

Permanent Defence Forces Adjudication Finding

Parties: Permanent Defence Forces Other Ranks Representative Association (PDFORRA) and Department of Defence (DoD)

Claim: Payment of Editor's Allowance (EA) in respect of two named serving members

Date of hearing: 5 June 2024

Background

1 In March 2023 PDFORRA submitted a claim for the payment of an Editor's Allowance on behalf of two of their members on the basis that the members concerned were tasked with the role and responsibilities as outlined in CCR 246 and that to date no payment of this allowance had been received.

2 In April 2023 the Department informed PDFORRA that in accordance with Government decision of 18 September 2012 the Editor's Connect and Cosantoir Allowance had been abolished for new beneficiaries of the allowance. The Department informed that there had been no new beneficiaries of the allowance since its abolition in 2012. The Department confirmed with the Department of Public Expenditure National Development Public Development & Reform (DPENDPDR) that the allowance had not been reinstated. The Department was accordingly not in a position to sanction payment of the allowance.

3 In September 2023 PDFORRA outlined to the Department their interpretation of the Review of the Public Service Allowance and Premium Payments correspondence dated 28 September 2012 from the Secretary General of DPENDPDR to the Secretary General of DoD indicating that in that correspondence the Editor's Allowance did not appear to be abolished as the listing was for "consideration only" by Government.

4 In response to PDFORRA the Department indicated the position that the Editor's Allowance had been abolished and that no sanction was in place to in order to approve payment of this claim.

5 Following normal procedures a disagreed Conciliation Council Report was signed on 14 November 2023.

PDFORRA's Case

1 PDFORRA is seeking the payment of an Editor's Allowance (EA) to personnel undertaking specific roles within the Defence Forces and to whom the allowance was previously payable. The claim is based on the value to the Exchequer, the onerous nature of the duties undertaken by the personnel concerned and the findings of Labour Court Recommendation 20448.

2 Following submission of the claim in March and April 2023 PDFORRA was informed by DoD that the allowance was discontinued for new beneficiaries in 2012.

3 In the view of PDFORRA this response was unexpected as no consultation had taken place between the parties concerning its discontinuation at the time and there had been no Conciliation Council Report completed to that effect.

4 It is PDFORRA's view that the management position on the abolition of the allowance in question was formed following correspondence from DPENDPDR dated 28 September 2012 that listed a number of allowances for proposed abolition. PDFORRA had no formal input into this process on the proposed abolition of allowances.

5 In further correspondence from DPENDPDR dated 12 October 2012 the reference to the EA which was contained in the initial correspondence of 28 September 2012 had been removed. As a consequence of the removal of reference to the EA in this correspondence PDFORRA was of the view that the allowance was

still payable. This is further witnessed by the fact that in 2018 PDFORRA included the E A in its submission to the Public Service Pay Commission.

6 It is the PDFORRA position that while the EA was originally part of management discussions to be abolished in the period between 22 October and 22 November 2012 the EA was removed from the list of allowances to be eliminated. In the event of PDFORRA being informed of its abolition it would have requested the completion of a CCR outlining the position of all parties and having the issue progressed through the appropriate dispute resolution mechanisms.

7 PDFORRA has drawn the attention of DoD to the fact that some allowances which had been removed or adjusted under FEMPI had now been reinstated. These included, for example, pay scales for enlisted personnel, allowances that had been reduced by 10%, flat rating of Saturday and Sunday duties.

8 PDFORRA contend that the elimination of the EA without consultation in circumstances where personnel are required to continue to perform a duty above the level normally associated with that particular rank is inequitable. This is furthermore considered to be a serious breach of the Conciliation & Arbitration Scheme operating within the Defence Forces.

9 PDFORRA contends that Labour Court Recommendation 20448 is of significance in consideration of this claim on the basis that its members continue to perform the EA duties in accordance with the conclusions of this LCR.

10 Accordingly, payment of the EA should be made to the claimants on whose behalf this claim is made for dates listed in PDFORRA's correspondence to the DoD.

Management's Case

1 The claim in question seeking the payment of an EA to personnel undertaking a specific editor role in the Defence Forces was abolished for new beneficiaries in 2012 on foot of a Government decision.

2 The abolition of this allowance along with other allowances was one of the measures announced as part of the government budgetary process in relation to reductions in the cost of the public service pay bill.

3 The DoD has not paid the EA to new beneficiaries since 2012 and DPENDPDR has confirmed that this allowance remains abolished.

4 The argument advanced by PDFORRA that some allowances abolished in 2012 have been restored as part of the undoing of FEMPI measures is not accurate. While the value of some specific allowances reduced in line with FEMPI reductions have been restored this is separate to the allowance review of 2012 which was concerned with the applicability of allowances to new beneficiaries.

5 While some of those allowances abolished in 2012 have been re-established for new beneficiaries this has only happened in very specific circumstances with management agreement. It is the position that no such agreement exists in this instance. In the Defence Forces for example a number of other of other allowances have not been re-established including the Civilian Clothing and Chaplain's Housekeeper allowances.

6 As the decision to abolish the EA was made by Government and outside of Conciliation Council no CCR was signed off on between the parties.

7 A range of allowances were abolished across the public service, as a result of the 2012 Government decision, a decision that has not been re-established, for new entrants.

8 PDFORRA made use of the sectoral bargaining mechanism in Building Momentum to address a number of claims but chose not to have the restoration of the EA addressed under the sectoral bargaining facility.

9 The reference by PDFORRA to LCR 20448 in support of their claim is misconstrued as the recommendation was in respect of recipients who were required to continue performing duties associated with the allowance. As the claimants in this case have never been in receipt of the EA allowance any question of granting compensation in respect of the allowance does not arise.

Conclusion and Finding

1 This claim arises in the context of a Government decision taken on 18 September 2012 which eliminated a range of allowances for new beneficiaries. This decision of Government arose from the outcome of a Review of Public Service Allowances and Premium Payments which was conducted under the auspices of DPENDPDR.

2 PDFORRA contend, inter alia, that it was of the view that the EA had not been eliminated for new beneficiaries. This conclusion was drawn from the observation that the reference to the elimination of the allowance for new beneficiaries while in evidence in official side documentation dated 28 September 2012 was not included in further official side documentation dated 12 October 2012. On the basis of this observation PDFORRA concluded that the EA in question was removed from being considered for elimination.

3 It is PDFORRA's position that had it been aware of the allowance's elimination it would have initiated the relevant industrial relations machinery in order to attempt to have the matter resolved.

4 In this context it is of relevance to note that the official side correspondence of 12 October 2012 omitted reference to a total of five allowances referenced in the 28 September 2012

correspondence and which included: i) health and safety allowance; ii) leading instrumentalist allowance; iii) NCO account holder allowance; iv) children's allowance as well as v) editor's Connect and Cosantoir allowance. This correspondence also included reference to two new allowances not included in the 28 September 2012 correspondence and which were: border duty allowance and Irish language allowance.

5 During the actual hearing to this claim it emerged that the i) health and safety allowance and ii) NCO account holder allowance had been restored for new beneficiaries through the process of a business case review and an adjudication finding respectively. However the status of the following three allowances for new beneficiaries has not been changed from the original Government decision and remain eliminated: i) leading instrumentalist allowance; ii) the children's allowance and iii) the EA.

6 The assumption on the part of PDFORRA that the EA had been eliminated needs to be assessed in light of the fact that the official side correspondence of 28 September 2012 referred specifically to the outcome of a Government decision that referenced the elimination of certain allowances for new beneficiaries including the EA.

7 The official side correspondence of 12 October 2012 refers specifically to the supply of information to the Clerk of the Houses of the Oireachtas Public Accounts Committee (PAC). This supply of information to the PAC was in response to questions raised by that Committee on the overall question of allowances in the public service.

8 The actual content of the official side correspondence of 12 October 2012 and its accompanying appendix clearly indicates that the list of allowances is for consideration in respect of the elimination of such allowances from current recipients. There is no

reference in this correspondence to any modification of the list of allowances eliminated by Government decision of 18 September 2012 and conveyed in the correspondence of 28 September 2012.

9 The exclusion of the EA along with the other four allowances referred to at paragraph 4 above was obviously due to the fact that they were not being considered for elimination from the then serving recipients of the allowances.

10 It is accordingly a conclusion of this Adjudication process that there is no factual basis for accepting the argument advanced on the part of PDFORRA that there had been a change in the status of the EA arising between the correspondence of 28 September 2012 and 12 October 2012 and that this constitutes a justification for the reinstatement of the allowance as sought by this claim.

11 This claim is being considered on the basis of its own merits and having full regard to its own context and circumstances. The application and relevance of conclusions drawn from other separate adjudication processes should be seen in this light.

12 In conclusion I find accordingly against concession of this claim as sought.

13 Arising from exchanges at the actual hearing I find, however, that PDFORRA was of the opinion that the EA was extant for new beneficiaries and that this viewpoint on the part of PDFORRA dating from the 2012 period may, on balance, have been formed from discursive interactions with the DoD management side at that time.

14 Therefore and having full regard to the exceptional circumstances and context arising in relation to this particular claim and which it should be clearly noted do not apply to any other of the eliminated Defence allowances, I find that the two claimants in question should receive the established loss of earnings provisions of one and a half

times the annual value of the allowance in full and final settlement of this matter.

15 I find accordingly.

Tom Clarke

Adjudicator

12 June 2024