

**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:**

RMT

and

Pullman Rail Limited

**Introduction**

1. RMT (the Union) submitted an application to the CAC dated 29 January 2014 that it should be recognised for collective bargaining by Pullman Rail Limited (the Employer) for a bargaining unit comprising “Unskilled, Apprentices, Semi-Skilled, Skilled, Inspection/Technical Support Staff but excluding Managers and Admin Staff”. The location of the bargaining unit was given as Pullman Rail Limited, Train Maintenance Depot, Leckwith Road, Cardiff, CF11 8HP. The CAC gave the parties notice of receipt of the application on 29 January 2014. The Employer submitted a response to the application on 5 February 2014.

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, Chairman of the Panel, and, as Members, Mr Dennis Scard and Mr Michael Shepherd. The case manager appointed to support the Panel was Adam Goldstein.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 12 February 2014. The acceptance period was extended to 21 February 2014 in order to allow time for the parties to comment on the results of the membership check and for the Panel to consider said comments before arriving at a decision.

### **Issues which the Panel has to determine**

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; and should therefore be accepted.

### **Background**

5. The Union made a previous application to the CAC for recognition by the Employer on 25 October 2012 (TUR1/825/2012). That application was not accepted by the CAC. The Union made two further applications on 17 December 2013 (TUR1/861/2013) and 17 January 2014 (TUR1/863/2014) both of which were withdrawn before a decision on acceptance was made.

### **Summary of the Union's application**

6. In its application the Union stated that it had sent its formal request for recognition to the Employer on 6 November 2013 and a response dated 15 November 2013 had been received from the Employer. Copies of both documents were attached to the application. In its response of 15 November the Employer stated that its established "Employee Committee" continued to serve as the main channel in employee communication and engagement and had successfully acted as the negotiation body on matters such as pay, hours and holiday (sic). The Employer stated that it therefore rejected the Union's request for recognition as the Employer considered that its current approach to employee engagement was the channel its employees preferred. The Employer stated that it was agreeable to meeting with the Union to discuss the basis of its latest application for voluntary recognition and that it would attend the Union's offices on a specified date. The Union stated in its application that the Employer,

following receipt of the request for recognition, did not propose that Acas should be requested to assist.

7. The Union stated that there were 154 workers employed by the Employer, of whom 128 were in the proposed bargaining unit. The Union stated that there were 80 members of the Union within the proposed bargaining unit. When asked to provide evidence that the majority of the workers in the bargaining were likely to support recognition for collective bargaining the Union stated that this was based upon applications for Union membership. The Union stated that the reason for selecting the proposed bargaining unit was a request from its members for recognition within those areas of work.

8. The Union stated that the bargaining unit had not been agreed with the Employer and, as far as it was aware, there was no existing recognition agreement in force covering any of the workers in the proposed bargaining unit. The Union confirmed that it held a current certificate of independence.

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

9. In its response to the Union's application, the Employer stated that it had received a written request for recognition from the Union on 11 November 2013. Following this the Employer had written, on 15 November 2013, to suggest a meeting to discuss the basis of the Union's application for voluntary recognition. An initial meeting between the parties to discuss the request for voluntary recognition had taken place on 29 November 2013. The Union had then made an application to the CAC for recognition (TUR1/861/2013) on 17 December 2013, a copy of which had been received by the Employer by e-mail at 9.56am on 18 December 2013. A second meeting between the parties to discuss the request for voluntary recognition had taken place at 10.15am on 18 December 2013.

10. The Employer confirmed that it had received a copy of the application form and supporting documents from the Union for the current application on 29 January 2014.

11. The Employer stated that it had not, before receiving a copy of the application from the Union, agreed the bargaining unit with the Union and that it did not agree it. The Employer stated that the bargaining unit should include all administrative staff and

middle/project managers as this was how the Employer ordinarily organised its business, a bargaining unit that would comprise 152 staff out of the 159 employed. The Employer stated that the existing Employee Committee represented all staff.

12. The Employer confirmed that, following receipt of the Union's request, it did not propose that Acas be requested to assist.

13. The Employer stated that there was an existing agreement for recognition in force covering workers in the proposed bargaining unit. The Employer stated that the date of such agreement was 17 September 2012 and attached a copy of the Employee Committee Constitution & Terms of Reference to its response. The Employer stated that the other party to the agreement was the representatives of all the workforce and that it did not have a certificate of independence. The Employer stated that the agreement had continued to be in effect since it was made, with the most recent meeting having been on 4 February 2014, and that minutes could be forwarded as requested.

14. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit the Employer said that it disagreed with this estimate based on previous experience. An updated membership list had not been provided by the Union and so the Employer was unable to verify the figures provided.

15. In answer to the question whether a majority of the workers in the proposed bargaining unit would be likely to support recognition the Employer stated that in mid-August 2012, after a request from staff, an Employee Committee had been set up to enable all employees to communicate their views on working life and to enable them to be fully informed about developments within the Employer. The Employee Committee consisted of Union and non-Union employees, representing all shop floor workers, office staff and middle/project managers. The Committee had full negotiating powers which had been exercised on many occasions and had successfully negotiated improvements in pay, hours and holidays for the benefit of all employees. The Employer stated that it was clear from recent statements made by the Employee Committee that Employee Committee members themselves (including both Union and non-Union members) believed that the Employee Committee remained the better way forward for the Employer and did not support the Union's application for recognition. The Employer stated that it was wholly committed to

building upon the good work already achieved with Employee Committee members and believed that its current approach to employee engagement remained the channel its employees preferred. The Employer further argued in a covering letter to its response that the Union had provided no evidence that the majority of workers in the proposed bargaining unit would favour recognition. The Employer said that it was aware that there had been some Union recruitment activity but that evidence presented for TUR1/825/2012 (see paragraph 5 above) showed that employees had joined the Union because of benefits such as the provision of wills, legal representation and assistance with internal procedures and that union membership did not automatically mean that staff wanted union representation in collective bargaining. The Employer also stated in its response to the application that it was concerned that Union members had singled out an Employee Committee member, adopting “harassing tactics” in an attempt to get that Committee member to step down, a matter that was currently being investigated. The Employer attached a signed statement from the Bogie Shop Manager in which he stated that the Assistant Shop Manager had informed him that he had overheard a Union member telling an Employee Committee member that he should step down and leave the pay negotiations to the Union. The Shop Manager said that he had invited the Employee Committee member into his office and the latter had said that several members of staff had been harassing him to step down from the Employee Committee and that an Employee Committee member in another shop was also having the same problem.

16. In the covering letter to its response the Employer stated that it believed that the Union had not followed the proper process for applying for recognition. The Employer said that three applications had been submitted by the Union since November 2013. The first was submitted prior to a second meeting between the parties to discuss voluntary recognition on 18 December (application withdrawn 16 January 2014); the second was submitted on 17 January 2014 (application withdrawn 27 January 2014); and the third on 29 January 2014. The Employer argued that the Union should have made a request for recognition to the Employer before submitting the current formal application to the CAC. The Employer submitted that the Union had by-passed a fundamental element of the statutory process by omitting to enter into any discussions about voluntary recognition before serving the formal application for recognition, thereby undermining the process, and that the Union’s latest application was procedurally incorrect. The Employer stated that it had written to the Union to confirm this belief and attached to its response a copy of a letter to the Union dated 5 February 2014 to this effect.

## **The membership check**

17. 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 the workers within the proposed bargaining unit, and that the Union would supply to the Case Manager a list of its members within that unit including full name, date of birth, date of joining, date paid up to and confirmation of membership status. 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 7 February 2014 from the Case Manager to both parties.

18. The information from the Union was received by the CAC on 10 February 2014. In an e-mail accompanying the Union's list of members the Union stated that its list showed the paid up current Union membership up to 7 February 2014. The information from the Employer was received on 11 February 2014. The Panel is satisfied that this check was conducted properly and impartially and in accordance with the agreement reached with the parties.

19. The list supplied by the Employer indicated that there were 141 workers in the Union's proposed bargaining unit. The list of members supplied by the Union contained 82 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 75, a membership level of 53.19%.

20. A report of the result of the membership check was circulated to the Panel and the parties on 12 February 2014 and the parties were invited to comment on the result by close of business on 17 February 2014.

## **Summary of the parties' comments on the result of the membership check**

21. Comments from the Employer were sent to the CAC in a letter dated 17 February 2014. In relation to the test that members of the union constitute at least 10% of the workers in the proposed bargaining unit the Employer stated that it was not able to verify the validity of the number of Union members and relied upon the data provided by the CAC. The Employer asked whether it had been verified that all Union members were still making direct debit payments as it had been its understanding previously (see TUR1/825/2012, referred to in paragraph 5 above) that some staff had cancelled their payments as a way of stopping membership but may not have formally cancelled their membership and so may still have been included in the membership check. The Employer reiterated the point made in its response to the Union's application that it did not accept the Union's definition of the bargaining unit and would include all staff within the bargaining unit as this was the way that the Employer organised itself.

22. In relation to the question whether 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, the Employer stated that it did not believe that staff favoured recognition of the Union for collective bargaining. The Employer stated that the Employee Committee had been very successful and had introduced changes for the benefit of all staff groups. The Employer stated that its bargaining unit would consist of 158 staff (made up of 141 shop floor workers and 17 administration and middle management workers) and that only 47% of that bargaining unit would be Union members, which was not a majority. The Employer also stated that it was currently recruiting additional staff and that, over the course of the next month, there would be 168 shop floor workers and 20 administration and middle management workers. This would mean that at current membership levels only 45% of the Union's proposed bargaining unit would be Union members and only 40% of the Employer's bargaining unit would be Union members.

23. The Employer further submitted that there was no credible evidence of majority support for recognition of the Union. The Employer stated that this assertion was evidenced in three ways. First, the Union had stated that its belief that the majority of workers in the bargaining unit were likely to support recognition was based upon applications for membership but there was no updated membership list attached to the Union's application

and so the Employer could not verify this. Moreover, the prospective additional staff numbers showed that, even if Union membership were to be taken as a guide, it was not clear that there would be majority support for Union recognition. Second, the Employer reiterated the point made in the covering letter to its response to the application that union membership did not automatically mean that staff wanted union representation in collective bargaining. Finally, the Employer stated that Union members remained fully engaged in the Employee Committee and pointed to the growing influence of the Committee and the benefits that the Committee had brought to staff. The Employer therefore disputed that the majority of workers in the bargaining unit would be likely to favour recognition.

24. The Employer submitted that, if the application were to be accepted by the CAC, a secret postal ballot of staff should be held to ensure that there was the “the required level of recognition” and to ensure continued good employee relations.

25. The Employer attached to its letter a number of handwritten signed statements, some of which were undated, others of which were dated 3 or 5 November 2012. Some sheets contained a statement written and signed by one individual whilst other sheets contained a statement signed by a number of individuals. Five statements were from individuals who stated that they were members of the Union but did not wish the Union to engage in collective bargaining; five were from individuals who stated that they were members of the Union and supported the Employee Committee but were silent on collective bargaining; the remainder were from individuals who did not indicate whether they were members of the Union.

26. No comments on the membership check were received by the CAC from the Union.

### **Considerations**

27. In deciding whether to accept the application, the Panel must determine whether the validity and admissibility provisions referred to in paragraph 4 above are satisfied. The Panel has considered carefully the submissions of both parties and all the evidence relating to these provisions in reaching its decision.

28. As stated in paragraph 16 above the Employer submitted that the Union's application should not be accepted on the ground that the Union had not submitted a valid request for recognition prior to submitting the current application to the CAC.

29. The Union submitted a request to the Employer dated 6 November 2013. It then submitted applications to the CAC on 17 December 2013 (TUR1/861/2013) and 17 January 2014 (TUR1/863/2014). Both these applications were withdrawn before a decision on acceptance was made. The present application was submitted on 29 January 2014.

30. The Panel notes that there is nothing in the Schedule that requires a union to submit a fresh request to the employer prior to making a further application to the CAC unless the CAC had decided in relation to any previous application that the initial request was not valid. No such decision had been made in relation to the request of 6 November 2013. The Panel has examined the request of 6 November 2013 and is satisfied that the Union made a valid request to the Employer within the terms of paragraphs 5 to 9 of the Schedule.

31. The Panel is also satisfied that the Union's application was made under paragraph 12 of the Schedule. A union may apply to the CAC under paragraph 12 if the employer informs the union before the end of the "first period" (defined in paragraph 10(6) as the period of 10 working days starting with the day after that on which the employer receives the request for recognition) that it does not accept the request but is willing to negotiate and no agreement is made before the end of the "second period". The "second period" is defined in paragraph 10(7) as the period of 20 working days starting with the day after that on which the first period ends or such longer period (so starting) as the parties may from time to time agree. In this case the second period started on 26 November 2013. The Union's application to the CAC was dated 29 January 2014, following the expiry of the period of 20 working days without agreement or any agreement by the parties to a longer period.

32. The Employer submitted that the application was inadmissible under paragraph 35 of the Schedule as there was already in force an existing agreement for recognition covering workers in the proposed bargaining unit in the form of the Employee Committee which covered all shop floor workers, office staff and middle/project managers and provided a vehicle for the negotiation of issues including pay, hours and holidays. The Panel notes that paragraph 35 applies only if there is already in force a collective agreement under which *a*

*union* (our emphasis) is recognised as entitled to conduct collective bargaining on behalf of any workers falling within the bargaining unit. The Panel is satisfied that the representatives of the workforce on the Employee Committee do not constitute a union within the meaning of section 1 of the Act and that on that ground alone the application is not rendered inadmissible under paragraph 35. Given its finding on this point the Panel is not required to consider whether other requirements for the application of paragraph 35 have been met.

33. The Panel is satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 and 34 and paragraphs 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)*

34. 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. The membership check conducted by the Case Manager, described in paragraphs 17-19 above, showed that 53.19% of the workers in the proposed bargaining unit were members of the Union. As stated in paragraph 18 above the Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties. The Panel notes the Employer's concern expressed in paragraph 21 above that members may have cancelled their direct debit payments without formally cancelling their union membership and that such individuals may erroneously have been included in the membership check. The Panel also notes that, as recorded in paragraph 18 above, the Union stated that its list of members provided for the purposes of the check showed the paid up current Union membership up to 7 February 2014. The Panel is content to rely for the purposes of this decision on the information provided by both parties in determining the level of union membership in the bargaining unit. 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)*

35. 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. For the reasons given in the previous paragraph the level of union membership is 53.19%. The Panel considers that, in the absence of reliable 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. The Panel notes the Employer's submissions that the majority of workers in the proposed bargaining unit support the Employee Committee and do not support recognition of the Union. The Employer attached to its comments on the membership check the statements referred to in paragraph 25 above. The Panel notes that these statements were either dated 3 or 5 November 2012 or undated. The Panel is unable to place any weight on these statements in the absence of any evidence that they represent the current views of union members. The Employer also submitted that workers may have joined the Union for reasons other than support for recognition. However no recent evidence was provided to support this submission. Finally the Employer submitted that the forthcoming recruitment of additional staff would reduce the proportion of workers in the proposed bargaining unit who support recognition below a majority and that this figure would be further reduced if its preferred bargaining unit were to be adopted. The Panel reminds the parties that its decision is taken on the basis of the number of Union members in the Union's proposed bargaining unit who are employed by the Employer at the time of the membership check. The Panel also emphasises that the question of whether the Union's bargaining unit is appropriate or, if not appropriate, which bargaining unit is appropriate (if the parties are unable to agree an appropriate bargaining unit) falls to be decided at a later stage in the statutory process and the parties will have an opportunity to make submissions on that matter at that stage.

36. 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.

## **Concluding observations**

37. The Panel notes the Employer's statement in paragraph 15 above that it is investigating "harassing tactics" allegedly being adopted by Union members to persuade an Employee Committee member to step down. The Panel has not sought further evidence on this matter or comment from the Union. It makes no finding on this matter and it has played no part in its decision.

38. The Panel notes the Employer's submission set out in paragraph 24 above that if, contrary to the Employer's general submissions, the CAC accepted this application a secret postal ballot of staff should be held. The Panel reminds the parties that the question of whether or not a ballot should be held and, if so, what form it should take arises at a later stage in the statutory process and the parties will have an opportunity, if that stage is reached, to make submissions on these questions at that stage.

## **Decision**

39. For the reasons given in paragraphs 30-35 above the Panel's decision is that the application is accepted by the CAC.

## **Panel**

Professor Gillian Morris, Chairman of the Panel

Mr Dennis Scard

Mr Michael Shepherd

24 February 2014