Case Number: TUR4/006/2018
09 March 2018

CENTRAL ARBITRATION COMMITTEE

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

SCHEDULE A1 - COLLECTIVE BARGAINING: DERECOGNITION

DECISION ON WHETHER TO ACCEPT THE APPLICATION

The Parties:

Union Bank UK plc

and

Unite the Union

Introduction

1. Union Bank UK plc (the Employer) submitted an application to the CAC dated 7 February 2018 that a secret ballot should be held to determine whether the bargaining arrangements between the Employer and Unite the Union (the Union) in respect of "all London based staff below the rank of assistant manager excluding agency workers" (the bargaining unit) should be ended. The CAC gave both parties notice of receipt of the application on 8 February 2018. The Union submitted a response to the application to the CAC dated 12 February 2018 which was copied to the Employer.

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 Professor Gillian Morris, Panel Chair, and, as Members, Mr David Coats and Mr Simon Faiers. The Case Manager appointed to support the Panel was Linda Lehan.

3. The Panel has extended the acceptance period in this case on one occasion. The initial period expired on 21 February 2018. The acceptance period was extended until 12 March

2018 in order to allow time for a membership check to take place, for the parties to comment on the subsequent report and for the Panel to consider said comments before arriving at a decision.

Issues which the Panel is required to determine

4. The application was brought by the Employer under Part IV of the Schedule to the Act (the Schedule). For applications by an Employer under Part IV the Panel is required by paragraph 111(2) to decide whether the request is valid within the terms of paragraph 104 and whether the application is made in accordance with paragraph 106 or 107 and admissible within the terms of paragraphs 108 to 110 and is therefore to be accepted. However the Panel notes that in this case recognition was granted to the Union without a ballot, the CAC having been satisfied that a majority of the workers constituting the bargaining unit were members of the Union. In such cases an application may be made by an Employer under Part V of the Schedule. This application having been made under Part IV the Panel has determined the application on the basis of the criteria specified in that Part. [1]

The Application

5. In its application the Employer stated that the CAC had issued a declaration that the Union was recognised as entitled to conduct collective bargaining on behalf of the bargaining unit on 12 December 2000, and that there was in place a method by which the Employer and Union conducted collective bargaining. A copy of the specified method was enclosed with the application.

6. The Employer stated that on 19 December 2017 a request to end the bargaining arrangements was sent to the Union. The Employer stated that no direct response was received from the Union until 23 January 2018, when the Union informed the Employer that legal advice was being sought together with members' opinions on derecognition. The Employer stated that it had offered an extension for the Union to agree derecognition/provide comments up to 2 February 2018 but that no response had been received as at the date of its application to the CAC. The Employer attached copies of the relevant correspondence.

[1] See further paragraph 27 below.

7. The Employer stated that there were 24 workers in the bargaining unit, of whom 15 were known to favour an end of the bargaining arrangements. The Employer stated that an independent ballot had been carried out in December 2017 by Dechert LLP, a law firm with no prior connection to the Employer. The Employer stated that the result of the ballot had been reported to the Employer and showed that, as at December 2017, 15 out of 24 eligible voters (being those employees in the bargaining unit) were in favour of derecognition and only six of the 24 employees were members of the Union. The Employer enclosed a copy of the report of the ballot signed on behalf of Dechert LLP.

8. The Employer stated that, following receipt of its request to end the bargaining arrangements, the Union did not propose that ACAS should be requested to assist. The Employer confirmed that there had been no previous application to the CAC under either Part IV or V of the Schedule in respect of the same bargaining unit. The Employer stated that notice of the application, and the application and supporting documents, were copied to the Union, on 7 February 2018.

The Union's response to the application

9. The Union stated that it had received the Employer's written request for derecognition on 19 December 2017. The Union confirmed that it had responded on 23 January 2018 in the terms summarised in paragraph 6 above. The Union stated that it had received a copy of the application form and supporting documents from the Employer on 19 December 2017. The Union stated that following receipt of the Employer's request it had not proposed that ACAS be requested to assist.

10. Asked whether it agreed with the number of workers in the bargaining unit as stated in the Employer's application the Union stated that it was unsure. The Union stated that its records showed that it had 14 members in the bargaining unit. The Union stated that there had been redundancies within the bargaining unit and that clearly some members had not disclosed their membership to the Employer, which was their legal right. The Union stated that the Employer should disclose its list of employees, listing all positions, to the CAC and the Union

11. The Union stated that it agreed with the Employer that there was a method in place by which the parties conducted collective bargaining. However the Union stated that on many occasions the Employer had failed to notify, discuss or consult with the Union over redundancies, health care and benefit (sic) to employees. The Union stated that it had never been invited to be part of the Employer's discussions. The Union stated that it had never been able to change the Employer's pay offer because of the Employer's tough stance. The Union alleged that the Employer had ignored the operation of the recognition agreement and had kept the Union away from any changes that would affect its members. The Union enclosed documentation relating to these statements.

12. In answer to the question whether it disagreed with the Employer's estimate of the number of workers known to favour an end to the bargaining arrangements the Union stated that the Employer had carried out a ballot of employees relating to derecognition without reference or consultation with the Union prior to doing so. The Union stated that no access was given to it during the ballot to meet with and or discuss the issues with employees or to provide materials or information to them. The Union submitted that it had been severely disadvantaged in this process.

13. In answer to the question whether the Union considered that a majority of the workers in the bargaining unit were likely to favour an end of the bargaining arrangements the Union argued that it was deeply unfair what the Employer had done, by telling its side of the story to the employees and not inviting the Union to do this. The Union reiterated its view that the believed that the Employer's ballot had put the Union at a disadvantage and submitted that the ballot should be re-run with the Union being given the opportunity to voice the advantages of keeping recognition.

14. The Union stated that as far as it was aware there had been no previous application to the CAC under either Part IV or V of the Schedule in respect of the same bargaining unit or a similar bargaining unit within the period of three years prior to the date of the Employer's application.

Membership check

15. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether at least 10% of the workers constituting the bargaining unit favour an end of the bargaining arrangements (paragraph 110(1)(a)) and whether a majority of the workers constituting the bargaining unit would be likely to favour an end of the bargaining arrangements (paragraph 110(1)(b), the Panel proposed an independent check of the level of union membership in the recognised bargaining unit. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names, dates of birth and job titles of the workers employed within the recognised bargaining unit, and that the Union would supply to the Case Manager a list of its paid up members within that unit (including their full name and date of birth). It was explicitly agreed with the parties that, to preserve confidentiality, the respective lists would not be copied to the other party. These arrangements were confirmed in a letter dated 21 February 2018 from the Case Manager to the parties.

16. The information from both parties was received by the CAC on 22 February 2018. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

17. The list supplied by the Employer indicated that there were 24 workers in the recognised bargaining unit. The list of members supplied by the Union contained 10 names. According to the Case Manager's report the number of Union members in the recognised bargaining unit was seven, a membership level of 29.16%.

18. A report of the result of the membership check was circulated to the Panel and the parties on 23 February 2018 and the parties were invited to comment on the results by 27 February 2018.

Parties' comments on the result of the membership check

19. In an email to the Case Manager dated 27 February 2018 the Employer stated that, based on the findings of the Case Manager's report, it did not have any comments. The Employer stated that, not having seen the list provided by the Union, it could not explain why the Union's list included three employees who did not appear on the Employer's list but said that

there may have been some departures since the Union last requested membership fees which could explain the difference.

20. The Employer stated that it had not received the Union's response to the Employer's application until 23 February 2018 despite it having been circulated by the Case Manager on 16 February 2018 (at the request of the Employer it was re-sent by the Case Manager on 23 February 2018). The Employer noted that the original deadline to respond to the points raised by the Union had passed but asked for an opportunity to clarify points which appeared to be in dispute. The Employer said that it was concerned that the Union's comments that the Employer had failed to notify, discuss or consult with the Union over redundancies, health care and benefits to employees would prejudice its application to the CAC. The Employer said that it had always abided by the applicable bargaining agreement which did not include the obligation to consult with the Union over individual redundancies. In relation to the Union's contention that its lack of knowledge of the ballot had placed it at a disadvantage the Employer said that the ballot was an internal ballot carried out by an independent third party and at no stage were members of the bargaining unit told they should not contact the Union in relation to the ballot taking place.

21. No comments were received from the Union.

Considerations

22. In deciding whether to accept the application the Panel must determine 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 the supporting documentation in reaching its decision.

23. The Panel is satisfied that the Employer made a valid request to the Union within the terms of paragraph 104 of the Schedule and that its application was made in accordance with paragraph 106. Furthermore the Panel is satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 108 or 109 of the Schedule. The remaining issues for the Panel to decide are whether the admissibility criteria contained in paragraph 110 are met.

24. Paragraph 110(1) provides that an application under paragraph 106 or 107 is not admissible unless the CAC decides that –

(a) at least 10 per cent of the workers constituting the bargaining unit favour an end of the bargaining arrangements, and
(b) a majority of the workers constituting the bargaining unit would be likely to favour an end of the bargaining arrangements.

25. The ballot conducted by Dechert LLP at the request of the Employer showed that 15 out of the 24 workers eligible to vote were in favour of derecognition, a figure which represents 62.5% of the workers in the recognised bargaining unit. The Panel is satisfied that, on the balance of probabilities, the criteria set out in paragraph 110(1) have been met. The Panel understands the Union's concern that it was disadvantaged in the ballot by not having access to workers in the bargaining unit to present its case for maintaining recognition. The Panel notes that in recognition applications under Part I of the Schedule it is common for petitions or polls to be submitted by a Union in support of recognition where participants have not necessarily been exposed to arguments from both parties and that, in relation to majority support at the acceptance stage, Panels are required only to find that a majority *would be likely to favour* a particular outcome (our italics). The next stage of the process in this case will be a secret ballot conducted in accordance with statutory provisions which will afford the Union, as well as the Employer, access to workers in the recognised bargaining unit.

26. The Panel asked the Case Manager to conduct the membership check described in paragraphs 15 to 17 above in view of the Union's statement in its response to the application that it had 14 members in the bargaining unit rather than the six shown in the Dechert report (see paragraphs 7 and 10 above). The Panel notes that the Case Manager's report, described in paragraph 17 above, shows that the level of union membership now stands at seven, representing 29.16% of the bargaining unit. The Panel does not consider that absence of union membership of itself signifies support for derecognition and has not relied upon this result in reaching the conclusion set out in paragraph 25 above.

27. As stated in paragraph 4 above, this application was brought by the Employer under Part IV of the Schedule. However the Panel notes that the application in this case could have been made under Part V of the Schedule given that recognition was granted to the Union

without a ballot. The Schedule does not appear to preclude an application made under Part IV being decided under Part V if the criteria applicable to the application of Part V are met. [2] Under Part V an application is admissible if the CAC is satisfied that fewer than half of the workers constituting the bargaining unit are members of the union (paragraph 131); there is no equivalent of paragraph 110. As described in paragraph 17 above, the Case Manager's report showed that 29.16% of the bargaining unit were members of the Union. The Panel has made its decision in relation to this application on the basis of the validity and admissibility provisions in Part IV of the Schedule but for the sake of completeness also notes that the tests in Part V have been satisfied in this case.

Decision

28. For the reasons given in paragraphs 23-25 above, the Panel's decision is that the application is accepted by the CAC.

Panel

Professor Gillian Morris, Panel Chair
Mr David Coats.
Mr Simon Faiers

09 March 2018

[2] Paragraph 127 requires an Employer's request to a union to agree to end the bargaining arrangements to state that it is made under "this Schedule"; it does not require the Employer to specify the Part of the Schedule. The CAC has separate forms for Part IV and Part V applications but this is not a statutory requirement.