

Ballycarney,
Clarina,
Co. Limerick.

16th September, 2011.

Mr. Richard Bruton,
T.D.,
Minister for Jobs, Enterprise and Innovation,
Leinster House,
Dublin,

RE: Consultation on the Reform of the State's Employment Rights
and Industrial Relations Structures and Procedures.

Dear Minister,

I am a qualified HR Professional with over 20 years experience. A large portion of my career was spent with a US Multinational with a unionised workforce of approximately 350. My main responsibility was to stabilise industrial relations through periods of enormous change and restructuring.

I have used the current Industrial Relations Machinery Model on many occasions and have found the system to be effective and useful on some occasions but for the most part my experiences were negative.

I have found the services of the Rights Commissioner to be very poor as the prime objective is to reach a resolution to satisfy both sides of the claim. When this is not possible, the system relies on the establishment of facts and adherence to existing procedures. This is an excellent approach and should not change in any major way. The only downside to the current system is the length of time it takes to reach the hearing stage and then the length of time it takes to receive a ruling.

In relation to the Labour Court, I have found the model to be frustrating and much too formal, the parties get very little opportunity to state their case in an informal fashion. The system can be abused when parties are disingenuous and it can be very difficult prove this. While I respect the members of the Court and the difficult job they do, it is not right that they can make a judgement based on one hearing with no experience or insight as to what it is really like "on the ground".

I believe your overall approach and ideas on how to reform the system are very realistic and if they are implemented correctly the system will be very effective. I agree totally with your Key Objectives, but I believe that the most important one is "*minimising the number of cases that present for resolution at formal hearings through active case progression and an increased range of interventions*".

These interventions must be as close the workplace as possible and credibility and promptness of the resource response is extremely important. I cannot stress enough the damage that is done due to lengthy delays in accessing the formal system. It seriously affects workplace procedures, effective supervision and morale of employees not involved.

KEY ISSUES FOR CONSIDERATION

- 1. Resolution of Grievances and disputes as close to the workplace as possible and as early as possible after they arise.***

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?***

I do not believe that the availability of good quality, up to date information alone is enough to help resolve a dispute or get an employee to accept a disciplinary sanction.

There must be a resource available to answer questions and if necessary visit the Workplace. All current such resources are centred mainly in Dublin which is not good enough for employers/employees in the rest of the Country. I also have to add that some of the resources currently in NERA are very limited in their experience and the information they can provide. This was proven recently to the embarrassment of NERA when National Radio Broadcaster called NERA to access information on a particular issue.

The Structure must be regionalised if it is to be more effective and it must be staffed by experts in the areas of employment law (not qualified legal professionals) with "*hands on*" experience of dispute and grievance resolution.

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?

Absolutely, if it is modelled as per my response to 1.1 I believe it will meet all of your Key Objectives.

1.3 When and how should the interventions be available from the state.

I believe they should be available as above immediately after it is established that a dispute/grievance cannot be resolved at local level.

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

By staffing it with resources that are knowledgeable, experienced, impartial and credible with a passion for dispute resolution and relationship building.

2. A simple and efficient institutional structure and a high quality customer service with a single authoritative source of information, a single entry point and minimum scope for forum shopping.

Integrated Structure

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

I agree with this principle as it will definitely minimise the scope for Forum Shopping and the frustration that can ensue from same by inexperienced employers/employees.

However, I do believe as I stated earlier, that in advance of the requirement for a hearing before the First Instance Body that there is the opportunity for information intervention by the resources of the structure i.e. consultation by telephone or visits to the Workplace.

In relation to the Upper Tier Appellate Body I do not think that consideration should be given to reserving employment rights appeals to a separate division of the new Appellate Body. Such an option will only contribute to workplace stress and would lengthen any opportunity for resolution. I believe that the High Court should be the only next option

after the appeal to the Appellate Body, this will avoid those making appeals with out substance but just *“for the sake of it”*.

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?

I agree that the single point of entry is an excellent solution, where the Government Resources reviewing the appeal at the First Instance Body make the decision on how the case should be heard and the most appropriate person(s) to hear it.

I and some of my colleagues have been victims of hearings that could not be heard or where elements of the hearing could not be heard due to a *“jurisdiction”* issue. This should be identified before the hearing and not at the hearing or the *“jurisdiction”* impediment should be removed altogether.

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, I agree.

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, I agree with this approach, a definitive system has to be established with rigid procedures. If this approach is not adopted then it would allow parties to pick and choose and would undermine the purpose of the first instance body.

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?

I believe there should only be one organisation and that each of the current structures or a minimised version of same should be established as separate divisions within the one organization.

Such a structure would almost eliminate forum shopping and would enhance the experiences of the state resources working within because

movement between the divisions should be encouraged to allow the resources to gain experiences from all aspects and not just one area.

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 the statutory redundancy

I do not see any disadvantages to this change, only advantages. It would serve to reduce the amount of time it is currently taking to process claims if the body is staffed properly. Most of the information required on the RP50 and associated documentation is already with the Department of Social Protection e.g. history of breaks in service, sick time etc. This would speed up access to information needed to process claims.

It would also allow the resources of NERA and associated bodies to concentrate on the work they should be doing.

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?

As stated earlier, revising the structure will only be effective if it is also resourced by experts in the area of employment law with legitimate "hands on" experience of dispute and grievance resolution. These extra resources should be qualified HR Professionals with a proven track record.

The advantages of appointing such people is the credibility they will bring to hearings, meetings with employers/employees as they will be seen to have the knowledge and experience as they will be able to demonstrate that they have been in a similar position before.

When restructuring an organisation, it is always advisable to inject new blood to ensure that the objectives are met and to ensure that the restructured organisation operates differently than before.

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

There should be one updated website that is extremely user friendly for all employment rights and industrial relations matters, except for Redundancy. I believe that should be kept totally separate.

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 new services of the new first instance body?

Yes, access to correct advice and information from a qualified person will also help to reduce the amount of unnecessary claims and will in turn reduce the burden of cost for employers and the state.

2.10 What is the best method of providing such advice?

As stated before, by the appointment of regional branches of the body that can provide information and advice over the phone or by company visits.

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.

Absolutely, this should be an integral part of the service and again will reduce the amount of claims that reach the system. All to many employers/employees are getting incorrect advice from other professionals who have little or no experience of the system and have an ulterior motive in ensuring that claims hit the system.

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?

By establishing a Division of the body that is staffed adequately with the expertise to process the claims and associated paperwork.

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

There is no point in creating a cohesive new structure unless there is one Application form designed to cover all issues.

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

Forms should not be processed unless the detail of the complaint, the facts and how it was dealt with at local level are included, similar to a RC/LC Submission.

Individual Company Grievance/Disciplinary Policies should be attached and any other supporting documentation i.e. copy of a Warning for example.

This will avoid time wasting for cases that are genuine, simply writing on a form "non payment of bonus due" for example is just not good enough and prevents genuine cases from being heard in a timely manner.

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

Yes, a Statute of Limitations should be applied to IR cases just as they are applied to Civil Cases. I would suggest six months.

2.16Do 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. trade union official, solicitor, other representatives etc.

I do not think that the laws of natural justice should be interfered with however much I disagree with Solicitors representing employees/employers.

Employees/Employers should be allowed choose who they are represented by.

2.17Where 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 do not believe it should, the process would be never ending.

Enforcement

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

Yes, each time an award is made it should be referred to a specific person/persons with the responsibility of following up. This again will reduce the amount of claims coming back into the RC/LC.

3 *Minimum number of cases presenting for resolution at formal hearings through active case progression and an increased range of interventions.*

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 of non-compliance e.g. telephone contact, informal hearings, more formal mediation, conciliation or arbitration?**

As stated before, resources should be regionalised and prepared to give advice over telephone or company visits. A lot of the time such informal intervention can resolve the issue as long as the facts are provided to the resource in advance from both parties. This would be effective particularly in cases where the issue is only escalated due to personality clashes and bringing claims just "for the sake of it".

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

If the information accompanying the application is provided properly (applications should be rejected or sent back if they are not completed properly) it will be easy to identify such cases.

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.**

The intervention should be available both when the person first seeks the information and after a complaint/claim is lodged.

3.4Is 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?

Yes, if the body is set up on a divisional basis but within the one area then dialogue and collaboration should be encouraged and will give a broader perspective on solutions due to the diversity of backgrounds and experience.

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

This certainly could be an option but I believe the better option is to staff the bodies with the appropriate expertise and experience, in the long run it would be more cost effective. Bringing external experts in on an ad hoc basis can be extremely costly and may not be as effective because the commitment to resolve would not be as strong as it would be with those appointed full time to the system.

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

Absolutely, this will ensure the information is factual and will allow the resource hearing the case to concentrate on the facts/issues rather than being distracted by taking notes and trying to understand the history.

It will also disallow people to change facts or positions at a later stage.

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

All complaints/claims should be examined as such, time limits have to be applied to avoid backlog.

3.8Are 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.

Mediation is always helpful in situations where an agreement has been reached but implementation of the agreement cannot be agreed upon and in situations where parties do not really know what they want.

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

I believe the intervention offer should be as stated before i.e. where the resource provides information over the telephone or by visiting the company. Hearings whether they be full or preliminary will always turn out to be formal and will only be a repetition of what will happen at the formal/informal hearing.

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

I believe that all cases should be dealt with on the basis of written submission only as stated before.

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

If attempt at resolution has a bearing on any subsequent hearing then it will defeat the entire purpose of the resolution. In effect it will be avoided and then the system will never change.

Conduct of Proceedings

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

There should be a uniform set of basic procedures to regulate the process otherwise it will be a "*free for all*".

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

Absolutely, this should be part of the purpose of intervention.

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

My very strong feeling is that they have to be heard in private. it can be a daunting process and when peoples views/conduct are being discussed then that has to remain private.

3.15Should there be a uniform period for submitting appeals.

Yes, a lot of cases are taken when something happens after a previous issue has not been closed out on either correctly or incorrectly.

I believe this initiative is a major landmark in the the history of Industrial Relations in Ireland and something I am passionate to be part of.

I certainly hope my input will prove useful and should any further information be required please do not hesitate to contact me.

Yours faithfully



Fiona O'Carroll