Cases Number: TUR1/918(2015)

8 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:**

Independent Workers' Union of Great Britain (IWGB)

and

Ocean Integrated Services Ltd

**Introduction**

1. The Independent Workers' Union of Great Britain (the Union) submitted an application to the CAC dated 20 May 2015 that it should be recognised for collective bargaining by Ocean Integrated Services Ltd for a bargaining unit comprising "All employees of Ocean Integrated Services Ltd. at the Royal College of Music site". The CAC gave both parties notice of receipt of the application on 21 May 2015. The Employer submitted a response to the CAC on 28 May 2015 which was duly 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 cases. The Panel consisted of Her Honour Judge Stacey, Deputy Chairman of the CAC, and, as members, Ms Lesley Mercer and Mr Roger Roberts. 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 applications to the CAC are valid within the terms of paragraphs

5 to 9; are made in accordance with paragraphs 11 or 12; are admissible within the terms of paragraphs 33 to 42; and therefore should be accepted. In the event, the Panel has considered first the question of whether paragraph 35 is applicable and so renders the applications inadmissible.

**The Union's applications**

4. In its application the Union stated that it had made a formal request for recognition on 5 May 2015 and the Employer responded on 14 May 2015 refusing the request on the grounds that it already recognised UNISON. The Employer also stated that any application to the CAC would be rendered inadmissible due to paragraph 35 of the Schedule.

5. The application went on to set out the proposed bargaining unit, how many workers were employed in total by the Employer, how many of these were employed at the site in question and how many were members of the Union. The Union detailed its reasoning for selecting its proposed bargaining unit explaining that this was the level at which major decisions affecting workers (e.g. wages, terms and conditions) were taken.

6. Further on, in answer to question 17 on each of the four applications, which asked "Is there any existing recognition agreement which you are aware of, which covers any workers in the bargaining unit?" the Union responded thus:

> **"Yes. Ocean Integrated Services Ltd. voluntarily recognises UNISON – an independent trade union – for the purpose of collective bargaining. The bargaining unit covers all Ocean cleaning staff working in the higher education sector in Greater London. The agreement came into effect on 5 March 2014. The document is attached"**

**Employer' response to the application**

7. In its response to the Union's application dated 28 May 2015 the Employer confirmed that the workers in the proposed bargaining unit were covered by an existing agreement for recognition made between the Employer and UNISON. This agreement was made and came into effect on 5 March 2015. The Employer provided the CAC with a copy of the agreement.

**Paragraph 35**

8. In accordance with paragraph 35, an application to the CAC made under paragraph 11 or 12, 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 only exceptions to this rule are found in paragraph 35(2), which allows for the union that is already recognised by an employer for matters other than pay, hours or holidays to make an application for recogntion in respect of these matters, and paragraph 35(4) which sets out the circumstances in which the CAC can ignore an agreement that involves a non-independent union. Neither of these exceptions are applicable in this case.

**Union's comments on the Employer's response**

9. On 1 June 2015 the Panel directed that the Union be invited to comment, both in general and specifically on the Employer's answers to question 9 of the response form – as to whether there is an existing agreement for recognition in force covering workers in the proposed bargaining unit. The Case Manager's letter drew the Union's attention to paragraph 35, which was set out in full in the body of the letter, and the Union was asked to consider the provisions therein in formulating its comments.

10. In an email received later on the same date the Union commented thus:

> **We are requesting trade union recognition for the IWGB, an independent union in possession of a certificate of independence. We are the most-representative union at the four Ocean contracts where we have requested recognition (Heythrop College, London School of Hygiene and Tropical Medicine, Royal College of Art, and Royal College of Music).**
>
> **We do not dispute that there is already a recognition agreement in place between Ocean and UNISON, which covers the same bargaining units. We do not dispute that this recognition agreement covers collective bargaining on a range of topics including pay, hours, and holiday. We do not dispute that UNISON has a certificate of independence.**

## Considerations

11. The Union has acknowledged that there is an existing recognition agreement with an independent trade union with a certificate of independence covering the proposed bargaining unit and that paragraph 35 is engaged. The Union asserts that it considers itself to be more representative than the union recognised by the Employer. However the Union's observation, even if correct, is not germane to paragraph 35 and the facts in this case. As noted in the judgment of Hodge J in ***R (National Union of Journalists) v Central Arbitration Committee*** **[2004] EWHC 2612 (Admin)**:

> **"… there is nothing in Schedule A1 of the 1992 Act that allows the CAC to require the employer to enter into another recognition agreement with a union that does have majority support."**

12. There are no grounds upon which the CAC can interfere in the agreement between the Employer and UNISON and for this reason the Union's application fails.

## Decision

13. The Panel is satisfied that, for the purposes of paragraph 35 of the Schedule, there is in force a collective agreement under which a union, in this case UNISON, is recognised as entitled to conduct collective bargaining on behalf of workers falling within the Union's proposed bargaining unit. Accordingly, by virtue of paragraph 35, the Union's application to the CAC is not admissible.

## Panel

Her Honour Judge Stacey, Chairman of the Panel
Ms Lesley Mercer
Mr Roger Roberts

8 June 2015