

## **Permanent Defence Forces Adjudication Finding**

**Parties: RACO and Department of Defence**

**Date of Hearing: 8 February 2024**

**Issue:** Claim by the Representative Association for Commissioned Officers (RACO) for the payment of Security Duty Allowance (SDA) to Senior Officer Pilots of No 1 Ops Wing and Senior Officer Air Traffic Controllers.

### **Background**

1 This claim has been the subject of both informal and formal discussions between the parties since December 2021.

2 The matter was the subject of discussion at the following fora: i) DFHQ Forum in December 2021; ii) Pay and Allowances Sub Committee of Council in January 2022; iii) Conciliation Council in February 2022 and subsequently throughout that year.

3 A data gathering exercise was carried out by the Official Side during 2022 in consultation with RACO to determine the cost of the claim.

4 In February 2023 the Official Side advised RACO at Conciliation Council that the claim was not being conceded.

5 In March 2023 RACO informed management that as there was no agreement on the claim a disagreed report should be prepared.

6 This report recording disagreement was adopted in April 2023.

7 The ranks in respect of which this claim is made are those of Commandant and Lieutenant Colonel.

### **RACO Case**

1 Throughout the deliberative process on this claim RACO was of the belief that the claim would be conceded.

2 The reason for this expectation on the part of RACO was that the claim was analogous to a previous adjudication finding concerning the backdated payment of a Security Duty Allowance (SDA) made to Senior Air Corp officers filling the rosters of Emergency Aeromedical Service (EAS) and Garda Air Support Unit (GASU) due to a lack of suitably qualified Junior Officers.

3 It is the contention of RACO that the Adjudication finding of 29 January 2021 regarding the payment of SDA to Senior Officers performing in the EAS and GASU is analogous to the claim under consideration and should therefore be applied to Senior Officers of the Air Corp who are routinely rostered on Air Traffic Control (ATC) and No 1 Ops Wing (Fixed Wing Aircraft) duty rosters.

4 The claim is accordingly based on the fact there are insufficient Junior Officers available to take the relevant rostered duties in respect of ATC and No 1 Ops Wing.

5 It is the position of RACO that the claim in question is not cost increasing and is not therefore in contravention of the provisions of the public service pay agreement Building Momentum. This argument on the part of RACO is based on reasons advanced in the Adjudicator's finding of 29 January 2021 that the claim was not a cost increasing one.

6 RACO contends that a primary argument for payment of the SDA to the Senior Officers concerned has to do with the routine, frequent rostering of the personnel in question which results in them being taken away from their critical leadership, management, instruction, administrative mentoring roles in the Air Corps. This incursion of duties on the Senior Officers' more critical roles is considered to have a detrimental impact on governance and hence organisational risk.

7 The analogous nature of the claim in question to the previous EAS and GASU adjudicated claim is not the degree of threat or risk inherent to the related tasks but to the principle that personnel regularly rostered for a planned duty should receive the allowance associated with that duty regardless of rank.

8 On the basis of equity and fairness the SDA should be paid to all officers irrespective of rank. RACO is of the firm belief that the SDA must be paid to Senior Officers of the Air Corps employed on regular routine rosters in ATC and No 1 Ops Wing arising from a lack of suitably qualified junior personnel. It is the further contention of RACO that the claim should be backdated to 2015.

## **Management Case**

1 It is the position of RACO that the Adjudication finding of 29 January 2021 regarding the payment of SDA to Senior Officers performing in the EAS and GASU is analogous to the claim in question and should accordingly be applied to Senior Officers of the Air Corps who are routinely rostered on ATC and No1 Ops Wings (Fixed Wing Aircraft) duty rosters.

2 The Official Side contend that their understanding of the Adjudicator's finding of 29 January 2021 is that the fundamental element which informed that finding was that the allowance was awarded in respect of the dangerous nature of the tasks involved and ensuing responsibilities.

3 The Official Side question why the claim under consideration did not form part of the claim referred to Adjudication in January 2021 having regard to the argument made by RACO that the claim is analogous.

4 It is the view of the Official Side that the claim should be assessed and considered on its own merits and that it would not generally be appropriate to extend arbitration findings which are based on the unique facts pertaining to one group of claimants to those of another group.

5 The Official Side contend that in the Adjudication finding of 21 January 2021 the Adjudicator focused on the point that payment of SDA for EAS duties related to the dangerous nature of the tasks involved. Accordingly that adjudication finding distinguished the EAS/GASU allowances specifically on the basis of the dangerous nature of the associated tasks

from allowances which may generally apply in respect of carrying out additional duties.

6 The Official Side argue that senior managers across the public service are required to carry out additional duties undertaken by more junior staff where necessary without having recourse to additional remuneration. Concession of this claim could have repercussive effects across the public service giving rise to similar claims from staff performing duties more appropriate to junior grades.

7 The Official Side assert that there is a cost increasing aspect to this claim in that it seeks to further extend SDA to an additional cohort of personnel for duties markedly different in nature to the EAS/GASU ones.

8 The terms of the public service pay agreement Building Momentum and as extended to 2023 provides for a Sectoral Bargaining mechanism which would have allowed for this claim to be processed. The Official Side contends that RACO chose not to utilise this sectoral bargaining pay mechanism to address the claim in question.

## **Conclusion and Finding**

1 There is no dispute between the parties on the fact that Senior Officers in the ATC and No1 Ops Wing are routinely and on a regular basis employed in areas traditionally assigned to more junior level ranks.

2 Where the parties essentially differ in their views on this claim is in relation to their interpretation of the rationale

advanced in the Adjudication finding of January 2021. RACO argue that while the role exercised by the claimants is not without certain risks and hazards these personnel who are subject to being rostered on an ongoing basis for a planned duty should in equity and fairness receive the SDA regardless of rank . The Official Side contend that the January 2021 Adjudication finding in favour of conceding the SDA to the claimants concerned was based on the dangerous nature of the tasks involved and ensuing responsibilities.

3 The arguments and interpretations advanced by each of the parties to this claim on the relevance or otherwise of using the Adjudication finding of January 2021 as a precedent in support of their position is therefore a central matter of contention and difference between them.

4 However in arriving at a conclusion on this matter and having full regard to the individual merits of the case it is considered that the issue for adjudication constitutes in effect a pay claim for the particular grades concerned. It is therefore on the basis of the pay claim's status that this case falls to be adjudicated and not the suggested precedent.

5 In establishing the pay claim's status it is the position that both RACO and the Official Side were formal parties to the public service pay agreement – Building Momentum 2021 - 2023. This pay agreement prescribed, inter alia, how particular sectoral and grade pay claims of this nature should be processed and dealt with.

6 This process contained in Building Momentum allowed for outstanding sectoral pay claims such as the claim in question

to be addressed through the option of using a percentage of the overall general pay award to be defrayed on such pay claims. This resolution process took in to account the cost increasing nature of any such claims.

7 It is noted that this sectoral bargaining mechanism was available to the claimants in respect of this claim but was not availed of during the period of that agreement.

8 Notwithstanding the fact that the public service pay agreement Building Momentum has now expired this adjudication process cannot be immune to the fact that developments are underway on a replacement public service pay agreement with, it is understood, sectoral bargaining provisions for the resolution of pay claims such as that before this adjudication process.

9 Taking in to account that the claimants are party to these public service pay developments it is considered that the claim before this adjudication process is a matter for the claimants to further assess in the light of the outcome to those public service pay developments and the sectoral bargaining provisions contained therein.

10 I find therefore against concession of this claim.

I find accordingly.

Tom Clarke

Adjudicator

13 February 2024

