

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

Carefree Travel Limited

Introduction

1. RMT (the Union) submitted an application to the CAC dated 25 January 2017 that it should be recognised for collective bargaining by Carefree Travel Limited (the Employer) for a bargaining unit comprising “All employees/workers except management grades” located at Barrow in Furness. The application was received by the CAC on 26 January 2017. The CAC gave both parties notice of receipt of the application on 27 January 2017. The Employer submitted a response to the CAC dated 1 February 2017 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, Chairman of the Panel, and, as Members, Mrs Maureen Chambers and Mr. Paul Talbot. The Case Manager appointed to support the Panel was Linda Lehan.

3. The CAC Panel has extended the acceptance period in this case. The initial period expired on 9 February 2017. The acceptance period was extended to 17 February 2017 in order to allow time for the parties to comment on the results of a membership check and for the Panel to consider these 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. The Union stated that it had sent its formal request for recognition to the Employer on 15 December 2016. A copy of that letter was attached to the application. The Union stated that the Employer's response was "...We do not believe that the majority of workers in the bargaining unit which you propose in your letter are members of the union or would want the union to carry out collective bargaining on their behalf. We believe that the support the RMT has is made up of a minority group of employees in the bargaining unit which you have proposed. If you would like to provide further information, we can review but at this stage we do not think it will be appropriate to agree to your request for formal recognition of the RMT". A copy of the Employer's response dated 23 December 2016 was also attached to the application.

6. The Union stated that there were 25 workers employed by the Employer, of whom 21 were in the proposed bargaining unit. Out of the 21 workers in the proposed bargaining unit the Union stated that 11 were members of the Union. When asked to provide evidence that a majority of the workers in the proposed bargaining unit were likely to support recognition for collective bargaining the Union stated that it would be willing to disclose, on a confidential basis to ACAS or the CAC, details of individual names of union membership and a petition.

7. The Union stated that the reason for selecting the proposed bargaining unit was because the bargaining unit covered all employees in Carefree Travel Limited below the management

grades.

8. The Union stated that the bargaining unit had not been agreed with the Employer and that it was not aware of any other existing recognition agreement which covered any of the workers in the bargaining unit. The Union confirmed that it held a current certificate of independence. The Union stated that it had copied the application made to the CAC, and supporting documents, to the Employer on 25 January 2017.

The Employer's response to the Union's application.

9. The Employer confirmed that it had received the Union's written request letter by recorded delivery on 15 December 2016. The Employer confirmed that it had refused the request and a copy of that letter was attached.

10. The Employer confirmed that it had received a copy of the application form from the Union on 26 January 2017.

11. 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. Subsequently when asked do you agree with the proposed bargaining unit the Employer answered "yes".

12. The Employer stated that it employed 23 workers and that it agreed with the number of workers in the bargaining unit as defined in the Union's application.

13. The Employer stated that there was no existing agreement for recognition in force covering workers in the proposed 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 believed that only 5 of the workers in the proposed bargaining unit were members rather than the 11 stated on the application form.

15. As to whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that it understood that 10 of the 21 workers in the

bargaining unit may support recognition which was less than half. The Employer stated that one employee had recently left and of the remaining 10 it was understood that only 5 were union members.

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 agreed bargaining unit are members of the union (paragraph 36(1)(a)) and whether a majority of the workers in the agreed 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 agreed 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 agreed 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 name and date of birth) and a copy of their petition. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and petition would not be copied to the other party. These arrangements were confirmed in a letter dated 3 February 2017 from the Case Manager to both parties. The information from the Employer was received by the CAC on 3 February 2017 and from the Union on 8 February 2017.

17. The Union provided a list of 11 members and the Employer provided a list of 21 workers.

18. The Union’s petition consisting of 9 names/signatories was set out as follows:

RMT RECOGNITION CAREFREE TRAVEL LTD

We the undersigned wish to be recognised for collective bargaining by RMT Trade Union for pay, terms and conditions and all other matters relating to our employment.

The bargaining unit to include all employees except directors and management grades.

Name (print)	Grade	Signed	Date

Please return to Daren Ireland, RMT Regional Organiser, 2 Temple Square, Temple Lane, Liverpool, Merseyside L2 5BB

This petition will remain confidential

19. The membership check established that there were 9 members of the Union within the bargaining unit; a membership level of 42.86%. The result of the comparison of the Union's petition with the Employer's list of workers revealed that a total of 8 workers (1 name/signature being unreadable) had indicated that they wanted the Union to be recognised which corresponded to 38.10% of the bargaining unit. 7 of the 8 were union members (33.33%) and 1 was a non-member (4.76%).

20. A report of the result of the membership and support check was circulated to the Panel and the parties on 8 February 2017 and the parties were invited to comment on the results and to bear in mind the two admissibility tests set out in paragraph 36 (1)(a) and paragraph 36 (1)(b) in so doing. The Panel is satisfied that the checks were conducted properly and impartially and in accordance with the agreement reached with the parties.

The Employer's comments on the result of the membership check

21. The Employer, in an e-mail dated 10 February 2017, stated that it was difficult to comment further without having sight of the petition and without knowing who is (or isn't) in the Union, but confirmed that the list of 21 names as provided by them was accurate.

22. The Employer stated that it appeared that the Union's list was either out of date or wrong, in that it included two names of people who were no longer with the Employer and it was agreed that only 9 out of the 21 employees in the bargaining unit were in the Union.

23. The Employer stated that there appeared to be 8 current employees who had signed the petition, of whom 7 were in the Union and would guess that the ninth name on the petition was probably that of a member of staff who had recently left the Employer's employment. The Employer stated that it did not seem on the present evidence that the majority of those in the bargaining unit would be likely to favour Union recognition.

The Union's comments on the result of the membership check

24. The Union, in a letter dated 10 February 2017, stated that it had met the requirement in respect of Paragraph 36(1)(a) with more than 10% of the bargaining unit being members of the RMT.

25. In respect of paragraph 36(1)(b) the Union stated that it reasonably believed that the majority of the workforce would favour union recognition, including the one union member who had not signed the petition, which if included would take the percentage up to 47.6%, meeting the 40% threshold. The Union stated that a number of meetings had taken place in Barrow which had indicated support for RMT recognition and it believed that more than 50% would participate in any ballot for recognition.

26. Finally the Union asked that the CAC accept the application taking into account the above and proceed with a workplace secret ballot.

Considerations

27. In determining whether to accept the application the Panel must decide 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 in reaching its decision.

28. 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 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)

29. 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.

30. The membership check conducted by the Case Manager (described in paragraphs 17 - 19 above) showed that 42.86% of the workers in the agreed bargaining unit were members of the Union which the Employer did not contest. As stated in paragraph 20 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)

31. 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.

32. Based on those numbers provided by the Case Manager's check of the Union's petition against the list of 21 workers provided by the Employer, this indicated that 8 of the 9 petition signatories were identifiable as workers within the bargaining unit, a support level of 38.10%. Of those there were 7 union members (33.33%) and 1 non-member in the bargaining unit (4.76%). If the non-union member who signed the petition was added to the number of Union members within the bargaining unit this would equate to 10 workers (47.62%) of the bargaining unit. The Panel has noted the Employer's comments in paragraph 23 above and reminds the parties that this is not a definitive test of support and that, for this test to be met, the Panel must only be satisfied that a majority of the workers in the bargaining unit would be *likely* to favour recognition. It is not a test as to whether the Union has majority membership within the bargaining unit. 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

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

Panel

Professor Kenneth Miller, Chairman of the Panel

Mrs. Maureen Chambers

Mr. Paul Talbot

13 February 2017