

THE LABOUR COURT
LANSDOWNE HOUSE
LANSDOWNE ROAD
BALLSBRIDGE
DUBLIN 4
D04 A3A8



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CD/19/251

RECOMMENDATION NO. LCR22075

CCc-164010-19

INDUSTRIAL RELATIONS ACTS 1946 TO 2015
SECTION 26(1), INDUSTRIAL RELATIONS ACT, 1990

PARTIES :

HEALTH SERVICE EXECUTIVE

- AND -

PNA
AND
SIPTU

DIVISION :

Chairman : Mr Foley
Employer Member : Ms Connolly
Worker Member : Mr Hall

SUBJECT:

1. Recruitment And Retention

BACKGROUND:

2. This dispute came before the Labour Court in accordance with Section 26(1) of the Industrial Relations Act, 1990. Hearings took place on the 31 July 2019 and the 8 August 2019.

RECOMMENDATION :

The Court has given careful consideration to the written and oral submissions of the parties.

The matters before the Court are complex and, in one respect at least, involve parties not present before the Court.

The Court had previously intervened in the within dispute and had advised the parties to engage comprehensively with the assistance of the Workplace Relations Commission (WRC). The parties subsequently, and prior to making a request to the Court to investigate the within dispute, had, with the assistance of the WRC, reached a point where they had agreed that an Enhanced Nurse Scale for psychiatric nursing should be introduced subject only to the conclusion of an agreed contract.

The parties have committed that any resolution to the within dispute must be found within the parameters of the Public Service Stability Agreement 2018-2020 (PSSA).

The Court notes the significant engagement between the parties on the matters before it but also notes that, in the course of the hearings, parties submitted to the Court that certain positions outlined to the Court had not been outlined previously or had not been fully explored or engaged with. This is a most unsatisfactory set of circumstances.

Expert Group on Nursing.

The Court, in LCR21900 and LCR21901 recommended as follows:

In the context of the significant planned reform of health services as referenced in the report of the Public Service Pay Commission (PSPC) published in August 2018, the Court recommends that an expert review of the nursing profession should be undertaken over the medium term and in any event to be completed during the lifetime of the PSSA. The outcome of that review can serve as an input to any future engagement between the parties to the PSSA as envisaged by the PSPC in Page 7 of its report. This input should inform the discussion on any new pay agreement on the expiration of the PSSA.

The Court understands that these recommendations have been accepted by the parties concerned.

The Trade Union side seeks to have the Court recommend on the make up of the Expert Review Group on Nursing to be established as a result of the Court's Recommendations. The employer side submitted that matters associated with the Expert Review Group will be the subject of focussed consideration following resolution of industrial relations issues.

The Court notes that the Expert Review Group on Nursing is a matter concerning the parties before the Court together with a party which is not before the Court.

The Court concludes that it would be premature and inappropriate for the Court to make a definitive recommendation on this matter in the context of this trade dispute. The Court recommends however that the parties, upon acceptance of this Recommendation, should engage appropriately as regards the terms of reference and make-up of the Expert Review Group on Nursing.

Area Directors of Nursing

The matter before the Court is a claim that the employer should complete an agreed review of Area Directors of Nursing initiated in 2016. That agreement followed co-operation by Directors of Nursing with '*Vision for Change*' which has resulted, since 2012, in a withdrawal of the Grade of Director of Nursing of which there were 42 posts and their replacement with 19 Area Directors of Nursing. The HSE, in 2012, committed to a review of the grading of Area Directors of Nursing within a five-year period.

That process was initiated in 2016 and involved, in December 2018, the Trade Unions submitting, as part of the agreed review, a business case to the employer. The employer, upon receipt of the business case, undertook to revert to the Trade Unions by end-January 2019 but has not yet done so. The employer submits that the commitment it made in December 2018 was overtaken by well known industrial relations events in the nursing sector. The employer submitted to the Court that it would now agree to have existing completed work examined by a group appointed by the HSE Office of Community Operations to examine and review such work. This group would work parallel to the Expert Group on Nursing and its work would inform the work of the Expert Group.

The Court cannot support a proposition that the Expert Group on Nursing, as yet unformed and whose terms of reference are unknown, should be assumed to comprehend the agreed review of Area Directors of Nursing by way of being informed by a review now to be carried out by a group to be appointed by the HSE Office of Community Operations. The process at issue before the Court was committed to by both parties in 2012, initiated in 2016 and was pursued jointly until December 2018. The Court consequently recommends that the review committed to in 2012 should now be carried forward to a conclusion in the manner intended by the parties jointly.

Nothing in this Recommendation prevents the parties from deciding by agreement to include this matter in the terms of reference for the Expert Group on Nursing. However, in the absence of such agreement the original agreement of the parties should apply as set out above.

Enhanced Nurse Contract

The Court understands that the parties have committed in direct discussions to the introduction of an Enhanced Nurse Scale in Psychiatric Nursing subject to agreement on the terms of a contract to be signed by Nurses entering the grade of enhanced nurse. The parties have committed that any agreement on an enhanced role for nurses in the context of an Enhanced Nurse Pay Scale must fall within the terms of the PSSA.

The Trade Union side seeks that the Court would recommend specific textual amendments to the current draft of the proposed Enhanced Nurse Contract which has emerged from engagement and discussion between the parties. That contract will set out the commitment nurses will make upon take up of the Enhanced Nurse role.

The Court considers that this matter must be the subject of further engagement between the parties to finalise the contract which will be offered to individuals wishing to take up the enhanced role. The Court recommends that the parties take realistic account of the relationship between this contract and the contract agreed in the area of general nursing. The Court also recommends that the parties consider the content of the contract against their joint underlying commitment that real change is required by

nurses taking up the enhanced role in order to ensure the delivery of the cost off-setting measures which ensure that the agreement reached between the parties falls within the terms of the PSSA.

In the event that the parties are unable to finalise the text of the draft contract the parties may refer the matter back to the Court for a definitive Recommendation. Any such referral should be accompanied by comprehensive written submissions setting out the significance of each textual amendment which is proposed.

Application of differential to Enhanced Nurse Scale.

The Trade Union side contends that a differential has existed for many years between the staff nurse scale in Psychiatric Nursing as opposed to the scale in general nursing and midwifery. That differential is positive towards Psychiatric nurses at some points of the staff nurse scale and negative in others. The Unions have submitted that this differential should be carried through onto the proposed Enhanced Nurse scale.

The employer has submitted that the Trade Unions' claim constitutes a cost increasing claim made in breach of the PSSA. The employer submits that concession of this claim would cost in excess of €1m per annum.

The Court notes the stated position of the parties that any resolution of the within dispute must fall within the parameters of the PSSA to which all are a party.

The parties disagree on the merits of the Trade Union Claim. The Trade Unions submit that a differential has existed for many years and that a failure to apply a differential to the enhanced scale will militate against the recruitment and retention of Psychiatric nurses. The employer has submitted that promotional grade scales have traditionally carried no differential and that no basis exists for the application of differential on this scale.

The Court believes that the conduct of good industrial relations requires that collective agreements should be upheld until they expire or are replaced by a new agreement between the parties. In this case the employer has submitted that a particular cost attaches to concession of the Trade Union claim and no agreement exists between the parties as regards any proposition that this cost can be offset by savings.

The Court cannot support the concession of a claim which, of itself, could constitute a breach of the parties' own collective agreement which is the PSSA.

The parties' positions as regards the application of the PSSA therefore are such as to create a barrier to the Court's consideration of the merits of any claim for the application of a differential to the Enhanced Nurse Scale.

The Court notes that the parties have committed to the creation of the Enhanced Nurse Scale within the terms of the PSSA. The Court understands that the parties' commitment to the introduction of the scale is based on their belief that the creation of enhanced practice by nurses will facilitate the achievement of savings and cost reductions which will offset the cost of the introduction of the Enhanced Nurse Scale and consequently permit the implementation of the scale within the terms of the PSSA.

The Court therefore recommends that the parties should engage to establish whether, in practical terms, the Unions' claim as regards a differential can be considered in a similar framework to that within which they have agreed to the creation of an

Enhanced Nurse scale in Psychiatric Nursing. In particular, the parties should seek to agree appropriate cost offsetting measures which, if implemented, could facilitate consideration of the claim on a cost neutral basis. Where such a basis for consideration of this matter is agreed to be practically feasible the parties should then, if required, engage to address their dispute as regards the merit of the application of such a differential.

Extension of Allowance / Introduction of a new allowance

The Trade Unions have sought the extension of an Unqualified Occupational Therapist Allowance and/or the introduction of a new allowance to recognise the range of therapeutic activities undertaken by Psychiatric Nurses. In addition, the Unions seek assurances that Location / Qualification allowances are available to all nurses. The unions submit that the cost of concession of these claims could be recovered by the achievement of savings arising as a result of the increased engagement of nurses with Occupational Therapy activity and other matters.

The employer submits that the claims on allowances are cost increasing and constitute a breach of the Public Service Stability Agreement. The employer submits that the cost of extension of the Unqualified Therapist Allowance alone amounts to €4.2m per annum approx. The employer submits that no means of recovery of this cost through productivity or new working arrangements is possible.

The employer also submits that no basis exists for the extension of allowances across Psychiatric Nursing. The employer submits that nurses do not carry two allowances and a proposition to apply a second allowance widely across Psychiatric Nursing would have very significant consequences.

The Court notes that the parties have no common position as regards the cost of concession of these allowance claims when account is taken of any possible cost reducing measures. The parties are in fact disagreed as regards the potential for achievement of any such cost savings in the context of this particular claim at all.

The parties' current collective agreement, the PSSA, prohibits the making of cost increasing claims throughout the lifetime of the agreement.

It is not for the Court to calculate or speculate on the potential to achieve savings as a result of the extension or introduction of allowances and the impact of such introduction on nursing practice and mental health service delivery. The Court must however acknowledge the plain fact that a claim which, if conceded, would cost, net of cost saving or offsetting measures, more than if it were not conceded, is a cost increasing claim.

The Court therefore recommends that the parties engage to examine in practical terms whether, outside of the efficiencies and savings accruing from enhanced nursing practice arising from the introduction of a new scale, innovative and effective means can be found to consider the Trade Unions' claims within the terms of the PSSA on a basis that is not cost increasing. If such an avenue were possible, it will be for the parties to seek to find agreement on the merits of the claim through normal industrial relations procedures as necessary.

Finally, noting that the parties are disagreed as to the degree of coverage of qualification / location allowances in Psychiatric nursing, the Court recommends that

an administrative means be found to establish the degree to which such allowances are currently paid to such nurses.

The Court so recommends.

Signed on behalf of the Labour Court

Kevin Foley

Chairman

TH
19 August 2019

NOTE

Enquiries concerning this Recommendation should be in writing and addressed to Therese Hickey, Court Secretary.