

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

The Parties:

National Union of Rail, Maritime and Transport Workers
(RMT)

and

Go West Travel Ltd trading as Norfolk Green

Introduction

1. The National Union of Rail, Maritime and Transport Workers (the Union) submitted an application to the CAC dated 20 January 2015 that it should be recognised for collective bargaining by Go West Travel Ltd trading as Norfolk Green¹ (the Employer) for a bargaining unit comprising “Permanently employed bus drivers working for Norfolk Green based at Kings Lynn. This excludes any drivers employed on a zero hour contract, casual or agency basis”. The CAC gave both parties notice of receipt of the application on 22 January 2015. The Employer submitted a response to the CAC dated 28 January 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, Chairman of the Panel, and, as Members, Mr Michael Leahy OBE and Mr Peter Martin. For the purposes of this decision, and the decision on whether the application was valid, Mr Arthur Lodge replaced Mr Peter Martin. The Case Manager appointed to assist the Panel was Nigel Cookson.

¹ In its application the Union had identified Norfolk Green as the employer of the workers in its proposed bargaining unit but in its response to the application the Employer explained that Norfolk Green was a trading name and the company concerned was Go West Travel Ltd.

3. By a decision dated 23 February 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. The appropriate period was initially due to end on 23 March 2015 but this period was extended, at the request of the Employer and with the agreement of the Union,² to enable discussions with assistance from Acas to take place. In an e-mail to the Case Manager dated 12 April 2015 the Union stated that it had met the Employer on 9 April 2015 and that the parties had agreed a bargaining unit. Following further e-mail correspondence between the Case Manager and the parties both parties confirmed, on 16 April 2015, that the agreed bargaining unit should be described as "all permanent hourly paid staff employed by the company at King's Lynn".

4. As the agreed bargaining unit differed from that originally proposed by the Union in its application the Panel was required by paragraph 20 of Schedule A1 to the Act (the Schedule) to determine whether the Union's application was invalid within the terms of paragraphs 43 to 50 of the Schedule. By a decision dated 12 June 2015 the Panel determined that the application was not invalid for the purposes of paragraph 20 and that the CAC would therefore proceed with the application.

Issues

5. Paragraph 22 of 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;**

² The Union agreed to the period being extended until 10 April 2015.

(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.

The Union's claim to majority membership

6. In a letter from the Case Manager dated 12 June 2015 the Union was asked whether it was claiming majority membership within the agreed bargaining unit and was therefore submitting that it should be granted recognition without a ballot.

7. In an e-mail to the Case Manager dated 15 June 2015 the Union said that the membership check carried out on the agreed bargaining unit showed that Union membership density was 59.06% and therefore the CAC should declare the Union recognised for collective bargaining.

The Employer's submissions on the Union's claim to majority membership and the qualifying conditions

8. On 15 June 2015 the Union's e-mail of that day was copied to the Employer and the Employer was invited to make submissions on both the Union's claim to majority membership within the bargaining unit and on the three qualifying conditions specified in paragraph 22(4) of the Schedule. In an e-mail to the Case Manager dated 18 June 2015 the Employer said that it had no reason to question the Union's membership numbers and that it believed the best way forward was for the Employer to have a joint recognition agreement with both Unite and the Union. The Employer said that it had arranged a meeting with Mr Lynch and Mr Peplow to discuss a recognition agreement between the Union & Go West Travel Limited.

Considerations

9. 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.

10. The membership check issued by the Case Manager on 23 April 2015³ indicated that 88 of the 149 workers on the list provided by the Employer were members of the Union, a membership level of 59.06%. The Employer did not challenge the accuracy of this figure when given the opportunity to do so and the Panel itself is satisfied that the majority of workers in the bargaining unit are members of the Union.

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

12. The first condition 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. The Panel is therefore satisfied that this condition does not apply.

13. The second condition 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 is therefore satisfied that this condition does not apply.

14. The third condition 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 is therefore satisfied that this condition does not apply.

³ See paragraphs 5-7 of the Panel's decision on the validity of the application promulgated 12 June 2015.

Declaration of recognition

15. 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 permanent hourly paid staff employed by the company at King’s Lynn”.

Panel

Professor Gillian Morris, Chairman of the Panel

Mr Michael Leahy OBE

Mr Arthur Lodge

19 June 2015