

1st July 2003

Mr Colm Flannery
Senior Executive Officer
Employee Relations Section
Human Resources Department
Merlin Park
Galway

Re: **Community RGN's Subsistence**

Dear Mr Flannery

I refer to your letter of 3rd June, in relation to the above matter.

In 1999, the Labour Court investigated a claim for payment of a subsistence allowance to Public Health Nurses in the Southern Health Board and subsequently in LCR 16194 expressed itself to be sympathetic to the claim as there were not justifiable reasons for not paying the claimants the allowance claimed, particularly as they are paid mileage allowance. However, as the issue had nationwide implications, the Court deferred issuing a definitive recommendation to allow for national negotiations to take place. In August 2000, the Court issued its definitive recommendation as follows: "The Court, having considered all aspects of this claim recommends concession of the Unions claim for subsistence allowances for this group of Public Health Nurses".

In light of the above, the Western Health Board should consider if justifiable reasons exist for not paying subsistence allowance to Community RGNs. Can Community RGN's work be organised in a manner that minimises the need for them to be more than five miles away from base for periods in excess of five hours? It may be necessary to occasionally pay subsistence to a Community RGN based on service need. However, as with all claims for subsistence payment, management should make every effort to ensure that the claimant's work is organised in an efficient manner that does not give rise to such claims on a routine or indeed daily basis.

I note previous related correspondence dated 15th November 2002 from your Employee Relations Manager to this office, with an estimate of the cost of paying subsistence payments to Community RGNs in Galway, Mayo and Roscommon attached. The estimated annual cost is in excess of €108,000 and assumes payment of subsistence to each Community RGN everyday. Such an assumption seems to be taking the payment of subsistence for granted, without examining the factors that give rise to subsistence claims.

I attach for your consideration recent Labour Court recommendation LCR 17540 which relates to this matter also.

I hope that you find this letter to be of some benefit and if I can be of further assistance please do not hesitate to contact me.

Yours sincerely

GERRY BELLEW
Industrial Relations Executive

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RECOMMENDATION NO. LCR17540

INDUSTRIAL RELATIONS ACTS, 1946 TO 2001
SECTION 20(1), INDUSTRIAL RELATIONS ACT, 1969

PARTIES :

NORTH EASTERN HEALTH BOARD

- AND -

IRISH NURSES' ORGANISATION.

DIVISION :

Chairman	:	Ms Jenkinson
Employer Member	:	Mr Keogh
Worker Member	:	Ms Ni Mhurchu



SUBJECT:

Retrospection of subsistence payments for public health nurses and community registered nurses.

BACKGROUND:

2. The dispute concerns the non-payment of subsistence allowance to public health nurses and community nurses employed in the North Eastern Health Board. The Union states that the claim was conceded nationally on the 6th March, 2001.

The Union states that the grade of the public health nurse is in existence since the late 1960's and hold nursing responsibility for a geographical community location. Their employment status is predominately permanent. The community nurse, which acts as support for the public health nurse, is in existence for over twenty years. Many are paid as public health nurses as they have to cover vacancies, such as annual leave, maternity and study leave for the public health nurse grade. Their employment status has traditionally been temporary.

Management rejected the Union's claim. It stated that public health nurses/community nurses can plan their journey in such a way as to ensure proximity to their base and can in most cases be away from their base less than the five hours threshold.

The Union referred the dispute to the Labour Court under Section 20(1) of the Industrial Relations Act, 1969 and agreed to be bound by the Court's recommendation. The Court investigated the dispute on the 10th April, 2003.

UNION'S ARGUMENTS:

- 3 1 Both groups of nurses are in receipt of public sector mileage allowance while engaged in duties on behalf of the Board.
2. The Health Board has conceded the claim with minimal retrospection to 1st January, 2003. The Union has accepted this proposal without prejudice to the substantive claim to March, 2001.
- 3 The nurses have been significantly out of pocket due to the Board's failure to implement a National Agreement on the due date.
4. The Board is claiming inability to pay. This is unfair and inequitable as all eligible officers secure the allowance. An all female workforce should not be purposefully excluded.
5. Most of the other Health Boards have conceded the claim nationally at this stage.

MANAGEMENT'S ARGUMENTS:

4. The Board can not concede retrospection without having a major impact on the provisions of front line services. Management is currently curtailing front line services in an effort to remain within exchequer funding during the current year.
2. The application of subsistence was never intended to be a regular feature of a worker's remuneration, but is a payment towards the cost of meals when a staff member is away from base or home.
3. The nurses should be able to plan their work in such a way as to ensure maximum efficiency in travel and subsistence while ensuring that they meet the needs of their patients.
4. The Union is seeking retrospection to March, 2001. The Board is not in a position to concede this claim given the impact the costs would have on front line service.
- 5 Given the Board's financial position with the resulting need to curtail frontline services in the current year, the Board requests the Court to reject the claim for retrospection.

RECOMMENDATION :

The Court has considered the position of both sides. The Court notes that as per the Board's letter of 2nd April, 2003 to the Union, the principle of paying subsistence to Public Health Nurses and Registered General Nurses in the community has been conceded going forward. The Court therefore, is looking at the reasonableness of paying retrospection back to March 2001, as claimed by the Union.

Having examined both arguments and considered the cost implication together with the administrative difficulties concerning such retrospective claims, the Court recommends that based on properly submitted claims, the Board should pay retrospection back to 1st January 2002. Such payments to be paid not later than 31st December 2003.

Signed on behalf of the Labour Court

Caroline Jenkinson

26th June, 2003
LW/MB.

Deputy Chairman

NOTE

Enquiries concerning this Recommendation should be addressed to Larry Wisely, Court Secretary.

03rd January 2002

Mr. Colm Flannery
Snr. Executive Officer
Western Health Board
Merlin Park Hospital
Galway

Re: Payment of Subsistence Allowance to Public Health Nurses


Dear Colm,

Thank you for your letter of the 29th November 2001 and regret the delay in replying.

I agree with Ms. O'Neill's recommendations with the exception of the final bullet point – the agreement only applies to P.H.N.s, not C.R.G.N.s.

I hope this clarifies the matter.

Yours sincerely,


Brendan Mulligan
HEAD OF INDUSTRIAL RELATIONS