Case Number: TUR1/1008/2017
24 July 2017

CENTRAL ARBITRATION COMMITTEE

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION

DECLARATION OF RECOGNITION WITHOUT A BALLOT

The Parties:

RMT

and

Peterson (United Kingdom) Limited

Introduction

1. The RMT (the Union) submitted an application to the CAC dated 20 April 2017 that it should be recognised for collective bargaining by Peterson (United Kingdom) Limited (the Employer) in respect of a bargaining unit comprising "All employees/workers excluding management at the Heysham Port." The application was received by the CAC on 26 April 2017 and the CAC gave both parties notice of receipt of the application on 27 April 2017. The Employer submitted a response to the CAC dated 3 May 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 Mr Charles Wynn-Evans, the Panel Chair, and, as Members, Mr Roger Roberts and Mr Paul Gates OBE. The Case Manager appointed to support the Panel was Kate Norgate.

3. By a decision dated 30 May 2017, the Panel accepted the Union's application. On 7 June 2017, the Employer wrote to the CAC confirming that it agreed with the Union's proposed bargaining unit as stated in its application.

4. As the agreed bargaining unit was the same as that proposed by the Union in its application, the Panel moved to the next stage in the statutory process.

Issues

5. Paragraph 22 of Schedule A1 to the Act (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) states that "membership evidence" 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 9 June 2017 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 an e-mail dated 13 June 2017, 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.

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

7. On 14 June 2017 the CAC copied the Union's letter 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.

8. In a response to the CAC sent on 21 June 2017 the Employer submitted that the Union should not be recognised without a ballot because it believed all three qualifying conditions were fulfilled. The Employer explained that the union members at Heysham had taken a vote on 21 June 2017 in which they were asked "Do you want to allow Peterson (United Kingdom) Ltd to postpone collective bargaining for 6 months?" The Employer attached to its response 19 A4 printed forms, each with the following question printed at the top of the page "DO YOU WANT TO ALLOW PETERSON TO POSTPONE THE COLLECTIVE BARGAINING FOR 6 MONTHS?" At the bottom of the page were two boxes, "YES" and "NO". 18 of the forms were ticked or crossed in the "YES" box, and 1 sheet was crossed in the "NO" box.

9. The Employer stated that the vote was counted and 18 union members had voted "Yes", to 1 "No" vote. It was the Employer's view that this showed there was credible evidence from a significant number of union members within the bargaining unit that they do not want the Union to conduct collective bargaining on their behalf, or at least not at this time.

10. The Employer also attached to its response copies of 16 letters, which it stated that it had sent to its staff on 21 June 2017, the Employer stating that the letters were sent "explaining our commitment". The Employer explained that as a consequence of its recent discussions and subsequent agreement with the employees on site, it had written to each employee stating "should the coming months not show [its] commitment to working with them, then they may hold a secret ballot to decide then whether they wish to be represented by the RMT for collective bargaining purposes." The Employer also stated that, if it was provided with

evidence that the majority voted in favour, it "will voluntary recognise the Union at that time." The Employer further stated that it "will work hard with the team to live up to the commitments we've made to them."

11. The Employer considered that, given the steps it had taken on site and the result of the union members' ballot, even if the CAC did not accept the evidence as being credible, then a ballot should be held in the interests of good industrial relations.

12. Finally, the Employer requested that, in order to continue to maintain good working relations to the benefit of all employees at Heysham, the CAC arrange for the holding of a ballot, unless the Union withdrew its application. The Employer explained that it had asked union members to relay their wishes to the Union "in order that they can withdraw their request in line with their members vote". The Employer also attached to its response a copy of an e-mail it had sent to the Union on 21 June 2017, the Employer stating that it had it sent the e-mail to the Union "on the authority of its members to advise that they want to withdraw the application".

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

13. On 23 June 2017 the CAC copied the Employer's submissions to the Union and invited it to comment on the points made by the Employer. By e-mail dated 30 June 2017 the Union stated that that it wished to remind the Panel that the Union exceeded the thresholds for automatic recognition, and this was evidenced by the high level of union membership and the high level of employees who had signed a petition in support of collective bargaining. The Union stated that whilst the Employer was now talking more actively to its employees within the bargaining unit, it was the Union's view that "this was clearly in a bid to stop trade union recognition" and the Union considered there was no need for a ballot to be held.

14. The Union submitted that there was no evidence to suggest that its members did not want the Union to conduct collective bargaining as its members and non-members had signed a petition in support of the Union to conduct collective bargaining on their behalf. The Union stated that, whilst there was a "ballot form" stating "Do you want to allow Peterson to postpone

the collective bargaining for 6 months" it was the Union's view that as there was no collective bargaining in place, there was nothing to postpone. The Union considered that the "ballot form" was not a credible piece of evidence stating "it was just placed on a table, in a room as reported by union members after a meeting with management". The Union stated that the "ballot" was not conducted secretly, nor was it known how many members or non-members had voted.

15. Finally, the Union asked the Panel to consider its petition in support of collective bargaining which the Union submitted was credible, reliable and accurate.

Summary of the Employer's additional comments

16. On 7 July 2017 the CAC copied the Union's e-mail of 30 June 2017 to the Employer and invited it to make any further comments on the points made by the Union. In its letter dated 12 July 2017 the Employer submitted that it wished to re-iterate its commitment to good working relations and that the Panel should not grant automatic recognition as the Union had failed to acknowledge in its response that the union members do not wish to be represented by the Union for the purposes of collective bargaining. The Employer stated that it wished re-iterate its commitment voluntarily to recognise the Union should its employees not be satisfied with the measures it had worked on together to improve working conditions.

17. The Employer explained that the workforce carried out two votes without the involvement of management, stating "union members voted 16-2 and then 18-1 in favour of working directly with management to improve their working conditions". The Employer considered that this vote superseded the Union's petition that was carried out on 24 April 2017. The Employer gave examples of "a list of conditions for improvement" which it maintained had already been agreed and a working group, including members of the workforce, had begun to address.

18. The Employer stated that it had organised for a management review of the site to be completed "before any communication regarding voluntary or statutory recognition of RMT". The Employer explained that it had met with its team individually and in groups, to address any issues stating "it had worked with the local team to address these, with a plan in place".

The Employer believed it had developed a good level of trust and due to the many changes it would not be in the interests of industrial relations for a ballot to be held.

19. The Employer explained that the ballot papers were drawn up by the workforce and issued to individuals who cast their vote accordingly. The Employer stated that "the counting of the votes was carried out by union members who then informed management of their decision". The Employer maintained that management were not involved in the ballot "nor present when the votes were made or counted".

20. The Employer referred to the e-mail it had sent to the Union "at the request of the union members on site" requesting that the Union withdraw its application to the CAC. The Employer submitted that the Union had ignored its request despite its guarantee to the workforce that Peterson would voluntarily recognise the Union "if they were not satisfied we were able to improve conditions together". It was the Employer's view that both the ballot conducted by the workforce and its e-mail to the Union showed that there was credible evidence that the union members in the bargaining do not want collective bargaining.

21. Finally, the Employer believed that the Union's petition was "out of date" stating that it was "superseded by two ballots". The Employer therefore believed that its submissions provided reliable evidence from a significant number of union members within the bargaining unit that they do not want the Union to conduct collective bargaining on their behalf.

Summary of the Union's additional comments

22. On 18 July 2017 the CAC copied the Employer's letter of 12 July 2017 to the Union and invited it to make any further comments on the points made by the Employer. By e-mail dated 20 July 2017 the Union disputed the Employer's claim that "management were not involved with the 18-1 vote". The Union stated that it was confirmed by its members that following pressure from Management a ballot paper was produced with the wording "Do you want Peterson to postpone collective bargaining for 6 months?" The Union stating "at no point had any vote been held stating that its members do not want the Union to conduct collective bargaining on their behalf."

23. The Union maintained that it "had no knowledge of the 16-1 vote expressed in the Employer's letter". It stated that it had made contact with its leading union activist at Heysham who confirmed that "no vote had ever taken place".

24. The Union explained that it held a meeting at Heysham on 6 July 2017, at which 18 union members were present. The Union stated that its members still wished for the Union to conduct collective bargaining and achieve a recognition agreement. The Union did not believe there was any evidence to suggest that that automatic recognition would not be in the interests of good industrial relations.

25. The Union submitted that at no point had its members "drawn up ballot papers" stating that they do not wish the Union to conduct collective bargaining, the Union stating that the only ballot paper "was following pressure from management" and "without any union official being in attendance."

26. The Union stated that the Employer had indicated that it would contact the Union following a "workforce meeting". Subsequently it received an e-mail on 21 June 2017 (a copy enclosed with its response to the CAC) from the Director, John Bain confirming the vote of the Union members with regard to the proposed postponement of collective bargaining. The Union stated that "no request came from the Union members to do so" i.e. to send such an email. It was the Union's view that no credible evidence had been provided to suggest that its members at Heysham do not want the union to conduct collective bargaining.

27. The Union considered that its petition was not out of date nor had it been "superseded by two ballots". The Union explained that it had held a recent "full member meeting" in Heysham on 22 February 2017 and 6 July 2017 as well as meetings with "our leading union activists". The Union maintained that support for the union to conduct collective bargaining, along with union membership "is as strong as ever".

28. The Union referred to an e-mail dated 13 July 2017 from "one of our leading activists" stating as follows - "The company are asking us to send an all in one letter to ask the CAC to ask for a 6 month standoff. We have had a meeting with all the members this morning and nobody is willing to sign". The Union considered that this demonstrated its members' "very

strong desire" for the Union to be recognised for collective bargaining purposes. The Union informed the Panel that this e-mail can be provided to the CAC if requested, with names redacted to maintain confidentiality.

29. Finally, the Union stated that for the reasons it had submitted in its earlier submissions it requested that the CAC grant the Union recognition without a ballot. At no stage has the Union agreed to withdraw its application for recognition and indeed, as noted by the Employer in its letter to staff of 19 June 2017 (which was before the Panel), the Union had made the point that, if it withdrew the application, it would be precluded from making a fresh application for recognition for a further three years.

Considerations

30. 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 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 them is fulfilled it must give notice to the parties that it intends to arrange for the holding of a secret ballot.

31. In this case the membership check issued by the Case Manager on 18 May 2017 showed that 70.8% 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.

32. 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.

33. 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 come to the view that it is not satisfied that a ballot should be held in the interests of good industrial relations. The Panel notes the Employer's claim on the recent work being carried out between management and the workforce to improve working conditions but it does not consider that this shows that a ballot would be in the interests of good industrial relations or that there are other sufficient grounds on which a ballot should be held on the question of recognition by reference to the statutory criterion. The Panel is therefore satisfied that this condition does not apply.

34. 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. On 30 June 2017 the Employer submitted 19 printed forms to the CAC with the following question at the top of each page "Do you want to allow Peterson to postpone collective bargaining for 6 months?" below the question were two boxes "Yes" and "No". 18 of the 19 forms submitted to the CAC were ticked or crossed in the "Yes" box. The Panel does not consider that the wording on the forms can be interpreted to indicate that an individual does not want the Union to conduct collective bargaining on their behalf, which is the test that the Panel must apply under the legislation. The wording on the forms refers to postponement of collective bargaining as opposed to postponement of recognition per se - and there is no evidence that these workers were union members. The Panel is therefore satisfied that this condition does not apply.

35. 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 is satisfied that this condition does not apply.

Declaration of recognition

36. 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 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 "All employees/workers excluding management at the Heysham Port".

Panel

Mr Charles Wynn-Evans, Panel Chair
Mr Roger Roberts
Mr Paul Gates OBE

24 July 2017