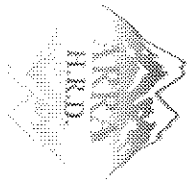


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Mr Eamonn Gallagher
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Davitt House
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23rd August 2011

**Re: Submission on Reform of the State's Employment Rights and
Industrial Relations Structures and Procedures**

Dear Mr Gallagher

I enclose a submission regarding the reform of the State's Employment Rights and Industrial Relations Structures and Procedures as contained in the Consultation Paper issued by the Minister for Jobs, Enterprise and Innovation Richard Bruton T.D. on 15 August 2011.

I trust you will consider my submission in this matter. I have prepared this submission as a Human Resources Specialist working extensively in the field of employment rights and industrial relations on behalf of employers.

Thank you for your consideration of this submission.

Yours Sincerely


Michael O'Sullivan

Submission on Reform of the State's Employment Rights and Industrial Relations Structures and Procedures

This submission is presented using the "Questions Arising here" from the consultation paper issued by the Minister for Jobs, Enterprise and Innovation Richard Bruton T.D. on 15 August 2011.

Maintaining good employment relations and resolving workplace conflict

1.1 How do you think employers and employees can best be supported in resolving disputes at workplace level?

It is vital to reduce the level of complexity in regard to dealing with disputes. Once a dispute goes to a 3rd party the current array of options and multiple claim possibilities leaves it costly, time consuming and often impractical to resolve especially with individual disputes. The current proposals where it is suggested that there will be one point of entry will significantly assist in dealing with such issues

1.2 Can the provision of timely up-to-date factual information help to facilitate early resolution of grievances / claims and stem the flow of formal cases being submitted?

Yes and in providing such information I feel it is vital that use of a central web site is a key component where all the relevant information on employment rights is readily accessible and easily understood. I feel a call centre type back up should supplement this where employers and employees can have the assistance of specialists to answer queries on the application of the employment rights legislation and on the presentation of accurate claims to the one point of entry.

1.3 When and how should interventions be available from the State?

I think in line with SI 146 of 2000 in the first instance there must be an insistence on employees and employers exhausting the internal grievance procedure within the company and no claims to the first point of entry should be processed until documentary presentation is provided detailing the efforts at resolution of matters. Where either party has failed to process matters through the internal grievance procedures then that should be a factor in determining the merits of specific claims e.g. where an employee goes straight to the external first point of entry consideration to be given to effectively send them back to that step; where an employer refuses to deal with matters internally then a penalty over and above the successful claim should be linked into the legislation e.g. currently up to 4 weeks pay can be

awarded where no contract of employment provided within certain statutory limits then in non-cooperation by the employer of internal grievance step this can be increased by 25% and similarly in other cases such as Unfair Dismissals

1.4 How do you think access by employers and employees to a just, fair and efficient adjudication process can be ensured?

There must be an insistence on processing matters internally as per previous point and then when claim is submitted at first point of entry there needs to be an audit type approach by an officer of the 3rd party institution where through desk contact within a timeframe of say 6 weeks from lodging claim both parties must provide a summary statement of their respective positions. This should facilitate the option then of resolution through mediation or conciliation without recourse to full hearing of first instance body of claim(s) or in the event that such a hearing is required the immediate scheduling of such a hearing within a maximum 3 month time frame from date of claim being submitted

Integrated Structure

2.1 Do you agree that the integrated two-tier model should be adopted as guiding principle?

Yes it makes sense to rationalise the current approach and this two tier model has significant prospects of improving efficiency and access in a timely manner

2.2 Do you agree that 'differentiation' of processing channels should be minimised to optimise the benefits of the proposed reform and to avoid re-introduction of institutional and procedural rigidities?

Yes and I feel the adoption of a screening type approach to all claims as I outlined in 1.4 above will assist this approach

2.3 Should all claims in respect of employment related complaints / claims (including employment related equality matters) be submitted and dealt with by one body of first instance?

Yes in line with my answer to 1.4

2.4 Should employment rights cases only go to the body of second instance on appeal (i.e. should the right of either side to object to the body of first instance hearing a case be removed)?

Yes all claims should go to first instance body and access to the second instance body should only be by way of appeal

2.5 If Minimal differentiation within a two-tier structure is to be pursued, what would the optimum streams / chambers be within

both the first instance and the appeals entity? For example, is there a need to retain some organisational distance / separation between the distinctive roles of:-

- The inspectorate function (i.e. NERA's role in inspection, enforcement and where appropriate prosecution)
- The conciliation and mediation processes dealing with collective disputes
- The advisory / mediation / investigative procedures dealing with individual industrial relations and employment rights claims;
- Any subsequent formal adjudication on such individual cases

How might a satisfactory segregation of these distinctive functions be best achieved?

I consider that all these functions and activities can be organised within the first instance body and act to some degree as a screening mechanism in assisting the formal adjudication element at the first instance body stage. Therefore it should be possible to organise current officers so that all aspects of the inspectorate function of NERA for example deal with the investigation aspects and when compliance is not forthcoming then the inspectorate refer it to the adjudication function within the first instance body. Similar approaches can I feel be applied within the conciliation/mediation processes, the advisory and investigative processes of the current LRC and Equality Tribunal functions and can be introduced into the EAT process in advance of a first instance body adjudication hearing with access to the second instance body confined to appeal as indicated earlier

2.6 What would be the advantages and disadvantages of having statutory redundancy appeals handled on an administrative basis, perhaps through the established social welfare appeals structure; given that statutory redundancy payments are now administered by the Department of Social Protection?

Many issues associated with appeals concerning redundancy are linked to employment rights issues and I feel are best dealt with in an industrial relations specialist arena. For that reason I feel it would be advantageous to retain appeals on redundancy within the first instance body as a point of entry. However it could subsequent to that be available route of appeal to have to proceed through the Social Welfare appeal structure

Appointment, tenure, etc, arrangements in new streamlined employment rights bodies

2.7 Should the arrangements for the appointment and tenure of those working in / appointed to the new streamlined employment rights bodies be changed, and if so, what should be the guiding principles?

I feel people should be appointed for 3 year terms and that there should be public appointments procedures applied to all such appointments i.e. all members of first instance bodies such as Rights Commissioners should be appointed from publicly advertised positions and similarly appointments to bodies similar to current Labour Court and Employment Appeals Tribunal should come under such public appointments procedures

People currently working in such bodies are obviously entitled to have their contractual terms and conditions including tenure honoured fully

Information and Advice

2.8 Should there be one website covering all employment rights and industrial relations matters?

Yes as previously outlined in this submission

2.9 Do you agree that a more coherent and co-ordinated approach to the provision of advice and information on industrial relations and employment rights issues should form part of the services of the new first instance body?

Yes the first instance body should be responsible for such a service which in addition to a dedicated web site should also have a dedicated call centre staffed by specialists who can assist employers and employees in the processing of employment rights claims and in providing guidance on how such matters can be resolved at the level nearest to where the dispute or issue arose

2.10 What is the best method of providing information and advice?

Web site, call centre, conference/workshop and targeted mailing of key processes and procedures

2.11 Should non-directive advice be provided to employees and employers on what options may be available to them on the basis of the facts provided and where to go for help if required?

Yes and this can be done through the call centre concept outlined in this submission

Single Point of Entry / Submitting Individual Industrial Relations and Employment Rights Claims

2.12 How can a single point of entry for all individual industrial relations and employment rights complaints / claims best be achieved?

It will be necessary to provide a uniform single form for entry to the process. It must be made obligatory that only claims submitted in this manner will be processed. In addition it must be part of such a process that the claim is reasonably detailed and the respondent is then given a short time period in which to respond so that the officer dealing with the claim can determine if it can be resolved without proceeding to first instance body adjudicating personnel and if so how i.e. mediation, conciliation etc

2.13 Should there be a single application form for all individual first instance industrial relations and employment rights complaints / claims?

Yes as mentioned in 2.12

2.14 What measures could be taken to improve information gathering from complaints / applicants at application stage?

Again in line with 2.12 a specialist needs to be assigned to review the claim(s) and liaise with the claimant and respondent to ascertain the basic facts and establish if alternative dispute resolution methods will resolve matters or assign case to adjudication and that this is done to a rigours time scale.

2.15 Should there be a consistent time limit for initiating all complaints / claims / appeals and if so what should it be?

Yes and I feel all complaints and or claims should be within 6 months of last alleged contravention with an exceptional circumstances additional 6 months available in line with current legislation and adjudication on time limits by the industrial relations bodies and Courts. All appeals should be confined to a 6 week period after presentation of the first instance body decision being communicated

2.16 Do you agree that more consistent arrangements are required for the representation of claimants so as to enable individuals to nominate a person to represent them at a hearing e.g. trades union official, solicitor, other representatives, etc.

Currently claimants and respondents may represent themselves, be represented by Trades Union officials, Solicitors, etc. This should not change but it should be stipulated in claim forms and in response request forms that representation must be notified to the adjudicating body and other party within 1 week of notification of hearing date being scheduled

2.17 Where the power to present / refer a complaint is currently limited to the claimant, should it be extended to include the claimant's trade union and, where appropriate, the claimant's parent / guardian?

No I feel that claimant must be seen to present/prefer complaint but obviously with assistance from a representative of their choice should they wish

Enforcement

2.18 Should there be a consistent method of enforcing awards of employment rights bodies and if so what should that be?

The second instance body should be given the enforcement powers which currently appear to mainly reside in Circuit Court. The value of this is that the second instance body will often have adjudicated on an appeal and after a period of say 6 weeks post appeal decision if not implemented or appealed on point of law to High Court it would make sense that on application to the second instance body they can have their decision enforced

Facilitating early interventions and alternative dispute resolution methods

3.1 What interventions should be available prior to a formal hearing or inspection to resolve grievances or non-compliance e.g. telephone contact, informal hearings, more formal mediation, conciliation or arbitration?

Detailed earlier in regard to proposed screening at desk level and making ADR options available depending on the nature of the claim(s) and the disposition of the parties towards resolution in this manner

3.2 What is the best method of identifying suitable cases for early intervention?

Have specialist staff review the initial claim form and response from other party

3.3 At what stage should the intervention take place, for example should it be available when the person first seeks information, prior to them lodging a complaint / claim or after a complaint / claim is lodged?

Once claim is lodged and has been screened by a specialist

3.4 Is there scope for harnessing the expertise and capacity of personnel within the existing bodies to decide on straightforward issues where purely factual matters are in dispute?

Very much so and in particular I feel many of the existing secretariat would be well experienced to do the initial screening suggested

3.5 Is there scope for forging positive connections between the public dispute resolution system and external experts in preventive alternative dispute resolution methods at workplace level?

Yes and for example access to mediators, industrial relations specialists etc could be explored for such interventions

3.6 Should parties be required to set their case out in writing?

Yes in all instances this would be essential

3.7 Should all complaints / claims be examined for potential interventions and should time limits apply to the offers of conciliation or mediation support?

Yes and time limits should be kept tight – of the order of 6 to 8 weeks

3.8 Are there particular kinds of issues, for instance, where mediation is likely to be especially helpful or, alternatively, where it is not likely to be helpful?

I feel each case needs to be examined in its own right and the experience of the specialist involved in screening the case will determine this matter then

3.9 Would there be merit in having a 'preliminary hearing' process and if so how should it operate?

I feel if screening at desk level was carried out by experienced existing staff this would suffice in determination of a resolution by using ADR was possible or if formal hearing need to be activated so this would overcome need for preliminary hearings

3.10 Should certain cases be dealt with on the basis of written submissions only?

That may be possible and it is important that all claims contain written submissions so that proper desk screening of the claim and of the respondent position can be determined

3.11 Should attempts at resolution have any bearing on any subsequent hearing or should the process be confidential and not admissible in any hearing?

ADR principles dictate that they be confidential and that either party can walk away at any time so I feel for them to be successful you must retain that element

Conduct of Proceedings

3.12 Should there be a uniform set of procedures regulating the conduct of hearings in all cases heard at first instance?

Yes and current procedures applied at Rights Commissioner and LRC Conciliation are broadly fine but do need some amendments to bring more consistency to individual hearings and ensure full compliance with investigative procedures i.e. issue a booklet on how hearing will be conducted

3.13 Should first instance jurisdictions be empowered to dismiss what are adjudged to be frivolous, vexatious or misconceived claims without holding a formal hearing?

Yes but you would need to leave the option open for the complainant to appeal such a conclusion to prevent possible moves in some such circumstances to seek judicial review or injunctive relief

3.14 Should hearings of employment rights disputes / appeals be heard in public or in private?

Public hearings should be promoted

3.15 Should there be uniform period submitting appeals?

All appeals within 6 weeks of receipt of decision of first instance body and indeed to High Court where point of law arises from second instance body