Case Number: TUR1/1013(2017)
26 July 2017

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:

BALPA

and

AirTanker Services Limited

Introduction

1. BALPA (the Union) submitted an application dated 14 July 2017 to the CAC that it should be recognised for collective bargaining purposes by AirTanker Services Limited (the Employer) for a bargaining unit comprising "All flight deck crew who are working in AirTanker Services Limited, AirTanker Hub, RAF Brize Norton, Carterton Oxfordshire OX18 3LX with the exception of Chief Pilot, Director of Flight Operations, Heads of Training, Contractor Pilots and Secondees." The location of the bargaining unit was given as "AirTanker Hub, RAF Brize Norton, Carterton, Oxfordshire, OX18 3LX." The CAC gave both parties notice of receipt of the application on 14 July 2017. The Employer submitted a response to the CAC which was received on 20 July 2017 and 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 Gillian Morris, Panel Chair, and, as Members, Ms Gail

Cartmail and Mr Robert Lummis. The Case Manager appointed to support the Panel was Kate Norgate.

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.

Summary of the Union's application

4. In its application to the CAC the Union stated that it had sent a formal request to the Employer on 22 June 2017 by e-mail and recorded delivery. The Union stated that its request had been addressed to Mr Iain Cullen, Director of Flight Operations at the Employer; Mr Bob Crowley, Head of Human Resources, had also been copied into the e-mail. The Union stated that Mr Cullen had acknowledged receipt of the Union's letter in an e-mail dated 26 June 2017. In that e-mail Mr Cullen had stated that the matter was being dealt with by Mr Crowley who was currently on leave but Mr Cullen said that he would discuss the matter with Mr Crowley immediately on his return. The Union stated that it had not received any further response to its request within the 10-day period. The Union stated that the request had been sent to the Employer following months of dialogue between the parties regarding voluntary recognition. A copy of the Union's request and the Employer's acknowledgement of receipt of that request was attached to the Union's application.

5. When asked whether the Union had made a previous application under the Schedule for statutory recognition for workers in the proposed bargaining unit or a similar unit the Union answered "no". The Union stated that, following receipt of the request for recognition, the Employer had not proposed that Acas should be requested to assist the parties.

6. The Union stated that it estimated the total number of workers employed by the Employer as 550-600. The Union stated that there were 64 workers in the proposed bargaining unit, of whom 45 were union members. When asked to provide evidence that the majority of the workers in the proposed bargaining unit were likely to support recognition for collective

bargaining, the Union stated that it currently had 45 members within the bargaining unit representing a membership density of 70%. The Union stated that it had had considerable membership growth as a result of the recognition campaign, with membership density in August 2016 being just 14%. The Union attached to its application a copy of a graph which was headed "AirTanker BG Density Aug 2016 & July 2017". The Union explained that an "indicative ballot for union recognition" had been held amongst its members from 31 March to 18 April with a 90% return rate. The Union stated that the result was 100% voting in the affirmative. The Union attached to the application a document which summarised the result of its ballot. The Union submitted that the increased membership density and ballot result demonstrated that the majority of workers in the bargaining unit favoured recognition for collective bargaining.

7. The Union stated that the reason for selecting its proposed bargaining unit was that it encompassed all flight crew working at the Employer who were directly employed by the Employer with the exception of those in senior management roles. The Union stated that the bargaining unit had not been agreed with the Employer and that, as far as it was aware, there was no existing recognition agreement in force covering any of the workers in the proposed bargaining unit.

8. 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 14 July 2017.

Summary of the Employer's response to the Union's application

9. In its response to the Union's application the Employer stated that it had received the Union's written request for recognition on 14 July 2017. The Employer stated that it did not respond to the Union's request but that a meeting was in the diary for 19 July 2017 to "discuss and progress voluntary recognition."

10. The Employer confirmed that it had received a copy of the Union's application on 17 July 2017, as it was addressed to an individual who was on annual leave until 17 July 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, and that it did not agree the proposed bargaining unit. The Employer stated that it objected to the proposed unit because there were an "incorrect number of voters in the application resulting in a higher percentage in favour of recognition." The Employer stated that, following receipt of the Union's request, it had not proposed that Acas should be requested to assist.

12. The Employer stated that it employed 72 workers. The Employer stated that it did not agree with the number of workers in the proposed bargaining unit as set out in the Union's application and said that there were 72 workers in the proposed bargaining unit. The Employer confirmed that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

13. In answer to the question whether it disagreed with the Union's estimate of membership in the proposed bargaining unit, the Employer said that there was "no evidence to support their figure either way". The Employer stated that since the Union's ballot, two pilots had resigned and left the business, and if they were counted in the number in favour the percentage reduced to 57% in favour of recognition. When invited to give its reasons if it did not consider that a majority of the workers in the bargaining unit would be likely to support recognition the Employer said that it would ballot its pilot community over the next three weeks to determine a majority view on voluntary recognition.

14. The Employer answered "none" when asked it was aware of any previous application under the Schedule by the Union in respect of this or a similar bargaining unit and when asked if it had received any other applications in respect of workers in the proposed bargaining unit.

Considerations

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

16. The Panel is satisfied that the Union made a valid request to the Employer within the terms of paragraph 5 to 9 of the Schedule. The next matter for the Panel to consider is whether the application was made in accordance with paragraph 11 or 12.

17. Paragraph 11 reads as follows:

> 11. (1) This paragraph applies if-
>
> (a) before the end of the first period the employer fails to respond to the request, or
>
> (b) before the end of the first period the employer informs the union (or unions) that the employer does not accept the request (without indicating a willingness to negotiate).
>
> (2) The union (or unions) may apply to the CAC to decide both these questions-
>
> (a) whether the proposed bargaining unit is appropriate;
>
> (b) whether the union has (or unions have) the support of a majority of the workers constituting the appropriate bargaining unit.

The "first period" is defined in paragraph 10(6) of the Schedule as "the period of 10 working days starting with the day after that on which the employer receives the request for recognition". Paragraph 172(2) of the Schedule states that in its application to a part of Great Britain a "working day" is a day other than (a) a Saturday or a Sunday, (b) Christmas day or Good Friday, or (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in that part of Great Britain.

18. The Panel notes that in its response to the application the Employer stated that it received the Union's written request for recognition on 14 July 2017. The Panel also notes, however, the Employer's e-mail to the Union dated 26 June 2017 in which the Employer acknowledged receipt of the Union's request (see paragraph 4 above). The Employer did not contest the validity of that e-mail and on the basis of the evidence before it the Panel is satisfied that the Employer received the Union's written request for recognition no later than 26 June 2017. The Panel is therefore satisfied that the first period had expired prior to the Union's application to the CAC and that the application was made in accordance with paragraph 11(2) of the Schedule. 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. 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)

19. 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 Union's proposed bargaining unit. In its application the Union stated that it had 45 members in the proposed bargaining unit and attached a graph showing the increase in membership since August 2016. In its response the Employer submitted that there was no evidence to support the Union's figure either way and stated that there were 72 workers in the proposed bargaining unit. The Employer did not explicitly challenge the veracity of the Union's stated level of membership and, indeed, implicitly accepted it by commenting that the true level of support for recognition among workers in the proposed bargaining unit, as reflected in the Union's ballot of its members, was 57% rather than the 70% claimed by the Union. On the basis of the evidence before it the Panel has 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)

20. 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. As stated in paragraphs 13 and 19 above, the Employer submitted that the true level of support for recognition was 57% of the proposed bargaining unit, which constitutes a clear majority albeit a lower figure than that claimed by the Union. There is no evidence before the Panel to suggest that there is not a majority of workers who would be likely to favour recognition. 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

21. For the reasons given in paragraphs 16-20 above, the Panel's decision is that the application is accepted by the CAC.

Panel

Professor Gillian Morris, Chairman of the CAC
Ms Gail Cartmail
Mr Robert Lummis

26 July 2017