

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECLARATION OF RECOGNITION WITHOUT A BALLOT

The Parties:

IWGB

and

The Doctors Laboratory Limited

Introduction

1. IWGB (the Union) submitted an application to the CAC that it should be recognised for collective bargaining by The Doctors Laboratory Limited (the Employer) for a bargaining unit comprising “All walking, pushbike, scooter and motorbike couriers who work at The Doctors Laboratory (TDL), based at Whitfield Street Site”. The CAC gave both parties notice of receipt of the application on 1 August 2017. The Employer submitted a response to the CAC dated 14 August 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 Charles Wynn-Evans, chairing the Panel, and, as Members, Mr Peter Martin and Mr Paul Noon OBE. The Case Manager appointed to support the Panel was Linda Lehan.

3. By a decision dated 8 September 2017, the Panel accepted the Union’s application. The parties then entered a period of negotiation, which was extended at the request of the Union, in an attempt to reach agreement on the appropriate bargaining unit.

4. In correspondence received from both parties dated 23 January 2018 it was confirmed

that the bargaining unit had been agreed as “All individuals engaged as couriers by TDL at its central London site (currently Whitfield Street), in the Greater London area (Ealing and Blackheath) and in Sawbridgeworth. Couriers include: cyclists, motorcyclists, van drivers, foot couriers and train couriers”. The Employer confirmed that the agreed bargaining unit differed to that originally proposed by the Union in that it included couriers engaged by the Employer at a number of other sites in the Greater London area and at Sawbridgeworth in Essex as well as the Employer’s train couriers.

5. As the agreed bargaining unit differed from that proposed by the Union, the Panel was required by paragraph 20 of the Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 (the Schedule) to determine whether the Union's application was valid or invalid within the terms of paragraphs 43 to 50 of the Schedule. By a decision dated 7 February 2018 the Panel determined that the application was valid for the purposes of paragraph 20 and that the CAC would therefore proceed with the application.

Issues

6. Paragraph 22 of Schedule A1 to the Act (the Schedule) provides that, if the CAC is satisfied that a majority of the workers constituting the bargaining unit are members of the union, it must issue a declaration of recognition under paragraph 22(2) unless any of the three qualifying conditions specified in paragraph 22(4) applies. Paragraph 22(3) requires the CAC to hold a ballot even where it has found that a majority of workers constituting the bargaining unit are members of the union if any of these qualifying conditions is fulfilled. The three qualifying conditions are:

- (i) the CAC is satisfied that a ballot should be held in the interests of good industrial relations;**
- (ii) the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union (or unions) to conduct collective bargaining on their behalf;**
- (iii) membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union (or unions) to conduct collective bargaining on their behalf. Paragraph 22(5) states that "membership evidence" is (a) evidence about the circumstances in which union members became members, or (b) evidence about the length of time for which union members have been members, in a case where the CAC is satisfied that such evidence should be taken into account.**

The Union's claim to majority membership

7. In a letter dated 7 February 2018 the Union was asked by the CAC if it claimed majority membership within the bargaining unit, and if so, whether it submitted that it should be recognised without a ballot. By an email dated 9 February 2018 the Union claimed that it had majority membership within the bargaining unit and therefore should be granted recognition without a ballot.

The views of the Employer

8. In a letter dated 14 February 2018 the Employer's representative said that the Employer would reiterate the points made in its letter of 5 February 2018, in that it maintained that a ballot would be in the interests of good industrial relations given the concerns it had received from a number of individuals within the new agreed bargaining unit about the Union being granted recognition.

9. The Employer's representative stated that, in light of the concerns raised to the Employer, and as the Employer was willing to cooperate with the Union if a ballot supported recognition, they respectfully submitted that the CAC should follow its approach in the case of Institute of Scientific and Technical Communicators and Mission Foods CAC Case No: TUR1/256/2003 and order a ballot to be held on the basis that to do so would be in the interests of good industrial relations.

The Union's comments on the Employer's views

10. The Union in an email dated 19 February reiterated that a ballot was not necessary or fruitful for the following reasons:

i) It would more in the interest of good industrial relationship to speed up the recognition proceedings and start negotiating on pay, hours and holidays - a ballot would cause unnecessary delay to a procedure already started several months ago.

ii) There was no basis to doubt nor any evidence adduced for the proposition that IWGB members and petition figures should be called into question. The Union argued that in the case law relied upon by the Employer a ballot had been ordered where the CAC was in possession of some evidence (in the form of letters from people in the bargaining unit asking for a ballot to be held) and this was clearly not comparable to the case at hand where no proof had been offered by the Employer.

iii) A ballot would increase costs.

iv) The Employer's approach would be widely perceived as a delaying tactic on the part of TDL which was contributing to tension with the labour force and generating distrust of TDL.

Considerations

11. As set out in paragraph 6 above, the Act requires the Panel to consider whether it is satisfied that the majority of the workers constituting the bargaining unit are members of the Union. If the Panel is satisfied that the majority of the workers constituting the bargaining unit are members of the Union, it must then decide if any of the three conditions in paragraph 22(4) is fulfilled. If the Panel considers that any of these three conditions is fulfilled, it must give notice to the parties that it intends to arrange for the holding of a secret ballot.

12. A membership check carried out by the Case Manager for the purposes of the Panel's decision on validity, the result of which was reported to the Panel and the parties on 31 January 2018, showed that 59 of the 108 workers in the bargaining unit were members of the Union, a membership level of 55.63%. In the absence of any evidence to the contrary, the Panel is satisfied that the majority of the workers in the bargaining unit are members of the Union.

Paragraph 22(4)(a)

13. The first condition is that the Panel is satisfied that a ballot should be held in the interests of good industrial relations. The Panel noted that the Employer maintained that a ballot would be in the interests of good industrial relations given the concerns that it

contended that it had received from a number of individuals within the new agreed bargaining unit about the Union being granted recognition. However, beyond this assertion no specific evidence in support of this contention was provided by the Employer to the Panel. The Panel considered carefully both parties' comments in relation to the CAC decision in *Institute of Scientific and Technical Communicators and Mission Foods* (TUR1/256/2003). However, the Panel did not find that decision to be of any value in determining the issue before it in relation to this application. Not only do prior CAC decisions have no binding precedent status; more importantly, the decision in *Institute of Scientific and Technical Communicators and Mission Foods* was based on materially different facts to those in relation to this matter in that, in contrast to this matter, specific evidence was adduced with regard to the desirability of a ballot and on which the CAC relied in reaching its decision that a ballot should be ordered. The Panel is therefore satisfied that this condition - that a ballot should be held in the interests of good industrial relations - does not apply in relation to this application.

Paragraph 22(4)(b)

14. The second condition is that the CAC has evidence, which it considers to be credible, from a significant number of the union members within the bargaining unit that they do not want the union to conduct collective bargaining on their behalf. Again the Panel noted that the Employer stated that it had received concerns from a number of individuals within the new agreed bargaining unit about the Union being granted recognition but no specific evidence was produced in support of this contention and the Panel was therefore not satisfied that this condition applied in relation to this application

Paragraph 22(4)(c)

15. The third condition is that membership evidence is produced which leads the CAC to conclude that there are doubts whether a significant number of the union members within the bargaining unit want the union to conduct collective bargaining on their behalf. The Panel is satisfied that this condition does not apply as no evidence to this effect was produced to the Panel.

Declaration of recognition

16. The Panel is satisfied in accordance with paragraph 22(1)(b) of the Schedule that the majority of the workers constituting the bargaining unit are members of the Union. The Panel is satisfied that none of the conditions in paragraph 22(4) of the Schedule are met. Pursuant to paragraph 22(2) of the Schedule, the CAC must therefore issue a declaration that the Union is recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit. The CAC accordingly declares that the Union is recognised by the Employer as entitled to conduct collective bargaining on behalf of the bargaining unit comprising “All individuals engaged as couriers by TDL at its central London site (currently Whitfield Street), in the Greater London area (Ealing and Blackheath) and in Sawbridgeworth. Couriers include: cyclists, motorcyclists, van drivers, foot couriers and train couriers”.

Panel

Mr Charles Wynn-Evans, chairing the Panel

Mr Peter Martin

Mr Paul Noon OBE

28 February 2018