

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:

National Union of Rail, Maritime and Transport Workers
(RMT)

and

Go West Travel Ltd trading as Norfolk Green

Introduction

1. The National Union of Rail, Maritime and Transport Workers (the Union) submitted an application to the CAC dated 20 January 2015 that it should be recognised for collective bargaining by Go West Travel Ltd trading as Norfolk Green¹ (the Employer) for a bargaining unit comprising “Permanently employed bus drivers working for Norfolk Green based at Kings Lynn. This excludes any drivers employed on a zero hour contract, casual or agency basis”. The CAC gave both parties notice of receipt of the application on 22 January 2015. The Employer submitted a response to the CAC dated 28 January 2015 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 Gillian Morris, Chairman of the Panel, and, as

¹ In its application the Union had identified Norfolk Green as the employer of the workers in its proposed bargaining unit but in its response to the application the Employer explained that Norfolk Green was a trading name and the company concerned was Go West Travel Ltd.

Members, Mr Michael Leahy OBE and Mr Peter Martin. The Case Manager appointed to support the Panel was Nigel Cookson.

3. The CAC Panel has extended the acceptance period in this case on two occasions. The initial period expired on 4 February 2015. The acceptance period was extended to 13 February 2015 to allow time for the Union to comment on the Employer's response and a subsequent letter from the Employer. The acceptance period was further extended to 26 February 2015 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

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 therefore should be accepted.

The Union's application

5. In its application to the CAC the Union stated that it had sent a request for recognition to the Employer on 5 January 2015. This request was addressed to the HR Manager, UK Bus at Stagecoach Services Limited² with the Union stating in its letter that it sought recognition for permanently employed drivers working for Norfolk Green (part of Stagecoach Group PLC) based at King's Lynn. The Union stated that, for clarification, this bargaining unit excluded any drivers employed on a zero hour contract, casual or agency basis. The Union confirmed that its request was made under the Schedule. The Union said that the Employer responded to the request on 16 January 2015 saying that it did not wish to enter into a recognition agreement. A copy of the Union's letter of 5 January 2015 was attached to its application to the CAC.

6. The Union stated that there were 140 workers employed by the Employer, of whom 90 were in the proposed bargaining unit. The Union stated that there were 55 members of the

² Norfolk Green is part of Stagecoach Group and it was to Stagecoach Group that the Union addressed its request for recognition.

Union within the proposed bargaining unit. 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 all members had joined over a short period of time specifically to gain collective bargaining rights. The Union stated that it would provide membership details to the CAC on a confidential basis, if required.

7. The Union stated that the reason for selecting the proposed bargaining unit was that it was a cohesive group of workers, all carrying out the same duties, based at the same location. 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. The Union stated that it had copied its application and supporting documents to the Employer on 20 January 2015.

Employer's response to the Union's application.

8. In its response to the Union's application to the CAC the Employer stated that it had received the Union's written request under the Schedule for recognition on 7 January 2015 and that it had replied by a letter dated 16 January 2015. This letter stated that at present the company consulted and negotiated with local staff representatives who had been re-elected by the workforce the previous year; that this arrangement worked very smoothly and the company had no desire to change it; and that it did not, therefore, wish to enter into a recognition agreement with the Union. The Employer attached a copy of this letter to its response to the Union's application.

9. The Employer confirmed that it had received a copy of the application form from the Union on 21 January 2015. The Employer stated that it did not agree the bargaining unit prior to receiving a copy of the application form from the Union and that it did not now agree it. The Employer stated that Go West Travel was a relatively small company and that current staff consultation arrangements involved the whole hourly paid workforce. The Employer stated that it believed that in a small company with quite a "family feel" it would be divisive for a trade union to represent only a part of the workforce.

10. The Employer stated that it did not, following receipt of the Union's request, propose

that Acas should be requested to assist.

11. The Employer stated that it employed 159 hourly paid plus 12 salaried staff. When asked whether it agreed with the number of workers in the Union's proposed bargaining unit as stated in the Union's application the Employer said that the number of workers on its establishment was 134 and that, whilst there was a current vacancy gap of eight staff, it could not understand why the Union had quoted such a low figure. The Employer confirmed that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit and that it had not received any other applications for statutory recognition in respect of any workers in the proposed bargaining unit.

12. In answer to the question as to whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer said that it could only assume that the Union had made an error in its calculations and offered to supply payroll evidence on a confidential basis. When asked for its reasons if it did not consider that a majority of the workers in the proposed bargaining unit would be likely to support recognition the Employer again said that for several years there had been an informal representation arrangement between the company and its staff where all staff were invited to elect representatives who then consulted with the staff. The Employer said that the current staff representatives were elected/re-elected in January 2014 and arrangements had worked very smoothly.

Clarification of the Employer's response

13. The Panel, having considered the Employer's response, asked the Case Manager to write to the Employer seeking confirmation that the figure of 134 that the Employer had given for the number of workers in the Union's proposed bargaining unit excluded any drivers employed on a zero hours contract, casual or agency basis. The Panel also asked that the Employer provide a sample of the contract which governed the terms of service of the workers that the Employer had included in the group of 134. In the event that there was more than one standard contract which applied to that group the Employer was asked to send a sample copy of all the contracts under which a member of that group may work. The Case Manager wrote to the Employer in these terms on 30 January 2015.

14. In a letter to the CAC dated 3 February 2015 the Employer provided further details of

its staffing levels. The Employer stated that there were 125 permanently staff currently employed with a “vacancy gap” of four and an “additional seasonal requirement” of six. The Employer explained that the seasonal requirement was because one of its routes ran along the North Norfolk Coast and the service frequency was higher between Easter and October due to the demands of tourist traffic. The Employer attached to its letter a copy of what it described as “a sample contract of employment”. This document was headed “PRINCIPAL STATEMENT OF TERMS AND CONDITIONS”. The job title in this document was stated to be “Stage Carriage Driver”. The Employer also stated that it had a total of 10 casual staff.

15. In a letter from the Case Manager to the Union dated 4 February 2015 the Union was invited to comment both on the Employer’s response to the application and the Employer’s letter of 3 February 2015.

Union’s comments on the Employer’s response and letter of clarification

16. In a letter to the CAC dated 5 February 2015 the Union stated that it did not consider that the Employer had clearly answered the question whether the figure it had given of 134 workers in the proposed bargaining unit “excludes any drivers on a zero hour contract, casual or agency basis”. The Union stated that there was no reference to zero hour contract drivers in the Employer’s response and requested that the Employer be asked to make absolutely clear how many, if any, of the 125 figure of “permanent staff currently employed” were employed on zero hour contracts. The Union said that its understanding was that there were presently 115 permanently employed drivers, the others being employed on a zero hours or casual basis. The Union also stated that it did not believe that the vacancy gap of four or the additional seasonal requirement of six should be counted towards the numbers in its proposed bargaining unit.

Request for further clarification as to the number of workers in the proposed bargaining unit

17. Having considered the Union’s letter of 5 February 2015, the Panel asked the Case Manager to write to the Employer and ask how many, if any, of the 125 figure of “permanent staff currently employed” were employed on zero hours contracts. The Case Manager wrote

to the Employer in these terms on 9 February 2015. In a letter to the CAC dated 10 February 2015 the Employer confirmed that the figure of 125 permanent staff currently employed did not include any employed on zero hours contracts.

Membership and Support Check

18. 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 full 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 the full names and dates of birth of its paid up members within that unit. 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 11 February 2015 from the Case Manager to both parties. The information from both the Union and the Employer was received by the CAC on 13 February 2015. The Panel is satisfied that the 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 125 workers in the Union's proposed bargaining unit. The list of paid up members supplied by the Union contained 65 names. According to the Case Manager's report, the number of Union members in the proposed bargaining unit was 60, a membership level of 48%.

20. In addition to its list of paid up members the Union also provided a separate list headed "Norfolk Green: New RMT joiners, awaiting clarification of payment/bank details" explaining in the covering email that "We also attach a separate list of nine more workers who have agreed to join the RMT but for who (sic) we do not yet have payment/bank details clarified and processed". The names of eight of the nine workers on this list appeared on the Employer's list of 125 permanent staff. If these members were added to those on the paid up

list then there would be 68 Union members in the proposed bargaining unit, a membership level of 54.4%.

21. A report of the result of the membership and support check was circulated to the Panel and the parties on 16 February 2015 and the parties were invited to comment on the results.

Parties' comments on the result of the membership and support check

22. In a letter to the CAC dated 18 February 2015 the Employer said that it did not have any method of checking whether members of its staff were Union members or not and so had no grounds to challenge the figures in the Case Manager's report. The Employer did, however, comment on the fact that the numbers quoted in the proposed bargaining unit were now very different to those initially quoted. The Employer fully accepted that, on the basis of the figures provided, more than 10% of its staff were Union members. With reference to the test under paragraph 36(1)(b), the Employer said that it could only repeat its comments in its initial response to the application that the proposed bargaining unit was not appropriate given that it was not a large company and it would be divisive to have a proportion of the workforce in a different bargaining unit; if there were to be a bargaining unit, it should be for the entire workforce and not just the bus drivers. The Employer concluded by reiterating that it had long and successfully proven staff consultation arrangements and it was not convinced that the majority of the workforce wanted to see a change.

23. The parties were asked to comment on the results of the membership and support check by close of business on 19 February 2015. The Union submitted comments to the Case Manager on 20 February 2015. This delay was not preceded by any request for an extension. The Panel has decided that it would not, therefore, be appropriate to take account of the comments made by the Union on the membership check.

Considerations

24. 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 all the evidence relating to

these provisions in reaching its decision.

25. The Employer did not contest the validity of the application within the terms of paragraphs 5 to 9 of the Schedule nor did it argue that the application was not made in accordance with paragraph 11 or 12. Having considered the documentation provided by both parties 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. The Panel is also satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 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)

26. 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 18 to 20 above) showed that 48% of the workers in the proposed bargaining unit were paid up members of the Union. 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)

27. 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 48%. The Panel considers that, in the absence of evidence to the contrary, union membership provides a legitimate indicator of the views of workers as to whether they would be likely to favour recognition of the Union. No such evidence to the contrary was received in this case. It is the experience of the Panel that there will also be

some workers who have not joined the Union but who are likely to favour recognition of the Union; indeed, the Panel notes that the membership check showed that a further eight workers have recently agreed to join the Union although their payment details await clarification. The Panel notes that the Employer considers that it has long-standing and successful staff consultation arrangements but does not consider that this, of itself, is inconsistent with support by workers for recognition of the Union for collective bargaining purposes. 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

28. The Panel notes that, in its comments on the membership check, the Employer reiterated its view that that Union's proposed bargaining unit was not appropriate. The Panel reminds the parties that the question of whether the Union's proposed 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.

Decision

29. For the reasons given in paragraphs 25-27 above, the Panel's decision is that the application is accepted by the CAC.

Panel

Professor Gillian Morris, Chairman of the Panel

Mr Michael Leahy OBE

Mr Peter Martin

23 February 2015