Case Number: TUR1/945(2015)
24 December 2015

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:

Unite the Union

and

American Airlines

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 1 December 2015 that it should be recognised for collective bargaining by American Airlines (the Employer) for a bargaining unit comprising "All Aircraft Maintenance Technicians employed at Heathrow Airport". The application was received by the CAC on 4 December 2015 and the CAC gave both parties notice of receipt of the application that day. The Employer submitted a response to the CAC dated 11 December 2015 which was 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 Gillian Morris, the Panel Chair, and, as Members, Mr Mike Cann and Mr Keith Sonnet who, for the purpose of this decision, was replaced by Mr David Coats. The Case Manager appointed to support the Panel was Nigel Cookson.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 18 December 2015. The acceptance period was extended to 8 January 2016 in order to allow time for the Panel to consider the papers received and for it then to decide the next course of action.

Issues

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 therefore should be accepted.

The Union's application

5. In its application to the CAC the Union stated that it had made a request for recognition on 5 November 2015 and that the Employer had said that it did not believe the staff wanted the Union to be recognised for collective bargaining. The Union attached a copy of its letter of 5 November 2015, the first two paragraphs of which read as follows:

> I am writing on behalf of Unite the Union to request that American Airlines recognise Unite the Union under Schedule A1 of the 1992 Act as the union entitled to conduct collective bargaining relating to pay, hours and holidays on behalf of:
>
> All employees employed as Aircraft Maintenance Technicians and Parts Logistics Specialists at London Heathrow Airport which we believe number approximately 49.

6. The Union also attached to its application a copy of the Employer's e-mail response to the Union dated 5 November 2015. In that response the Employer noted that:

> The Stores team are currently covered by an existing collective bargaining agreement we have with Unite covering our non-management employees in the UK.
>
> Our understanding from regular meetings with M&E employees is that they do not wish to be recognised.
>
> The HR team are out in Dallas, our Headquarters, for the week and therefore we won't be able to review this situation until week commencing 16th November. Apologies for any inconvenience this may cause.

7. The Union attached to its application a copy of further e-mail correspondence between the parties. An e-mail dated 17 November 2015 from the Union to the Employer contained the following paragraph:

> In respect of the proposed bargaining unit identified in my letter, I confirm that I am amending my request for recognition to include only the approximately 42 Aircraft Maintenance Technicians employed at Heathrow Airport.

The Employer responded to this e-mail on 20 November 2015, stating:

> Thank you for your email below. I note the difference in the numbers and the role requested as the 42 Aircraft Maintenance Technicians.

8. The Union stated that the Employer employed 630 workers, 42 of whom were in the proposed bargaining unit. The Union stated that there were 32 members of the Union within the proposed bargaining unit. When asked to provide evidence that the majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that it had a majority of members in the bargaining unit in membership and that membership had increased in the expectation that recognition could be achieved. The Union stated that members supported the recognition campaign as they were very unhappy with the current process by which their pay and conditions were determined.

9. The Union stated that the reason for selecting the proposed bargaining unit was that all other major areas of the Employer's operations at Heathrow had collective bargaining. The Union stated that the bargaining unit had been agreed with the Employer and 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. The Union stated that it had copied its application and supporting documents to the Employer on 1 December 2015.

The Employer's response to the Union's application

10. In its response to the Union's application to the CAC the Employer stated that on 5 November 2015 it had received a request for recognition with respect to "all employees employed as Aircraft Maintenance Technicians and Parts Logistics Specialists at London Heathrow Airport", whom the Union believed to number 49. The Employer stated that it had not received a written formal request in accordance with paragraph 8(c) of the Schedule in respect of the revised group of 42 Aircraft Maintenance Technicians to which the application to the CAC related. The Employer stated that it had acknowledged the letter of 5 November 2015 the same day in the terms set out in paragraph 6 above. The Employer stated that it had received a copy of the application form, which referred to the proposed bargaining unit as being "all Aircraft Maintenance Technicians employed at Heathrow Airport", from the Union on 4 December 2015.

11. The Employer stated that it had not agreed the bargaining unit with the Union prior to receiving a copy of the application form from the Union. The Employer stated that on 20 November 2015 it acknowledged that the Union wished to amend its 5 November 2015 request to the 42 Aircraft Maintenance Technicians employed at Heathrow Airport only. The Employer stated that it did not, however, receive a formal written request under the Schedule for recognition for this group of employees. In particular, the Union's amending e-mail of 17 November 2015 did not state that its amendment was made under the Schedule as was required by paragraph 8(c) of the Schedule. The Employer therefore submitted that the Union had not

strictly complied with its obligations and the Employer believed its application should be rejected by the CAC.

12. The Employer stated that it did not object to the Union being recognised on behalf of the Maintenance Technicians but that it did object to there being a separate bargaining unit. The Employer stated that it already had an existing collective agreement with the Union which currently applied to all its staff except for management, Aircraft Maintenance and Engineering staff. The Employer stated that it was happy for the Maintenance Technicians who were interested to be covered via a simple extension/variation to the existing collective agreement subject to reassuring itself as to the actual level of support among them for this step. The Employer submitted that a separate bargaining unit for this group would cause fragmentation and would not be compatible with effective management.

13. The Employer stated that it did not, following receipt of the Union's request, propose that Acas should be requested to assist. The Employer stated that it had entered into dialogue with the Union and had hoped that its stated willingness to bring the 42 Maintenance Technicians into the existing recognition agreement with the Union would avert the need for any Acas involvement or CAC application. The Employer attached further e-mail correspondence between the parties.

14. The Employer stated that it employed approximately 106,000 workers worldwide, 756 in the UK and 447 at the London Heathrow site. Five hundred and forty-eight of the UK employees were covered by the existing collective bargaining agreement with the Union. The separate unit proposed by the Union would therefore contain less than 8% of the "recognised" workforce.

15. The Employer stated that it agreed with the number of workers in the bargaining unit as defined by the Union in its CAC application. The Employer confirmed that there was no existing agreement for recognition in force covering workers in that bargaining unit but said that there was an existing agreement in force for the Parts Logistics Specialists at Heathrow Airport who had been referred to in the Union's request under the Schedule. The Employer reiterated that it had made it clear to the Union that it was happy to extend the existing agreement to cover the

Maintenance Technicians if that is what those employees wanted. The Employer attached to its response a copy of the existing agreement.

16. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer said that it had no information or evidence concerning union membership among the Maintenance Technicians. When asked for its reasons if it did not consider that a majority of the workers in the bargaining unit would be likely to support recognition, the Employer stated that a ballot had taken place a number of years ago which concluded that the Maintenance Technicians did not want to recognise a Union (sic). The Employer stated that it had also had much more recent feedback from employee representative meetings, which indicated that the majority of Maintenance Technicians still did not want recognition and that it had drawn this to the Union's attention on 5 and 20 November 2015. The Employer stated that on 1 December 2015 it had learnt for the first time from the Maintenance Technicians that some did want the Union to be recognised in respect of them but it did not know if this was a majority.

17. The Employer answered "N/a" under the questions as to whether it was aware of any previous application under the Schedule for statutory recognition by the Union in respect of this or a similar bargaining unit and whether it had received any other applications under the Schedule in respect of any workers in the proposed bargaining unit.

Union's comments on the Employer's response

18. On 14 December 2015 the Employer's response was cross-copied to the Union and the Union's comments, both in general and specifically on the matter of the change in the definition of the proposed bargaining unit, were invited by no later than noon on 17 December 2015.

19. In a letter to the Case Manager dated 17 December 2015 the Union stated that the original request letter which was sent to the Employer on 5 November 2015 clearly identified that it was a request for recognition made pursuant to the applicable statutory provisions. The Union stated that, whilst its subsequent e-mail of 17 November 2015 did not refer expressly to the legislation,

it was clear that it was written further to the original request and sought only to refine the group for which the Union sought recognition. The Union stated that it was absolutely clear that it was seeking to amend the original request and that the Employer had responded to the e-mail on 20 November 2015 noting this point. The Union submitted that the correspondence taken together made it absolutely clear that it was a request for recognition made pursuant to the statutory provisions for Aircraft Maintenance Technicians employed at Heathrow Airport and therefore complied with the statutory provisions.

20. In respect of the appropriateness of the bargaining unit the Union said that it had only had the opportunity to provide provisional comments in the light of the time scale that was given to respond. The Union stated that the current recognition agreement expressly did not cover Aircraft Maintenance Technicians, who had different characteristics from other workers; that this group had their own employee forum with the Employer which recognised their interests as a distinct unit; and that they carried out a distinct occupation and were regulated by the Federal Aviation Administration which was an overseas body. The Union submitted that a unit comprising Aircraft Maintenance Technicians was entirely compatible with effective management and said that the Union would make further points about the appropriateness of the bargaining unit when given more time to do so.

Considerations

21. In determining whether to accept the application, the Panel must decide 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 in reaching its decision.

22. The Panel started its deliberations by considering whether the Union's application is valid within the terms of paragraphs 5 to 9 of the Schedule and is made in accordance with paragraphs 11 or 12. In view of its findings on these matters it did not proceed to examine whether the application is admissible within the terms of paragraphs 33 to 42 of the Schedule and makes no findings on whether these admissibility criteria are satisfied.

23. Paragraph 1 of the Schedule states that a trade union seeking recognition to be entitled to conduct collective bargaining on behalf of a group of workers may make a request in accordance with this Part (Part I) of the Schedule. Paragraph 4(2) of the Schedule states that paragraphs 5 to 9 apply to the request. Paragraph 8 states that a request will not be valid unless it is in writing, identifies the union and the bargaining unit, and states that it is made under the Schedule. Paragraph 2(2) states that references to the bargaining unit are to the group of workers concerned. Paragraph 15(2)(a) requires the CAC to decide whether the request for recognition to which the application relates is valid within the terms of paragraphs 5 to 9. The Panel considers that the request for recognition which the Union made to the Employer on 5 November 2015 complied with paragraphs 5 to 9 and is a valid request.

24. Paragraph 15(2)(b) requires the Panel to decide whether the application is made in accordance with paragraphs 11 or 12 of the Schedule. Paragraph 11 applies if, before the end of the period of 10 working days starting with the day after that on which the employer receives the request for recognition (the 'first period'), the employer fails to respond to the union's request for recognition or informs the union that it does not accept the request. Paragraph 12 applies if, before the end of the first period, the employer informs the union that it does not accept the request but is willing to negotiate. The parties may then conduct negotiations with a view to agreeing a bargaining unit and that the union is to be recognised as entitled to conduct collective bargaining on behalf of that unit. If no agreement is made before the end of the period of 20 working days starting with the day after that on which the first period ends or such longer period as the parties may agree (the 'second period') the union may apply to the CAC.

25. In the present case the Employer, in its e-mail to the Union of 5 November 2015, stated that the Stores Team was currently covered by an existing collective bargaining agreement with the Union, and that its understanding from regular meetings with M & E employees was that they did not want recognition, but that it would be unable to review the situation until the week commencing 16 November 2015. On 20 November 2015 the Employer reaffirmed its position that the Aircraft Technicians did not want to be recognised as a group but proposed that those in the Maintenance team who wished to join the union could do so through the existing collective

agreement with the Union. The Employer's e-mail of 20 November 2015 came after the expiry of the 'first period'.

26. The Panel considers that, on the balance of probabilities, the Employer, in its e-mail of 5 November 2015, informed the Union that it did not accept the Union's request without stating a willingness to negotiate. On that basis paragraph 12 does not apply to the application and the Panel is required to consider whether the application is made in accordance with paragraph 11 of the Schedule. However the Panel has also considered whether the application could be regarded as having been made under paragraph 12 on the basis that the Employer, by stating that it would be unable to review the position until the week commencing 16 November 2015, was indicating a willingness to negotiate. Its conclusions on this matter are set out in paragraph 28 below.

27. Paragraph 11(2) of the Schedule states that a union may apply to the CAC to decide whether the proposed bargaining unit is appropriate, and whether the union has the support of a majority of the workers constituting the appropriate bargaining unit. Paragraph 2(3) states that references to the 'proposed bargaining unit' are to 'the bargaining unit proposed in the request for recognition'. In the present case the bargaining unit proposed in the request for recognition is "All employees employed as Aircraft Maintenance Technicians and Parts Logistics Specialists at London Heathrow Airport". This is the bargaining unit in respect of which paragraph 11 of the Schedule would permit an application to be made to the CAC. The application to the CAC identified a proposed bargaining unit of 'All Aircraft Maintenance Technicians employed at Heathrow Airport". This is a different bargaining unit to that identified in its request for recognition. That being so, the Union has not applied to the CAC to decide whether the bargaining unit proposed in the request for recognition is appropriate within the terms of paragraph 11 (2) and the application has not been made in accordance with paragraph 11.

28. Paragraph 12(2) of the Schedule states that a union, where no agreement is made before the end of the 'second period', may apply to the CAC to decide whether the proposed bargaining unit is appropriate, and whether the union has the support of a majority of the workers constituting the appropriate bargaining unit. Paragraph 2(3) states that references to the 'proposed bargaining unit' are to 'the bargaining unit proposed in the request for recognition'.

For the same reasons set out in paragraph 27 above the Union has not applied to the CAC to decide whether the bargaining unit proposed in the request for recognition is appropriate within the terms of paragraph 12(2) and the application has not been made in accordance with paragraph 12. The Panel also notes that, under paragraph 12 of the Schedule, the timing of the Union's application to the CAC (which was made prior to the end of the 'second period') would have been at issue. Neither party addressed this point in their submissions, nor did the Panel raise it with the parties, and in view of its conclusion relating to paragraph 12(2) the Panel has made no finding on this matter.

29. The Panel notes the Union's submissions, set out in paragraph 19 above, that it was clear that the Union's e-mail to the Employer of 17 November 2015 was written further to the original request of 5 November 2015; sought only to refine the group for which the Union sought recognition and to amend the original request; and that the Employer had responded to the e-mail on 20 November 2015 noting this point. The Panel has some sympathy with this view. However paragraph 8 of the Schedule makes clear that a request for recognition is not valid unless it identifies the union and the bargaining unit and states that it is made under the Schedule. The Schedule does not envisage a union amending the description of the bargaining unit identified in a request for recognition made under the Schedule and, indeed, to permit this would further complicate other aspects of the Schedule (for example time limits). The Panel is also satisfied that a reference to the Schedule cannot be implied into the Union's e-mail of 17 November 2015 to render this a fresh request complying with paragraph 8 of the Schedule.

Decision

30. For the reasons set out in paragraphs 23-29 above, the Panel's decision is that the application is not accepted by the CAC.

Panel

Professor Gillian Morris

Mr Mike Cann

Mr David Coats

24 December 2015