Case Number: TUR1/910/2015
20 August 2015

CENTRAL ARBITRATION COMMITTEE

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION

DECLARATION OF RECOGNITION WITHOUT A BALLOT

The Parties:

RMT

and

City Cruises Plc

Introduction

1. The RMT (the Union) submitted an application to the CAC dated 21 April 2015 that it should be recognized for collective bargaining by City Cruises PLC (the Employer) for a bargaining unit comprising "Captains and mates employed by City Cruises PLC. This excludes other grades of staff such as administration, management and customer service assistants." The stated location of the bargaining unit was "River Thames, London". The application was received by the CAC on 27 April 2015 and the CAC gave both parties notice of receipt of the application on 28 April 2015. The Employer submitted a response to the CAC dated 7 May 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 Ms Bronwyn McKenna. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

3. By a decision dated 4 June 2015, 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. As the parties did not reach an agreement in the appropriate period, the Panel was required to determine the appropriate bargaining unit and to assist the Panel with its decision a hearing was held on 13 July 2015. In a decision promulgated on 20 July 2015 the Panel determined that the appropriate bargaining unit was that proposed by the Union, namely "Captains and mates employed by City Cruises PLC. This excludes other grades of staff such as administration, management and customer service assistants." The location of the bargaining unit is "River Thames, London".

4. As the determined bargaining unit was the same as that proposed by the Union in its application, the Panel proceeded with the application.

Issues

5. Paragraph 22 of Schedule A1 to the Act (the Schedule) provides that if the CAC is satisfied that a majority of the workers constituting the bargaining unit are members of the union, it must issue a declaration of recognition under paragraph 22(2) unless any of the three qualifying conditions specified in paragraph 22(4) applies. Paragraph 22(3) requires the CAC to hold a ballot even where it has found that a majority of workers constituting the bargaining unit are members of the union if any of these qualifying conditions is fulfilled. The three qualifying conditions are:

(i) the CAC is satisfied that a ballot should be held in the interests of good industrial relations;

(ii) the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;

(iii) membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union (or unions) to conduct collective bargaining on their behalf.

Paragraph 22(5) states that "membership evidence" is:

(a) evidence about the circumstances in which union members became members, or

(b) evidence about the length of time for which union members have been members, in a case where the CAC is satisfied that such evidence should be taken into account.

The Union's claim to majority membership

6. In a letter dated 20 July 2015 the Union was asked by the CAC whether it claimed majority membership within the bargaining unit and, if so, whether it submitted that it should be granted recognition without a ballot. The Union, in a letter to the CAC dated 21 July 2015, stated that it did claim to have majority membership within the bargaining unit and therefore submitted that it should be granted recognition without a ballot. The Union stated that the membership check conducted to assist the Panel's decision on acceptance had shown that the number of Union members in the proposed bargaining unit was 25, a membership level of 51%. The Union stated that at the hearing held on 13 July 2015 the Employer had said that two workers based at Poole had been erroneously included in its list provided for the purposes of the membership check, meaning that there were 47 workers in the Union's proposed bargaining unit not 49, a membership level of 53%. The Union also submitted that it did not believe that any of the qualifying conditions contained in paragraph 22(4) of the Schedule which would require a ballot were fulfilled. The Union's submissions on the qualifying conditions are summarised in paragraphs 16-19 below.

Summary of the Employer's response to the Union's claim to majority membership

7. On 22 July 2015 the CAC copied the Union's letter to the Employer and invited it to make submissions on the Union's claim that it had majority membership within the bargaining unit and on the three qualifying conditions specified in paragraph 22(4) of the Schedule.

8. In a response to the CAC sent on 28 July 2015 the Employer submitted that the Union's claim to majority membership was based on data which had been provided by the Employer on 15 May 2015 and which was now over two months old. The Employer identified a number of workers who had been included on its list on 15 May 2015 but had been included in error and/or had since left its employment and a number who had joined the Employer

since that list had been provided. The Employer stated that, although it was unaware of the membership status of most of these workers, collectively these changes had the potential to bring membership density below 50%. The Employer submitted that the Panel could no longer be satisfied that the majority of the workers in the bargaining unit were members of the Union and must therefore arrange for the holding of a ballot. The Employer also made submissions relating to the three qualifying conditions specified in paragraph 22(4) of the Schedule. These are summarised in paragraphs 12-15 below.

The membership check

9. To assist in deciding whether to arrange for a secret ballot under Schedule A1 the Panel proposed an independent check of the level of union membership within the bargaining unit. It was explicitly agreed with both parties that, to preserve confidentiality, the lists provided by each party would not be copied to the other party and these arrangements were confirmed in a letter dated 30 July 2015 from the Case Manager to both parties. The information from both parties was received by the CAC on 4 August 2015. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

10. The list supplied by the Employer showed that there were 47 workers in the bargaining unit. The list of members supplied by the Union contained 32 names. According to the Case Manager's report the number of Union members in the bargaining unit was 32, a membership level of 68.08%.

11. A report of the results of the membership check was circulated to the Panel and the parties on 5 August 2015. The Employer was invited to make further submissions on the qualifying conditions in addition to those it had made in its letter sent on 28 July 2015 and the Union was informed that it would then have the opportunity to respond to the Employer's submissions on the qualifying conditions in their entirety.

Summary of the Employer's submissions on the qualifying conditions

12. The Employer submitted that a ballot should be held in the interests of good industrial relations. The Employer stated that the Union had notified the Employer of a ballot on industrial action while its senior management who had attended the CAC's bargaining unit hearing on 13 July 2015 were returning to the office from that hearing, at a point when the Union was aware that the CAC had yet to make its decision on the appropriate bargaining unit. The Employer stated that in its letter the Union claimed to be balloting its members as a result of the Employer's 'failure to table a satisfactory pay offer' to its members in response to a 'pay submission' from the Union's Regional Organiser. The Employer stated that in a subsequent letter dated 16 July 2015, the Union again referred to this 'pay submission'. The Employer stated that it had twice written to the Union confirming that it had never received the 'pay submission' and that in the last of these letters, dated 16 July 2015, the Employer had requested a copy of that submission and had also requested that the conduct of the Union's ballot be delayed until the CAC had completed its task. The Employer stated that, to date, there had been no response to these requests from the Union. The Employer stated that on 4 August 2015 the Union had notified the Employer of the results of its ballot on industrial action, which was that all those who had voted in the ballot were in favour. The Employer stated that this letter from the Union had made no reference to the Employer's letter of 16 July 2015.

13. The Employer submitted that the events summarised above demonstrated its adversarial relationship with the Union. The Employer submitted that this adversarial relationship was also shown by the conduct of thirty members of the bargaining unit who attended a meeting on 2 June 2015 called by the Employer to discuss their concerns and then left within minutes, an event recorded on page 34 of the Employer's supplementary evidence supplied for the bargaining unit hearing on 13 July 2015. The Employer noted its summary of a meeting on 5 June 2015, also contained in that supplementary evidence, during which eleven members of the bargaining unit attended a meeting and did discuss issues directly with management. The Employer further referred to its summary of a follow-up management meeting on 9 June 2015 at which the feedback received at the meeting of 5 June 2015 had been actioned and stated that management had since then held one-to-one meetings on pay with members of the bargaining unit.

14. The Employer submitted that the adversarial nature of its historical relationship with the Union, and the willingness of some staff to attend meetings and discuss pay, meant that it would be in the interests of good industrial relations to hold a ballot. The Employer also submitted that a large proportion of workers only became members of the Union very recently and may have been subject to peer pressure in this regard and that this was another reason why it would be in the interests of good industrial relations to hold a ballot.

15. The Employer further submitted that the summaries of meetings with staff held on 2 and 5 June 2015 and the follow-up management meeting on 9 June 2015 constituted evidence which should lead the CAC to conclude that there were doubts whether a significant number of the union members within the bargaining unit want the Union to conduct collective bargaining on their behalf.

Summary of the Union's submissions on the qualifying conditions

16. The Union noted that the membership check referred to in paragraphs 9-10 above showed that it had 68.08% membership in the bargaining unit and that the Panel was therefore required to award automatic recognition to the Union unless any of the three qualifying conditions specified in paragraph 22(4) of the Schedule was met. The Union submitted that there was no credible evidence that any of these conditions had been met.

17. The Union submitted that the Employer had failed to show that it would be in the interests of good industrial relations to hold a ballot. The Union stated that its industrial dispute with the Employer was a separate issue with no relevance to its claim for recognition. The Union stated that there was no evidence to support the Employer's reference to the "adversarial nature of its historical relationship" with the Union nor had the Employer explained why a ballot on recognition would improve industrial relations. The Union stated that the fact that eleven out of forty-seven workers had attended a meeting with management in the absence of a union recognition agreement was not a credible basis on which to argue that a ballot should be held and that no evidence had been produced to show that Union recognition was a divisive issue among the workforce. The Union submitted that a ballot for recognition would only frustrate the workforce; delay a resolution to the industrial dispute;

and worsen industrial relations whereas automatic recognition, enabling a procedure for dealing with industrial issues to be agreed, would help both parties to develop a more positive relationship and understanding.

18. The Union submitted that the Employer did not explain what it meant by "peer pressure" to join the Union and had produced no credible evidence that any union member did not want the Union to conduct collective bargaining on their behalf.

19. The Union submitted that no membership evidence had been produced that could lead to doubts as to whether a significant number of Union members wanted collective bargaining. The Union submitted that precisely the opposite conclusion should be drawn from the membership check.

Considerations

20. The Act requires the Panel to consider whether it is satisfied that a majority of the workers constituting the bargaining unit are members of the Union. If the Panel is satisfied that a majority of the workers constituting the bargaining unit are members of the Union, it must declare the Union recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit unless it decides that any of the three qualifying conditions set out in paragraph 22(4) is fulfilled. If the Panel considers that any of them is fulfilled it must give notice to the parties that it intends to arrange for the holding of a secret ballot.

21. The membership check issued by the Case Manager on 5 August 2015, described in paragraphs 9 and 10 above, showed that 68.08% of the workers in the bargaining unit were members of the Union. The Panel is satisfied that this check was conducted properly and impartially and, in the absence of evidence to the contrary, is satisfied that a majority of the workers in the bargaining unit are members of the Union.

22. The Panel has considered carefully the submissions of both parties and all the evidence in reaching its decision as to whether any of the qualifying conditions laid down in paragraph 22(4) of the Schedule is fulfilled.

23. The first condition is that the Panel is satisfied that a ballot should be held in the interests of good industrial relations. The Panel has considered the arguments put forward by both parties and has come to the view that it is not satisfied that a ballot should be held in the interests of good industrial relations. In particular the Panel does not consider that attendance by eleven out of 47 workers at a meeting with the Employer to discuss their concerns, in the absence of collective bargaining, of itself shows that a ballot would be in the interests of good industrial relations, nor does the willingness of an unspecified number of individuals to hold one-to-one meetings with management about pay. Rather, it seems to the Panel that good industrial relations with the Employer would be better served by securing the establishment of a bargaining relationship between the parties, underpinned by a procedural agreement, as soon as possible. The Panel is therefore satisfied that this condition does not apply.

24. The second condition is that the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union to conduct collective bargaining on their behalf. The Panel does not consider that the summaries of meetings held on 2 and 5 June 2015, and the follow-up management meeting of 9 June 2015, referred to by the Employer (see paragraph 15 above) constitute evidence to this effect. The actions of the thirty individuals who left a meeting with the Employer on 2 June 2015 cannot reliably be interpreted in this way. Eleven of the 47 workers in the bargaining unit attended a meeting on 5 June 2015 at which their concerns were discussed but there is no evidence that these workers were union members nor, in any event, do their actions necessarily show that they are opposed to collective bargaining. The Panel is therefore satisfied that this condition does not apply.

25. The third condition is that membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union to conduct collective bargaining on their behalf. The Employer contended that workers who had recently joined the Union may have been subject to “peer pressure” in this regard but did not explain what form this pressure may have taken

nor did it produce any evidence to support its contention. The Panel is therefore satisfied that this condition does not apply.

Declaration of recognition

26. The Panel is satisfied in accordance with paragraph 22(1)(b) of the Schedule that a majority of the workers constituting the bargaining unit are members of the Union. The Panel is satisfied that none of the conditions in paragraph 22(4) of the Schedule is met. Pursuant to paragraph 22(2) of the Schedule, the CAC must issue a declaration that the Union is recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit. The CAC accordingly declares that the Union is recognised by the Employer as entitled to conduct collective bargaining on behalf of the bargaining unit comprising "Captains and mates employed by City Cruises PLC. This excludes other grades of staff such as administration, management and customer service assistants". The location of the bargaining unit is "River Thames, London".

Panel

Professor Gillian Morris, Panel Chair
Mr Mike Cann
Ms Bronwyn McKenna

20 August 2015