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CAC tactics – bargaining unit disputes

Jeremy Lewis

Littleton Chambers, 3 King's Bench Walk North, London EC4Y 7HR
Telephone: 020 7797 8600 | Facsimile: 020 7797 8699 | DX: 1047 Chancery Lane
www.littletonchambers.com | clerks@littletonchambers.co.uk

Importance of Proposed Bargaining Unit

- Reference point for admissibility tests including (sch A1 para 36):
 - 10% membership
 - Majority likely to favour recognition
- Preferential status of PBU:

See eg **PDAU v Boots Management Services Ltd**
TUR1/1062, 1 October 2018

- Potential 3 year bar (Sch A1, paras 47,48)

Importance of Alternative Bargaining Unit

R (Kwik-Fit (GB) Ltd) v CAC [2002] ICR 1212:

- Testing the PBU (see Sch A1 para 19B(4))
- Replacement BU if PBU isn't appropriate

Tactical considerations

- Impact on validity/ ballot? Cf **Unite the Union and Kellycare** TUR1/781/2012
- Gaining a foothold.
- Persuasiveness
- Damage limitation
- Potential breadth (cf **NUMAST and Hoverspeed Ltd** TUR/1/433/04, 14.10.05)

Blocking tactics

SchA1 [35,44]: existing collective agreement

- S.178 TULRCA definition
- Covering any of PBU
- Must be with a union (**TGWU and Jordan (Cerials) Ltd** CAC No.TUR1/258/2003)
- But need not be independent
- Narrow exceptions [35(2),(4)]

Blocking tactics (2)

- **PDAU v Boots Management Services Ltd**
[2017] IRLR 355 (CA)
 - Recognition of non-independent union
 - Only CB re facilities for officials; machinery for consultation
- **R (NUJ) v CAC** [2006] ICR 1 (CA)
- Small employer exception (21 workers) [17]
 - **Unite and Paragon Labels Ltd** TUR1/852/13,
10 January 2014

Appropriateness of the BU

- Overarching test of whether appropriate [19]
- Need not be most appropriate (Kwik-Fit)
- Need to be compatible with effective management
- Consistency/ ability to co-exist NUJ and Pearson Education Ltd (TUR1/652/08, 30.1.09)
- Focus on working methods of resolving issues of pay, hours, holidays by CB

The relevant matters

19B(3):

- Views of the employer and the union(s)
- Existing national and local bargaining arrangements
- Avoiding small fragmented bargaining units
- Characteristics of the workers within the BU and other relevant employees
- Location of workers

171: Object of encouraging and promoting fair and efficient practices and arrangements in workplace.

Fragmentation

R (Lidl Limited) v CAC [2017] ICR 1145 (CA): Underhill LJ [36] on scope of 19B(3)(c):

“The policy expressed by head (c) is evidently that, other things being equal, where a group of employees can appropriately be bargained for by a single trade union in a single bargaining unit it is desirable that they should be. It is thus concerned specifically with fragmentation of *collective bargaining*.”

- Therefore focus on risk of proliferation of CB.
- Divisions between colleagues, especially working together in similar roles, still relevant: eg **PDAU v Boots**
- “A small island of union recognition” may still be relevant but isn’t “axiomatically undesirable”
- See also **R (Cable and Wireless Services UK Ltd) v CAC** [2008] ICR 693, QBD.

Other common factors

- Self-contained/ clearly defined boundaries: **Unite v Triumph Aerospace Operations UK Ltd**
TUR1/1052/2018, 11 September 2018
- One company ethos?
- Management/ operating structure in practice
- Difference/ commonality in pay, hours, holidays
- Separate budget?
- Functional flexibility?
- Management/ senior employees
- Comparable employers Eg **ATL and Kaplan Liverpool Ltd** TUR1/784/2012, 31 May 2012
- Forward looking approach: **Aegis the Union v JLT Benefit Solutions Ltd** TUR1/862/2014, 24 April 2014

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JEREMY LEWIS

jlewis@littetonchambers.co.uk

Littleton Chambers
3 King's Bench Walk North
Temple
London
EC4Y 7HR

T +44 (0) 20 7797 8600
F +44 (0) 20 7797 8699
DX 1047 Chancery Lane
www.littetonchambers.com
clerks@littetonchambers.co.uk