

CONSULTATION ON THE REFORM OF THE STATES EMPLOYMENT RIGHTS AND INDUSTRIAL RELATIONS STRUCTURES AND PROCEDURES

SUBMISSION BY FRANK NYHAN

INTRODUCTION:-

I am a former Vice Chairman of the Employment Appeals Tribunal. I sat for a number of years in the early 1980's. I am State Solicitor for Cork North East. I am a practising Arbitrator and Mediator. I have an extensive employment law practice and appear regularly before the Employment Appeals Tribunal. I have advised employers and employees in relation to all forms of industrial relations, including Rights Commissioner Hearings, Equality Tribunal Hearings, Labour Court Hearings and Labour Law Related Matters generally.

I prosecute for breaches of employment legislation on behalf of the National Employment Rights Authority.

PROPOSALS:-

I read with interest the Consultation Paper issued on behalf of the Minister. As a practitioner I confirm the concerns of service users, be their employers or employees about the complexities of legislation, backlogs in hearings and delays in issuing of findings. I believe many of the administrative proposals have merit but I would make the following observations and suggestions:-

SHORT TERM SOLUTIONS:-

There is a serious problem with backlogs of hearings before the Employment Appeals Tribunal. A number of steps could be taken immediately to remedy this:-

1. Redesign the Application Form so that more information is required from both parties. This will enable the Tribunal Secretariat to estimate the likely length of hearing and list cases appropriately.
2. Remove the requirement for a tribunal to give reasoned decisions or alternatively encourage tribunals to give shorter reasoned decisions and insist that same be delivered on the date of hearing. The award should be written by the Chairman and not by the Secretariat. Regard should be had to the practice of the Mental Health Commission Tribunals who have much more streamlined process.
3. Limit appeals to the High Court on a point of Law.

MEDIUM TERM SOLUTIONS:-

1. Introduce a common point of entry for all employment related claims with the common application form.
2. Up skill staff and provide an option for mediation in all appropriate cases. The Equality Tribunal already offer this service and it is very effective.
3. Reform the membership of Tribunals and give responsibility for appointment to the Public Service Appointment Commission.

LONG TERM SOLUTIONS:-

1. I note the proposal to create a single appeals body based largely on the Labour Court. This would be a mistake. The Labour Court is constitutionally designed to deal with representative disputes and is not an effective body for dealing with single issues and individual grievances. If there is to be a two tier structure then I think initial intervention should be along the lines of the current Rights Commissioner Service or Equality Offers in the Equality Tribunal. The appeals should be to a reformed Employment Appeals Tribunal with provision only for appeal from there to the High Court under point of law.

I trust that the above may be of some assistance.

Dated the 8th day of September 2011

Signed: _____
Frank Nyhan