

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
METHOD OF COLLECTIVE BARGAINING

The Parties:

RMT

and

Brylaine Travel Ltd

Introduction

1. The RMT (the Union) submitted an application to the CAC dated 19 November 2013 that it should be recognised for collective bargaining by Brylaine Travel Ltd (the Employer) for a bargaining unit comprising "all drivers at the above locations" which were listed as Boston, Skegness, Conningsby and Lincoln. The CAC gave the parties notice of receipt of the application on 20 November 2013. The Employer submitted a response to the application on 28 November 2013 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 Mr Chris Chapman, Chairman of the Panel, and, as Members, Mr George Getlevog and Mr Gerry Veart. The Case Manager appointed to support the Panel was Nigel Cookson.

3. By a decision dated 20 December 2013 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 but no agreement was reached. The parties were then invited to supply the Panel with, and to exchange, written submissions ahead of a hearing to determine the appropriate bargaining unit. Following a hearing in Nottingham on 12 February 2014, which the Employer elected not to attend, the Panel, in a decision promulgated 25 February 2014, determined that the appropriate bargaining unit in this matter was that proposed by the Union in its application, namely all drivers employed at the depots in Boston, Skegness, Coningsby and Lincoln.

4. By a further decision dated 20 March 2014 the Panel determined that a majority of the workers constituting the bargaining unit were members of the Union and that none of the qualifying conditions which might require the holding of a secret ballot were met. Accordingly the Panel issued a declaration that the Union was recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit. In the letter dated 20 March 2014 that accompanied the declaration the parties were informed that the next stage was for them to negotiate with a view to reaching agreement on the method by which they would conduct collective bargaining. To assist the parties a copy of the Statutory Instrument which specified a method of collective bargaining, namely “The Trade Union Recognition (Method of Collective Bargaining) Order 2000”, was enclosed with the declaration.

5. By way of an email dated 16 May 2014 the Union explained that having received no response from the Employer to its emails and letters, it wished the CAC to assist the parties reach an agreement. An informal meeting with the parties and the Chairman of the Panel took place in Nottingham on 4 July 2014 following which the parties entered into negotiations. However, in a letter dated 10 September 2014 the Union explained that it believed that the parties were unlikely to reach a satisfactory outcome and called upon the Panel to give consideration to specifying the method of collective bargaining.

Issues

6. No agreement on a method of collective bargaining had been reached by the parties within either the 30 day negotiation period or the 20 day agreement period as extended by the parties’ mutual consent. Accordingly, under paragraph 31(3) of Schedule A1 to the Act (the

Schedule), the CAC Panel must specify to the parties the method by which they are to conduct collective bargaining.

7. Paragraph 168 of the Schedule states that in specifying the method the CAC must take into account the specified method as set out in the Order referred to at paragraph 4 above, but may depart from it to such extent as the CAC thinks is appropriate in the circumstances. On 20 March 2014 the Case Manager wrote to the parties and provided them with a copy of this Order.

8. In a letter dated 10 September 2014 the Case Manager explained to the parties that given the contents of the Union's letter, the Panel would now move on to specify the method of collective bargaining. It was made clear in the letter that the statutory model would be the starting point for the Panel with consideration then being given to the appropriateness of any proposals from the parties which depart from that method. In preparing their proposals as to how they would have the Panel depart from the specified method the parties were reminded that the Panel must confine itself to bargaining over pay, hours and holidays. The parties were informed that if it was at all possible, the Panel would determine the matter on the papers received without recourse to a hearing.

The parties' proposals

9. In a letter dated 16 September 2014 the Employer set out its proposals as to how it would have the Panel depart from the specified method. First, it currently operated a JNC that was an elected body by all staff members. This JNC covered all aspects of welfare (excluding individual HR matters) and issues of concern, along with proposals for development. It comprised five members of staff (location based and one solely representing the drivers) aligned with a Management Team of three. The JNC had no legally binding rights to negotiate other than all aspects of the JNC were presented to the senior team as part of an agreed agenda and an outcome/resolution or response was noted to all staff members. If a JNB, as currently noted within the statutory agreement was imposed this undermined the Employer's ability to operate the current JNC in place and the overarching remit of an already elected team. In regards to the proposed JNB in the statutory agreement, the remit of this JNB and operational scope for discussion was much smaller and absolutely defined in terms of criteria, therefore if it was imposed as a separate entity the Employer suggested that,

given the size of the bargaining unit, the Union side should consist of one member employed by the Employer supported by a member of the regional RMT administration aligned with two members of the Employer's management team to underpin any JNB in regards to pay, hours or holidays.

10. Second, in terms of the proposed agreement the Employer requested that any training, time off for duties etc. for the elected JNB member as noted in regards to "negotiating for hours, pay and holidays" be limited entirely to this and no other duties in respect of the Union.

11. Third, in line with a clause in a document submitted by the Union to the Employer as part of the parties' earlier negotiations, the Employer proposed the inclusion of a clause that should Union membership fall below 40% of the overall bargaining unit then the agreement should be reviewed. As the Union's Executive had sanctioned this clause for inclusion in the other agreement the Employer respectfully asked that this clause be included within the framework of the method specified in this case.

12. Fourth, the Employer would also appreciate the inclusion of a definitive time frame for the agreement to stand.

13. In an email dated 17 September 2014 the Union said that, having reviewed the specified method and in an effort to move things forward, it did wish any departures from the specified method.

14. In the letter enclosing a copy of the Union's email of 17 September 2014 the Employer was asked whether there was an established annual date when it reviewed the pay, hours and holidays of all the workers in the bargaining unit in the event that the Panel believed it appropriate to incorporate such a date into the method. On 19 September 2014 the Employer confirmed, by way of an email, that there was no established common review date.

Considerations

15. In imposing the method of collective bargaining the Panel considered the extent to which, by application and of its own motion, it considered it was appropriate, given the

circumstances of the case, to depart from the specified method.

Paragraph 1 of the Specified Method

16. The Panel believes that it is appropriate to identify the parties in paragraph 1 of the specified method and the second sentence has been deleted as it was not applicable given the circumstances of this case.

Paragraph 5 of the Specified Method

17. The Employer submitted that the membership of the JNB should comprise two employer representatives and two union representatives rather than the three from each party as set out in paragraph 5 of the specified method. The Panel having considered the Employer's submission has decided not to depart from the specified method on this point. The Panel did however consider that it was appropriate to delete the second and third sentences of paragraph 5 as they were not applicable given the circumstances of this case

Paragraph 15 of the Specified Method

18. As the Employer has confirmed that there is no established common review date the Panel has amended the third sentence of Step 1 of Paragraph 15 accordingly and deleted the fourth sentence. Further, the words "in either case" at the start of the fifth sentence will also be deleted.

Paragraph 21 of the Specified Method

19. The Employer proposed that it should be noted that any training and time off for the elected JNB member was to be limited entirely to negotiating for hours, pay and holidays and no other duties in respect of the Union. The Panel considers that the terms of the specified method are clear on the issue of time off for trade union duties which is tied into the staged process for the annual pay claim. If a party takes the view that matters have arisen which are outside the terms of the specified method then the parties should abide by the terms of the Acas Code of Practice on Time Off for Trade Union Duties and Activities.

20. The Employer also proposed that training for the elected union side members of the JNB be limited in the same way as time-off for trade union duties. However, as stated below, one of the implications of the CAC having imposed the method of collective bargaining on the parties is that the Employer is then obliged to consult union representatives periodically on its policy, actions and plans on training. The CAC has no jurisdiction to interfere with this obligation.

21. Having considered the matter the Panel is satisfied that no departure from the specified method is necessary on the Employer's proposals regarding time-off for trade union duties and training.

Paragraph 28 of the Specified Method

22. The Employer proposed that should union membership fall below 40% of the bargaining unit then the specified method should be reviewed. This was a clause contained within an agreement provided by the Union to the Employer during the parties' negotiations as an example of one of its agreements and because of this, the Employer believed that the Union could not take exception to such a clause being included.

23. Having considered the matter the Panel is not persuaded that it should depart from the specified method. The specified method does allow for the parties to amend its terms by agreement and the Panel will leave the question of any 40% trigger for the parties to decide themselves.

24. Finally, the Employer proposed that the specified method should contain what it called a definitive time frame for the agreement to stand. The Panel considers it unnecessary for a termination date to be included as the earliest date that the process for statutory derecognition can commence is covered by primary legislation elsewhere.

Implications of the Specified Method

25. The bargaining method imposed by the CAC has effect as if it were a legally binding contract between the Employer and the Union. If one party believes the other is failing to respect the method, the first party may apply to the court for an order of specific

performance, ordering the other party to comply with the method. Failure to comply with such an order could constitute contempt of court.

26. The parties can vary the model method, including the fact that it is legally binding, by agreement provided that they do so in writing.

27. The fact that the CAC has imposed a method does not affect the rights of individual workers under either statute or their contracts of employment. For example, it does not prevent or limit the rights of individual workers to discuss, negotiate or agree with their employer terms of their contract of employment, which differ from the terms of any collective agreement into which the Employer and the Union may enter as a result of collective bargaining conducted by this method. Nor does the imposed method affect an individual's statutory entitlement to time off for trade union activities or duties.

28. The CAC having imposed a bargaining method on the parties, the Employer is separately obliged, in accordance with Section 70B of the Trade Union and Labour Relations (Consolidation) Act 1992 (as inserted by section 5 of the Employment Relations Act 1999), to consult union representatives periodically on the policy, actions and plans on training.

Decision

29. The method detailed in the document attached (appendix A) is specified as the method by which the parties are to conduct collective bargaining.

Panel

Mr Chris Chapman

Mr George Getlevog

Mr Gerry Veart

24 September 2014

Appendix A

THE SPECIFIED METHOD

The Parties

1. The method shall apply to Brylaine Travel and RMT who are referred to here respectively as the "employer" and the "union".

The Purpose

2. The purpose is to specify a method by which the employer and the union conduct collective bargaining concerning the pay, hours and holidays of the workers comprising the bargaining unit.

3. The employer shall not grant the right to negotiate pay, hours and holidays to any other union in respect of the workers covered by this method.

The Joint Negotiating Body

4. The employer and the union shall establish a Joint Negotiating Body (JNB) to discuss and negotiate the pay, hours and holidays of the workers comprising the bargaining unit. No other body or group shall undertake collective bargaining on the pay, hours and holidays of these workers, unless the employer and the union so agree.

JNB Membership

5. The membership of the JNB shall usually comprise three employer representatives (who together shall constitute the Employer Side of the JNB) and three union representatives (who together shall constitute the Union Side of the JNB).

6. The employer shall select those individuals who comprise the Employer Side. The individuals must either be those who take the final decisions within the employer's organisation in respect of the pay, hours and holidays of the workers in the bargaining unit or who are expressly authorised by the employer to make recommendations directly to those who take such final decisions. Unless it would be unreasonable to do so, the employer shall select as a representative the most senior person responsible for employment relations in the bargaining unit.

7. The union shall select those individuals who comprise the Union Side in accordance with its own rules and procedures. The representatives must either be individuals employed by the employer or individuals employed by the union who are officials of the union within the meaning of sections 1 and 119 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").

8. The JNB shall determine their own rules in respect of the attendance at JNB meetings of observers and substitutes who deputise for JNB members.

Officers

9. The Employer Side shall select one of its members to act as its Chairman and one to act as its Secretary. The Union Side shall select one of its members to act as its Chairman and one to act as its Secretary. The same person may perform the roles of Chairman and Secretary of a Side.

10. For the twelve months from the date of the JNB's first meeting, meetings of the JNB shall be chaired by the Chairman of the Employer Side. The Chairman of the Union Side shall chair the JNB's meetings for the following twelve months. The chairmanship of JNB meetings will alternate in the same way thereafter at intervals of twelve months. In the absence of the person who should chair JNB meetings, a JNB meeting shall be chaired by another member of that person's Side.

11. The Secretary of the Employer Side shall act as Secretary to the JNB. He shall circulate documentation and agendas in advance of JNB meetings, arrange suitable accommodation for meetings, notify members of meetings and draft the written record of JNB meetings. The Secretary of the Employer Side shall work closely with the Secretary of the Union Side in the discharge of these duties, disclosing full information about his performance of these tasks.

JNB Organisation

12. Draft agendas shall be circulated at least three working days in advance of JNB meetings. The draft record of JNB meetings shall be circulated within ten working days of the holding of meetings for approval at the next JNB meeting. The record does not need to be a verbatim account, but should fully describe the conclusions reached and the actions to be taken.

13. Subject to the timetable of meetings stipulated in paragraphs 15, 17, 20 and 28 below, the date, timing and location of meetings shall be arranged by the JNB's Secretary, in full consultation with the Secretary of the Union Side, to ensure maximum attendance at meetings. A meeting of the JNB shall be quorate if 50% or more of each Side's members (or, where applicable, their substitutes) are in attendance.

Bargaining Procedure

14. The union's proposals for adjustments to pay, hours and holidays shall be dealt with on an annual basis, unless the two Sides agree a different bargaining period.

15. The JNB shall conduct these negotiations for each bargaining round according to the following staged procedure.

Step 1 - The union shall set out in writing, and send to the employer, its proposals (the "claim") to vary the pay, hours and holidays, specifying which aspects it wants to change. In its claim, the union shall set out the reasons for its proposals, together with the main supporting evidence at its disposal at the time. The union shall put forward its first claim within three months of this method being imposed (and by the same date in subsequent rounds). The employer and the union may agree a different date by which the claim should be submitted each year. If the union fails to submit its claim by this date, then the procedure shall be ended for the bargaining round in question. Exceptionally, the union may submit a late claim without this penalty if its work on the claim was delayed while the Central Arbitration Committee considered a relevant complaint by the union of failure by the employer to disclose information for collective bargaining purposes.

Step 2 - Within ten working days of the Employer Side's receipt of the union's letter, a quorate meeting of the JNB shall be held to discuss the claim. At this meeting, the Union Side shall explain its claim and answer any reasonable questions arising to the best of its ability.

Step 3 -

(a) Within fifteen working days immediately following the Step 2 meeting, the employer shall either accept the claim in full or write to the union responding to its claim. If the Employer Side requests it, a quorate meeting of the JNB shall be held within the fifteen day period to enable the employer to present this written response directly to the Union Side. In explaining the basis of his response, the employer shall set out in this written communication all relevant information in his possession. In particular, the written communication shall contain information costing each element of the claim and describing the business consequences, particularly any staffing implications, unless the employer is not required to disclose such information for any of the reasons specified in section 182(1) of the 1992 Act. The basis of these estimated costs and effects, including the main assumptions that the employer has used, shall be set out in the communication. In determining what information is disclosed as relevant, the employer shall be under no greater obligation than he is under the general duty imposed on him by sections 181 and 182 of the 1992 Act to disclose information for the purposes of collective bargaining.

(b) If the response contains any counter-proposals, the written communication shall set out the reasons for making them, together with the supporting evidence. The letter shall provide information estimating the costs and staffing consequences of implementing each element of the counter proposals, unless the employer is not required to disclose such information for any of the reasons specified in section 182(1) of the 1992 Act.

Step 4 - Within ten working days of the Union Side's receipt of the employer's written communication, a further quorate meeting of the JNB shall be held to discuss the employer's response. At this meeting, the Employer Side shall explain its response and answer any reasonable questions arising to the best of its ability.

Step 5 - If no agreement is reached at the Step 4 meeting (or the last of such meetings if more than one is held at that stage in the procedure), another quorate meeting of the JNB shall be held within ten working days. The

union may bring to this meeting a maximum of two other individuals employed by the union who are officials within the meaning of the sections 1 and 119 of the 1992 Act. The employer may bring to the meeting a maximum of two other individuals who are employees or officials of an employer's organisation to which the employer belongs. These additional persons shall be allowed to contribute to the meeting, as if they were JNB members.

Step 6 - If no agreement is reached at the Step 5 meeting (or the last of such meetings if more than one meeting is held at that stage in the procedure), within five working days the employer and the union shall consider, separately or jointly, consulting ACAS about the prospect of ACAS helping them to find a settlement of their differences through conciliation. In the event that both parties agree to invite ACAS to conciliate, both parties shall give such assistance to ACAS as is necessary to enable it to carry out the conciliation efficiently and effectively.

16. The parties shall set aside half a working day for each JNB meeting, unless the Employer Side Chairman and the Union Side Chairman agree a different length of time for the meeting. Unless it is essential to do otherwise, meetings shall be held during the normal working time of most union members of the JNB. Meetings may be adjourned, if both Sides agree. Additional meetings at any point in the procedure may be arranged, if both Sides agree. In addition, if the Employer Side requests it, a meeting of the JNB shall be held before the union has submitted its claim or before the employer is required to respond, enabling the Employer Side to explain the business context within which the employer shall assess the claim.

17. The employer shall not vary the contractual terms affecting the pay, hours or holidays of workers in the bargaining unit, unless he has first discussed his proposals with the union. Such proposals shall normally be made by the employer in the context of his consideration of the union's claim at Steps 3 or 4. If, however, the employer has not tabled his proposals during that process and he wishes to make proposals before the next bargaining round commences, he must write to the union setting out his proposals and the reasons for making them, together with the supporting evidence. The letter shall provide information estimating the costs and staffing consequences of implementing each element of the proposals, unless the employer is not required to disclose such information for any of the reasons specified in section 182(1) of the 1992 Act. A quorate meeting of the JNB shall be held within five working days of the Union Side's receipt of the letter. If there is a failure to resolve the issue at that meeting, then meetings shall be arranged, and steps shall be taken, in accordance with Steps 5 and 6 of the above procedure.

18. Paragraph 17 does not apply to terms in the contract of an individual worker where that worker has agreed that the terms may be altered only by direct negotiation between the worker and the employer.

Collective Agreements

19. Any agreements affecting the pay, hours and holidays of workers in the bargaining unit, which the employer and the union enter following negotiations, shall be set down in writing and signed by the Chairman of the Employer Side and by the Chairman of the Union Side or, in their absence, by another JNB member on their respective Sides.

20. If either the employer or union consider that there has been a failure to implement the agreement, then that party can request in writing a meeting of the JNB to discuss the alleged failure. A quorate meeting shall be held within five working days of the receipt of the request by the JNB Secretary. If there is a failure to resolve the issue at that meeting, then meetings shall be arranged, and steps shall be taken, in accordance with Steps 5 and 6 of the above procedure.

Facilities and Time Off

21. If they are employed by the employer, union members of the JNB:

- shall be given paid time off by the employer to attend JNB meetings;
- shall be given paid time off by the employer to attend a two hour pre-meeting of the Union Side before each JNB meeting; and
- shall be given paid time off by the employer to hold a day-long meeting to prepare the claim at Step 1 in the bargaining procedure.

The union members of the JNB shall schedule such meetings at times which minimise the effect on production

and services. In arranging these meetings, the union members of the JNB shall provide the employer and their line management with as much notice as possible and give details of the purpose of the time off, the intended location of the meeting and the timing and duration of the time off. The employer shall provide adequate heating and lighting for these meetings, and ensure that they are held in private.

22. If they are not employed by the employer, union members of the JNB or other union officials attending JNB meetings shall be given sufficient access to the employer's premises to allow them to attend Union Side pre-meetings, JNB meetings and meetings of the bargaining unit as specified in paragraph 23.

23. The employer shall agree to the union's reasonable request to hold meetings with members of the bargaining unit on company premises to discuss the Step 1 claim, the employer's offer or revisions to either. The request shall be made at least three working days in advance of the proposed meeting. However, the employer is not required to provide such facilities, if the employer does not possess available premises which can be used for meetings on the scale suggested by the union. The employer shall provide adequate heating and lighting for meetings, and ensure that the meeting is held in private. Where such meetings are held in working time, the employer is under no obligation to pay individuals for the time off. Where meetings take place outside normal working hours, they should be arranged at a time which is otherwise convenient for the workers.

24. Where resources permit, the employer shall make available to the Union Side of the JNB such typing, copying and word-processing facilities as it needs to conduct its business in private.

25. Where resources permit, the employer shall set aside a room for the exclusive use of the Union Side of the JNB. The room shall possess a secure cabinet and a telephone.

26. In respect of issues which are not otherwise specified in this method, the employer and the union shall have regard to the guidance issued in the ACAS Code of Practice on Time Off for Trade Union Duties and Activities and ensure that there is no unwarranted or unjustified failure to abide by it.

Disclosure of Information

27. The employer and the union shall have regard to the ACAS Code of Practice on the Disclosure of Information to Trade Unions for Collective Bargaining Purposes and ensure that there is no unwarranted or unjustified failure to abide by it in relation to the bargaining arrangements specified by this method.

Revision of the Method

28. The employer or the union may request in writing a meeting of the JNB to discuss revising any element of this method, including its status as a legally binding contract. A quorate meeting of the JNB shall be held within ten working days of the receipt of the request by the JNB Secretary. This meeting shall be held in accordance with the same arrangements for the holding of other JNB meetings.

General

29. The employer and the union shall take all reasonable steps to ensure that this method to conduct collective bargaining is applied efficiently and effectively.

30. The definition of a "working day" used in this method is any day other than a Saturday or a Sunday, Christmas Day or Good Friday, or a day which is a bank holiday.

31. All time limits mentioned in this method may be varied on any occasion, if both the employer and the union agree.