

Conciliation and Arbitration Scheme for Teachers

Adjudication Finding

Parties:

Teacher Unions and Department of Education and Skills

Issue:

Claim that the Environmental Allowance (which is currently paid to Prison Officers and others in Portlaoise Prison) be extended to teachers working in the education unit in Portlaoise Prison.

The hearing took place on 26 March, 2019

Background

1. Portlaoise Prison is a closed high security prison for adult males. It is the committal prison for those sent to custody from the Special Criminal Court and prisoners accommodated here include those linked with subversive crime.
2. There are several grades of staff operating in the prison. These include Prison Officers, Teachers, Cleaners, Clerical Staff, Doctors, Nurses, Chaplains, Technicians, and so on. The total number of staff currently in Portlaoise Prison stands at 228 (as of 14 January, 2019), 25 of whom work in the subversive wing of the prison. There are 20.72 whole time equivalent teachers currently serving in Portlaoise Prison, of these 7.2 whole time equivalent teachers are teaching subversive prisoners. There is also a Supervising Teacher, who works with all prisoners.
3. In addition to the normal teacher salary (and additional qualification allowances for those employed prior to 1 February 2012), teachers in prison education centres may be entitled to an honorarium for certain service carried out in the prison centre.
4. This honorarium continues to be paid to new beneficiaries i.e. those employed in a prison education centre on or after 1 February, 2012. The prison honorarium is one of the allowances in the teaching area which continues to be paid to new beneficiaries following the Government's public service-wide review of allowances in 2012 (other location-based allowances such as the Gaeltacht allowance and Island allowance were withdrawn for new beneficiaries from 1 February, 2012)

5. The claim was presented at a meeting of the Teachers' Conciliation Council (TCC) on 15 March, 2016. It was discussed at subsequent meetings of the TCC. The Official side stated at the TCC meeting on 5 December, 2017 that they would not concede the claim. Disagreement was recorded in Agreed Report 1/2018 and both sides agreed to refer the claim to Adjudication in accordance with the terms of the Conciliation and Arbitration Scheme.

Teachers' Side Case

Introduction

6. The claim related solely to the teaching staff in the Education Unit in Portlaoise Prison. In total, there were thirty-one teachers working in the prison, nineteen of whom were members of the Teachers' Union of Ireland.
7. The current value of the "environmental allowance" was €1,349 per annum.
8. The underpinning rationale for payment of the allowance was that Portlaoise Prison was considered a highly dangerous environment. It was the only prison in which security was provided by the deployment of armed army personnel.
9. Most of the grades (and the majority of staff) working in Portlaoise Prison were in receipt of the allowance. Clerical officers, domestic workers, public sector secretariat officers, nurses, instructors, cleaners and prison officers received the allowance. Those receiving the allowance included staff who had commenced employment in recent years, including recently appointed prison officers
10. However, the allowance was not paid to the teachers.
11. The Teacher's Side believed that it was demonstrably unfair and anomalous not to pay the allowance to teachers – indisputably front-line employees whose work involved direct and prolonged engagement with prisoners.
12. The Teacher's Side recognised that, in addition to teachers, there were two other grades (Chaplain and Psychologist) not in receipt of the allowance. The Union understood that a claim had been made by or on behalf of the Chaplain and that the work of the (two) psychologists was not confined to Portlaoise Prison as they also worked in the Midlands Prison, which was considered a less dangerous environment and where security was not provided by the Army.

Review of Allowances

13. Notwithstanding the 2012 review of allowances across the public service, the environmental allowance for certain grades in Portlaoise Prison had not been withdrawn because there had been (and was) a compelling case for its retention. The Teaching Staff in this Prison faced at least the same level hazard as the staff currently in receipt of the allowance.

Context

14. In its totality, Portlaoise prison was a unique setting with an entirely different work environment to the State's other prisons. Staff there, including teachers, provided an invaluable service to the State in this complex, volatile and sometimes violent environment.

15. Portlaoise Prison was a

'.. closed, high security prison for adult males. It is the committal prison for those sent to custody from the Special Criminal Court and prisoners accommodated here include those linked with subversive crime.' (Prison Service Web-Site)

16. The Irish Prison Inspectorate also succinctly described Portlaoise Prison as:

'...a particular type of prison where there are subversives and very dangerous big-time criminals'. (Prison Service Web-Site)

17. The Prison Officers' Association (POA) had observed that, as Ireland's only maximum-security prison, Portlaoise operated on a strict security setting, reinforced with the very visible presence of the army personnel stationed there. In 1973, a ministerial order had authorised the presence of a substantial army unit which operated under a host of strict monitoring and security measures and with high-powered equipment backup. As a result, the army's presence and precautions ensured the location was a quasi-war zone on permanent stand-by.

18. The accounts above conveyed a clear message that the nature of the prisoner cohort housed in Portlaoise prison gave rise to a uniquely fraught environment characterised by a much greater volatility and level of risk than those experienced in other institutions.

Regimen and Risks

19. Following was a summary of the salient features of the daily regimen that applied and the risks that arose for the teaching staff in Portlaoise prison:
- Teachers were subject to the same tight “airport style” searches as the other staff members upon entering the prison.
 - Random searches were carried out on staff members in a side-room where prison staff, including teachers, were required to remove footwear and clothing.
 - There was a constant army presence within the prison (because of the subversive element among the prisoners housed there).
 - “Anti-tiger-kidnapping” gates had been installed for the protection of the prison staff.
 - In the general vicinity of the Prison, all airspace - up to 30,000 feet – was designated a prohibited ‘no fly’ zone. Any incursion into this zone required prior authorisation. In the absence of such authorisation, army personnel were under obligation to open fire with their roof-top anti-aircraft weaponry.

E-Block

20. Following were some of the features of E-Block
- Prison management had accommodated many of the demands of the prisoners in E-Block. Prisoners exerted a very significant influence on the day-to-day running of the landings. The Irish Prison Inspectorate had confirmed this in a 2006 report, which had noted that prisoners in E-Block did not allow CCTV cameras on the landings they occupied. This in turn begged the question if teaching staff were safe while carrying out their duties. Classes were generally held in cells that had been converted to makeshift classrooms which were, to all intents and purposes, soundproof when the heavy cell door was closed. Teachers’ vulnerability was increased by the relative isolation this entailed.
 - Upon entering the landings in E-Block, teachers were faced with paramilitary murals on the walls. Many of these were of “fallen comrades” and other paramilitary images which could be very unsettling.

- The practice of slopping out was still carried out in E-Block. In the past, and, indeed, relatively recently, the teaching staff had been exposed to, and witnessed first-hand, the effects of a “dirty protest”. Teachers had been expected to continue with classes in unsafe and unsanitary conditions. Bins had not been allowed to be collected from the landing for some time until the management had conceded to the demands of the prisoners. This had led to a build-up of rotten food and waste, but the teachers had still been required to perform their duties in such conditions.
- Teachers were not readily contactable from the outside in the case of an emergency. It could take some time for an outside call/message to find its way to a teacher, depending upon where s/he was teaching at the time.
- There was a restriction on access to toilets, which was particularly concerning for female members of staff, especially if they were pregnant.

C-Block

21. Following were some of the features of C-Block:

- Since the opening of C-Block, prisoners who were members or associates of major criminal gangs had been moved from E-Block to C-Block.
- These inmates were in a position to exert pressure on ordinary prisoners with whom the teaching staff had to deal. This led to heightened tension in the prison, including the Education Unit
- As professionals, the teachers fully accepted that security was paramount in a setting such as this. However, it did considerably limit their scope at times and, inevitably, added greatly to the stress they experienced in this unique workplace.
- However, the stress of teaching in such a setting seemed to be overlooked routinely - and was evidently overlooked by the Department of Education and Skills in its consideration of the claim for payment of the allowance.
- For example, in spite of the valuable and important work that was carried out by the staff in the Education Unit, procuring some of the basic essentials for the provision of worthwhile education could take some time, resulting in frustration for the learners/prisoners and staff alike.

22. Moreover, teachers were often caught up, through no wish or fault of their own, in the tensions that were ever-present and that could, without warning, flare up between the prison staff and the inmates.
23. In this regard, it was widely accepted that there had been significant tension in the prison over the past few years. The decline in the number of Republican prisoners had not ameliorated the situation as the prison was now housing criminals of a more sinister nature. The following extract from the Irish Times dated 14 July 2017 illustrated this prevailing context and it was of note that this was the environment in which (unarmed) teachers, as frontline staff, sought to provide a high quality, professional education service:

Riot teams used more than once a day in Portlaoise prison

New figures for 2016 show 373 instances of Control and Restraint squads being deployed

Portlaoise prison saw the highest use of riot teams among Irish prisons in 2016. Prison authorities deployed control and restraint (C&R) teams in riot gear 373 times to deal with high risk prisoners at Ireland's only maximum security prison at Portlaoise last year.

New Irish Prison Service (IPS) figures show C&R teams were deployed more than once every day on average at the prison that houses some of the country's most notorious criminals.

Victim impact statements for the prison officers said there was fear experienced by their partners and spouses that the men are constantly at risk of assault.

C&R teams have been deployed regularly to deal with one prisoner, Leon Wright (28). In March of this year, a five-strong riot team accompanied Wright to a cleared Portlaoise District Court where he was jailed for six months for the assault of four prison officers, including three C&R team members, during an incident at the prison in February of last year. Wright has attacked over two dozen guards while in jail and left many with very serious injuries, necessitating the use of C&R teams.

An IPS C&R team typically would be made up of five or six wearing riot gear including a helmet and shield.

In a written Dáil reply to Jonathan O'Brien TD, Minister for Justice Charlie Flanagan revealed that the deployment of C&R teams at Portlaoise is far greater than any other prison.

The figures show C&R teams were deployed 273 times at Mountjoy last year and 102 times at Cloverhill.

The next highest is Wheatfield at 62. The teams were used six times in the Midlands prison and on five occasions each in Castlerea and Cork.

C&R teams were not used in any other prison last year.

In his reply, Mr Flanagan said: "As part of a control and restraint team a staff member, with a video recording camera, records footage of the event. The majority of the incidents in which a control and restraint team was deployed did not require the physical removal of the prisoner."

President of the Prisoner Offices Association (POA), Stephen Delaney, said on Thursday that the Portlaoise figures underline the risks faced by staff at the prison.

Mr Delaney said that Portlaoise "is a particularly stressful environment to work in and this has been recognised with the payment of an Environmental Allowance to staff there".

The payment of the "danger money" is in recognition of Portlaoise housing the country's subversive Republican prisoners, which number 40 - down 32 per cent from 59 five years ago.

The allowance is worth €30.97 per week to each prison officer.

Last year, 178 prison officers at Portlaoise received almost €1 million in backpay from the IPS after winning a battle over the continued payment of the allowance.

24. The Teachers' Side submitted various other examples of the difficult nature of the work.

Scope of the Claim

25. This was a confined claim relating exclusively to the teachers in one prison (Portlaoise Prison). The total cost of conceding the claim would be approximately €45,000 per annum (based on payment of the allowance of €1,349 per annum to some 31 persons). Any cost-increasing element involved in the claim was minimal and could not defeat the justice of the claim.
26. This claim was being submitted on the basis that teachers in the prison were a very vulnerable group. They were far more vulnerable and exposed to risk than many of the other employees who were in receipt of the allowance.

27. In order to ensure a high quality of teaching and learning and best service to prisoners engaging (as learners) with the Education Unit in Portlaoise Prison, it was essential that the elevated level of risk to teachers' health, welfare and safety be acknowledged in the same manner as for other grades. Payment of the environmental allowance would put them on an equal footing with their fellow workers and would remove the current discriminatory injustice that they suffered.
28. There was no tenable justification for not paying the allowance to the teachers when it was, entirely appropriately, being paid to employees who in many cases had a lesser level of vulnerability than the teachers.
29. Therefore, the Staff Side sought the concession of this claim in full to teachers employed in Portlaoise Prison, with effect from the date of lodgement of the claim at the Teachers' Conciliation Council in March 2016. The Union reserved the right to supplement this submission with further evidence at the hearing and were willing to make available witnesses, as required, in the adjudication process.

Official Side Case

30. The honorarium had been introduced in 1979 in respect of the special features of service carried out by teachers in prisons. In 1990, the Teacher's Side had introduced a claim for an increase in the honorarium payable to teachers in the prison service. Following a number of meetings in 1991 and 1992, the Official Side had offered to increase the honorarium subject to:
 - (i) *The offer was being made in full and final settlement of all claims for compensation for any special features of the work by comparison with normal teaching duties in a school or college.*
 - (ii) *The honorarium is in respect of the totality of the special features of the work, including the working environment, the longer working year, and vacation arrangements.*
31. This offer was accepted in Agreed Report 1/1992
32. It had to be noted that the honorarium currently paid to those teaching in prisons was non-pensionable, whereas the environmental allowance was pensionable. Granting such an allowance to teachers in Portlaoise would therefore put them in a significantly advantageous position versus not only their counterparts in schools – compared to whom they already earn a significantly higher salary – but also their counterparts in other prisons, by virtue of increasing their pensionable earnings.

Staff Side's Arguments

33. The Staff Side had stated that the conditions that teachers were subject to in Portlaoise prison were extreme to a point that warranted further remuneration. They had raised issues around the conditions, the high security nature of the prison, the increased profile of the prisoners, the sanitary conditions of the institution etc.

Official Side's Response

34. Not all staff working in Portlaoise prison received the Environmental Allowance
35. Information received from the Department of Public Expenditure and Reform and the Irish Prison Service confirmed that a number of grades in Portlaoise prison were not paid the environmental allowance. These grades included Chaplains, Psychologists, Doctors, Cleaners, and Teachers. Prison Officers were the staff who were at most risk and, as a result, they received the environmental allowance.
36. Other allowances specific to Portlaoise prison were reserved for the Defence Force personnel, including an allowance for Hospital Guard and Prison Duty. These were unique to the Defence Forces and Portlaoise prison.

Agreed Report 1/92 covered the totality of special features of work in prisons

37. As outlined above, in 1992, TCC Agreed Report 1/92 had provided for a "special" increase in the amount of the honorarium on the basis that it was a full and final settlement of all claims for compensation. The honorarium had been increased to take account of the additional length of the working year and the fact that their service was given in a secure unit.
38. This agreement had settled all claims for compensation for service provided by teachers in every prison. Furthermore, the conditions of Portlaoise prison in 1992 had been worse than the current standard in many respects and there had been a greater number of dangerous and subversive prisoners. The number of subversive prisoners in Portlaoise had been reduced from a maximum of 163 in 1984 dropping to 107 in 1995, then down further to 40 in 2019.
39. Portlaoise prison ranked among the lowest for assaults on staff, with only Arbour Hill and three open centres recording fewer assaults over the period 2012-2014.
40. The Official Side questioned whether an allowance paid in compensation for dangerous working conditions which had not been considered necessary by the Staff Side in 1992 could now be considered necessary now at a time when those working conditions had become markedly, and measurably, less dangerous.

41. Furthermore, the Staff Side had not quantified the alleged increased risk associated with the conditions in Portlaoise, either by reference to the staff currently working in that prison, or by reference to their counterparts in other prisons.
42. It was difficult to understand, for example, how the additional security measures present in Portlaoise, which had been put in place for the protection of prison staff, could be leaving these teachers more at risk than their counterparts elsewhere.
43. It was not clear from the Staff Side's submission, whether teachers in Portlaoise were experiencing any increased levels of stress, at least when compared to those already experienced by their fellow teachers in other prisons.
44. In addition, although the Staff Side had offered some passing comment on the risk of assault in the prison, this chiefly revolved around the risk of assault to prison officers, not to teachers. The Staff Side had not detailed any instances of assaults on teaching staff in Portlaoise prison, and the Department was not presently aware of such instances. A small number of prison officers had been subjected to assaults in the course of their duties.
45. Overall, the Staff Side's submission was replete with hypothetical, rhetorical statements and claims, none of which had been quantified and which had not been backed up by any reference to specific incidents, timeframes, or even accounts from teachers themselves. It was interesting to note that the Prison Service had argued for the removal of this allowance entirely due to the gradual disappearance of its chief justification, i.e. the number of subversive prisoners held at Portlaoise. Though an arbitration report of 2015 had recommended that the allowance should continue to be paid to those prison officers already in receipt of it, this situation was to be reviewed in two years. The Department understood that this review had yet to take place. With this in mind, the Official Side argued that any recommendations made regarding the expansion or continuation of the Environmental allowance had to be made in the context of the review of the allowance for prison officers, given that they were the comparators being used and that they were the group entitled to the allowance.
46. Notwithstanding any of the above, there were also objective reasons against the granting of this allowance, both under the current Public Service Agreement and also under the provisions of the associated legislation.

Public Service Stability Agreement 2018-2020 and Cost-increasing Claims

47. The Public Service Stability Agreement 2018-2020 had been agreed between the Government and ICTU in June 2017. Under the agreement, the parties had agreed Clause 8.3 on No Cost-Increasing Claims which read as follows:

8.3.1. The Parties agree that there will be no cost-increasing claims for improvements in pay or conditions of employment by trade unions, Garda and Defence Force associations, or employees during the period of the Agreement.

48. The Staff Side had argued that although the claim was cost increasing (€45,000 p.a. according to an estimate provided by the Official side) this was a minor increase in cost. However, the terms of the PSSA in this regard were quite clear, “...*there will be no cost-increasing claims for improvements in pay or conditions of employment by trade unions...*”. There was no provision for the advancement of claims which related to an increase in remuneration. Instead, the Agreement was clear that there were to be no cost-increasing claims, including claims which might be considered minor within the overall context of the education pay budget.
49. Therefore, as the claim lodged by the Staff Side ran contrary to the Public Service Stability Agreement as a cost-increasing claim, the Official side took the view that the claim should be dismissed.

FEMPI (No. 2) Act 2009

50. The Financial Emergency Measures in the Public Interest (No. 2) Act 2009 had established criteria for reducing the pay of public servants including teachers with effect from January, 2010 and for controlling the future pay of public servants.
51. In addition to the pay reductions outlined in the Act, there was also provision that a public servant might not be paid a greater amount than his or her salary as determined in accordance with the legislation. This was provided for in Section 5(1) of the Act which stated:

“a public servant whose remuneration falls to be determined in accordance with the relevant provision is not entitled to receive remuneration of an amount greater than the amount so determined”,

52. Furthermore, Section 5 (1) (b) stated that

“no person or body responsible for paying the remuneration of such a public servant is entitled to pay remuneration to the public servant of an amount greater than the amount so determined”

53. It was further worth noting that the terms of these provisions had been reiterated via the amendments made in the Public Service Pay and Pensions Act 2017, and that Section 5(1) of the 2009 Act was to remain in operation until 1 January, 2021.

54. Therefore, it was not possible for a public service employer to increase the remuneration paid to a teacher, who had had his/her salary reduced under the Financial Emergency Measures in the Public Interest (No. 2) Act 2009.
55. The Official side contended that the claim as advanced by the Staff Side ran contrary to the obligations placed on public sector employers not to increase the remuneration of public servants.

Summary

56. The Official Side respectfully requested that the Adjudicator should find against the claim lodged by the Staff Side. The payment of the environmental allowance was not warranted as:
57. Prison Officers who received the environmental allowance had a higher level of contact with prisoners and were therefore at greater risk. Other staff in Portlaoise prison did not receive the allowance, and teachers were not in a similar position to prison officers either in terms of their work or in terms of their being potential targets for assault or intimidation.
 - The particular stresses and differences in conditions experienced by a teacher in a prison versus a teacher in a school were already adequately captured by the payment of the honorarium. No evidence had been provided to illustrate that teachers in Portlaoise were experiencing a higher level of either risk or stress when compared to their counterparts in other prisons. In fact, given the reduction in the number of subversive prisoners since 1992, conditions for these teachers had actually improved when compared to that earlier period during which the staff side apparently had not considered that the payment of this allowance was necessary.
 - A claim had previously been brought on the subject of pay for work in prisons and an increase in the honorarium had been agreed on the basis that this had been in full and final settlement of all claims relating to the special conditions associated with teaching in prisons. Disregarding this agreement raised the question of whether all agreed reports were open to renegotiation provided enough time passed.
 - The claim advanced by the Staff Side was a cost increasing claim and was therefore precluded by the Public Service Stability Agreement 2018-2020.
 - The claim advanced by the Staff Side would increase the remuneration of the teachers working in Portlaoise prison contrary to the provisions of Section 5 of the Financial Emergency Measures in the Public Interested (No. 2) Act 2009.

58. In light of the above the Official Side requested that the Adjudicator should reject the claim by the Staff Side.

Finding

59. It seems to me that there are two separate issues to be considered in this case:
- (a) the industrial relations substance of the case; and
 - (b) the position of the claim under the Public Service Stability Agreement 2018-2020 and the Financial Emergency Measures in the Public Interest Legislation.

Industrial Relations Substance of the Case

60. In support of their claim for the payment of the Environmental Allowance, the Teachers' Side have pointed to the fact that most other staff in Portlaoise Prison are in receipt of this allowance and that there is no good reason to deny the Teachers in the prison the same allowance.
61. They have also described, in detail, the environment in which their members work in Portlaoise Prison.
62. They maintain that these considerations justify their claim for the payment of the allowance.
63. By contrast, the Official Side maintain that the claim is not justified as the agreement made in 1992 was in full and final settlement of all claims for compensation for Teachers working in prisons and the circumstances in Portlaoise Prison had, if anything, become less difficult in the years since 1992.
64. The conditions attached to the 1992 agreement as set out in Agreed Report No. 1/92 are as follows:
- (i) *the offer was being made in full and final settlement of all claims for compensation for any special features of the work by comparison with normal teaching duties in a school or college.*
 - (ii) *the honorarium is in respect of the totality of the special features of the work, including the working environment, the longer working year, and vacation arrangements.*

65. On the face of it, this would suggest that, unless there has been some material change in circumstances for the Teachers in Portlaoise Prison since the agreement made in 1992 which would justify reopening that agreement, the claim could not succeed as that agreement was “in full and final settlement of all claims for compensation for any special features of the work” and goes on to say that the amount agreed was “in respect of the totality of the special features of the work, including the working environment, the longer working year, and vacation arrangements”.
66. However, it emerged at the hearing that the Honorarium currently paid to the Teachers in Portlaoise Prison is actually related, exclusively, to the extent to which these teachers teach for more than the normal 167 days required of a secondary teacher in an ordinary school where, normally, they do not work in the months of June, July and August. If a teacher in Portlaoise Prison works longer than this, the honorarium becomes payable and the amount of the honorarium paid varies with the amount by which a teacher exceeds the 167 day norm. Thus, if a teacher works for the whole of the months of June and July, he/she receives twice the honorarium paid to a teacher who works only for the whole month of June. Classes are not held in August. The decision to work in June or July is at the individual teacher’s volition. (The Department advised me that, in the Summer of 2018, 25 teachers received either a full or partial honorarium payment for working a period of the summer programme.)
67. However, a teacher in Portlaoise Prison who does not exceed the 167 day norm receives no honorarium.
68. If the honorarium were truly to compensate for the “the working environment” as stated in the agreement in Agreed Report No. 1/92, a teacher in Portlaoise Prison who does not exceed the 167 day norm would have to receive some form of compensation since there is no evidence that the working environment in the months of September to May is any less difficult than in the months of June and July.
69. Taken together, two salient facts emerge from this:
 - (a) the amount of the honorarium varies with the amount of time actually worked by teachers in June and July;
 - (b) a teacher who works from September to May but not in June or July receives no honorarium.
70. This leads one inescapably to the conclusion that, notwithstanding any text that may have been included in Agreed Report No. 1/92, the honorarium is actually paid exclusively for time spent working over and above the normal school year in June and July and is not related, in any way, to the actual circumstances of working in the Prison environment.

71. It is indisputable that the environment of Portlaoise Prison is a very difficult workplace - even by the standards of prisons generally. It is not possible to explain the environmental allowance paid to Prison Officers in the prison on any other basis.
72. Since the original introduction of the allowance for Prison Officers, the Environmental Allowance has been extended to cover most other staff in the Prison.
73. In these circumstances, on the normal industrial relations substance of the case, it follows that the teachers in Portlaoise Prison should also be entitled to the same allowance so long as it is paid to Prison Officers and other staff.
74. However, having reached this assessment on the industrial relations substance of the claim, it is also necessary to have regard to the position of the claim under the Public Service Stability Agreement 2018-2020 and the Financial Emergency Measures in the Public Interest Legislation.

Public Service Stability Agreement 2018-2020 and the Financial Emergency Measures in the Public Interest Legislation

75. The Official Side argued that, since the terms of the Public Service Stability Agreement 2018-2020 precluded cost-increasing claims, the claim could not proceed.
76. The Teachers' Side argued that the claim constituted a "Minor Claim" and that there was a saver from the general prohibition on cost-increasing claims in respect of such claims by virtue of a side letter from the Department of Public Expenditure and Reform to the Public Services Committee of ICTU dated 27 February, 2013.
77. On the face of it, the argument that the claim should be treated as a "Minor Claim" would appear to have merit in that it does not relate to basic pay, is not related to external comparisons and is relatively small in cost terms.
78. However, the text of the side letter of 27 February, 2013 mentioned above reads as follows:

I am writing to confirm that, as with the previous agreement, it is the intention of public service management to continue to operate in relation to minor claims on the same general basis as they have operated in previous agreements with the exception of minor claims related to remuneration, the award of which is precluded under the provisions of the Financial Emergency Measures in the Public Interest (No. 2) Act, 2009.

79. In the light of this text, it is difficult to see how the claim could be treated as a “Minor Claim” as it clearly related to “remuneration” and, as such, is excluded from the definition of “Minor Claims.” and, therefore, covered by the general embargo on cost-increasing claims.

80. I am aware of a subsequent similar letter dated 9 June 2017 from the Department of Public Expenditure and Reform to the Secretary of the Public Services Committee of the Irish Congress of Trade Unions in the context of Public Service Stability Agreement 2018-2020. The relevant part of this letter reads as follows:

I refer to your letters of the 7th and 8th of June and note your position in relation to allowances and economic circumstances.

As you know, the terms of the Financial Emergency Measures in the Public Interest (No. 2) Act, 2009 (as amended) continue to preclude claims for increases in remuneration. However, further to the recent concluded negotiations of an extension to the Lansdowne Road Agreement, I wish to confirm that it is the intention of public service management to continue the approach taken under previous agreements in terms of minor claims (excluding remuneration) for the duration of the new agreement.

81. I have examined this letter carefully. It seems to me that the intention of the letter is to confirm, as it states, “*that it is the intention of public service management to continue the approach taken under previous agreements in terms of minor claims.*” Equally, however, it is clear that claims which concern remuneration are excluded from this “saver” from the general prohibition on cost-increasing claims under the Public Service Agreements.

82. As the instant claim does involve remuneration, it is, therefore, clear that I am barred from making a finding in favour of the claim (or any finding in favour of a remuneration increase) by virtue of the general prohibition on cost-increasing claims under the Public Service Agreements.

83. There was reference at the hearing as to relevance of the Financial Emergency Measures in the Public Interest Legislation to the instant case.

84. I have formed no view on this latter matter. It is beyond the competence of an Adjudicator to attempt to construe legislation. This is a matter for the Courts.

Recommendation

85. In the circumstances, I recommend that the parties should consult with each other on the options that may be open to them to give consideration to the assessment reached on the industrial relations substance of the case above at an appropriate time and in appropriate circumstances.

Daniel Murphy,
Adjudicator.

2 April, 2019