

**29 March 2017**

**CENTRAL ARBITRATION COMMITTEE**  
**TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992**  
**SECTION 183 – DISCLOSURE OF INFORMATION**

**BECTU**

**and**

**Rio Centre (Dalston) Ltd**

**Introduction**

1. BECTU (the Union) submitted a complaint to the CAC dated 11 January 2017, received by the CAC on 12 January 2017, under section 183 of the Trade Union and Labour Relations (Consolidation) Act 2014 (the Act). The complaint related to an alleged failure by Rio Centre (Dalston) Ltd (the Employer) to disclose information for the purposes of collective bargaining.

2. In accordance with section 263 of the Act, the Chairman established a Panel to consider the complaint. The Panel consisted of Professor Lynette Harris, Deputy Chairman, and, as Members, Mr Len Aspell and Ms Lesley Mercer. The Case Manager appointed to support the Panel was Linda Lehan.

3. The Employer submitted, on 18 January 2017, a response to the Union's complaint. To establish whether there were any ways in which the parties could be assisted in resolving the issues in dispute, the Parties were offered an informal meeting. The Union declined the offer so the matter proceeded to a formal Panel hearing which took place in London on 14 March 2017. The names of those who attended the hearing are appended to this decision. Both parties provided written statements of case which were exchanged, and submitted to the Panel, in advance of the hearing.

**Background information**

4. BECTU represents a bargaining unit that comprises all workers at Rio Centre (Dalston) Limited except for the Executive Director. Under the Specified Method BECTU is responsible for collective bargaining over pay, hours and holidays on behalf of the bargaining unit and therefore requested information to assist in collective bargaining, in accordance with good industrial relations practice.

**Summary of the submission made by the Union**

5. The Union believed that the Employer had failed to disclose information for the purposes of collective bargaining and had materially impeded the process of collective bargaining. The Union stated that the Employer had failed to:

- i) Provide agreed minutes of first JNB Meeting held on 26<sup>th</sup> October 2016
- ii) Provide agreed minutes of second JNB meeting held on 24 November 2016
- iii) Provide financial information critical to collective bargaining
- iv) Meet at Stage 5 in accordance with the Specified method

6. The Union explained that draft minutes were provided for the JNB meeting held on 26 October 2016 and, even though amendments from them had been accepted by the Employer, no final minutes were received. In respect of the second JNB Meeting held on 25<sup>th</sup> November 2016 only draft minutes were provided and its requested amendments were not replied to. The Union said that final minutes including the amendments were necessary as a record of what had been discussed and agreed with the Employer, not just for the union representatives but also as a credible basis upon which to report back to members.

7. The Union stated that the final minutes for both these JNB meetings were last requested on 20<sup>th</sup> December 2016. The failure to provide these had prevented them from demonstrating that the Specified Method, for which the members had campaigned, was being respected by the Employer which led to a worsening of industrial relations and an erosion of trust in the Employer. The Union's position was that this had been materially impeded in collective bargaining by the absence of a final set of agreed minutes and it was in accordance with common sense and good industrial relations for the Employer to provide these.

8. In respect of the financial information and a correct understanding of the Specified Method the Union explained that it had asked the Employer (a) when the Employer would be in a position to share financial information that could materially inform collective bargaining, (b) if the Employer ever intended to share financial information even if they were refusing to do so in 2016, and (c) whether the Employer agreed that hours and sick pay fell under the collective agreement and were legitimate issues for negotiation. The Union stated that it required this information as it believed it to be critical to collective bargaining.

9. The Union stated that in respect of (a) and (b) above both sides had agreed that for the pay year 2015/2016 financial information prior to the staffing restructure in May 2016 would not be indicative of the charity's performance and future prospects. The Union stated that it had, therefore, requested financial information from monthly management accounts going back only to May 2016 which the Employer had refused. The Union stated that the Employer had only offered sight of publicly available audited accounts from previous years as it was current information that was required for collective bargaining purposes. The Union stated that, whilst the Employer had shared management accounts in 2015, it had refused to do so in 2016 on the basis that it believed the Union had leaked the information provided into the public domain even though the Employer's evidence of that was spurious and the Union denied the allegation.

10. The Union said that no financial information had been given to them since the restructure of the company in May 2016 and it would have welcomed any pertinent data, not just what was requested, but none was offered. It explained that information in relation to salary bands, hourly rates and staff rotas for all staff could help them look at guaranteeing hours, giving staff greater security within their jobs which would lead to them feeling a valued part of the company. The Union stated that it believed it had been materially impeded from

carrying out collective bargaining by the absence of any relevant current financial information that could give them demonstrable parameters within which to position a pay claim.

11. The Union questioned the Employer's understanding of the Specified Method as the Employer had asserted repeatedly, before and during the first JNB meeting, that hours and sick pay did not fall under the scope of collective bargaining as specified in the Method.

12. The Union stated that the opportunity to meet at Stage 5 of the Specified Method was last requested on 7<sup>th</sup> December 2016. The Union said that not to meet at Stage 5 or agree to postpone Stage 5 to a time when negotiations could be more meaningful, was to unilaterally close down collective bargaining before giving every opportunity for agreement to be reached. The Union said that it had offered to postpone Stage 5 to a time in 2017 when the Employer felt they could share pertinent financial information that they did not know in 2016 but the Employer had refused to meet at Stage 5 or to meet at any time before the next cycle of collective bargaining which was due to commence in October 2017.

### **Summary of the submission made by the Employer**

13. The Employer disputed that the Union had been unable to conduct bargaining due to their failure to disclose financial information. The Charity did not believe that allegation to be true, as evidenced by the fact that bargaining had taken place with the Union for over 18 months. The Employer pointed out that the Union had raised additional matters that were not related to disclosure of information and should not be considered by the CAC.

14. In respect of the minutes the Employer stated that Clause 13 of the Specified Method stated "The record (of the meeting) does not need to be a verbatim account, but should fully describe the conclusions reached and the actions to be taken". The Employer explained that the JNB Secretary, who was a practising solicitor, took notes during JNB meetings which went beyond the standard required in Clause 13 of the Specified Method and prepared a detailed record of the meetings. The Employer explained that the minutes were circulated and when the Union Officer had requested that the record be amended, the JNB Secretary did not believe that the Union's suggested amendments reflected what was actually said at the meeting. The Employer said that the Union could clarify their position at the subsequent JNB meeting, and those clarifications were included in the record for that meeting.

15. The Employer proposed that any amendments the Union wished to make to the minutes could be attached as an addendum; a proposal that the Union confirmed they would be happy to discuss. The Employer also said that it would make every effort to get the minutes out within 10 days following any meeting in the future.

16. In respect of the financial information requested by the Union the Employer explained that the Charity's monthly accounts were prepared on a different basis and for a different purpose than its audited annual accounts and the Charity did not prepare or issue reviewed or audited interim accounts. On the 23<sup>rd</sup> September 2016, prior to the JNB on 26 October, the Union Officer had requested by email the monthly accounts for the last full year (2015/2016) and the management accounts since April 2016 again broken down month by month so that the Union could clearly understand fluctuations in outgoings and incomings. The Employer explained that monthly accounts did not present a true and accurate portrait of the Charity's overall financial condition or ability to pay a particular level of wages or salaries; for example, a single large payment such as an annual insurance premium paid in one month,

even though the cost was effectively amortised over the full year, would have the effect of making the financial situation at that point in time look materially worse than was the case.

17. The Employer stated that the Charity's Executive Director had sent the Union official a schedule of the pay levels for Staff on 5 May 2016 and all positions at the Charity had been publicly advertised including details regarding levels of pay. The Employer said it found it difficult to understand how the Union could claim that it was not aware of the levels of pay for all positions at the Charity as all details of the new roles and pay rates were shared with the Union during the restructuring process. Furthermore, the Union Officer, by her own admission, had 'found the official accounts difficult to understand' in the past and were therefore unclear how they would be useful to her or the Union going forward.

18. The Employer explained that unfortunately the publication of the Charity's financial accounts for the year ended 31 March 2016 had been delayed for several reasons all of which the Union were aware of and had not been available until December 2016. The Employer said it had not been willing to share draft interim financial information with the Union as it was not required to under either the Act or the Acas Code on Disclosure of Information which "imposes no legal obligations on an employer to disclose any specific item of information". The Employer said that whilst the Charity produced draft unaudited and unreviewed monthly management accounts for internal purposes, such accounts were not in a form that was appropriate for public distribution or disclosure. The Employer said that as Union representatives had, in the past, been employed at the Charity's competitors concurrent with their employment at the Charity, disclosure of that sort of confidential information could cause a substantial injury to the Charity and referred to Paragraph 6 of the Code which states:

"No employer is required to disclose any information which: would be against the interests of national security; would contravene a prohibition imposed by or under an enactment; was given to an employer in confidence, or was obtained by the employer in consequence of the confidence reposed in him by another person; relates to an individual unless he has consented to its disclosure; would cause substantial injury to the undertaking (or national interest in respect of Crown employment) for reasons other than its effect on collective bargaining; or was obtained for the purpose of any legal proceedings."

19. The Employer also stated that it did not have the confidence that information revealed in confidence to the Union would not be revealed as it had in the past misused financial information that the Charity had provided to it on a confidential basis, including making number of public statements disclosing such information. Furthermore, the Union had not given reasons why it wished to have the information requested and why such information was considered relevant and referred to Paragraph 16 of the Code where it states that "requests state as precisely as possible all the information required, and the reasons why the information is considered relevant".

20. In October 2016 the Union had submitted a pay claim for a 2% increase for all staff (excluding the Executive Director) without the data they now say is vital to its bargaining, and meetings were conducted without having been asked for or delivered such financial information. The Employer explained that although there had been a failure to agree this pay increase, a pay rise was given to staff in April 2016 in line with the minimum wage and a big restructure in May 2016 had resulted in all staff being given a 12.5% increase in July 2016. The Charity had obligations under the Charities Act 2008 and it would not be responsible

governance to agree to a request for a third pay increase over the course of a single year, in particular, as the last pay increase in July was 12.5%.

21. The Panel asked if the Employer thought having collective bargaining regarding any annual pay increase beginning in October each year was the right time of year for this to take place. The Employer in response said that they would be willing to hold talks in June/July which would probably be the best month as their audited accounts would be available within 8 weeks of the end of the financial year and the Union said they would welcome this and a change of date. The Employer, however, indicated that it wished to retain the October review date.

22. The Employer said that it acknowledged that the Union was recognised to bargain over pay, hours and holiday, as set out in the specified method but did not recognise sick pay as part of pay. The Charity's did not have its own sick pay scheme but provided Statutory Sick Pay in full compliance with the applicable law.

23. The Employer said that in respect of Stage 5 of the Specified method it was agreed that there was nothing further to discuss and just because the Union were unhappy about the outcome did not mean bargaining did not take place. Finally, the Employer said that the Stage 5 issue remained outside the scope of Sections 181-185 of the Act and did not believe that such matters should, accordingly, be considered by the CAC Panel.

## **Considerations**

24. In reaching its decisions the Panel has carefully considered the oral and written submissions of both parties.

25. In respect of the JNB minutes the issue for the Union was about having minutes recorded in one final agreed document. Whilst the Panel are of the view that one final document is good practice, it recognises that it may not be possible to agree minutes and it was not of the view that by not having the minutes issued in the form requested by the Union it had been impeded in conducting collective bargaining. The Panel felt that the offer of an addendum to the final minutes noting any points that were not agreed as put forward by the Employer at the hearing could be a positive way forward for the parties.

26. In respect of the financial information requested by the Union, the Panel recognises that it regards the interim accounts as important for collective bargaining purposes but accepts the Employer's position that interim working accounts could create a misleading picture of the Charity's overall financial position and that it would require extra work and expenditure to provide such information. The Panel noted the Employer's argument that the Union had not been impeded in pay negotiations in October 2016 as collective bargaining had taken place without the information requested but was of the view that this had to be considered within the context of the situation facing the Charity in 2016 which led to the reported major restructure in May 2016 and the annual published accounts not being available until December 2016.

27. The Panel took particular account of paragraphs 7, 20 and 21 of the ACAS Code of Practice (see Appendix A) in reaching its decision. It was mindful that the employer should not be required to compile or assemble information which would entail work or expenditure out of reasonable proportion to the value of the information in the conduct of collective bargaining but that the information it provided should be in a form which could be reasonably expected to be understood by the Union. Leaving aside the circumstances that prevailed at the Charity in 2016, the Panel's view was that good industrial practice would expect the Employer to disclose information about its financial situation in an understandable form to the Union in sufficient time before any annual pay bargaining began.

28. The Panel's view is that the Union failed to demonstrate that it is materially impeded in conducting collective bargaining by not having access to the interim working accounts and that they are able to conduct collective bargaining with the information provided to them in the Annual accounts.

29. It was not within the scope of the Panel to consider whether or not there has been a failure to comply with the specified method which is a legally enforceable contract. For this reason, it has made no decision in respect of the Union's complaint that Stage 5 of the specified method had not been carried out.

30. The Panel noted that there were ongoing employee relations issues that needed to be addressed in order for the parties to move forward in a positive manner and it was suggested to them that they consider seeking assistance from ACAS.

## **Declaration**

31. The Panel finds that the Union's complaint is not well founded in this instance.

Professor Lynette Harris

Mr Len Aspell

Ms Lesley Mercer

29 March 2017

## **Names of those who attended the hearing**

### **On behalf of the Trade Union:**

Ms Sofie Mason                      BECTU Negotiations Officer

Mr Kendell Foster                  Front of House

Ms Ines Marques                  Front of House

### **On behalf of the Employer**

Mr Oliver Meek                      Executive Director

Mr Patrick Lyons                  Chairman of the Board of Trustees

Mr Jerome Lessard                Board Member

Acas Code of Practice – Disclosure of Information

Paragraph 7: In providing information the employer is not required to produce original documents for inspection or copying. Nor is he required to compile or assemble information which would entail work or expenditure out of reasonable proportion to the value of the information in the conduct of collective bargaining. The union representative can request that the information be given in writing by the employer or be confirmed in writing. Similarly, an employer can ask the trade union representative to make the request for information in writing or confirm it in writing.

Paragraph 20: Employers should aim to be as open and helpful as possible in meeting trade union requests for information. Where a request is refused, the reasons for the refusal should be explained as far as possible to the trade union representatives concerned and be capable of being substantiated should the matter be taken to the Central Arbitration Committee.

Paragraph 21: Information agreed as relevant to collective bargaining should be made available as soon as possible once a request for the information has been made by an authorised trade union representative. Employers should present information in a form and style which recipients can reasonably be expected to understand.