Case Number: TUR1/1026(2017)
10 January 2018

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:

Independent Workers' Union of Great Britain (IWGB)

and

Cordant Security Limited

Introduction

1. The Independent Workers' Union of Great Britain (the Union) submitted an application to the CAC dated 20 November 2017 that it should be recognised for collective bargaining by Cordant Security Limited for a bargaining unit comprising "Security Guards, Postroom Workers, AV Staff, Porters, and Receptionists working for Cordant Security and/at University of London". The CAC gave both parties notice of receipt of the application on 21 November 2017. The Employer submitted a response to the CAC on 28 November 2017, which was duly 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 Regional Employment Judge Barry Clarke, in his capacity as a Deputy Chairman of the CAC, and, as members, Mr David Coats and Mr Roger Roberts. The Case Manager appointed to support the Panel was Nigel Cookson.

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; and, therefore, should be accepted. In the event, the Panel has considered first the question of whether paragraph 35 is applicable and so renders the application inadmissible.

The Union's application

4. In its application form the Union stated that it had made a formal request for recognition on 31 October 2017 enclosing a copy of its letter with its application. In brief, the Employer refused the request on the basis that there was already a recognised trade union and collective bargaining agreement in place. The bargaining agreement covered all employees employed by the Employer on the Senate House/University of London contract. The Employer employed a total of 4000 workers with 75 workers falling in the proposed bargaining unit. The Union stated that 61 of the 75-strong proposed bargaining unit were in membership. Asked to provide evidence that a majority of workers in the bargaining unit would be likely to support recognition for collective bargaining, the Union stated that more than 50% of the workers in the bargaining unit were members of the Union.

5. When asked to provide its reasons for selecting the proposed bargaining unit, the Union explained that the workers in the bargaining unit had similar terms and conditions to each other and were working both for Cordant and the University of London. The Union said that it intended to argue that the CAC must accept its application, notwithstanding paragraph 35 of the Schedule, in order to give effect to Article 11 of the European Convention of Human Rights, incorporated into UK law by virtue of the Human Rights Act 1998. (The Panel notes that Article 11 can be summarised as a qualified right by which the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions, may be limited so long as the limitation is prescribed by law, is necessary and proportionate and pursues a legitimate aim.) Given the public importance of the law being interpreted compliantly with the European Convention of Human Rights, the Union believed it was necessary to hold a hearing where oral argument could be made.

6. When asked if there was any existing recognition agreement which covered any workers in the bargaining unit, the Union stated that it acknowledged that there was an

existing voluntary recognition agreement between the Employer and Unison.

7. Finally, when asked if it had made a previous application under the Schedule for statutory recognition in respect of the same or similar bargaining unit, the Union stated that it had made an application to the CAC against Cofely Workplace Ltd, the Employer's transferor. The proposed bargaining unit in that case covered all the outsourced workers at the University of London employed by Cofely. On 8 June 2015, the CAC ruled that the application was inadmissible by reason of paragraph 35.

Employer's response to the application

8. In its response to the Union's application dated 28 November 2017, the Employer confirmed that it received a written request for recognition from the Union on 25 May 2017 and a further request was submitted on 31 October 2017. The Employer attached copies of both letters and its replies thereto dated 31 May 2017 and 7 November 2017 to its response to the application.

9. The Employer confirmed that it had received a copy of the Union's application and supporting documentation direct from the Union on 21 November 2017. The Employer confirmed that it employed a total of 4282 workers and it agreed with the figure given by the Union as to the number of workers in the proposed bargaining unit. The Employer stated that it did not disagree with the Union's estimate of its membership in the proposed bargaining unit.

10. When asked whether there was an existing agreement for recognition in force covering workers in the proposed bargaining unit the Employer stated that there was such an agreement which came into effect on 23 September 2011. The initial parties to the agreement were Balfour Beatty and Unison. The recognition and collective bargaining agreement transferred to Cofely Security Ltd and then, on 28 March 2016, it transferred again to the Employer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (sections 5 and 6) ("TUPE"). The Employer recognised Unison at the University of London site contract and the collective bargaining agreement covered all employees and all sites within the contract. The Employer noted that the Union, in its application to the CAC, acknowledged there was an existing voluntary recognition agreement between the Employer

and Unison. The Employer confirmed that Unison had a certificate of independence. A copy of the existing agreement was attached to the Employer's response.

11. When asked to give reasons if it did not consider that a majority of workers in the proposed bargaining unit would be likely to support recognition of the Union, the Employer stated that a majority of the workers would not support recognition of the Union as there was already an agreement for collective bargaining in place.

12. Asked whether it was aware of a previous application under the Schedule for statutory recognition for the same or similar bargaining unit, the Employer stated that the Union had made an application for recognition in respect of the same site and covering the same bargaining unit in 2015. The Employer at the time was Cofely Workplace Ltd. A copy of the CAC decision was attached to the Employer's response.

Union's comments on the Employer's response

13. The Employer's response was copied to the Union and its comments invited. In an email dated 4 December 2017, the Union stated that the majority of the workers in the proposed bargaining unit clearly did not support Unison being recognised and clearly did support recognition of the Union. Many of these workers used to be members of Unison and chose to leave Unison after the latter invalidated branch elections. It was at this point that they started joining the Union. The Union said that it had campaigned for and won improved terms and conditions for these workers. The Union was also party to a dispute with the Employer, on behalf of these workers, regarding their pay. As part of this dispute the Union had called the workers out on strike various times in recent months; every strike, it said, had been strongly supported by the members of the Union. Finally, the Union was also waging a campaign to end outsourcing so that these workers could be brought back in-house and work directly and exclusively for the University of London.

14. As was undisputed by the Employer, the Union represented a majority of these workers. It was, the Union said, nonsensical to suggest that a majority of workers in the bargaining unit would join the Union, participate in the Union's actions, want the Union to represent them in their disputes with the Employer and yet, for some reason, not want the Union to be recognised. In summary, the Union considered that evidence for the contention

that a majority of workers in the bargaining unit were likely to support recognition was abundant.

Paragraph 35

15. In accordance with paragraph 35, an application to the CAC under paragraph 11 or 12 is not admissible if the CAC is satisfied that there is already in force a collective agreement under which an independent trade union is recognised as entitled to conduct collective bargaining on behalf of any workers falling within the bargaining unit proposed by the union.

16. The one exception to this rule can be found in paragraph 35(2), which allows for the union that is already recognised by an employer for matters other than pay, hours or holidays to make an application for recognition in respect of these matters, but this exception is not applicable in this case before us.

Considerations

17. In its application to the CAC the Union has clearly acknowledged that there is an existing recognition agreement between Unison on the one hand and the Employer on the other, albeit that the Employer inherited the agreement through the mechanism of a TUPE transfer when it took over the contract at the University of London from Cofely Workforce Ltd, who in turn inherited the agreement when it took over the contract from the original co-signatory, Balfour Beatty.

18. There is no disputing that the third-party union, Unison, is an independent trade union, that the agreement covers those workers identified by the Union as being in its proposed bargaining unit or that it is in force. The Union argues that it has in membership a greater share of the workers in the proposed bargaining unit than Unison and it is on this basis that it believes it should be afforded the opportunity of having its application considered further. However, the role of the CAC is not, in cases such as this, to consider which union would be more representative or which union has numerical superiority in membership.

19. The Union, in its application, sought to persuade the Panel to allow the parties to make submissions at an oral hearing so that, in turn, the Panel might be persuaded that its

application was admissible despite the terms of paragraph 35. The Panel carefully considered whether we should afford the Union the opportunity to pursue these points at an oral hearing, but we could not justify putting the Employer to the associated costs when such an argument has no reasonable prospect of success. Parties in applications to the CAC are not entitled to oral hearings as of right. In this case the facts are not disputed and the law is clear.

20. The Panel recognises that paragraph 35 must be read and given effect in a way which is compatible with Article 11. We also recognise that Article 11 includes the right to engage in collective bargaining (*Demir v. Turkey* [2009] IRLR 766). However, the wording of paragraph 35 is clear and, in the Panel's view, it is not possible to read and give effect to it in a manner that would enable the Union to seek recognition in the face of the existing recognition agreement with Unison. Furthermore, such an approach would run counter to the CAC's general duty under paragraph 171 to have regard to the object of encouraging and promoting fair and efficient practices and arrangements in the workplace, since it would upset existing collective bargaining arrangements.

21. The Panel recognises that the Union may wish to contend that paragraph 35 is incompatible with Article 11. However, the CAC has no power to make any such declaration. That is a matter for the High Court; see the discussion at paragraph 4 of *R (on the application of Boots Management Services Ltd) v Central Arbitration Committee and Pharmacists' Defence Association Union* [2014] IRLR 887.

22. In summary, the CAC is a creature of statute; the CAC must apply the statute; and the Panel's view is that paragraph 35 places a hurdle before the Union that is insurmountable. There are no grounds upon which the CAC can interfere in the agreement between the Employer and Unison. It follows that the Union's application fails.

Decision

23. The Panel is satisfied that, for the purposes of paragraph 35 of the Schedule, there is in force a collective agreement under which an independent trade union is recognised by the Employer as entitled to conduct collective bargaining on behalf of workers falling within the Union's proposed bargaining unit. Accordingly, by virtue of paragraph 35, the Panel finds the Union's application to the CAC is not admissible.

Panel

Regional Employment Judge Barry Clarke, Chairman of the Panel
Mr David Coats
Mr Roger Roberts

10 January 2018