

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

Swietelsky Construction Company Ltd

Introduction

1. The RMT (the Union) submitted an application to the CAC dated 18 September 2017 that it should be recognised for collective bargaining by Swietelsky Construction Company Ltd (the Employer) for a bargaining unit comprising the "All Rail Maintenance Grades; including Supervisors; On Track Machine Operators, Maintainers, Drivers, Fitters: Kirow Operators, Maintainers, Fitters; and Day Shift Technicians; excluding Management and Clerical grades, employed by Swietelsky Construction Company Ltd nationally". The CAC gave both parties notice of receipt of the application on 19 September 2017. The Employer submitted a response to the CAC dated 25 September 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 Lynette Harris, Chairman of the Panel, and, as Members, Mr Bill Lockie and Mr Paul Talbot. 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.

The Union's application

4. In its application the Union said that it had written to the Employer with a formal request for recognition on 29 August 2017 to which the Employer did not reply. A copy of the Union's letter was enclosed with the application.

5. The Union estimated that a total of 72 workers were employed by the Employer with an estimated 51 of these falling within the proposed bargaining unit. The Union stated that it had 28 members within the proposed bargaining unit. 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 said that membership of the Union had grown substantially during the campaign for collective bargaining rights and it included an anonymised copy of its membership list which showed membership data including join dates. The Union also had a confidential petition signed by workers in the proposed bargaining unit in favour of collective bargaining. Finally, meetings with workers on 14 and 28 July 2017 at Guide Bridge¹ also confirmed to the Union that a majority were in favour of collective bargaining.

6. When asked to give its reasons for selecting the proposed bargaining unit, the Union stated that workers in the grades specified asked the Union to represent them for collective bargaining as the Employer was proposing changes to their terms and conditions of employment. The Union confirmed that the bargaining unit had not been agreed with the Employer.

7. When asked if it had made a previous application for recognition for workers in this or a similar bargaining unit the Union said that an application was submitted on 16 August

¹ Which refers to the Employer's depot in Guide Bridge Lane, Guide Bridge, Manchester M34 5HF.

2017 and withdrawn by the Union before the Panel had made a decision on acceptance. Finally, the Union stated that there was no existing recognition agreement that covered any of the workers in the proposed bargaining unit.

The Employer's response to the Union's application

8. The Employer stated that it had received the Union's formal request for recognition 30 August 2017 and that it replied by way of an undated letter refusing the request. A copy of this letter was attached to its response.

9. When asked to give the date it received a copy of the application form directly from the Union, the Employer stated that as at 20 September 2017 it had only received the copy sent by the CAC however, in a subsequent email dated 29 September 2017 the Employer confirmed that the copy of the application and supporting documents sent direct by the Union had been received. The Employer confirmed that no agreement had been reached as to the appropriate bargaining unit prior to it receiving a copy of the completed application form but when asked did it agree the bargaining unit, it answered "Yes".

10. The Employer stated that it employed 65 workers. The Employer did not agree with the Union's figure as to the number of workers in the bargaining unit explaining that there were 48 workers within the bargaining unit. Asked to explain the difference in the parties' figures the Employer said that it was unsure as to where the Union had got the figure of 51 from. When asked to give reasons for disagreeing with the Union's estimate of its membership in the bargaining unit, the Employer stated that it requested clarification on eligibility, whether by employer or job title, as the Employer did not employ any individual with the job titles of "Trackman", "Kirow Crane Controller", "OTM North Driver Operator", " OTM North Fitter Operator" or any worker with a home depot of Doncaster.² When asked to give reasons if it did not consider that a majority of the workers in the bargaining unit were likely to support recognition, the Employer stated that it had always operated with open lines of communication for all workers. It had received feedback form a number of workers which would indicate that union representation was not supported by a majority. Based on this, the Employer would request a ballot of all workers in the bargaining unit.

² These job titles and "Doncaster" were to be found on the anonymised version of the Union's membership data which it had included with its application.

11. The Employer confirmed that there was no recognition agreement in place covering any of the workers in the agreed bargaining unit. When asked whether, following receipt of the Union's request, the Employer had proposed that Acas be requested to assist, the Employer stated that this was the second submission of the application by the Union for statutory recognition. At the time of the first application which dated 4 July 2017 the Employer took advice from Acas. A meeting was held on 1 August 2017 with both the Union and representatives from Acas present and it resulted in the parties agreeing the bargaining unit and that relevant data would be provided to undertake a membership density check. The Employer requested an Acas conducted ballot with a view to offering voluntary recognition if the ballot confirmed a majority were in favour. The Union refused to undertake a ballot stating that it was confident that it had the numbers required.

12. Finally, when asked if it was aware of any previous application under the Schedule by the Union in respect of this or a similar bargaining unit the Employer stated that the Union had tendered an application dated 16 August 2017 which was withdrawn on 24 August 2017. A copy of this application was attached to the Employer's response.

The Union's comments on the Employer's response

13. The Employer's response was forwarded to the Union and its comments invited. In a letter dated 29 September 2017 the Union first addressed the Employer's assertion that it had not received a copy of the application form direct from the Union. However, as stated above, the Employer did subsequently confirm that it had received the copy sent by the Union as stated in its application and so the Union had complied with its duty under paragraph 34 of the Schedule and nothing further needed to be said on this matter.

14. The Union then went on to address the other issues set out in the Employer's response. It explained that it did not refuse an Acas led ballot but had suggested an alternative, which was an Acas membership check, which showed membership stood at 55%. The Employer responded to this by refusing a voluntary agreement, which had been its constant position since the parties had first met on 27 June 2017. The Union had taken the figure as to the number of workers in the bargaining unit from the Employer's returns to Companies House and it accepted that this figure would only be a snapshot at any given time. Some of the job

titles and locations on its membership data³ was historical and not updated, which the Union was in the process of changing, however, it was satisfied that all were employed by the Employer and were within the bargaining unit as currently defined. The Union's membership levels, petition, on-site meetings with groups of workers, letters sent by the Union to members relating to collective bargaining and discussions with individual members all suggested that the majority were in favour of the Union being recognised for collective bargaining.

Membership and Support Check

15. To assist in the application of the admissibility tests, the Panel proposed independent checks of the level of union membership in the proposed bargaining unit and the number of workers in the unit who had signed a petition supporting recognition of the union. 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 bargaining unit, and that the Union would supply to the Case Manager a list of the full names and dates of birth of the paid up union members within that unit and a copy of its petition. The information from the Employer was received by the CAC on 5 October 2017 and from the Union on 6 October 2017. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists and the petition would not be copied to the other party and that agreement was confirmed in a letter from the Case Manager to both parties dated 3 October 2017.

16. The Union provided a spreadsheet with the names of 28 members giving the forename, surname and date of birth for each person listed. It also provided a petition bearing 32 names/signatures with each name/signature being on a separate A4 sheet. Each of the 32 pages comprising the petition was headed:

As an employee of Swietelsky Construction Company Ltd, I wish to have the National Union of Rail and Maritime Workers (RMT) represent me for the purposes of collective bargaining.

17. Each individual was asked for their name, grade and location and to then sign and

³ See f/n 2 above.

date the form. The earliest signature was dated 29 June 2017 and the latest dated 2 October 2017. Under the line for signature there was the instruction: "Please return in the Stamp Addressed Envelope provided". Finally, at the foot of each page it read:

"This petition is confidential and will NOT be seen by the company and will only be shown to the CAC and/or ACAS if requested."

18. The Employer provided a spreadsheet with the details of 47 workers with columns headed "Employee Name", "Job Title" and "Date of Birth".

19. According to the Case Manager's report, the number of Union members in the bargaining unit was 23, a membership level of 48.94%. The check of the petition showed that it had been signed by 29 workers in the bargaining unit, a figure which represents 61.7% of the bargaining unit. Of those 29 signatories, 21 were members of the Union (44.68% of the bargaining unit) and 8 were non-members (17.02% of the bargaining unit).

20. A report of the result of the membership check was circulated to the Panel and the parties on 6 October 2017 and the parties' comments invited.

Parties' comments on the Case Manager's report

21. In a letter dated 13 October 2017 the Union stated that the membership check identified 23 out of the 28 on the Union's membership list as being in the bargaining unit leaving five members not on the Employer's list. The Union had been able to confirm that three of its members on the list had recently left the company but it had not been able to verify the current position of the remaining two members - it was possible that they also were no longer working for the Employer. The Union accepted the petition figures as being accurate and that they showed a clear majority were in favour of collective bargaining. The Union believed that it had met the criteria for acceptance of the application and that a clear majority of the bargaining unit were in favour of it being recognised for the purposes of collective bargaining.

22. In an email dated 16 October 2017 the Employer stated that it had concerns regarding the validity of the petition undertaken by the Union. It was done without prior authorisation from the business and was conducted on business premise during business times. The petition was enforced onto the workers and was not explained to them in any depth insofar as some workers were of the understanding that they were completing an official company briefing record form. For this reason the Employer asked that the CAC undertook a ballot to determine the worker voice as opposed to relying on the petition provided by the Union.

Considerations

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

24. 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 and that it was made in accordance with paragraph 11(2) of the Schedule in that before the end of the first period of 10 working-days following the Employer's receipt of the request for recognition, the Employer failed to respond to the request. The remaining issue for the Panel to address is whether the admissibility criteria set out in paragraph 36(1) of the Schedule are met.

Paragraph 36(1)(a)

25. In accordance with paragraph 36(1)(a) of the Schedule the Panel must determine whether members of the Union constitute at least 10% of the workers in the bargaining unit. In this case the Union, in its application, claimed that it had 28 members in a 51 strong bargaining unit although accepted subsequently that it had taken the figure as to the number of workers from the Employer's returns to Companies House and so accepted that the information may well be out of date. The Employer confirmed that the true number was 48 although this had fallen to 47 by the time the Case Manager conducted his comparisons of the information provided by the parties on 6 October 2017. The Case Manager's check established the number of members in the bargaining unit was 23, which was a membership level of 48.94%. This figure was not challenged by the Employer. It is, therefore, clear to

the Panel that members of the Union constitute at least 10% of the workers in the bargaining unit and the test in paragraph 36(1)(a) is satisfied.

Paragraph 36(1)(b)

26. The test in paragraph 36(1)(b) is whether a majority of the workers constituting 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.

27. The check conducted by the Case Manager showed that 61.7% of the workers in the bargaining unit had signed the Union's petition in support of recognition. The Union relied on its membership and the petition as evidence that this test was satisfied. The Employer, in its email of 16 October 2017, questioned the validity of the petition on the grounds that it was conducted on the Employer's premises without authorisation and that some workers were mistakenly of the view that they were being asked to complete a form on behalf of the Employer rather than signing a petition in support of trade union recognition. It submitted that whether or not recognition is awarded should be decided by a ballot of the workers rather than a petition provided by the Union.

28. The Panel has noted the concerns expressed by the Employer about the workers' understanding of the petition but takes the view that the single sentence proposition put forward by the Union on its petition is precise, unambiguous and could not be plainer. Given that 61% of the workers in the bargaining unit have signed the petition in support of the Union the Panel is of the view that the Union has provided sufficient evidence to persuade us that it is likely, on the balance of probabilities, that a majority of the workers would support recognition of the Union and on this basis we find the test in paragraph 36(1)(b) is met.

Decision

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

Panel

Professor Lynette Harris, Chairman of the Panel

Mr Bill Lockie

Mr Paul Talbot

17 October 2017