

CENTRAL ARBITRATION COMMITTEE

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION

DECLARATION THAT THE UNION IS NOT ENTITLED TO BE RECOGNISED

The Parties:

RMT

and

Interserve FS (UK) Ltd

Introduction

1. RMT (the Union) submitted an application to the CAC dated 20 January 2015 that it should be recognised for collective bargaining by Interserve FS (UK) Ltd (the Employer) for a bargaining unit comprising “Station/Platform cleaners, cleaning supervisors and tow tractor drivers employed, booking on and working on the Interserve, Network Rail managed stations contract”. The CAC gave both parties notice of receipt of the application on 21 January 2015. The Employer submitted a response to the application on 27 January 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 The Panel consisted of Professor Paul Davies QC FBA who has been replaced by Professor Linda Dickens MBE, as chair of the Panel, and, as Members, Mr Bob Hill and Ms. Gail Cartmail. The Case Manager appointed to support the Panel was Linda Lehan.

3. By its written decision dated 23 February 2015 the Panel accepted the Union’s application and the parties entered a period of 20 working days, the ‘appropriate period’ in accordance with paragraph 18(2)(a) of Schedule A1 to the Act (the Schedule), within which to negotiate and try to reach agreement as to the appropriate bargaining unit.

4. In correspondence received from the Employer on 26 February 2015 and 3 March 2015 and from the Union on 2 March 2015 and 5 March 2015 it was confirmed that the bargaining unit was the same as that defined in the Union's application form i.e.

“Station/Platform cleaners, cleaning supervisors and tow tractor drivers employed, booking on and working on the Interserve, Network Rail managed stations contract”

5. On 11 March 2015, the Panel, satisfied that a majority of the workers constituting the bargaining unit were not members of the Union, gave notice in accordance with paragraph 23(2) that a secret ballot would be held. The Panel also advised the parties that it would wait until the end of the notification period of ten working days, as specified in paragraph 24(5), before arranging a secret ballot. The parties were also asked for their views on the form the ballot should take.

6. The parties were not in agreement on the type of ballot to be conducted. On 26 March 2015, in accordance with paragraph 25(4) of the Schedule, the Panel determined that the ballot should be a postal ballot. The parties were able to reach agreement as to access during the balloting period and the CAC was notified accordingly.

The Ballot

7. Popularis was appointed as QIP on 17 April 2015 to conduct the ballot and the parties were notified accordingly. The Employer provided a list of the names and addresses of workers in the bargaining unit to the CAC which was passed to the QIP. The postal ballot papers were dispatched on 6 May 2015 to be returned by no later than noon on 20 May 2015. At the Union's request and cost the QIP sent out information from the Union as provided for under paragraph 26(6).

8. During the ballot it came to light that the Employer had supplied inaccurate information in that the data supplied to the CAC was not up to date. The list included some workers who had ceased being employed by the Employer and included non-current addresses for some workers. The Case Manager pursued these issues with the Employer as they emerged. The Employer undertook a manual check and it took some time before all joiners and leavers were identified; a full list of the names and addresses of workers in the

bargaining unit was provided to the CAC the evening before the ballot was due to close.

9. The Panel had concerns about the problems being experienced through the failure of the Employer to provide complete and accurate information in a timely fashion. Given the significant number of changes to the original list the Panel decided to extend the ballot period until the 1st June to allow those workers in the bargaining unit who had not previously received a ballot paper the opportunity to vote.

10. A letter dated 22 May was received from the Union complaining about the actions of the Employer in the provision of inaccurate information to the CAC.

11. Having considered the extent to which, and the way in which, the Employer had complied with the duties under paragraph 26 of the Schedule the CAC on 26 May 2015 made an order on the Employer under paragraph 27(1) of the Schedule. This required the Employer to take immediate and ongoing steps to remedy the failure to provide complete and accurate information concerning the names and home addresses of workers constituting the bargaining unit and notification of those leaving and joining the bargaining unit. The Employer complied with the order undertaking manual checks and confirming, within the time frame set in the order, that a complete accurate list had been provided.

12. The QIP expressed concern over the data which had been provided to the CAC for the ballot, setting out the number and nature of changes which had been necessary to achieve a complete and accurate list. The Panel reviewed the whole ballot process in the context of the provisions in the Schedule on 1st June prior to receiving the results. We are satisfied that, despite earlier problems, everyone entitled to vote in the ballot did have the opportunity to do so and that steps were taken to remove any votes cast by those no longer in the bargaining unit. We are further satisfied that the ballot was conducted properly by the QIP.

13. The QIP reported to the CAC on 1 June 2015 that out of 597 workers eligible to vote, two hundred and forty one (241) ballot papers had been returned. Two (2) ballot papers were found to be spoilt. Two hundred and sixteen (216) workers, 90% of those voting, had voted to support the proposal that the Union be recognised for the purposes of collective bargaining with the Employer. Twenty three (23), that is 10% of those voting, voted to reject the proposal. The number of votes supporting the proposal as a percentage of workers in the bargaining unit was 36.18%.

14. The CAC informed the Employer and the Union on 3 June 2015 of the result of the ballot in accordance with paragraph 29(2) of the Schedule.

Declaration that the Union is not entitled to be recognised

15. The ballot establishes that the Union is supported by a majority of the workers voting but the Union has not secured support of at least 40% of the workers constituting the bargaining unit.

16. In accordance with paragraph 29(4) of the Schedule, the CAC declares that the Union is not recognised by the Employer as entitled to conduct collective bargaining on behalf of the bargaining unit.

Panel

Professor Linda Dickens MBE, Chair of the Panel

Mr Bob Hill

Ms. Gail Cartmail

5 June 2015