

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECISION ON FORM OF BALLOT

The Parties:

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.

3. By a decision dated 17 October 2017 the Panel accepted the Union's application. Although the parties had not reached agreement as to the appropriate bargaining unit prior to the application being lodged with the CAC the Employer, in its response to the application dated 25 September 2017, had stated that it now agreed the composition of the bargaining unit and so the Panel moved immediately to the question as to whether or not a secret ballot should be held.

Issues

4. According to the Case Manager's report dated 6 October 2017, the number of Union members in the proposed bargaining unit was 23, a membership level of 48.94%. On 17 October 2017 the Panel, not being satisfied that a majority of the workers constituting the agreed bargaining unit were members of the Union, gave notice in accordance with paragraph 23(2) of Schedule A1 to the Act (the "Schedule"), that it intended to arrange for the holding of a secret ballot and the parties were asked for their views on the form the ballot should take. The Panel also advised the parties that it would wait until the end of the notification period of ten working days, as specified in paragraph 24(5) and 24(6), before arranging a secret ballot.

5. The notification period under paragraph 24(5) and 24(6) of the Schedule ended on 30 October 2017. The CAC was not notified by the Union or by both parties jointly that they did not want the ballot to be held, as per paragraph 24(2).

Union's submissions on the form of ballot

6. In a letter dated 19 October 2017 the Union stated that its preferred option would be a workplace ballot as, in its view, this was the best way to get a return of ballot papers. The Union believed that this was preactical for the workplace. The majority of workers were mobile and worked away from the Guide Bridge location however, the Employer did call them into the depot on a reasonably regular basis for Health and Safety briefs and to brief them about company matters. This should allow the Employer to facilitate a workplace ballot with minimum cost to the business.

Employer's submissions on the form of ballot

7. In an email dated 19 October 2017 the Employer stated that the workers in the bargaining unit were, in the majority, field based workers and that due to roster patterns and locations, did not attend the Guide Bridge, Manchester depot. Based on this the Employer requested that the ballot took place in postal form.

Considerations

8. When determining the form of the ballot (workplace, postal or a combination of the two methods), the CAC must take into account the following considerations specified in paragraphs 25(5) and (6) of the Schedule:

- (a) the likelihood of the ballot being affected by unfairness or malpractice if it were conducted at a workplace;
- (b) costs and practicality;
- (c) such other matters as the CAC considers appropriate

9. The parties have put forward two different types of ballot for the Panel to consider. On the one hand the Union has argued for a workplace ballot as it believes that this form of ballot would maximise the number of votes cast whereas, on the other hand, the Employer has submitted that the ballot should be a postal ballot because of the peripatetic nature of the roles undertaken by the workers in the bargaining unit in that they were field rather than depot based.

10. Having considered the views put forward by the parties and having set these against the matters that we must take into account, the Panel has decided that on the grounds of practicality and cost, the appropriate form of ballot in this matter would be a postal ballot.

Decision

11. The decision of the Panel is that the ballot be a postal ballot.

12 The name of the Qualified Independent Person appointed to conduct the ballot will be notified to the parties shortly as will the period within which the ballot is to be held.

Panel

Professor Lynette Harris, Chairman of the Panel

Mr Bill Lockie

Mr Paul Talbot

31 October 2017