

21 November 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:

Prospect

and

SafeSkys Ltd

Introduction

1. Prospect (the Union) submitted an application to the CAC dated 8 November 2017 and received by the CAC on 8 November 2017 that it should be recognised for collective bargaining by SafeSkys Ltd (the Employer) for a bargaining unit comprising “Employees of SafeSkys employed in Lydd Airport’s air traffic control service” and the location for which was “Lydd Airport”. The CAC gave both parties notice of receipt of the application on 9 November 2017. The Employer submitted a response dated 15 November 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 Her Honour Judge Stacey as chair of the Panel, and, as Members, Mr Mike Cann and Mr Michael Leahy OBE. The Case Manager appointed to support the Panel was Miss Sharmin Khan.

3. The statutory deadline for the Panel to reach a decision on the whether or not to accept the Union's application was 22 November 2017.

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 of the Schedule; and therefore should be accepted.

The Union's application

5. The Union stated that its request letter to the Employer for recognition was dated 6 November 2017. A copy of this and a copy of the Employer's email of reply dated 8 November 2017 was enclosed with the application. In its reply to the Union, the Employer declined the Union's request for trade union recognition. The Union confirmed that the date on which the application and the supporting documents were copied to the Employer was 8 November 2017.

6. The Union indicated the Employer's website reported over 80 workers were employed by them, of whom there were 9 workers in the proposed bargaining unit, who were all members of the Union. When asked to provide evidence that a majority of the workers in the bargaining unit were likely to support recognition for collective bargaining, the Union stated that the members joined in order to secure representation in the face of a TUPE transfer which took place on or around 1 November 2017.

7. When explaining the reasons for selecting the proposed bargaining unit, the Union said that it represented a high proportion of the UK's air traffic control (ATC) employees, across multiple employers, including those directly employed by a number of airports. They specialised in advising and representing the relevant occupations. The ATC staff at Lydd had approached them for support with a live issue.

8. Finally the Union confirmed it had a certificate of independence and that it was not aware of any existing recognition agreement for which covered any worker in the

bargaining unit. It is common ground that it had made a previous application under Schedule A1 for statutory recognition of the bargaining unit shortly before the TUPE transfer to the Employer, which it had withdrawn, after the TUPE transfer before the CAC had made a decision on whether or not to accept the application.

The Employer's response to the Union's application

9. The Employer completed and returned to the CAC the "Employer's Response Questionnaire form" dated 15 November 2017. The Employer confirmed that it had received the Union's formal letter of request on 6 November 2017. In response to this letter the Employer sent an email on 8 November 2017 which said, "*At SafeSkys we do not recognise unions*". The Employer received a copy of the Union's application to the CAC on 8 November 2017.

10. The Employer stated that no discussions regarding the bargaining unit or recognition had been held with the Union before it made its application to the CAC. The Employer had not made a request for Acas assistance following receipt of the Union's request. The Employer indicated it had demonstrated effective management in relation to its employees previously, and that none had previously requested union recognition. It also believed that, having just taken over the contract for Lydd Airport it could effectively manage nine employees if given a chance.

11. The Employer stated that it employed approximately 80 workers. It agreed with the number of workers in the bargaining unit as defined in the Union's application at the Lydd Airport site.

12. The Employer did not accept the Union's estimate of membership in the proposed bargaining unit, explaining that it disagreed as there was no evidence upon which they could agree. The Employer also stated that there was no evidence that a majority were likely to support recognition as it had a good working relationship with its other workers and there was nothing to say it would be different for those workers in the bargaining unit proposed.

13. The Employer said the Union previously made an application for statutory recognition under case TUR1/1024(2017) which was withdrawn before conclusion. It also stated that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

Considerations

14. 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 all the evidence in reaching its decision.

15. The Panel is satisfied that the Union made a valid request to the Employer within the terms specified in 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.

16. The remaining issues for the Panel to decide are whether the admissibility criteria contained in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

17. As mentioned by the Employer in its response to this application, the Union had submitted a previous application (see paragraph 13 above) in respect of the previous owners, London Ashford Airport Ltd for the same proposed bargaining unit. The then employer's response to original application on 25 October 2017 confirmed that it agreed with the level of Union membership in the proposed bargaining unit. There has been no comment from either party in the current application to suggest that anything has changed.

Paragraph 36(1)(a) and (b)

18. In accordance with paragraph 36(1)(a) of the Schedule the Panel must determine whether or not members of the Union constitute at least 10% of the workers in the Union's proposed bargaining unit. 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.

19. The Union's assertion of the level of membership has been corroborated by the transferor employer's confirmation that as at 25 October 2017 all the members of the proposed bargaining unit were members of the Union. There is no information from the Employer to dispute the Union's figures, but the Employer acknowledges that the ATC workforce are unsettled, which is consistent with the Union's submission that the workers in the proposed bargaining unit joined the Union in order to secure representation in the face of a TUPE transfer. From the information before us, the Panel is therefore satisfied on the balance of probabilities that at least 10% of the workers in the proposed bargaining unit are members of the Union and that a majority of workers would be likely to favour recognition of the Union by the Employer. They have demonstrated through their membership of the Union that they seek recognition in unsettled times. In light of the information provided, and the lack of any information suggesting a contrary view, it is not necessary to conduct a membership and support check at the acceptance stage of the CAC procedure in this case, within the statutory acceptance period.

Decision

The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance to with paragraph 11 and is admissible within the terms of paragraphs 33 to 42 of the Schedule. The application is therefore accepted by the CAC.

Panel

Her Honour Judge Stacey

Mr Mike Cann

Mr Michael Leahy OBE

21 November 2017