

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECLARATION OF RECOGNITION WITHOUT A BALLOT

The Parties:

Unite the Union

and

Brake Bros Limited

Introduction

1. Unite the Union (the Union) submitted an application to the CAC on 2 December 2014 that it should be recognised for collective bargaining by Brake Bros Limited (the Employer) for a bargaining unit comprising "All Drivers and LGV Drivers, all Administration Clerks, all Supervisors, all Handymen, all Team Support workers, all Warehouse Operatives/Forklift Drivers, Warehouse Administrators and all Storemen/women excluding Managers" employed at the Employer's sites in Newhouse, Uddingston and Bellshill. The CAC gave both parties notice of receipt of the application on 4 December 2014. The Employer submitted a response to the CAC dated 10 December 2014 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 Kenny Miller, Chairman of the Panel, and, as Members, Mr Dennis Cameron and Mrs Maureen Shaw. The Case Manager appointed to support the Panel was Nigel Cookson.

3. By a decision dated 19 January 2015 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 but no agreement was reached. As no agreement was reached, the parties were invited to supply the Panel with, and to exchange, written submissions relating to the question of the determination of the appropriate bargaining unit. Following a hearing in Glasgow on 19 February 2015, the Panel, in a decision dated 10 March 2015, determined that the appropriate bargaining unit was that proposed by the Union in its application, namely "All Drivers and LGV Driver, all Administration Clerks, all Supervisors, all Handymen, all Team Support workers, all Warehouse Operatives/Forklift Drivers, Warehouse Administrators and all Storemen/women excluding Managers" employed at the Employer's sites in Newhouse and Uddingston.¹

Issues

4. Paragraph 22 of the Schedule to the Act (the Schedule) provides that if the CAC is satisfied that a majority of the workers constituting the bargaining unit are members of the union, it must issue a declaration of recognition under paragraph 22(2) unless any of the three qualifying conditions specified in paragraph 22(4) applies. Paragraph 22(3) requires the CAC to hold a ballot even where it has found that a majority of workers constituting the bargaining unit are members of the union if any of these qualifying conditions is fulfilled. The three qualifying conditions are:

- (a) the CAC is satisfied that a ballot should be held in the interests of good industrial relations;**
- (b) the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union to conduct collective bargaining on their behalf;**
- (c) membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union to conduct collective bargaining on their behalf. Paragraph 22(5) states that "membership evidence" is (a) evidence about the circumstances in which union members became members, or (b) evidence about the length of time for which union members have been members, in a case where the CAC is satisfied that such evidence should be taken into account.**

¹ By the time of the hearing to determine the appropriate bargaining unit the site at Bellshill had closed and the site at Uddingston was, according to the Employer's submissions, due to close in April 2015. Upon closure of this site the bargaining unit will comprise the single site at Newhouse.

The Union's claim to majority membership

5. In a letter to the Case Manager dated 13 March 2015 the Union stated that it did not believe a ballot should be held in the interest of good industrial relations. In fact it would contend that such a ballot would only go to polarise each party's position considering that the Panel had ruled on the appropriate bargaining unit in this matter.

6. The Union was not aware of any evidence the CAC had that would indicate any credibility that a significant number of Union members within the bargaining unit did not want the Union to conduct collective bargaining on their behalf.

7. The Union referred the Panel to the Case Managers Membership Report check of 19 December 2014 whereby the Employer submitted a list of 328 employees and the Union had 164 matching Union members on the Employer's list. The Union noted that, of the 328 on the Employers list, 37 held managerial positions. It referred the Panel to the decision of 10 March 2015 "Determination of the Bargaining Unit" which declared that "The appropriate Bargaining Unit in this matter is "All Drivers and LGV Drivers, all Administration Clerks, all Supervisors, all Handymen, all Team Support workers, all Warehouse Operatives/Forklift Drivers, Warehouse Administrators and all Storemen/women excluding Managers" employed at the Employer's sites in Newhouse and Uddingston".

8. Taking cognisance of the decision of 10 March 2015 and the revised figure of 291 employees in the determined bargaining unit (328 less the 37 managers) and Union membership totalling 164, this equated to 56% of workers in the bargaining unit. Based on this information, the Union sought a declaration from the Panel that the Union should be recognised for collective bargaining without the need for a ballot.

The views of the Employer

9. The Union's letter of 13 March 2015 was copied to the Employer and the Employer was invited to lodge any submissions it wished to make on the Union's claim to majority membership and on the qualifying conditions set out in paragraph 4 above by the close of business on 19 March 2015. No submissions were received from the Employer by the expiry of this deadline nor had any request been made by the Employer for this deadline to be

extended. On 23 March 2015 the Case Manager emailed the Employer to say that the Panel would be informed that no submissions had been received and that it should act accordingly. The Employer replied to the Case Manager's email confirming that it had determined that it did not want to put any submissions to the Panel.

Membership Check

10. To assist in deciding whether to arrange for a secret ballot under the Schedule, the Panel proposed a further independent check of the level of union membership in the bargaining unit. The information from the Union was received by the CAC on 25 March 2015 and the information from the Employer was received by the CAC on 27 March 2015. 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 26 March 2015.

11. The Union provided a spreadsheet with the details of 165 members and the Employer provided a spreadsheet with 309 names in its main list although one name had been listed twice which brought the total to 308. At the end of the main list were three further lists. One headed "New Starters" with six names – three of whom were noted as starting on 30.03.15, one on 31.03.15, one on 07/04/15 and one on 21/04/15. The next list was headed "New starters: Temp to Perm" and contained five names. One was noted as "commencing perm on 31/03" the others as "commencing perm April". The next list was headed "Agency" and contained 38 names. The check undertaken by the Case Manager was conducted using the 308 names on the main list provided by the Employer. Workers that had yet to start work for the Employer or workers that were currently agency workers and so not employed by the Employer on the day that the comparison was undertaken were not included in the check.

12. The result of the check established that 159 names on the Union's list appeared on the Employer's list; a membership level of 51.46%. The Case Manager's report on the membership check was sent to the parties on 27 March 2015.

Considerations

13. The Act requires the Panel to consider whether it is satisfied that the majority of the workers constituting the bargaining unit are members of the Union. If the Panel is satisfied that the majority of the workers constituting the bargaining unit are members of the Union, it must then decide if any of the three conditions in paragraph 22(4) is fulfilled. If the Panel considers that any of them is fulfilled it must give notice to the parties that it intends to arrange for the holding of a secret ballot.

14. The membership check issued by the Case Manager on 27 March 2015, described above, indicated that 159 of the 308 names on the list provided by the Employer were members of the Union, a membership level of 51.46%. Therefore, in the absence of any evidence to the contrary, the Panel is satisfied that the majority of workers in the bargaining unit are members of the Union.

15. The Panel has considered carefully whether any of the qualifying conditions set out in paragraph 22(4) are fulfilled.

16. The first condition under paragraph 22(4)(a) is that the Panel is satisfied that a ballot should be held in the interests of good industrial relations. The Panel has not received any evidence that a ballot should be held in the interests of good industrial relations and is not satisfied that this condition is fulfilled.

17. The second condition under paragraph 22(4)(b) is that the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union to conduct collective bargaining on their behalf. The Panel has no such evidence and the Panel has therefore concluded that this condition does not apply.

18. The third condition under paragraph 22(4)(c) is that membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union to conduct collective bargaining on their behalf. No such evidence has been produced and the Panel has therefore concluded that this condition does not apply.

Declaration of recognition

19. The Panel is satisfied in accordance with paragraph 22(1)(b) of the Schedule that the majority of the workers constituting the bargaining unit are members of the Union. The Panel is satisfied that none of the conditions in paragraph 22(4) of the Schedule are fulfilled. Pursuant to paragraph 22(2) of the Schedule the CAC must issue a declaration that the Union is recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit. The CAC accordingly declares that the Union is recognised by the Employer as entitled to conduct collective bargaining on behalf of the bargaining unit comprising "All Drivers and LGV Driver, all Administration Clerks, all Supervisors, all Handymen, all Team Support workers, all Warehouse Operatives/Forklift Drivers, Warehouse Administrators and all Storemen/women excluding Managers" employed at the Employer's sites in Newhouse and Uddingston.

Panel

Professor Kenny Miller, Chairman of the Panel

Mr Dennis Cameron

Mrs Maureen Shaw

31 March 2015