

The Labour Court
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THE LABOUR COURT

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10th September 2024

Dear Mr Carpendale,

At the commencement of the Labour Court hearing on Wednesday 4th September 2024, Mr Carpendale solicitor on behalf of NECI raised two preliminary issue which he submitted were sufficient to bring the proceedings before the Court to a close. With the agreement of the parties the Court proceeded to hear the parties on those preliminary issues.

The first preliminary issue outlined by Mr Carpendale was the fact that none of the statutory declarations submitted by the three applicants complied with the requirements of the Statutory Declarations Act 1938.

Mr Carpendale noted that the Connect statutory declaration omitted the Trade Unions registered address within the state and that was contrary to Labour Court (Sectoral Employment Orders) Rules 2016 rule 3 (c) which he submitted mandated the inclusion of the registered address. It was also contrary to the contents of the document titled 'important notes for completion of the form' attached to the application forms completed by the parties, which at point 2 states that the statutory declaration shall contain "the registered address of the applicant trade union within the state ". The form in question is a prescribed form as provided for under section 14 (4) of the Industrial (Amendment) Act 2015.

Mr Carpendale noted that in addition to this omission the jurat on the statutory declaration was not in line with the required jurat as provided for in the Civil Law (Miscellaneous Provisions) Act 2008, and therefore the statutory declaration was not a valid declaration whose contents could be relied on as evidence in a substantive hearing of the issues before the Court.

In respect of the ECA statutory declaration Mr Carpendale submitted that the word "and "was missing from the jurat and part of the jurat was on the second page and therefore that declaration was flawed. He submitted that the jurat in the AECI declaration did not comply with the

requirements of the Civil Law (Miscellaneous Provisions) Act 2008. Mr Carpendale went on to state that as the declarations are not in the prescribed form, the Court cannot proceed, and he was therefore making an application to bring the proceedings to a close.

Connect, AECL and ECA all stated that they had received legal advice in respect of their respective statutory declarations and were satisfied that they were valid. Connect noted that the registered address was on the page that the statutory declaration was on and in their view that was sufficient to comply with the requirements of the Labour Court rules. They all voiced opposition to Mr Carpendale's application.

Ms Rogers supported Mr Carpendale's assertion that the declarations were fundamentally flawed, and the process should not proceed.

With the agreement of the parties the Court moved to hear the second preliminary issue as it related to the application form to which the statutory declaration was attached.

Mr Carpendale noted that contrary to Labour Court rule no 1 (f) and the box on the application form where it states, "*please enter names and address of any trade union of employers or organisation of employers that is representative of employers in the sector*", Connect had not identified NECI as an organisation of employers despite the fact they were well aware of their interest in these matters. Mr Carpendale submitted that this failure by Connect to identify NECI was fatal to the process.

He accepted that the form as currently constituted does not require the employers to identify other employer groups.

Mr Nolan submitted that Connect has no engagement with NECI in respect of terms and conditions of employment in the sector and they only included bodies that they would normally have engagement with. Ms Winters submitted that there are multiple different employer bodies in the sector and it would be impossible to list them all.

After hearing the parties' submissions on both the preliminary issues the Court adjourned the hearing to consider same.

Discussion and Decision

In respect of the second preliminary issue, the fact that NECI are not mentioned on the Connect application form as an organisation of employers in the sector, the Court does not believe that on its own this is fatal to the process. The Court's view is supported by the fact that the form is not a statutory form and that the relevant part of the form does not require that all Union/ Organisations of employers in the sector are to be named.

When engaging with the section 14 application in line with section 15 (1) (a) the Court took at face value the documentation submitted including the statutory declarations. During the hearing Mr Carpendale took the Court through each of the Statutory declarations and highlighted the elements he believed to be legally flawed. All parties present and wishing to be heard were then invited to comment. Each of the parties who had submitted a statutory declaration advised the Court that their statutory declaration had been drawn up in consultation with their respective legal representatives. No legal arguments or caselaw was opened to the Court on this issue.

Having heard the parties in respect of the statutory declaration and gone through them in the course of the hearing, it cannot be disputed that two of the declaration's differ in the formation and content of the jurat when compared with how the jurat is expressed in the Civil Law (Miscellaneous Provisions) Act 2008. There was no legal argument before the Court to support a finding that these differences are '*de minimis*' in nature and therefore do not affect the standing of the declaration. Taking all of the above into account the Court finds that at a minimum there is a stateable case that two of the statutory declarations are fatally flawed, and therefore for the Court to proceed any further with his process would be unconscionable.

The Court did ask the parties to address the issue of whether the application could proceed if one or more of the applications were flawed, while Connect the AECl and ECA believed it could, NECl and Ms Rogers were adamant that it could not.

The Court reviewed the details contained in the statutory declaration that it felt was not compromised and noted that it would not be able to comply with section 15 (1) (a) of the Act if it was to rely solely on that statutory declaration, as the Court could not extrapolate from that document that the Trade Union of Workers is substantially representative of workers in the sector.

In accordance with section 16 (1), the Court does not consider if it were to continue with this process that it would be appropriate to make a recommendation to the Minister knowing there is at least a stateable case that some of the statutory documentation being relied on are flawed. On that basis the Court upholds Mr Carpendale's application to bring the process to a close at this point.

Your sincerely



Louise O' Donnell

Deputy Chair

Paul O'Brien

Paul Bell

Ordinary Member

Ordinary Member

Date 10th September 2024

Fiona Corcoran

Court Secretary