

THE LABOUR COURT
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CD/07/94
(CCc-008139-04)

RECOMMENDATION NO. LCR18916

INDUSTRIAL RELATIONS ACTS, 1946 TO 2004
SECTION 26(1), INDUSTRIAL RELATIONS ACT, 1990

PARTIES :

HEALTH SERVICE EXECUTIVE - EMPLOYERS AGENCY

- AND -

IRISH MEDICAL ORGANISATION

DIVISION :

Chairman : Mr Duffy
Employer Member : Mr Grier
Worker Member : Ms Ni Mhurchu

SUBJECT:

1. 1. Payment for provision of 'Out of Hours' cover 2. Payment of 7.5% interim increase.

BACKGROUND:

2. There are two issues to the Union's claim as follows: (1) payment for provision for "out-of-hours" service to participating Public Health Doctors and (2) claim for payment of 7.5% Higher Review Body increase to Directors of Public Health and Specialists in Public Health Medicine. The claim can be traced back to an agreement between the parties in June 2003 under the auspices of the Labour Relations Commission (LRC)

(1) Out of hours service.

The proposal for an out-of-hours service is to be interim pending the report of the Review Body on Higher Remuneration in the Public Sector (the Review Body) which is to resolve the matter definitively. Both parties agree that there is a need for this service

which will involve 60 whole-time equivalent staff. An example of when the service would be needed would be the outbreak of an infectious disease. It is reckoned that the claimants would provide 10 weeks' service per year and the HSE has offered to pay them an all-in payment of €500 per week, a total of €5000 per year. The Union is seeking payment by way of one of two options (a) the 5 claimants should be paid a Consultant's salary which would be approximately €180,000 per year or (b) an on-call rate similar to Non-Consultant Hospital Doctors (NCHDs) which would equate to approximately €60,000 per year which could rise to €80,000 per year depending on the level of activity involved.

(2) 7.5% increase

The HSE's case is that workers whose pay was adjusted in line with Benchmarking could not receive the Review Body's increase of 7.50%. This would mean that the current claimants would be excluded from the 7.50% increase.

The dispute was referred to the Labour Relations Commission and a conciliation conference took place. As the parties did not reach agreement the dispute was referred to the Labour Court on the 7th of February, 2007, in accordance with Section 26(1) of the Industrial Relations Act, 1990. A Labour Court hearing took place on the 30th of May, 2007.

UNION'S ARGUMENTS:

3. 1. **Out-of-hours service:**

Public Health Doctors and Hospital Consultants have identical training, qualifications and clinical responsibility and, as such, the Doctors should be paid the same as the Consultants or, at least, a similar rate to NCHDs.

2. **7.5% increase:**

The LRC agreement in 2003 made it clear that the claimants would have their remuneration decided from that point on by the Review Body. Following submissions from the Union, the Review Body decided in Report No. 40 that the senior public service posts being examined by the Review Body should receive an interim increase of 7.5%. However, it was decided by the Department of Finance not to grant the increase to the claimants, something that is contrary to the agreement in 2003.

HSE'S ARGUMENTS:

4. 1. **Out-of-hours service:**

The employer's offer of €500 per week is more than reasonable given a one-in-five call-out for the doctors involved. The level of call-out will be minimal and the service can be primarily provided by telephone from the doctors' own house.

2. **7.5% increase:**

The claimants are clearly outside the scale of the provisions of Report No. 40 of the Review Body and cannot be encompassed by those provisions. If such were to happen it would have serious implications for the terms of reference both for the Review Body and the Benchmarking Process.

RECOMMENDATION :

Claim 1 - Interim Arrangement on Out of Hours Service

It is noted that the Review Body on Higher Remuneration in the Public Service is currently dealing with matters relating to the introduction of a substantive out-of-hours service, including the appropriate remuneration for the operation of the service. It is further noted that the Review Body is expected to report in the final quarter of 2007.

In these circumstances the Court recommends that the position put forward by the HSE for the operation of an interim service be accepted without prejudice to the outcome of the Review Body's consideration of the matter. The Court further recommends that if the outcome of the Review Body's report results in more favourable arrangements than those proposed by the HSE, the new arrangements should apply retrospectively to the commencement of the interim arrangement.

Claim 2 - 7.5% Increase

It is noted that the Recommendations contained in Report No. 40 of the Review Body were expressly not intended to apply to groups whose salaries have been adjusted by benchmarking. The Claimants in this case have had their salary adjusted by benchmarking. Accordingly, they are excluded from the ambit of the Recommendations contained in the report.

In these circumstances the Court cannot recommend concession of the Union's claim.

Signed on behalf of the Labour Court

14th June, 2007
CON/MB.

Kevin Duffy

Chairman

NOTE

Enquiries concerning this Recommendation should be addressed to Ciaran O'Neill, Court Secretary.