Case Number: TUR1/932/(2015)

9 September 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

International Procurement & Logistics Limited

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 4 August 2015 that it should be recognised for collective bargaining by International Procurement & Logistics Limited (the Employer) for a bargaining unit comprising "All hourly-paid workers at IPL Ltd, Normanton". The CAC gave both parties notice of receipt of the application on 7 August 2015. The Employer submitted a response to the CAC dated 13 August 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 Kenny Miller, Chairman of the Panel, and, as Members, Ms Virginia Branney and Mr Simon Faiers. The Case Manager appointed to support the Panel was Nigel Cookson.

Issues

3. 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

4. In its application the Union stated that it made its formal request for recognition to the Employer on 11 March 2015 and that the Employer replied saying that there was already a collective agreement in place. Copies of both the Union's letter requesting recognition and the Employer's reply were attached to the application. The Union went on to add that the agreement was not in place at the time of it writing to the Employer as it was not signed until 26 March 2015.

5. The Union provided the further information necessary to complete the application form and enclosed a copy of a petition in support of it being recognised. When asked whether it was aware of any existing agreement which covered any of the workers in the proposed bargaining unit, the Union said that it was aware of such an agreement between the Employer and the GMB which was signed 15 days after the date of the letter it had sent to the Employer under the terms of the Schedule. It believed that this was clearly done to keep Unite from gaining recognition and flew in the face of the purpose of the statutory recognition procedure. The Union noted that the agreement did not confer negotiation on pay, hours or holidays on the GMB and therefore was no recognition agreement at all. The Union believed that the fact that the presence of the GMB agreement may preclude the application had the effect of breaching the freedom of association element of the Human Rights Act 1998 ("the 1998 Act"). The Union included a copy of the agreement with its application which was headed

Partnership Agreement Between
IPL and GMB.

International Procurement & Logistics Limited ("IPL") recognised GMB as the sole recognised trade union for all hourly paid workers employed by IPL at IPL's Normanton site.

On page two of the two page document, under the heading "Scope of the Partnership, it stated:

> **"Bargaining Unit**
> **This Agreement applies in respect of all hourly-paid workers employed by IPL at IPL's Normanton site.**
>
> **Matters for Negotiation**
>
> **For workers who are covered by this Agreement, IPL shall negotiate with the GMB in relation to the following matters:**
>
> **Facilities for GMB union officials;**
> **Matters of discipline;**
> **Membership or non-membership of a trade union; and**
> **Machinery for negotiation or consultation, and other procedures, relating to the above matters."**

The Employer's response to the Union's application

6. In its response to the Union's application the Employer stated that it had received the Union's formal request for recognition on 12 March 2015 and it responded on 26 March 2015 to the effect that it did not intend to enter into negotiations with the Union since it already recognised the GMB in respect of the proposed bargaining unit. The Employer confirmed that the agreement had come into force on 26 March 2015 and it enclosed a copy of the agreement with its response. The Employer submitted that, by virtue of the agreement, the GMB was recognised to conduct collective bargaining on behalf of all the workers falling within the proposed bargaining unit. The Employer confirmed that the GMB was in possession of a certificate of independence.

Union's comments on the Employer's response

7. On 14 August 2015 the Employer's response was copied to Union and its comments invited. Despite being reminded, no comments at all were received from the Union.

Considerations

8. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 3 of this decision are satisfied. The Panel is satisfied that the Union made a valid request to the Employer within the terms specified in paragraphs 5 to 9 of the Schedule to recognise it for collective bargaining in respect of the bargaining unit as described in paragraph 1 of this decision in its letter of 11 March 2015 and that the application was made in accordance with paragraph 11 of the Schedule in that, before the expiry of the first period of 10 working days starting with the day after that on which the Employer received the request for recognition, the Employer did not accept the request without indicating a willingness to negotiate.

9. The Panel must now consider whether it is satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 42.

Paragraph 35

10. Paragraph 35(1) provides that an application to the CAC is not admissible if the CAC is satisfied that there is already in force a collective agreement under which a union is recognised as entitled to conduct collective bargaining on behalf of any workers falling within the bargaining unit proposed by the union. The Panel has been generous with the time given to the Union to submit its arguments as to why the application should not be rendered inadmissible under this provision however the Union has not put forward any submissions in addition to those set out in its application.

11. When asked on the application form if there was an existing agreement for recognition in force that covered workers in the proposed bargaining unit the Union readily admitted that there was but made three points: First, the agreement was made after the Union

had written to the Employer and made its formal request for recognition under the Schedule; second, the agreement did not extend to pay, hours and holidays and so it was not a recognition agreement at all and third, the fact that the presence of the agreement may preclude the application breached the freedom of association element of the 1998 Act. That there was an existing agreement in place was confirmed by the Employer in its response to the application. This is the extent to the Union's case and these points have not been expanded upon although ample time was provided for it to do so.

12. Dealing with the first point made by the Union, there is no provision in the Schedule that would prevent an employer entering into a recognition agreement with a union other than the applicant union following receipt of a formal request for recognition made under the Schedule. Indeed, there is no provision that would prevent such an occurrence at any time during the statutory process and a Panel would not be under a duty to specifically consider whether or not there was an existing agreement other than at the acceptance stage, when it considers the effects of paragraph 35 or, if the bargaining unit changes by agreement or determination, the effects of paragraph 44. Hence the making of a formal request for recognition does not stop the clock, nor indeed does the lodging of an application to the CAC. Clearly, if a Panel has issued a statutory declaration of recognition this should preclude an employer seeking to make an agreement with another union but the truth of the matter is that there is no provision within the Schedule that would prevent this. It must be remembered that the original purpose of the Schedule was as a mechanism to allow unions the opportunity, should the relevant tests be satisfied, to gain recognition in non-unionised workplaces. It was not designed to place a CAC Panel in a position where it was required to act as referee in territorial disputes between unions, which remains true to this day.

13. The second point made by the Union went to the matters that were covered by the Employer's agreement with the GMB in that it did not grant the GMB collective bargaining rights in respect of pay, hours and holidays, described in the Schedule as the "core topics". The effect of the absence of the "core topics" from a collective agreement is a matter that has been determined in ***R (on the application of Boots Management Services Ltd) and The Central Arbitration Committee and The Pharmacists' Defence Association Union [2014] EWHC 65 (Admin).*** In this case the CAC Panel that was appointed to determine the application found that an agreement made between Boots and Boots Pharmacists Association

(BPA) which was limited to facilities for union officials and machinery for consultation did not render the Pharmacists' Defence Association's application inadmissable because the agreement did not cover the "core topics" of pay, hours and holidays which, so the Panel found, should be the proper construction of the term "collective bargaining" in paragraph 35 of the Schedule. However, Boots sought a judical review of the CAC's decision and the High Court, finding in its favour, said that the CAC could not simply add wording to the Schedule but should have given effect to the law as it currently stands. In his judgment Keith J confirmed that the definition of the phrase "collective agreement" in s.178 of the Act applied to paragraph 35(1) of the Schedule. S.178 provides:

> **"(1) In this Act 'collective agreement' means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers' associations and relating to one or more of the matters specified below; and 'collective bargaining' means negotiations relating to or connected with one or more of those matters.**
>
> **(2) The matters referred to above are—**
> **(a) terms and conditions of employment, or the physical conditions in which any workers are required to work;**
> **(b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;**
> **(c) allocation of work or the duties of employment between workers or groups of workers;**
> **(d) matters of discipline;**
> **(e) a worker's membership or non-membership of a trade union;**
> **(f) facilities for officials of trade unions; and**
> **(g) machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures.**
>
> **…"**

14. In the case before us the Employer recognises the GMB in respect of:

- **Matters of discipline (para (d))**
- **Membership or non-membership of a trade union (para e)); and**
- **Machinery for negotiation or consultation, and other procedures, relating to the above matters (para (g)).**

Which clearly satisfies the "one or more of the matters specified below" requirement in s.178(1) and so the agreement between the Employer and the GMB falls into the definition of a collective agreement under s.178(2).

15. The third limb of the Union's grounds as to why the application should not be found wanting is its claim that the fact that the Employer's agreement with the GMB renders the Union's application as not admissible breached the freedom of association element of the 1998 Act.

16. However, the fact of the matter is that the CAC is unable to issue a declaration of incompatibility between Art. 11 of the Convention and paragraph 35 of the Schedule even should it be of the view that the agreement with the GMB is not a collective agreement in that it did not confer on the GMB the right to bargain for pay, hours and holidays. Such a declaration of incompatibility would need to be sought in a court as set out in and defined by section 4 of the 1998 Act. As it stands the CAC must give effect to paragraph 35 in accordance with its terms as currently expressed and in this case paragraph 35 prevents this application from going any further. The Panel makes no decision as to the remaining statutory admissibility tests set out in paragraphs 33 to 34 and 36 to 42 of the Schedule since it is not necessary for us to do so.

Decision

17. For the reasons given above, the CAC is satisfied that there is already in force a collective agreement under which a union is recognised as entitled to conduct collective bargaining on behalf of any workers falling within the proposed bargaining unit.

18. The decision of the Panel is that paragraph 35 renders the application not admissible and the application is therefore not accepted by the CAC.

Panel

Professor Kenny Miller, Chairman of the Panel

Ms Virginia Branney

Mr Simon Faiers

9 September 2015