

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

CGL Rail

Introduction

1. RMT (the Union) submitted an application to the CAC dated 11 April 2018 that it should be recognised for collective bargaining by CGL Rail (the Employer) for a bargaining unit comprising “General Operations Technicians and Systems Technicians employed by CGL Rail on the Docklands Light Railway contract” based on the Docklands Light Railway in London. The application was received by the CAC on 13 April 2018. The CAC gave both parties notice of receipt of the application on 13 April 2018. The Employer submitted a response to the CAC dated 20 April 2018 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, Chair of the Panel, and, as Members, Mr Roger Roberts and Mr. Paul Noon OBE. 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 27 April 2018. The acceptance period was extended to 9 May 2018 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 12 February 2018. A copy of that letter was attached to the application. The Union stated that the Employer agreed to meet to discuss voluntary recognition and a meeting was held on 12 March 2018 but they had been unable to agree a way forward. The Union stated that the company suggested ACAS involvement which they agreed to but as two months had passed since their original request they did not want a further extension of time before submitting their claim to the CAC. The Union attached relevant correspondence regarding their agreement to meet to discuss a voluntary agreement and their agreement to meet with ACAS.

6. The Union stated that there were 35 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 18 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 all the workers involved had joined with the intention of achieving collective bargaining rights.

7. The Union stated that the reason for selecting the proposed bargaining unit was because it was a distinct group of workers within the company with particular qualifications carrying out particular duties.

8. The Union stated that the bargaining unit had been agreed with the Employer.

9. 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 11 April 2018.

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

10. In its response to the Union's application the Employer stated that it had received the Union's written request for recognition on 13 February 2018. The Employer stated that a meeting with the RMT was proposed and attached a copy of their letter dated 23 February 2018 referring to that.

11. The Employer stated that a copy of the application form was received in the post on 13 April 2018 and although there was no indication that it had been sent to CGL Rail by the RMT they assumed that it was.

12. The Employer stated that at their meeting on 12 March 2018 they had agreed the nature and size of the bargaining unit.

13. When asked do you agree the proposed bargaining unit the Employer answered 'no'.¹ The Employer stated that the reason for their objection was because they considered that entirely satisfactory employee relations arrangements were in place. The Employer stated that they were not satisfied that the majority of the staff employed in the potential bargaining unit were in favour of recognition by the RMT for collective bargaining purposes.

14. In answer to the question following receipt of the union's request did you propose that ACAS be requested to assist the Employer stated that following subsequent communication with RMT they had contacted ACAS for assistance. The Employer stated that the RMT had agreed to meet with ACAS on the 3 May 2018 and therefore they considered the Union's formal application to be premature. The Employer stated that the CAC process ought at the

¹ The Employer subsequently, in a telephone conversation with the Case Manager, stated that they did agree the bargaining unit and this was confirmed in writing to both parties on 23 April 2018 in the letter sent to the parties requesting the information in respect of the membership check.

very least, be delayed until after the ACAS meeting.

15. The Employer stated that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

16. The Employer stated that it employed 38 workers and that it did not agree with the number of workers in the proposed bargaining unit as defined in the Union's application and stated that there were 22 (staffing joining/leaving) workers in the union's proposed bargaining unit.

17. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer said the company had no evidence of membership.

18. When asked "if you do not consider that a majority of the workers in the bargaining unit are likely to support recognition indicating reasons for taking that view" the Employer stated "CGL Rail consider that entirely satisfactory employee relations arrangements are in place. CGL Rail are not satisfied that the majority of the staff employed in the potential bargaining unit are in favour of recognition by the RMT for collective bargaining purposes. CGL Rail would however be willing to accept the outcome of a ballot if this shows that the majority of those in the potential bargaining vote in favour of recognition and that these employees represent at least 40% of the membership of the potential bargaining unit. This approach has been proposed to the RMT but has been rejected. This approach has also been suggested to ACAS and we are currently awaiting meeting with ACAS together with the RMT on 3 May 2018."

Union's comments on the Employer's response

19. In a letter to the CAC from the Union dated 24 April 2018 the Union stated that the Employer was informed by emails dated 4 and 5 April that they would be entering a claim with the Central Arbitration Committee and it was also clear from section 1 of that form who had sent them the application form. The Union stated that it was clear from the Employer's answer to question 4 (see paragraph 12 above) that the bargaining unit had been agreed by the Employer. The Union stated that they had agreed to meet with ACAS on 3 May, hoping

that ACAS could clarify the procedure for the parties and given that the company received its request for voluntary recognition on 13 February, 10 weeks ago, they did not think it reasonable to postpone their formal application any longer. The Union stated that there was no guarantee that any agreement would be reached with ACAS so wished for their claim to be accepted and processed by the CAC. The Union stated that it had suggested that the company provide any evidence that they had that workers in the proposed bargaining unit did not support recognition for collective bargaining and had not done so.

The Membership Check

20. 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). It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party. These arrangements were confirmed in a letter dated 23 April 2018 from the Case Manager to both parties. The information from the Union and Employer was received by the CAC on 25 April 2018. The Panel is satisfied that the check was conducted properly and impartially and in accordance with the agreement reached with the parties.

21. The list supplied by the Employer indicated that there were 22 workers in the agreed bargaining unit. The list of members supplied by the Union contained 18 names. According to the Case Manager's report, the number of Union members in the agreed bargaining unit was 18, a membership level of 81.82%.

22. A report of the result of the membership check was circulated to the Panel and the parties on 25 April 2018 and the parties were invited to comment on the result.

The parties' comments on the result of the membership check

23. The Union in a letter dated 26 April 2018 stated that they had received the results of the membership check confirming that the membership in the agreed bargaining unit was 81.82%. The Union stated that members had joined the union specifically to achieve collective bargaining rights with CGL Rail and this had been discussed in detail at meetings with the workers concerned. The Union stated that in addition to their majority membership further evidence for that was that 15 out of their 18 members had joined the RMT since September 2017.

24. The Employer in a letter dated 1 May 2018 in response to the Union's letter of 26 April 2018 stated that CGL did not dispute the validity of the membership check carried out by the CAC but they did have concerns about the assertion that because staff had joined the RMT that they had done so because they wanted GCL Rail to recognise the RMT for collective bargaining purposes. The Employer put forward an argument on why it was their belief that the only way to resolve this was by holding a workplace ballot which will, if necessary, be considered by the Panel at a later stage of the process.

Considerations

25. 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.

26. 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 Panel notes that, under paragraph 34 of the Schedule, the Union is required to give the Employer a copy of the application to the CAC and any supporting documents. The Employer's statement in paragraph 11 of this decision states that a copy of the application was received but there was no indication that it had been sent by the RMT. However the Panel also notes the Union's letter of 24 April 2018, summarised in paragraph

19 above, in which it confirmed that it had informed the Employer by emails dated 4 and 5 April that they would be entering a claim with the Central Arbitration Committee and it was also clear from Section 1 of the form who had sent the application form. The Employer did not dispute the Union's assertions set out in this letter and the Panel is satisfied that, on the balance of probabilities, the requirements of paragraph 34 of the Schedule have been met. 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)

27. 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.

28. The membership check conducted by the Case Manager showed that 81.82% 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)

29. 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 level of union membership is 81.82%. The Union did not provide any additional evidence of support for recognition, such as a petition, but 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. No evidence to the contrary was provided in this case. 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

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

Panel

Professor Kenneth Miller, Chair of the Panel

Mr Roger Roberts

Mr. Paul Noon OBE

04 May 2018