

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
METHOD OF COLLECTIVE BARGAINING

The Parties:

GMB
and
Tempay Ltd

Introduction

1. GMB (the Union) submitted an application to the CAC dated 11 September 2014 that it should be recognised for collective bargaining by Tempay Ltd (the Employer) for a bargaining unit comprising “Hourly paid employees on permanent contracts of at least seven hour per week, at Marks and Spencer’s Distribution Depot, Stirling Road, South Marston Industrial Estate, Swindon, Wiltshire, SN3 4TT”. The CAC gave the parties notice of receipt of the application on 15 September 2014. The Employer submitted a response to the application on 17 September 2014.

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 Paul Davies QC FBA, Chairman of the Panel, who was subsequently replaced by Professor Linda Dickens and, as Members, Mr Roger Roberts who, for the purpose of this decision, was replaced by George Getlevog and Mr Paul Talbot. The case manager appointed to support the Panel was Adam Goldstein and subsequently replaced by Linda Lehan.

3. By a decision dated 23 October 2014 the Panel accepted the Union's application. On 13 November 2014 the parties confirmed that they had reached agreement that the appropriate bargaining unit was that which was proposed by the Union and, also, that a revised wording would be used to describe that bargaining unit being: "Hourly paid employees on permanent contracts of employment with Tempay Limited that provide for least seven hour per week, and who are presently on assignment at Marks and Spencer's Distribution Depot, Stirling Road, South Marston Industrial Estate, Swindon, Wiltshire, SN3 4TT." A declaration that the Union be recognised following a ballot was issued on 16 February 2015.

4. The Union in an e-mail dated 13 May wrote to inform the Panel that the parties had been unable to reach agreement on a method of bargaining and requested that the CAC intervene as provided by the Schedule. The CAC consequently wrote to both parties by letter dated 28 May 2015 explaining that if applied to for assistance the CAC had a period of 20 working days (or longer as the CAC may decide with the consent of the parties) to try to help the parties reach agreement on the method.

5. The parties communicated further but in an e-mail from the Union dated 17 June 2015 and an e-mail from the Employer dated 16 June 2015 both parties agreed that they had reached deadlock. The Employer wished to include a particular dispute resolution procedure which the Union would not accept. The Union and the Employer both agreed that the way forward was to have the method specified in the Trade Union Recognition (Method of Collective Bargaining) Order 2000 imposed by the CAC and requested this.

Issues

6. As no agreement on a method of collective bargaining has been reached by the parties within either the 30 day negotiation period or the 20 day agreement period, under paragraph 31(3), the CAC Panel must now specify to the parties the method by which they are to conduct collective bargaining.

Considerations

7. As both parties agreed that the specified method set out in the Statutory Instrument should be imposed the only changes that have been made by the CAC are minor and reflect the particular case and are detailed below.

Paragraph 1 of the Specified Method

8. The parties are identified in paragraph 1 of the specified method and the second sentence has been deleted as it was not applicable given the circumstances of this case.

Paragraph 2 of the Specified Method

9. The description of the bargaining unit has been added in the appropriate place.

Implications of the Specified Method

10. The bargaining method imposed by the CAC has effect as if it were a legally binding contract between the Employer and the Union. If one party believes the other is failing to respect the method after the procedure set out in paragraph 20 has been exhausted, the first party may apply to the court for an order of specific performance, ordering the other party to comply with the method. Failure to comply with such an order could constitute contempt of court.

11. The parties can vary the model method, including the fact that it is legally binding, by agreement provided that they do so in writing.

12. The fact that the CAC has imposed a method does not affect the rights of individual workers under either statute or their contracts of employment. For example, it does not prevent or limit the rights of individual workers to discuss, negotiate or agree with their employer terms of their contract of employment, which differ from the terms of any collective agreement into which the Employer and the Union may enter as a result of collective bargaining conducted by this method. Nor does the imposed method affect an individual's statutory entitlement to time off for trade union activities or duties.

13. The CAC having imposed a bargaining method on the parties, the Employer is separately obliged, in accordance with Section 70B of the Trade Union and Labour Relations (Consolidation) Act 1992 (as inserted by section 5 of the Employment Relations Act 1999), to consult union representatives periodically on the policy, actions and plans on training.

Decision

14. The decision of the Panel is that the method detailed in the document attached (appendix A) is specified as the method by which the parties are to conduct collective bargaining.

Panel

Professor Linda Dickens MBE, Panel chair

Mr George Getlevog

Mr Paul Talbot

22 June 2015

Appendix A

THE SPECIFIED METHOD

The Parties

1. The method shall apply to Tempay Ltd and GMB, who are referred to here respectively as the "employer" and the "union".

The Purpose

2. The purpose is to specify a method by which the employer and the union conduct collective bargaining concerning the pay, hours and holidays of the workers comprising the bargaining unit. i.e. Hourly paid employees on permanent contracts of employment with Tempay Limited that provide for least seven hour per week, and who are presently on assignment at Marks and Spencer's Distribution Depot, Stirling Road, South Marston Industrial Estate, Swindon, Wiltshire, SN3 4TT.

3. The employer shall not grant the right to negotiate pay, hours and holidays to any other union in respect of the workers covered by this method.

The Joint Negotiating Body

4. The employer and the union shall establish a Joint Negotiating Body (JNB) to discuss and negotiate the pay, hours and holidays of the workers comprising the bargaining unit. No other body or group shall undertake collective bargaining on the pay, hours and holidays of these workers, unless the employer and the union so agree.

JNB Membership

5. The membership of the JNB shall usually comprise three employer representatives (who together shall constitute the Employer Side of the JNB) and three union representatives (who together shall constitute the Union Side of the JNB). Each union recognised by the employer in respect of the bargaining unit shall be entitled to one seat at least. To meet this requirement, the Union Side may need to be larger than three and in this eventuality the employer shall be entitled to increase his representation on the JNB by the same number, if he wishes.

6. The employer shall select those individuals who comprise the Employer Side. The individuals must either be those who take the final decisions within the employer's organisation in respect of the pay, hours and holidays of the workers in the bargaining unit or who are expressly authorised by the employer to make recommendations directly to those who take such final decisions. Unless it would be unreasonable to do so, the employer shall select as a representative the most senior person responsible for employment relations in the bargaining unit.

7. The union shall select those individuals who comprise the Union Side in accordance with its own rules and procedures. The representatives must either be individuals employed by the employer or individuals employed by the union who are officials of the union within the

meaning of sections 1 and 119 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").

8. The JNB shall determine their own rules in respect of the attendance at JNB meetings of observers and substitutes who deputise for JNB members.

Officers

9. The Employer Side shall select one of its members to act as its Chairman and one to act as its Secretary. The Union Side shall select one of its members to act as its Chairman and one to act as its Secretary. The same person may perform the roles of Chairman and Secretary of a Side.

10. For the twelve months from the date of the JNB's first meeting, meetings of the JNB shall be chaired by the Chairman of the Employer Side. The Chairman of the Union Side shall chair the JNB's meetings for the following twelve months. The chairmanship of JNB meetings will alternate in the same way thereafter at intervals of twelve months. In the absence of the person who should chair JNB meetings, a JNB meeting shall be chaired by another member of that person's Side.

11. The Secretary of the Employer Side shall act as Secretary to the JNB. He shall circulate documentation and agendas in advance of JNB meetings, arrange suitable accommodation for meetings, notify members of meetings and draft the written record of JNB meetings. The Secretary of the Employer Side shall work closely with the Secretary of the Union Side in the discharge of these duties, disclosing full information about his performance of these tasks.

JNB Organisation

12. Draft agendas shall be circulated at least three working days in advance of JNB meetings. The draft record of JNB meetings shall be circulated within ten working days of the holding of meetings for approval at the next JNB meeting. The record does not need to be a verbatim account, but should fully describe the conclusions reached and the actions to be taken.

13. Subject to the timetable of meetings stipulated in paragraphs 15, 17, 20 and 28 below, the date, timing and location of meetings shall be arranged by the JNB's Secretary, in full consultation with the Secretary of the Union Side, to ensure maximum attendance at meetings. A meeting of the JNB shall be quorate if 50% or more of each Side's members (or, where applicable, their substitutes) are in attendance.

Bargaining Procedure

14. The union's proposals for adjustments to pay, hours and holidays shall be dealt with on an annual basis, unless the two Sides agree a different bargaining period.

15. The JNB shall conduct these negotiations for each bargaining round according to the following staged procedure.

Step 1 - The union shall set out in writing, and send to the employer, its proposals (the "claim") to vary the pay, hours and holidays, specifying which aspects it wants to change. In its claim, the union shall set out the reasons for its proposals, together with the main

supporting evidence at its disposal at the time. In cases where there is no established annual date when the employer reviews the pay, hours and holidays of all the workers in the bargaining unit, the union shall put forward its first claim within three months of this method being imposed (and by the same date in subsequent rounds). Where such a common review date is established, the union shall submit its first claim at least a month in advance of that date (and by the same date in subsequent rounds). In either case, the employer and the union may agree a different date by which the claim should be submitted each year. If the union fails to submit its claim by this date, then the procedure shall be ended for the bargaining round in question. Exceptionally, the union may submit a late claim without this penalty if its work on the claim was delayed while the Central Arbitration Committee considered a relevant complaint by the union of failure by the employer to disclose information for collective bargaining purposes.

Step 2 - Within ten working days of the Employer Side's receipt of the union's letter, a quorate meeting of the JNB shall be held to discuss the claim. At this meeting, the Union Side shall explain its claim and answer any reasonable questions arising to the best of its ability.

Step 3 -

(a) Within fifteen working days immediately following the Step 2 meeting, the employer shall either accept the claim in full or write to the union responding to its claim. If the Employer Side requests it, a quorate meeting of the JNB shall be held within the fifteen day period to enable the employer to present this written response directly to the Union Side. In explaining the basis of his response, the employer shall set out in this written communication all relevant information in his possession. In particular, the written communication shall contain information costing each element of the claim and describing the business consequences, particularly any staffing implications, unless the employer is not required to disclose such information for any of the reasons specified in section 182(1) of the 1992 Act. The basis of these estimated costs and effects, including the main assumptions that the employer has used, shall be set out in the communication. In determining what information is disclosed as relevant, the employer shall be under no greater obligation than he is under the general duty imposed on him by sections 181 and 182 of the 1992 Act to disclose information for the purposes of collective bargaining.

(b) If the response contains any counter-proposals, the written communication shall set out the reasons for making them, together with the supporting evidence. The letter shall provide information estimating the costs and staffing consequences of implementing each element of the counter proposals, unless the employer is not required to disclose such information for any of the reasons specified in section 182(1) of the 1992 Act.

Step 4 - Within ten working days of the Union Side's receipt of the employer's written communication, a further quorate meeting of the JNB shall be held to discuss the employer's response. At this meeting, the Employer Side shall explain its response and answer any reasonable questions arising to the best of its ability.

Step 5 - If no agreement is reached at the Step 4 meeting (or the last of such meetings if more than one is held at that stage in the procedure), another quorate meeting of the JNB shall be

held within ten working days. The union may bring to this meeting a maximum of two other individuals employed by the union who are officials within the meaning of the sections 1 and 119 of the 1992 Act. The employer may bring to the meeting a maximum of two other individuals who are employees or officials of an employer's organisation to which the employer belongs. These additional persons shall be allowed to contribute to the meeting, as if they were JNB members.

Step 6 - If no agreement is reached at the Step 5 meeting (or the last of such meetings if more than one meeting is held at that stage in the procedure), within five working days the employer and the union shall consider, separately or jointly, consulting ACAS about the prospect of ACAS helping them to find a settlement of their differences through conciliation. In the event that both parties agree to invite ACAS to conciliate, both parties shall give such assistance to ACAS as is necessary to enable it to carry out the conciliation efficiently and effectively.

16. The parties shall set aside half a working day for each JNB meeting, unless the Employer Side Chairman and the Union Side Chairman agree a different length of time for the meeting. Unless it is essential to do otherwise, meetings shall be held during the normal working time of most union members of the JNB. Meetings may be adjourned, if both Sides agree. Additional meetings at any point in the procedure may be arranged, if both Sides agree. In addition, if the Employer Side requests it, a meeting of the JNB shall be held before the union has submitted its claim or before the employer is required to respond, enabling the Employer Side to explain the business context within which the employer shall assess the claim.

17. The employer shall not vary the contractual terms affecting the pay, hours or holidays of workers in the bargaining unit, unless he has first discussed his proposals with the union. Such proposals shall normally be made by the employer in the context of his consideration of the union's claim at Steps 3 or 4. If, however, the employer has not tabled his proposals during that process and he wishes to make proposals before the next bargaining round commences, he must write to the union setting out his proposals and the reasons for making them, together with the supporting evidence. The letter shall provide information estimating the costs and staffing consequences of implementing each element of the proposals, unless the employer is not required to disclose such information for any of the reasons specified in section 182(1) of the 1992 Act. A quorate meeting of the JNB shall be held within five working days of the Union Side's receipt of the letter. If there is a failure to resolve the issue at that meeting, then meetings shall be arranged, and steps shall be taken, in accordance with Steps 5 and 6 of the above procedure.

18. Paragraph 17 does not apply to terms in the contract of an individual worker where that worker has agreed that the terms may be altered only by direct negotiation between the worker and the employer.

Collective Agreements

19. Any agreements affecting the pay, hours and holidays of workers in the bargaining unit, which the employer and the union enter following negotiations, shall be set down in writing and signed by the Chairman of the Employer Side and by the Chairman of the Union Side or, in their absence, by another JNB member on their respective Sides.

20. If either the employer or union consider that there has been a failure to implement the agreement, then that party can request in writing a meeting of the JNB to discuss the alleged failure. A quorate meeting shall be held within five working days of the receipt of the request by the JNB Secretary. If there is a failure to resolve the issue at that meeting, then meetings shall be arranged, and steps shall be taken, in accordance with Steps 5 and 6 of the above procedure.

Facilities and Time Off

21. If they are employed by the employer, union members of the JNB:

- shall be given paid time off by the employer to attend JNB meetings; - shall be given paid time off by the employer to attend a two hour pre-meeting of the Union Side before each JNB meeting; and - shall be given paid time off by the employer to hold a day-long meeting to prepare the claim at Step 1 in the bargaining procedure.

The union members of the JNB shall schedule such meetings at times which minimise the effect on production and services. In arranging these meetings, the union members of the JNB shall provide the employer and their line management with as much notice as possible and give details of the purpose of the time off, the intended location of the meeting and the timing and duration of the time off. The employer shall provide adequate heating and lighting for these meetings, and ensure that they are held in private.

22. If they are not employed by the employer, union members of the JNB or other union officials attending JNB meetings shall be given sufficient access to the employer's premises to allow them to attend Union Side pre-meetings, JNB meetings and meetings of the bargaining unit as specified in paragraph 23.

23. The employer shall agree to the union's reasonable request to hold meetings with members of the bargaining unit on company premises to discuss the Step 1 claim, the employer's offer or revisions to either. The request shall be made at least three working days in advance of the proposed meeting. However, the employer is not required to provide such facilities, if the employer does not possess available premises which can be used for meetings on the scale suggested by the union. The employer shall provide adequate heating and lighting for meetings, and ensure that the meeting is held in private. Where such meetings are held in working time, the employer is under no obligation to pay individuals for the time off. Where meetings take place outside normal working hours, they should be arranged at a time which is otherwise convenient for the workers.

24. Where resources permit, the employer shall make available to the Union Side of the JNB such typing, copying and word-processing facilities as it needs to conduct its business in private.

25. Where resources permit, the employer shall set aside a room for the exclusive use of the Union Side of the JNB. The room shall possess a secure cabinet and a telephone.

26. In respect of issues which are not otherwise specified in this method, the employer and the union shall have regard to the guidance issued in the ACAS Code of Practice on Time Off for Trade Union Duties and Activities and ensure that there is no unwarranted or unjustified failure to abide by it.

Disclosure of Information

27. The employer and the union shall have regard to the ACAS Code of Practice on the Disclosure of Information to Trade Unions for Collective Bargaining Purposes and ensure that there is no unwarranted or unjustified failure to abide by it in relation to the bargaining arrangements specified by this method.

Revision of the Method

28. The employer or the union may request in writing a meeting of the JNB to discuss revising any element of this method, including its status as a legally binding contract. A quorate meeting of the JNB shall be held within ten working days of the receipt of the request by the JNB Secretary. This meeting shall be held in accordance with the same arrangements for the holding of other JNB meetings.

General

29. The employer and the union shall take all reasonable steps to ensure that this method to conduct collective bargaining is applied efficiently and effectively.

30. The definition of a "working day" used in this method is any day other than a Saturday or a Sunday, Christmas Day or Good Friday, or a day which is a bank holiday.

31. All time limits mentioned in this method may be varied on any occasion, if both the employer and the union agree.