

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECISION ON WHETHER THE APPLICATION IS VALID FOLLOWING
DETERMINATION OF THE BARGAINING UNIT

The Parties:

Unite the Union

and

Bombardier Transportation UK Ltd

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 12 April that it should be recognised for collective bargaining by Bombardier Transportation UK Ltd (the Employer) for a bargaining unit comprising “Management grades known as SPMs and SDMs¹” and the location for which was “Bombardier Transportation Ltd Central Rivers Depot, Barton-under-Needwood, Burton-on-Trent”. The CAC gave both parties notice of receipt of the application on 13 April 2016. The Employer submitted a response to the application dated 20 April 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 Linda Dickens MBE, as chair of the Panel, and, as Members, Mr Paul Gates OBE and Mr Mike Regan. The Case Manager

¹ Which refers to Shift Production Managers and Service Delivery Managers.

appointed to support the Panel was Miss Sharmin Khan and, for the purpose of this decision, Linda Lehan.

3. By a decision dated 20 May 2016 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. No agreement was reached on the appropriate bargaining unit and a hearing to determine the issue was held in Birmingham on 27 June 2016. The Panel decided that the appropriate bargaining unit was "Management grades known as SPMs and SDMs, Outstation Manager, Train Presentation Manager and Modifications Manager based at the Central Rivers Depot". For the sake of clarity this bargaining unit excludes the roles of Service Support Manager and Depot Operations Manager.

4. As the determined bargaining unit differed from that proposed by the Union, the Panel is required by paragraph 20 of the Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 (the Schedule) to determine whether the Union's application is valid or invalid within the terms of paragraphs 43 to 50 of the Schedule.

Issues

5. Paragraph 20 of the Schedule states that where an application has, as in the present case, been accepted under paragraph 11 and the CAC has determined an appropriate bargaining unit that differs from the proposed bargaining unit then the CAC must, within the decision period, decide whether the application is invalid within the terms of paragraphs 43 to 50 of the Schedule. The tests that the Panel must consider under these paragraphs are:-

- is there an existing recognition agreement covering any of the workers within the new bargaining unit? (*paragraph 44*)
- is there 10% union membership within the new bargaining unit? (*paragraph 45(a)*)

- are the majority of the workers in the new bargaining unit likely to favour recognition? (*paragraph 45(b)*)
- is there a competing application, from another union, where their proposed bargaining unit covers any workers in the new bargaining unit? (*paragraph 46*)
- has there been a previous application in respect of the new bargaining unit? (*paragraphs 47 to 49*)

6. In letters dated 14 July 2016 both parties were asked for their views as to whether the application remained valid following the determination of the bargaining unit.

Views of the Employer

7. In an email dated 19 July 2016 the Employer confirmed that there was no existing agreement covering any of the workers in the new bargaining unit, there was no competing application from another union covering any of the workers in the new bargaining unit nor had there been a previous application in respect of the workers in the new bargaining unit..

8. As to whether 10% of the new bargaining unit were members of the Union the Employer said that it believed that to be correct based on the figures previously submitted by the Union.

9. Turning to the question as to whether the majority of workers in the new bargaining unit would be likely to favour recognition the Employer stated that it was unable to confirm that.

Views of the Union

10. In an email dated 20 July 2016 the Union confirmed that there was no other agreement covering the workers identified in the new bargaining unit nor was it aware of a competing application from another Union for that group of workers.

11. As to whether 10% of the new bargaining unit were members of the Union the Union stated that in respect of the membership information previously sent it had checked their records and the levels remained the same for paying members. The Union stated that one of their 'blue collar' representatives had accepted a vacant post of DSM increasing their membership to 8 in the new bargaining unit.

12. In response to whether there had been a previous application in respect of the new bargaining unit the Union stated that no previous application for that group of workers had been made by them other than the existing application where the original bargaining unit proposed by them had been increased by the Panel to include a further 3 management roles.

13. To assist the determination of the two admissibility tests under paragraph 45 (a) and 45 (b) of Schedule A1, namely whether 10% of the workers in the new bargaining unit are members of the Union and whether a majority of the workers in this bargaining unit are likely to favour recognition of the Union, the Panel instructed that the Case Manager carry out checks on the level of union membership within the determined bargaining unit and the number of workers who had indicated support for recognition of the Union for the purposes of collective bargaining.

14. The parties agreed that the Employer would supply, to the Case Manager, a list of the names of workers within the determined bargaining unit and that the Union would supply, to the Case Manager, a list of its union members within that unit and a copy of its petition to enable a comparison to be undertaken. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party and that agreement was confirmed in a letter from the Case Manager to both parties dated 21 July 2016. The Union provided a list of Union members in the determined bargaining unit, and confirmed by e-mail to the CAC that it would not be submitting a petition. The information from both parties was received by the CAC on 21 July 2016.

15. The Union provided a list of 8 union members in the determined bargaining unit and the Employer provided a list of 13 workers.

16. The result of the membership and support check showed that 7 of the 13 workers in the bargaining unit were members of the Union, giving a membership level of 54%. The Panel is satisfied that the check was undertaken appropriately.

17. The report of the result from the membership and support check was circulated to the Panel and the parties on 27 July 2016. Both parties were then invited to comment on the check and the further tests.

Union's comments on membership /support check

18. The Union in an email dated 27 July 2016 stated that the current membership recorded was 54% of the new bargaining unit and it truly believed that one of their reps had accepted and was about to fill a vacant SDM role which would lift their membership levels to 61.5% .

19. The Union stated that the level of membership had not been achieved by any direct recruitment activity which would be possible if they were recognised for collective bargaining and it was felt therefore that relatively small numbers of further recruitment could achieve a high membership density in the bargaining unit.

20. Finally the Union said that it would like to re-iterate that those members had remained as paying membership throughout the process indicating their strong desire to achieve recognition of the union.

Employer's comments on membership/report check

21. No comments were received from the Employer.

Considerations

22. The Panel is satisfied on the evidence available that the application is valid in terms of the tests laid down in paragraphs 44 and 46 to 49 of the Schedule, namely that there is no existing recognition agreement in force, that there is no competing application and that there has been no previous CAC application in respect of the new bargaining unit. The remaining tests before the Panel are whether, in accordance with paragraphs 45(a) and (b) of the Schedule, 10% of the workers constituting the new bargaining unit are members of the union and whether a majority of the workers constituting the new bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit.

Paragraph 45(a)

23. The membership and support check established that there was a membership level of 54% and this was not challenged by the Employer at any point. The Panel is therefore satisfied that the test set out in paragraph 45(a) of the Schedule is met and that at least 10% of the workers constituting the new bargaining unit are members of the Union.

Paragraph 45(b)

24. Under paragraph 45(b) of the Schedule, an application is invalid unless the Panel decides that a majority of the workers constituting the agreed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit.

25. As stated in paragraph 23 above the result of the membership check showed a membership level of 54% which was not challenged by the Employer at any point. In the absence of any evidence to the contrary, the Panel regards union membership as indicative of support for recognition and is therefore satisfied that the majority of workers constituting the relevant bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit and

that the test set out in paragraph 45(b) of the Schedule is met.

Decision

26. The decision of the Panel is that the application is valid for the purposes of paragraph 20 of the Schedule and the CAC will therefore proceed with the application.

Panel

Professor Linda Dickens MBE, Chair of the Panel

Mr Paul Gates OBE

Mr Mike Regan

05 August 2016