

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

The Parties:

The Parties:

RMT

and

City Cruises PLC

Introduction

1. The RMT (the Union) submitted an application to the CAC dated 21 April 2015 that it should be recognized for collective bargaining by City Cruises PLC (the Employer) for a bargaining unit comprising “Captains and mates employed by City Cruises PLC. This excludes other grades of staff such as administration, management and customer service assistants.” The stated location of the bargaining unit was “River Thames, London”. The application was received by the CAC on 27 April 2015 and the CAC gave both parties notice of receipt of the application on 28 April 2015. The Employer submitted a response to the CAC dated 7 May 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, the Panel Chair, and, as Members, Mr Mike Cann and

Ms Bronwyn McKenna. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

3. By a decision dated 4 June 2015 the Panel accepted the Union's application. The parties then had a period of 20 working days starting with the day after that on which the CAC gave notice of acceptance of the application to reach an agreement on the appropriate bargaining unit. On 18 June 2015 the Panel declared under paragraph 18(3) of Schedule A1 to the Act (the Schedule) that the appropriate period had ended, the Panel having concluded that there was no reasonable prospect of the parties agreeing an appropriate bargaining unit before the time when the appropriate period would otherwise end. The parties were notified that a hearing would be held on 13 July 2015 and 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. The names of those who attended the hearing are appended to this decision.

4. The Panel is required, by paragraph 19(2) of the Schedule to the Act (the Schedule) to decide whether the Union's proposed bargaining unit is appropriate and, if found not to be appropriate, to decide in accordance with paragraph 19(3), a bargaining unit which is appropriate.

Preliminary issue

5. The Employer sought, at the commencement of the hearing, to submit supplementary documents relating to a Captain and Mates Forum which demonstrated the activities of that Forum. The Employer contended that these documents were required to be admitted so that the Employer could respond to points in the Union's written submissions relating to the Forum. The Employer had already sent these documents directly to the Union but they had not been seen by the Panel. The Union stated that, in its view, deadlines for written submissions should be adhered to and that admitting a document from one party at a hearing could mean that the other party should be given the opportunity itself to submit a further document in response, a process which could be never-ending. However the Union also said that it did not object to the documents in question being admitted in this case. The Panel Chair called a short adjournment for the Panel to consider these submissions.

6. At the resumption of the hearing the Panel Chair reminded the parties of the statement in the letter notifying them of the hearing that once submissions had been lodged and cross-copied new evidence would be admitted only where there were good reasons for so doing and that this would be at the discretion of the Panel. She said that the Panel sympathized with the point made by the Union about adherence to deadlines but that given that the Union did not object to the documents in question being admitted, and because the Panel considered that they may be of assistance, the Panel had agreed that they should be admitted in this case.

Matters clarified at the commencement of the hearing

7. *The bargaining unit considered appropriate by the Employer.* The Employer confirmed that for the purposes of the hearing the bargaining unit which it considered appropriate was “Captains and mates employed by City Cruises plc at all locations”. The Employer stated that this would add a further nine workers based at Poole to the number of workers in the Union’s proposed bargaining unit (subject to paragraph 9 below).

8. *Services operated at Poole.* The Employer explained that it had operated a sightseeing vessel at Poole since April 2014. As from April 2015 additional staff had been employed.¹

9. *Terms used to describe workers on the River Thames and at Poole.* The Employer explained that the category of workers known on the River Thames as ‘mates’ were called crew or deckhands at Poole. The Employer said that they did an identical job to the mates on the River Thames except that they also served refreshments to customers. For the purposes of this decision we refer to the crew and deckhands at Poole collectively as ‘mates’.

10. *The number of workers in the Union’s proposed bargaining unit.* The Employer said that two workers based at Poole had erroneously been included in the list of workers it had provided for the purposes of the union membership check conducted to assist the Panel’s decision on acceptance.² There were, therefore, 47 workers in the Union’s proposed bargaining unit, not 49.

¹ Further clarification of the arrangements at Poole was given in the course of questions on the Employer’s submissions; see paragraph 18 below.

² TURI/910/2015, 4 June 2015, paragraph 19.

11. *Exclusion of the Senior Charter Captain from the Union's proposed bargaining unit.* There had been a disagreement between the parties at the acceptance stage as to whether the Senior Charter Captain should be included within the Union's proposed bargaining unit. In response to questions from the Panel Chair the parties agreed at the hearing that the Senior Charter Captain should be excluded from both the Union's proposed bargaining unit and the bargaining unit that the Employer submitted was appropriate.

Summary of the submissions made by the Union

12. The Union submitted that its bargaining unit was appropriate. The Union stated that it had been asked by captains and mates employed by the Employer on the River Thames to represent them. The Union submitted that captains and mates were skilled crew who were responsible for boat and passenger safety during all journeys and that their duties, skills and responsibilities differed from those of other employees employed by the Employer. The Union submitted that captains and mates had different contracts and terms and conditions to other employees and required Local Knowledge Endorsements.³ The Union submitted that the existence of a specific forum established by the Employer for captains and mates, and the fact that they were a separate constituency within the Employee Communication Forum, demonstrated that they were regarded by the Employer as a separate and distinct group. The Union stated that the most recent meetings of the Captains and Mates Forum had taken place on 2 June 2015 and 5 June 2015, and only captains and mates from the River Thames were invited to or participated in these meetings. The Union submitted that for all these reasons the proposed bargaining unit was compatible with effective management.

13. The Union submitted that there was no reason to believe that recognition for its proposed bargaining unit would result in small, fragmented bargaining units and that the bargaining unit already operated efficiently as a separate consultation forum. The Union submitted that the characteristics and location of this group of workers were distinct and separate and that widening the scope of the bargaining unit would not be consistent with the object set out in paragraph 171 of the Schedule of encouraging and promoting fair and efficient practices in the workplace. The Union submitted that it would be unfair to the Poole-

³ The Employer indicated during the hearing that the requirement to obtain Local Knowledge Endorsements applied only to captains, a point which the Union accepted.

based captains and mates to include them within the bargaining unit as they would be in such a minority within it; it would also be impractical as it would involve them in a five or six-hour round trip to London.

14. The Union stated that the Employer's written submissions stated that there was a pay grade structure specific to the Thames-based captains and mates and that the evidence which had emerged in the course of the hearing showed that the methods of determining pay for those in Poole and those working on the River Thames were entirely different. Moreover, unlike the mates on the River Thames, the Poole-based mates worked on a seasonal basis and were expected to serve refreshments. The Union submitted that the Employer itself regarded the Poole-based workers as separate, as shown by the fact that they had not been invited to any of the three meetings of the Captain and Mates Forum. The Union submitted that its proposed bargaining unit would not result in fragmentation because there were already two autonomous groups. The Union stated that it had been unaware until recently of the Poole operation and had not envisaged including those working there within the bargaining unit. The Union emphasized that the Schedule required the Panel to decide if the Union's proposed bargaining unit was appropriate, not whether it was the *most* appropriate, and that the arrangements currently in operation showed that it was appropriate.

Summary of the submissions made by the Employer

15. The Employer submitted that the Union's proposed bargaining unit was not appropriate. The Employer submitted that it would not be compatible with effective management because it excluded workers in identical or largely similar jobs based at its Poole location. The Employer submitted that engagement in collective bargaining on behalf of only some captains and mates could lead to the introduction of varying employment terms amongst the same category of staff. This, in turn, could give rise to disharmony within the workforce which would have negative consequences in terms of morale, motivation and management time. The Employer submitted that its alternative bargaining unit would avoid these negative effects.

16. The Employer submitted that its existing arrangements for consultation were a "red herring" as far as collective bargaining was concerned and that the two processes were entirely different. The Employer submitted that it was common for a union to represent

workers at more than one location and that workers in Poole should not be disenfranchised. The Employer submitted that collective bargaining would be conducted through representatives and would not, therefore, require all Poole-based captains and mates to travel to London. The Employer submitted that the Captain and Mates Forum was largely a training and team-building forum dealing with operational matters and could not be compared with a representative body as all Thames-based captains and mates had been required to attend the initial meeting and invited to subsequent meetings; it was, therefore, wrong to compare it with collective bargaining. For this reason, too, it was irrelevant that the Poole-based captains and mates had not been invited to attend that Forum.

17. The Employer submitted that the Union's proposed bargaining unit would lead to fragmentation. The Employer stated, in answer to a question from the Panel, that no worker in Poole had yet asked for collective bargaining but said that it could not be inferred from this that there was no demand for collective bargaining there. The Employer also submitted that if a different union were to ask at some stage in the future for recognition for captains and mates at Poole there would be fragmentation and that this factor should be taken into account in considering whether there was a good reason to exclude a small group of people purely on the basis of their location.

18. In answer to questions from the Panel the Employer explained that the letter headed "Salary and Pay Review", which specified pay grades for Thames-based staff, should be read together with the two sample statements of main terms and conditions of employment exhibited for captains and mates respectively. The Employer stated that captains were employed for a specified number of hours per week, annualized over the year, and were paid a salary. The number of hours per week depended upon when the captain had joined the Employer or moved onto the new salary structure: in April 2014 the Employer had sought to standardize hours at 42.5 per week and had further standardized them at 40 in April 2015. By contrast, mates were employed on an hourly rate and, with one exception, worked on zero-hours contracts. The Employer stated that the grading structure set out in the "Salary and Pay Review" was not applicable to workers at Poole. In Poole, the captain had been benchmarked "unofficially" against the London scale; the General Manager recommended the appropriate salary which was then subject to approval by the Employer's Managing Director. The pay of mates in Poole was determined by the General Manager in accordance with local market rates. Mates in Poole, like those on the Thames, were on zero-hours contracts but these

contracts were seasonal, unlike the Thames-based mates whose contracts contained no finite date. The Employer confirmed that the provision in the written statement of both captains and mates for workers to be required to perform their duties in any service operated by the Company based at any of their locations pre-dated the commencement of their Poole operation and that individuals would be moved between the Thames and Poole locations only by agreement.

19. The Employer submitted that, although the operating environment in Poole was more seasonally affected than London it still involved a sightseeing function and captains and mates in both places required the same qualifications and training in the areas of safely, boarding and disembarkation. In addition, although a Poole-based captain would require a Local Knowledge Endorsement to work on the River Thames, he or she could work on the Thames other than as a captain and Poole-based mates, too, could work on the Thames. The Employer submitted that it was wrong to exclude workers purely on the basis of location. The Employer concluded by emphasizing that it was its intention to integrate the pay structures of its Thames and Poole-based operations and that creating a separate bargaining unit for the River Thames would not be a step in the right direction.

Considerations

20. The Panel is required, by paragraph 19(2) of the Schedule to the Act, to decide whether the proposed bargaining unit is appropriate and, if found not to be appropriate, to decide in accordance with paragraph 19(3) a bargaining unit which is appropriate. Paragraph 19B(1) and (2) state that, in making those decisions, the Panel must take into account the need for the unit to be compatible with effective management and the matters listed in paragraph 19B(3) of the Schedule so far as they do not conflict with that need. The matters listed in paragraph 19B(3) are: the views of the employer and the union; existing national and local bargaining arrangements; the desirability of avoiding small fragmented bargaining units within an undertaking; the characteristics of workers falling within the bargaining unit under consideration and of any other employees of the employer whom the CAC considers relevant; and the location of workers. Paragraph 19B(4) states that in taking an employer's views into account for the purpose of deciding whether the proposed bargaining unit is appropriate, the CAC must take into account any view the employer has about any other bargaining unit that it considers would be appropriate. The Panel must also have regard to paragraph 171 of the

Schedule which provides that “[i]n exercising functions under this Schedule in any particular case the CAC must have regard to the object of encouraging and promoting fair and efficient practices and arrangements in the workplace, so far as having regard to that object is consistent with applying other provisions of this Schedule in the case concerned.” The Panel’s decision has been taken after a full and detailed consideration of the views of both parties as expressed in their written submissions and amplified at the hearing.

21. The Panel’s first responsibility is to decide, in accordance with paragraph 19(2) of the Schedule, whether the Union’s proposed bargaining unit is appropriate. The Panel considers that the Union’s proposed bargaining unit is compatible with effective management based on the arrangements currently in place. Captains and mates are governed by a distinct pay and grading system and they constitute a discrete constituency within the Employer’s Employee Communication Forum. They are also covered by a separate Captains and Mates Forum within the Employer. Although neither Forum is engaged in collective bargaining these structures demonstrate that captains and mates are perceived by the Employer as a coherent group. Among those workers categorized as captains and mates the methods of determining pay for those working on the River Thames and those based at Poole are materially different as explained in paragraph 18 above. The Panel also notes that mates at Poole are employed on seasonal contracts whereas those based on the River Thames are not. The Panel appreciates that the Employer wishes to integrate the pay structures of those working at Poole with those working on the River Thames but no target date was given for this process and the Panel is able to make a decision only on the basis of the facts as they stand at the time of its decision.

22. The Panel has considered the matters listed in paragraph 19B(3) of the Schedule, so far as they do not conflict with the need for the unit to be compatible with effective management. The views of the Employer and the Union, as described earlier in this decision, have been fully considered. The Panel does not consider that there are any existing national or local bargaining arrangements in this case. In relation to the desirability of avoiding small fragmented bargaining units within an undertaking, the Union’s proposed bargaining unit would be the sole existing bargaining unit within the undertaking and there is no evidence of any current demand for recognition amongst captains and mates at Poole. As far as the characteristics of workers are concerned, the Panel notes that the duties of captains and mates on the River Thames and at Poole are largely comparable, although captains on the Thames,

unlike those at Poole, are required to have a Local Knowledge Endorsement and mates at Poole, unlike those on the River Thames, serve refreshments to customers. Moreover, as noted in the previous paragraph, mates at Poole work on a seasonal basis whereas those on the River Thames do not. All the workers in the proposed bargaining unit are based at a single location. The Panel notes that there is provision in their respective statements of main terms and conditions of employment for captains and mates to be required to perform their duties in any service operated by the Employer based at any of their locations. However the Employer confirmed at the hearing that these statements preceded the establishment of its sightseeing activities at Poole and that individuals would be moved between the Thames and Poole locations only by agreement. The Panel is satisfied that its decision is consistent with the object set out in paragraph 171 of the Schedule.

23. The Panel appreciates that this is a period of change within the Employer's organization. As stated in paragraph 21 above the Panel is able to make a decision only on the basis of the facts as they stand at the time of its decision. However the Panel reminds the parties that, should the CAC eventually declare recognition in this case, there is provision in Part III of the Schedule for the bargaining unit to be varied subsequently (provided that a collective bargaining method is in place) in specified circumstances such as a change in the organization or structure of the business.

Decision

24. The Panel's decision is that the appropriate bargaining unit is that proposed by the Union, namely "Captains and mates employed by City Cruises PLC. This excludes other grades of staff such as administration, management and customer service assistants." The location of the bargaining unit is "River Thames, London".

Panel

Professor Gillian Morris - Chairman of the Panel
Mr Mike Cann
Ms Bronwyn McKenna

20 July 2015

APPENDIX

Attending for the Union:

- DAVE MARSHALL - RMT ORGANISING UNIT**
- BRIAN WHITEHEAD - RMT REGIONAL ORGANISER**

Attending for the Employer:

- KYLE HAUGHTON - MANAGING DIRECTOR**
- AURA BURGHIU - HUMAN RESOURCES MANAGER**
- RITA BECKWITH - CHIEF EXECUTIVE OFFICER**
- COLIN BOURNE - BARRISTER, KINGS CHAMBERS**
- CHRIS NAGEL - DIRECTOR / HEAD OF HR, EMPLOYEE MANAGEMENT LIMITED**

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Considerations

20. The Panel is required, by paragraph 19(2) of the Schedule to the Act, to decide whether the proposed bargaining unit is appropriate and, if found not to be appropriate, to decide in accordance with paragraph 19(3) a bargaining unit which is appropriate. Paragraph 19B(1) and (2) state that, in making those decisions, the Panel must take into account the need for the unit to be compatible with effective management and the matters listed in paragraph 19B(3) of the Schedule so far as they do not conflict with that need. The matters listed in paragraph 19B(3) are: the views of the employer and the union; existing national and local bargaining arrangements; the desirability of avoiding small fragmented bargaining units within an undertaking; the characteristics of workers falling within the bargaining unit under consideration and of any other employees of the employer whom the CAC considers relevant; and the location of workers. Paragraph 19B(4) states that in taking an employer's views into account for the purpose of deciding whether the proposed bargaining unit is appropriate, the CAC must take into account any view the employer has about any other bargaining unit that it considers would be appropriate. The Panel must also have regard to paragraph 171 of the

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21. The Panel’s first responsibility is to decide, in accordance with paragraph 19(2) of the Schedule, whether the Union’s proposed bargaining unit is appropriate. The Panel considers that the Union’s proposed bargaining unit is compatible with effective management based on the arrangements currently in place. Captains and mates are governed by a distinct pay and grading system and they constitute a discrete constituency within the Employer’s Employee Communication Forum. They are also covered by a separate Captains and Mates Forum within the Employer. Although neither Forum is engaged in collective bargaining these structures demonstrate that captains and mates are perceived by the Employer as a coherent group. Among those workers categorized as captains and mates the methods of determining pay for those working on the River Thames and those based at Poole are materially different as explained in paragraph 18 above. The Panel also notes that mates at Poole are employed on seasonal contracts whereas those based on the River Thames are not. The Panel appreciates that the Employer wishes to integrate the pay structures of those working at Poole with those working on the River Thames but no target date was given for this process and the Panel is able to make a decision only on the basis of the facts as they stand at the time of its decision.

22. The Panel has considered the matters listed in paragraph 19B(3) of the Schedule, so far as they do not conflict with the need for the unit to be compatible with effective management. The views of the Employer and the Union, as described earlier in this decision, have been fully considered. The Panel does not consider that there are any existing national or local bargaining arrangements in this case. In relation to the desirability of avoiding small fragmented bargaining units within an undertaking, the Union’s proposed bargaining unit would be the sole existing bargaining unit within the undertaking and there is no evidence of any current demand for recognition amongst captains and mates at Poole. As far as the characteristics of workers are concerned, the Panel notes that the duties of captains and mates on the River Thames and at Poole are largely comparable, although captains on the Thames,

unlike those at Poole, are required to have a Local Knowledge Endorsement and mates at Poole, unlike those on the River Thames, serve refreshments to customers. Moreover, as noted in the previous paragraph, mates at Poole work on a seasonal basis whereas those on the River Thames do not. All the workers in the proposed bargaining unit are based at a single location. The Panel notes that there is provision in their respective statements of main terms and conditions of employment for captains and mates to be required to perform their duties in any service operated by the Employer based at any of their locations. However the Employer confirmed at the hearing that these statements preceded the establishment of its sightseeing activities at Poole and that individuals would be moved between the Thames and Poole locations only by agreement. The Panel is satisfied that its decision is consistent with the object set out in paragraph 171 of the Schedule.

23. The Panel appreciates that this is a period of change within the Employer's organization. As stated in paragraph 21 above the Panel is able to make a decision only on the basis of the facts as they stand at the time of its decision. However the Panel reminds the parties that, should the CAC eventually declare recognition in this case, there is provision in Part III of the Schedule for the bargaining unit to be varied subsequently (provided that a collective bargaining method is in place) in specified circumstances such as a change in the organization or structure of the business.

Decision

24. The Panel's decision is that the appropriate bargaining unit is that proposed by the Union, namely "Captains and mates employed by City Cruises PLC. This excludes other grades of staff such as administration, management and customer service assistants." The location of the bargaining unit is "River Thames, London".

Panel

Professor Gillian Morris - Chairman of the Panel
Mr Mike Cann
Ms Bronwyn McKenna

20 July 2015

APPENDIX

Attending for the Union:

- DAVE MARSHALL** - **RMT ORGANISING UNIT**
- BRIAN WHITEHEAD** - **RMT REGIONAL ORGANISER**

Attending for the Employer:

- KYLE HAUGHTON** - **MANAGING DIRECTOR**
- AURA BURGHIU** - **HUMAN RESOURCES MANAGER**
- RITA BECKWITH** - **CHIEF EXECUTIVE OFFICER**
- COLIN BOURNE** - **BARRISTER, KINGS CHAMBERS**
- CHRIS NAGEL** - **DIRECTOR / HEAD OF HR, EMPLOYEE
MANAGEMENT LIMITED**