

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

Epsom Coaches Group

Introduction

1. RMT (the Union) submitted an application to the CAC dated 23 June 2014 and received on 24 June 2014 that it should be recognised for collective bargaining by Epsom Coaches Group (the Employer) for a bargaining unit comprising “Bus Drivers employed with HR Richmond Limited T/A Epsom Coaches Group”. The location of the bargaining unit was given as HR Richmond Ltd, T/A Epsom Coaches Group, Roy Richmond Way, Epsom, Surrey, KT19 9AF. The CAC gave the parties notice of receipt of the application on 25 June 2014. The Employer submitted a response to the application on 1 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 Michael Shepherd and Mr Malcolm Wing. 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 8 July 2014. The acceptance period was extended to 21 July 2014 in order to

allow time for a membership check to be conducted and for the Panel to consider any comments received on that check before arriving at a decision. The period was further extended to 28 July 2014 to allow the Panel to finalise its 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. The Union attached to its application a letter dated 9 June 2014 from the Union's Regional Organiser to the Employer's Managing Director formally requesting recognition of the Union for collective bargaining purposes. The letter identified the Union and the bargaining unit and stated that the request was being made under the Schedule. The Union also attached to its application the Employer's response to the Union's letter. This was dated 16 June 2014 and signed by the Employer's Managing Director. The Employer, in the letter, rejected the Union's request for recognition. The letter stated that, whilst appreciating that the Union had significant membership in the bus driver section of the Employer's business, a recent ballot clearly showed that staff preferred the "present method of working together". Also enclosed was a letter from the Employer dated 22 May 2014 in response to an earlier request from the Union for voluntary recognition following the company initiated ballot.

6. The Union stated in its application that, following receipt of the request for recognition, the Employer did not propose that Acas be requested to assist.

7. The Union stated that there were 363 workers employed by the Employer, of whom 259 were in its proposed bargaining unit and claimed 117 members of the Union within the proposed bargaining unit.

8. As evidence that the majority of the workers in the bargaining were likely to support recognition for collective bargaining the Union referred to its records of membership and

claimed that increasing numbers of drivers in the bargaining unit had joined the Union to achieve collective bargaining rights. The Union also provided to a letter dated 25 April 2014 from The Personnel Consultancy Limited to the Employer’s Managing Director. The letter gave results of a postal ballot conducted by The Personnel Consultancy Limited on behalf of H R Richmond. The vote was on the statement; “I would like a union represent my interests and welfare during my employment with H R Richmond Ltd T/A Epsom Coaches Group.” The letter’s author stated that he had attended the Employer’s offices on 14 April 2014 and counted 363 “individual envelopes addressed to each of the employees employed by the Company on that day”. The results showed that overall 204 votes were cast from 363 eligible to vote, being a turnout of 56% across the company. Figures were given separately for each of four departments. Those for ‘Bus’ are shown below:

Department/ colour of form	Number “Yes”	Number “No”	Number eligible to vote	% of staff voting	% of all eligible voting “Yes”
Bus - White	99	45	259	56%	38%

9. The Union stated that its reasons for selecting its proposed bargaining unit were that the workers within the unit were employed and managed as a distinct group being bus drivers with the particular terms and conditions applicable to that employment.

10. The Union stated that, as far as it was aware, there was no existing recognition agreement in force covering any of the workers in the proposed bargaining unit. The Union confirmed that it held a current certificate of independence.

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

11. In its response to the Union’s application, the Employer stated that it had received the formal written request for recognition from the Union on 12 June 2014 and had rejected the request on the grounds that the recent independent ballot showed staff in the bargaining unit did not want union recognition. The Employer stated that, prior to this formal request, it had received a letter from the Union of 13 May 2014 requesting voluntary recognition to which the Employer had responded similarly. Copies of this correspondence were provided together with material relating to the ballot results (mentioned in para 8 above).

12. The Employer had received a copy of the application form and supporting documents from the Union on 24 June 2014.

13. Asked if it agreed the proposed bargaining unit, the Employer responded as follows:

Yes in so much that the description of the staff within it as Bus Drivers is correct, although the number of staff estimated is slightly lower. It is only the principle of recognition that is in dispute.

14. The Employer stated that it had not proposed that Acas be requested to assist. It had not been aware of this option but noted that it would not have involved Acas because its staff (including drivers) had indicated, through a ballot, that they did not want recognition of a trade union.

15. The Employer employed 372 workers. It further stated that, according to the payroll for the week ending Friday 27 June 2014, there were 271 bus drivers overall (the bargaining unit defined in the Union's application). The Employer noted that this figure varied and that it had recently started a new contract which explained the increase.

16. Asked if there was an existing agreement for recognition in force covering workers in the proposed bargaining unit the Employer replied that there was not such an agreement in the context of a recognition agreement with an outside body. However, there were staff committees for each department comprising bus drivers, coach drivers, administration and engineering. Representatives of these committees were democratically elected from members of each section with each electing its own Chair. Management nominees sat in on the meetings and took forward agreed actions. Information on the committees was provided, together with some meeting minutes.

17. The Employer stated that it had no way of knowing Union membership levels within the bargaining unit, other than information given by the Union.

18. The Employer did not consider that a majority of the workers in the bargaining unit were likely to support recognition. The Employer gave the following reasons for this:

- The workers in the bargaining unit had indicated through the recent independent postal ballot in April 2014 that they did not support recognition (the ballot results are summarised in paragraph 8 of this decision). The Employer also noted results from past ballots conducted in 2001 and 2007 also showed no majority in favour of recognition.
- Workers who were RMT members had, in the main, been recently recruited and had been particularly attracted to the benefits of membership through what appeared to be an “artificially low” membership fee of £1 per week. The Employer stated that it understood this to be an introductory offer and was substantially less than the normal RMT subscription as was shown on their website. The concession for those earning £20,000 per annum or less would not apply to the majority of those within the bargaining unit. The Employer therefore submitted that membership had been “artificially boosted” by this offer and the recruitment methods.
- The Employer stated that there had been reports of intimidation and bullying of staff by Union members. The Employer stated that, “Given the nature of this, the victims had asked that such incidents not be taken any further for fear of recriminations”, but attached to its response copies of anonymised e-mails and Facebook records that it had been able to capture. These included an e-mail written by an employee who initially joined the Union at the reduced rate in 2013 but left disillusioned after a few months. The writer of the e-mail says that he is continually and repeatedly targeted by co-workers to join the union and thought new drivers were being treated similarly. The exchange on Facebook involved an employee (or employees) who are RMT member(s) and one or more others in which a view is expressed that some posts amount to bullying.
- The Employer referred again to its staff committees including for the bus drivers which it had for over 40 years. The Employer emphasized that these committees provided democratic representation for workers as well as an open channel of communication.

- Substantially less than half of the workers within the bargaining unit were Union members and so, even assuming they were all in favour, this was not a majority. It could not, however, be assumed that because a person joined a union that he or she automatically supported recognition. There were other benefits attracting potential members such as individual representation. The Employer's workers therefore enjoyed the benefits of the company's staff committees and the benefits of individual trade union membership if they so wished.
- The Employer had a long track record of close employee relationships, demonstrated by its openness about the company and its finances and through practical assistance including an interest free loan scheme, free leisure centre membership and a wide range of other benefits. The satisfaction of staff had been demonstrated through an independent survey carried out in 2012 which demonstrated that employees considered the Employer to be amongst the best employers in Surrey. Results of this survey were attached to the response as was a copy of the Company benefits leaflet.

The membership check

19. 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 would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit (paragraph 36(1)(b)), the Panel proposed an independent check of the level of union membership within the proposed bargaining unit. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, dates of birth, job titles and starting dates of the workers within the proposed bargaining unit, and that the Union would supply to the Case Manager a list of its members within that unit including full name, date of birth, date of joining, date paid up to and confirmation of membership status. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party. These arrangements were confirmed in a letter dated 9 July 2014 from the Case Manager to both parties.

20. The information from both the Union and the Employer was received by the CAC on 10 July 2014. The Panel is satisfied that this check was conducted properly and impartially and in accordance with the agreement reached with the parties.

21. The list supplied by the Employer indicated that there were 271 workers in the Union's proposed bargaining unit with start dates ranging between 23 March 1976 and 30 June 2014. Seventeen out of the total 271 showed start of employment dates later than 14 April 2014. The list of members supplied by the Union contained 123 names with dates of joining the Union ranging between 30 September 2008 and 10 July 2014. Twenty two of the total 123 showed dates later than 14 April 2014 as the date of joining the Union. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 113, a membership level of 41.7%.

22. Following a telephone conversation with the case manager 11 July 2014 regarding the membership status of those on the Union's list, the Union sent an e-mail on 14 July 2014 stating as follows: "in relation to the data file, I can confirm that all members listed are in benefit, in accordance with the RMT rulebook."

23. A report of the result of the membership check was circulated to the Panel and the parties on 14 July 2014 and the parties were invited to comment on the result by 17 July 2014.

Summary of the Employer's comments on the result of the membership check

24. In a letter dated 15 July 2014 the Employer accepted that the test at paragraph 36(1)(a) of the Schedule was satisfied in that more than 10% of the workers in the bargaining unit were members of the Union. Addressing the test at 36(1)(b), whether 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, the Employer submitted that the proportion of Union members in the bargaining unit of 41.7% was clearly short of a majority which was needed for this test. The Employer further observed that:

- The joining dates on the Union’s list might apply for some, if not all, longer term members who had transferred from Metrobus Ltd under a TUPE arrangement in April 2012.
- The 22 members who joined later than 14 April 2014 proved that many members had been more recently recruited.
- The Employer addressed the Union’s statement that, “in relation to the data file, I can confirm that all members listed are in benefit, in accordance with the RMT rulebook.” (see paragraph 22 of this decision). The Employer stated that it did not dispute that members were “in benefit” or that they were full members but had questioned the subscription level applied, which the Employer submitted had falsely boosted membership of the Union short term.
- The Employer referred the statement in the report that 17 of the workers on its list had joined later than 14 April 2014. The Employer confirmed this as correct, explaining that it had recently recruited following expansion of its existing contracts.
- The Employer noted that the number of union members not appearing on the Employer’s list was 10 and submitted that it assumed that was made up of those who had left the company’s employ who were employed elsewhere within the company.

26. No comments on the membership check were received by the CAC from the Union.

Considerations

27. 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.

28. The Panel is satisfied that the application is valid with the terms of sections 5 -9 and not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and paragraphs 37

to 42 of the Schedule. This is an application under paragraph 11, the employer having rejected the request for recognition without indicating a wish to negotiate.

29. 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.

30. The membership check indicates a membership level of 41.7%. It is accepted by the Employer that the members of the Union constitute at least 10% of the workers constituting the proposed bargaining unit. The test in paragraph 36(1)(a) is met.

31. In relation to the test in paragraph 36(1)(b) it needs to be stated that the CAC does not need to determine whether a majority of the bargaining unit does actually support recognition of the Union for collective bargaining but, rather, whether it is *likely* that a majority would do so. The real numerical test of support comes in a subsequent ballot, if the application is accepted.

32. The membership check shows a membership level of 41.7% in the proposed bargaining unit. Some of these members will be paying a reduced subscription rate, as provided for in the Union rules. We do not accept, however, the Employer's contention that this indicates that membership levels are artificially inflated and that these members would not support recognition of the Union. We are aware from other cases heard by the CAC that some unions offer concessionary subscription rates in workplaces where they are not recognised, but where recognition is sought, in acknowledgment of the fact that without collective bargaining the Union cannot offer members in such workplaces the full benefits of union membership. Once recognition is achieved the concessionary subscription rate ceases. It is also our experience that even if a reduced subscription rate is offered some employees will not join a union until after recognition is achieved.

33. We very carefully considered the Employer's contention that employees had been intimidated or bullied into joining the Union. The Union offered no comment on this aspect of the Employer's response. From the documents provided by the Employer it appears that there may have been attempts to recruit members by co-workers who are in the Union (but not union officials) which may be perceived as crossing the line between encouragement to join and undue pressure. However the writer of the letter provided by the Employer has

withstood this pressure (he notes that “I just laugh at them”) and he is not sure that others who have been approached similarly actually joined the Union. The Employer notes that this is a difficult area in which to provide evidence, but in its absence we cannot conclude that existing members have joined because of intimidation.

34. It may be that some existing Union members in the proposed bargaining unit would not support recognition for collective bargaining but, in the absence of evidence to the contrary, we take membership as a rough indicator of likely support. We note that although currently below 50% there is an upward trajectory in union membership.

35. We also take into account the results of the postal ballot conducted in April on behalf of the Employer. In this ballot 68.7% of the bus drivers who participated (99 out of 144) voted in favour of having a union represent their interests. This is a high level of support for union recognition among those casting a vote. With only 56% of eligible drivers voting this constituted support from 38% of the bargaining unit. It is clear from the correspondence between the parties which we have seen that both accept that this would fall short of the requirements for statutory recognition where support needs to come from at least 40% of those eligible to vote. In the Union’s letter to the Employer of 13 May 2014 asking to discuss a voluntary recognition agreement following this ballot this is acknowledged but the letter goes on to state, “I am informed that there was some confusion amongst my members as to whether or not to vote for union recognition in the recent referendum”. It says “I am confident that my members...and a large proportion of the drivers wish to have RMT recognition and would vote accordingly in an independent CAC referendum”. No evidence has been provided to cast any doubt on the fairness or the independent, impartial nature of the ballot undertaken for the Employer but the turnout figure is relatively low. For comparison we note that the average participation in a CAC- sponsored ballot is over 70%.

35. The ballot results assist our deliberations but we note that there have been significant changes since this ballot was conducted in April. More bus drivers have been employed, increasing the size of the bargaining unit by 17. The Membership Check showed also that the Union has recruited 22 new members (not necessarily from these new employees) since the ballot census date.

36. 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

37. For the reasons given in paragraphs 28-36 above the Panel's decision is that the application is accepted by the CAC.

Postscript

38. As noted in the decision no reply was received from the Union in response to the invitation from the CAC to comment on the results of membership check and address the tests in paragraph 36, on which the Employer had commented in its reply to the application. The Employer's response to the Membership check was copied to the Union for information. On the afternoon of 23 July 2014 the Union sent a letter in response to this. This was received after the Panel had reached and drafted its decision. The Union's letter was forwarded to the Panel. Having considered whether the letter provided any reason for inviting further input from either party or for re-considering its decision, the Panel decided that it did not. The Union's letter has been copied to the Employer for information.

Panel

Professor Linda Dickens MBE, CAC Deputy Chairman

Mr Michael Shepherd

Mr Malcolm Wing

25 July 2014