

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

American Airlines

Introduction

1. Unite the Union (the Union) submitted an application to the CAC dated 15 March 2016 that it should be recognised for collective bargaining by American Airlines (the Employer) for a bargaining unit comprising "All Aircraft Maintenance Technicians employed at Heathrow Airport". The application was received by the CAC on 16 March 2016 and the CAC gave both parties notice of receipt of the application that day. The Employer submitted a response to the CAC dated 23 March 2016 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, the Panel Chair, and, as Members, Mr Mike Cann and Mr David Coats. The Case Manager appointed to support the Panel was Nigel Cookson.

Issues

3. 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

4. In its application to the CAC the Union stated that a request for recognition had been made to the Employer on 4 January 2016 and that the Employer had responded that it did not want a separate bargaining unit for Aircraft Maintenance Technicians. The Union attached to its application a copy of its request letter of 4 January 2016. The Union stated that, following receipt of the request for recognition, the Employer had proposed that Acas should be requested to assist and that the Union had agreed to that request. The Union gave the name of the contact at Acas.

5. The Union stated that there were 630 workers employed by the Employer, of whom 42 were in the proposed bargaining unit. The Union stated that there were 33 Union members 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 it had a majority of members in the bargaining unit in membership and that membership had increased in the expectation that recognition could be achieved. The Union stated that members supported the recognition campaign as they were very unhappy with the current process by which their pay and conditions were determined. The Union stated that an Acas membership check had determined that there were 33 members of the Union within the proposed bargaining unit.

6. The Union stated that the reason for selecting the proposed bargaining unit was because all other major areas of the Employer's operations at Heathrow had collective bargaining and that the pay of the workers in the proposed bargaining unit had been determined separately from other groups for at least the last 13 years. The Union stated that the bargaining unit had been

agreed with the Employer¹ and that, as far as it was aware, there was no existing recognition agreement in force covering any of the workers in the proposed bargaining unit.

7. 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 15 March 2016. 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 bargaining unit it answered "Yes, on 1st December 2015. The application was not accepted by the CAC".

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

8. In its response to the Union's application the Employer stated that it had received the Union's written request for recognition on 4 January 2016 and that it had replied on 18 January 2016. In this reply the Employer had explained that, whilst it did not object at all to the Union being recognised on behalf of the Maintenance Technicians at London Heathrow ("AMTs") along with all other employees currently covered by its collective agreement with the Union, the Employer did not agree to the proposed separate bargaining unit, which it considered to be wholly inappropriate. However, as the Union had made the formal request, the Employer had said that it was willing to have discussions with the Union with the assistance of Acas. The Employer attached a copy of its letter of 18 January 2016 together with a letter from the Union to the Employer dated 15 February 2016 and a letter from the Employer to the Union dated 2 March 2016.

9. The Employer stated that it had received a copy of the application form from the Union on 15 March 2016.

10. 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 it did not object to the Union being recognised on behalf of the AMTs provided that

¹ In its response to the application the Employer said that the bargaining unit had not been agreed: see paragraph 10 below.

this was via its existing collective bargaining agreement with the Union. The Employer set out some of what it described as "numerous reasons" why a separate bargaining unit for AMTs would be inappropriate.² The Employer also stated that a separate bargaining unit for AMTs would cause fragmentation and would be incompatible with effective management. The Employer concluded by stating that from a practical perspective, it would be very odd and impracticable for it to have two different collective agreements in the same terms about the same things with the same union about employees at the same workplace.

11. The Employer stated that, following receipt of the Union's request, it had proposed that Acas should be requested to assist and gave the contact details of the conciliator who had provided assistance.

12. The Employer stated that it employed approximately 106,000 workers worldwide, 756 in the UK and 447 at the London Heathrow site. The Employer stated that 548 of its UK employees were covered by the existing collective bargaining agreement with the Union and that the separate unit proposed would therefore contain less than 8% of its "recognised" workforce.

13. The Employer stated that there were 42 AMTs within the bargaining unit defined by the Union in its application to the CAC. The Employer confirmed that there was no existing agreement for recognition in force covering workers in that bargaining unit.

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 did not disagree based upon Acas' investigations and conclusions. In answer to the question whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer answered "N/A".

15. When asked if it was aware of any previous application under the Schedule for statutory recognition by the Union in respect of this or a similar bargaining unit the Employer stated that the Union had submitted an application to the CAC on 1 December 2015 with respect to the

² The Employer's detailed submissions on this point are not recorded in this decision because the question whether the Union's proposed bargaining unit is appropriate falls to be determined at a later stage of the statutory process in default of agreement between the parties as to the appropriate bargaining unit.

same bargaining unit. However, the formal written request that the Union had submitted prior to that application related to AMTs as well as Parts Logistics Specialists (Stores employees, who were already covered in the existing collective agreement) at London Heathrow Airport. On 24 December 2015 the CAC had decided not to accept the application for the reasons outlined in paragraphs 23-29 of its decision.³ When asked whether it had received any other applications under the Schedule in respect of any workers in the proposed bargaining unit, the Employer answered "N/A".

Considerations

16. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 3 above are satisfied. The Panel has carefully considered all the evidence submitted by the parties in reaching its decision.

17. 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 12. Furthermore the Panel is 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 set out in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

Paragraph 36(1)(a)

18. 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. In its application to the CAC the Union said that 33 of the 42 workers in its proposed bargaining unit were members of the Union and that an Acas membership check had determined this. In its response to the Union's application the Employer stated that it did not disagree with the Union's estimate of membership based upon Acas' investigations and conclusions. The Panel has no evidence before it which casts doubt on the accuracy of the figure

³ TURI/945 (2015).

of 33 Union members. On the basis of this figure 78.57% of the workers in the proposed bargaining unit are members of the Union. 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)

19. 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 Panel is content to assume for the purposes of this decision that the level of union membership is 78.57%. The Panel considers that, in the absence of 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 has no evidence to the contrary in this case. The Panel has therefore 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

20. For the reasons given in paragraphs 17 to 19 above, the Panel's decision is that the application is accepted by the CAC.

Panel

Professor Gillian Morris

Mr Mike Cann

Mr David Coats

29 March 2016