

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:

Unite the Union

and

Tata Consultancy Services Ltd (“TCS”)

Introduction

1. Unite (the Union) submitted an application to the CAC dated 25 May 2018 that it should be recognised for collective bargaining purposes by Tata Consultancy Services Ltd (“TCS”) (the Employer) in respect of a bargaining unit comprising "UK TCS PGDS Account." The application was received by the CAC on 25 May 2018 and the CAC gave both parties notice of receipt of the application on 25 May 2018. The Employer submitted a response to the CAC on 11 July 2018 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 Professor Kenneth Miller, Panel Chair, and, as Members, Mr Len Aspell and Mr Keith Sonnet. The Case Manager appointed to support the Panel was Kate Norgate.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 11 June 2018. In an e-mail to the CAC dated 5 June 2018 the Employer explained that the parties wished to hold further talks on voluntary recognition and in view of this

requested that the statutory procedure be stayed. By e-mail dated 8 June 2018 the Union confirmed that it also requested a stay in the process, until 18 June 2018. In line with the CAC policy of helping parties, where possible, reach voluntary agreements outside the statutory process the Panel was happy to accede to the Union's request and gave notice, by way of a letter dated 11 June 2018 that proceedings would be stayed until 18 June 2018. In an e-mail to the CAC dated 15 June 2018 the Union made a request for a further stay in the process. By letter dated 19 June 2018 the Panel granted a further stay and the parties were informed that the proceedings would be stated until 3 July 2018. On 4 July 2018 the Union informed the CAC that the discussions had broken down and the parties had been unable to reach a voluntary agreement. The stay was therefore lifted and the statutory process resumed.

4. The acceptance period was then extended on several occasions in order to allow more time for the Employer to submit its response to the Union's application, to enable the CAC to carry out a membership and support check and for the parties to comment on that check, and to provide time for the Panel to consider all the evidence before arriving at a decision as to whether or not to accept. The final extension ends the acceptance period on 21 August 2018.

Issues

5. 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.

Summary of the Union's application

6. In its application to the CAC the Union stated that it had sent a formal request to the Employer on 3 May 2018. A copy of this request was attached to the application. The Union stated that Ramkumar Chandrasekaran responded, by e-mail, on 23 May 2018 stating that "a formal recognition agreement would not be appropriate."

7. When asked whether the Union had made a previous application under the Schedule for statutory recognition for workers in the proposed bargaining unit or a similar unit the Union

answered “no”. 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.

8. The Union stated that the total number of workers employed by the Employer, was 41,000. The Union stated that there were 157 workers in the proposed bargaining unit, of whom 103 were members of the Union. When asked to provide evidence that the majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining, the Union stated that on 27 March 2018 it had carried out a consultative ballot with the question “Would you be prepared to take industrial action , including strike action, over TCS proposals to de-recognise Unite.” The Union explained that 78 members responded, with 76.92% voting in favour of action. The ballot closed on 10 April 2018. The Union further stated that following this ballot its membership had increased but this would not affect the outcome of the consultative ballot.

9. The Union stated that the reason for selecting its proposed bargaining unit was because “Prudential employees on the PGDS account were TUPed to TCS on 1 May 2018. These groups of employees were part of a voluntary recognition agreement with Prudential and will continue to work on the PGDS account. The TUPE is for 5 years and if an employee moves to other employment in TCS they will be required to sign new TCS contracts.” In answer to the question whether the bargaining unit had been agreed with the Employer, the Union stated “no”. When asked whether there was any existing recognition agreement of which it was aware which covered any workers in the bargaining unit, the Union stated that “these employees were part of a voluntary recognition agreement with Prudential but on transfer TCS derecognised Unite.”

10. The Union confirmed that it held a current certificate of independence. The Union stated that it had copied its application and supporting documents to the Employer on 25 May 2018.

Summary of the Employer's response to the Union's application

11. In its response to the Union’s application the Employer stated that the Union’s written request for recognition had been received on 8 May 2018. The Employer stated that by e-mail dated 23 May 2018 it declined the Union’s request.

12. The Employer confirmed that it had received a copy of the Union's application form on 25 May 2018. The Employer stated that it had not, before receiving a copy of the application form from the Union, agreed the bargaining unit with the Union, nor did it agree with the proposed bargaining unit. The Employer considered that the bargaining unit should only consist of those employees, who were the subject of a transfer to TCS under the TUPE Regulations. The Employer stated that following receipt of the Union's request, it had not proposed that Acas should be requested to assist.

13. The Employer stated that it did not agree with the number of workers in the proposed bargaining unit as set out in the Union's application. The Employer said that there were 144 workers in the proposed bargaining unit and that the reason for the discrepancy was unknown. The Employer stated that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

14. The Employer did not respond to question 10 on the response form: "If you disagree with the Union's estimate of membership in the proposed bargaining unit, please indicate your reasons for disagreeing, with any available evidence." When invited to give its reasons if it did not consider that a majority of the workers in the bargaining unit would be likely to support recognition the Employer stated "Of the 144 employees that transferred to TCS on Monday May 1st 114 have expressed a desire to leave the Company under the proposed Voluntary Redundancy scheme."

15. The Employer stated that it was not aware of any previous application under the Schedule by the Union in respect of this or a similar bargaining unit, nor had it received any other applications in respect of workers in the proposed bargaining unit.

The membership and support check

16. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the proposed bargaining unit are members of the union (paragraph 36(1)(a)) and whether a majority of the workers in 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 (paragraph 36(1)(b)), the Panel proposed an independent check of the level of union membership within the proposed 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 workers within the proposed 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 names and dates of birth). It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party. These arrangements were confirmed in a letter dated 16 July 2018 from the Case Manager to both parties. The information required from the Union was received by the CAC on 16 July 2018 and from the Employer on 18 July 2018.

17. The Union provided a list of 90 members and the Employer provided a list of 200 workers.

18. The membership check established that there were 82 members of the Union within the bargaining unit which constituted a membership level of 41%. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

19. A report of the result of the membership and support check was circulated to the Panel and the parties on 23 July 2018 and the parties were invited to comment on the results of that check and on any other aspect of the admissibility criteria by noon on 26 July 2018.

Summary of the parties' comments following the membership and support check

20. In an e-mail to the CAC dated 26 July 2018 the Union stated that it did not intend to challenge the 8 union members not appearing on the Employer's list because 4 had since left the company and 4 were able to find alternative employment at the Prudential. It also stated that it was unable to comment on the 6 individuals identified as "Locals" as it did not know who those individuals were.

21. The Union stated that it did wish to challenge the 50 individuals identified as "Expats". The Union explained that in both TUPE consultations and a conversation with TCS, it was clear that TCS employees were not fixed to one particular contract or account and would be expected to move as and when instructed by TCS. The Union stated that for Prudential employees that transferred to the UK TCS PGDS Account this would not be the case, unless they had chosen to accept a TCS contract. It was the Union's view that the 50 "Expat"

employees were employed under TCS standard contracts and therefore would not be part of the UK TCS PGDS Account bargaining group.

22. In an e-mail to the CAC dated 26 July 2018 the Employer stated that whilst it accepted that members of the union currently constitute at least 10% of the bargaining unit, it did not believe that the majority of the members in the bargaining unit were likely to favour union recognition.

23. The Employer stated that it had recently begun discussions with the workforce and offered voluntary redundancy as part of a possible restructuring. At least 84 employees had agreed to take voluntary redundancy and were therefore likely to be absent at the time of a ballot either because they would have already left the business, the first leaving at the end of July, or that they would have “little legitimate interest” as to whether the union should be recognised. It was the Employer’s view that given the circumstances, it did not believe it was in any way a forgone conclusion that the majority of the bargaining unit would be likely to vote in favour of union recognition if a ballot was held.

24. In a further e-mail to the CAC dated 26 July 2018 the Employer stated that the figure of 84 given in its earlier e-mail was incorrect and the correct number was 114. The Employer said that all personnel, who applied for voluntary redundancy, came from the 144 personnel who had transferred to TCS from PGDD on 1 May 2018. The Employer stated that the number of staff who applied for voluntary redundancy was 114, and as of today, the number of personnel with a defined leave date, was 102.

25. On 26 July 2018 the CAC copied the Union’s e-mail of 26 July 2018 to the Employer and invited its comments on the points made by the Union. By e-mail dated 31 July 2018 the Employer stated that it would like to resist the Union’s challenge to the expat community, as to exclude those people from the bargaining unit would severely hamper its ability to manage the team effectively. The Employer explained that whether those workers were an expat or not was irrelevant. It further explained that over time the proportion of the team who were expats would increase. A lot of people who transferred from PGDS had agreed to leave the business by way of voluntary redundancy – around 20 per month for the next three months, with 40 leaving in November and 20 next year. The Employer stated that it had been forced to back-fill vacancies with expats because so many personnel had opted for voluntary redundancy. The Employer stated that consequently, the bargaining unit would continue to shrink over the

coming months and the number of union members would proportionately decrease as the number of expats proportionately rises. The Employer explained why it believed it would be incompatible with effective management to exclude those expats from the bargaining unit. However this is an issue that will, if necessary, be considered by the Panel at a later stage of the statutory recognition process.

26. By a further e-mail dated 31 July 2018 the Employer also set out, for information, what it referred to as the “latest position with regard to the 144 transferred employees.”

27. On 1 August 2018 the CAC copied the Employer’s e-mails of 31 July 2018 to the Union and invited its comments on the points made by the Employer. By e-mail dated 2 August 2018 the Union stated that although voluntary redundancy had been agreed, it still believed that the release date could be pushed back. The Union further stated that in the consultation before the transfer of the Operating Model did not identify any new roles on the PGDS so was difficult to comment on this point. It stated that it was also possible that those employees were Unite members and would still want union recognition. The Union said that it therefore believed its application for recognition still had merit as the 144 employees, who had transferred, were still working for TCS on the PGDS Account.

28. In an e-mail to the CAC on 3 July 2018 the Employer further set out the company’s position concerning the voluntary redundancies. It stated that to date, it had confirmed a leave date with 102 personnel, 95 of whom would have left by December. The Employer said that it was the case that the majority of the personnel who transferred from PGDS to TCS on 1 May “were not happy people”. The Employer stated that “many felt that they had been poorly treated by PGDS in the previous few years and the announcement that they were now to be outsourced to TCS was the final straw for many of them which is why we received such a high take up to the VR option.” The Employer said that it was certainly not the desire of any of those personnel to have their leaving prolonged and since they were leaving, it questioned whether they were “that bothered about union recognition”. The Employer stated that it considered any suggestion that release dates be pushed back would not to be in their best interests, nor did it believe this is something they would accept.

Considerations

29. In determining whether to accept the application the Panel must decide whether the

admissibility and validity provisions referred to in paragraph 5 above are satisfied. The Panel has considered carefully the submissions of both parties and all the evidence in reaching its decision.

30. The Panel is satisfied that the Union made a valid request to the Employer within the terms of 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 37 to 42 of the Schedule. 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.

Paragraph 36(1)(a)

31. Under paragraph 36(1)(a) of the Schedule an application is not admissible unless the Panel decides that members of the union constitute at least 10% of the workers in the proposed bargaining unit.

32. The membership check conducted by the Case Manager (described in paragraphs 16 - 19 above) showed that 41% of the workers in the proposed bargaining unit were members of the Union which the Employer did not contest. As stated in paragraph 18 above, the Panel is satisfied that this check was conducted properly and impartially and in accordance with the arrangements agreed with the parties. The Panel has therefore decided that members of the union constitute at least 10% of the workers in the proposed bargaining unit as required by paragraph 36(1)(a) of the Schedule.

Paragraph 36(1)(b)

33. 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.

34. The Panel is satisfied on the basis of the membership check that the union membership density level is 41%. The Union did not provide any additional evidence of support for recognition, such as a petition, but the Panel considers that, in the absence of any evidence to

the contrary, union membership provides a legitimate indicator of the views of the workers in the proposed bargaining unit as to whether they would be likely to favour recognition of the Union. It is also the Panel's experience that there will be workers who are not members of the Union who would be likely to favour recognition of the Union. On the basis of the evidence before it, the Panel has decided that, on the balance of probabilities, a majority of the workers in 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, as required by paragraph 36(1)(b) of the Schedule

Decision

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

Panel

Professor Kenneth Miller, Panel Chair

Mr Len Aspell

Mr Keith Sonnet

20 August 2018