PDFORRA

PERMANENT DEFENCE FORCE
OTHER RANKS REPRESENTATIVE ASSOCIATION

SUBMISSION TO PUBLIC SERVICE PAY COMMISSION

5th March 2019

Oral Submission to the Public Service Pay Commission

By

PDFORRA

On behalf of the members represented by PDFORRA, I wish to thank the Committee for taking the time to meet with us and allowing us to make a case for targeted increases in Allowances in an attempt, as the Association believes necessary, to address the current recruitment and more so, retention, difficulties being experienced by the Defence Forces.

I understand that an obligation exists upon PDFORRA to show why the proposed increases are necessary and explain the causal link between the current rates of allowances and the premature departure of personnel from the Defence Forces.

As the Commission is no doubt aware there exist considerable difficulties in establishing the causal link in the absence of explicit declarations by personnel exiting the Defence Forces. However, the most recent attitudes study undertaken by the University of Limerick in 2015/16 remains relevant in the context of the prevailing situation amongst enlisted personnel. Likewise, PDFORRA believes, despite the passage of time, that the last review of Defence Forces Pay, the Gleeson Commission report of 1990, remains relevant in the context of the issues that gave rise to its necessity.

For example, at the time of publication of the Gleeson report the Defence Forces had an establishment of 17,978. Thirty years later and the Defence Forces is little over half of that establishment. The Gleeson Report highlighted that on average there were 6,000 Security Duty Allowance (**SDA**) type duties being undertaken on a weekly basis. There are a little under 5,500 Thousand being done on a weekly basis presently.

At the time of publication of the Gleeson Commission Report the Naval Service had an establishment of 1,237 with seven ships, today, thirty years later, the Naval Service has an establishment of 1094 with nine ships, and with a strength of just over 900.

Thus, one can see that a correlation exists between the climate that gave rise for the need for the establishment of an Independent Commission at that time and the need to address issues affecting the Defence Forces presently[1].

While it is appreciated that turnover levels within the Defence Forces have always been slightly elevated as compared to the rest of the Public Service, the current retention difficulties can, and have been described as dysfunctional. It is respectfully suggested that turnover levels of 5-10% of an organisation of approximately 18 Thousand cannot be compared to similar turnover levels in an organisation of half that size. Additionally, it must be considered that in 1990 only 194 personnel applied for discharge by purchase whereas last year 111 recruits and 187 other ranks sought discharge by purchase. This must, the Associations believes, be considered as an indicator of dysfunctional turnover.

Moreover, it must be considered that this level of turnover places considerable strain on already scarce resources within the Defence Forces, as considerable numbers of already

[1] **Gleeson Commission Report 1990, Para 3.4.8**

trained personnel are withdrawn from full duties to train recruits and undertake specialised training.

Furthermore, it must be remembered that the induction in large numbers at this time will have long term negative effects on the organisation, especially where fixed-term contracts are in place - as significant numbers may need to be replaced in 20 years' time. This is, of course, predicated on personnel remaining in service. Alternatively, as PDFORRA has highlighted previously, should the economy rise further the negative effect of recent pension changes will further adversely impact on retention- consequential upon deferred pension entitlements and a limited number of immediate pensionable positions.

While the aforementioned University of Limerick study showed considerable discontent across a wide spectrum of areas within the organisation the central fact remains, personnel do not believe they are appropriately remunerated for the work they do. These feelings arise from two areas. Firstly, the volume of hours worked bears no correlation to the pay they receive[2]. Many members, from the Association's perspective, feel cheated and disillusioned when they hear comparisons being made between their average earnings and other bodies. Why? Because other workers have the protections of the Organisation of Working Time Act. They work set hours and are compensated with overtime where hours, in excess of contracted hours, are worked; whereas, they receive a meagre set allowance. Secondly, members do not believe that current Military Service Allowance rates fully compensate them for the vagaries of service. Personnel frequently point, inter alia, to the fact that the allowance was established and set at a time when no contractual obligation existed on members to serve overseas and Defence Forces housing stock existed.

PDFORRA firmly believe that the specific disadvantages of liability for service must be reflected in an appropriate rate of allowance, especially so when it is considered that the spouse of any Defence Forces member must have extremely flexible working arrangements to cover the liability of service of the serving member. Personnel have frequently found themselves having to engage the services of childcare at short notice to cover periods where they have been called into service with a limited warning, in circumstances where the SDA paid will not cover the cost of the fuel or the additional cost of the childminder. In the foregoing context, it must be remembered that since 1990 over 15 Military installations have closed and 6 of these in the recent past at a time when house prices tumbled and personnel found themselves not being able to sell houses and resultantly having to commute significant distances to work.

Within the Naval Service personnel are not, for operational reasons, getting to enjoy their full 2 years sea shore rotation times as they are being called upon to undertake reliefs on a more frequent basis, with the resultant turmoil to families.

It is respectfully suggested that metrics and baseline data will not give a full contextual picture of the foregoing, but the assertions made by PDFORRA are no less true. In some respects, data collected represents "survivorship bias", as it does not appropriately address why personnel have departed, as opposed to concentrating on those that remain in service.

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[2] The "Your Say" Climate Survey, University of Limerick 2015, reported that 55.3% of personnel did not feel adequately compensated for additional hours worked.

Factors for consideration in respect of SDA type allowances

Security Duty type Allowances are unique to the Defence Forces and represent payments for hours worked outside of normal hours duty hours. In 1990 the Gleeson Commission recommended an increase in the rate of the weekday, Saturday and Sunday duties. The amendments were from £14.57 for weekdays and Sat duties to £20 for weekdays and £30 for Saturdays. An increase from £29.14 for Sundays and Defence Force Holidays to £40 was also recommended.

At the time of the change, the new rate of Sunday Duty represented 20.5% of the pay of a Private on the first point of the scale and 16.26% of the salary of a Private at the top of the scale.

In 2013, as part of the Haddington Road Agreement (HRA), duty rates premiums for Saturday and Sunday were equalised with weekday rates and cut by a further 10%. This has resulted in current rates only being equal to 10.9% of a Private salary on the first point of the scale and 6.52% of the salary of a Private at the top of the scale. It must also be remembered that as these earnings are pensionable for Post 2013 personnel, therefore the net value is reduced even further as pension deductions are made from the gross pay. The percentage salary/duty rate figures are actually worse for pre- 2013 Privates and NCO's on a comparative basis to the 1990 rates.

Accordingly, it must be appreciated that the value being placed on the additional hours worked by personnel is being undervalued considerably. Much more so than it was thirty years ago. PDFORRA contest that no other area of the Public or Civil service has suffered such a devaluation.

PDFORRA respectfully suggests that comparisons can be drawn between the recent Labour Court Recommendation (**LCR**) 20837[3] and the current situation as it pertains to members of the Defence Forces required to undertake Security Duties outside of normal contracted hours.

The aforementioned case arose consequential upon the provision of a "Sleepover Allowance" for hours that were over and above asserted contracted hours. In the case of Security Duty Allowance, it is provided at a standard rate for hours worked outside of normal duty hours regardless of duration.

During the course of the aforementioned ruling, the Labour Court recognised that the normal contracted hours was 39 and that hours spent over and above these on "sleepover duties" should be compensated at the National Minimum Hourly Rate. It was reported at that time that this necessitated an increase in the pay budget of approximately 8 Million Euro per year.

Members of the Defence Forces have been, and remain outside the scope of the Organisation of Working Time Act. Additionally, members do not have access to the Labour Court and have been debarred through FEMPI legislation from submitting cost increasing claims through our Conciliation and Arbitration Scheme.

[3] **Annex "A"**

The fact that payment of appropriate rates for duties acts as a retention measure has previously been recognised, indeed as far back as 1980 the rates have been increased in an attempt to retain personnel[4].

Figures provided by the Department of Defence show that the cost of SDA has reduced from 10.886 Million Euro in 2012, to 7.931 Million Euro in 2017. This represents a drop of over 2.9 Million, or over 37.26% from 2012 levels.

Based upon these figures it is respectfully suggested that these cuts were too deep and have given rise to current dissatisfaction levels being experienced by enlisted personnel within the Defence Forces.

In PDFORRA's estimation Other Security Duty related Allowances also necessitate increases. For example, current rates of Patrol Duty Allowances do not appear adequate to support recruitment, or retention, within the Naval Service. The rates of this allowance were also reduced as part of cost-saving measures under the HRA. Correspondence received from the Department of Defence in May of 2013, stated that the 10% cut to these allowances were for the duration of the agreement[5]. Since this clarification, a position has been adopted that these cuts will continue indefinitely, as a position has been adopted that agreements are extensions of previous agreements. In the event that members of PDFORRA failed to "sign up" to the last agreement (PSSA 2018-20120), they were faced with the prospect of incremental freezes and deferred restoration of pay. In reality, as a consequence of the foregoing, members of the Defence Forces could not realistically register dissatisfaction with the position being adopted, as PDFORRA is not a member of ICTU. Many members feel that the current interpretation being placed upon the 2013 clarification letter represents the very worst in sharp practice and was is all respects punitive and goes beyond the projected savings envelope.

Finally, it must be recognised that the undertaking of these duties is obligatory. No discretion exists amongst personnel to undertake these duties or not. In fact, members face disciplinary action for insubordination, for complaining about having to undertake duties or the inadequate rates of duty allowances. In the event that they do not undertake the duties, they face absence charges amongst other potential punitive actions.

The Association has appended corroborating documentation at the rear of this briefing document.

[4] **Annex "B"**
[5] **Annex "C"**

Factors for consideration in respect of increases in Military Service Allowance

Military Service Allowance (MSA) was introduced in 1979 to compensate Defence Force personnel somewhat for the unique nature of military service. As previously outlined the Defence Forces environment was considerably different to that which exists today, yet the fundamentals behind the payment of this allowance are and will continue to remain, extant.

This allowance is unique to the Defence Forces and was deliberately designed as such at the time of its inception.

However, certain factors have altered considerably since the introduction of the allowance, for which no additional consideration (remuneration) has been provided for in the intervening period. Recent factors, such as the condensing in Defence Forces establishments to urban centres, the considerable reduction in the provision of what were described as "non- pay benefits" by the Gleeson Commission and the alteration of Defence Force personnel contracts to a point where they would be unrecognisable to those terms that existed in 1979 have all gone unrecompensed in their own right.

Moreover, at the time of introduction of this allowance, the Defence Forces would have provided housing to married members and a special payment of children's allowance existed for married members of the Defence Forces.

Currently, extremely limited, to the point of negligible, housing stock exists for Defence Force married personnel. Moreover, an extremely limited amount of accommodation exists for single members of the Defence Forces, especially when one considers the current operational needs of the organisation for training.

Since the introduction of this allowance one of the most radical changes that have occurred is the alteration in contractual terms for newly enlisted personnel. At its most elemental the changes require personnel to travel overseas, mandatorily if necessary. It requires personnel to undertake courses more frequently and to meet fitness and health standards that render continued employment far more precarious than that which existed in 1979.

It is generally accepted nowadays that the majority of families require both spouses to be working in order to secure a mortgage. This is particularly true of low paid members of the workforce. However, the majority of the Irish workforce do not have such onerous conditions of employment as members of the Defence Forces, which require personnel to serve overseas, obligates them to travel frequently away from home to undertake career courses. It must also be considered that current promotional systems within the Defence Forces mandate that members undergo overseas service. Furthermore, the undertaking of arduous courses is an absolute necessity for career progression.

The foregoing places considerable strain on families, some of which are obviously unique to Defence Forces personnel and are far removed from the conditions of service that existed in 1979. Furthermore, the contractual requirement for overseas service inhibits the ability of single personnel to secure rental agreements of long term duration. This exposes them to greater fluctuations in rental costs as they cannot avail of long term rental costs caps.

It must be remembered that the underlying rationale behind the introduction of the allowance remains. Factors such as liability to serve, restrictions on personal liberty, the risk of danger,

responsibility for use of lethal force, subjection to military discipline and law, will forever be a constant in any military force.

The obvious link between the failure to compensate personnel for the unique nature of military service and the retention difficulties lies in the fact that during times of economic upturn military forces tend to lose personnel at an accelerated rate. Additionally, difficulties are experienced in recruitment.

While it may be fairly stated that an incongruence exists between prevailing social values and military life, there also exists an economy which has increased the need for workers. PDFORRA has provided figures supplied by the Construction Industry Federation and the Irish Restaurant Federation as indicators of areas where military personnel may go in our main submission.

Studies show that young people examine the totality of the remuneration package before entry into employment. In the foregoing context the lack of application of various elements of legislation, the lack of security of tenure, the diminished pension entitlements and the reduction in "non-pay benefits" clearly act as a drag on any retention policy.

The provision of holidays and family-friendly measures have become normative features of all employment and could not be said to be unique to the Defence Forces, in fact, the figures of lost leave by enlisted personnel, 117 thousand over a four year period, indicate an organisation under pressure[6].

The provision of medical services had previously been an attractive feature of military service; however, since 1979 the three hospitals where personnel could have convalesced in the event that personnel were injured or sick has gone. These hospitals no longer provide inpatient care. This results in personnel have to convalesce outside of the Defence Forces- thereby necessitating home ownership or rental property. While the limited provision of health care remains a feature of military life it is becoming more and more frequent for personnel to be pushed into the public system, thus diminishing the previous attractiveness of this feature of military life.

The unsocial nature of military life remains a constant feature. Added to the obligation to serve overseas it is not uncommon for personnel to be called into duty out of hours. Recent weather events such as Storm Emma, Ophelia and floods and fires in various parts of the country have resulted in personnel travelling to work out of hours when public transport was not available. The costs of having to present outside of normal hours, with the attendant low duty rates, give rise to situations where personnel are having to pay to go to work. This engenders a deep sense of frustration and anger amongst personnel which frequently manifests itself in early discharge as alternative employment options are considered.

While it is appreciated that current rates will be restored by 5% in line with legislative provisions under the Public Pay and Pensions Act 2017, the Association fervently believes that a substantial case exists for a considerable increase in the rate which takes cognizance of the aforementioned changes to Defence Forces members terms and conditions.

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[6] **Annex "D"**

Conclusion

The Association believes that at a minimum the foregoing allowances need to be increased to reflect the changed working environment that enlisted personnel of the Defence Forces find themselves in. PDFORRA believe the changes proposed represent a reflection of the changed legislative environment that the Defence Forces currently inhabit. Moreover, the Association believes the proposed changes represent measures which will retain an ever-increasing discerning workforce who value their time and consider the totality of the remuneration package when making a determination regarding future employment in any area.

Many other areas are addressed within our primary submission of February 2018, which will require more detailed analysis by the Commission, such as, the payment of personnel in technical appointments.

PDFORRA is aware of enhanced exit pressures being levied on CIS staff, Engineers, Chefs, Mechanics and Ordnance personnel amongst other technical areas as the economy improves.

The pay and pension structures of the Defence Forces are becoming ever more complex with three different superannuation schemes in existence, two different pay rates to take cognizance of and three differing contractual terms, Pre-1994, Pre 2013 and post 2013, which arises consequential upon a 2015 adjudication. Consequentially, PDFORRA believes that extreme merit exists for a total review of the terms, pay and pension policy for Defence Force members.

While it is appreciated that a wholesale review of Defence Forces terms and conditions is beyond the remit of the Commission, PDFORRA believes that such a recommendation would go some way towards securing the inception of such a review.

PDFORRA sincerely believe that in the absence of the aforementioned ameliorating measures the Defence Forces will continue to haemorrhage highly skilled and motivated personnel at a rapidly increasing rate.

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PDFORRA sincerely believe that in the absence of the aforementioned ameliorating measures the Defence Forces will continue to haemorrhage highly skilled and motivated personnel at a rapidly increasing rate.

I wish to take this opportunity to thank the Commission for your time and invite you to ask any questions you deem relevant.

ANNEX "A"

Ruling on 'sleepover' rate benefits 5,000 care staff

BRIAN SHEEHAN

A binding ruling on the so-called 'sleepover' rate will benefit care staff by up to €180 a week, resulting in another headache for HSE at a time when it is lurching toward a 2014 financial deficit of over €500m.

Three unions (IMPACT, SIPTU and TEEU), representing around 5,000 residential care staff, have described the decision as major breakthrough.

IRN understands that the HSE will act on the recommendation given that it is committed to implementing all such binding rulings that come under the broad remit of the Haddington Road Agreement.

The claimants – who are employed by the HSE and other organisations funded by HSE out of public funds – will benefit to the tune of €3.27 per hour for sleepover duties, or by €26 per sleepover stint. This would amount to €81 for a minimum three sleepovers, or over €180 for a staff member working the maximum seven sleepovers in a fortnight.

The cost to HSE is estimated to be in the region of €8m on an annual basis.

However, IRN understands that although HSE must meet the terms of the recommendation as it comes under the HRA, it has not budgeted for it. Coming on top of an estimated financial deficit of over €500m this year, the outcome adds to the financial woes of the Executive and the Minister for Health, Leo Varadkar.

VALUE OF HRA

The HSE has to abide by binding decisions under the terms of the HRA, but it will not have planned for the cost involved, in particular how to manage the working time aspect of the decision.

For the trade unions involved, however, it is seen as a major 'win' and the binding nature of the finding again underscores – from their perspective in particular – the value of of third party decisions on all HRA-related issues.

IMPACT national secretary for health, Louise O'Donnell, said that the Court had upheld what the group of unions had been arguing for some time, while Paul Bell of SIPTU said that the recommendation was a "really significant milestone". Willie Quigley of Unite said he was delighted their position was "vindicated."

The recommendation, issued on September 18, calls for the recognition of sleepover duty as working time, requires all employers in the sector to comply with the Working Time Act and sets the rate of pay for sleepover duty as not less than the minimum wage of €8.65 per hour - an increase of €3.27 on the existing hourly rate.

The rate of pay for sleepover duty applies with immediate effect.

INTEGRAL ELEMENT

The Court explained that the case concerned the terms under which social care workers and related grades are employed in the child care and intellectual disability sector.

A sleepover refers to a continuous period of usually 8 hours between the hours of 8pm and 8am and is in addition to the normal contracted average weekly working hours for the grades.

The HSE explained that the requirement to undertake sleepovers is an integral element of the contracts of employment of staff working in these sectors and is the accepted custom and practice.

The unions said that sleepover time is regarded as working time and that the appropriate rate should be paid in accordance with existing norms and within the health sector and the wider public sector.

COURT OF JUSTICE

In a detailed and lengthy recommendation, the Court noted that the workers concerned work in a residential care setting which provides a service over 24 hours, seven days a week. They are required to sleepover on a number of occasions – up to three - during their working week.

As the Court noted, currently sleepovers are not treated, for pay purposes, as part of the claimant's working time. They are paid for each sleepover, the value of which is significantly less than their normal pay in respect of the equivalent period of ordinary working time.

As the Court explains, the origins of the dispute lie in decisions of the Court of Justice of the European Union, which held that for the purposes of the Directive 93/104/EC on the Organisation of Working Time (now Directive 2003/88EC), time spent by

workers at their place of work during which they remain liable to be called upon to perform the duties of their employment is to be regarded as working time. (The Directive in Ireland is transposed by the Organisation of Working Time Act 1997.)

OPERATIONAL ISSUES

The Court noted that the unions contended that the combined duration of ordinary work and sleepovers involves the claimants working significantly in excess of 48 hours per week, which is the maximum number of weekly hours permitted under the Directive and the Act of 1997. They further claimed that the organisation of their working time does not permit the taking of breaks and intervals at work as are prescribed by the Directive. Moreover, sleepovers are overtime and should be remunerated as such.

The employers accepted that sleepovers must be regarded as working time. But they pointed to the operational problems in changing long-established work patterns. "They also point out, correctly, that neither the Directive nor the Acts deals with questions of pay", the Court noted.

HSE said the claims were cost-increasing and couldn't be conceded with the terms of agreements and legislative provisions governing public service pay.

APPROACH OF THE COURT

The Court explained that as the dispute was referred under section 26(1) of the IR Act 1990, its role is to assist the parties in finding a "practical and fair industrial relations basis upon which the dispute should be resolved".

Having regard to the legislative basis under which dispute was before it, the Court said it "cannot and does not purport to resolve any differences between the parties concerning the interpretation of either the Directive or the Act of 1997".

Accordingly, it said nothing in the recommendation should be understood as addressing those issues or purporting to define the legal rights and duties of the parties either in the Directive or the Act.

THE RECOMMENDATIONS

The Court said the dispute should be resolved in the following basis (edited):

Basic terms of employment: All parties should acknowledge that the claimants standard week is 39 hours; that the custom & practice in the employments concerned have an obligation to provide services by way of sleepover – and that obligation should continue; time on sleepovers should be acknowledged as working time; maximum weekly hours should not exceed 48 but this should be achieved through a restructuring of working time (see below*); claimant is entitled to same breaks and intervals as prescribed in relevant legislation.

Payment: With effect from the date of the recommendations, the Court said the staff should be paid an hourly rate in respect of each hour spent on sleepover in excess of the 39 hours equal to the national minimum hourly rate.

*Restructuring of working time: A restructuring of working time will have to be undertaken and this is acknowledged by all parties. But the Court said it is not in a position to make a detailed recommendation on how that should be achieved. The parties themselves are best placed to do that, it said.

REPORTING BACK

In that regard, the Court said they should return to conciliation and engage in an intensive process directed at agreeing mechanisms by which full compliance with the legislation can be achieved while maintaining current levels of service provision. But this process should not exceed nine months, and they should report to the Court on progress at three monthly intervals.

Any disagreement that might inhibit final agreement should be referred back, and the Court will if necessary, issue further recommendations "directed at assisting the parties to complete this process within the timeframe envisaged by this recommendation".

CLAIMS REJECTED

Finally, the Court rejected concession of two trade union claims: the first for compensation in relation to any breaches of the working time directive, the second related to a claim that staff are entitled to the appropriate rate of pay for hours worked outside normal hours "paid retrospectively". *(LCR 20837 – court chairman, Kevin Duffy)*

CD/14/266 RECOMMENDATION NO. LCR20837
(CCC-130492-13)

INDUSTRIAL RELATIONS ACTS, 1946 TO 2012
SECTION 26(1), INDUSTRIAL RELATIONS ACT, 1990

PARTIES :

HEALTH SERVICE EXECUTIVE

- AND -

IRISH MUNICIPAL, PUBLIC AND CIVIL TRADE UNION
SERVICES INDUSTRIAL PROFESSIONAL TECHNICAL UNION
UNITE THE UNION

DIVISION :

Chairman	:	Mr Duffy
Employer Member	:	Ms Doyle
Worker Member	:	Mr McCarthy

SUBJECT:

1. The terms under which social care workers and related grades are employed in the Child Care and Intellectual Disability Sector.

BACKGROUND:

2. This dispute concerns the operation of sleepover arrangements in both the Childcare and Intellectual Disability Sectors. Sleepover refers to a continuous period of usually 8 hours between the hours of 8pm and 8am and is in addition to the normal contracted average weekly working hours for the grades. The Employer said the requirement to undertake sleepovers is an integral element of the contracts of employment of staff working in these sectors and is the accepted custom and practice. The Unions said that sleepover time is regarded as working time and that it should be paid at the appropriate rate in accordance with existing norms within the health sector and the wider public sector. This dispute could not be resolved at local level and was the subject of a Conciliation Conference under the auspices of the Labour Relations Commission. As agreement was not reached, the dispute was referred to the Labour Court on the 10th July 2014, in accordance with Section 26(1) of the Industrial Relations Act, 1990.

A Labour Court hearing took place on the 11th September 2014.

UNION'S ARGUMENTS:

3. 1. Working time is defined as any period during which the worker is working at the employer's disposal and carrying out his/her activities or duties in accordance with national hours of practice.

2. Sleepovers involve the workers working significantly in excess of 48 hours per week which is the maximum number of weekly working permitted under the Act of 1997.

3. The organisation of sleepovers does not permit the taking of breaks at work. Sleepovers are overtime and should be remunerated as such.

EMPLOYER'S ARGUMENTS:

4. 1. It is the employers' position that the Unions' claims are cost increasing and cannot be conceded within the terms of agreements and legislative provisions governing public service pay.

2. The employers accept that sleepovers counts as working time but this does not extend to remuneration levels to be paid for the sleepovers.

3. The concession of the Unions claim would cost the service an additional €60 million euro per annum.

RECOMMENDATION :

This dispute concerns the terms under which 5,500 social care workers and related grades are employed in the Child Care and Intellectual Disability Sector. They undertake their caring duties in a residential setting which provide a service over 24 hours seven days per week. Having regard to the nature of the service provided those associated with these claims are required to 'sleepover' at their place of employment on a number of occasions during their working week.

The Claimants are employed by the HSE and other organisations funded by the HSE out of public funds.

Currently sleepovers are not treated, for pay purposes, as part of the Claimants' working time. They are paid an allowance for each sleepover the value of which is significantly less that their normal pay in respect of an equivalent period of ordinary working time. Each sleepover involves a continuous period of eight hours between 8pm and 8am. The Claimants currently undertake up to three sleepovers per week.

The origin of the dispute lies in decisions of the Court of Justice of the European Union (formally the ECJ) which held that for the purpose of Directive 93/104/EC on the Organisation of Working Time (now Directive 2003/88/EC) time spent by workers at their place of work during which they remain liable to be called upon to perform the duties of their employment is to be regarded as working time. The Directive is transposed in Ireland by the Organisation of Working Time Act 1997.

The Unions contend that the combined duration of ordinary work and sleepovers involves the Claimants in working significantly in excess of 48 hours per week which is the maximum number of weekly hours working permitted under the Directive and the Act of 1997. They further claim that the organisation of their working time does not permit the taking of breaks and intervals at work as are prescribed by the Directive and the Act. They also claim that sleepovers are overtime and should be remunerated as such.

The employers accept that sleepovers must now be regarded as working time. However, they point to the operational difficulties in changing long established working patterns within which they provide services to those in their care. They also point out, correctly, that neither the Directive nor the Act deals with questions of pay. It is the employers' position that the Unions' claims are cost increasing and cannot be conceded within the terms of agreements and legislative provisions governing public service pay.

Issues in Dispute
In the course of conciliation a list of 10 items claimed by the Unions were identified as constituting the central issues in dispute. They were set out by the IRO as follows: : -

1. **"Staff contracts are for 39 hours per week and pro rata if not fulltime**
2. **Sleepovers count as working time**
3. **Average maximum that can be worked is 48 hours per week**
4. **Staff are not legally required to work beyond their contracted hours**
5. **Staff are entitled to 11 hours rest in each 24 hour period or equivalent compensatory rest**
6. **Staff are entitled to a 15 minute break away from work after working 4 hours and 30 minutes**
7. **Staff are entitled to a 30 minute break away from work after having worked for 6 hours**
8. **Staff are entitled to be paid overtime for hours worked outside their contract hours**
9. **Staff are entitled to be compensated for the fact that the employer knowingly broke the working time directive**

10. Staff are entitled to have the appropriate rate of pay for hours worked outside of normal hours paid retrospectively"

Approach of the Court

This dispute was referred to the Court under section 26(1) of the Industrial Relations Act 1990. Consequently, the Court's role is to assist the parties in finding a practical and fair industrial relations basis upon which the dispute should be resolved. Having regard to the legislative basis under which the dispute is before it, the Court cannot and does not purport to resolve any differences between the parties concerning the interpretation of either the Directive or the Act of 1997. According, nothing in the recommendations that follow should be understood as addressing those issues or purporting to define the legal rights and duties of the parties under either the Directive or the Act.

Recommendations

Having considered the submissions of the parties, and having had the benefit of discussing their respective positions with them in side session, the Court recommends that the dispute should be resolved on the following basis:

1. Basis terms of employment
   All parties should acknowledge that: -

   (a) The standard working week of the Claimants is 39 hours.

   (b) The established custom and practice in the employments concerned is that those associated with this dispute have an obligation to provide services by way of sleepover and that obligation should continue.

   (c) Time spent on sleepovers should be acknowledged as constituting working time.

   (d) Like all other workers who are encompassed by the legislative provisions on working time the maximum weekly hours worked by the Claimants should not exceed 48. However, this can only be achieved through the process recommended at 3. below

   (e) Like all other workers the Claimants are entitled to the breaks and intervals at work prescribed by relevant legislation.

2. Payment for Sleepovers

   Having regard to all the circumstances currently prevailing, the Court recommends that, with effect from the date of this Recommendation, staff should be paid an hourly rate in respect of each hour spent on sleepover in excess of 39 hours equal to the national minimum hourly rate.

3. Restructuring working time

It is clear that a major restructuring of the way in which the services of those associated with these claims is delivered will have to be undertaken in order to bring about full compliance with the legislative requirements concerning working time. This is acknowledged by all parties. Discussions and negotiations have taken place with that in view but no agreement has so far been reached.

The Court is not in a position to make detailed recommendations at this time on how that reorganisation should be achieved. That is a matter which will have to be addressed by the parties themselves who are best placed to know what is required so as to continue providing the current level of service within the working time parameters identified in this Recommendation.

The Court recommends that the parties return to conciliation and that they engage in an intensive process directed at agreeing mechanisms by which full compliance with the legislative requirement can be achieved while maintaining current levels of service provision. That process should continue for a period not exceeding nine months or such longer period as may be agreed.

The parties should report to the Court on progress in these discussions at three monthly intervals. Any disagreement or other difficulties encountered that could inhibit or delay final agreement should be referred back to the Court. The Court will, if necessary, issue further recommendations directed at assisting the parties to complete this process within the timeframe envisaged by this Recommendation.

4. Other Matters

The Court does not recommend concession of the claims at points 9 and 10 of the list of items referred to above.

Signed on behalf of the Labour Court

Kevin Duffy

Chairman

CR
18th September, 2014.

NOTE

Enquiries concerning this Recommendation should be in writing and addressed to Ciaran Roche, Court Secretary.

ANNEX "B"

Department of Defence
An Roinn Cosanta

P91(10)

23 May 2006

Mr. Gerry Rooney
General Secretary
PDFORRA
John Lucey House
Unit 2 Collins Square
Benburb Street
Dublin 2.

Re: Security Duty Allowance – (SDA)

Dear General Secretary,

I refer to your correspondence dated 27 February 2006 in connection with the above. The matter has been examined and the situation regarding the bigger payment of Security Duty Allowance in respect of duties performed on Sundays and Army Holidays was implemented with effect from 1 October 1980.

The basis for the increase in Security Duty Allowance for Sundays and Army Holidays was part of a special review, which considered the problem of retention of personnel in the Defence Forces. The payment of an enhanced allowance on Sundays and Army Holidays was part of a number of proposals put forward for consideration.

Yours sincerely

Colette Kavanagh

Colette Kavanagh
Defence Forces C&A Branch

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ANNEX "C"

An Roinn Cosanta
Department of Defence

30 May 2013

Col Brian O'Keeffe
General Secretary
RACO

Mr Gerry Rooney
General Secretary
PDFORRA

Re: LRC Pay Agreement Proposals – Clarifications

Dear Brian and Gerry

I refer to the clarification meeting on 28 May 2013, on the above matter and your request for a single comprehensive response to all issues raised by both Associations in relation to queries raised in recent correspondence and meetings. Each of the issues raised is now addressed below:

(a) <u>Clarification of Defence Forces Sectoral Issues</u>

1. Duration of reduction of allowances and which allowances

The reduction in allowances is set out in paragraph 1 of the Defence Sectoral Agreement.

In relation to the 10% reduction in allowances, 'permanent' means for the duration of the agreement. On the expiry of the agreement, the official side will enter into discussions with the Representative Associations on the modalities for the recovery of this reduction in these allowances. This will not include the recovery of any loss incurred during the period of the agreement.

The allowances to be reduced are as set out in Annex 1 "Schedule of Allowances" to which the Agreement refers. In this regard, I understand you received a printout of subhead codes and descriptions on 16 April 2013. The only exception to the allowances covered by the Schedule are overseas allowances and travel packages which are unaffected by the terms of the Defence Sector Proposals.

2. Application of additional day off to all Sunday duties

The additional day off applies to all duties attracting Security Duty Allowance and related allowances previously paid at a Sunday rate which are of a 24 hour duration and which take place on a Sunday – i.e. between 0900 on Sunday to 0900 on a Monday.

ANNEX "D"

An Roinn Cosanta
Department of Defence

12 June 2017

Mr. Gerard Guinan
Deputy General Secretary
PDFORRA
John Lucey House
Collins Square
Benburb Street
Dublin 7

Provision of information regarding total number of lost Annual Leave days through application of DFR A.11, Para 16(1) (b) & (c) to Enlisted Personnel.

Dear Ger,

I refer to your letter of 4th November 2016 and previous correspondence in relation to the above and regret the delay in replying.

Please find below the total number of lost days from 2011 through to 2016 for your information.

Year	Days lost	Average Days Lost
2016	26,941	3.34
2015	22,307	2.77
2014	21,886	2.682
2013	24,881	3.068
2012	24,614	3.036
2011	25,409	2.864

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I trust this clarifies the issue for you and I regret the long delay in responding to your request.

Yours sincerely,

Graham Halley
C& A Branch