



OBSERVATIONS ON

Minister for Jobs, Enterprise and Innovation

Reform Proposals of the State's Employment Rights and Industrial Relations Structures and Procedures 15 August 2011

September 2011

PREAMBLE

Mandate Trade Union represents over 40,000 retail and bar workers across Ireland. And as such, Mandate Trade Union is keenly aware of the need for employment rights bodies which are effective and process claims without undue delay or formality. Protecting the rights of vulnerable service workers is not easy, the employee profile of the service sector is often young, part-time, early school leavers and of recent foreign workers. The vast majority of such workers do not have the knowledge or the means to prosecute their employment rights in a system which is formal or quasi legal. This in turn results in many vulnerable service workers being unable to enjoy the basic minimum standards for workers as set in Irish and European legislation. This fact is supported by the NERA employment rights compliance figures for the various sectors.

Therefore, Mandate Trade Union which has vast experience in the existing procedures and structures of all present employment rights bodies would welcome a realistic and user friendly review of these bodies. We set out below some observations on the Minister's proposals and some of what we believe should be the guiding principles for any restructuring of employments rights bodies.

1. The new system and its procedures should draw on the best features of all the current employment rights bodies. In particular the new system must be “user friendly”, cases should be heard without undue delay and formality in a manner which does not encourage “cost building” by the parties involved. If possible the stated aim of the procedures should be to settle cases at the lowest entry level possible and as close to the work place as possible. The modus operandi of the new bodies should be inquisitorial rather than adversarial and parties should be free to be represented as they see fit on the proviso that the procedures adopted by the new bodies will not be dictated by the nature of the representation of parties, and that the quality of the hearings will be consistent, fair and understandable regardless of the type of representation or non representation of any of the parties and in doing so ensure that no advantage is conferred to any party based on the type of representation they choose at either the first instance body or the appellant body. The new employment rights bodies must be free to determine their own procedures in line with the aforementioned guiding principles.
2. There should be a single centralised first instance employment rights body for making initial complaints. There should be a common form and deadlines for making claims and appealing decisions. The single first instance body should include a voluntary facility for conciliation/mediation. In the event of either party to a complaint refusing conciliation/mediation, there then there must be a requirement to proceed to the “first instance” body. Detailed pre hearing written submissions should be presented by both parties to the body “x” days after an initial complaint is made. These submissions to be copied to each party at the same time. The submissions should clearly and in detail state the details of the position of the parties. There should be no facility for “rebuttal submissions” as this aspect of the case can be dealt with at the inquisitorial hearing. It is the view of Mandate Trade Union that the first instance body should be a new body specifically set up for and fit for purpose as outlined above. The new body will publish “reasoned

decisions”. If a decision of the new body is not implemented or appealed within six (6) weeks from the date of issue, then the parties can apply for an enforcement order as per the procedure specified in Section 28(8) of the Organisation of Working Time Act (see point 5 in this regard).

3. Appeals Body

The Labour Court currently deals more than adequately with a significant body of employment rights referrals and appeals, which touch on domestic and European legislation. The Labour Court has over the years established a track record of expertise and user credibility which has proven a great asset to the Irish industrial relations system. Mandate Trade Union therefore supports the extension of the jurisdiction of the Labour Court as the single appellant body with regard to all rights based claims. This of course will require additional resource allocation to the Labour Court so as to facilitate this extended brief. Mandate Trade Union would not favour the creation of specialists divisions within the Labour Court dealing with specific types of referrals, this we believe would unnecessarily and ultimately lead to blockages and delays in the processing of appeals with the added danger of specialist divisions setting their own *modus operandi* and becoming elitist and not user friendly. The generalist approach currently adopted by the Labour Court works and should be maintained.

4. Inspectorate

Mandate Trade Union which organises in the retail services sector is strongly of the view that there is a continuing need for a Labour Inspectorate within the reformed employments rights framework. The role of the inspectorate should continue as a field check on compliance levels across the full range of employment rights legislation, including the terms of the reconstituted JLCs and REAs. In order that the inspectors can fulfil their role effectively and without undue delay, employers must continue to be required to keep evidence of compliance under the various

employment rights legislation and to display the appropriate notices. Given the present dismal compliance levels in many service sectors such as retail, hotels and restaurants recorded by NERA, any rowing back from inspection will result in an exploitation free for all, where the compliant employer is under cut by the exploitative employer, thereby undermining standards and costing jobs.

5. Enforcement of Decisions of new employment rights bodies.

One serious flaw of the existing enforcement procedures under existing employment rights procedures is that in an increasing number of cases it is frankly impossible for workers to enforce a favourable decision against certain types of employers, even with an enforcement order of the Circuit Court. These cases commonly arise in the service sector such as retail, restaurants and contract cleaning because of the large number of “shelf companies” who lease for example a pub but in fact have no tangible assets or where an employer incorporates a company which owns the property assets, including stock and a trading company which employs the staff and has no assets. The same applies to “dormant companies”. More and more workers who have successfully prosecuted their rights are unable to get final satisfaction of their claim. This is not only grossly unfair, but makes nonsense of the State’s redress mechanisms. This matter should be dealt with under the current review.

Ends.