Case Number: TUR1/1015(2017)
8 August 2017

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

UK Bulk Handling Services Limited

Introduction

1. RMT (the Union) submitted an application to the CAC on 26 July 2017 that it should be recognised for collective bargaining by UK Bulk Handling Services Limited (the Employer) for a bargaining unit comprising "Multi Skilled Operatives, Supervisors and Senior Supervisors" located at Runcorn – Viridor Energy from Waste Power Plant. The CAC gave both parties notice of receipt of the application on 26 July 2017. The Employer submitted a response to the CAC which was received on 2 August 2017 and 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 Barry Clarke, Chairman of the Panel, and, as Members, Mr Bill Lockie and Ms Fiona Wilson. The Case Manager appointed to support the Panel was Linda Lehan.

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.

The Union's application

4. In its application to the CAC the Union stated that it had sent its formal request letter to the Employer on 23 January 2017 and that the Employer had responded on 2 February 2017 stating "As such, I can only advise that the business has decided to reject your request for recognition". Copies of both letters were attached to the application.

5. The Union stated that, following receipt of the request for recognition, the Employer had not proposed that ACAS should be requested to assist the parties.

6. According to the Union there were 2119 workers employed by the Employer including associated companies. The Union said that there were 14 workers in the bargaining unit of whom 8 were members of the Union. Asked to provide evidence that a majority of the workers in the bargaining unit were likely to support recognition for collective bargaining, the Union said it had 13 signatures on a petition for collective bargaining purposes which could be supplied on a confidential basis to the CAC. The Union also stated that it could supply, on a confidential basis, paid up membership information.

7. The Union explained that it had selected the proposed bargaining unit on the basis that it covered all UK Bulk Handling Services Limited employees on the Runcorn site.

8. The Union confirmed that it held a current certificate of independence and that there was no existing recognition agreement that covered any of the workers in the proposed bargaining unit.

9. Finally the Union confirmed that the bargaining unit had not been agreed with the Employer.

The Employer's response to the Union's application

10. In its response to the application the Employer said that it had received the written request from the Union on 25 January 2017 and had responded by letter (e-mailed) on 2 February 2017. A copy of the Employer's response letter was attached to the application.

11. The Employer stated that it received a copy of the application form and enclosures from the Union on 26 July 2017.

12. The Employer stated that the proposed bargaining unit had not been agreed and in their letter of 2 February 2017 they had indicated that the proposed bargaining unit was too small, noting that it fell short of the statutory requirement to employ at least 21 workers where compulsory recognition was sought.

13. The Employer said that during previous discussions they had advised the Union that the proposed bargaining unit was a very small bargaining unit and that more direct methods of engagement, with that particular group of staff had been preferred, as opposed to traditional mechanisms and processes. The Employer also said that it believed that there would be a disproportionate administrative burden of managing collective bargaining and associated procedural mechanisms for such a small group.

14. When asked whether, following receipt of the Union's request, the Employer proposed that ACAS be requested to assist, the Employer stated "no".

15. When asked to state the number of workers employed by them the Employer stated 13.

16. Asked whether it agreed with the Union's figure as to the number of workers in the proposed bargaining unit, the Employer stated that there had been a recent leaver, who may have been a union member, meaning the number of workers employed within in the proposed

bargaining was 13. The Employer said that a replacement would be recruited in due course taking the number of workers back up to 14.

17. Asked whether it disagreed with the Union's estimate of membership in the proposed bargaining unit and for its views as to whether a majority of the workers in the bargaining unit were likely to support recognition, the Employer stated that based on the information available within the union's application, if the recent leaver was a union member that may mean that there were currently 7 members out of 13 in the bargaining unit. The Employer stated that once a replacement was recruited that may mean that there were 7 members out of 14, a 50% membership level.

18. The Employer confirmed that there was currently no recognition agreement in place covering any of the workers in the proposed bargaining unit nor was it aware of any previous application under the Schedule by the Union in respect of this or a similar bargaining unit.

Clarification of the number of workers employed by the Employer

19. Paragraph 7 of the Schedule provides that a request for recognition is not valid unless the employer, taken with any associated employer or employers, employs (a) at least 21 workers on the day the employer receives the request, or (b) an average of at least 21 workers in the 13 weeks ending with that day. In the light of the Employer's statement in its response to the Union's application that it employed a total of 13 workers (see paragraph 15 above) the Case Manager, at the request of the Panel Chair, wrote to the Employer asking if they were contending that, taking account of associated employers, they employed fewer than 21 employees in total. The Employer confirmed in a letter dated 4 August that, taking account of associated employees, the number of workers currently employed was 1,957.

Considerations

20. In deciding whether to accept the application the Panel must determine whether the admissibility and validity provisions referred to in paragraph 3 of this decision are satisfied. The Panel has considered all the evidence submitted by the parties in reaching its decision.

21. 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 and that it was made in accordance with paragraph 11 of the Schedule. The remaining issue for the Panel to address is whether the admissibility criteria set out in paragraph 36(1) of the Schedule are met.

Paragraph 36(1)(a)

22. Paragraph 36(1)(a) of the Schedule calls for the Panel to determine whether members of the Union constitute at least 10% of the workers in the Union's bargaining unit. In its application the Union said that there were 14 workers in the proposed bargaining unit and of those 14 workers 8 workers were in membership. The Employer in their response stated that there was one recent leaver, who may have been a union member meaning that there would be 7 union members in a bargaining unit consisting of 13 workers. The Employer also stated that once a replacement was recruited that may mean that there were 7 members out of 14, a 50% membership level. The Employer did not contradict or dispute that the Union had not met the 10% membership, and on the information available, the Panel is satisfied that the 10% threshold has been met.

Paragraph 36(1)(b)

23. The test in paragraph 36(1)(b) is whether 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.

24. As with the test in paragraph 36(1)(a), the Employer has not disputed the Union's assertion that it has a majority of workers in the proposed bargaining unit in membership. The Panel therefore conclude that in light of the Union's declaration of its level of members within the bargaining unit it is likely that a majority favour recognition.

25. For the reasons given above the Panel is satisfied that, on the balance of probabilities, a majority of the workers in the proposed bargaining unit would be likely to support recognition of the Union and the test set out in paragraph 36(1)(b) is therefore met.

Decision

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

Panel

Mr Barry Clarke, Chairman of the Panel
Mr Bill Lockie
Ms Fiona Wilson

8 August 2017