

**Division**

Chairman: Mr Duffy  
Employer Member: Ms Cryan  
Worker Member: Ms Ni Mhurchu  
Date of hearing: 10/07/2012  
Court Secretary: Ciaran Roche

**CD/12/327      RECOMMENDATION NO. LCR20335**  
**(CCc-122551-12)**

**INDUSTRIAL RELATIONS ACTS, 1946 TO 2004**  
**SECTION 26(1), INDUSTRIAL RELATIONS ACT, 1990**

**PARTIES :** \_\_\_\_\_

**DEPARTMENT OF PUBLIC EXPENDITURE**

**- AND -**

**PUBLIC SERVICE COMMITTEE OF ICTU**

**DIVISION :**

Chairman : Mr Duffy  
Employer Member : Ms Cryan  
Worker Member : Ms Ni Mhurchu

**SUBJECT:**

1. Sick pay arrangements for the Public Service

**BACKGROUND:**

2. This dispute was referred to the Court under the provisions of the Public Sector Agreement. Both sides made written submissions to the Court and a Hearing was held on 10th July, 2012.

**RECOMMENDATION :**

**This dispute came before the Court in the context of commitments contained in the Public Service Agreement 2010-2014 (PSA) to increase productivity and improve efficiency in the public service. In furtherance of that commitment management have identified a need to reform the current sick leave arrangements applicable to public servants. In accordance with the commitments contained in the PSA the unions represented by the Public Services Committee of ICTU (PSC) have engaged with management in that review. Significant progress was made in direct discussions and in conciliation on a range of proposals to modify aspects of the current arrangements but final agreement was not**

reached.

The current arrangements in place in the public service are of long standing and while they may not amount to a contractual entitlement in the strict sense they are an established condition of service of those to whom they apply. It is the contention of management that, having regard to the current state of the public finances, the scheme is unduly costly and its continuance cannot be afforded by the State as employer. Management have identified in both the Public Service Reform Plan, and the Memorandum of Understanding with the Troika, that the revision of the public service sick leave arrangements, and a more active management of the scheme, can result in significant savings in the public sector pay bill. In that regard a target of achieving savings of at least €25 million has been set for 2012.

Against that background, the Court was told that the State intends to legislate for a new modified scheme which will continue to provide a high level of protection to public servants who are unable to work due to genuine illness.

The PSC contend that savings of at least the magnitude envisaged by management can be achieved by a more active control of the present arrangements. They point out that a relatively small number of people account for a disproportionate amount of sick leave availed of in public service employments. The PSC's position is that they support and encourage efforts by management to adopt more active interventions in controlling the scheme. The PSC does not agree with any of the changes to the current arrangements proposed by management. They do, however, recognise the inevitability of legislative change leading to modifications in the current arrangements. The PSC pointed out that the proposals would have a particularly disproportionate effect on teacher / lecturer grades compared with their current arrangements which are better than those applicable to the generality of public servants. They contend that any general recommendations made by the Court will have to be the subject of further consultative meetings under the auspices of the Department of Education and Skills.

#### Issues in dispute

There are four aspects of the management proposals upon which the Court is asked to make recommendations, namely: -

- Management proposals to alter the current arrangement whereby staff can avail of up to seven self-certified days of sick leave per year,
- Management proposals for critical illness arrangements – specifically the proposal to limit critical illness cover to six months full pay and three months half pay and a stipulation that this facility can generally be available only once during the working career of a public servant,
- Management proposals for rehabilitation pay where this would result in certain public servants who have exhausted their entitlement to paid sick leave being left with an income less than social welfare rates,
- The management proposals on transitional arrangements.

The Court notes that a central feature of the new arrangements to be introduced involves a modified entitlement to paid sick leave of three months full pay and three months half pay over a four year rolling period. The Court has not been asked to make any recommendations on this aspect of the proposals. While the PSC has not agreed to this proposal they recognised the inevitability of its introduction. This change in the existing arrangements must be seen as one of major significance from the perspective of the State as an employer. Moreover, this new arrangement, in the context of an entitlement arising over a four year period, is both reasonable and modest relative to sick pay

arrangements applicable in other employment.

With regard to the four issues specifically referred to it the Court recommends as follows: -

### **Self-Certified Sick Leave**

The Court recommends that seven days self-certified paid sick leave be granted over a rolling two year period.

### **Critical Illness Cover**

The Court recommends that critical illness cover be provided for six months at full pay and six months at half pay. The total maximum period of payment, including rehabilitation pay, should remain two years.

On the question of the permitted incidence of this cover, the Court does not believe that it would be either fair or reasonable to limit the availability of this facility in the manner proposed by management. The Court does, however, recognise that recourse to critical illness cover should be regarded as an exceptional and normally non-recurring occurrence. It should also be accepted that provision of this facility, to those whose circumstances require it, is within the discretion of management. The Court does not believe that management should seek an unfettered discretion in providing this facility. Rather the parties should have further discussion with a view to reaching agreement on a protocol setting out the criteria against which this discretion will be exercised,. This protocol should also provide for independent appeals mechanisms in cases where the facility is withheld. The Court recommends that such discussions should commence as soon as practicable on acceptance of this Recommendation. If agreement is not reached this matter may be referred back to the Court for a definitive recommendation.

### **Rehabilitation Pay**

The Court believes that the proposals put forward by the PSC for a minimum payment equal to social protection rates for those who joined the public service before 1995 is reasonable and should be accepted by management.

### **Transitional Arrangements**

The Court recommends that the recommendation on self-certified sick leave should come into effect as soon as practicable following the date of this Recommendation.

Subject to the necessary legislation being enacted, the proposal on certified sick leave and the other matters covered by this recommendation should take effect from 1<sup>st</sup> January 2014. The other aspects of the management proposal on transitional arrangements should be accepted.

### **Position of School / Colleges Grades**

It is the intention of the Court that the revised sick leave arrangements envisaged by this Recommendation should be of general application to all categories of public servants associated with this referral. However, in the case of schools / colleges grades the application of this recommendation should be the subject of further consultative meetings under the auspices of the Department of Education and Skills.

**Signed on behalf of the Labour Court**