

**THE INDUSTRIAL COURT**

**THE TRADE UNION AND LABOUR RELATIONS (NORTHERN IRELAND)  
ORDER 1995 (AS INSERTED BY ARTICLE 3 OF THE EMPLOYMENT  
RELATIONS (NORTHERN IRELAND) ORDER 1999)**

**SCHEDULE 1A – COLLECTIVE BARGAINING: RECOGNITION**

**DECISION ON BARGAINING UNIT**

**The Parties:**

SIPTU

And

RMS Cash Solutions Ltd

**DECISION**

**Background**

1. The Industrial Court (the Court) received an application on 13th March 2017, for recognition at RMS Cash Solutions Ltd, 38 Montgomery Road, Belfast, BT6 9HL. This address is the location of the proposed bargaining unit. The bargaining unit was described as “consisting of drivers in CVIT, ATM and ATME Engineers. It also includes staff in the control room working for RMS Cash Solutions Ltd, 38 Montgomery Road, Belfast, BT6 9HL. For the avoidance of doubt it excludes management and supervisor posts, temporary workers, casual workers and cash processing operatives.” The Court accepted the application by way of a short Decision dated 7<sup>th</sup> April 2017

**Preliminary matters in relation to Decision on Bargaining Unit**

2. Paragraph 18 of the Schedule applies once an application is accepted. It provides:-

*“(1) If the Court accepts an application under paragraph 11(2) or 12(2) it must try to help the parties to reach within the appropriate period an agreement as to what the appropriate bargaining unit is.*

*(2) The appropriate period is (subject to any notice under sub-paragraph (3), (4) or (5))*

*(a) the period of 20 working days starting with the day after that on which the Court gives notice of acceptance of the application, or*

*(b) such longer period (so starting) as the Court must specify to the parties by notice containing reasons for the extension.*

*(3) If, during the appropriate period, the Court concludes that there is no reasonable prospect of the parties' agreeing an appropriate bargaining unit before the time when (apart from this sub-paragraph) the appropriate period would end, the Court may, by a notice given to the parties, declare that the appropriate period ends with the date of the notice."*

3. The Chairman of the Panel met with the Parties on 3<sup>rd</sup> May in accordance with paragraph 18(1) of the Schedule. The Panel Members, Avril Hall-Callaghan and Patrick Masterson, were in attendance as observers. The discussions at the informal meeting were subject to qualified confidentiality and hence will not be disclosed. At the end of the informal meeting, the Chairman of the Panel determined, in accordance with the provisions of paragraph 19(3), that there was no prospect of the Parties reaching agreement and, hence, determined that the 'appropriate period' should be brought to a conclusion.

### **Preliminary matters in relation to a hearing**

4. At the informal meeting on 3<sup>rd</sup> May, a provisional date for a hearing was identified as 30<sup>th</sup> May. The Panel later determined that the hearing should take place at Killymeal House on 30<sup>th</sup> May 2017 in order to assist the Court to make a decision under paragraph 19 of the Schedule which provides:-

*"(1) This paragraph applies if—*

*(a) the Court accepts an application under paragraph 11(2) or 12(2),*

*(b) the parties have not agreed an appropriate bargaining unit at the end of the appropriate period (defined by paragraph 18), and*

*(c) at the end of that period either no request under paragraph 19A(1)(b) has been made or such a request has been made but the condition in paragraph 19A(1)(c) has not been met.*

*(2) Within the decision period, the Court must decide whether the proposed bargaining unit is appropriate.*

*(3) If the Court decides that the proposed bargaining unit is not appropriate, it must also decide within the decision period a bargaining unit which is appropriate."*

5. The Chairman of the Panel had earlier extended the 'decision period', set out in paragraph 19(4), until 1<sup>st</sup> June to allow for the hearing to assist the Court in making its decision. The Chairman had sent a Note to the Parties dated 9<sup>th</sup> May 2017, setting out why the Panel had determined to have a hearing on 30<sup>th</sup> May and requesting further information, primarily from the Employer, in relation to matters such as an organisational chart of the Company and terms and conditions of employment of the various categories of workers both inside and outside the proposed bargaining unit and any alternative bargaining unit submitted by the Employer. The Chairman sent a further Note to the Parties dated 22<sup>nd</sup> May 2017 confirming the Panel's decision to proceed with a hearing on 30<sup>th</sup> May.

6. The Union delivered its submissions to the Court dated 23<sup>rd</sup> May 2017 and the Employer delivered its submissions dated 25<sup>th</sup> May. The Employer's representatives had previously submitted a Skelton Argument dated 28<sup>th</sup> April, prior to the informal meeting on 3<sup>rd</sup> May.

## **The hearing**

7. The hearing took place on 30<sup>th</sup> May 2017 in Killymeal House. The Union was represented by Mr Niall McNally and Mr Vernon Hegarty. The Employer was represented by Mr John McManus, Solicitor and Mr Sean Doherty of Counsel. The CEO of the Employer, Ms Jean Hillyard, was also in attendance.

8. The Chairman briefly outlined that the Court's decision, based on paragraph 19(2) and (3), as interpreted by the Court and the Central Arbitration Committee, was whether the proposed bargaining unit was an appropriate bargaining unit, taking into account the views, including any alternative bargaining unit, put forward by the Employer. The Chairman also made reference to the criteria on the basis of which the Court was required to make its decision, as set out in paragraph 19B of the Schedule, namely:-

*“(1) This paragraph applies if the Court has to decide whether a bargaining unit is appropriate for the purposes of paragraph 19(2) or (3) or 19A(2) or (3).*

*(2) The Court must take these matters into account—*

*(a) the need for the unit to be compatible with effective management;*

*(b) the matters listed in sub-paragraph (3), so far as they do not conflict with that need.*

*(3) The matters are—*

*(a) the views of the employer and of the union (or unions);*

*(b) existing national and local bargaining arrangements;*

*(c) the desirability of avoiding small fragmented bargaining units within an undertaking;*

*(d) the characteristics of workers falling within the bargaining unit under consideration and of any other employees of the employer whom the Court considers relevant;*

*(e) the location of workers.*

*(4) In taking an employer's views into account for the purpose of deciding whether the proposed bargaining unit is appropriate, the Court must take into account any view the employer has about any other bargaining unit that he considers would be appropriate.”*

9. In its submissions, the Employer had asserted that the appropriate bargaining unit was “all non-managerial staff employed at the Montgomery Road site.”

## **Categories of workers in the proposed bargaining unit**

10. Mr Doherty explained that one of the categories included in the proposed bargaining, ATME Engineers, were no longer employed by the Employer. He stated that these workers had resigned on 31<sup>st</sup> March 2017 and now work for a separate company which had won a contract for that work. This is not a TUPE (Transfer of Undertaking – Protection of Employment) situation. He also sought to clarify that the ATME Engineers had been included in the information provided to the Case Manager on 4<sup>th</sup> April 2017, in relation to the acceptance membership check, although the workers had resigned on 31<sup>st</sup> March, as the date of employment for the purposes of the check was 28<sup>th</sup> March. The Chairman indicated that this was the correct approach as the acceptance decision was made on the basis of employment and Union membership on that date. He also confirmed that the Union was not seeking to revise its proposed bargaining unit as the Employer might employ ATME Engineers in the future.

## **Organisational chart**

11. Before hearing the Union's submissions, the Chairman invited the Employer to explain in more detail the organisational chart and how the Employer operated. In doing so, Mr Doherty mentioned that there was a redundancy consultation ongoing in relation to ATM Drivers due to changes in customer demand. The Chairman stated that the Court was aware of these anticipated changes but that they would not be taken into account as the decision had to be made on the facts pertaining at the time of the decision.

12. Mr Doherty explained that the Company was organised on the basis of separate managerial and supervisory arrangements for mobile and non-mobile workers. Three of the categories of workers in the proposed bargaining unit, CVIT and ATM drivers and ATME Engineers, along with Support Services Operators, are on one side of the organisational chart. They have a Regional Manager and a number of Operations Supervisors. There is a complementary managerial and supervisory structure for non-mobile workers, including Security Coordinators, referred to as "staff in the control room" in the description of the proposed bargaining unit, together with Cash Processors and Secure Area Operators. Here there is an Operations Manager and a number of Operations Supervisors.

## **The Union's submissions**

13. Mr McNally carried the Panel through the Union's submissions. He sought to illustrate differences in working hours, shift working, pay rates and overtime payments between different categories of workers in the Employer's alternative bargaining unit. He sought to counter the Employer's submission on harmonised terms and conditions across all non-managerial workers. He stated that such harmonised terms and conditions was 'aspirational' on the part of the Employer and made reference to the contracting out of the ATME Engineers on superior terms and conditions as evidence that this purported harmonisation was not occurring. This has caused fragmentation in terms and conditions and undermined the Employer's claim of harmonised terms and conditions across its alternative bargaining unit.

14. He submitted that, in comparison to the workers in the alternative bargaining unit, there is a natural affinity shown between workers in the proposed bargaining unit who have regular contact with one another and work broadly the same shifts, experience broadly the same rates of pay, and more importantly consider themselves to be part of a natural bargaining unit. He claimed that their motivation to join the union as a distinct group springs from this organic connection fostered by their daily working routines and practices. He asserted that the proposed bargaining unit comprises approximately 56% of all workers, 73 workers out of 130 employed at the location, which was neither a fragmented bargaining unit nor incompatible with effective management.

## **The Employer's submissions**

15. Mr Doherty, in response, made reference to the Employer's written submissions which, in turn, referred back to his original Skeleton Argument. He did not intend to go through the Employer's submissions on every point but concentrate on the most pertinent issues. In relation to the position of ATME Engineers, which had previously been clarified, the written submissions state, at paragraph 5, "In respect of the issue of ATME drivers, ... the Respondent has provided numbers of ATME drivers, together with their terms and condition as at the date of the Applicant's application. A separate company that is not a party to these proceedings employs a number of the Respondent's former ATME drivers. This Respondent has not, as is suggested at paragraph 2 of the Applicant's submissions, changed any terms and

conditions for ATME drivers. It has not entered into any two year pay deal. It does not operate a separate site from which ATME drivers operate. The Applicant's submission refer to a different company that is not a party to this application. It's actions, its terms and conditions and pay agreements are therefore entirely irrelevant. Consequently, there is no basis for the Applicant to suggest that changes to ATME drivers T&C's runs contrary to the Respondent's stated aim of harmonisation. This Respondent has not changed any terms and conditions for ATME drivers."

16. He sought to point out factual errors in some of the comparisons between terms and conditions of different categories of workers and questioned the evidential basis for some of the Union's assertions. In the Employer's written submissions, at paragraph 6, it is stated, "... if the Court consider the Statement Of Main Terms and Conditions of Employment documents that are issued to Cash Processors and drivers in CVIT or ATM, one can see that the conditions of employment are almost identical. One noticeable difference, which is referred to by the Applicant is that drivers require an SIA Licence. That difference exists as a result of the Private Securities Act 2001, and the Private Security Industry Act 2001 (Designated Activities) (Northern Ireland) Order 2009. Legislation dictates that drivers working for the Respondent be SIA licensed. It does not require Cash processors to be licenced. It is not therefore the employer that has elected to have any divergence in terms in this regard." He also confirmed that Security Coordinators are not SIA regulated.

17. He explained that, for security reasons, supervisors allocated vehicles to drivers on the day prior to operations and this was communicated to the drivers by Security Coordinators but that the Security Coordinators had more contact with Cash Processors and Secure Area Operators and, more generally, also had more in common with these categories of workers.

18. He submitted that the Security Coordinators are on the non-mobile side of the organisational chart while the other categories of workers in the proposed bargaining unit are on the mobile side of the chart. However, he maintained that there is close coordination across the organisation and hence that the Employer's alternative bargaining unit was an appropriate bargaining unit while the proposed bargaining unit was not. In the Employer's written submissions, at paragraph 9, it is stated that the alternative bargaining unit "is the natural bargaining unit. The staff at the site are all interlinked. They do have harmonized terms and conditions. They could not do their job without the help and assistance of all employees at the site. In order to effectively manager that interlinked operation the Respondent should be able to negotiate with all staff on the same basis, either with a Trade Union recognised for all, or directly with all staff."

19. In his view, the Union had fashioned the proposed bargaining unit around its membership and that there was no coherence to it. Issues of pay, hours and holidays were negotiated across all non-managerial staff. In a one-off occurrence, a pay rise was given to the CVIT and ATM drivers and ATME Engineers in July 2016, due to market conditions at the time. Generally speaking, a pay review took place in November and was implemented in January. The November 2016 pay review determined that there should be no pay rise and this was communicated to the workforce. Hence the Employer's alternative bargaining unit was the only appropriate one. He also rejected the possibility of another bargaining unit being determined by the Court.

## **Conclusions**

20. It is not the Court's immediate task to determine if the proposed bargaining unit is the most appropriate bargaining unit or that the Employer's alternative unit is a more appropriate

bargaining. In taking the Employer's views into account, the Court is initially considering whether any alternative bargaining unit undermines the potential appropriateness of the proposed bargaining unit. If the Court decides that the proposed bargaining unit is not an appropriate bargaining unit, it is free to consider the Employer's alternative as an appropriate bargaining unit or, indeed, conclude that a bargaining unit of its own devising is an appropriate bargaining unit.

21. On the basis of the submissions of the Parties both in writing and at hearing, the Panel considers that there is a range of possibilities in relation to an appropriate bargaining unit in this case. First, there is the proposed bargaining unit, to which the Panel must give its initial attention. This includes CVIT and ATM drivers and ATME Engineers from the mobile side of the organisational structure and also Security Coordinators from the non-mobile side of the structure. A second possibility is the alternative bargaining unit put forward by the Employer, namely "all non-managerial staff employed at the Montgomery Road site." A third possibility would be to restrict the bargaining unit to drivers in CVIT, ATM and ATME Engineers. A fourth possibility would be to include the Support Services Operators, also on the mobile side of the organisational structure, in the bargaining unit.

22. In relation to the appropriateness of the proposed bargaining unit, a starting point is to consider whether the third possibility, namely restricting the bargaining unit to CVIT and ATM drivers and ATME Engineers, could have been an appropriate bargaining unit. It is clear to the Panel that it could have been appropriate.

23. The Union has cited the Court of Appeal judgment in On the application of Kwik Fit Ltd v Central Arbitration Committee [2002] EWC Civ 512, where at paragraph 17 of his judgment, Buxton LJ states:-

*"the CAC's task is to determine whether the structure proposed by the union is appropriate for pay bargaining purposes, and no more than this."*

24. It is the Court's settled practice to consider the compatibility of a proposed, or other, bargaining unit, with effective management in relation to the 'core issues' for which recognition can be declared, namely pay, hours and holidays. Secondly, the Court considers wider issues upon which collective bargaining may be conducted, including, for example supervisory and disciplinary procedures, and thirdly, the still wider basis upon which the Employer is organised.

25. Until the ATME Engineers were contracted-out to another employer, each of these categories of workers had identical pay structures, hours of work and holiday arrangements, which are the 'core' issues upon which recognition for collective bargaining purposes can be granted. Hence, this possible bargaining unit would have been compatible with effective management in relation to these core issues. On wider industrial relations issues, it is also clear that this possible bargaining unit would have been compatible with effective management. Finally, in terms of the organisational structures of the Employer, there is once again, compatibility with effective management.

26. Taking into account the alternative bargaining unit submitted by the Employer, and the fourth possibility, of including all mobile workers in the bargaining unit, the Panel is satisfied that the inclusion of the Security Coordinators does not make the proposed bargaining unit inappropriate. They are on a different rate of pay to that of the CVIT and ATM drivers and, previously, the ATME Engineers, their hours overlap with those on the mobile and non-mobile sides of the organisation and have similar holiday arrangements to the categories of

workers in the proposed bargaining unit. They work under a separate but complementary supervisory system. Although they are on the non-mobile side of the organisation, they have significant contact with both non-mobile and mobile workers, including the other categories of workers in the proposed bargaining unit. In this sense, their role straddles the mobile and non-mobile sides of the organisation both in terms of hours of work and their degree of contact with workers in both parts of the Employer's organisation.

27. It is clear that a Union cannot fashion a proposed bargaining unit out of its current membership. However, on evidence from the Union, the Security Coordinators specifically joined the Union to be included in the bargaining unit, which indicates a community of interest on industrial relation matters between them and the CVIT and ATM drivers and ATME Engineers, prior to contracting out. The proposed bargaining unit is not a small, fragmented bargaining unit. As the Union has stated, the proposed bargaining unit comprises approximately 56% of all workers, 73 workers out of 130 employed at the location, and there are sufficient common characteristics between the different categories of workers in the proposed bargaining unit.

28. The Panel also considered the alternative bargaining unit provided by the Employer. The Employer's representative put forward valid arguments, by way of both written and oral submissions, in favour of a bargaining unit of all non-managerial staff. However, the Court's task is not to be satisfied that the alternative bargaining unit is a more appropriate bargaining unit but whether the Employer's views and alternative bargaining unit undermine the appropriateness of the proposed bargaining unit.

29. The Employer, in its submissions, made reference to the decision of the English Court of Appeal in R (on the application of Kwik Fit (GB) Ltd) v Central Arbitration Committee [2002] EWCA Civ 512. In that case, Buxton LJ stated:

*“As he did in the present case, the employer may well raise objections to the appropriateness of the union's proposed bargaining unit by urging that only another and different unit could be appropriate. The CAC cannot simply ignore such objections. It has to determine whether the objections, and the availability of alternatives that may form an important part of the argument in support of those objections, render inappropriate for bargaining purposes the unit proposed by the union”*

30. In this case, taking its industrial relations experience into account, the Panel is satisfied that that Employer's alternative bargaining unit does render inappropriate for bargaining purposes the unit proposed by the Union and therefore remains satisfied that the proposed bargaining unit is an appropriate one.

31. The Panel also briefly considered the fourth possibility, namely of including the other category of mobile workers, the Support Services Operators. However, as previously stated, the test to be applied is whether the proposed bargaining unit is an appropriate bargaining unit. It may be that each or any of the other possible bargaining units would have been a more appropriate bargaining unit. However, the Panel has decided that the proposed bargaining unit is an appropriate one.

## DECISION

32. The Decision of the Industrial Court's is that the appropriate Bargaining Unit is that proposed by the Union, that is,

*“drivers in CVIT, ATM and ATME (Engineers). It also includes staff in the Control Room working for RMS Cash Solutions Ltd, 38 Montgomery Road, Belfast, BT6 9HL. For the avoidance of doubt, it excludes management and supervisor posts, temporary workers, casual workers and cash processing operatives.”*

*Barry Fitzpatrick*

Mr Barry Fitzpatrick  
Mr Pat Masterson  
Ms Avril hall-Callaghan

Decision Date: 30<sup>th</sup> May 2017  
Date Issued to Parties: 18<sup>th</sup> August 2017