

On what grounds and with what prospects of success can you Judicially Review a bargaining unit decision, post Lidl?

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If this is the answer what is the question...

- 18,203
- 637
- 273
- 1.2%

TULRA 1992; Sched A1, paras 19 and 19B.

The determinative question is simply whether the proposed bargaining unit is “appropriate”

that structure, adopting a broad criterion of “appropriateness”reflects an intention on the part of Parliament to allow full range to the expert judgement of the CAC in making decisions about bargaining units.”

The protest!

Relevant authorities:

- ***R v CAC ex p Kwik Fit (GB) Ltd***
[2002] EWHC 277; [2002] EWCA
Civ 512, [2002] IRLR 395.
- Elias J : 'Judicial review, such as is
sought in the present case, is
therefore only available if the
CAC has either acted irrationally
or made an error of law.'

R (BBC) v CAC [2003] ICR 1542

“True enjoyment at supper in front of the television can only be achieved by the sight of the disappearing limbs of an insect within the mouth of a monitor.”

R (on the application of Cable & Wireless Service UK Ltd) v CAC [2008] IRLR 425

- Fragmentation is not measured numerically as a proportion of the workforce
- It is whether a unit would divide up the workforce into numerous groups prone to compete with each other.
- Stability and occupational identity of field service workers militates against fragmentation.

Grounds of challenge by Lidl.

Correct approach to para 19B(3)(c)?

...CAC to take into account the desirability of avoiding small fragmented bargaining units within an undertaking when determining whether a proposed bargaining unit is compatible with effective management.

Rejected because...

Fragmented connotes a whole which has been broken into parts and necessarily implies plurality.... Seeking to avoid employers having to negotiate in more than one forum

Unit identified is small – but mischief 19B(3)(c) is aimed at is fragmentation between bargaining units.

A warning...

For the future, I would strongly discourage legal challenges based on the nice parsing of the constituent parts of paragraph 19B

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I am resistant to applying a fine-tooth comb to the reasoning of the CAC

Thank you

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