

THE LABOUR COURT  
LANSLOWNE HOUSE  
LANSLOWNE ROAD  
BALLSBRIDGE  
DUBLIN 4  
D04 A3A8



AN CHÚIRT OIBREACHAIS  
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CD/19/102

RECOMMENDATION NO. LCR22015

CCc-162215-17

INDUSTRIAL RELATIONS ACTS 1946 TO 2015  
SECTION 26(1), INDUSTRIAL RELATIONS ACT, 1990

PARTIES :

HEALTH SERVICE EXECUTIVE HSE

- AND -

HEALTH SERVICE STAFF PANEL AND PNA

DIVISION :

Chairman : Ms O'Donnell  
Employer Member : Ms Connolly  
Worker Member : Mr Hall

SUBJECT:

1. Claim for Revised arrangements in respect of compassionate/bereavement leave

BACKGROUND:

2. This dispute could not be resolved at local level and was the subject of a number of Conciliation Conferences under the auspices of the Workplace Relations Commission. As agreement was not reached, the dispute was referred to the Labour Court on 19 March 2019 in accordance with Section 26(1) of the Industrial Relations Act, 1990. A Labour Court hearing took place on 22 May 2019.

**UNION'S ARGUMENTS:**

3. 1. It is reasonable and appropriate that a benefit introduced in the civil service and local government should be applied to staff working in the health sector.
2. Previously reductions in conditions of employment including pay, sick leave, pension etc were applied uniformly throughout the public sector. By contrast, when a benefit is being applied, it is done so selectively by sector which is unfair and unjust.
3. The matter of bereavement/compassionate leave and the matter of personal loss and grief applies equally to all public servants, regardless of the sector they work in.

**EMPLOYER'S ARGUMENTS:**

4. 1. DPER have confirmed that the bereavement leave arrangements in DPER Circular 1/2017 only apply to Civil Servants and do not apply to other public bodies/sectors.
2. This is a cost increasing claim which is prohibited under the terms of the PSSA.
3. The granting of improvements to bereavement arrangements would impose significant additional costs on health service employers.

**RECOMMENDATION :**

**The dispute between the parties is in relation to the Unions claim to have the revised arrangements in the Civil Service regarding bereavement leave applied in the HSE and the Section 38 funded agencies. The amended scheme was introduced initially in the Civil Service by circular 01/2017 and then in the Local Government sector. It is the Unions case that prior to the Civil Service introducing the revised arrangements the bereavement leave available across the Health, Local Government and Civil service while not mirror images of each other were all reasonably similar. The decision by the Civil Service to substantially change the terms of its bereavement scheme is the trigger for this claim by the Health Sector Unions.**

**The Employer in response to the claim in the Health Sector has claimed that it is a breach of the Public Service Stability Agreement (PSSA). This is disputed by the Unions who rely on the fact that this claim has already been conceded in two sectors that are also covered by the PSSA. In circumstances such as in this case, where the Parties to the agreement have already decided that a claim of this nature is not a breach of the agreement in that they have conceded the claim in two sectors, it is not appropriate for the Court to decide otherwise.**

**The Employer in their submission set out in table form the current differences between the Civil Service and the Health sector schemes. It is clear from this table that the differences are not only the quantum of leave available, but the scope in relation to the**

category of relative. The Court at this time proposes to address the quantum of leave only as it is the departure from previous arrangements (where the schemes were quite similar) by the concession of a significant increase in leave in two other sectors, that is the subject of this claim. The Court is not proposing any change to the existing category of relative in the HSE and section 38's at this point in time.

The Employer in their submission highlighted two elements to the cost of conceding this claim 1) the loss of productivity that naturally arises when a Worker is absent and 2) the cost of backfill. While the Employer does not dispute that the loss of productivity would also be a factor in the other sectors which have conceded the claim, it was their submission that the issue of back fill would not arise in the other two sectors and certainly not to the same extent as it would arise in the Health Sector. The Employer carried out an exercise to try and cost the Unions claim. These estimates were done on the basis of 100 percent back fill and carried a caveat that the majority of HR systems across the Public Health service could not provide detailed records on bereavement leave.

The Unions disputed the figures and in particular that it was normal practice to have a 100 percent back fill policy. The Unions drew the Courts attention to HSE HR Circular 017/2013 bullet point 8) which they felt could be explored to minimise the need for backfill arising from any increase in bereavement leave. Both the Union side and the Employer confirmed to the Court that the issue of addressing the backfill and in particular Circular 017/2013 had not been raised by either party at Conciliation.

The Union side drew the Courts attention to a letter dated 4<sup>th</sup> October 2017 from DPER to the Department of Health in respect of this claim. The Court was surprised to learn that this letter had not been shown to the Unions during the Conciliation process and that they only became aware of it when they received the Employers submission to this Court. The Union asked the Court to note that the letter indicated that the take up of the increased leave for spouse or child bereavement was only 0.02% of the Civil Service Workforce for the first six months. No costings have been done to show what that would mean in terms of the Health Sector and there was no reason to think that there would be a significant difference in terms of take up in that sector.

The letter then went on to say that "*the sector may choose to negotiate the introduction of the changes on a cost neutral basis,*" It was the Employers position to the Court that they did not raise this with the Unions or at Conciliation as they felt that staff were already under pressure and it would not be fair to ask them to cover extended bereavement leave.

The Court having read the submissions of the parties and listened carefully to the oral submissions on the day recommends that the HSE and section 38 funded agencies bereavement policies be amended in line with the concessions referenced earlier in the Civil Service to allow for twenty working days for spouse/partner and child (including adopted and 'in loco parentis') and five days for immediate relative as currently defined in the HSE and Section 38's own policies. The Court, noting the commitments that exist in HSE HR Circular 017/2013, further recommends that the parties return to Conciliation and constructively engage on the issue of the need for backfill arising from these changes, and other relevant issues, with a view to implementing the changes with effect from 1st October 2019.

**The Court so recommends.**

Signed on behalf of the Labour Court

Louise O'Donnell

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Deputy Chairman

MK

10 June 2019

**NOTE**

Enquiries concerning this Recommendation should be in writing and addressed to Mary Kehoe, Court Secretary.