

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:

RMT

and

DCC UK Ltd

Introduction

1. RMT (the Union) submitted an application dated 2 December 2016 to the CAC that it should be recognised for collective bargaining purposes by DCC UK Ltd (the Employer) for a bargaining unit comprising “Full time Passenger Hosts and Technicians employed on the Emirates Cable Car with guaranteed contractual hours”. The location of the bargaining unit was given as “Emirates Cable Car, River Thames, London”. The application was received by the CAC on 1 December 2016 (sic) and the CAC gave both parties notice of receipt of the application on 2 December 2016. The Employer submitted a response to the CAC dated 2 December 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 Gillian Morris, Panel Chair, and, as Members, Mr David Coats and Mr Bryan Taker. The Case Manager appointed to support the Panel was Linda Lehan.

Issues

3. 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 to be accepted.

Summary of the Union's application

4. In its application to the CAC the Union stated that it had sent a request dated 10 November 2016 to the Employer. The Union stated that the Employer had declined its request by email with an attached letter dated 17 November 2016. A copy of the Union's request and the Employer's letter was attached to the Union's application.

5. When asked whether the Union had made a previous application under the Schedule for statutory recognition for workers in the proposed bargaining unit or a similar unit the Union answered "yes", explaining that an application had been made to the CAC dated 22 September 2016 which the Union had withdrawn before a decision on acceptance had been made. The Union said that a further application had been made on 22 November 2016 and that this had been rejected by the CAC Panel on the basis that the application had not been made in accordance with paragraph 11 of the Schedule. The Union stated that, following receipt of the request for recognition, the Employer had not proposed that Acas should be requested to assist the parties.

6. The Union stated that the total number of workers employed by the Employer was 2546. In a covering letter attached to its application to the CAC the Union explained that this figure was the number of employees that the company had globally and was taken from the DCC Group website. The Union stated that in the UK the company employed 20 people on the Emirates Airline contract and also employed an unspecified number on a cable car contract at Birmingham Airport.

7. The Union stated that there were 14 workers in the proposed bargaining unit, of whom nine were union members. When called upon to provide evidence that the majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that the majority of workers in the bargaining unit were members of the RMT and had joined for collective bargaining purposes and that it could supply membership details confidentially to the CAC when required. The Union said that the reason for selecting the proposed bargaining unit was that this was a coherent group of workers and it was logical to collectively bargain for these grades of workers together. The Union said that the bargaining unit had not been agreed with the Employer and that, as far as it was aware, there was no existing recognition agreement in force covering any of the workers in the proposed bargaining unit.

8. The Union confirmed that it held a current certificate of independence. The Union stated that it had copied its application and supporting documents to the Employer on 2 December 2016.

Summary of the Employer's response to the Union's application

9. In its response to the Union's application the Employer stated that it had received the Union's written request for recognition on 1 December 2016 and that it had declined that request.¹ The Employer attached a copy of its letter declining that request which was dated 17 November 2016.

10. The Employer stated that it had received a copy of the application form from the Union on 1 December 2016.

11. The Employer stated that it had not, before receiving a copy of the application form from the Union, agreed the bargaining unit with the Union and that it did not agree it. The Employer stated that staff on site were being pressurised into joining the union, possibly being misinformed by fellow colleagues.

¹ See further paragraph 23 below.

12. The Employer stated that, following receipt of the Union's request, it had not proposed that Acas should be requested to assist but that it would contact ACAS. The Employer stated that it had had "advisory contact" with Acas.

13. The Employer stated that it employed a total of 20 workers which would reduce to 19 as of 17 December 2016.² Asked whether it agreed with the number of workers in the proposed bargaining unit as defined in the Union's application the Employer stated "no" and said that the actual figure was 13 and would become 12 as of 17 December 2016. The Employer confirmed that there was no existing agreement for recognition in force covering workers in that bargaining unit.

14. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer said that the staffing number would be reduced by one as of 17 December 2016. When invited to give its reasons if it did not consider that a majority of workers in the bargaining unit would be likely to support recognition the Employer stated that the union membership figure may be incorrect due to a staff member leaving the company as of 17 December 2016.

15. When asked if it was aware of any previous application under the Schedule for statutory recognition by the Union in respect of this or a similar bargaining unit, and whether it had received any other applications under the Schedule in respect of any workers in that unit, the Employer stated that the Union had applied to the CAC on 22 September 2016 and had withdrawn the application on 12 October 2016. The Employer further stated that the Union had made a second application to the CAC on 10 November 2016 and that this application had been declined by the CAC on 30 November 2016.

Clarification of the number of workers employed by the Employer

16. Paragraph 7 of the Schedule provides that a request for recognition is not valid unless the employer, taken with any associated employer or employers, employs (a) at least 21 workers on

² See further paragraph 16 below.

the day the employer receives the request, or (b) an average of at least 21 workers in the 13 weeks ending with that day. In the light of the Employer's statement in its response to the Union's application that it employed a total of 20 workers (see paragraph 13 above) the Case Manager, at the request of the Panel Chair, asked the Employer to confirm that it employed at least 21 workers in total. In a telephone conversation with the Case Manager on 5 December 2016 the Employer confirmed that it employed at least 21 workers in total based in London and Birmingham and this conversation was recorded in writing in a letter to the Employer dated 5 December 2016 in which the Case Manager also confirmed the basis upon which a membership check would be conducted (see further paragraph 17 below).

Membership 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. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, dates of birth and job titles of the workers within the proposed bargaining unit and that the Union would supply to the Case Manager a list of the names and dates of birth of its paid up members within that unit. 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 5 December 2016 from the Case Manager to both parties. The information from both the Union and Employer was received on 6 December 2016. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

18. The list supplied by the Employer showed that there were 14 workers in the Union's proposed bargaining unit, of whom five were "technicians" and nine were "operators." The list

supplied by the Union contained 11 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was nine, a membership level of 64.29%.

19. A report of the result of the membership check was circulated to the Panel and the parties on 7 December 2016 and the parties were invited to comment on the result.

Summary of the parties' comments on the membership check.

20. In an email to the CAC dated 7 December 2016 the Employer reiterated that an employee within the 14 would no longer be with the Employer as from mid-December, potentially bringing down the level of union membership to approximately 57%. The Employer stated that the fact that two union members had not appeared on its list could be due to them no longer being employed. The Employer stated that it fully believed that the majority of members would not be in favour of recognition for three reasons: pressure to join by former employees; a change in management had benefitted the employees; and employees were in the process of/ were forgetting to cancel their membership.

21. No comments were received from the Union.

Considerations

22. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 3 above are satisfied. The Panel has considered carefully the submissions of both parties and all the evidence in reaching its decision.

23. The Panel is satisfied that the Union made a valid request to the Employer within the terms of paragraph 5 to 9 of the Schedule. The next matter for the Panel to consider is whether the application was made in accordance with paragraph 11 or 12. Paragraph 11 reads as follows:

(1) This paragraph applies if-

(a) before the end of the first period the employer fails to respond to the request, or

(b) before the end of the first period the employer informs the union (or unions) that the employer does not accept the request (without indicating a willingness to negotiate).

(2) The union (or unions) may apply to the CAC to decide both these questions-

(a) whether the proposed bargaining unit is appropriate;

(b) whether the union has (or unions have) the support of a majority of the workers constituting the appropriate bargaining unit.

The “first period” is defined in paragraph 10(6) of the Schedule as “the period of 10 working days starting with the day after that on which the employer receives the request for recognition”. Paragraph 172(2) of the Schedule states that in its application to a part of Great Britain a “working day” is a day other than (a) a Saturday or a Sunday, (b) Christmas day or Good Friday, or (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in that part of Great Britain. The Panel notes that, in its response to the Union’s application, the Employer stated that it had received the Union’s request for recognition on 1 December 2016 (see paragraph 9 above). However the Employer attached to its application a letter to the Union declining the Union’s request dated 17 November 2016 which refers to receipt of the Union’s request dated 10 November 2016. In its response to a previous application to the CAC by the Union, which relied upon the same request, the Employer stated that it received the Union’s request on 10 November 2016³ and the Panel is satisfied that the date of 1 December 2016 on the response to the current application was given in error and that the application was made in accordance with paragraph 11. The Panel is also satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and 37 to 42 of the Schedule. The remaining issues for the Panel to decide are whether the admissibility criteria contained in paragraph 36(1)(a) and paragraph 36(1)(b) of the Schedule are met.

Paragraph 36(1)(a)

24. Under paragraph 36(1)(a) of the Schedule an application is not admissible unless the Panel decides that members of the union constitute at least 10% of the workers in the proposed

³ TURI/984(2016), decision of 30 November 2016, paragraph 9.

bargaining unit. The membership check conducted by the Case Manager (described in paragraphs 17 and 18 above) showed that 64.29% of the workers in the proposed bargaining unit were members of the Union. As stated in paragraph 17 above, the Panel is satisfied that this check was conducted properly and impartially and in accordance with the arrangements agreed with the parties. The Panel notes the Employer's comment, in response to the report of the membership check, that an employee would no longer be with the Employer as from mid-December, potentially reducing the percentage figure to approximately 57%.⁴ However the Panel also notes that the potential percentage reduction in membership is a matter of speculation; that the percentage in membership could equally become higher; and that, in any event, the Panel makes its determinations on the basis of the numbers employed at the time of its decision not on the basis of the numbers which may be employed at a future date. For the purposes of this decision the Panel is content to rely on the result of the membership check conducted by the Case Manager. The Panel has therefore decided that members of the union constitute at least 10% of the workers in the proposed bargaining unit as required by paragraph 36(1)(a) of the Schedule.

Paragraph 36(1)(b)

25. 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. As stated in paragraph 24 above the level of union membership established by the membership check is 64.29% and for the reasons stated in that paragraph the Panel is content to rely on that figure for the purposes of this decision. The Panel considers that, in the absence of evidence to the contrary, union membership provides a legitimate indicator of the views of the workers in the proposed bargaining unit as to whether they would be likely to favour recognition of the Union. The Panel understands that the Employer does not consider that the majority of members would favour recognition and notes its assertions that workers were pressurized to join by former employees; are in the process of cancelling their membership or

⁴ In its response to the Union's application the Employer stated that this reduction would occur as of 17 December 2016: see paragraph 13 above.

have forgotten to do so; and that changes in management have benefitted these workers. However no evidence was provided by the Employer to substantiate any of these assertions and the Panel has no evidence from elsewhere which would support them. On the basis of the evidence before it, the Panel has decided that, on the balance of probabilities, a majority of 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

26. For the reasons given in paragraphs 23 – 25 above, the Panel’s decision is that the application is accepted by the CAC.

Panel

Professor Gillian Morris, Panel Chair

Mr David Coats

Mr Bryan Taker

14 December 2016