Case Number: TUR1/984/2016
30 November 2016

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:

RMT

and

DCC UK Ltd

Introduction

1. RMT (the Union) submitted an application dated 22 November 2016 to the CAC that it should be recognised for collective bargaining purposes by DCC UK Ltd (the Employer) for a bargaining unit comprising "Full time Passenger Hosts and Technicians employed on the Emirates Cable Car with guaranteed contractual hours". The location of the bargaining unit was given as "Emirates Cable Car, River Thames, London". The application was received by the CAC on 23 November 2016 and the CAC gave both parties notice of receipt of the application on 24 November 2016. The Employer submitted a response to the CAC dated 25 November 2016 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, Panel Chair, and, as Members, Mr Bryan Taker and Mr David Coats. The Case Manager appointed to support the Panel was Linda Lehan.

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 of the Schedule; and therefore to be accepted.

Summary of the Union's application

4. In its application to the CAC the Union stated that it had sent its request to the Employer on 10 November 2016. A copy of this letter was attached to the Union's application. The Union stated that it had received a response from the Employer on 17 November 2016 stating that it declined the Union's request.

5. When asked whether the Union had made a previous application under the Schedule for statutory recognition for workers in the proposed bargaining unit or a similar unit the Union answered "yes" explaining that an application had been made to the CAC dated 22 September 2016 which it withdrew before a decision on acceptance was made. The Union stated that, following receipt of the request for recognition, the Employer had not proposed that Acas should be requested to assist the parties.

6. The Union stated that the total number of workers employed by the Employer was 2546. The Union stated that there were 14 workers in the proposed bargaining unit, 9 of whom were union members. When called upon 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 the majority of workers in the bargaining unit were members of the RMT and had joined for collective bargaining purposes and they could supply membership details confidentially to the CAC when required.

7. The Union said that the reason for selecting the proposed bargaining unit was that this was a coherent group of workers and it was logical to collectively bargain for those grades of workers together. The Union said that the bargaining unit had not 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.

8. 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 22 November 2016.

Summary of the Employer's response to the Union' application

9. In its response to the Union's application the Employer stated that it had received the Union's written request for recognition on 10 November 2016 and that it had declined that request. The Employer enclosed a copy of that letter.

10. The Employer stated that it had received a copy of the application form from the Union on 22 November 2016.

11. The Employer stated that it had not, before receiving a copy of the application form from the Union, agreed the bargaining unit with the Union and that it did not agree it. The Employer stated that staff on site were being pressurised into joining the union, possibly being misinformed by fellow colleagues.

12. The Employer stated that, following receipt of the Union's request, it had not proposed that Acas should be requested to assist although ACAS would be contacted by DCC UK.

13. The Employer stated that it employed a total of 20 workers which would reduce to 19 as of 17 December 2016. Asked whether it agreed with the number of workers in the proposed bargaining unit as defined in the Union's application the Employer stated "no" and said that the actually figure was 13 and would become 12 as of 17 December 2016. The Employer confirmed

that there was no existing agreement for recognition in force covering workers in that bargaining unit.

14. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer said that the staffing number would be reduced by 1 as of 17 December 2016 and that the union's membership figure may be incorrect due to a staff member leaving the company as of 17 December 2016.

15. When asked if 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 that unit the Employer stated that the RMT had applied to the CAC on 22 September 2016 and withdrew the application on 12 October 2016.

Considerations

16. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 3 above are satisfied.

17. The Panel is satisfied that the Union made a valid request to the Employer within the terms of paragraph 5 to 9 of the Schedule. The next matter for the Panel to consider is whether the application was made in accordance with paragraph 11 or 12.

18. Paragraph 11 reads as follows:

> 11. (1) This paragraph applies if-
>
> (a) before the end of the first period the employer fails to respond to the request, or
>
> (b) before the end of the first period the employer informs the union (or unions) that the employer does not accept the request (without indicating a willingness to negotiate).
>
> (2) The union (or unions) may apply to the CAC to decide both these questions-

(a) whether the proposed bargaining unit is appropriate;

(b) whether the union has (or unions have) the support of a majority of the workers constituting the appropriate bargaining unit.

The "first period" is defined in paragraph 10(6) of the Schedule as "the period of 10 working days starting with the day after that on which the employer receives the request for recognition". Paragraph 172(2) of the Schedule states that in its application to a part of Great Britain a "working day" is a day other than (a) a Saturday or a Sunday, (b) Christmas day or Good Friday, or (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in that part of Great Britain.

19. In this case, the Employer received the Union's request for recognition on 10 November 2016, a Thursday. The "first period" therefore started on 11 November 2016 and expired at the end of 24 November 2016. The Employer informed the Union that it did not accept the request for recognition without indicating a willingness to negotiate by way of a letter dated 17 November 2016, received by the union the same day. The Employer therefore informed the Union that it did not accept the request within the "first period", the situation set out in paragraph 11(1)(b).

20. The Union's application to the CAC was dated 22 November 2016 and received by the CAC on 23 November 2016, before the expiry of the "first period". The issue for the Panel to consider is whether the application was made in accordance with paragraph 11 of the Schedule.

21. The Panel notes that the term "before the end of the first period" is used in both paragraph 11(1)(a) and paragraph 11(1)(b) of the Schedule. In paragraph 11(1)(a) it seems clear that the end of the first period is intended to set a cut-off point in relation to a failure on the part of an employer to respond to a union's request for recognition and that a union would be able to apply to the CAC only when the full period had expired. The Panel considers that the use of the terminology "before the end of the first period" in paragraph 11(1)(b) suggests that paragraph 11(1)(b) should be interpreted consistently with paragraph 11(1)(a) and that it, too, requires the full period to have expired before an application can be made to the CAC. In this case the "first

period" had not expired and in the view of the Panel the application was not made in accordance with paragraph 11.

22. The Panel is aware that a different CAC panel has treated an employer's letter rejecting a union's request as bringing the first period to a premature end.[1] The Panel appreciates that the interpretation of paragraph 11 is, therefore, a matter of debate but considers the approach it has adopted in paragraph 21 above to be preferable. The Panel also notes that the impact of its decision can be quickly and easily remedied in that the Union is free to make a fresh application to the CAC in reliance on its original request given that the "first period" has now expired.

Decision

23. For the reasons given above the application is not accepted by the CAC.

Panel

Professor Gillian Morris, Panel Chair
Mr Bryan Taker
Mr David Coats

30 November 2016

[1] *Unite the Union and Besana UK Ltd* TURI/ 949 (2016), decision of 12 February 2016.