Labour Court outlines approach to pay disputes, role as 'court of last resort'

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**In its latest posts on LinkedIn, the Labour Court explains how it deals with pay claims, as well as highlighting the factors that pave the way for successful IR dispute resolution.**

The Court's approach to pay claims brought before it is to generally recommend pay increases where "justifiable and sustainable." However, a pay recommendation from the Court "can never be interpreted as a reflection of what the Court believes to be an appropriate pay rate, simpliciter."

The Court "does not, of its own volition, engage in analysis and consideration of economic data and form a view as to what level of pay increase is appropriate in the economy generally at any given time."

To emphasise this point, the Court posed the scenario that were it to be asked, what increase is the Court recommending these days … what's the going rate from the Court? the answer is, "quite simply, there isn't such a thing."

Neither does the Court engage in research and compile and maintain data on pay rates, to be consulted when deciding on a recommendation.

While the Court is aware of trends in pay determination in the economy generally, it does not set rates of pay, "but rather it assists parties by giving its opinion as to how their pay dispute should be settled."

When parties seek the Court's opinion as to how their pay dispute should be settled, the Court considers that particular pay dispute on its own merits, "having regard to, and only to, the information and arguments advanced by the parties and the particular circumstances applying in that employment."

**TYPICAL POINTS MADE**

The Court listed the following types of arguments that are typically made by the parties in pay claims at the Labour Court:

- The economic, commercial and competitiveness circumstances of the employer, including inability/ability to pay;
- Detail of comparable pay settlements outlined by one or both parties within the relevant sector of the economy or geographical area;
- Detail of other grade, group or category pay settlements within the employment or a related employer, as outlined by one or both parties;
- Pay progression and bargaining history within the employment, including matters such as periods of pay pause, periods of retrenchment;
- The employer's pay position relative to the market as contended for by one party or the other;
- Any other enterprise or industry-specific matter one side or the other submits as being relevant.

By the time the parties get to the Labour Court, they will usually "have a high level of familiarity with each other's positions." Nevertheless, the Court will want to "understand the parties' views of each other's positions, including the potential impact of the union's claim on the economic and commercial circumstances of the employment and the impact of the employer's position on the circumstances of the workers making the claim."

Only when it has a full understanding of the positions of the parties, "together with a level of insight into the potential impact any recommended pay increase might have, will the Court be in a position to formulate a recommendation which is reflective of the particular circumstances of the employment which has come before it."

**'Court of last resort'**

In a separate post, the Court also explained its role as a final arbiter in industrial relations, where all else has failed – the industrial relations "Court of Last Resort."

It says that where it has been successful in assisting parties to resolve their dispute, it has been where the parties have done (in the words of the Minister for Labour in 1969, Patrick Hillery) "their level best" to reach a settlement before coming to the Court and have volunteered to jointly seek the Court's opinion "for the genuine purpose" of achieving a resolution.

A key characteristic of its recommendations, the Court says, is that it represents the Court's "best estimation of what is likely to settle the dispute between the parties."

For this to happen, a resolution to the dispute needs to be "within reach" and that there are terms of resolution "that are likely to be acceptable to the disputing parties".

The Court notes that sometimes parties come before the Court where landing a resolution is still a distant prospect and any recommendation it might make, "will not bring the intended finality to the dispute."

When disputes are capable of being resolved, "there will generally be certain factors or conditions present such that the parties are in a state of readiness for a third-party solution."

The Court listed the following conditions that build a foundation for its input to help bring about a resolution:

The parties have utilised their agreed procedures; engaged on the issues in a genuine fashion; agreed on the facts; understood each other's position and associated rationale; explored solutions; and jointly requested the Court's opinion.

Where these factors are not present, then a dispute "has not reached the stage of required readiness" and the Court's intervention "will not bring finality."