

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

STM Security Group Limited

Introduction

1. RMT (the Union) submitted an application to the CAC dated 8 May 2017 that it should be recognised for collective bargaining by STM Security Group (UK) Limited (the Employer) in respect of a bargaining unit comprising “Multi-functional Customer Service Assistants and Station Champions employed on the MTR Crossrail (previously TfL Rail) contract”. The application was received by the CAC on 10 May 2017. The CAC gave both parties notice of receipt of the application on 10 May 2017. The Employer submitted a response to the CAC dated 17 May 2017 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 Mr James Tayler, Chairman of the Panel, and, as Members, Ms Bronwyn McKenna and Mr Len Aspell. The Case Manager appointed to support the Panel was Kate Norgate.

3. The CAC Panel has extended the acceptance period in this case on two occasions. The initial period expired on 24 May 2017. The acceptance period was extended to 7 June 2017 in order to allow time for a membership and support check to be carried out by the Case Manager. It was further extended to 21 June 2017 for the parties to comment on the subsequent report, and for the Panel to consider these comments before arriving at a decision.

Issues

4. 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; and therefore should be accepted.

The Union's application

5. The Union stated that it had sent its formal request for recognition to the Employer on 9 March 2017. A copy of that letter was attached to the application. The Employer responded by e-mail dated 21 March 2017, also attached to its application, in which it declined the Union's request to voluntarily recognise the Union.

6. When asked whether the Union had made a previous application in respect of this or a similar bargaining unit the Union answered "Yes. Case Number TUR1/0831(2013)." The Union stated that the application was withdrawn before acceptance.

7. The Union stated that there were 140 workers in the proposed bargaining unit of whom 84 were members of the Union. When asked to provide evidence that a majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining the Union stated that all members had joined for collective bargaining purposes. The Union also stated that it was gathering signatures on a petition in support of RMT recognition.

8. The Union stated that the reason for selecting the proposed bargaining unit was that it was a definable, specific group of workers, who carried out particular functions on the rail contract. The Union said that the bargaining unit had not been agreed with the Employer and that it was

not aware of any other existing recognition agreement which covered any of the workers in the bargaining unit.

9. 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 8 May 2017.

The Employer's response to the Union's application.

10. The Employer confirmed that it had received the Union's written request letter on 13 March 2017. By letter dated 21 March 2017, a copy attached to its response, the Employer rejected the Union's request stating that "we did not feel the majority of staff are members of the union or would want collective bargaining." The Employer indicated its view that the bargaining unit should include all staff on the contract as "any recognition would impact on these employees."

11. The Employer confirmed that it had received a copy of the application form from the Union on 10 May 2017. The Employer stated that it had not, before receiving a copy of the application form from the Union, agreed the bargaining unit as it had not received a response from the Union to its request for further information.

12. The Employer did not agree with the proposed bargaining unit stating that "all staff in the unit should be included and not only those workers on guaranteed hours." The Employer referred to the Union's flyer, a copy attached to its response. The Employer considered this demonstrated that the Union were "looking to impact all staff on the MTR Crossrail contract that worked for STM group, and not just multi-functional Customer Service Assistants and Station Champions." The Employer stated that this may otherwise lead to small, fragmented bargaining units.

13. The Employer stated that it employed 1350 workers. The Employer explained that it did not agree with the number of workers in the bargaining unit as defined in the Union's application as it was not aware of the Union's list to understand the differences.

14. When asked to give reasons for disagreeing with the Union's estimate of its membership in the proposed bargaining unit, the Employer stated that it required clarification on the

bargaining unit as it believed all staff should be included. It further stated that it was unable to comment on the Union's estimate of its membership as it had no information.

15. The Employer stated "N/A" in response to the question on whether it was aware of any existing recognition agreement in place covering any of the workers in the proposed bargaining unit. The Employer also stated that, following receipt of the Union's request, it had not proposed that Acas be requested to assist.

16. Finally, the Employer responded "N/A" when asked whether it was aware of any previous application under the Schedule by the Union in respect of this or a similar bargaining unit.

Further Comments from the parties

17. On 18 May 2017 the CAC copied the Employer's response to the application to the Union and invited its comments. By letter dated 22 May 2017 the Union stated that the Employer's response showed a lack of understanding of the procedure. In sections 5, 10 and 11 the Employer had attempted to argue for a different bargaining unit instead of answering the questions on the Union's proposed bargaining unit.

18. By letter dated 23 May 2017 the Panel asked that the Employer provide information on the number of workers in the Union's proposed bargaining unit and to confirm whether those staff were on guaranteed hours.

19. The Employer responded by letter dated 25 May 2017 in which it confirmed that it employed 14 Multi-Functional Customer Service Assistants and 13 Station Champions on the MTR Crossrail contract. The Employer also confirmed that those staff worked guaranteed hours. On 26 May 2017 the response was copied to the Union and its comments invited, specifically on the discrepancy between the parties on the number of workers in the Union's proposed bargaining unit.

20. The Union responded by letter dated 30 May 2017 in which it explained that, based on information from its employees within the company, all Customer Service Assistants on the contract were multi-functional. All Customer Service Assistants covered gate line duty, platform duty and various other customer service duties. The Union believed that the company

had used the definition of Customer Service Assistants to mean a smaller group with the overall complement of Customer Service Assistants. This group of Customer Service Assistants could also work in ticket offices. The Union considered that this was the reason for the discrepancy in the numbers. The Union stated that it had seen customer rosters which showed there were approximately 120 Customer Service Assistants in total employed on the contract. Finally, the Union stated that for clarity, its proposed bargaining unit was meant to include all Customer Service Assistants.

The membership and support check

21. 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 workers within the proposed bargaining unit, and that the Union would supply to the Case Manager a list of its paid up members within that unit (including their full names and dates of birth) and a copy of its petition. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and petition would not be copied to the other party. These arrangements were confirmed in a letter dated 31 May 2017 from the Case Manager to both parties. The information from both parties was received by the CAC on 2 June 2017.

22. The Union provided a list of 57 members.

23. The Employer provided a list of 172 workers. From this it appeared clear that the Employer had a reasonable understanding of the bargaining unit proposed by the Union as the workers listed were not limited to the 14 Multi-Functional Customer Service Assistants and 13 Station Champions referred to in the Employer's letter of 25 May 2017.

24. The Union’s petition consisting of 67 names/signatories and headed with the RMT logo was set out as follows:

“CONFIDENTIAL

We, the undersigned, support the RMT claim for recognition for collective bargaining for Multi-Functional Customer Service Assistants and Station Champions employed by STM Security on the MTR Crossrail contract. Recognition for collective bargaining will give the RMT Union rights to negotiate with STM on (at a minimum) wages, hours and holidays on behalf of workers in these grades.”

NAME	SIGNATURE	CONTACT DETAILS	JOB DESCRIPTION	DATE

25. The dates on the petition ranged between 5 April 2017 and 4 May 2017.

26. The membership check established that there were 51 members of the Union within the bargaining unit, which constituted a membership level of 29.65%. The result of the comparison of the Union’s petition with the Employer’s list of workers revealed that a total of 63 workers had indicated that they wanted the Union to be recognised which corresponded to 36.62% of the bargaining unit. 33 of the 63 were union members (19.18%) and 30 were non-members (17.44%). The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

27. A report of the result of the membership and support check was circulated to the Panel and the parties on 6 June 2017 and the parties were invited to comment on the results by 9 June 2017.

The parties’ comments on the result of the membership and support check

28. In a letter dated 6 June 2017 the Employer stated that based on the figures presented, it accepted that members of the Union constitute at least 10% of the workers in the proposed bargaining unit. The Employer stated that it did not accept that a majority of the workers in the proposed bargaining unit would be likely to favour recognition of the Union.

29. By letter dated 7 June 2017 the Union stated that it had over 10% membership within the proposed bargaining unit as the check demonstrated that there were 51 members, being 29.65%. The Union also stated that a majority of the workers in the bargaining unit would be likely to favour recognition as in addition to the 51 union members in the bargaining unit, a further 30 non-union members had also signed a petition in support of recognition. The Union considered that overall 81 workers in the bargaining unit had shown support for recognition, either by joining the RMT or signing the petition, and that this amounted to 47.09% of the bargaining unit.

30. The Union explained that it was a fluid workforce with a constant turnover of staff. Workers in the proposed bargaining unit carried out a variety of customer service duties, covering thirteen different railway stations, with a variety of shifts, including weekend working. The Union explained that those factors made it more difficult to communicate and organise than if they were all at one location.

31. The Union stated that it had four more signatures on another petition page that it was unable to forward to the case manager by the deadline, but if counted, could have shown support at 49.4%. The Union continued to campaign for support and membership amongst those workers. The Union believed that the level of support shown from the membership and support check meant that it was likely, if given the opportunity to vote, that a majority of workers in the bargaining unit would support recognition of the Union for collective bargaining purposes.

Considerations

32. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 4 above are satisfied. The Panel has considered carefully the submissions of both parties and the evidence referred to above in reaching its decision.

33. The Panel is satisfied that the Union made a valid request to the Employer within the terms of paragraphs 5 to 9 of the Schedule and that its application was made in accordance with paragraph 11. Furthermore, the Panel is satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and paragraphs 37 to 42 of the Schedule. The remaining issues for the Panel to decide are therefore whether the admissibility criteria contained in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

Paragraph 36(1)(a)

34. 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 bargaining unit.

35. The membership check conducted by the Case Manager (described in paragraphs 21 - 26 above) showed that 29.65% of the workers in the proposed bargaining unit were members of the Union which the Employer did not contest. 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 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)

36. 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.

37. The Case Manager's check of the Union's petition against the list of 172 workers provided by the Employer indicated that 63 of the 67 petition signatories were identifiable as workers within the bargaining unit, a support level of 36.62%. Of those there were 33 union members (19.18%) and 30 non-members in the bargaining unit (17.44%).

38. The Panel considers that members of the Union would be likely to favour recognition of the Union for collective bargaining (29.65%), as would non-union members who signed the petition (17.44%); giving a total of 47.09%. In the industrial experience of the panel, support is likely to increase as the application progresses. This view is supported by the Union's wish to submit further evidence that workers are continuing to sign the petition. The Panel consider that the majority of workers would be likely to support recognition for collective bargaining.

39. The Panel has noted the Employer's comments in paragraph 28 above but reminds the parties that the Panel must only be satisfied that a majority of the workers in the bargaining unit would *be likely* to favour recognition. On the basis of the evidence before it, the Panel has decided that, on the balance of probabilities, 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, as required by paragraph 36(1)(b) of the Schedule.

Decision

40. For the reasons given above the Panel's decision is that the application is accepted by the CAC.

Panel

Mr James Tayler, Chairman of the Panel

Ms Bronwyn McKenna

Mr Len Aspell

16 June 2017