

## FULL RECOMMENDATION

**CD/12/261**

**RECOMMENDATIONNO.LCR20313**

(CCc-120318-12)

**INDUSTRIAL RELATIONS ACTS, 1946 TO 1990**

**SECTION 26(1), INDUSTRIAL RELATIONS ACT, 1990**

**PARTIES :**

**HSE (NAC)**

**- AND -**

**SIPTU & UNITE**

**DIVISION :**

Chairman: Mr Duffy

Employer Member: Ms Doyle

Worker Member: Ms Tanham

## **SUBJECT:**

1. Removal of overtime in certain situations, payment in terms of long distance journeys, and roster changes.

## **BACKGROUND:**

2. This dispute concerns the HSE's introduction of changes in work practices in accordance with the Public Service Agreement. This dispute could not be resolved at local level and was the subject of a Conciliation Conference under the auspices of the Labour Relations Commission. As agreement was not reached, the dispute was referred to the Labour Court on the 28th May, 2012, in accordance with Section 26(1) of the Industrial Relations Act,

1990. A Labour Court hearing took place on the 11th June, 2012.

#### **UNION'S ARGUMENTS:**

3 1 The Union have engaged constructively with the HSE for several years on the issue of change in the National Ambulance Service.

2 Section 2.8 of the Public Services Agreement protects all existing agreements.

3 The Union believes that no changes in work practices should be introduced until all outstanding issues are resolved in an atmosphere of trust and cooperation.

#### **EMPLOYER'S ARGUMENTS:**

4 1 The proposed changes in work practices are fully in line with the provisions of the Public Sector Agreement.

2 The Employer has the right to utilise all available staff to cover any form of leave.

3. The Employer has the right to ensure that payment is only made for actual hours worked.

#### **RECOMMENDATION:**

**This matter came before the Court against the background of negotiations on an overall action plan for the Ambulance Service under the terms of the Public Service Agreement 2010 – 2014 (PSA).**

**It is noted that significant progress has been made on many key aspects of the action plan and that the unions have made a number of important concessions as part of that process. However, agreement could not be reached on five issues involving management proposals to change long-standing work practices that lead to significant overtime liabilities for the service.**

**This dispute is before the Court in the context of the commitments in the PSA to the introduction of more efficient and cost sensitive systems of service delivery. Accordingly the starting point for consideration of the issues before the Court must be an acceptance of the need to eliminate work practices or arrangements that lead to or perpetuate unnecessary costs. It must, however, be acknowledged that the work practices at issue have been allowed to continue over many year and have become part of the structured working arrangements of the staff concerned. Their elimination**

will result in those affected losing a substantial part of their regular income and in these circumstances it is appropriate to mitigate that loss, as far as possible, by the payment of compensation.

Having considered the submissions of the parties the Court recommends as follows in respect to each of the issues referred to the Court: -

- 1. Removal of overtime to cover short term replacements
  - This matter relates to Management's proposal to fully implement the 2007 National Framework Agreement on structured leave. The Court recommends that this agreement should now be fully implemented. In so far as the agreement provides for exceptions in the arrangements for providing cover in certain areas, it is clearly desirable that a common arrangement should apply throughout the service. Accordingly, the Court recommends that this aspect of the 2007 agreement be reviewed as a matter of urgency. This review should commence immediately and should conclude within a period of three months. Any matters outstanding at the end of that period should be referred back to the Court for final adjudication

The Court notes that where the 2007 agreement has already been introduced consequential loss of overtime did not attract compensation. In these circumstances the Court does not recommend the payment of compensation on implementation of this recommendation.

2. Payment for long distance journeys

- This matter relates to a practice which was established by a number of local agreements between former Health Boards and the Unions which provided that crews who travel long distances in the course of their duties are paid a standard notional number of hours which are unrelated to the actual time taken to complete the journey. Management are seeking to eliminate this practice and pay for actual hours worked only. The Unions contend that the agreements in question are protected by Clause 2.8 of the PSA.

The Court has been furnished with copies of the Agreements relied upon by the Unions. They clearly provide for the practices now in issue in the locations to which they relate. However, Clause 2.8 of the PSA does prevent the alteration or termination of agreements to which the Clause relates where this is agreed to by the parties.

It is noted that the parties have agreed on the introduction of a new arrangement involving the use of 'Intermediate Care Vehicles' which will eventually eliminate the need for ambulance crews to undertake long journeys of the type giving rise to this aspect of the dispute. However, in the interim Managements proposals to curtail the present arrangements are reasonable. This should be accepted by the Unions and the parties should agree to the termination of the local agreements on the following basis.

The Court recommends that the Unions should agree to the termination of the present agreed practice of paying for notional time to crews undertaking long journeys with effect from 1<sup>st</sup> September 2012. Thereafter only actual time spent in completing the journey should be paid. Having regard to the savings that will accrue from the implementation of this recommendation Management should undertake to accelerate its programme of introducing Intermediate Care Vehicles and should aim to have this programme fully operational within two years.

For the avoidance of doubt, where, after the ICV programme is implemented, where crews are required to undertake long journeys, only actual time spent in completing the journey should be payable.

In relation to compensation, the immediate elimination of the current arrangements on notional time will give rise to significant loss of earnings for those affected. The Court recommends that these losses be compensated for by application of the formula agreed in association with the PSA. Further losses may accrue arising from the introduction of the ICV arrangement and when this system is operational such additional losses in earnings should likewise be compensated for by application of the PSA formula.

### **3. Overnight Stops**

- The Court recommends that the normal or default position should be that crews return to their base following a transfer of a patient to Dublin. There may, however, be situations in which this will not be feasible on health and safety or other grounds. Consequently, an arrangement should be put in place where, exceptionally, authorisation may be given to a crew remaining in Dublin overnight. The circumstances in which such authorisation may be given, and the objective criteria against which it will be given, should be set out in a policy statement which Management should prepare before 1<sup>st</sup> September 2012. This policy statement should be formulated in consultation with the Union. The operational arrangements, including the appropriate deployment of staff necessary to avoid the necessity for overnight detention, should be a matter for Management.

### **4. Elimination of Overtime Before and After Start Times**

- This matter relates to a practice in a number of locations whereby staff are automatically called in before the commencement of their shift regardless of the requirements of the service. Management are seeking agreement to the elimination of this automatic practice and its replacement with an arrangement by which Ambulance Control will determine if crews are to commence early or work beyond the finish of their shift.

The Court recommends that the Union should agree to the arrangement proposed by management. Loss of earnings, which arise from this change, should be compensated by reference to the PSA formula.

### **5. Overtime Built Into Rosters**

- There should be local discussions aimed at producing rosters that reflect a standard working week of 39 hours averaged over the duration covered by the roster. These discussions should commence as soon as practicable and should conclude by 1<sup>st</sup> September 2012. If agreement is not reached by that date the provisions of Clause 1.23 of the PSA should apply while the discussions continue.

Loss of earnings arising from the implementation of this recommendation should be compensated for by application of the formula provided in the PSA.

**Signed on behalf of the Labour Court**

**Kevin Duffy**

**3rd July, 2012** \_\_\_\_\_

**JMcCChairman**

**NOTE**

**Enquiries concerning this Recommendation should be addressed to Jonathan McCabe, Court Secretary.**