

## **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 WHETHER TO ACCEPT THE APPLICATION**

#### **The Parties:**

TSSA

And

Knock Travel

#### **Introduction:**

1. TSSA (the Union) submitted an application to the Industrial Court (IC) dated 24 November 2004 that it should be recognised for collective bargaining purposes by Knock Travel (the Undertaking). The Industrial Court received the application on 24 November 2004, and duly acknowledged receipt of the application to both parties. The Company submitted a response to the IC on 2 December 2004, which was copied to the Union.
2. In accordance with Article 92(A) of the Industrial Relations (Northern Ireland) Order 1992, the IC Chairman established a Panel of the Court to deal with the case. The Court consisted of Mr Richard Steele, Chairman, and, as Members, Mr Bob Gourley and Mr Irvine McKay. The Case Manager appointed to support the Court was Mrs Joanna Calixto.

#### **Issues:**

3. The Court is required by the 1995 Order to decide whether the Union's application to the IC is valid within the terms of; Article 3 and Schedule 1A, paragraphs 5-8; is made in accordance with paragraphs 11 or 12; and is admissible within the terms of paragraphs 33 to 42 of Schedule 1A to the Order and is therefore to be accepted.
4. In the letter of request dated 7 October 2004 from the Union to the Undertaking, the proposed bargaining unit was described as ' All staff employed by Knock Travel in the Upper Newtownards Road, Kings Square and Hamilton Road Branches excluding the IT manager Mr Morris McKenzie and Proprietor Mrs Doreen McKenzie.' In the Union's application of 24 November 2004, it was stated that the Undertaking employed 21 people.

6. The Employer's response to the Union's letter of request dated 13 October 2004, and response to the Court dated 2 December 2004, asserted that the Undertaking did not employ the necessary number of workers for the application to be valid. It was stated that only 19 people were employed by the Undertaking.
7. It was decided that the Case Manager should carry out a check to verify the number of workers employed by the Undertaking. The factual results of this check were copied to both Parties along with the Case Manager's report dated 9 December 2004.
8. Paragraph 7 of the Schedule stipulates that the Union's request is not valid unless the employer, with any associated employers, employs (a) at least 21 workers on the day the employer receives the request, or (b), an average of at least 21 workers in the 13 weeks ending with that day. The day the employer received the request was 8 October 2004, and on this day it was found that the Undertaking employed 19 people. Paragraph 7(1)(a) was therefore not satisfied. The Case Manager then took an average of the number of workers employed in the 13 weeks ending with 8 October.
9. The Court considered whether it was appropriate to include Mr Morris McKenzie and Mrs Doreen McKenzie in this calculation. They had not appeared on payroll, since Mrs McKenzie as sole trader simply drew from the after tax profits of the Undertaking. The Case Manager was informed that Mr McKenzie was an officer of the Undertaking in name only for the purposes of travelling to conferences with his wife. The Court considered whether Mr and Mrs McKenzie could be considered 'workers' for the purposes of Article 2(2) of the Trade Union and Labour Relations Order 1995. It was found that they could not be considered to 'perform personally any work or services for another party'. The Court was unable to find any other party to the contract; therefore Mr and Mrs McKenzie were not workers for the purposes of Article 2 of the Order. They should not therefore be included in the calculation of the number of workers employed.
10. It having been decided not to include Mr and Mrs McKenzie in the calculation, the average number of workers employed by the Undertaking over the 13 week period was calculated at 20.9. Therefore Paragraph 7(1)(b) of the Schedule was not satisfied.

## **Decision**

11. The Court concluded that the Union's request had failed to satisfy the validity criteria in the Schedule. Since it would not be appropriate for the tests specified under Paragraph 36 of the Schedule to be carried out, the application is not admissible and is therefore not accepted.

