The 21st Countess Markievicz Memorial Lecture

The Labour Court: Past, Present and Future

Evelyn Owens,
Chairperson of the Labour Court

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The Countess Markievicz Memorial Lecture has been established by the Irish Association for Industrial Relations with the support of the Department of Enterprise and Employment. Countess Markievicz was appointed Minister for Labour in the Executive of the first Dáil Eireann in 1919. The object of the Memorial Lecture is to provide an occasion for a substantive contribution to discussion in the industrial relations area by a distinguished practitioner or academic.

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I would like to thank the Irish Association for Industrial Relations for inviting me to give this year's Countess Markievicz Memorial Lecture. As you probably know, the Labour Court is celebrating its 50th Anniversary this year, so it is particularly appropriate that the Court should be the subject of the 1996 lecture.

Countess Markievicz was the first woman to be elected to Parliament. She was also the first woman Cabinet Minister. For that reason, I am particularly pleased, as the first woman to chair the Labour Court, to be here this evening.

The title I have chosen for this lecture is "The Labour Court: Past, Present and Future", and I will be talking about the development of the Court from its earliest days to the present, and commenting briefly on how it may develop in the future. There are some areas which I will focus on and deal with in detail, but others will have to be passed over because of the time available. I propose to deal with developments generally in the order in which they occurred, although there may be some movements back and forth in time, depending on the context. Starting with the pre-1946 situation and following with the 1946 Industrial Relations Act, which established the Court, I will then go on to discuss developments leading to the 1969 Act, the 1974 and 1977 Equal Pay and Employment Equality Acts, the 1990 Act and its effects, the current work of the Court and finally possible future developments. I will be dividing the talk into three main parts, using the headings in the title: the past, the present and the future. I should mention here that the words "Labour Court" or, "the Court" are often used interchangeably. Sometimes they refer to the actual Court itself - the Chairperson, Deputy Chairpersons and Members. Alternatively, they may refer to the organisation as a whole, including the administrative staff and, up to 1991, the Conciliation and Equality Services. It will, I hope, be clear from the context, whether I am referring to the wider organisation or just the Court itself.

THE PAST

Before the 1946 Act

The Labour Court owes its existence to the Second World War. I will return to that shortly, but before that, I will say something about the early industrial relations legislation operating in Ireland.

Before the establishment of the State and during the early years of Independence, all legislation covering industrial relations matters had been made by the British Parliament. The Conciliation Act of 1867 and the Arbitration Act of 1872 supplemented an earlier 1824 Act on arbitration, but it was not until 1896 that the Conciliation Act of that year put third-party conciliation on a broader legal footing by empowering the Board of Trade to investigate disputes and to appoint a conciliator or arbitrator. The Industrial Courts Act, 1919 provided for the setting up of an industrial court and for special courts of enquiry into industrial disputes. However, while an industrial court was set up in Britain, Ireland remained without one.

Following the establishment of the State, a number of special courts of enquiry were set up under the 1919 Act to deal with various disputes, but conciliation was the preferred option. However, the fact that conciliation was undertaken by officers of the Department of Industry and Commerce in addition to their other duties gives an interesting indication of the importance which the officialdom of the time attached to that function. Nevertheless, from the information we have, they do seem to have had a high rate of success in resolving industrial disputes.
During the period of the Second World War, from 1939 to 1945, the Government had imposed a series of Emergency Powers Orders. These Orders strictly controlled pay, initially prohibiting pay increases altogether, but allowing bonus awards in the later years of the War. These awards were subject to recommendations by emergency wage

tribunals, which also recommended standard rates of pay. The members of the tribunals were appointed by the Minister for Industry and Commerce, whose Department administered them. The members consisted of legal chairpersons and employer and worker members.

The Emergency Powers Orders were not very popular, and relations between the trade unions and the Government during the period were often strained. There were also stresses within the trade union movement itself, which led to the setting up of the Congress of Irish Unions following the secession of most of the Irish-based unions from the Irish Trade Union Congress in 1945. This conflict was not resolved until 1959, when the Irish Congress of Trade Unions was established.

When the War ended in 1945, the Government was concerned that if it were to remove the emergency controls on pay without providing some sort of legislative framework for pay and industrial relations issues, severe industrial unrest and disruption might follow. This could create inflationary pressures and hamper economic progress. In response to that concern, the Government carried out a major review of the existing arrangements for the resolution of industrial disputes and the setting of pay rates. That review resulted in the Industrial Relations Act, 1946.

The Industrial Relations Act, 1946

The purpose of the 1946 Act was set out in its long title. It was **"to make further and better provision for promoting harmonious relations between workers and their employers and for this purpose to establish machinery for regulating rates of remuneration and conditions of employment and for the prevention and settlement of trade disputes** ....". The Act was introduced in the Dáil on 25th June, 1946 and passed by the Seanad on 2nd August, 1946.

Central to the Act was the establishment of the Labour Court and the setting out of its general structure and overall procedures. It provided for the appointment of Conciliation Officers. It reformed the Trade Boards system by providing for Joint Labour Committees which were to replace them. Employment Regulation Orders would give legal status to employment conditions agreed by the Committees and approved by the Labour Court. The Act also amended existing provisions for the registration of employment agreements, which would in future be registered with the Court. Joint Industrial Councils, whose object was "the promotion of harmonious relations" between workers and their employers could also be registered with the Court. In short, most of the industrial relations machinery which had functioned under the Minister for Industry and Commerce had been updated and expanded and was now the responsibility of the Labour Court. Apart from providing for legally-binding decisions concerning Joint Labour Committees, Employment Regulation Orders and Registered Employment Agreements, the 1946 Act took a voluntarist approach to industrial relations issues. It effectively enshrined in law the principle of free collective bargaining.

The Minister responsible for steering the Act through the Oireachtas was Sean Lemass. During the passage of the legislation through the Dail, he acknowledged the Government's concern at the prospect of the removal of the controls on pay **"being interpreted as meaning**

that it is no longer necessary to be concerned with the reaction of wage rates on price levels". However, the Government was anxious **"to widen the field of responsibility so that the course to be followed, particularly in relation to a matter of such intimate personal concern to individuals as the wages of workers, will not merely be the responsibility of Government, but of everybody whose actions can affect it".**

Again, during the same debate, he said that responsibility for **"keeping industrial conditions in relation to public interests can now.....be safely shared with workers' trade unions and with employers and it is in that spirit that it is proceeding".** There was one concession to the Government's concern regarding the removal of pay controls, and that was included in the Bill as part of the Labour Court's terms of reference and included in the Act.

Section 68 of the 1946 Act required the Court, having investigated a dispute, **"to make a recommendation setting forth its opinion on the merits of the dispute and the terms on which, in the public interest and with a view to industrial peace, it should be settled**

Fundamentally, however, the Labour Court would be a voluntary dispute-settling agency. The question of possible conflicts in deciding between what is acceptable to the parties in a major dispute and what might be regarded as contrary to the public interest was left to the Court itself to deal with. It was something which had the potential to put the Court into an a difficult position, particularly when dealing with some major disputes. The Court referred to this in its first annual report, when it noted that "considerations" which it had to take into account in its deliberations "may not always be compatible with one another". The "public interest" reference remained in the Act until 1969.

Overall, and in contrast to what had been in place prior to 1946, the Act provided for the prospect of a consensus, if not a partnership, between what are now known as the Social Partners - the Government, employers and the unions. It was also a practical response to the various views at the time as to what the Act should have contained. Those who had argued that Labour Court awards should be binding, however, had lost the argument.

The First Labour Court

The Labour Court held its first meeting on 23rd September, 1946. Its first premises were located at 3 Lower Ormond Quay, but most of its hearings were held in the Court room of the Controller of Industrial and Commercial Property at 45 Merrion Square. In May, 1947, it moved to "temporary accommodation" in Griffith Barracks, moving on to the Department of Labour premises in Mespil Road in 1966. It moved to its present premises, Tom Johnson House, in Haddington Road in 1983.

The first Labour Court consisted of a Chairperson, Deputy Chairperson, two Employers' Members, two Workers' Members and administrative staff.

The Chairperson, Ronald Mortished, had an interesting background, having been a civil servant, a trade union and Labour Party official, and had worked for the International Labour Organisation in Geneva and Canada. The Deputy Chairperson was Francis Vaughan Buckley, a Senior Counsel who had considerable recent experience of chairing the emergency wage tribunals during the war.

The Members of the Court were, as they are today, nominated by their relevant organisations at the time - The Federated Union of Employers in the case of the two Employers' Members, and the Congress of Irish Unions and the Irish Trade Union Congress respectively in relation to the two Workers' Members. The

Employers' Members were Peter McLaughlin and William McRae Bruce and the Workers' Members were Cathal O'Shannon and Tom Johnson (after whom the building currently housing the Court is named). The first Registrar, James Geary, was appointed to another post in the Civil Service only four months after the Labour Court came into operation. He was replaced by Myles Gavagan.

At its first public meeting, the Court issued a statement which stressed its independence. It went on to say that the Labour Court was **"not an ordinary Court of law. But it is a Court - a court of reasonableness and fair dealing and of as high a degree of social justice as circumstances permit us to attain".**

From its earliest days, the Court often operated in two Divisions, each comprising the Chairperson or Deputy Chairperson, one Workers' Member and one Employers' Member. The first Recommendation, issued by the Court on 10th October, 1946 and signed by Ronald Mortished, concerned a dispute at CIE which had led to a work stoppage. Whether or not the Recommendation was accepted is not recorded in the Court, but I think we can safely assume that the dispute was settled!

The early years were difficult for the Court. It was a newly-established agency, and had to find its way in an area where the relationships between the parties it was dealing it were often strained. Yet it had, in effect, to oversee the transition from compulsory wage restrictions to free collective bargaining in a period of economic and industrial instability. Its work was not made any easier by a number of serious strikes in 1947 involving major services, including transport, banking and gas. However, in late 1947 the Court initiated discussions with employers and trade unions which resulted in a general pay agreement the following year, and which brought relative peace to industrial relations for a period.

During its first year (September to September), the Court issued 100 Recommendations. In the same period, 166 disputes were referred to conciliation. As a matter of interest, the corresponding figures for 1995 were: 624 Recommendations (and other decisions) issued by the Court and 1,692 disputes referred to conciliation (in the Labour Relations Commission).

From 1949 to the early 1950s, the Court had a difficult time yet again, having found itself involved in a number of controversies. However, in its early years it had achieved the major tasks of completing the transition to reasonably orderly free collective bargaining and of seeing to the negotiation of the first national pay agreement in 1948.

During the 1950s, the pay round system was established and proceeded - often unevenly in some sectors - with sporadic problems arising for the Court. In 1959, however, and during the first years of the 1960s, a series of major disputes involving petrol distribution, transport, cement and electricity led to increasing criticism of the Court. In several of the disputes, Ministerial intervention was considered necessary. The nature of the Court's role was coming under scrutiny, and a review of the Court and the industrial relations machinery was initiated by the Department of Industry and Commerce. In April, 1961, the Minister (Jack Lynch) promised a review of the industrial relations machinery. In fact, a review had started in 1959, following a strike affecting petrol distribution. The review was lengthy and detailed, and involved wide consultations. Those consulted included the Court and its chief officers, and the Department of Finance.

In 1967, employers decided to negotiate on a firm-by-firm basis and seek two-year agreements. However, major strikes continued to occur, including a dispute in the ESB which led to the Special Provisions Act, 1966 under which some picketers were imprisoned. The Act was repealed in 1969, the year that also saw the first significant amendment to the 1946 Industrial Relations Act.

The Industrial Relations Act. 1969

When the legislation that was to become the 1969 Act was originally proposed, the Government intended to tighten up on the free collective bargaining element by turning Labour Court investigations into arbitration. Strikes in breach of awards emerging from these investigations would not enjoy the protection of the Trade Disputes Act, 1906. The Court's arbitration functions would be augmented by panels of people qualified in economic, legal, social or industrial matters.

Members of the Court would no longer be nominated by Employers' and Workers' organisations, although these would be consulted. The Court's terms of reference, set out in Section 68 of the 1946 Act, would be amended to require the Court to consider "the national interest in the economic field".

By the time the 1969 Act had reached its final stages in the Dáil, all of these proposals had been abandoned. One surprising provision was the removal of the "public interest" reference from Section 68 of the 1946 Act. These were the main provisions of the new Act:

- it allowed the Minister to appoint an additional (third) Division to the Court;
- a superannuation scheme was set up for Court Members;
- Conciliation Officers became Industrial Relations Officers;
- Court investigations would be held in private or, on request, in public;
- Court Members could be appointed to arbitration boards;

- the Court could make fair employment rules;

- a Rights Commissioner Service would be set up - appeals of their Recommendations under the Act would be heard by the Labour Court;

- the Court would, except in exceptional circumstances, only conduct an investigation under Section 68 of the 1946 Act where a dispute had already been through conciliation (however, where the workers or both parties agreed to be bound by the Court's Recommendation, a dispute could be heard under Section 20 of the Act without having been through the conciliation process);

- the reference to "the public interest" was deleted from Section 68 of the 1946 Act.

The 1969 Act was the last piece of legislation to make major changes to the industrial relations machinery for twenty-one years. There was one Industrial Relations Act, in 1976, which provided for the appointment of additional Divisions to the Court, and brought agricultural workers fully within the scope of the Legislation, which also provided for the setting up of an Agricultural Joint Labour Committee.

Access to the Labour Court

A notable feature of the 1946 Act was the number of groups which were prevented from having access to the Labour Court. These were placed outside its jurisdiction by being specifically excluded from the definition of "worker". Eight categories of worker in all were excluded. These were:

- a person who is employed by or under the State,
- a teacher in a secondary school,

- a teacher in a national school,
- a person who is employed by a local authority in any office or employment,
- an officer or servant of a vocational education committee,
- an officer or servant of a committee of agriculture,
- an officer of a school attendance committee,
- an agricultural worker, within the meaning of the Agricultural Wages Act 1936.

These exclusions gave rise to great opposition during the passage of the legislation through the Dáil. Only one concession was made at the time.

For the purposes of Part 6 of the Act, which dealt with trade disputes, agricultural workers would be considered "workers" for the purposes of the Act. This meant that they would have access to the Court's dispute-settling services, but they could not use its wage-fixing facilities, which remained the responsibility of the Agricultural Wages Board. This remained the position until 1969, when the Industrial Relations Act of that year brought them more fully within the scope of the Court's services.

The exclusion of public service workers was also particularly controversial. These represented a significant proportion of workers. However, the view of the Government was clear and unyielding. It would not give public service workers access to the Court for the following reason: In paying public servants, the Government was acting on behalf of the citizens of the State as their agent. Any dispute over the pay of public servants would not simply be a dispute between the Government as employer and public servants as employees. It would be a dispute between the community - the taxpayers - and the public servants. It would not be acceptable to pass responsibility for dealing with the pay demands of public servants - which would involve the question of taxation - to any tribunal such

as the Labour Court. This was exclusively the province of elected representatives.

The position regarding public servants was modified during later years. In addition, a trial scheme of conciliation and arbitration for civil servants was introduced in 1950 and was made permanent in 1955.

Schemes were introduced for national teachers in 1957, for employees of county committees of agriculture in 1961 and for Gardaí in 1962. A scheme for local authority staffs was introduced, after a long period of negotiation, in 1963.

In 1955, a short Act - the Industrial Relations (Amendment) Act -extended the dispute-settling services of the Court - but not the wage-fixing machinery set out in the 1946 Act - to the "servants" of local authorities, vocational Education Committees and county committees of agriculture. Health inspectors, psychiatric nurses and certain public assistance officers were also added to the list. The 1955 Act also enabled the Government to extend, by Order, access to the Court's dispute-settling services to any class of local authority officer specified in the Order. The 1955 Act was later consolidated into the 1969 Act. The definition of "worker" was subsequently replaced by a new one in the 1990 Act.

The Anti-Discrimination (Pay) Act, 1974 and the Employment Equality Act. 1977

The two pieces of equality legislation in 1974 and 1977 marked a new direction for the Labour Court. Up to then, the only legally-enforceable decisions the Court was required to make related to Registered Employment Agreements, Joint Labour Committees and Employment Regulation Orders. These decisions related, in the main, to interpretations of, or non-compliance with matters that had already been agreed and endorsed with the seal of the Court. The equality

legislation, which gave legal effect to the equal pay and equal treatment Directives of the EEC (now EU), was a radical departure from that. For the first time, the Labour Court was deciding on matters of rights, regardless of any agreements, and its decisions would have the force of law. It was moving into the area of prescribed, rather than agreed, rights.

The first of two Acts, the Anti-Discrimination (Pay) Act, 1974, required that men and women employed on "like work" by the same or an "associated" employer, be paid the same rate of remuneration. It established the new post of Equal Pay Officer, and the holders of this post would operate from the Labour Court. Complaints of discrimination in relation to pay under the Act would be investigated by an Equal Pay Officer, who would issue a Recommendation. That Recommendation could be appealed to the Labour Court and the Court's Determination could be appealed, on a point of law, to the High Court. Despite the year of the Act, it did not come into operation until 31st December, 1975.

The 1977 Employment Equality Act was much broader in scope and posed a particular challenge for the Court at the time. It outlawed discrimination in employment, both directly and indirectly, on the grounds of sex and marital status.

It is interesting to note that pay discrimination on the grounds of marital status was not prohibited by the 1974 Act, and that position remains unchanged today. However, it will be outlawed under the provisions of the Employment Equality Bill, which is currently before the Dáil.

The 1977 Act changed the title of Equal Pay Officer to Equality Officer, but they still remained officers of the Labour Court. Complaints of Discrimination would be addressed to the Court itself, which would decide whether the case should be referred to an Equality Officer for a recommendation or to an Industrial Relations

Officer of the Court to try to settle the matter through conciliation. In practice, the Conciliation Service was rarely used under the 1977 Act. Again, an Equality Officer's Recommendation could be appealed to the Labour Court for a Determination which, in turn, could be appealed to the High Court on a point of law.

The 1977 Act also established the Employment Equality Agency, whose functions were:

- to work towards the elimination of discrimination in relation to employment,

- to promote equality of opportunity between men and women in relation to employment, and

- to keep under review the working of both the 1974 and 1977 Acts and, whenever it considered it necessary, to make proposals to the Minister for amending either or both of the Acts.

The extension of the Labour Court's range of functions to include responsibility for the employment equality legislation set a number of new challenges for the Court. The first requirement was to arrange with the (then) Department of Labour to appoint Equal Pay/Equality Officers to carry out investigations and issue Recommendations. Prior to the appointment of Equal Pay Officers, claims for equal pay had been investigated by an Equal Pay Commissioner, who was an officer of the Department of Labour. This arrangement had been provided for in the 1972 and 1974 National Agreements. The Commissioner investigated each claim and submitted a report to the Labour Court and the parties. If the parties disagreed with the conclusion, the Court would make a final Determination.

It is interesting to note that during their first year (they were appointed on 27th February, 1976) the Equal Pay Officers were able to resolve eight cases without issuing formal Recommendations, and

that only in three cases were Recommendations issued during that period. That approach - applying the principle of conciliation - was not provided for in the 1974 equal pay legislation but, as I have mentioned, it was included as a rarely-used option in the 1977 Act in relation to equal treatment cases.

It was in 1978 that the Equality Service acquired a distinct identity within the wider organisation of the Labour Court, with the appointment of a third Equality Officer and support staff for the Service. Up to then, Equality Officers had to rely on access to the staff of the Labour Court and the Department of Labour.

While the impact of the equality legislation was immediate in relation to the work of Equality Officers, it was more gradual in relation to the Labour Court which dealt, in the main, with appeals of their Recommendations. The 1977 Act provided that cases which involved alleged dismissal would not be heard by Equality Officers but would go directly to the Court, but these did not feature in the early years of the Act.

The full impact of the 1974 and 1977 Acts began to be felt by the Court in 1978, when it heard nineteen appeals, issuing thirteen Determinations. In its annual report for that year, the Court noted that **"A feature of these appeals is the extent to which the Court finds itself involved with legal aspects of its actions and its decisions thus depriving it of the flexibility which it enjoys when dealing with cases referred to it under the Industrial Relations Acts. It also means that the cases take up more time and that the decisions take longer to reach".** In the same report, the Court also mentioned that it had to take legal advice on one equal pay case, with the result that each individual's claim must be considered as a separate issue. In fact, after due examination it was able to apply a determination to a group of named workers. However, this was an indication of the type of complex issues that were to lie ahead in this area. Similar comments were made in relation to the equality

legislation in subsequent annual reports, the most recent being in the 1994 report. The 1995 report also comments on the complexity of cases and the increasing length of time required to investigate them, but it is referring now to cases under the Industrial Relations Acts as well.

I mentioned that equality cases concerning alleged dismissal did not feature during the early days of the legislation. It was really not until the 1980s that discriminatory dismissals - constructive and otherwise - came to notice. One particular case at that time established an important precedent for the Court. In 1985, the Labour Court issued a Determination to the parties in a case that had been referred to it under Section 27 of the 1977 Act. That Determination, which was kept confidential by the Court, nonetheless received widespread publicity, details having been released by another source. The case involved a young woman who, having suffered continuous sexual harassment, felt that she had no option but to leave the job. The Court determined that she had been constructively dismissed and awarded her compensation. This was a landmark case for the Court -and for workers and employers - because it established that, in the words of the Court **"freedom from sexual harassment is a condition of work which an employee of either** sex **is entitled to expect".** That particular case - and the publicity that surrounded it -had a very positive effect. It made people aware that sexual harassment existed, that it was unacceptable, and that redress was available to those who suffered it. Since then, many workers have taken cases concerning sexual harassment to Equality Officers and, where a dismissal has been alleged, to the Labour Court.

There is a European dimension to the work of the Labour Court in relation to its equality functions. The Court is the competent authority to which employees have access in the first instance to assert their rights under the equal pay and equal treatment Directives of the European Union, through the 1974 and 1977 Acts. The Court

has therefore to take account of relevant developments in Europe when considering cases referred to it under this legislation.

I should also mention that the Labour Court has some functions under the equality provisions of the Pensions Act, 1990. However, no cases have yet been referred to the Court under the Act.

The Structure of the Labour Court

At this point, I would like to talk about the structure and procedures of the Labour Court as set out in the 1946 Act. These are virtually unchanged today.

As I mentioned earlier, the first Labour Court consisted of two Divisions, with supporting staff providing the conciliation and administration services. The Court also had a Registrar - the Court's legal adviser - who is required under the 1946 Act to be a practising barrister or solicitor of not less than ten years' standing.

The number of Court Divisions has varied according to the workload of the Court. A third Division was added in 1973, and a further one in 1980. In 1992, with the retirement of two Members, and a Deputy Chairperson the following year, the number of Divisions was reduced again to three. The appointment of the Chairperson and Deputy Chairpersons is a matter solely for the Minister - originally the Minister for Industry and Commerce, then Labour, and now Enterprise and Employment. Members are, as I mentioned earlier, nominated by employers' and workers' organisations and appointed by the Minister. The post of Chairperson is full-time, and the Deputy Chairpersons and Members must be available to the Court at all times. The normal period of office for Members is three years, though the Minister may make an appointment for a shorter period. Members may be re-nominated and appointed for a further term of office. They are precluded from holding office in a trade union or employer organisation during their membership of the Court. Equally, they may

not hold any other office or employment which would prevent them from being available at all times for the work of the Court. The role of what the 1946 Act describes as the "ordinary" Members - that is, the Workers' and Employers' Members - in relation to their nominating bodies was set out by Seán Lemass during the Dáil debate on the 1946 Act. They were not, he said, delegates of their nominating organisations - having ended their membership on joining the Court. Their role was to represent the workers' or employers' point of view and to assist the Court in arriving at commonsense decisions on the basis of their own judgement.

The decision-making process of the Court was set out in the 1946 Act, and this is how it still applies today. Where a Division of the Court is considering a question, the agreement of the Members is required for a Recommendation or other decision to be issued. If the Members do not agree, the Chairperson of the Division will make the decision. In practice, however, all decisions issued by the Court, whether they are Recommendations, Determinations or other decisions, are unanimous. There may be vigorous discussions in the course of arriving at the decisions, but the final document has always been agreed by the members of the Division. The Labour Court has never issued a minority report with any of its decisions. Some issues, mainly those relating to policy or procedural matters, are put to a meeting of the full Court for a decision. In those circumstances, the decision is taken by a majority of the ordinary Members. If they fail to agree, a majority of all Members, that is, the Workers' and Employers' Members and the Deputy Chairpersons, decides the issue. If agreement is still not possible, the Chairperson makes the decision.

All Members appointed to the Court have experience which is relevant to their roles. Employer Members usually have a management background with experience of personnel and industrial relations matters. Workers' Members usually have a trade union background. Chairpersons and Deputy Chairpersons are usually appointed from the same backgrounds as the ordinary Members. The

wide range of experience brought to the Court by the Members provides it with the high level of expertise it needs to function effectively.

Sometimes issues will arise for which the Court requires external specialist advice to enable it to make an informed decision. The 1946 Act anticipated this by the inclusion of a provision in Section 14 which enables the Court to "appoint technical assessors to assist matter relating to proceedings before the Court". The Court has appointed assessors on a number of occasions, particularly during the 1970s and 1980s, usually to carry out technical assessments arising from "inability to pay" and similar clauses in national agreements.

Developments leading to the 1990 Act

In May, 1978, the Minister for Labour appointed a Commission of Inquiry on Industrial Relations. It was given broad terms of reference covering employer bodies, trade unions, collective bargaining, statute law, institutions, structures and procedures, and was chaired by Séamus O'Conaill, a retired Secretary of the Department of the Public Service. The membership consisted of five employer nominees, five nominated by trade unions and five by the Minister. The Court was not invited to provide a nominee.
The Labour Court made a formal submission to the Commission and followed this up with detailed discussions. It stressed its commitment to free collective bargaining, though it was unable to offer a unanimous view on the question of changes in statute concerning industrial relations. The Court also stressed the importance of its independence. It drew attention to its increasing workload and argued for the provision of additional trained staff within the Conciliation Service to provide an advisory service on industrial relations. This service would be available to firms and unions

The Commission completed its report in July, 1981. It did so despite the permanent withdrawal of the five trade union nominees in July, 1979 in protest against the Government's failure to amend the Trade Disputes Act, 1906 to cover industrial action in disputes which did not come within the term "trade or industry".

The Commission's report was wide-ranging, covering the whole field of industrial relations procedures, institutions, practices and personnel and legislation. A number of recommendations directly concerned the Labour Court. These were:-

(1) The Labour Court and the Employment Appeals Tribunal should be replaced by a Labour Relations Board and a Labour Relations Court. The Board would include:

- a Labour Tribunal to investigate disputes and issue non-binding recommendations

- a Conciliation Service

- a Rights Commissioner Service and an Equality Service (The Rights Commissioner and Equality Services would be independent of the Board).

The Labour Tribunal would be responsible for the arbitration functions under the public service conciliation and arbitration schemes. The Labour Relations Board would prepare industrial relations codes of practice, leading possibly to mandatory fair employment rules, to be made by the Labour Relations Court. The membership of the Board and the Tribunal would be similar to that of the existing Labour Court.

(2) The Labour Relations Court should undertake all appellate functions involving binding Determinations under the Industrial

Relations, Redundancy Payments, Equality and Unfair Dismissals Acts.

(3) Industrial Relations Officers should be recruited from the Civil Service generally.

(4) There should be strict time-limits on conferences, investigations, recommendations and determinations by the Tribunal, the Court, Industrial Relations Officers, Rights commissioners and Equality Officers.

A series of discussion documents containing proposals for reform followed - in 1983, 1985, 1986 and 1988. The 1988 proposals, which ultimately formed the basis for the 1990 Act, proposed the setting up of a new agency - the Labour Relations Commission, whose functions would include the Conciliation and Equality Services, which were provided by the Court at the time.

These proposals provoked a critical submission by the Court. In the summary of its submission, the Court said that it **"cannot envisage the setting up of a Labour Relations Commission as establishing an improved dispute settling service to the constituents of the social partners on either qualitative or administrative grounds. It believes that a Commission on the lines proposed would profoundly diminish the effectiveness of the Court by:**

- **Divorcing from it the right to determine the cases it will hear.**
- **Separating from it the conciliation service which has always been regarded as an integral part of the Court.**
- **Constraining the resolution of disputes by semi-legal codes of practice.**

- **Creating an alternative forum for Ministerial referral of significant dispute investigations.**

The Court is of the view that against this background it would be extremely difficult, if not impossible, to replace the present view and acceptance of the Court with the concept of "the Court of last appeal". The Court therefore suggests that the strengthening of the Court structure would provide a better prospect for satisfactory industrial relations in the 90s".

That submission, and the Minister's proposals, were included as appendices to the Labour Court's annual report for 1988. The printing of the Court's annual report was at that time normally arranged by the Department of Labour, and it may not be totally coincidental that the 1988 Labour Court report was not printed and published until 1992!

The Industrial Relations Act. 1990

The Industrial Relations Act, 1990 was passed in July, 1990 after a lengthy debate in the Dáil and Seanad. It provided for a wide range of changes in law relating to industrial relations legislation covering industrial action, trade unions, picketing, balloting, industrial relations procedures and the machinery for dealing with industrial relations matters.

When introducing the Bill in the Dáil, the Minister for Labour, Mr. Bertie Ahern, said that one of the Bill's objectives was to shift the main responsibility for dispute prevention and resolution back to the parties in a dispute. He said that during the era of national agreements, parties to disputes had developed the habit of referring far too many matters to the Court for adjudication and found it difficult to revert back to settling their own problems.

The main provisions in the 1990 Act which related directly to the Labour Court were:

(1) A Labour Relations Commission would be established, under a Chairperson appointed by the Minister, with six ordinary members, two nominated by trade unions, two by employer bodies and two by the Minister.

(2) The Conciliation, Equality and Rights Commissioner Services would be transferred from the Court to the Commission. The appointment of Industrial Relations Officers and Equality Officers would be a matter for the Commission. Rights Commissioners would be appointed by the Minister from a panel provided by the Commission. Appeals against findings by Rights Commissioners and Equality Officers would continue to be dealt with by the Court.

(3) Trade disputes would normally be referred to the Commission and its services in the first instance. The Labour Court would not investigate a dispute unless it had received a report from the Commission that it was satisfied that no further efforts on its part would advance the resolution of the dispute. Exceptions to this were situations where the Commission had waived its conciliation function and the parties requested the Court to investigate the dispute or where the Court, after consulting the Commission, was of the opinion that there were exceptional circumstances for its direct intervention.

(4) The Minister could refer a dispute to the Commission or the Court with a view to its resolution or request an inquiry and a report on the dispute.

(5) Other functions given to the Commission included the drafting of codes of practice, research into matters relevant to industrial relations, assisting Joint Labour Committees and Joint Industrial

Councils, and general responsibility for promoting improvements in industrial relations and providing advice on industrial relations generally.

The Commission was also to review periodically whether new Joint Labour Committees should be established or the remit of existing committees changed or such committees abolished.

The Act also revised certain detailed provisions relating to these committees but did not change materially the powers and functions of the Court in relation to them.

As regards codes of practice, the Labour Court and other industrial relations bodies were required to have regard to these codes, where relevant, in reaching their decisions. The Court was also given functions on the interpretation of codes of practice and the investigation of complaints of breaches of codes of practice.

THE PRESENT

The Labour Court Today

The division of the industrial relations machinery between the two agencies in January, 1991 went smoothly. Much preparatory work had been done between the time of the passing of the Act and the setting up of the Labour Relations Commission on 21st January, 1991. Both organisations continued to share the premises at Tom Johnson House and also the various support services within the building.

The Court adapted quickly to its newly defined role as "court of last resort" in industrial relations cases. The functions central to the Court as an arbitrating body in industrial relations matters and a tribunal in equality issues - had hardly changed. As an agency it had lost two major functions - the Conciliation Service and the Equality Service, but it had, after some discussion with the Labour Relations Commission, retained its functions in relation to servicing Joint Labour Committees and some other, peripheral, functions.

It is interesting to note that the number of cases dealt with by the Court in the years since the 1990 Act came into operation have not varied dramatically. Perhaps surprisingly, they increased during the first three years; however, the numbers referred to the Conciliation Service of the Labour Relations Commission had increased during the period too.

Cases currently coming to the Labour Court cover a very wide range, of issues. The 1995 Annual Report, for instance, mentions that during the year, issues dealt with by the Court included overtime, hours of work, allowances, staffing levels, reorganisation and rationalisation, union recognition and unfair dismissal. A number of cases involved multiple issues.

The Court has found in recent years that the reorganisation of firms and the implementation of survival plans have presented it with some particularly difficult and challenging cases.

Many of these cases arose from the requirement of firms to restructure to meet the growing challenge of competition from within the country and from abroad. The liberalisation of international trade is a growing factor in industrial relations problems. The disputes at Waterford Crystal in 1993, Irish Steel, Packard Electric and Team Aer Lingus in 1994 and various disputes in Aer Lingus this year are high-profile examples of the problems that are involved in trying to adjust to the changing business environment. These disputes, which involved large numbers of employees, had implications for the viability of the enterprises concerned - and of other firms supplying goods and services to them. They required many long hours of hearings by the Court, often over weekends. These were, as I have said, high profile cases, because of the size of the firms involved and the number of people affected. There are also many smaller firms which are involved in similar problems and whose disputes do not receive so much publicity. The Court, of course, gives equal access to its services to the parties in these cases.

It is not often commented on, but access to the Labour Court is free of charge. There are no fees for its services. Neither is legal representation required for the parties in any case referred to the Court. Legal representatives are, however, often present representing parties in hearings under the equal pay and equal treatment legislation.

The Labour Court's view that legal representation is not normally necessary is in keeping with the Court's wish to provide a reasonably informal atmosphere and to minimise the stress on the parties - the Court's clients. It also keeps the expenses of the parties to a minimum.

The wish to keep its services accessible, informal and free of expense is reflected in the current Mission Statement of the Labour Court. This statement, which was first issued in 1994, sets out the objectives of the Court quite succinctly. These are **"to find a basis for real and substantial agreement through the provision of fast, fair, informal and inexpensive arrangements for the adjudication and resolution of trade disputes".**

I have mentioned that the Court has recently repeated its comments about the increasing complexity of the cases being referred to it. Bearing in mind that most industrial relations cases reach the Court only after being through the conciliation process, it can be expected that the more straightforward issues are filtered out at that stage. Only the more difficult and complicated ones, for which conciliation was unable to achieve a settlement, would be expected to reach the Court. The Court has, however, noticed an increase in the number of cases being referred directly to it under Section 20 of the 1969 Act, which enables the parties to bypass the conciliation process in return for an advance undertaking by the workers or all parties to accept its Recommendation.

This avenue to the Court is widely used in disputes concerning negotiating rights - particularly the issue of union recognition - but more recently the range of issues has broadened to cover those more usually dealt with by conciliation in the first instance. It is not immediately clear why this should be so and whether it is simply a short-term development, but it may be that it arises from a growing requirement for "instant" service, or at least an early hearing of the cases concerned. Section 20 of the 1969 Act requires the Labour Court to give priority to such cases.

Cases under the 1974 equal pay and 1977 equal treatment legislation have also become more complex. These Acts have been in operation for a long time now, and the basic principles for which they provide are well established. It is matters such as indirect discrimination and

job-sharing that involve the Court in difficult legal issues. The issue of job-sharing in two equal pay appeals, for instance, has given rise to a series of questions which the Court has referred to the European Court of Justice for its ruling under Article 177 of the EEC Treaty. These will be heard in Luxembourg on 10th December, 1996.

The Labour Court has also noticed an increasing readiness by parties to refer equality cases for judicial review following Determinations by the Court. Judicial reviews are broader in scope than appeals to the High Court on a point of law, as provided for in the 1974 and 1990 Acts. In a judicial review, the whole procedure followed by the Labour Court in a particular case comes under examination. However, few have been referred back to the Labour Court following judicial review, and the procedures of the Court have remained generally intact and unchanged.

THE FUTURE

Possible Developments

Now, as the Labour Court now faces into its second half-century, we might ask: how will it develop? Will there still be a place for it in the year 2046?

Like every other agency providing a service to the State and its people, the future of the Labour Court depends on three main things: the policy of the Government of the time, whether there is a need for its services and, if so, whether it can meet the demands of its "clients".

Proposed New Legislation

As far as Government policy is concerned, the Labour Court has had the support of successive Governments since its establishment in 1946, and there is no indication of any weakening of that support. In fact, further statutory functions are planned for the Labour Court. The effect of these will be to increase, probably quite considerably, the demand for the services of the Court.

The Employment Equality Bill, which was published this year and is currently before the Dáil, proposes a radical widening of the scope of the existing equal pay and equal treatment legislation. In addition to the present prohibition on discrimination on the grounds of sex or marital status, the Bill proposes to ban discrimination on the grounds of family status, sexual orientation, religious belief, age, disability, race, and membership of the travelling community. The Bill itself is complex, and will add considerably to the Court's equality functions.

A new Equality Authority will be set up in place of the Employment Equality Agency and all cases except those involving dismissal will be

referred to that Service. Appeals and cases involving alleged dismissals will be heard by the Labour Court, although the Bill as presently drafted provides that they may, as an alternative, be submitted to the Circuit Court.

During its passage through the Oireachtas, there will no doubt be amendments to the Bill, and it is not yet clear how it will look in its final form. What is clear is that the Court will have to develop its resources and extend its bank of knowledge and experience in equality matters to meet the challenge of this major extension of the equality legislation.

Another new piece of legislation, which the Labour Court will have a major role in implementing, is the proposed Working Time legislation. This legislation will give effect to the EU Working Time Directive.

- The Directive provides for:
- holiday entitlements of 20 days
- a minimum period of 11 hours' rest per 24-hour period
- a rest break when 6 hours have been worked
- a minimum uninterrupted 24-hour rest period per week
- a maximum weekly working limit of 48 hours, and
- a maximum of 8 hours' night work in any 24-hour period.

The provisions of the Directive are contained in the Organisation of Working Time Bill, which has just been published. Two of the Bill's

main provisions directly relate to the Court and will add to its functions.

These provide that:-

- a range of derogations or exemptions may be made at firm, workplace or sectoral level by collective agreements. These agreements must provide for equivalent compensatory rest periods and are subject to their being approved by and deposited with the Labour Court.

- employees who believe that they have not been given their statutory entitlements under the legislation may take their case to a Rights Commissioner for adjudication, with a right of appeal to the Labour Court. These entitlements will include those provided for under the Holiday (Employees) Acts, which are being incorporated into the legislation.

The extent to which this legislation will increase the Court's workload can only be guessed at present, but it is likely to be considerable in the medium term. While the EU Directive has direct effect from 23rd November, 1996, the Labour Court will not have a role in implementing its provisions until the legislation is passed and has come into operation. The present indications are that this will be early next year.

The restrictions to be imposed by this legislation, if it is passed as presently drafted, may not be welcomed in some areas of employment where high levels of overtime are the norm. It is possible that difficulties will arise in those areas when the time comes to implement the legislation. This gives rise to the prospect of these problems being referred to the Labour Court as disputes to be investigated under the Industrial Relations legislation!

Meeting the Demands of Clients

The clients of the Labour Court comprise all workers and employers not specifically excluded from the pieces of legislation under which the Court operates. Before considering how the Court might meet the demands of its clients in the future however, we might ask: how well does it do so now? The answer, I think, must be a positive one. Any feedback that has reached the Court indicates that those who use its services are, on the whole, satisfied with the service they have received.

Because of the nature of its work, the Labour Court cannot satisfy everybody - there must be some winners and some losers in its Recommendations and, more particularly, in its Determinations under the equality legislation - but in most of its work, the Court promotes the spirit of compromise, and in the majority of cases, this approach works well. An indication of how successful it is in achieving this can be seen in the results of a limited survey undertaken by the Court in 1994 and described in its annual report for that year.

The survey covered a sample of Recommendations issued under Section 26(1) of the 1990 Act - cases which had been referred to the Court from the Labour Relations Commission. Of the 75 Recommendations covered, 63, or 84%, had been accepted by both parties. Seven, or 9%, were accepted only by the employer and rejected by the union or workers, and only three, or 4%, were rejected by both sides. No information was available in relation to the two remaining cases. The extent of the survey was, of course, limited, but it can be taken as a reasonable indicator of the level of satisfaction experienced by those who use the services of the Court. There is no reason to believe that this will not continue in the foreseeable future.

There are, of course, many factors which may affect the future direction of the Court. Changing work practices, new employment

contracts, increasingly sophisticated approaches to personnel and management methods - these will all impact on the work of the Court.

The ever-increasing rate of change underlines the continuing need for the Court to keep abreast of developments in both the industrial relations and equality fields, both here and abroad - particularly within the European Union. Information technology wilt also feature strongly in the future. The Labour Court itself was something of a pioneer in this field. In 1987, it made its database, containing the text of Recommendations and Determinations issued since 1985, available to organisations which had the necessary computer equipment to access it by phone, and a considerable number of organisations, private and public, have availed themselves of this facility. A new computer system was installed in the Court earlier this year, allowing for improved facilities to those who can access the system. Like all other services provided by the Court, this also is free of charge.

Rapid changes are taking place in the field of information technology. Having led the way by being the first organisation in the public service to allow access to a public database over the telephone system, the Court must continue to examine how it can make full use of this technology to serve the future needs of its clients.

Suggestions for Change

In July, 1995, a document entitled "Managing Change" was submitted by a review group to the Biennial Conference of the Irish Congress of Trade Unions. Among its proposals was the provision of additional resources for the industrial relations institutions, including the Labour Court, for dealing with disputes consequent on investment proposals, business and marketing strategies and production systems. Discussions were also proposed on the introduction of mandatory third-party machinery in processing industrial disputes on issues of interests (as distinct from issues of rights). The Conference asked the

review group to prepare an Action Plan on the implementation of its recommendations.

In April, 1996, the Labour Relations Commission published a document entitled "Improving Industrial Relations - A Strategic Policy". The document includes suggestions for having certain types of disputes which are currently dealt with by the Labour Court referred to Rights Commissioners. It also includes suggestions for the discussion of measures to strengthen the position of the Court as the forum of "last resort" in industrial disputes and touches on the possibility of making Labour Court Recommendations binding.

The question of mandatory third-party machinery is one that requires a very cautious approach. It may work successfully in the context of local or national agreements, but as a statutory requirement it might be counter-productive in that it might add pressure to existing tense situations. This would need to be widely debated before a decision is made on any proposals to introduce it into industrial relations in Ireland.

Even more controversial would be the prospect of all Labour Court Recommendations being binding. This would run directly against the present - and, it is true to say, successful - system of free collective bargaining. The implementation of such a concept itself would require a consensus between the Social Partners and that is not likely to happen in the foreseeable future.

There is a valid argument, however, for some decisions by the Labour Court under the Industrial Relations Acts, to be made legally binding, and a move to make the necessary changes to the legislation would be welcomed by the Court. I am referring specifically to the Court's decisions on appeals of Rights Commissioners' Recommendations, and also to the Court's Recommendations under Section 20 of the 1969 Act. Section 20 Recommendations are issued in cases where the workers or their union, or both parties, have agreed in advance to

accept the Court's Recommendation. While in both cases the Court's decisions are binding, their legal enforceability is in doubt, as there is no provision in the legislation to enforce them. This has never been tested, so they have remained no more than "morally" binding in practice.

As far as the role of the Labour Court as the "Court of last resort" in industrial relations cases is concerned, the Court has no difficulty with that. However, that role has to be accepted as such by all concerned. Once the Labour Court has become involved in a case, the outcome should remain the property of the Court - that is, any Recommendation issued by the Court should be the final word. The parties may wish to negotiate further on the basis of the Recommendation, or even refer questions arising from it to the Court, but there must be a general acceptance that no other party will try to "adjust" the Court's Recommendation.

The immediate future holds the prospect of a successor to the current Programme for Competitiveness and Work, which expires at the end of the year. Whether or not there will be a new national agreement and, if so, what it will contain and whether it will provide specifically for a role by the Court remains to be seen.

Recent national agreements have brought periods of welcome industrial relations peace and stability, and these are unquestionably desirable from the point of view of workers and employers and the economy.

If the experience of partnership at national level through the development of national wage agreements, the PESP, the PCW (and whatever is to follow) is to translate into the workplace (and the indications are that the "new PCW" will have a much stronger emphasis on workplace partnership) then the culture of introducing continuous improvement and change, without every piece of change being held up to ransom, will have to become the norm. If this is to

be the case (and it will have to be if Irish companies are to remain competitive) then different systems of reward and recognition will also have to emerge. The Labour Court will have to keep abreast of these developments and become (more) expert in these new reward systems which will accompany new forms of work practice.

If the workplace partnerships invest in developing the appropriate new skills for negotiating and implementing continuous improvement and change, the work of the Court will remain that of one of final appeal on unresolved issues or disputes. As these new reward systems develop the Court will no doubt find itself involved investigating and recommending on a new range of complex reward systems. This is part of our challenge to change and remain effective for our clients into the next century.

Conclusion

During the past fifty years, the Labour Court has been a central national agency - it could even be described at this stage as an institution - serving the State by promoting industrial peace and, more recently, applying the principle of equal rights in employment. It has seen and participated in many changes during the period. Some changes have resulted from legislation; some are due to its own initiatives.

The ability of the Court to continue to provide its services depends not only on those who work in and for it, but also on the confidence of the public, and particularly, those who use its services directly -workers and employers.

That confidence and respect have been strong for many years, and will, I believe, continue. The Court does not usually publicise its work, preferring to deal only with the parties concerned in its work and not seeking contact with the media. This has proved to be the most effective way of going about its business, much of which concerns sensitive issues, and helps to maintain the integrity of the Court.

In its first fifty years, the Labour Court has issued as many as 19,000 Recommendations and other decisions directly involving perhaps 1.7 million people and indirectly involving many more. During that time, it has shown its flexibility and that it can adapt to the changing demands on its resources. These demands are constantly changing due to developments in various areas: economic and social, legal and political, and many more. Looking back at its work over the past fifty years, I think it is true to say that the Labour Court has achieved a great deal in the development of the dispute-settlement process in industrial relations in Ireland and the establishment of a body of case law in equality issues. Will it continue to do so over the next fifty years? I think that it will.

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