

LCR21104

FULL RECOMMENDATION

CD/15/352

RECOMMENDATIONNO.LCR21104

INDUSTRIAL RELATIONS ACTS, 1946 TO 1990

SECTION 26(1), INDUSTRIAL RELATIONS ACT, 1990

PARTIES :

HSE

- AND -

HEALTH SERVICE TRADE UNIONS (INMO-IMPACT-IMO-SIPTU-PNA-UNITE-TUE-UCAT-TEEU-MLSA)

DIVISION :

Chairman: Mr Foley

Employer Member: Ms Doyle

Worker Member: Mr Shanahan

SUBJECT:

1. Assimilation Rule for temporary assignment

BACKGROUND:

2. This case concerns a dispute between the HSE and the Health Service Trade Unions in relation to the appropriate mechanism for pay assimilation while on temporary assignment to higher positions within the HSE. Management's position is that it acted appropriately in placing all staff appointed to higher positions on a temporary basis to the minimum point of the higher payscale or to the nearest point. It contends that this is in compliance with the terms of the appropriate HSE Circular (17/2013).

The Union's position is that rates of pay applying to promotional posts are governed by the terms of Circular 10/71. The Union contends that the appropriate assimilation process does not differentiate between temporary and permanent assignments to a higher post. The Union is seeking the appropriate assimilation (nearest point plus one) for those temporarily assigned to higher posts.

The dispute was not resolved at local level and was the subject of a conciliation conference under the auspices of the Workplace Relations Commission. As agreement was not reached the matter was referred to the Labour Court on 9th November 2015 in accordance with Section 26(1) of the Industrial Relations Act, 1990. A Labour Court hearing took place on 10th December 2015

UNION'S ARGUMENT:

3 1 The discussions and subsequent agreement between the parties which lead to the issuing of HSE Circular 17/2013 related to the regularisation of acting posts and related to a specific set of circumstances. It did not reflect agreement on the appropriate assimilation that would apply to those appointed either permanently or on a temporary basis to higher positions. The Union is seeking the application of Circular 10/71 to all staff appointed to higher positions within the organisation.

MANAGEMENT'S ARGUMENT:

4 1 HSE Circular 17/2013 related to the regularisation of long term acting and formed the basis for future pay arrangements on temporary assignment to higher positions. Management contends that it acted appropriately and in line with the relevant circular in assimilating staff on to the higher payscale.

RECOMMENDATION:

The Court has carefully considered the detailed submissions made by the parties and the points made at the hearing. The parties reached a collective agreement in 2012 and subsequently amended that agreement as part of the process leading to the Public Service Agreement of 2013. That collective agreement as amended dealt with arrangements to apply to staff performing the duties of a higher grade in circumstances other than permanent promotion. The parties are disputing the pay arrangements to apply to persons at the commencement of a temporary period of undertaking the duties of a higher grade. Payment applies only where that period extends beyond three months.

The Court understands that prior to the conclusion of the collective agreement referred to above the practice of the HSE included appointment of staff to carry out duties of a higher grade on (a) a permanent promotional basis, (b) an 'acting' basis, and (c) a temporary assignment basis. The parties' collective agreement did not provide for any alteration of pre-existing arrangements for payment of staff at the point of taking up higher duties under any of these circumstances.

The Court believes that the collective agreement referred to above brought to an end the previous facility to have staff assigned to higher duties on an 'acting' basis. That agreement therefore also brought the payment arrangements associated with 'acting' to an end. The agreement did not bring to an end the process of temporary assignment of staff to higher duties or its attendant payment arrangements.

The Court therefore recommends that the pre-existing arrangements for payment of staff temporarily assigned to higher duties should have continued to apply after completion of the collective agreement referred to above. The Court recommends that the disputed guidance document issued by the HSE should be amended accordingly and the amended provision should apply to all affected staff. The Court also recommends that any proposal to amend these payment arrangements should be dealt with by the parties through normal procedures.

Signed on behalf of the Labour Court

Kevin Foley

17th December 2015 _____

AHDeputy Chairman

NOTE

Enquiries concerning this Recommendation should be addressed to Andrew Heavey, Court Secretary.