

06 June 2017

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
ACCESS ARRANGEMENTS FOR BALLOT

The Parties:

RMT
and
Carefree Travel Limited

Introduction

1. RMT (the Union) submitted an application to the CAC that it should be recognised for collective bargaining by Carefree Travel Limited (the Employer) in respect of a bargaining unit comprising, "All employees/workers except management grades" located at Barrow in Furness. The application was received by the CAC on 26 January 2017.

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 Kenneth Miller, Chairman of the Panel, and, as Members, Mrs Maureen Chambers and Mr Paul Talbot. The Case Manager appointed to support the Panel was Linda Lehan.

3. By a decision dated 13 February 2017 the Panel accepted the Union's application. The Parties agreed the bargaining unit as being that proposed by the Union.

4. On 15 February 2017 the Panel, not being satisfied that a majority of the workers constituting the bargaining unit were members of the Union, gave notice in accordance with paragraph 23(2) of Schedule A1 to the Act (the Schedule) that a secret ballot would be held. The Panel also advised the Parties that it would wait until the end of the notification period of ten working days, as specified in paragraph 24(5) of the Schedule, before arranging a secret ballot. The Parties were also asked for their views on the form the ballot should take.

5. The notification period under paragraph 24(5) of the Schedule ended on 1 March 2017. The CAC was not notified by the Union or by both Parties jointly that they did not want the ballot to be held, as envisaged by paragraph 24(2). After considering the views of the parties, the Panel decided that the form of ballot would be postal and this was communicated in a decision to the parties dated 10 March 2017.

6. The Panel determined that a ballot be arranged and in a letter dated 21 April 2017, informed the Parties that a secret ballot would be held and the parties were informed of the identity of the QIP and the balloting timetable and the employer's attention was drawn to its statutory duties under paragraph 26 of the Schedule.

7. The Union and the Employer failed to agree on the issue of access. If the CAC is satisfied that the employer has failed to fulfil any of the duties imposed by paragraph 26, and the ballot has not been held, it may order the employer, in accordance with paragraph 27 of Schedule A1, to take such steps to remedy the failure as the CAC considers reasonable within such time as specified in the order. Paragraph 22 of the Code of Practice on Access to Workers During Recognition and Derecognition Ballots (the Access Code), moreover, envisages that where the parties fail to reach an agreement on access, the CAC may be asked to assist and in appropriate circumstances, to consider delaying the balloting arrangements, and, in the absence of agreement, the CAC may be asked to adjudicate and make an order.

8. The Union, by an e-mail dated 28 April 2017, informed the CAC of its complaint that the Employer had failed to fulfil its duties under paragraph 26(3) of the Schedule by failing to give access to the workers constituting the bargaining unit as is reasonable to enable the Union to inform the workers of the object of the ballot and to seek their support and their opinion on the issues involved.

9. As it appeared these issues could not be resolved voluntarily, the Panel, through a letter from the case manager dated 28 April 2017, notified the parties that there would be a hearing to determine access arrangements and that the ballot would be suspended. The hearing was held on 31 May 2017 in Manchester and the names of those who attended are listed in Appendix 2. Prior the hearing, the parties supplied to the Panel and exchanged written statements of case.

The statutory framework

10. The Panel must determine first whether the Company was in breach of any of the statutory duties imposed on it by paragraph 26 of the Schedule. That paragraph imposes five duties on an employer. It is the first two of these duties that form the subject of the Union's complaint:

- (1) To co-operate generally, in connection with the ballot, with the union and the QIP – the second and third duties are expressly stated not to prejudice the generality of this first duty (paragraph 26(2)).
- (2) To give the union such access to workers in the bargaining unit as is reasonable to enable the union to inform the workers of the object of the ballot and to seek their support and opinions on the issues involved (paragraph 26(3)).

11. In determining these issues, account can be taken of the Code of Practice *Access and unfair practices during recognition and derecognition ballots* (the Access Code) issued by the Secretary of State for Trade and Industry. In proceedings before the CAC the Code is admissible in evidence, and any provision of the Code which the

CAC considers relevant to any question “shall be taken into account in determining that question”.

12. If the CAC is satisfied that an employer has not fulfilled any of the duties imposed by paragraph 26, and the ballot has not been held, it can under paragraph 27(1) order the employer (a) to take such steps to remedy the failure as the CAC considers reasonable and specifies in the order, and (b) to do so within such period as the CAC considers reasonable and specifies in the order. Finally, paragraph 27(2) of the Schedule provides that if an employer fails to comply with such an order and the ballot has not been held, “the CAC may issue a declaration that the union is...recognised as entitled to conduct collective bargaining on behalf of the bargaining unit”.

Agreement between the parties at the hearing

13. Submissions were received from both parties prior to the hearing although at the beginning of the hearing the Employer stated that on looking again at access they were able to offer the Union access to all the workers over 2 days instead of the 4 originally offered.

14. At the suggestion of the Panel, the parties agreed to discuss further whether this new offer given by the Employer could work and subsequently an agreement was reached.

Considerations

15. In deciding whether the Union’s complaint can be upheld, the Panel on hearing the Employer’s further offer regarding access arrangements, has reached the conclusion that reasonable access, as envisaged by paragraph 26(3) of the Schedule was not given to the Union.

16. Upholding the Union’s complaint in relation to paragraph 26(3) of the Schedule means that the Panel is empowered to make an order in accordance with paragraph 27 of the Schedule.

Decision

17. The Union's complaint that the Employer failed in its second duty, set out at paragraph 26(3) of the Schedule, to provide reasonable access to the workers constituting the bargaining unit, is upheld to the extent indicated above. As a consequence of this, the Panel has made an order on access during the balloting period which is appended to this decision as Appendix 1. The parties agreed the access as detailed during the hearing.

Panel

Professor Kenneth Miller (Chairman)

Mrs Maureen Chambers

Mr Paul Talbot

06 June 2017

Appendix 1

Order on access during the balloting period

Ballot timetable

- 27/06/2017 - appointment of QIP
- Within 10 days of the 25(9) letter being sent out the Employer to submit names and addresses of those in the bargaining unit
- 12/07/2017 - Ballot papers to be sent out to eligible workers
- 25/07/2017 – noon last date for ballot papers to be returned
- 25/07/2017 - QIP sends report of ballot result to CAC

Access meetings

Day 1 – 28 June 2017

09:00 – 09:30

2 Passenger Assistants

10:30 – 11:30

30 minutes during that time for 5 drivers & 1 admin staff

14:30 – 15:00

3 Passenger Assistants

Day 2 – 29 June 2017

09:00 – 09:30

2 Passenger Assistants and 1 part time Driver

10:30 – 11:30

30 minutes during that time for 6 drivers & 1 admin staff

14:30 – 15:00

2 Passenger Assistants

At the hearing it was agreed between the parties that the above access meetings would be mirror imaged on the 5 July 2017 and 6 July 2017. In a telephone conversation with the Case Manager, on 2 June 2017, it was agreed that the meetings would now take place on 12 July 2017 and 13 July 2017 instead of the previous dates advised.

Notice board

11. The local branch representatives will be allowed access to notice board in the canteen to put up notices and literature.

Appendix 2

Names of those who attended the hearing

For the Union

Mr Daren Ireland – RMT Regional Organiser

Mr Donald Graham – RMT Organising Unit

For the Employer

Ms Amanada Sandifer – Manager for Carefree Travel Limited