

04 June 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:

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 recognised 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, as 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. The CAC Panel has extended the acceptance period in this case on one occasion. The initial period expired on 12 May 2015. The acceptance period was extended to 5 June 2015 to allow time for a membership check to take place and to provide more time for the Panel to consider all the evidence.

Issues

4. 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.

Summary of the Union's application

5. In its application to the CAC the Union stated that it had sent its request for recognition to the Employer on 8 April 2015. The Union stated that the Employer had responded by saying that it did not wish to pursue a recognition agreement. Copies of both these letters were attached to the Union's application. In its response to the request, dated 14 April 2015, the Employer stated that it had considered the subject of Trade Union recognition on a number of occasions in the past but had previously decided not to proceed in this direction. The Employer stated that it believed that the majority of its workforce did not have an interest in being represented in negotiations by a trade union at the present time and that it had appropriate Human Resource & Employment Law Policies in place. The Employer stated that it also had in place a Communication Forum for employees to raise issues as well as find solutions and that through this its employees had demonstrated their trust and confidence in the Employer.

6. The Union stated that there were 110 workers employed by the Employer, of whom 32 were in the proposed bargaining unit. The Union stated that there were 20 members of the Union within the proposed bargaining unit. When asked to provide

evidence that a majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that it could provide evidence of its membership to the CAC if required on a confidential basis.

7. The Union stated that the reason for selecting the proposed bargaining unit was that it was a cohesive group of workers who carried out specific duties in crewing boats carrying passengers on the River Thames in London. Their duties and terms and conditions were completely different to all other members of staff. The Union stated 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. 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 21 April 2015.

Summary of the Employer's response

8. In its response to the Union's application to the CAC the Employer stated that it had received the Union's written request under the Schedule on 8 April 2015 and attached a copy of its response to that request dated 14 April 2015, summarized in paragraph 5 above. The Employer stated that it had received a copy of the application form and supporting documents from the Union on 27 April 2015 (due to an office move).

9. The Employer stated that no agreement had been reached on the proposed bargaining unit before a copy of the Union's application form had been received and that it did not now agree the proposed bargaining unit. The Employer stated that its goal was to promote a culture that encouraged teamwork and collaboration between different departments and that treating a unit differently would not only be contrary to its vision but could be perceived as unfair by other units within the Company. The Employer stated that the proposed bargaining unit had had a pay increase for the last three years and that it had introduced a graded pay structure that incited (sic) opportunity for progression. The Employer stated that over the last few years it had become apparent that the working

relationship between different units had gone from strength to strength. In addition to the Employee Communication Forum the Employer had also introduced a Captain's (sic) Forum which was a platform where Captains and Mates had been able to put forward credible ideas that were shaping the way in which the Employer operated.

10. In answer to the question whether it had proposed that Acas be requested to assist following receipt of the Union's request, the Employer stated that Acas had been contacted for general answers and information.

11. The Employer stated that it employed a total of 180 workers. It did not agree with the number of workers in the Union's proposed bargaining unit as defined in the Union's application and stated that there were 49 workers in the proposed bargaining unit.

12. The Employer stated that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

13. In answer to the question as to whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer stated that it required substantial evidence to support this.

14. When asked for its reasons if it did not consider that a majority of the workers in the proposed bargaining unit would be likely to support recognition the Employer stated that the feedback following the forums had always been positive and issues had always been resolved in a timely manner.

15. The Employer placed a dash under the questions as to whether it was aware of any previous application under the Schedule by the Union in respect of the proposed bargaining unit or a similar bargaining unit and whether it had received any other applications under the Schedule in respect of any workers in the proposed bargaining unit.

Confirmation of numbers in the Union's proposed bargaining unit

16. The Panel noted the discrepancy between the number of workers the Union stated in its application were in its proposed bargaining unit (32) and the number the Employer stated were in that unit (49) in its response to the application. At the request of the Panel the Case Manager raised this issue with the Employer. In an e-mail dated 8 May 2015 the Employer confirmed that the figure of 49 was an up-to-date figure of all the workers in the proposed bargaining unit and did not include any type of worker other than those specified in the Union's description of the proposed bargaining unit. This e-mail was copied to the Union on 12 May 2015.

Membership and Support Check

17. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the proposed bargaining unit are members of the union (paragraph 36(1)(a)) and whether a majority of the workers in the proposed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit (paragraph 36(1)(b)), the Panel proposed an independent check of the level of Union membership within the proposed bargaining unit. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, addresses, job titles, and dates of birth of the workers within the proposed bargaining unit, and that the Union would supply to the Case Manager a list of the names, addresses and dates of birth of its paid up members within that unit. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party. These arrangements were confirmed in a letter dated 14 May 2015 from the Case Manager to both parties. The information from the Employer was received by the CAC on 15 May 2015 and from the Union on 18 May 2015. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

18. With its list, the Union submitted an e-mail to the Case Manager confirming that workers on zero-hours contracts were included in the proposed bargaining unit. The Union also stated that its members were concerned that the Employer may have included some managers in the bargaining unit list that it had provided for the check. The Union named in its e-mail three workers who it understood to be managers who were qualified to do captain's duties but were not employed as captains and so were not included in the proposed bargaining unit. These names were checked by the Case Manager on the same confidential basis. Of the three names provided the Union, only one appeared on the list provided by the Employer (the Senior Charter Captain) and this individual was excluded from the list for the purposes of the membership check by the Case Manager.

19. The list supplied by the Employer showed that there were 49¹ workers in the Union's proposed bargaining unit. The list of members supplied by the Union contained 26 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 25, a membership level of 51%.

20. A report of the result of the membership check was circulated to the Panel and the parties on 20 May 2015 and the parties were invited to comment on the result.

Summary of the parties' comments on the membership and support check

21. In an e-mail to the CAC dated 22 May 2015 the Union stated that the percentage membership density in the bargaining unit demonstrated that the majority of workers were likely to support Union recognition.

22. In its letter to the CAC dated 27 May 2015, the Employer noted with concern that a worker on its list, the Senior Charter Captain, had been excluded from the membership check at the request of the Union without the Employer's submissions on this exclusion having been invited. The Employer also expressed concern as to how the Union came to be aware of the content of the employee inventory provided by the Employer to the CAC when this information had been supplied on a confidential basis with an assurance that it

¹ This was the total figure excluding the worker named by the Union in its e-mail to the Case Manager as a worker who was not included in the proposed bargaining unit: see paragraph 18 above.

would be used only by the Case Manager. The Employer further stated that it had reviewed the workers comprising the proposed bargaining unit and that one of these had now left the Employer and that some others had been excluded by mistake. The Employer stated that the total number of workers in the proposed bargaining unit was now 56 and that an updated list could be provided to the CAC on a confidential basis. Finally the Employer stated that, in accordance with its previous submissions on this matter, feedback received from its Communication Forum, and liaison with a random selection of eight Captains and Mates that day, it believed that a majority of workers in the proposed bargaining unit would not be likely to favour recognition of the Union for collective bargaining purposes.

Considerations

23. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 4 above are satisfied. The Panel has considered carefully the submissions of both parties and all the evidence in reaching its decision.

24. The Panel is satisfied that the Union made a valid request to the Employer within the terms of paragraphs 5 to 9 of the Schedule and that its application was made in accordance with paragraph 11. Furthermore, the Panel is satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and paragraphs 37 to 42 of the Schedule. The remaining issues for the Panel to decide are whether the admissibility criteria contained in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

Paragraph 36(1)(a)

25. Under paragraph 36(1)(a) of the Schedule an application is not admissible unless the Panel decides that members of the union constitute at least 10% of the workers in the proposed bargaining unit. The membership check conducted by the Case Manager (described in paragraphs 17-19 above) showed that 51% of the workers in the proposed bargaining unit were members of the Union. As stated in paragraph 17 above, the Panel is

satisfied that this check was conducted properly and impartially and in accordance with the arrangements agreed with the parties. The Panel has therefore decided that members of the union constitute at least 10% of the workers in the proposed bargaining unit as required by paragraph 36(1)(a) of the Schedule.

26. The Panel notes the Employer's comment, set out in its letter of 27 May 2015, that the confidentiality arrangements agreed with the parties for the conduct of the membership check may have been breached given that the Union had expressed concern that the Employer may have included some managers in the list provided for the check and had named three individuals the Union wished to be excluded from the check (see paragraphs 18 and 22 above). The Panel appreciates why the Employer has raised this question. However, the Panel is satisfied that the Union expressed its concerns about the Employer's list purely on the basis of speculation and without having had sight of that list. The Panel also notes the Employer's concern that the Senior Charter Captain had been excluded from the membership check without the Employer's own submissions having been invited on this exclusion. The Panel reminds the parties that it is for the Union to define its proposed bargaining unit but also notes that, even if the Senior Charter Captain were not to have been excluded, there would still have been a membership level of 50% within the proposed bargaining unit.

Paragraph 36(1)(b)

27. Under paragraph 36(1)(b) of the Schedule, an application is not admissible unless the Panel decides that a majority of the workers constituting the proposed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit. For the reasons given in paragraph 25 above the level of union membership shown by the membership check is 51% (50% if the Senior Charter Captain is not excluded). The Panel considers that, in the absence of evidence to the contrary, union membership provides a legitimate indicator of the views of the workers in the proposed bargaining unit as to whether they would be likely to favour recognition of the Union. No such evidence to the contrary was received in this

case. It is the experience of the Panel that there will also be some workers who have not joined the Union but who are likely to favour recognition of the Union. The Panel notes that the Employer considers that it has a strong Employee Communication Forum and has introduced a forum where captains and mates can put forward credible ideas but does not consider that these arrangements, of themselves, are inconsistent with support by workers for recognition of the Union for collective bargaining purposes.

28. The Panel notes the statement by the Employer in its letter of 27 May 2015 that the total number of workers in the proposed bargaining unit has increased to 56 since the membership check was conducted, one worker having left the Employer and others having been excluded by the Employer by mistake. However the Panel reminds the parties that the role of the membership check is to assist the Panel to decide whether an application should be accepted. The Schedule prescribes a tight timescale for this process which does not envisage the figures being revisited on a rolling basis.

29. On the basis of the evidence before it, the Panel has decided that, on the balance of probabilities, a majority of workers in the proposed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit, as required by paragraph 36(1)(b) of the Schedule.

Decision

30. For the reasons given in paragraphs 24-29 above, the Panel's decision is that the application is accepted by the CAC.

Panel

Professor Gillian Morris - CAC Deputy Chairman

Mr Mike Cann

Ms Bronwyn McKenna

04 June 2015