Case Number: TUR1/1040/2018

11 September 2018

CENTRAL ARBITRATION COMMITTEE

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION

DECLARATION OF RECOGNITION WITHOUT A BALLOT

The Parties:

NUJ

and

Springer Nature Limited (Formerly Macmillan Publishers Limited)

Introduction

1. NUJ (the Union) submitted an application to the CAC dated 12 March 2018 that it should be recognised for collective bargaining by Macmillan Publishers Ltd (part of the Springer Nature Group) (the Employer) in respect of a bargaining unit comprising "Editorial and Production staff in content creation roles (as opposed to those working in purely administrative roles) employed in Nature Research Group at the London Campus". The application was received by the CAC on 12 March 2018. The CAC gave both parties notice of receipt of the application on 13 March 2018. The Employer submitted a response to the CAC dated 19 March 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 Mr Charles Wynn-Evans, Chairman of the Panel, and, as Members, Miss Mary Canavan and Ms Judy McKnight. The Case Manager appointed to support the Panel was Kate Norgate.

3. By a decision dated 24 April 2018 the Panel accepted the Union's application. Following this decision the parties then reached agreement on the appropriate bargaining unit. The agreed bargaining unit was identified as "NRG Editorial; Art Editing group; Copyediting and proofreading groups; Nature Weekly production roles [Simon Gribbins + team of 2]; To be red circled - Production Editors [Derna Brown and Emma Carter's teams]".

4. As the agreed bargaining unit was different from that proposed by the Union in its application, the Panel was required by paragraph 20 of Schedule A1 to the Act (the Schedule) to determine whether the Union's application was invalid within the terms of paragraphs 43 to 50 of the Schedule. By a decision dated 31 July 2018 the Panel determined that the application was not invalid and that the CAC would proceed with the application.

Issues

5. Paragraph 22 of 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) provides that "membership evidence" for these purposes 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 and submission it should be recognised without a ballot

6. In a letter dated 31 July 2018 the Union was asked by the CAC whether it claimed majority membership within the bargaining unit and, if so, whether it submitted that it should be granted recognition without a ballot. The Union, in a letter dated 1 August 2018, stated that it did claim to have majority membership within the bargaining unit and therefore submitted that it should be granted recognition without a ballot.

7. The Union submitted that this was not a case where there was an atmosphere of mutual hostility and mistrust that might prompt the CAC to order a ballot. During the period in which the parties were seeking to negotiate a voluntary agreement, minutes of meetings and correspondence showed that there was constructive and positive dialogue throughout. The parties subsequently agreed an appropriate bargaining unit after constructive negotiations in an atmosphere of cooperation and good will. The Union considered that such a bespoke bargaining unit could only have been agreed where there were good industrial relations or the prospect for future good industrial relations was bright.

8. The Union maintained that there was no need for the CAC to conclude that a ballot would be in the interests of good industrial relations. To hold a ballot would mean a further delay, which would more likely "sour existing good industrial relations". On this point the Union relied upon the decision in the case of ***NUJ and AOL (UK) Ltd (TUR1/424/2005).*** The Union contended that that the CAC should work from the premise that, as here, a union which has majority membership should be awarded recognition without a ballot unless there was good reason to hold otherwise.

9. The Union stated that any reference by the Employer to the "narrowness of the Union's majority" was not of itself a ground for ordering a ballot. The CAC was not entitled to "*impose, in effect, a threshold for recognition without a ballot higher than that stipulated by the legislators*". On this point, the Union relied on the decision in **ISTC and Fuller Computer Industries Ltd (TUR1/29/00)** which was affirmed on an application for judicial review in **R v Fullarton Computer Industries Ltd, [2001] IRLR 752**.

10. The Union argued that the Employer had submitted no evidence to show that it would be in the interests of good industrial relations to hold a ballot. Nor did the Union believe that the CAC had received evidence from union members within the bargaining unit that they do not want the union to be recognised for the purpose of collective bargaining.

11. The Union believed that the CAC had received no 'membership evidence' which could lead it to doubt whether a significant number of union members want the union to be recognised. The Union's position was that no such evidence existed nor had the Employer asserted this to be the case. The Union argued that the steady increase in union membership since its application to the CAC that it said had taken place indicated both support from existing members and the wider bargaining unit.

12. Finally, it was the Union's view that it had demonstrated that 51.5% of the workers in the agreed bargaining unit were in favour of recognition, and that the Employer had submitted no evidence to the contrary beyond the bare assertion that it was "necessary" or "absolutely essential" for there to be independent verification of the Union's figures in the form of a ballot. The Union considered that those "bare assertions" did not meet the statutory test which requires that the CAC Panel *must* declare the Union to be recognised without a ballot *unless* one of the three qualifying conditions, as specified in paragraph 22(4) of the Schedule, were fulfilled.

Summary of the Employer's response to the Union's claim and submission it should be recognised without a ballot

13. On 2 August 2018 the CAC copied the Union's letter of 31 July 2018 to the Employer and invited it to make submissions on the Union's claim that it had majority membership within the bargaining unit and on the three qualifying conditions specified in paragraph 22(4) of the Schedule.

14. In a response to the CAC sent on 9 August 2018 the Employer submitted that the size and make-up of the bargaining unit was constantly changing and that, since the last membership check was undertaken by the CAC, the composition of the bargaining unit had changed. The Employer explained that two workers had left the bargaining unit and two workers had joined. Nine workers from within the bargaining unit had also handed in their notice of the termination of their employment, and they would be leaving in the near future.

15. The Employer considered that, even when taking the Union's membership figures at their highest, members of the Union made up the slenderest majority within the bargaining unit, namely 51.47%. The Employer believed that the majority was so slight that if any Union members were amongst those workers identified as having left, or who had handed in their notice, this majority could well have disappeared. The Employer therefore believed that the Union had not demonstrated that it had majority membership within the bargaining unit and it considered that a ballot was essential.

16. The Employer submitted that it would be in the interests of good industrial relations for a ballot to be held. The Employer explained that the negotiations between Springer Nature and the Union had been constructive and undertaken in an atmosphere of cooperation. The Employer argued that this was how any negotiation should be undertaken. The Employer's interests were solely aligned with its employees and it simply wanted to ensure that recognition was what the workers in the bargaining unit wanted. The Employer stated that it had seen no evidence to suggest that this was the case.

17. The Employer stated that it did not accept that all members of the Union support recognition. Nor did the Employer believe that the Union had presented any evidence to demonstrate that this was the case, despite its repeated requests. The Employer explained that in its view there was already in place a very effective employee consultation body, which was regularly consulted about key issues which affect the business, including the annual salary review process, and the majority of workers were happy with the current arrangements. It was the Employer's view that it had seen no sustained level of support for recognition amongst its staff and it believed the Union's concern about undertaking a survey (and now a ballot) to determine support for recognition was indicative of the Union's concerns about the level of support amongst staff, including its own members.

18. The Employer believed that there was no reason why any delay caused by a ballot should sour industrial relations, the Employer considering that it would in fact be the opposite. It was the Employer's belief that, if recognition was imposed without a ballot, there would remain a feeling that it had been imposed against the will of the workers in the bargaining unit and without them being given a fair opportunity to determine if that is what they want. The Employer considered that this would likely influence industrial relations for the foreseeable future and would leave a cloud of suspicion hanging over the collective bargaining arrangement. The Employer stated that, if a ballot were held which showed beyond doubt that those workers favoured recognition, all such suspicion would be removed and industrial relations between the parties would improve going forwards rather than soured.

19. The Employer asked that the CAC have regard to the lengths to which the Union had gone to avoid any assessment of support for recognition within the bargaining unit, and the consistent approach which it had adopted which was to grant recognition if that was requested by the workers in the bargaining unit. The Employer stated that it remained to be convinced recognition is what the workers want, and to hold a ballot would determine the issue.

Summary of the Union's comments on the Employer's response

20. On 10 August 2018 the CAC copied the Employer's submissions to the Union and invited it to comment on the points made by the Employer. In its e-mail response dated 16 August 2018 the Union made the point that, although the Employer had put great emphasis on the fact that it had seen no evidence of the union members' support for recognition, it had provided no evidence to the contrary. It was the Union's view that, in the absence of any such evidence, the Panel should not be persuaded that it would be in the interests of good industrial relations to hold a ballot.

21. The Union maintained that the existence of an employee consultative body was not material to the consideration of good industrial relations in the context of the statutory recognition procedure and the test under paragraph 22(4), as there was no conflict in union recognition being in place alongside such a body. The Union stated that it did not accept that its members would feel that recognition would be "imposed against the will of the workers in the bargaining unit" and there was no reason to suggest that non-union members within the

bargaining unit would oppose recognition of the Union beyond what appeared to be the Employer's projection of its feelings of opposition onto such workers. The Union contended that the Employer had presented no evidence to support its arguments in this regard.

22. Finally, the Union submitted that it was entitled to maintain its reliance on the default position that the CAC Panel must declare the Union to be recognised without a ballot unless one of the three qualifying conditions as specified under paragraph 22(4) of the Schedule is fulfilled. The Union stated that in doing so it was not avoiding any assessment of support within the bargaining unit but simply asserting its statutory rights and accordingly submitted that the CAC should grant the Union recognition under paragraph 22(4) of the Schedule.

Considerations

23. The Act requires the Panel to consider whether it is satisfied that a majority of the workers constituting the bargaining unit are members of the Union. If the Panel is satisfied that a majority of the workers constituting the bargaining unit are members of the Union, it must declare the Union to be recognised as entitled to conduct collective bargaining on behalf of the workers constituting the bargaining unit unless it decides that any of the three qualifying conditions set out in paragraph 22(4) is fulfilled. If the Panel considers that any of those specific conditions is fulfilled it must give notice to the parties that it intends to arrange for the holding of a secret ballot.

24. In this case the membership check issued by the Case Manager on 17 July 2018 showed that 51.5% of the workers in the bargaining unit were members of the Union. The Panel is satisfied that this check was conducted properly and impartially and, in the absence of evidence to the contrary, is satisfied that a majority of the workers in the bargaining unit are members of the Union.

25. The Panel has considered carefully the submissions of both parties and all the evidence in reaching its decision as to whether any of the qualifying conditions laid down in paragraph 22(4) of the Schedule is fulfilled.

26. The first condition is that the Panel is satisfied that a ballot should be held in the interests of good industrial relations. The Panel has considered the submissions put forward

by both parties and has concluded that it is not satisfied that a ballot should be held in the interests of good industrial relations. The Panel notes the Employer's concern that members of the union made up the slenderest majority. However, this is not in itself a justification for the holding of a ballot. The Union has a majority of workers in the bargaining unit in membership – 51.5% as at the time of the membership check - and therefore the threshold for recognition without a ballot has been met in this case. For this condition to be met the Panel requires evidence that a ballot would be in the interests of good industrial relations. The Panel notes the Employer's view that to impose recognition "without the will of the workers" would likely influence industrial relations for the foreseeable future and leave a cloud of suspicion hanging over the collective bargaining arrangement. However, no cogent evidence has been put before the Panel to show how industrial relations would be detrimentally affected if it were to award recognition without a ballot taking place and why industrial relations would improve if a ballot were to be held. The Panel has therefore concluded that this condition has not been satisfied.

27. 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. No such evidence has been produced and the Panel has therefore concluded that this condition has not been satisfied.

28. 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. No such evidence has been produced and the Panel has therefore concluded that this condition has not been satisfied.

Declaration of recognition

29. The Panel is satisfied in accordance with paragraph 22(1)(b) of the Schedule that a 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 is 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 ""NRG

Editorial; Art Editing group; Copyediting and proofreading groups; Nature Weekly production roles [Simon Gribbins + team of 2]; To be red circled - Production Editors [Derna Brown and Emma Carter’s teams]".

Panel

Mr Charles Wynn-Evans, Panel Chair
Ms Judy McKnight
Miss Mary Canavan

11 September 2018