

**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:**

Unite the Union

and

Bombardier Transportation UK Ltd

**Introduction**

1. Unite (the Union) submitted an application to the CAC dated 12 April 2016 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 SDMs ” 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 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 appointed to support the Panel was Miss Sharmin Khan.

3. The CAC Panel extended the acceptance period in this case. The initial period expired on 27 April 2016. The acceptance period was extended on three occasions until 20 May 2016 in order to enable the CAC to carry out a membership check, for the parties to comment on that check and to provide more time for the Panel to consider all the evidence before arriving at a decision.

### **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 of the Schedule; and therefore should be accepted.

### **The Union's application**

5. In its covering letter (dated 12 April 2016) to its application to the CAC, the Union stated that it enclosed its completed application form and a copy of its request letter to the Employer which it believed was received by the Employer on 9 December 2015. The Union also stated that it had evidence that a majority of workers in the bargaining unit favoured its application which it could provide to the CAC on a confidential basis. It also confirmed that it had that day sent the Employer a copy of its covering letter to the CAC and all of its enclosures.

6. In its application form, the Union confirmed it had a certificate of independence. The Union stated that after a request to meet with the Employer to discuss collective bargaining for the managers at the site was declined, it formally wrote to the Employer on 9 December 2015. The Union received a reply dated 22 December 2015 declining recognition of the bargaining unit. Copies of both letters were enclosed with the application.

7. The Union stated that it had involved Acas in an attempt to open discussions but Acas had received a negative response from the Employer. A copy of Acas's e-mail to the Union explaining that the Employer was not willing to negotiate on

recognition of the bargaining unit was attached to the Union's application.

8. The Union stated approximately 250 workers were employed by the Employer and that there were 9 workers in the proposed bargaining unit of which 6 were members of the Union. When asked to provide evidence that a majority of the workers in the bargaining unit were likely to support recognition for collective bargaining, the Union stated that it was in the process of inviting managers to sign a letter of support and that this information could be provided separately from the application to the CAC at a later date.

9. Explaining the reasons for selecting the proposed bargaining unit the Union stated that it had been approached by a spokesperson for the group of workers in November 2015 asking for collective bargaining. They felt that their current method of consultation and engagement with their employer was inadequate when compared with the trade union mechanisms that existed on site for production workers.

10. The Union explained that it had currently had a sole voluntary agreement in place for production workers at "Central Rivers" but this was not a joint application. There had been no previous application for workers in the proposed bargaining unit or similar unit. It was not aware of any existing recognition agreement for Managers in Bombardier.

### **The Employer's response to the Union's application**

11. The Employer completed the CAC's Employer's Response Questionnaire form and enclosed with it 4 supporting documents: Letters dated 30 October 2015, the Union's initial approach to Employer; 9 December 2015 the Union's formal request letter; the Employer's letters dated 30 November, asking the Union to identify the bargaining group and 22 December 2016, declining the Union's formal request.

12. The Employer confirmed that it had received the Union's formal letter of request on 15 December 2015 and a copy of the Union's application to the CAC on 12 April 2016.

13. The Employer stated that the bargaining unit was not agreed between the parties before the Union made its application to the CAC and that it had not made a request for Acas assistance following receipt of the Union's request.

14. The Employer stated that it employed 2600 employees of which 250 were currently employed at the Central Rivers site. The Employer did not agree with the number of workers in the bargaining unit. There were 10 workers in the proposed bargaining unit, 6 Production Shift Managers and 4 Service Delivery Managers.

15. As to whether it disagreed with the Union's estimate of membership in the proposed bargaining unit and whether a majority of the workers in the proposed bargaining unit would be likely to support recognition the Employer stated that it did not agree or disagree as it had no visibility of membership.

16. The Employer stated that it was not aware of any previous application covering the proposed bargaining unit or similar unit and that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

### **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.

18. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, dates of birth (where possible) and job titles of workers within the proposed bargaining unit, and that the Union would supply to the Case Manager a list of its paid up members within that unit giving names, addresses and dates of birth (where possible). 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 29 April 2016 from the Case Manager to both parties. The Employer submitted its information to the CAC on 28 April 2016 and the Union submitted its information on 3 May 2016.

19. The Union also submitted with its list a scanned copy of a petition on which workers had signed up to the following statement. The signatures were dated either 15 or 16th April 2016:

*“Unite the Union is asking your employer to recognise it for collective bargaining. We have to show the Central Arbitration Committee that a majority of workers favour our application. If you want your employer to recognise this union for collective bargaining, please sign the petition.*

*I support recognition of Unite the Union as entitled to conduct collective bargaining on pay hours and holidays: ”*

20. The membership check established that there were 8 workers in the proposed bargaining unit of which 6 were members of the Union; a membership level of 70%. The result of the comparison of the Union’s petition with the Employer’s list of workers revealed that a total of 4 workers in the proposed bargaining unit had indicated that they wanted the Union to be recognised which corresponded to 50% of the bargaining unit and all 4 workers were Union members.

21. A report of the result of the membership and support check was circulated to the Panel and the parties on 4 May 2016 and the parties were invited to comment on the results and to bear in mind the two admissibility tests set out in paragraph 36 (1)(a) and paragraph 36 (1)(b) in so doing. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

### **Comments on the membership check report**

22. In its comments to the CAC, email dated 13 May, the Union stated that it knew currently of two vacancies which might have accounted for the differences between the parties’ information and the employer’s information regarding the size of the proposed bargaining unit. The Union had taken steps to see if newly joined members remained in the Union as a measure of their commitment. In its view these

workers had remained as paying members for a considerable period, since December 2015 whilst it had not been able to deliver recognition and address their concerns. This was a positive indication that they had a real desire to bargain collectively on issues relating to their roles in the workplace.

23. The Employer commented by e-mail to the CAC dated 10 May 2016 but only to reiterate its views on the proposed bargaining unit.

### **Considerations**

24. 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.

25. The Panel is satisfied that the Union made a valid request to the Employer within the terms specified in 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.

26. 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)**

27. In accordance with paragraph 36(1)(a) of the Schedule the Panel must determine whether or not members of the Union constitute at least 10% of the workers in the Union's proposed bargaining unit. The check of Union membership in the proposed bargaining unit as conducted by the Case Manager on 30 March 2016 established that Union membership stood at 70%. The Panel is therefore satisfied that this test is met.

### **Paragraph 36(1)(b)**

28. 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.

29. As noted 70% of the workers in the proposed bargaining unit are members of the Union. Further, the Case Manager's check of the Union's petition against the list of workers provided by the Employer indicated that 50% of the proposed bargaining unit explicitly supported recognition of the Union. On the basis of the evidence before it the Panel has decided that 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, as required by paragraph 36(1)(b) of the Schedule.

### **Decision**

30. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance to with paragraph 11 and is admissible within the terms of paragraphs 33 to 42 of the Schedule. The application is therefore accepted by the CAC.

### **Panel**

Professor Linda Dickens MBE

Mr Paul Gates OBE

Mr Mike Regan

20 May 2016