions.

8. The Union stated that the location of the bargaining unit was at all 3 current depots.

9. The Union confirmed that they had not made a previous application for workers in the proposed bargaining unit or a similar unit, nor was there an existing agreement that covered any of the workers in the proposed bargaining unit.

## **The Employer's response to the Unions' application**

10. In its response dated 30 July 2014 the Employer confirmed that it had received the Union's written request for recognition on 1 July 2014 and had responded on 8 July 2014, a copy of which was attached.

11. The Employer stated that it had received a copy of the application form from the Union on 15 July 2014.

12. The Employer stated that it did not agree the proposed bargaining unit as it saw no value in entering into any arrangement.

13. The Employer stated that the number of workers employed by them was 200.

14. The Employer stated that they were not able to confirm the Union's estimate of membership as the Union had been unwilling to provide a list of names. The Employer stated that based on the indications of locations and job they believed that some of the members on the union list may have been ex-employees or non-drivers who would not form part of the driver bargaining group.

15. As to whether the majority of workers in the bargaining unit were likely to support recognition the Employer stated that the workforce had never wanted to be unionised and no approach by any employee had been made nor during any disciplinary or grievance proceeding was a representative from RMT present or requested. The Employer explained that when they had previously closed depots and consultations were held with staff no driver had requested the attendance of a Union Representative.

16. The Employer confirmed that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

## **Membership and Support Check**

17. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the proposed bargaining unit are members of the

Union (paragraph 36(1)(a)) and whether a majority of the workers in the proposed bargaining unit are likely to support recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit (paragraph 36(1)(b)), the Panel proposed independent checks of the level of union membership in the proposed bargaining unit and the support for recognition.

18. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, date of birth and job titles of workers within the proposed bargaining unit and that the Union would supply to the Case Manager a list of names and dates of birth of its paid up members within that unit and a copy of its petition to enable comparisons to be undertaken. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and the petition would not be copied to the other party. These arrangements were confirmed in a letter dated 31 July 2014 from the Case Manager to both parties. The membership information (but not a petition) was received from the Union on 1 August 2014 and the information from the Employer was received by the CAC on 31 July 2014. A report of the check was issued to the Panel and to the parties for comment on 4 August 2014.

19. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

20. The membership and support check established that there were 163 workers in the proposed bargaining unit of which 84 were members of the Union; a membership level of 51.53%. A report of the result of the membership and support check was circulated to the Panel and the parties on 4 August 2014 and the parties were duly invited to comment on the results of the membership check and to bear in mind the two admissibility tests set out in para 36 (1)(a) and para 36 (1)(b) in so doing.

#### **Union's comments on the result of the membership and support check**

21. In a letter dated 7 August 2014 the Union submitted that it was sceptical about the figure of the bargaining unit as quoted by the Employer of 163 employees. The Union stated that they believed the number to be approximately 151 which was based upon information drawn from the weekly duty roster of drivers who did service work every day. The Union stated that it assumed the additional numbers were employees who held a PCV license who

may have driven occasionally as a last resort. The Union suggested that those employees may have been Supervisors/Management grades who may also be on a different salary structure than the drivers.

22. Finally the Union advised that since the check was carried out a further 4 drivers had joined the Union.

### **Employer's comments on the result of the membership and support check**

23. A letter dated 7 August 2014 was received from the Employer stating that they were minded to go with a secret ballot. The Employer stated that they were of the view that whilst there may be union members amongst their staff, they may want an individual voice rather than agreements made for them by a trade union representative.

24. Comments were circulated to the Panel and the parties on 11 August 2014 and the parties were duly invited to comment.

### **Further comments from the Employer**

25. In an e-mail dated 12 August 2014 the Employer stated that it thought the figure of 151 that the Union were referring to had been added up by someone from a Drivers roster on the Notice Board. The Employer stated that drivers who also do other duties were on a different roster which is not posted there. The Employer confirmed that for the avoidance of doubt, the 163 excluded Management, Engineering and Admin staff who held PCV licences and drove from time to time.

### **Considerations**

26. In deciding whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 4 of this decision are satisfied. In arriving at its decision the Panel has taken into consideration all of the evidence submitted by the parties. The Panel is satisfied that the Union made a valid request to the Employer within the terms specified in paragraphs 5 to 9 of the Schedule to recognise it for collective bargaining in respect of the bargaining unit as described in paragraph 1 of this decision in its

letter of 1 July 2014. The request was made in writing, identified the Union, the proposed bargaining unit, and stated that it (the request) was made under the Schedule.

27. The Panel is also satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and 37 to 42 and that it was made in accordance with paragraph 11 of the Schedule in that, before the end of the first period the Employer informed the Union that the Employer did not accept the request for recognition without indicating a willingness to negotiate.

28. The remaining issues for the Panel to decide are whether the admissibility criteria contained in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

#### **Paragraph 36(1)(a)**

29. In accordance with paragraph 36(1)(a) of the Schedule the Panel must determine whether or not members of the Union constitute at least 10% of the workers in the Union's proposed bargaining unit. The check of membership conducted by the Case Manager on 4 August 2014 established that 84 workers out of a total of 163 workers in the proposed bargaining unit were members of the Union, a membership density of 51.53%. The Panel is therefore satisfied that the 10% threshold test is met.

#### **Paragraph 36(1)(b)**

30. Paragraph 36(1)(b) of the Schedule provides that, for an application to be admissible, the CAC must be satisfied that a majority of the workers constituting the proposed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit. It is not a definitive test but one in which the Panel must decide, after weighing up the available evidence, whether it is likely that a majority of the workers in the proposed bargaining unit would support recognition of the Union.

31. The Employer raised possible lack of support among union members but provided no evidence to support this. The Union queried the number of workers the Employer submitted for the membership check as it was higher than the information they had drawn from the

weekly duty roster and the Employer subsequently explained why their could be a discrepancy. The Union also informed the Panel that since the membership was carried out they had recruited a further 4 drivers which would give them a higher membership density.

32. The Union did not provide any additional evidence of support for recognition, such as a petition, but the Panel considers that, in the absence of evidence to the contrary, union membership provides a legitimate indicator of the views of the workers in the proposed bargaining unit as to whether they would be likely to favour recognition of the Union. There may be some Union members who would not favour recognition but it is also the Panel's experience that there will be workers who are not members of the Union who would be likely to favour recognition of the Union. The Panel notes the recent marked upward trend in membership in the context of the Union seeking recognition for collective bargaining. Using the Employer's figure of 163 employees, Union membership in this case constitutes over 50% of workers in the bargaining unit. The Panel has considered the possible implications in terms of the level of actual current membership of there being a mismatch between the Union's proposed bargaining Unit and the job titles of those included in the list of workers provided by the Employer. On the basis of the evidence before it, the Panel has decided that, on the balance of probabilities, a majority of the workers in the proposed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit, as required by paragraph 36(1)(b) of the Schedule.

### **Decision**

33. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance to with paragraph 11 and is admissible within the terms of paragraphs 33 to 42 of the Schedule. The application is therefore accepted by the CAC.

### **Panel**

Professor Linda Dickens MBE,

Mr Paul Wyatt

Mr David Coats

15 August 2014