THE LABOUR COURT

"... not an ordinary court of law"

1946 to 2021

A HISTORY OF SEVENTY-FIVE YEARS OF THE LABOUR COURT

1946 to 2021

MISSION STATEMENT OF THE LABOUR COURT

"To provide high quality, fair and impartial arrangements for the resolution of industrial disputes and the determination of appeals in disputes

Foreword by Minister for Enterprise, Trade and Employment, Mr Peter Burke, T. D.

As Minister for Enterprise, Trade and Employment, I am delighted to provide the foreword to this important book which examines the prestigious history of the Labour Court in its first 75 years from 1946 to 2021.

Since it was established by the Industrial Relations Act 1946, the Labour Court has played a vital role in the stability and success of the Irish State. The role of the Court has significantly grown over the years, as a consequence of the increase in national and European employment legislation, including the enactment of the Workplace Relations Act 2015. The Court has had to develop continuously and to adapt to these new functions and responsibilities. It has done so while maintaining its independence and a high level of public confidence.

The Labour Court is an almost unique institution globally.

On the one hand, the Court provides an industrial relations service whereby disputes which parties have been unable to resolve can be referred to the Court for an 'opinion' in the form of a recommendation of the Court, which is not binding on the parties.

It is a mark of the value and success of the Court that the vast majority of its recommendations are accepted voluntarily by the parties, notwithstanding that their path to the Court has been an experience of disagreement.

Separately, the Court is also the single appellate body for all complaints made under the body of employment law. That role gives the Court binding decision making functions in law. Such decisions of the Court can be appealed on a point of law to the High Court but, otherwise, are final and enforceable.

There has been a very small level of appeal to the High Court on points of employment law or judicial review arising from Labour Court decisions; these high rates of acceptance of the Court's decisions indicate that the Court continues to deliver a high-quality and impartial service and that it enjoys the confidence of its stakeholders.

To give some context to the impressive workload of the Court, in 2023 alone the Court received 1141 appeals/referrals, scheduled 1513 hearings, and 1248 cases were completed (cases decided, settled or withdrawn).

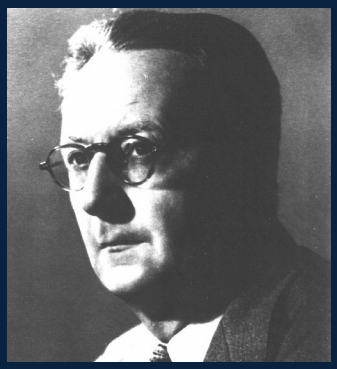
In 2023, 186 cases were completed by the Court under the Industrial Relations Acts 1946-2015 (i.e. a recommendation, determination, or decision issued, or the matter was settled by the parties).

The text of each of the industrial relations cases in which the Court issued a recommendation and the Court's determinations in employment law cases can be viewed on the Court's website, which provides a valuable reference to all stakeholders in industrial relations. The legacy of the Labour Court is, therefore, a robust and growing body of case law on equality issues and employment rights as well as an insight into the challenge of industrial dispute resolution at the level of the enterprise and nationally.

There is no doubt that the Labour Court's capacity to deliver successfully on its statutory mandate has always rested on the expertise, impartiality and professionalism of its Members and on an efficient and enabling administration and I want to commend the generations of civil servants and statutory office holders who, through their hard work and commitment to public service, have ensured that the Court has delivered excellent public service across all of its first 75 years.

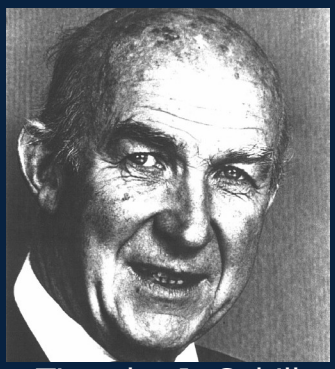
I wish, on behalf of the Irish Government, to take this opportunity to formally sincerely thank all of the current and former staff and members of the Labour Court for their contribution to the Irish State.

CHAIRMEN OF THE LABOUR COURT 1946-2021



Ronald P. Mortished
1946 – 1952

Martin J. Keady
1952 – 1962



Timothy J. Cahill
1962 – 1977

Maurice Cosgrave
1977 – 1984

John Horgan
1984 – 1988

Kevin Heffernan
1988 – 1994

Evelyn Owens
1994 – 1998

Finbarr Flood
1998 – 2003

Kevin Duffy
2003 –
2016

Kevin Foley
2016 to present

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PART ONE

1946 to 1996

Written by Ian Finlay

Ian Finlay is a former Secretary of the Department of Labour. He served in the Department of Posts and Telegraphs, External (now Foreign) Affairs, and Finance before being appointed Assistant Secretary in the Department of Labour in 1967 and Secretary in 1982. After retirement he took a BA in History and French in UCD and an MA in History. His thesis for his MA was on the history of the Labour Court, 1946-1962. The first three chapters of part one of this book are based largely on that thesis.

FOREWORD by Evelyn Owens

The Labour Court has now been in existence for half a century. Since its first meeting on 23rd September 1946, it has played a central role in the settlement of industrial disputes in Ireland, issuing as many as 19,000 Recommendations and other decisions so far. This history of the Court, covering the period from its earliest days to the present, marks the occasion of the Court's 50th Anniversary. It shows the development of the Court, commenting on the main personalities involved, and sets it against the changing economic, political and industrial relations background of the period.

The Labour Court itself has changed in many ways during the fifty years, but one of its original and unchanged functions – investigating trade disputes and making Recommendations to resolve them — is still the most frequently requested service. It is also the one service which is most widely identified with the Labour Court. But the Court also has other functions, which it continuously reviews and develops to meet the needs of those who use its services. These functions have been given to the Court over the years under various pieces of legislation, the most significant of which have been — in terms of their social and economic effects – the equal pay and employment equality legislation in the 1970s.

There is a European dimension to the work of the Labour Court. The Court is the competent authority to which employees have access in the first instance to assert their rights under the equal pay and employment equality Directives of the European Union, through the equal pay and employment equality legislation. Consequently, the Court must take account of relevant developments in Europe when considering cases referred to it under this legislation.

In 1991, following the enactment of the Industrial Relations Act, 1990, the Conciliation and Equality Officer Services were transferred from the Labour Court to the Labour Relations Commission. The Court's central functions remained unchanged, but greater emphasis is now given to its position as "court of last resort" in cases concerning industrial disputes.

The Labour Court today continues to play a major part in the process of resolving industrial disputes. Its role in the enforcement of employment rights — through the equality legislation in particular — is an important part of its remit.

The success of the Court depends on the skills and dedication of those who work there. I would like to pay tribute to the members and staff past and present, who have contributed to the work of the Court. Government Ministers

and Departments under whose aegis the Court has operated — Industry and Commerce, Labour and now Enterprise and Employment — have consistently supported the Court and recognised and respected its independence and impartiality. This is equally true of employers, trade unions and workers and their representative organisations, I.B.E.C. and I.C.T.U. Their support has not only been welcome; it has been essential in enabling the Court to carry out its work successfully.

I would like to thank Ian Finlay, who was commissioned to write this book, for the time and work he has put into the project. A detailed and objective account, it places the Labour Court, its role and its development in a historical context. It is a fitting commemoration of the 50th Anniversary of the Court.

Evelyn
Owens
Chairman
The Labour
Court Autumn,
1996

BEGINNINGS

The Labour Court was created under the Industrial Relations Act, 1946. Much of the period 1939—1946 had been one of emergency wage-control in Ireland, as in many other countries. An original wage-freeze, which was of general application, had been moderated as the emergency period progressed, by a series of emergency bonus awards. The grant of these bonus awards was subject to recommendations by emergency wage tribunals, which also recommended standard pay rates. These tribunals, which consisted of legal chairmen and employer and worker members, were appointed by the Minister for Industry and Commerce and the system was administered by his Department. By 1946, wages generally in Ireland had fallen significantly behind pre¬war rates in real terms.

The proposals which resulted in the 1946 Act and the setting up of the Labour Court arose from the Irish Government's preparations to deal with the post-war economic and social situation. It was accepted that the tight control of wages could not last after the war ended and that means would have to be devised to process claims by trade unions and workers to regain at least the real level of pre-war wages.

Relations between the trade union movement and the Government during the emergency period had not been easy. The unions had campaigned against the emergency control of wages but they did co-operate in the working of the emergency wage tribunals and in providing workers' representatives to serve on them.

The trade union movement had internal problems during the emergency period, particularly between some of the wholly Irish unions and those which were based in Britain but with substantial membership in Ireland. These difficulties led to a "split" in the movement in 1945, while preliminary discussions on industrial relations proposals were taking place. Most of the wholly Irish unions seceded from the Irish Trade Union Congress (I.T.U.C.) and set up the Congress of Irish Unions (C.I.U.). The I.T.U.C. continued to represent unions which did not secede. This split was not finally healed until the Irish Congress of Trade Unions (I.C.T.U.) was set up in 1959.

Sean Lemass, Tánaiste and Minister for Industry and Commerce, initiated moves to institute machinery for dealing with industrial disputes in 1944. Prolonged discussions and negotiations, primarily with the trade union movement and employer bodies, followed, which were complicated by the trade union "split", The Industrial Relations Bill, 1946 was introduced in Dáil Eireann on 25th June, 1946 and, following extensive debate in Dáil and Seanad, was passed on 2nd August, 1946. Lemass was the driving force behind the lengthy discussions,

including those in the Oireachtas. The legislation was widely welcomed in the Oireachtas.

The 1946 Act provided for the setting up of the Labour Court consisting of a full-time Chairman, a part-time Deputy Chairman and two employers' and two workers' members, The ordinary members were to be nominated by organisations representative of workers and employers.

The Court was empowered to investigate trade disputes which existed or were apprehended. It could arrange mediation by a conciliation officer or, with consent, refer a dispute to arbitration. To quote the Act (Section 68),

"The Court, having investigated a trade dispute, shall 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 promoting industrial peace, it should be settled, due regard being had to the fairness of the said terms to the parties concerned and the prospects of the said terms being acceptable to them."

Court recommendations would be made by majority, but, where there was no majority, the Chairman's view should prevail and a single recommendation be promulgated. Crucially, Court recommendations were not binding.

The Act provided for the bringing under the Court of virtually all the industrial relations machinery which had functioned under the Minister. The Court was to appoint conciliation officers. The system of trade boards for fixing wages and conditions of lowly paid and poorly organised workers was subsumed in a revised system of joint labour committees under the Court. The setting up of joint industrial councils to promote harmonious relations between employers and workers and the registration by the Court of such councils and of employment agreements made between employers and trade unions were provided for.

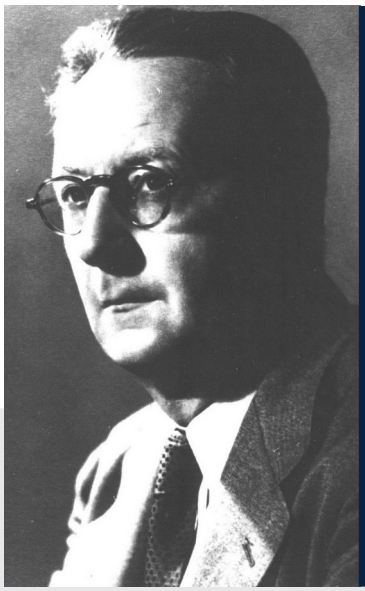
When the Court was set up in September, 1946, it was launched with widespread support and approval. While it was moving into new and uncharted waters it was generally hoped that it would make a major contribution to a new era in industrial relations in Ireland. One interesting view on the Court set out by the writer James Plunkett, himself a former trade union official, was that the setting up of the Court was a symbol of "the victory of trade unionism in its fight for a respected and influential place in the social and economic life of modern Ireland. Here was the beginning of a new stage in labour relations, with its machinery for direct negotiation and conciliation representing new privileges for trade unionism, but also putting on its shoulders new responsibilities".

Before the Labour Court could be appointed, the problem of who should nominate the workers' members had to be faced. The C.I.U. strongly opposed giving a voice in the nominations to I.T,U.C. The Minister, in the event, decided to request each congress and the larger unions to nominate one workers' member. C.I.U., rather than nominating themselves, passed the job on to their constituent unions with suggestions as to whom to nominate. The de facto result was that each congress nominated one workers' member and this situation continued until the two congresses merged in 1959.

The personal contribution of Lemass to producing the 1946 Act was immense. On the important issue of whether Court awards should be binding he seems to have moved, in the face of trade union argument, from favouring binding awards, at least in key employments, to adoption of the principle of voluntarism favoured by the unions. It was his hope, of course, that, in practice, acceptance of Court recommendations would become general.

The Labour Court which emerged was an interesting and, in many ways, an original institution. Despite its name, it was not a Court as it did not ordinarily hand down legally binding decisions though it was given power to summon witnesses and take evidence on oath. It was unlike labour courts in various other countries which give binding decisions but are usually confined to "rights" disputes (i.e., affecting individuals or interpretation of collective agreements).

A significant influence on the Court's format was the emergency wage tribunals which were generally accepted as having worked well during the world war period and in which employer and union representatives co-operated fully.



THE COURT 1946-52 CHAIRMAN : RONALD J.P. MORTISHED

The first members of the Labour Court, appointed for 5 years from 23 September 1946, were:

- *Ronald J.P. Mortished, Chairman*
- *Francis Vaughan Buckley, S.C., Deputy Chairman*

- *Peter Mc Laughlin Employer Member*
- *William McRae Bruce Employer Member*

- *Cathal O'Shannon Worker Member*
- *Thomas Johnson Worker Member*

Mortished, the first Chairman, was born in England of Irish parents. He had been a civil servant, a trade union and a Labour Party official and had worked for the International Labour Organisation in Geneva and Canada. The Deputy Chairman, Vaughan Buckley, was a Senior Counsel and had considerable experience of chairing the emergency wage tribunals.

The Employers' Members were nominated by the Federated Union of Employers and both had substantial experience as employers and as members of the
F.U.E. O'Shannon was nominated by the constituent unions of C.I.U. He had been Secretary of C.I.U., and earlier, Secretary of I.T.U.C. and was a former Labour Party T.D. Johnson was nominated by I.T.U.C. and had been their acting secretary. He was prominent in the trade union and Labour Party movements. He had been a T.D. and a Senator, and had led the Party in the Dáil. In the 1920s, Johnson had been Secretary and Mortished Assistant Secretary of the I.T.U.C. and Labour Party.

The Chairman's appointment was full-time and the Deputy Chairman's part-time. Court Members were expected to be available at all times as required for Court work. In practice, Workers' Members had to give up their trade union positions.

The position of Employers' Members was more flexible — they could not hold other full-time jobs but some were able to retain business interests which did not conflict with their Court responsibilities.

The first premises occupied by the Court and its staff were at 3 Lower Ormond Quay and most Court hearings were held in the Court room of the Controller of Industrial and Commercial Property at 45 Merrion Square. The Court moved, in May, 1947, to Griffith Barracks on the South Circular Road "as temporary accommodation". In the event, the Court stayed at that address until 1966 when the Court and the new Department of Labour were housed in new offices on Mespil Road.

At its first public meeting the Court issued a statement stressing its independence. The statement said that the 1946 Act might be regarded as an expression of industrial or vocational self government and went on to say "the Court is 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".

One of the principal preoccupations of the Court during its first two years of operation was the implementation of the transitional part VII of the Act. Part VII related to the phasing of bonus awards on foot of emergency wage tribunal recommendations into the new "voluntary" system. The Court said in its first annual report that pressure on its resources arising from Part VII made it difficult to devote sufficient attention to its other, and in the longer-term sense, more important responsibilities.

The Court decided that in hearing individual disputes it would normally act by separate divisions headed by the Chairman or Deputy Chairman respectively. This procedure has continued as membership of the Court expanded in later years and has enabled the Court to undertake a growing volume of business. The Court as a whole did come together regularly for business meetings and has continued to do so.

In February, 1947 the Court decided that, normally, a conciliation officer would not be available to intervene in a dispute where a Court recommendation had been made but had not led to a settlement. This policy was to be reviewed and changed in later years.

In its first year, the Court had to find a formula for wage adjustment which would facilitate the initial move from the emergency control system towards free collective bargaining. The Court decided against recommending full compensation for the cost of living increase since pre-war, except where lower paid workers were concerned. For better paid workers, increases giving part compensation only should be proposed. The first increases recommended for organised male adult industrial workers were, in fact, less than 11/- (55p) per week and mainly between 8/- (4Op) and 10/- (5Op) per week.

The Court had to operate against a variety of difficulties in its first few years. The war-time approach of control of pay was not easily surrendered. The cost of living increased sharply in 1947. Various proposals were put forward by Ministers to control wage developments and legislation was threatened to curtail strikes in key industries. The efforts of the Government and the Labour Court and its services did not prevent serious strikes, e.g., a nine-week bus strike in 1947 during which transport by army lorries was provided. Other serious strikes took place in sugar, turf, gas and banking. Lemass undertook discussions late in 1947 with employers and trade unions seeking a voluntary agreement for pay restraint. These discussions were put on hold following a decision to call a general election. The election led to the appointment of the first inter-party Government in March, 1948.

The Labour Court, following an approach by the Federated Union of Employers, initiated discussions with employers and trade unions on the pay situation late in 1947, which resulted in the first "national" pay agreement in March, 1948 providing for pay increases of 11/-(55p) a week for adult male workers. The 1948 national agreement produced some degree of stability in industrial relations. The cost of living index remained stable during 1948—49 but a number of serious strikes occurred. There was some fairly mild criticism of the effectiveness of the Court and its services by employer and trade union bodies but the general view, at least up to the end of 1948, was that the Court, while still on trial, was working reasonably satisfactorily.

From 1949 onwards the Court, and in particular Mortished, became involved in a number of controversies. Firstly, there was a major row with the Irish Transport and General Workers' Union (backed by the Congress of Irish Unions) over the handling of a dispute in 1949 in the road freight department of Córas Iompar Eireann. The settlement of that dispute resulted in a confrontation between Mortished and the Minister for Industry and Commerce (Dan Monissey). The Minister for Posts and Telegraphs (James Everett) criticised the Court at a party meeting in January, 1950, and the members of the Court had an acrimonious meeting with An Taoiseach (John Costello).

In 1950 the two trade union congresses sought review of the 1948 national pay agreements. The Court held discussions with the Federated Union of Employers and the two congresses over several months but agreement was not reached. The cost of living had increased by only 1% a year in 1949 and 1950. At the end of the discussions the Court issued a statement which included the following:— "The Court does not regard the case for a general increase in wages as proved". The Unions now sought pay increases on a firm by firm basis and they negotiated increases in pay in the range 10/-(50p) to 16/- (80p) for adult males with an average of about 15/- (75p).

In March, 1951 Mortished made a public speech in Cork criticising Government foreign policy, particularly in relation to the repeal of the External Relations Act. In the Dáil John Costello, Taoiseach, described Mortished's remarks as "ill-advised and improper".

Criticism of the Court, mainly by the trade union congresses and individual trade unions, grew throughout 1949 to 1951. Mortished submitted a lengthy memorandum in April, 1951 reviewing the Court's work and suggesting various changes in the legislation and procedures. By the time Mortished's five-year appointment was due to expire in September, 1951, Lemass had returned to office as Minister for Industry and Commerce. Although the Congress of Irish - Unions opposed Mortished's reappointment, Lemass decided to re-appoint him for a further 5 years. However, Mortished resigned as Chairman in May, 1952, to take up an appointment with the International Labour Organisation.

Two comments on Mortished's work as Chairman are worth quoting. A senior civil servant wrote:—

"His personality is distinctive and his manner somewhat didactic. … The union leaders might have preferred a more easy going Chairman but I do not think that either they or anyone else can ever charge that the Chairman was ever anything but impartial and independent-minded… . It is possibly fair to say that the present Chairman is not noted for his tactfulness but I do not see where one can find a Chairman with all the qualities of a Solomon".

TABLE A
DISPUTES DEALT WITH BY LABOUR COURT AND ITS SERVICES AND STRIKE STATISTICS (1946-52)

(Source - Labour Court Annual Reports – percentages calculated from Report figures)

1 Period	2 Total Disputes referred to Court and its Services	3 Disputes Referred to Conciliation	4 Settled at Conciliation	5 4 as % of 3	6 Disputes Referred to Court
Sept 46 - Sept 47	251	166	105	63	121
Oct 47 - Dec 48	350	228	153	67	170
1949	186	135	81	60	83
1950	143	102	66	65	67
1951	212	157	111	71	86
1952	214	169	134	79	66

In "The Irish Times" of 20th May, 1952 the paper's industrial correspondent (Michael McInerney) wrote:—

"…all credit must go to Mr. Mortished for having created the Labour Court… It was he, mainly, who put Mr. Lemass's theory into practice and made it work. His capacity for work and searching out the facts surprised all who were his colleagues. The urge behind the drive was the unflinching principle that the particular recommendation should be based on all the ascertainable facts and should do justice to both sides. One of the secrets of the success of the Court must be attributed to the objectivity of the Chairman."

The Court under Mortished had to its credit the major achievements in 1946—48 of underpinning the transition to free collective bargaining and supervising the negotiation of the first national pay agreement in 1948. The period from 1949 was seen as less fruitful and the failure to achieve a second pay agreement in 1950 was a blow to the Court's prestige.

Mortished's qualities of integrity and independence served him well in getting the Court established and accepted as a major industrial relations institution. He seems, however, to have lacked tact, patience and flexibility and his outspokenness alienated some of the Court's important clients, particularly on the trade union side.

Some statistics referring to the period of Mortished's chairmanship are given in Table A. While interpretation must be approached guardedly they indicate a creditable success rate for the Court and its services, It tended to be blamed for its failures rather than praised for its successes. The 15% to 30% annual failure and the high number of man-days lost in 1951 and 1952 weighed more in the general perception of the Court than the 70% to 85% annual success rate.

The only change in the membership of the Court in this period was that Vaughan Buckley resigned as Deputy Chairman in July 1948 and was replaced by John Ingram, a retired senior civil servant.

7 Court Recommendations	8 Recs. Accepted by both sides	9 8 as % of 7	10 4 + 8 as % of 2	11 No of Strikes	12 Man Days Lost
100	74	74	71	194 (1947)	449,000 (1947)
179	136	76	83	147 (1948)	258,000 (1948)
89	55	62	73	153	273,000
60	36	60	71	154	216.000
86	53	62	77	138	565,000
66	49	74	86	82	529,000

THE COURT 1952-1962 CHAIRMAN:

Mortished's successor as Chairman was Martin J. Keady, B.E., B.Sc., A.R.C.S.I., who was appointed for five years with effect from 1st July, 1952. He was 59 years of age, had served for thirty eight years in the vocational education service and, prior to appointment as Chairman, was principal of Bolton Street Technical Institute, Dublin. He had extensive involvement in apprenticeship matters which brought him into regular contact with employers and trade unions. Lemass, speaking in the Dáil on 9th July, 1952, said he had been fortunate to obtain the services of Keady who had been reluctant to leave Bolton Street but agreed to do so under pressure.

While the chairmanship of the Court was vacant in the Spring of 1952, discussions were proceeding between the F.U.E. and two trade union congresses about a further pay agreement. C.I.U and F.U.E. reached agreement for a general increase of 12/6 (62p) per week. According to F.U.E., this agreement was negotiated under great pressure from Lemass. The cost of living index had risen significantly in 1951 and food subsidies were reduced in the April, 1952 budget. I.T.U.C. did not formally accept the F.U.E.-C.I.U. agreement but the 12/6 increase was adopted fairly generally and became the fourth post¬war pay round.

Keady's early period as Chairman was no doubt eased by the general adoption of the fourth round pay formula. The years 1953 and 1954 were comparatively quiet ones for the Court with some reductions in the scale of references to the Court and its services and a low level of strike activity. The cost of living index remained fairly stable but claims for reduced working hours were developing towards the end of 1954.

Following a general election, a second inter-party Government took office on 2nd June, 1954, with William Norton as Tánaiste and Minister for Industry and Commerce. Norton, shortly after his appointment as Minister in June, 1954, took

up the issue of bringing the pay and conditions of local authority employees within the scope of the Labour Court. The outcome was the first amendment of the 1946 Act — the Industrial Relations (Amendment) Act, 1955, which made the Court and its services available to most lower-level local authority staff. The Act — the first of several to broaden the functions of the Court — involved a substantial extra workload for the Court. The Court's report for 1956 stated that 10% of the disputes before the Court and its services, and 15% of Court investigations, related to local authority employees.

About the end of 1954 and the early part of 1955, dissatisfaction with the fourth round pay increase began to emerge and fresh claims for pay increases and improvements in working hours were made on individual employers. Fifth round claims were pursued on a firm by firm basis and negotiation of the round continued throughout 1955 and 1956.

Those who settled in the early stages of the round frequently got less than those settling later and the result was claims to "catch up". The round produced increases in the range of 11/- (55p) to 16/- (8Op) with average increases of 12/- (6Op).

The rather haphazard nature of the fifth round was probably at least partly responsible for growing complaints about the functioning of the Court, notably from the trade union side. At the summer trade union congresses in 1955, there was fairly strong criticism of the Court's recommendations. Keady took these criticisms to heart and wrote to the Minister (Norton) in August 1955 tendering his resignation as Chairman alleging unfair criticism of the Court. The Minister met him and persuaded him to defer resignation on the basis that a review of the working of the 1946 Act would be undertaken involving the two congresses, the F.U.E. and the Department as well as the Court. Keady's resentment of the criticism of the Court was expressed in a letter of 12th October, 1955 to the Minister in which he accused the presidents of I.T.G.W.U. and C.I.U. of undermining the Court by their "unmeasured criticism". He also referred to "the wholesale and destructive change in attitude to the Court caused by the breach between C.I.U. and F.U.E. early in 1955 over the unwillingness of F.U.E. to discuss another agreement and termination by C.I.U. of the 1952 agreement".

There followed the first major review of the 1946 Act, the Court and its services, involving submissions by the Court, the two trade union congresses and the F.U.E. The Minister (William Norton) proposed a conference of all interested parties but the conference never took place. The two trade union congresses were pre-occupied with unity discussions and the inter-party government was in its final stage. A general election brought Fianna Fáil into office on March, 1957 with Sean Lemass again as Minister for Industry and Commerce. The papers on the proposed review of the Act were submitted to him and he noted "the investigation had not disclosed any great need to consider amendment of the Act". He directed that the matter be allowed rest until one or other party re- opened it.

In the meantime, the reputation of the Court in the eyes of at least some trade union leaders seemed to have improved quite significantly. The I.T.G.W.U. report

for 1955 paid tributes to the Court and its officials. At its annual conference in Galway in June 1956 the president, John Conroy, said: "Looking back on 1955 it was the most satisfactory year the Labour Court had …since its inception". "The Court's standing amongst our members is now much higher than at any period in the past".

While Norton was Minister he launched a campaign in 1956 to reduce the incidence of unofficial strikes. He summoned a conference of the trade unions, employer bodies, State bodies and the Labour Court in October, 1956. A working party was set up with Keady as Chairman. The report of the working party was submitted to the Minister in January 1957. The conference re-convened under official chairmanship in July 1957 and the report was approved and issued to all conference parties for implementation. The report's recommendations did not involve the Court, which normally does not intervene in unofficial disputes.

Keady's first period of office from 1952-57 was one of reasonable success. So far as the unions were concerned he seems to have repaired the breach with C.I.U. which had occurred in Mortished's later years in office. Criticism of the Court by the trade union congresses in 1955 led to a threat of resignation by Keady, but good relations with the unions were restored by 1956—57. The F.U.E. reaction to the Court in this period was fairly neutral though there were some hints of dissatisfaction with the Court and more particularly the conciliation service.

The first change in the ordinary membership of the Court took place when Thomas Johnson, who was 84 years of age, resigned in December 1955. He was replaced by Patrick Doyle, Irish Organiser of the National Union of Vehicle Builders. In September, 1956 McRae Bruce was replaced as employer member by Ernest E. Benson, a member of the National Council and a former vice president of F.U.E.

Keady's second term as Chairman started in July 1957, when he was appointed by Sean Lemass for a further five years and when moves for the next general pay increase had been initiated by the Provisional United Trade Union Organisation (P.U.T.U.O.) which had been set up in January, 1957. As the cost of living index had been reasonably stable in 1956 and early 1957 the F.U.E. was reluctant to grant any further increase. Lemass put pressure on the F.U.E. to continue discussions until agreement could be reached. He stressed, however, that the agreement should incorporate clauses to ensure that prices and employment would not be adversely affected by any pay increases. The outcome was an agreement in September 1957 for a general increase of 10/- (50p) per week for adult males – the sixth round. The agreement included clauses providing that employers could seek compensatory productivity measures. The Court's annual report for 1957 stated that many sixth round agreements were negotiated through conciliation and joint industrial councils but that the productivity clause of the agreement was not generally insisted on by employers. The F.U.E. in its annual report for 1957 criticised the Court for recommending the full 10/- to workers in C.I.E. and Dublin Corporation, stating that the 10/- was intended to be a ceiling and not to be given automatically. In contrast, the I.T.G.W.U. in its report for 1958 regretted that the Court recommended some increases below 10/.

The remainder of 1957 and 1958 was a relatively uneventful period but this period of calm was brought to an end by termination of the sixth round agreement by
P.U.T.U.O. as from November, 1958. The cost of living index had increased from 135 to 142 in 1957 but remained stable in the range of 144 to 146 in 1958 and, in fact, declined from 147 to 144 in 1959.

The year 1959 brought three notable developments. First, the split in the Irish trade union movement was finally healed with the setting up of the Irish Congress of Trade Union (I.C.T.U.) on 11th February, 1959. Second, Sean Lemass became Taoiseach in June, thus ending his lengthy period of direct responsibility for industrial relations policy. Third, pressure for a further or seventh pay round developed but on a firm-by-firm basis. The seventh round gave increases in the range of 10/- (50p) to 15/- (75p) a week to adult male workers, with comparable percentage increases for salaried workers. In general, productivity did not feature in the agreements.

F.U.E. described the seventh round as a show of strength by the new I.C.T.U. Jack Lynch, who had succeeded Lemass in 1959 as Minister for Industry and Commerce, said in the Dáil in May, 1960 that, while the seventh round gave rise to a number of industrial disputes, "it is satisfying to note that workers and employers continued to recognise the value of the Labour Court for the settlement of these disputes" and "the success of the Court is reflected in the fact that the adjustments were completed with a minimum of industrial strife".

The newly formed I.C.T.U. sought discussions with the Labour Court and two meetings were held on 28th May and 13th July, 1959, and certain criticisms of the Court were aired at these meetings but Keady strongly defended the Court's record.

From the end of 1959 the position of the Court came under much greater pressure due to a series of major disputes which the Court and the conciliation service had processed but failed to solve. In each instance serious disruption for the public was involved and pressure resulted for direct intervention by the Government. These disputes damaged the Court's reputation and another, far- reaching, review of the Court and its future was precipitated.

A dispute in November, 1959 affected the distribution of petrol and led to petrol shortages with queuing for petrol and some disemployment in industry and services. The strike lasted 11 days and was eventually settled, following intervention by the Minister, (Jack Lynch) at conferences chaired by officers of the Department.

The next strike involving Ministerial intervention related to pay for weekend work by C.I.E. bus workers and led to a complete closure Of bus services in March, 1961. After the Minister intervened, a Court of Enquiry was set up under the chairmanship of Justice Cearbhall O'Dalaigh of the Supreme Court. This Court's recommendations were accepted following a ballot and work was resumed.

A dispute in the cement industry in 1961 led to stoppage of work and serious shortages of cement. The repercussions on the building industry resulted in

pressure on the Minister to intervene and to license the import of cement. He eventually arranged for a resumption of work on the understanding that further discussions to produce a settlement would be held under a chairman nominated by him.

An E.S.B. strike involving extensive power cuts took place in August/September, 1961 following rejection of a Court recommendation on claims for increased pay and shorter hours by installation electricians. The strike started on 21 August with picketing of generating stations, refusal of workers to pass the pickets and consequent power cuts. Two personal interventions by the Minister (Jack Lynch) eventually produced a settlement and work was resumed on the 8th September. Before the dispute was settled, the Government had recalled the Dáil and Seanad for emergency session to enact the Electricity (Temporary Provisions) Act, 1961 which became law on the 2nd September 1961. The Act provided for setting up of two tribunals one, which was not, in the event, set up, to be headed by a Supreme Court Judge to produce mandatory awards on the pay claims and the other to enquire into procedures for dealing with pay, etc., claims in the E.S.B.

This series of major disputes led to a growing chorus of criticism of the Court and the industrial relations institutions mainly by F.U.E. and even in Dáil Eireann. The Minister, in the Dáil in April, 1961, promised a review of the industrial relations machinery. In fact, a review had started within the Department of Industry and Commerce shortly after the strike in petrol distribution in November, 1959. The review was a lengthy and detailed one and lasted until 1963. It involved extensive consultations with the Court and its chief officers. This was the era of economic programming and the Department of Finance also became involved. To quote from a letter from T.K. Whitaker, Secretary of the Department of Finance, to
J.C.B. MacCarthy, Secretary of the Department of Industry and Commerce, they wanted to avoid "the risk that collective bargaining, backed by unfettered strike action, may frustrate all planning".

It emerged during the review that the Court was now adopting a much more flexible position in regard to availability of conciliation officers after a Court recommendation had been rejected and that, where both sides sought the services of a conciliation officer after a rejection, the officer would be made available.

Internal discussions in the Department of Industry and Commerce and with the Court and discussions with the Department of Finance continued until early 1963, and beyond the period of Keady's chairmanship.

A further move for a general pay increase started in the summer of 1961 and was given a substantial impetus by the settlement of the E.S.B. dispute in the autumn of 1961. The outcome was the eighth round which, apart from pay increases, involved in many employments, the reduction of working hours and introduction of a 5-day week. The round developed on a firm by firm basis and early settlers found themselves putting in later "catching up" claims. Increases were significantly higher than in previous rounds, usually in the range of 20/- (£1) to 25/- (£1.25) per week.

While the major review of the industrial relations machinery was in progress, and the eighth pay round was being completed, Keady's term as Chairman was coming to an end. Jack Lynch decided to appoint Timothy J. Cahill, Assistant Secretary in the Department and a former Chief Conciliation Officer, to be full-time Deputy Chairman with effect from 25th April, 1962 and to take over the chairmanship from 1st July, 1962. In view of the possible changes affecting the Court arising from the ongoing review, Jack Lynch, writing to the Minister for Finance, pointed out that the appointment of a civil servant would have the advantage of flexibility if the Court were to be discontinued or radically changed.

John Ingram who had been Deputy Chairman since July, 1948 retired in March, 1959. The Minister (Lemass) had considered a full-time replacement, as Keady was expected to retire fairly soon. However, a part-time appointment was made of John J. Purcell, a retired Assistant Secretary of the Department of Posts and Telegraphs.

The Court, in the ten-year period 1952—62 under Martin Keady, performed to fairly general satisfaction up to his final few years. Keady repaired the breach with
C.I.U. which occurred in the later part of Mortished's term. In general, although he threatened resignation in 1955 after trade union criticism, he maintained good relations with the unions. A contributing factor to the relatively peaceful industrial relations situation up to 1959 was that Ireland's economic situation was depressed, with high unemployment by previous standards and emigration. From 1959 the economic background to industrial relations began to change. The depression of the 1950s was ending and a period of substantial economic growth was beginning. Keady and the Court were caught in the early stages of what Professor Charles McCarthy has labelled the "Decade of Upheaval". In any event, the F.U.E. became highly critical of the Court and its services and the Government and the administration generally had their confidence in the Court shaken by the succession of major disputes which the Court seemed powerless to settle.

Keady had a very different personality to that of his predecessor. He adopted a much lower profile and avoided the type of personal hostility from the unions which Mortished attracted. He did not issue public statements or look for controversy. In his period, the Court tended to give brief factual recommendations of its findings and did not enter into detailed reasons or comments, as was more usual under Mortished.

His approach was pragmatic and his main interest was in seeking solutions to the individual disputes before the Court; he was not inclined to involve himself in the wider ramifications in the industrial relations field of the work of the Court and its services.

Some published comments on the Court's performance which refer to Keady's term of office and which also relate to Mortished's term are worth quoting.

In an article in "Administration" on labour relations in Bord na Móna in the Spring of 1959, A. D. Sheehan referred to the "excellent service provided by the Labour Court" and to the 22 Court recommendations on Bord na Móna disputes all of which were effectively accepted. "The Labour Court as the pinnacle of the Board's procedure in industrial relations has proved of incalculable value",

David O'Mahony, writing in February, 1965 on "Economic Aspects of Industrial Relations" asserts:—

"… the history of wage rounds shows that the attitude of the Labour Court to wages questions has changed. In the years immediately after the war the Court took up a positive attitude in the matter of wage questions. It stated its own position clearly and made positive suggestions to labour and management in an effort to establish criteria by which wages could be judged. As time elapsed, however, the Court became increasingly passive and in recent years has ceased to express any views whatever on these matters."

TABLE B
DISPUTES DEALT WITH BY LABOUR COURT AND ITS SERVICES AND STRIKE STATISTICS (1952-62)

(Source — Labour Court Annual Reports — percentages calculated from Report figures)

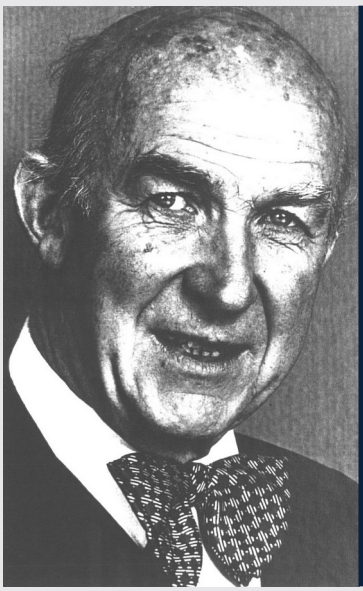
1 Period	2 Total Disputes Referred to Court and its Services	3 Disputes referred to Conciliation	4 Settled at Conciliation	5 4 as % of 3	6 Disputes Referred to Court
1952	214	169	134	79	66
1953	178	143	94	66	74
1954	199	166	110	66	77
1955	244	188	135	72	99
1956	230	173	116	67	99
1957	231	191	119	62	110
1958	280	226	136	60	137
1959	240	191	125	65	115
1960	246	197	122	62	115
1961	251	211	151	72	98
1962	322	300	214	71	108

In "The Decade of Upheaval" published in 1973, Charles McCarthy wrote:— "The Court relies on a moral, not a legal, authority to support its recommendations and Mortished gave it this during his period of office until 1952. The reports at the time show a drive and a dominance much in contrast with the more prosaic, service-type report of recent times" and later "The Labour Court has a stabilising role, following trends when they had emerged but not as a rule initiating trends itself".

Charles McCarthy in "Trade Unions in Ireland 1894—1960", published in 1977, referred to "the somewhat peremptory manner in which Mortished handled the Court's procedure" and "the less colourful handling of Martin Keady" and then went on to say: "Thus was formed the character of the Labour Court as the Sixties knew it, a Court that was modest in what it attempted to do, helping where it could, deciding on cases in the light of clearly developing events and cautiously providing in these circumstances the briefest of reports".

While the concluding years of Keady's term of office marked a decline in the Court's reputation, the statistics (quoted with the usual qualifications) do not support the view that there was a decline in the general performance of the Court and its services. Table B gives statistics for 1952—62 in the same form as Table
A. On the basis of these statistics the Court's overall performance was rather better than in 1946—52. The low-key approach of the Court and the more flexible attitude to involvement of conciliation in disputes after Court recommendations had not been accepted, probably contributed to those improved statistics. However, it appears that the Court's failures in the small number of admittedly major disputes which involved serious disruption in supplies of petrol, cement and electricity and absence of public transport outweighed, in the general perception any improvement in the Court's general record.

	7 Court Recommendations	8 Recs. Accepted by both sides	9 8 as % of 7	10 4+8 as % of 2	11 No of Strikes	12 Man days lost
	66	49	74	86	82	529,000
	72	48	67	80	75	82,000
	73	50	68	80	81	67,000
	96	60	63	80	96	236,000
	96	55	57	74	67	48,000
	108	76	70	84	45	92,000
	136	104	76	86	51	126,000
	113	58	51	76	58	124,000
	115	76	66	80	49	80,000
	98	69	70	88	96	377,000
	108	92	85	95	60	104,000



THE COURT 1962-1977 CHAIRMAN: TIMOTHY J. CAHILL

It was ironic that, when Timothy Cahill was appointed Chairman in 1962, the future of the Court was seen as uncertain. Cahill was, however, to continue as Chairman for almost 15 years and was thus the longest-serving Chairman in the Court's history. Also, as this chapter will show, the Court was given a wide range of additional functions and the Court itself and its staff had to be expanded substantially to cope with the far greater volume of work arising. Cahill assumed office as Chairman on 1st July, 1962 and, in contrast with his two predecessors, was not appointed for a fixed period.

The period of turbulence in industrial relations which had started in Keady's final years continued and indeed intensified during much of Cahill's term of office. Most of the years up to the first "oil shock" in the early 1970s showed reasonably good economic growth but also relatively high inflation — averaging about 5.7% in 1962—1972. Apart from seeking pay increases to match inflation and to obtain some share of the growth in national resources, workers and their unions campaigned for reduced hours of work, extra holidays, service pay and improved pension terms. The 40-hour, five-day week and a third week's holiday became the norm and service pay was introduced in many employments. The achievement of these improvements and their spread across the board to a wide range of employments was accompanied by an increase in the number and duration of strikes, as the statistics, which will be given later, show.

The first general pay agreement after 1962 was made in 1963 between employer organisations and I.C.T.U. and provided for a 12% pay increase, subject to a minimum of £1 a week for adult males. The agreement was for two years and disputes were to be referred to the Court or conciliation before stoppages of work were initiated. The agreement did not avoid serious disputes, e.g., about "status" claims, mainly in clerical employment, and other claims for benefits over and above the terms of the agreement. Over 1 million man-days were lost in strikes between 1964 and 1965. Of particular note was a two-month strike by Dublin

building workers in 1964 over a claim for a 40-hour week. The claim was heard by the Court which did not recommend in favour of the workers. The dispute was eventually settled by discussions by the parties, under the chairmanship of the Chief Conciliation Officer, and phased reductions in hours were conceded, leading to the 40-hour week.

In July, 1965 I.C.T.U. decided to seek a review of the 1963 agreement but the employers were unwilling to negotiate a new agreement. Early in 1966 I.C.T.U. recommended that unions should seek up to £1 a week increase. The Government intervened to say that income increases should be kept within a limit of 3%. The Court now took a hand and, after discussions with employers and I.C.T.U., issued a guidelines statement in April, 1966 proposing that the £1 increase for male adult workers should be conceded, where firms' circumstances permitted, but other cost-increasing claims should not be pressed, except where serious anomalies existed.

The £1 a week increase was conceded generally but major strikes took place with lengthy ones in Dublin Port, paper-making and commercial banks. 1966 also saw further trouble in the E.S.B. with serious power cuts. The Government responded by having the E.S.B. (Special Provisions) Act 1966 enacted which provided for binding Labour Court awards and bans on picketing and strikes. A Government order was necessary to bring the Act into operation.

Chapter 3 referred to a review of industrial relations procedures and institutions which had been initiated in the Department of Industry and Commerce in 1959. The need for an improvement in industrial relations was to be a continuing cry throughout the 1960s and succeeding decades and the issue was addressed by various fora which were set up to examine Ireland's economic, social and industrial relations problems.

The Departmental review initiated in 1959 continued, with widespread consultations, including with the Court, before and after Cahill's appointment as Chairman. A wide range of possible changes was examined, including such options as:

(a) *abolition of the Court*

(b) *detachment of the conciliation service from the Court*

(c) *an arbitration tribunal of last resort with a variable panel of members*

(d) *taking away the power of recommendation from the Court*

(e) *special provisions with mandatory powers for essential industries and "cooling off" periods for disputes in such industries*

(f) *removal of the requirement that the Court should have regard to acceptability of its recommendations*

(g) *introduction of wider recruitment and specialised training for members of the conciliation service.*

The outcome of this review was a submission to the Government by the Minister for Industry and Commerce on 28th February, 1963 which recommended that a series of proposals should be discussed with employers and trade unions. However, before that submission was made, a new representative body with functions in the industrial relations field had been set up — the National Employer Labour Conference (N.E.L.C.). It was the fervent hope of the Government that
N.E.L.C. would produce some consensus on improved measures to deal with the industrial relations situation. The Government decided to await N.E.L.C. conclusions before proceeding with any action in the matter.

The initial impetus for creation of the N.E.L.C. came from a statement by An Taoiseach, Sean Lemass, to the Irish Management Institute conference in Killarney in May, 1961. He met representatives of employers and trade unions and the idea emerged of some national forum, which might give guidance to the Labour Court on general developments in pay and other conditions. The view of the meeting was that, while the Court was operating reasonably satisfactorily, it might need strengthening. There was need for continuing conciliation after Court recommendations were rejected. Amendments to the 1946 Act were not urgent. Further discussions led to the setting up of the N.E.L.C. which was to meet for a period each year and issue agreed recommendations or observations. Expert advice was to be made available to the conference on wages, prices and the overall economic situation.

When the N.E.L.C. met in May, 1962 it set up four sub-committees which were to report to a plenary session of the conference in July. One of these sub-committees was to deal with industrial negotiations, but its report was not adopted by the plenary conference in July, because of reservations by the I.C.T.U. representatives. The report included proposals for a full-time Deputy Chairman for the Court, arbitration on "rights" disputes, secret ballots on Labour Court recommendations and binding awards by the Court in disputes which involved the public interest.

In the light of the continued turbulence in industrial relations, the sub-committee of N.E.L.C. on industrial negotiation procedures reconvened and produced a revised report in January, 1964 which was accepted by N.E.L.C. The report now proposed (a) that strikes and lockouts should not take place until conciliation and, if appropriate, the Court had been availed of and (b) a 28-day "cooling off" period after Court recommendations. However, the sub-committee's report was rejected at the 1964 I.C.T.U. Annual Conference.

Discussions between An Taoiseach, I.C.T.U. and employers' bodies following the issue in 1963 of the White Paper "Closing the Gap (Incomes and Output)" led to the setting up of the National Industrial Economic Council (N.I.E.C.) representative of Government nominees, employers and trade unions with a broad economic remit but including the following:

"The Council shall have regard to the level of trend of incomes, including wages, salaries, profits, rents and other incomes with a view to inclusion in its reports of policy recommendations on these matters. The N.E.L.C. may, at any time, request the Council to prepare a report on a specific subject".

The N.I.E.C. was a standing body which produced a series of major reports on economic, social and other policies. In its report No. 9 (July 1965) on "Administrative Measures for Manpower Policy" the question was raised of setting up a Department of Labour but primarily in the context of manpower policy. The deteriorating industrial relations situation also focused attention on the need for greater attention at Ministerial and official levels to industrial relations matters. The Government decided to set up a separate Department of Labour with responsibility for, inter alia, industrial relations and manpower matters. Dr. Patrick J. Hillery became Minister for Labour in July 1966. The Labour Court was attached to the new Department and shortly afterwards both the Department and the Court were housed in the same premises – Ansley House, later to be re- named Davitt House on Mespil Road (now the Mespil Hotel).

A new approach to pay negotiations was initiated in 1967. Employers decided to negotiate with unions on a firm by firm basis and to seek comprehensive agreements for a fixed period – usually two years – with increases phased over the period of the agreement. Pay increases were usually in three phases, hours reductions in two phases and extra holidays in three. Shift premiums, sick pay and pensions improvements were often included. Disputes were to be referred to the Labour Court and Conciliation Service. The first "round" under this approach was completed by the end of 1968. Pay increases were in the range 35/- (£1.75) to 40/- (£2), normally in 3 phases.

The new approach did not avoid serious strikes, among which were disputes in Bord na Móna, Dublin Corporation, Electrical Contracting and the E.S.B. The E.S.B. dispute led to power cuts and the 1966 Special Provisions Act was brought into operation by Government order, A number of picketers were arrested and sent to gaol. The dispute was settled following discussions involving the Minister for Labour (Patrick J. Hillery). The gaoled picketers were released and the Government order was withdrawn. The 1966 Act was repealed in 1969.

The year 1969 was the most traumatic yet for industrial relations — it was the year of the maintenance men's strike. The settlement of the strike in electrical contracting late in 1968 led to a claim for corresponding pay increases by maintenance craftsmen. There was a six weeks' strike which closed down wide areas of industry and produced losses of over 600,000 man-days. The dispute caused major recriminations and bitterness between employers and trade unions and within the two sides. Extensive discussions chaired by the conciliation service were unsuccessful. The settlement which emerged, after individual employers broke ranks with their representative body, was for an increase of
£3.50 in two phases over 18 months. The settlement set the tone for increases of the same order in employment generally with increases up to £4 given in two or three phases over 18 months. 1969 also marked the start of a period of rapidly increasing inflation. It was 7.4% in 1969, over 8% in the next three years and "took off' into double figures from 1973 onwards, with huge increases in oil prices a major factor.

The year 1969 also produced the first significant amendment of the Industrial Relations Act, 1946. When the N.E.L.C. failed to come up with agreed proposals for improving industrial relations, in 1964 the issues continued to be examined in the Department of Industry and Commerce. The Minister (Jack Lynch) initiated discussions with I.C.T.U. and F.U.E. in 1965 and these discussions were continued by Patrick J. Hillery when he was appointed Minister for Industry and Commerce in April, 1965 and later as Minister for Labour. Heads for legislation were sent to
I.C.T.U. and F.U.E. for comment in April, 1966. Working parties were set up with I.C.T.U. and F.U.E. to examine the proposals but I.C.T.U. withdrew from these discussions in September, 1967. A modified version of these proposals was embodied in two Bills, one of which became law as the Industrial Relations Act, 1969. The second Bill, the Trade Union Bill, lapsed with the dissolution of the Dáil in 1969 and was not revived. There had been a substantial campaign mounted by trade union elements against the legislation, but the main objections were to the provisions in the Trade Union Bill.

The main provisions of the Industrial Relations Act, 1969 relating to the Court and its services were:—

(i) *Discretion given to the Minister for Labour to appoint an additional division of the Court, including a full-time Deputy Chairman;*

(ii) *A superannuation scheme for Court members;*

(iii) *Conciliation officers re-named industrial relations officers and given extended functions;*

(iv) *Court investigations to be in private or, on request, in public;*

(v) *Provision for appointment of employers' and workers' members of the Court to public service arbitration boards;*

(vi) *Court given power to make fair employment rules;*

(vii) *Provision for appointment by the Minister of Rights Commissioners to investigate trade disputes other than those relating to rates of pay, hours or times of work or holidays of a body of workers and for appeals to the Court from recommendations of Rights Commissioners, the Court's decisions to be binding;*

(viii) *The Court normally to investigate a dispute only where it has first been dealt with by an industrial relations officer but could intervene directly in exceptional circumstances;*

(ix) *The criteria to be followed by the Court in making recommendations laid down by the 1946 Act were replaced by the formula that a recommendation should set forth the Court's opinion on the merits of the dispute and the terms on which it should be settled.*

The N.I.E.C., late in the 1960s returned to examination of measures to improve industrial relations and produced its report No. 27 on Incomes and Prices Policy in 1970. This report proposed that:¬

(i) *Guide-lines for increases in money incomes should be set by N.I.E.C.*

(ii) *A new employer/labour body (including representatives of the State as employers) should be created which should articulate the guidelines and translate them into practical negotiating terms for employers and unions, and*

(iii) *There should be detailed examination of income developments including wages and salaries to ensure that the public interest was properly catered for by the Labour Court.*

However, all these recommendations were rejected at the 1970 I.C.T.U. Annual Conference, except that a review of the operation and constitution of the N.E.L.C. was accepted. The Employer/Labour Conference was re-constituted with new terms of reference and the addition of direct representatives of the Government as employers. The re-constituted Conference (E.L.C.) became the body through which were negotiated the national agreements which were a feature of the period from 1970 onwards,

The Court, in its report on 1969, drew attention to the adverse results in the industrial relations area of the system of phased firm by firm agreements and asked the parties to reconsider their use. In fact, 1970 saw a return to centralised bargaining but it required a Government threat of legislation to bring the parties to agreement. The agreement was reached by the re-constituted Employer/ Labour Conference in December, 1970 after discussions with the Minister for Labour (Joseph Brennan who had succeeded Hillery). The agreement provided for two phases of pay increases, first £2 a week for one year and second 4% plus an escalator related to the cost of living index for six months. Disputes were to be referred to the Court for conciliation and Court recommendations accepted. Industrial action for claims not covered by the agreement was not to be supported by employers or trade unions, Claims could be put forward where serious anomalies existed but had to be processed through normal procedures, including the Court and conciliation.

In 1970, before the general pay agreement was decided, there were over 1 million man-days lost in strikes of which over 800,000 were accounted for by disputes in banking and cement, The Court, at the request of the Minister, issued a recommendation in the banks dispute which was rejected. Settlement was eventually reached in discussions chaired by the Chief Conciliation Officer (now styled Director of Conciliation). A Court recommendation in the cement dispute was also rejected and discussions arranged by the Minister were necessary to end the dispute.

A further centralised agreement was negotiated through the E.L.C. in July, 1972, covering 18 months, It provided for two-phased percentage increases with an escalator related to cost of living in the second phase. The first phase gave

increases varying from 9% to 4% and the second 4%. The agreement provided that special claims could be made where rates of pay had fallen seriously out of line with those of comparable workers; such claims to be processed through the Court and conciliation. Employers could plead inability to pay the standard increases, such pleas to be considered by the Court with the assistance of assessors.

In 1972, provision was made for possible involvement of the Court and its services in claims under the Civil Service Conciliation and Arbitration Scheme. In a revision of the scheme a clause was inserted about mediation between the discussion and arbitration stages of processing a claim — the mediator to be designated by the Chairman of the Labour Court. Somewhat similar clauses were later inserted in other public service conciliation and arbitration schemes and still appear in the various schemes. Where the Court was involved in designating a mediator a member of the Conciliation Service was usually designated. In practice, the use of mediation under schemes has been sparing.

The year 1973 marked a significant change in the political and economic background against which collective bargaining was to take place. Ireland became a member of the European Economic Community on 1st January, 1973. That year also saw a huge increase in oil prices which, over the succeeding years, brought severe adverse economic consequences for the Western world generally including much higher inflation, from which Ireland was not spared. Inflation in 1973—76 was twice as high on average as in the period 1959—1971 and was as high as 20.9% in 1975. Furthermore, economic growth slowed down significantly, and was even negative in 1975.

An inter-party Government took office in 1973 with Liam Cosgrave as Taoiseach. The Minister for Labour was Michael O'Leary, a Labour Party Deputy. The 1972 agreement ran up to about mid-1974. A further agreement was negotiated through the E.L.C. in March, 1974 covering twelve months. Again there were two phases of percentage increases, each for six months with an escalator in the second phase. The first phase was for increases between 9% and 5% and the second for 4% plus 60p. Special claims could be made where there were clear injustices or inequities and an inability to pay clause for employers was repeated, the Court and conciliation being involved in processing such claims.

The Government did not intervene in the operation of the 1972 agreement or the negotiation of the 1974 agreement. However, growing economic difficulties, including increasing public sector deficits and Government borrowing led to a change in Government policy in this matter, When the E.L.C. proposed a further 12-month agreement in 1975, the Government sought modification of the agreement. The proposal was a four-phased percentage increase, each related to the cost of living increase, The Government sought cancellation of phase three and modification of phase four and introduced a supplementary budget which included subsidies and removal of VAT from certain items. The employers and trade unions eventually accepted the Government's package. The actual increases which resulted were — phase one-8%, two-4%, three-nil, four-2,8%. The 1975 agreement contained similar clauses to those of 1970, 1972 and 1974

about reference of disputes to the Labour Court and conciliation and that "only cases of serious inequity" would justify claims for increases above the standard agreement provisions. An inability to pay clause was included. The Government also introduced, in 1975, an embargo on claims in the public sector for increases above national agreement terms.

When the 1975 agreement expired, the Government sought a pay pause. An interim agreement was reached in September, 1976 for 7 months (including a two-month pay pause), pending further discussions between the two sides and the Government. The Government had suggested tax reliefs and employment subsidies. The interim agreement gave an increase of 3% plus £2 a week with a minimum of £3 and a maximum of £5. The embargo on further public sector increases (including productivity increases) was continued. Provisions on the usual line for disputes and processing of claims for special increases and for inability to pay claims through the Court and conciliation were included.

The Joint Industrial Council for the building industry proposed a three-phase pay increase from 1st September, 1976 and referred the agreement to the Court for "ratification" under the national agreements. The Court saw no objection to the proposed first phase but considered it had no function to "ratify" the proposed agreement as a whole which would require further study. The Court reported in 1977 on the other two proposed phases and indicated that it was unable to judge the justification for the proposals and suggested they should be examined by E.L.C. Following E.L.C. examination, the proposed increases were conceded under threat of strike action.

The issue of bank officials' pay posed particular problems during a regime of national agreements. The bank officials' association was not then affiliated to I.C.T.U. nor were the banks represented on the E.L.C. The association's view was that the national agreements did not apply to them. Furthermore they were normally unwilling to avail of the Court in dispute situations. There had been lengthy strikes by bank officials in 1951, 1966 and 1970. Proposed increases for bank officials when the various national agreements were current were referred to the Court by the Minister for Labour to examine if the increases conformed with the agreements. Legislation was passed in 1973, 1975 and 1976 to regulate such pay. A proposed agreement on such pay in June, 1976 led, following a Ministerial reference, to Court recommendations for modifications to conform with the national agreement. A further bank strike followed. The Government arranged for a further assessment of the proposed agreement by Maurice Cosgrave, Deputy Court Chairman, After further discussions between the Minister for Labour and the association, the strike was called off.

While the changeover from phased agreements on a firm-by-firm basis in 1967 —1970 to national agreements from 1970 on produced some improvement in the overall strike statistics in the period to 1977 it did not prevent major strikes. Notable among them were strikes in Dublin buses and the distributive trades in 1974, a further bank strike in 1976, and, in 1977, unofficial disputes in the ESB and Nitrigín Eireann and a dispute in Ferenka in Limerick which led to closure of a major foreign industrial firm.

The period of office of the inter-party government from 1973 to 1977 produced four Acts, which were to affect substantially the work of the Court and its services, i.e.,

* *The Anti-Discrimination (Pay) Act, 1974*
* *The Industrial Relations Act, 1976*
* *The Employment Equality Act, 1977, and*
* *The Unfair Dismissals Act, 1977*

The two Equality Acts implemented European Community Directives and provided for hearing of claims of discrimination on grounds of sex in relation to pay and other employment matters, Claims were to be dealt with by Equality Officers attached to the Court but appointed by the Minister — the first Equality Officers were appointed in 1976. Claims under the Equality Acts of unfair dismissal due to sex discrimination (including sexual harassment) were, however, to be sent direct to the Court. Appeals from findings of Equality Officers could be submitted to the Court and the Court's decisions were legally binding, but appeals to the Law Courts on points of law were allowed. The Equality legislation introduced a major new dimension into the Court's work by involving it in giving binding decisions of a semi-judicial character, often involving complex legal argument. The Industrial Relations Act, 1976, brought agricultural workers fully within the scope of the Industrial Relations Act, 1946, and provided for setting up of a Joint Labour Committee to settle pay and other conditions of such workers. This Committee was constituted in 1976. The act also empowered the Minister, with the approval of the Minister for the Public Service, to make orders adding a Division or Divisions to the Court and to appoint extra Deputy Chairmen on a full or part-time basis. The Unfair Dismissals Act, 1977, introduced new procedures for claims of unfair dismissal. Such claims could now be processed through the Rights Commissioners appointed by the Minister, and the Employment Appeals Tribunal (a strengthened version of the tribunal set up under the Redundancy Payments Acts). Previous to the 1977 Act, such claims had to be pursued under the Industrial Relations Acts or in the civil courts. Claims not covered by the Act (e.g., where service was less than one year) continued to be dealt with by the Court.

Cahill's lengthy term as Chairman ended in March, 1977 when he retired under the civil service age limit. Some other developments during his term are worthy of mention.

The Court had operated in two Divisions up to 1972. James P. Rice, an officer of the Vocational Education Service had been appointed part-time Deputy Chairman in 1962 shortly after Cahill was appointed Chairman. A third Division of the Court was provided for from January, 1973 with the appointment of Maurice Cosgrave, former General Secretary of the Post Office Workers' Union and recent President of I.C.T.U., as full-time Deputy Chairman. In 1973, Rice retired and was replaced as part-time Deputy Chairman by Patrick D. McCarthy, a retired Chief Adviser in the Department of Labour and a former Chief Conciliation Officer.

The provision of the 1969 Act relating to the addition of two members of the Court to public sector arbitration boards was implemented from 1970 onwards and applied to all the main arbitration bodies with considerable inroads on the time of the Court members involved.

The Court had been looking for premises separate from the Department of Labour for some time and the decision to provide such premises was taken before Cahill left office.

In September 1975, an exchange took place between Dermot McDermott, the Director of Conciliation, and an officer of the same rank — Assistant Secretary — in the Department of Labour but, following representations, including strong ones from trade union interests, McDermott was restored to the conciliation post. He retired in 1977 and was replaced by James McCauley, Deputy Director.

In any overall assessment of the period of Cahill's chairmanship of the Court, great stress must be laid on the vast increase in the volume of work. The total number of disputes referred to the Court and its services grew from 366 in 1963 to 1125 in 1976 with a gradual increase up to 1970 (569) turning to a very rapid increase from 1970 onwards, partly accounted for by references under the regime of national agreements. The Court itself issued 122 recommendations in 1963, 80 in 1970, rising to 474 in 1976. More detailed Statistics for the period 1962—77 on the same lines as Tables A and B are given in Table C at the end of this chapter.

Apart from increasing numbers, new types of work were coming on stream (though the individual cases are included in the overall totals given in the preceding paragraph). The number of appeals from Rights Commissioners' recommendations in 1976 was 45. The first appeal against findings by an Equality Officer was received by the Court in 1976 and there were ten such appeals in 1977. These appeals involved legally binding decisions and required special attention. Another type of work which grew in volume was special references by the Minister for report under Section 24 of the 1946 Act. They reached a peak of 13 in 1974.

A big factor in the increased work load was references under the dispute processing mechanisms of the National Agreements. James F. O'Brien in his "Study of National Wage Agreements in Ireland" published by the Economic and Social Research Institute in 1981 indicates that most of the work relating to procedures and interpretation of the national agreements was done by the E.L.C. and its committees but that the determination of the very great number of claims for increases above standard and by employers to permit increases below standard fell to the Labour Court and conciliation. Claims by employers under the "inability to pay" clauses which required the use of assessors (normally the Irish Productivity Centre) rose to a peak of 41 under the 1976 agreement and then declined. It is worth emphasising that the Court had no part in the negotiation or drafting of the national agreements but was expected to rule on the application of such rather general concepts as "serious anomalies", "rates of pay seriously out of line", "clear injustices and inequities" and "serious inequities" and "inability to pay".

Examination of the strike statistics for the period of Cahill's chairmanship shows that the number of strikes and man-days lost increased significantly as against those in Keady's term. The period of phased agreements on a firm-by-firm basis (1967—70) was particularly bad for man-days lost. There was some improvement when national agreements were re-introduced in 1970 but this improvement tended to be lost in the later years of the agreements. A feature of the strike statistics (not shown in the table) was the growth of unofficial strikes during the national agreements. For example, 81% of all strikes in 1973 were unofficial. The Court, as a matter of policy, did not intervene in unofficial strikes but kept a "watching eye" on them.

The statistics of "success rates" by the Court and conciliation set out in columns 5, 9 and 10 of Table C (while recognising their limitations) show that, up to 1973 inclusive, the overall success rate was at least as high as in Keady's period and rather better than in Mortished's time. Unfortunately, comparable figures from 1974 onwards are not available but the Court's annual reports suggest that similar "success rates" were achieved.

TABLE C
DISPUTES DEALT WITH BY LABOUR COURT AND ITS SERVICES (1962-77)

(Source — Labour Court Annual Report — percentages calculated from Report figures)

1 Period	2 Total Disputes Referred to Court and its Services	3 Disputes referred to Conciliation	4 Settled at Conciliation	5 4 as % of 3	6 Disputes Referred to Court
1962	322	300	214	71	108
1963	366	337	238	71	122
1964	408	388	282	73	
1965	478	450	289	64	
1966	447	429	300	70	
1967	547	532	377	71	
1968	582	546	408	75	
1969	443	414	327	79	
1970	569	564	451	80	
1971	664	628	429	68	
1972	737	713	443	62	
1973	887	855	487	57	
1974	987	951	646	68	
1975	1157	1108	576	52	
1976	1125	1071	581	54	
1977	1324	1175	638	54	

**includes determinations under the Equal Pay Legislation.*

During Cahill's term of office a new Government Department (Labour) and new representative institutions (N.E.L.C. and N.I.E.C.) tried their hands at producing better ways of dealing with industrial relations problems but without notable success. Significant changes in procedures were made through the 1969 Act, the four new Acts in 1974—77 and the switch to national agreements from 1970 onwards. These measures relied heavily on the Court and its services for implementation. However, the general situation as to industrial relations still gave cause for much concern.

An independent survey of the Court's work (report unpublished) was undertaken by Joseph Krislov (Professor of Economics in the University of Kentucky) in 1970/71. This survey showed that 95% of respondents, i.e., representatives of companies and unions, which participated in a Court hearing in 1970, accepted that "the Court serves an important function and any effort to abolish it would be a serious error". The respondents also indicated positive reaction to Court procedures, impartiality and clarity of recommendations. This survey was made about half way through Cahill's term of office.

The comments by David O'Mahony and Charles McCarthy quoted in Chapter 3 which suggest that the Court under Mortished was more effective than under his successors apply, to some extent, to the Court under Cahill. O'Mahony was writing in 1965 and McCarthy in 1973 and 1977. It is probably fair to say that Cahill's approach in the matter of giving a lead on general pay developments was nearer to that of Keady than to that of Mortished.

7 Court Recommendations	8 Recs. Accepted by both sides	9 8 as % of 7	10 4+8 as % of 2	11 No of Strikes	12 Man days lost
108	92	85	95	60	104,000
122	100	82	93	70	234,000
122	94	77	92	87	545,000
142	79	56	77	89	556,000
124	70	56	83	112	784,000
131	78	60	83	79	183,000
139	76	55	83	126	406,000
82	41	50	83	134	936,000
80	58	73	89	134	1,008,000
162	123	76	83	133	274,000
232	191	82	86	131	207,000
326	276	85	86	182	207,000
365	-	-	-	219	552,000
403	-	81	-	151	296,000
474	-	75	-	134	777,000
462*	-	69	-	175	442,000

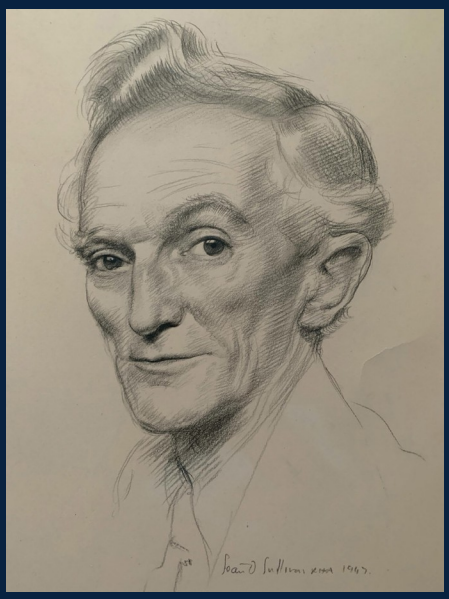
THE FIRST SITTING OF THE LABOUR COURT, 23RD OF SEPTEMBER 1946

The first sitting of the Labour Court, 23rd of September 1946:
Left to right (seated): Left to right: Francis Vaughan Buckley (Deputy Chairman), Thomas Johnson (Workers Member), Cathal O'Shannon (Workers' Member), R.J.P. Mortishead (Chairman), Peter McLoughlin (Employers' Member) and William M. Bruce (Employers' Member)

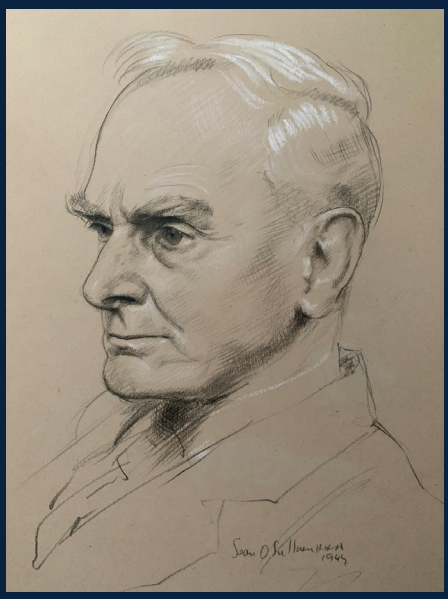
THE LABOUR COURT IN 1996

Left to right (seated): Padraigín Ní Mhurchú (Workers' Member), Finbarr Flood (Deputy Chairman), Evelyn Owens (Chairman), Tom McGrath (Deputy Chairman) and Patrick Pierce (Employers' Member).

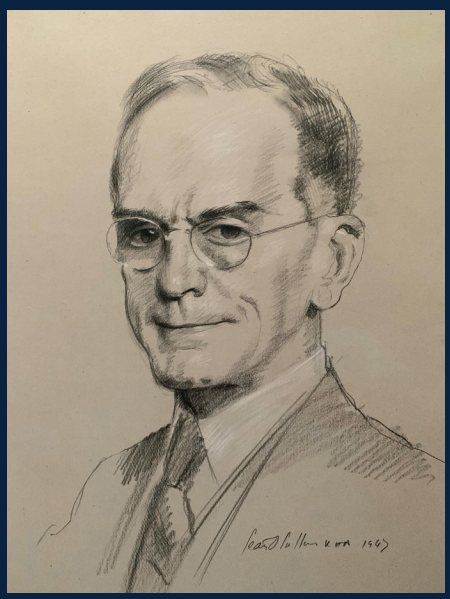
Left to right (standing): Séan Walsh (Workers' Member), Bernard Rorke (Workers' Member), Vincent J. Keogh (Employers' Member) and Cormac P. McHenry (Employers' Member).



Cathal O'Shannon
Sketch by Seán
O'Sullivan



Thomas Ryder Johnson
Sketch by Seán
O'Sullivan



William M Bruce
Sketch by Seán O'Sullivan

He adopted a low profile on general pay developments, apart from the Court intervention in 1966, in favour of general acceptance of a £1 pay increase. Also, the Court did suggest that the system of phased agreements on a firm by firm basis adopted in 1967—70 needed re-examination. Throughout 1963—77 the lead role in general pay negotiations had been taken over firmly by the employers' bodies and trade unions and this role was formally institutionalised in the 1970s under the Employer/Labour Conference.

The Court had to operate against this background and was broadly very successful, as the statistics show. The Court had to show great flexibility and adaptability in responding to the great increase in volume and range of tasks which were entrusted to it. Much of the credit for the high degree of success the Court attained in 1963—77 must go the Cahill's leadership. If the Court, in his term, had to operate in a continuing period of ferment in industrial relations it also got through a huge volume of increasingly exacting work and was successful in settling a high majority of the disputes referred to it.

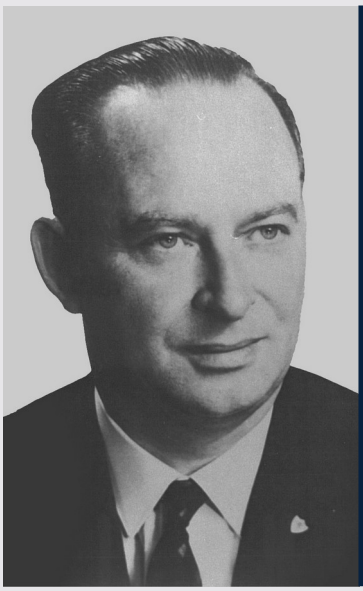
I THE COURT 1977 TO THE INDUSTRIAL RELATIONS ACT, 1990

CHAIRMEN: MAURICE COSGRAVE, JOHN HORGAN AND KEVIN HEFFERNAN

On Timothy Cahill's retirement in March, 1977 he was replaced as Chairman by Maurice Cosgrave, Deputy Chairman. John Horgan, Socio-economist in the Department of Labour, was appointed full-time Deputy Chairman. About the same time Dermot McDermot, Director of Conciliation, retired and was replaced by James McCauley, Deputy Director.

The Minister for Labour, Michael O'Leary, announced in March, 1977 his intention to set up a review body to consider changes in the role and functions of the Court and in the Industrial Relations Acts, but the body had not been set up when the Coalition Government left office later in 1977. The Minister had proposed that the Court Chairman should be a member of the review body but the Court had opposed that proposal. The Minister for Labour in the Fianna Fáil government which took office in 1977 (Gene Fitzgerald) appointed a Commission of Inquiry on Industrial Relations in May, 1978. The Commission was given broad terms of reference covering employer bodies, trade unions, collective bargaining, statute law, institutions, structures and procedures. The Chairman was Séamus O'Conaill, a retired Secretary of the Department of the Public Service. Membership included five employer nominees, five nominated by trade unions and five by the Minister. The Court was not asked to provide a nominee. The outcome of the Commission's work — it reported in 1981 — will be described later.

In the meantime a further national agreement was negotiated through the E.L.C. and ratified in February, 1977. A new Department of Economic Planning and Development took a significant role in the negotiation of this agreement and the agreements up to the national understanding of September, 1980. The Government had, in the January, 1977 Budget, provided for substantial tax concessions and expenditure on employment, if income moderation was achieved. The agreement was for a period of fourteen months with a three months' pause, followed by two phased increases, one for 7 months of 21/2% plus £1 (minimum £2.00, maximum
£4.13) and one for 4 months of 21/2% plus £1 (minimum £2.00, maximum £4.23). Various further restrictions were placed on claims for increases above these terms, including changes in conditions of service, with the Labour Court and Conciliation Service involved in the processing of such claims. Industrial action in pursuance of such claims was also severely restricted.



THE COURT 1977 – 1984 CHAIRMAN:

The Employment Equality Agency was set up in October, 1977 and liaison between the Court and the Agency was established in relation to processing of claims under the Equality legislation.

The strain of the increasing volume of work for the Court and its services was demonstrated by arrangements made in 1977 for a major review of the Court's staffing by the Department of Public Service. The Court also had to introduce a temporary arrangement dispensing, in the Court's recommendations, with the background material which was ordinarily set out before each recommendation. The strengthening of the Court's staff led to a resumption of normal-type recommendations.

The next in the series of national agreements was settled in March, 1978, following concessions on income tax and indirect taxation. The agreement was for two phases — 8% (minimum £3.50) for 12 months and 2% for 3 months. Further increases of up to 2% through local bargaining were also permitted. The Labour Court and conciliation were to be involved, as required, in processing claims for increases above the basic ones, with the usual restrictions on industrial action.

A major strike by Aer Lingus clerical and administrative staff took place from March to May, 1978. A Labour Court recommendation was not accepted. The strike was settled by an interim award, with a provision that the Court would study further a productivity claim by the workers. Two important claims were dealt with by the Court in 1978 relating to building workers and C.I.E. bus workers. The recommended increases for building workers — £5.50 for craftsmen and
£5 for operatives in two phases were accepted. A recommended £7 a week increase for bus workers was rejected by one of the unions concerned and a strike followed in 1979. The Court succeeded in getting work resumed on the basis of an interim settlement and a further in-depth investigation by the Court. Following a recommendation issued in April, 1979, the dispute was settled.

In 1979, there was a major strike involving postal and telephone services, which adversely affected the work of the Court. In its 1979 report, the Court refers to the communication problems it experienced arising from these disputes, leading to cancellation and postponement of many meetings and hearings. The Court and its services were not involved in efforts to settle the dispute, which was dealt with by the Government Departments concerned. The dispute was responsible for loss of about 1.2 million man-days of the 1.465 million man-days lost in 1979 which was, by a substantial margin, the highest figure for days lost since the Court was established in 1946.

Following representations by the Court it was decided to set up a fourth Division from the beginning of 1980. James McCauley, Director of the Conciliation Service, was appointed Deputy Chairman.

I.C.T.U. decided initially not to look for a further national agreement when the 1978 agreement expired. However, lengthy further negotiations followed between the two sides which the Government facilitated by income tax concessions in the 1979 budget. The result was adoption of the first National Understanding in July, 1979 covering pay, employment, taxation, industrial democracy, educational training, health and social welfare. The pay clauses provided for two phases covering fifteen months — Phase I for nine months providing an increase of 9% (minimum £5.50), Phase II for 6 months for 2% plus full indexation for consumer price increases between 7% and 12%, and 60p per 1% increase between 13% and 16% (minimum Phase II, £3.00). The Court in its annual report for 1979 pointed out that it was necessarily and rightly bound by the terms of national agreements but that this situation limited its flexibility in dealing with certain claims which otherwise it would be able to approach with greater sympathy.

The second and final National Understanding was reached in September, 1980 after prolonged discussions and covered a wider range of non-pay issues than in 1979. The Budget had included income tax concessions but increased indirect taxes, The pay provisions covered fifteen months; a one month pause was followed by two phases — one for eight months gave 8% plus £1, one for six months gave 7%. The Labour Court and Conciliation Service were once more responsible for processing claims for increases above the basic terms and claims by employers of inability to pay.

The Commission on Industrial Relations reported in July, 1981. The five trade union nominees had withdrawn from the Commission in July, 1979 in protest at the failure of the Government to amend the Trade Disputes Act, 1906 to cover industrial action in disputes not coming within the term "trade or industry". The Commission completed its work in the absence of the trade union nominees.

The Labour Court made a formal submission to the Commission in November, 1978 and the Court subsequently met the Commission for detailed discussions. In its submission the Court stressed its commitment to free collective bargaining and praised the contribution of I.C.T.U., F.U.E., their constituent bodies and officials to good industrial relations. It indicated that it was unable to furnish a unanimous view on changes in statute law in relation to industrial relations.

It commented on unofficial strikes and said that recently Industrial Relations Officers had been made available to bring unions and unofficial strikers together for discussions to seek a return to work, but without departing from the principle of no negotiations while an unofficial strike was in progress. The Court's submission stressed the importance of the Court's independence, the great increase in the volume of work it had to undertake and its relatively limited resources. It argued for provision of additional trained staff within the Conciliation Service to provide an advisory service on industrial relations to firms and unions.

The Commission's report covered the whole field of industrial relations procedures, institutions, practices and personnel and the law governing industrial relations and the trade unions. The principal recommendations directly relevant to the future of the Labour Court were:—

(i) *The Labour Court and the Employment Appeals Tribunal should be replaced by a Labour Relations Board and a Labour Relations Court.*
The Board should comprehend

(a) *a Labour Tribunal to investigate disputes and issue non-binding recommendations,*

(b) *a conciliation service,*

(c) *a Rights Commissioner service, and*

(d) *an equality service,*

(c) and (d) to be independent units of the Board

The Labour Tribunal should assume responsibility for the arbitration function under public service conciliation and arbitration schemes. The Board should prepare draft codes of practice in industrial relations procedures, leading possibly to mandatory fair employment rules to be made by the Labour Relations Court. The membership of the Board and Tribunal should be similar to that of the existing Labour Court, except that an Executive Officer should be appointed to take responsibility for administrative matters.

(ii) *The Labour Relations Court (consisting of a Chairman, Deputy Chairman and employers, trade union and independent members) should undertake all appellate functions involving binding determinations under the Industrial Relations Acts, the Redundancy Payments Acts, the equality and the unfair dismissals legislation.*

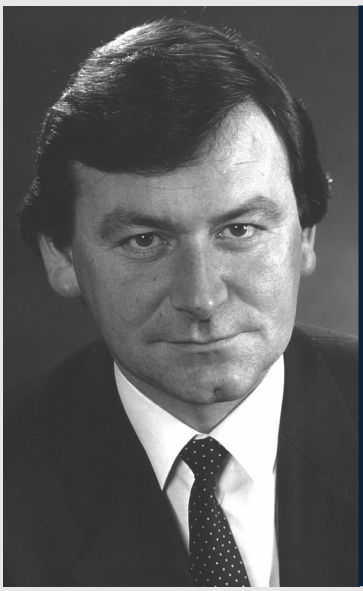
(iii) *Industrial Relations Officers should be recruited from the Civil Service generally.*

(iv) *Strict time-limits were proposed for conferences, investigations, recommendations and determinations by the Tribunal, the Court, Industrial Relations Officers, Rights Commissioners and Equality Officers.*

The fact that the trade union representatives had withdrawn from the Commission meant that there was no consensus as to acceptability of the Commission's recommendations. However, these recommendations formed part of the background to the later discussions which led finally to the Industrial Relations Act, 1990.

The year 1981 initiated a period of instability in politics in Ireland with three general elections in rapid succession each producing a change in Government. In 1982, a Fine Gael/Labour Government took office which lasted until 1987 with Liam Kavanagh, followed by Ruairí Quinn, as Ministers for Labour. There were also significant changes in the approach to wage negotiations. Tentative approaches through the E.L.C. towards a further national pay agreement were inconclusive. The Government decided to take a lead role by negotiating a pay deal for the public service with the Public Services Committee of I.C.T.U. This agreement, which was ratified in 1982, was for fifteen months and provided for three phases of increases, one for three months, 2% or £4 a week; one for seven months, 6% and one for five months, 5%. Special claims above these levels could be negotiated mainly through the various conciliation and arbitration schemes but implementation was to be deferred and phased. Unions were committed to co-operate in changes and measures to improve efficiency. The Government hoped that, by negotiating a relatively moderate agreement for public servants, the private sector would be influenced in the direction of moderation.

I.C.T.U. asked the Court in April, 1981 to investigate a refusal by the employers to revise the second phase of the 1980 agreement because the consumer price index had increased by more than 10% in the period May, 1980 to February, 1981 — the agreement provided for a review if such increases occurred. The employer side opposed such a Court investigation. The Court decided that it had no function under the 1980 agreement to carry out such an investigation, the matter being primarily for the parties to the agreement to consider.



THE COURT 1984 – 1988 CHAIRMAN:

From 1981 to 1987 was a period of full return to firm by firm collective bargaining so far as the private sector was concerned and separate agreements on public service pay. The period was also one of serious economic recession with negative or negligible economic growth up to 1986. There were high levels of redundancy, and unemployment practically doubled in the period. Price inflation also slowed down dramatically as the period progressed — from 20.4% in 1981 to 3.2% in 1987. This background had major moderating effects on expectations of pay increases.

The Court, in the period 1982 to 1987, adopted a policy, in issuing recommendations on private sector claims, of following trends set in agreements negotiated voluntarily or with the assistance of the conciliation service. Most agreements in 1982 were made without reference to the Court but in 1983 the Court and Conciliation Service were more extensively involved. Some employers used public sector pay settlements as a basis but the indications were that many private sector settlements were in excess of public sector norms. For example, the Court reported that in 1983 the trend was for an increase in two phases over fifteen months totalling 10.5% with a three-month pay pause, though some settlements were higher and gave a third phase. This compared with the public service agreement in September, 1983 covering 15 months, starting with a six- month pay pause, followed by 4.75% for five months plus 3.25% for four months. By 1986, the Court was reporting that there was no discernible trend in private sector pay settlements and the F.U.E. was stating that "the wage round has ceased to exist as a concept which produced separately identifiable and non- concurrent cohorts of wage agreements".

During the period of non-centralised bargaining the role of the E.L.C. in industrial disputes changed. There had been suggestions in the period of national agreements that the Court and conciliation were overlapping with the E.L.C. in dealing with industrial disputes. While the E.L.C. continued to be available and

was sometimes called on to help, its status in relation to industrial disputes was greatly modified after the end of national agreements.

Before moving on to deal with the return to centralised bargaining in 1987, some other developments in the interim should be outlined.

Maurice Cosgrave retired as Chairman in October, 1984 and John Horgan, Deputy Chairman, succeeded him. P.D. McCarthy had retired as Deputy Chairman in 1980 and James McCauley in 1984. Their replacements were Evelyn Owens, formally an official of Dublin Corporation and also a former Leas-Chathaoirleach of the Seanad, John O'Connell, a Divisional Director of F.U.E. and Nicholas Fitzgerald, a Principal Officer in the Department of Labour. The Court moved into its new premises in Haddington Road in 1983 and they were officially opened on 1st May, 1984 by Ruairí Quinn, Minister for Labour, and named Tom Johnson House.

A dispute in Dunnes Stores regarding the import of goods from South Africa was referred to the Court by the Minister in 1985. The Court sought a settlement of the dispute by suggesting adoption of a code by supermarkets on the sale of South African goods. This approach was not acceptable to Dunnes Stores. The matter was referred back to the Government, who decided to ban imports of South African fruit, which led to withdrawal of the picket on Dunnes Stores.

When the Coalition Government left office in 1987, a Fianna Fáil Government took over with Bertie Ahern as Minister for Labour. The economic background to pay negotiations had been transformed by five years of economic recession, coupled with non-centralised settlement of private sector pay increases. However, 1987 marked the end of the recession and the search for a more consensual approach to pay developments resumed. Based on a report by the National Economic and Social Council (which had replaced the N.I.E.C. in 1973) entitled a "Strategy for Development 1986—90", the Government initiated tripartite discussions on the pay situation.

A Programme for National Recovery (P.N.R.) was negotiated in the autumn of 1987 which the Court welcomed and promised to support. The Programme provided for separate pay agreements for private and public sectors. The same increases applied for each of three years — 3% on first £120 a week and 2% on the excess, subject to a minimum of £4 a week. For the public sector, however, there was to be a 6-months' pay pause, and other special increases awarded were to be phased over future years. Increases in the private sector were to be the subject to the circumstances of individual firms or industries and a possible reduction in hours of work was to be considered in October, 1988.

The Court reported in 1988 that adherence to the P.N.R. was better than in cases of earlier national agreements. Average earnings increased in 1988, 1989 and 1990 by about 4% a year and inflation in these years averaged at about 3.2%. Some discontent with the P.N.R. developed in trade union circles in 1989 and
I.C.T.U. decided to hold a Special Delegate Conference in the matter in 1990. In 1989 agreement was reached to reduce hours of work by one hour, where weekly hours were 40 or higher.

Proposals for amending industrial relations legislation came to finality in 1990 and were embodied in the Industrial Relations Act, 1990. These proposals and the Act will be dealt with shortly. However, before the Act was introduced, John Horgan resigned as Chairman, in April, 1989, to take up an appointment in the private sector. He was succeeded by Kevin Heffernan, an employer member of the Court and former manager of Industrial Relations and Personnel Services in the E.S.B. and well known in G.A.A. circles. Nicholas Fitzgerald retired as Deputy Chairman and was replaced by Tom McGrath, Deputy General Secretary of I.C.T.U.

The enactment of the Industrial Relations Act, 1990 was the culmination of a process of seeking reforms in industrial relations law, procedures and practices which had been going on for many years. The only significant piece of general legislation enacted was the 1969 Act but its companion Trade Union Bill was not proceeded with. The Commission on Industrial Relations produced a series of recommendations — including the setting up of a Labour Relations Board — which had carried less weight due to the withdrawal of the I.C.T.U. nominees from the Commission at an early stage. Discussion documents containing proposals for reform were issued by successive Ministers for Labour (Liam Kavanagh, Ruairí Quinn and Bertie Ahern) in 1983, 1985, 1986 and 1988. Introduction of the Bill for the 1990 Act was preceded by extensive discussions with employer bodies and trade unions which had been provided for in the 1987 P.N.R.

The 1990 Act, which was passed after lengthy debate with the Dáil and Seanad, provides for important changes in law relating to industrial action, trade unions, picketing, secret ballots, etc., as well as to industrial relations procedures and machinery for dealing with industrial disputes. Practically all the discussions on the Bill in Dáil and Seanad related to the proposals on strikes, trade union law, etc.

What follows is confined to issues under the Bill affecting the Court and the Court's services.

The Minister (Bertie Ahern), in introducing the Bill, paid tribute to the Labour Court's work and said one of the Bill's objectives was to shift main responsibility for dispute prevention and resolution back to the parties involved in the dispute, with the Court becoming a court of final resort. He said that parties to disputes had, particularly during the era of national agreements, 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 of the 1990 Act affecting the Court and its services are:—

(a) *The establishment of a Labour Relations Commission under a chairman appointed by the Minister with six ordinary members, two nominated by trade unions, two by employer bodies and two by the Minister.*

(b) *The Industrial Relations Conciliation Service, the Equality Service and the Rights Commissioner service to be transferred from the Court to the Commission. Appointment of Industrial Relations Officers and Equality*

Officers to be a matter for the Commission. Rights Commissioners are to be appointed by the Minister from a panel provided by the Commission. Appeals against findings by Rights Commissioners and Equality Officers to continue to be dealt with by the Court.

(c) *Trade disputes should normally be referred to the Commission and its services in the first instance and the Labour Court should not investigate a dispute unless it receives a report from the Commission that it has failed to resolve the dispute. Exceptions to this clause are (i) where the Commission waives its conciliation function and the parties request*
the Court to investigate the dispute and (ii) where the Court, after consulting the Commission, is of the opinion that there are exceptional circumstances.

(d) *The Minister may refer a dispute to the Commission or the Court with a view to its resolution or to conduct an inquiry on the dispute and furnish a report.*

(e) *Other functions given to the Commission include preparation 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 is 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 revises certain detailed provisions relating to these committees but does 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 are required to have regard to the codes, where relevant, in reaching their decisions. The Court is also given functions on the interpretation of codes of practice and investigation and report on complaints of breaches of a code of practice.

When the proposals which formed the basis of the 1990 Act were circulated to interested organisations, including the Labour Court, the Court expressed reservations on certain of the proposals affecting the Court and Conciliation Service. These reservations are outlined in the Court's report for 1988. The Court's statement expressed the view that strengthening of the Court and its services would be a better approach to providing improved dispute settling machinery than setting up an Industrial Relations Commission with the functions proposed. It opposed the transfer of conciliation services from the Court and was doubtful of the value of codes of practice with statutory force. Its also argued against provision for reference of interpretation of collective agreements to the Court.

The Industrial Relations Act, 1990 became law in July of that year and the Labour Relations Commission was established in January, 1991. The Commission and the Court now share the premises Tom Johnson House on Haddington Road.

Table D gives statistics for the period 1977 to 1990 which are, as far as possible, comparable to those given in the Tables relating to earlier periods. The information available does not permit the calculation of annual "success rates" of the Court and its services which was done for the earlier periods up to 1973, but some comments can be made. The reduction in the percentage of disputes settled at conciliation which was noted in 1975—77 continued up to 1983, but the percentage then improved substantially until by 1990 it had recovered to about its level in the 1960s. The Court, in its 1985 report, referred to this improved trend and welcomed it.

The total volume of work of the Court and its services continued to increase, reaching a ceiling in 1983 for both the total and the number of Court hearings. Since then there was some reduction in demands, but the 1990 figures were still much higher than those for 1977, when Maurice Cosgrave took over the Chairmanship.

During Maurice Cosgrave's period of office, (1977 to 1984) national agreements negotiated through the E.L.C. were in operation up to 1979, national understandings in which the Government was heavily involved from 1979 to 1981, and firm by firm agreements with separate public service agreements from 1982 to 1984. The strike statistics for 1978 and 1979 continued the trend of high levels of man-days lost which had emerged in the later years of Cahill's term. 1979 was a particularly bad year with 1,465,000 days lost but over 1.2 million of this figure was caused by the strike of postal workers and telephonists already referred to. For the rest of Cosgrave's period there was a gradual improvement in total man-days lost. Other major strikes during Cosgrave's term of office were Ferenka (1977), Psychiatric nurses (1980), Tara Mines (1981—82), Dublin Corporation (1982), Dunnes Stores and Clery & Co. (1983).

During 1979 to 1981 there was also a very high incidence of unofficial disputes which were responsible for over half of the individual strikes and over one fifth of the man-days lost. Unfortunately, growth in unofficial strikes seemed to go hand in hand with national agreements and the Court's role in them is, as a matter of policy, extremely limited.

Maurice Cosgrave was in charge of the Court during an exceptionally demanding period. The volume of work for the Court and conciliation was constantly increasing and reached its historic peak in his last full year of office, 1983. During his term of office the general approach to pay negotiations changed from national agreements to national understandings in 1979 and then in 1981 firm¬by-firm agreements were re-introduced with separate public service agreements. The Court had to take these changes on board in its work. That the Court functioned so successfully against this volatile background was a tribute to his leadership, competence and dedication. Prior to his appointment to the Court, Cosgrave was an influential and much respected trade union leader with a high reputation for integrity. In the first Court report Cosgrave signed, as Chairman — that for 1977 — he set out in some detail the Court's view as to its role and functions, stressing the need for full co¬operation by all parties in avoiding and solving industrial disputes. During his period of office he worked hard to obtain such co¬operation, if it was not always forthcoming.

John Horgan had a shorter period of office — 1984 to 1989 — during some of which firm-by-firm agreements were in operation (1984—1987) and during the remainder of which the Programme for National Recovery was current. While the total volume of work for Court and conciliation continued at a high level it began a gradual decline, with the total in 1989 down from the 1983 peak by over 15% and Court recommendations down by about 40%.

Strike statistics also began to improve, particularly under the P.N.R. There were, however, major strikes by public service workers (1985), teachers (1986) and Dublin and Cork Corporation workers (1986). It was during this period that the level of dispute settlement at conciliation began to recover to the levels achieved in the 1960s and early 1970s.

The economic background had a great deal to do with the changes in industrial relations in this period. The recession which had begun in 1980 did not start to lift until 1987/1988. A crisis relating to public finances due to State borrowing and the level of national debt, which was compounded by currency problems, had to be tackled by the Government. Unemployment which rose from about 8.0% of the workforce in 1980 to a peak of 17% in 1986 declined slowly in 1987 and 1988. The P.N.R. put an almost complete stop to above-the-norm pay increases and the unions were, under the agreement tied into this approach. During Horgan's period, the rate of annual increase in nominal earnings declined from almost 10% in 1984 to about 4% in 1989. However, inflation was also declining – from 8.6% in 1984 to 2.1% in 1988 and 4% in 1989, so that despite the declining level of pay increases awarded, particularly under P.N.R., real increases in pay were still being secured.

John Horgan was 38 years of age when he was appointed Court Chairman — far younger than any of his predecessors. He also had a different background. He had served as Socio-economist in the Department of Labour from 1973 to 1977 and had previous service with the British Prices and Incomes Board. His influence can be seen in the changes of presentation in the annual reports of the Court from 1984 onwards. He was also responsible for the introduction of computers into the Court's work. Horgan contributed an interesting article to "Industrial Relations in Ireland" published by the Department of Industrial Relations,
U.C.D. in 1987. He argued that the vast increase in the Court's work led to the "inescapable conclusion" that employer and trade union negotiators had lost the art of compromise and that the aim should be to have the Court used to deal only with the most serious and intractable disputes. He also said that the Court "from its inception… has been extremely cautious in its pronouncements not because it did not have strong views but because it did not want to do anything which would impede in any way its acceptability in its primary role of solving disputes". He supported the setting up of a Commission on Industrial Relations with responsibility for channelling the direction of future industrial relations developments but did not favour interfering with the functions of the Court. As will be seen from the earlier material on the 1990 Act some of Horgan's ideas were followed up in preparing the legislation but others relating to the division of functions between the new Commission and the Court were not accepted. But by then Horgan had left the Court to take up private sector employment.

TABLE D
DISPUTES DEALT WITH BY LABOUR COURT AND ITS SERVICES (1977 TO 1990)

(Source Labour Court Annual Reports)

1 Period	2 Total Disputes Referred to Court and its Services	3 Disputes referred to Conciliation	4 Settled at Conciliation	5 4 as % of 3	6 Court Recommendations*	7 No of Strikes	8 Man days lost
1977	1324	1175	638	54	462	175	442,000
1978	1361	1288	651	51	545	152	624,000
1979	1433	1301	634	49	576	140	1,465,000
1980	1558	1379	693	50	802	130	404,000
1981	1718	1582	756	48	766	117	436,000
1982	1987	1855	923	50	975	131	439,000
1983	2324	2090	1113	53	1045	154	311,000
1984	1987	1750	1037	59	941	192	354,000
1985	2279	2021	1355	67	963	116	412,000
1986	2114	1892	1268	67	839	102	316,000
1987	2068	1787	1151	64	837	80	260,000
1988	1815	1571	1064	68	708	72	130,000
1989	1687	1450	1019	70	646	41	41,000
1990	1712	1552	1143	74	529	51	204,000

**Includes Determinations under the Employment Equality and Equal Pay Legislation*

I THE COURT SINCE THE 1990 ACT

THE COURT 1988 – 1994 CHAIRMAN:

CHAIRMEN:
KEVIN HEFFERNAN AND EVELYN OWENS

The P.N.R. continued to operate up to the end of 1990 and the Court, in its 1990 report, said that pay issues continued to be settled under that agreement. Discussions opened in October towards a further agreement and the outcome was the Programme for Economic and Social Progress (P.E.S.P.) which covered broadly the three years 1991—1993. The Programme covered a very .wide range of economic, social, taxation employment, etc., issues as well as an agreement on pay and conditions. The pay clauses were for increases as follows:—

Year 1	4% of basic pay with a minimum of £5 a week
Year 2	3% of basic pay with a minimum of £4.25 a week
Year 3	3.75% of basic pay with a minimum of £5.75 a week.

Increases were to be negotiated with due regard to the circumstances of firms or industries. There was also provision for negotiation "exceptionally" of up to 3% by local bargaining, payments not to commence before the second year. There were some variants in the application of the agreement to the public service and the construction industry. The agreement provided for reference of disputes under the agreement to the Labour Relations Commission and/or the Court and a no-strike clause was included.

New functions were given to the Labour Court under the Pensions Act, 1990. These involve the equality provisions of the Act in relation to pensions and provide for the hearing by the Court of appeals of Equality Officers' Recommendations. By mid-1996, no cases had been referred to the Court under the Act.

1991 was also the year of transition to the new institutional arrangements provided for in the 1990 Act. The Commission and the Court met on a number of occasions during the year to set up agreed procedures and practices for a co-ordinated approach under the Act to the resolution of industrial disputes and to decide detailed distribution of functions and staff and other resources.

During the three years of the P.E.S.P., pay increases were kept broadly within the terms of the agreement. While economic growth was modest, inflation remained low, declining from about 3% in 1991 to 1.5% in 1993. However, unemployment remained very high, climbing to 15% (as measured by the live register and total workforce) in 1991 and remaining over 15% throughout 1992 and 1993.

The volume of work for the Court continued at a very high level. The figures for cases completed were: 1990 — 529, 1991 — 606, 1992 — 640 and 1993 — 652. The figures for referrals to the Court by the L.R.C. were 1991 — 187, 1992 — 305 and 1993 — 336. It is interesting to note also that the number of disputes referred to conciliation (now under the L.R.C.) also continued at a high level — 1990—1552, 1991—1880, 1992—1935, 1993—1884. Despite the efforts of the L.R.C. to persuade employers and unions to settle their differences themselves, or at next best at conciliation, progress with the policy of trying to make the Court a forum of last resort was proving very difficult to achieve.

In spite of the clauses in the P.E.S.P. on industrial action, there were some serious strikes during its currency, e.g., the ESB in 1991, R.T.E., the Banks, B&I and Waterford Crystal in 1992 and Dublin Bus and Ambulance drivers in the Eastern Health Board in 1993. However, the total number of strikes and man-days lost were very low in historical terms.

The 3% local bargaining clause in the P.E.S.P. was a cause of a substantial number of disputes, particularly as the period of the agreement progressed. Disputes where employers sought to defer the basic increases under the agreement or pleaded inability to pay were referred to the Court by the L.R.C. During the P.E.S.P. a number of disputes arose from major restructuring and rationalisation within large undertakings or industries, usually with a view to improving competitiveness. Some difficult trade union recognition issues also arose. Some of these disputes were very time consuming both for Industrial Relations Officers and the Court.

The issue of involvement of Industrial Relations Officers in disputes after Labour Court recommendations were rejected was raised again after the L.R.C. was in operation. The Commission decided in 1992 that there would be no such intervention unless there were exceptional circumstances and then after discussion with the Court and if agreed by both sides in the dispute.

In 1993 this decision was modified in a few cases where Industrial Relations Officers were authorised to assist settlement on the basis of the relevant Court recommendation. Continuance of the practice of non-intervention in unofficial disputes was confirmed by the L.R.C.

The L.R.C. has prepared three Codes of Practice under the 1990 Act relating to (i) disputes procedures, including disputes in essential industries, (ii) duties and responsibilities of employee representatives and the protection and facilities to be afforded them by their employers and (iii) disciplinary procedures. Each of these Codes has been confirmed by Ministerial Order as a Code of Practice under the 1990 Act. Each Code was drafted after extensive consultations, including consultation with the Court. Under the 1990 Act, the Court must have regard to these Codes, where relevant, in reaching its decisions and is involved in interpretation and investigating alleged breaches of the Codes.

John O'Connell, a Deputy Chairman, retired in June, 1993 and was not replaced. The Court now operated in three Divisions (against four since 1980).

The Fianna Fáil-Labour Government which took office in 1993 decided to re-organise a number of Departments. A new Department of Enterprise and Employment took over the labour relations functions of the Department of Labour, which ceased to exist. The Court (and the L.R.C.) now report to the Minister and Department of Enterprise and Employment.

The Court continued to be very busy in 1994 and 1995. It received 761 new cases in 1995, only six fewer than in the previous year. The number of cases completed was substantially higher — 624 in 1995 against 573 in 1994. The vacancy for a Deputy Chairman, following Evelyn Owens' appointment as Chairman, which had remained unfilled during part of 1994, meant that only two divisions of the Court could operate at that time. This contributed to the lower number of cases completed that year.

There were serious strikes in Irish Steel, Team Aer Lingus and Packard Electric in 1994 and in Dunnes Stores and Irish Press Newspapers in 1995. All of these disputes required full-time involvement of a Court Division over long periods. The effects of the 1994 Packard dispute continued into 1995, with the Court completing eight cases involving the company during the year.

The number of strikes and man-days lost in 1994 were the lowest on record but there was some disimprovement in 1995, though the figures were still low by historical standards, Economic growth in 1994 and 1995 was exceptionally high and inflation was in the range of 2.4% to 2.5%. Unemployment continued to fall slowly and was at 13.1% of the workforce in December, 1995. References to the conciliation arm of the L.R.C. were 1551 in 1994 and 1692 in 1995.

When the P.E.S.P. expired it was succeeded by a new wide-ranging three-year programme which broadly cover the years 1994-96. The Programme for Competitiveness and Work (P.C.W.) provides for the following pay increases:—

Year 1	2% of basic pay
Year 2	2.5% of basic pay with a minimum of £3.50 per week
Year 3	2.5% of basic pay for 6 months plus 1% for 2nd 6 months and a minimum of £3.50 per week.

Again, agreements were to be negotiated having regard to circumstances of individual firms and industries but a provision for local bargaining increases (as in the P.E.S.P.) was not repeated. Disputes were to be referred to the L.R.C. and/or the Court and a no-strike clause was repeated. There were separate and significantly different pay provisions for the public service and the Construction Industry.

The Court carried out a limited survey of recommendations made in the April — June quarter of 1994 which showed an acceptance rate of 84% by both sides.

THE COURT 1994 – 1998 CHAIRMAN:

Kevin Heffernan retired as Court Chairman in August 1994 and was succeeded by Evelyn Owens. The vacancy for a Deputy Chairman was filled by appointing Finbarr Flood, former Managing Director of Guinness, Son & Co. (Dublin) Ltd. and

also a member of the L.R.C. (from which he resigned).

Kevin Heffernan's term of office as Chairman 1989 to 1994 was relatively short. The pay situation was dominated by the three programmes (P.N.R., P.E.S.P. and P.C.W.). However, the volume of work for the Court continued largely undiminished despite improvements in the economic indicators. New elements the Court had to deal with were the local bargaining provisions of the P.E.S.P. and the emergence of disputes from major restructuring exercises in large undertakings to prepare for international competition. Some examples of "restructuring" disputes were those in Waterford Glass and Irish Steel. Heffernan also had to deal with the changes arising from the 1990 Act and the transfer of many functions — notably conciliation — to the new L.R.C. — some of the changes having been opposed by the Court. That these changes took place smoothly is a reflection of the ability of the Court, under Heffernan, to settle issues amicably.

Evelyn Owens has been Chairman of the Labour Court since August, 1994. The first woman to be appointed Chairman of the Court, she is continuing to develop not only the role and functions assigned to the Court under the 1990 Act, but also the profile of the Court. The role of the Court is now defined in a Mission Statement (which is reproduced at the beginning of this book) and described in a new Guide to the Labour Court, which is set Out in the same style and design as the current Annual Report. Evidence of her approach can be seen in the Court's Annual Reports from 1994, which feature various changes in format and presentation and the provision of additional information, which are designed to give a broader and more informative picture of the work of the Court.

Table E sets out statistical information for the years 1990 to 1995.

TABLE E
DISPUTES DEALT WITH BY LABOUR COURT AND BY CONCILIATION 1990—1995

(Sources — Annual Reports of Labour Court and Labour Relations Commission, and the Department of Enterprise and Employment)

1 Period	2 Disputes referred to Reconciliation	3 Court Recommendations *	4 No. of Strikes	5 Man-days Lost
1990	1552	529	51	204,000
1991	1880	606	52	83,000
1992	1935	640	41	190,000
1993	1844	652	48	65,000
1994	1551	533	32	25,000
1995	1692	624	36	130,600

**Includes Determinations and Orders under the Employment Equality and Equal Pay Legislation.*

JOINT LABOUR COMMITTEES

The 1946 Act provided for a system of Joint Labour Committees to operate under the Labour Court and submit proposals to the Court for employment regulation orders (E.R.Os) in relation to remuneration and conditions of employment of the workers catered for by the Committees. When the Court makes an E.R.O. the rates and conditions prescribed are legally binding as minima on the employers and workers concerned and the rates and conditions are prescribed by statutory instrument. Each Committee consists of a chairman appointed by the Minister and equal numbers of members appointed by the Court of representatives of employers and workers. The Act also provided machinery for enforcement of the E.R.Os.

Fifteen Trade Boards, established under earlier legislation, which existed when the 1946 Act came into operation, became Joint Labour Committees under the provision of the Act. Since then a number of new Committees have been set up, three in 1948, one in 1950, two in 1957, one in 1960, one in 1964, one in 1965, one in 1976, two in 1977, one in 1984, one in 1991, one in 1992 and a number of committees have been abolished. There are at present 16 Committees in existence. The Committee set up in 1976 was for agricultural workers, covered about 30,000 workers and its establishment was provided for in the Industrial Relations Act, 1976. The Minister for Agriculture and Food is also involved in the selection of the chairman and members of this Committee.

A point of contention for many years from certain employer interests about the E.R.Os was that there is no provision for exceptions or for employers to plead inability to pay (as was provided for in many national pay agreements). The Court has always held that there should not be exceptions to statutory minimum rates. Furthermore, up to the 1990 Act, the Court had either to accept or reject a Joint Labour Committee's proposal for an E.R.O. — it could not modify a proposal. The 1990 Act introduced provisions whereby the Court may exclude an undertaking from the scope of a Joint Labour Committee where employees in the undertaking covered by a registered employment agreement have remuneration and conditions at least as favourable as those in the relevant E.R.O. The Act also empowers the Court to submit to Committees suggested amendments to proposed E.R.Os which the Committee may adopt or modify and re-submit to the Court. It also provides that the L.R.C. shall assist Joint Labour Committees in the exercise of their function. However, in the course of discussions concerning the intentions of the Act in relation to Joint Labour Committees, it was agreed that the Court would continue to provide a secretariat to the Committees.

The processing and making of E.R.Os has involved a substantial volume of work for the Court and the Court's staff as practically every revision in pay and change in conditions for workers generally (e.g., through a national agreement) has resulted in a corresponding change for workers covered by the Committees and the making of new or amended E.R.Os by the Court. For example, in 1994, the Court made 18 Orders covering workers in 14 different industries.

JOINT INDUSTRIAL COUNCILS

The 1946 Act provided for the registration by the Court as "qualified" joint industrial councils of bodies, representative of workers and employers which sought harmonious relations and had rules providing that a strike or lock-out would not take place before a dispute had been considered by the body concerned. The Court was empowered to appoint, on request, a Chairman and a secretary to a registered Council.

The Act imposes three conditions for registration of a Joint Industrial Council. The Council must be substantially representative of the workers affected and of their employers, and its object must be the formation of harmonious relations between those it represents. The rules must provide that if a trade dispute arises, a strike or lock¬out will not be undertaken until the dispute has been referred to the Council and considered by it.

Three such Councils were registered, in 1948, 1964 and 1965, and still exist though two (Construction and Footwear) have been suspended since 1982 and 1983 respectively and the third (Dublin Wholesale Fruit and Vegetable Trade) has not met for many years Previous to their suspension, the Construction and Footwear Councils were actively involved in negotiations on pay and conditions in their industries.

There are also eleven Joint Industrial Councils which have not sought registration They are chaired by Industrial Relations Officers of the L.R.C. and an officer of the Labour Court acts as their secretary.

REGISTERED EMPLOYMENT AGREEMENTS

Registration by the court of employment agreements is provided for in the 1946 Act. Such agreements may be made between trade unions and employers or by registered joint industrial councils. The Court must satisfy itself that the parties to the agreement support its registration and that the parties are substantially representative of the workers and employers concerned. Provision that strikes or lock-outs will not occur before disputes are subject to appropriate negotiations is also required. Where an employment agreement is registered it applies to all workers and employers in the categories covered in the agreement even if they are not parties to the agreement. Rates of pay and conditions and other provisions of the agreement have legal force.

The Court is empowered to hear complaints by trade unions or employers of breaches of an agreement and, by order, direct that such a breach should cease and (in relation to employees) sums due should be paid. Where Court orders are not complied with, offences, which are subject to fines, may arise.

There are, at present, 43 Employment Agreements on the Court register but very few have been brought up to date in recent years. In 1994, one new agreement (B&I Line) was registered and one Variation Order (Construction Industry, Pensions, Assurance and Sick Pay) was made. The Construction Industry Federation has campaigned vigorously over the years for enforcement of the relevant agreements in their industry. The 1990 Act includes provisions designed to strengthen the enforcement of the application of registered employment agreements.

STAFFING OF THE COURT

The 1946 act provided that the Minister should provide the staff of the Court, with the consent of the Minister for Finance. In practice this has meant that the Court's staff are general service-grade Civil Servants normally drawn from the staff of the parent Department (Industry and Commerce up to 1966, Labour 1966-1993 and Enterprise and Employment since 1993), though some have been assigned direct by the Civil Service Commission or recruited by special in-service competitions. Members of the staff are also eligible for promotion to higher posts in the parent Department. After assignment to the Court they are appointed by the Court to their particular duties on the Court's services. Up to the 1990 Act, this also applied to appointments of Industrial Relations and Equality Officers.

There is special provision, however, for appointment of the Registrar of the Court, who must be a practising barrister or practicing solicitor of ten years' standing. The first Registrar was James Geary. He was succeeded in 1947 by Myles Gavagan who was on the legal staff of the Land Commission and served as Registrar until 1985. The current Registrar is Muireann Ó Briain, S.C. Her principal function is to act as legal adviser to the Court. As various of the Court's Determinations are legally binding the availability of legal advice is frequently required.

CONCLUSION

The Court which was set up under Sean Lemass in 1946 with great hopes that it would profoundly influence industrial relations for the better has had a colourful and chequered career for the past 50 years. Lemass could hardly have foreseen the complex background to industrial relations which emerged since 1946 though he was a vital player in it until 1966. Negotiations on pay and conditions and other employer/employee issues have continued under national agreements, free-for-alls, comprehensive economic and social programmes, membership of the European Communities, perids of recession and national growth, inflation which has oscillated between zero and 20%, unemployment which has grown steadily and is now about 13% of the work. Throughout all these changes the Court and its services have been in steady and increasing demand to facilitate the process of negotiation and compromise and very frequently settlement of disputes.

Throughout its fifty years the Court has accumulated a wide range of additional functions, (some of which, particularly in giving binding decisions under the equality legislation, have involved it in very intricate legal issues). Further functions requiring legally-binding decisions are envisaged for the Court under proposed legislation to implement Council Directive 93/104/EC on the organisation of working time. Legislation to amend the 1974 and 1977 Equality Acts may also affect the range of the Court's functions.

A brief analysis of its 624 recommendations and decisions in 1995 will illustrate the range of its current functions:—

Cases referred to the Court by the L.R.C.:	305
Appeals against Rights Commissioners' Recommendations:	102
Issues arising from Registered Employment Agreements:	72
Other disputes referred directly to Court:	107
Appeals against Equality Officers' Recommendations on pay and employment issues or claims for implementation of such Recommendations:	17
Cases involving time limits under Equality Acts:	11
Direct reference of claims re dismissal under 1977 Equality Act:	10

Appendix 3 of the Court's 1995 report shows the extremely wide variety of issues which arose in the 305 cases referred to the Court by the Labour Relations Commission and those (107) referred to it directly. While the majority of such cases refer to pay and other conditions of employment such as hours of work,

overtime, allowances, sick pay, pensions, etc., they also frequently involve such issues as re-organisation and restructuring of work-forces, company survival plans, manning levels, use of sub-contractors, productivity, redundancy, union recognition, unfair dismissal, discipline and disciplinary procedures.

The work arising from Equality legislation is particularly onerous. In the period since the enactment of the 1974 and 1977 Acts, the Labour Court has acquired a wide experience of disputes concerning employment equality issues. It has played a central role in setting precedents and developing case law in this area, while at the same time keeping itself informed of developments in equality law at the European Court of Justice. The Labour Court established in 1985, for instance, that freedom from sexual harassment is a condition of work which an employee of either sex is entitled to expect. In the area of equal pay, it has found that "pay" includes pension entitlements.

The Court has direct access to the European Court of Justice on questions relating to employment equality. In 1995, it referred questions of interpretation of the Equal Pay Directive arising from two cases under the 1974 Act for a ruling by the European Court of Justice.

Determinations by the Court under the 1974 and 1977 Acts may be appealed to the High Court on a point of law. However, the judicial review process has been used with increasing frequency in recent years, reflecting the more widespread use of this process in other areas of law. Cases now coming to the Court under the employment equality legislation tend to involve complex issues. Complaints of sexual harassment leading to constructive dismissal have presented the Court with a particular challenge in recent years.

Recent years have shown a much improved picture of industrial relations in Ireland. The rate of increase in money incomes has declined, but, because inflation has been contained at low levels, real increases in wages have been secured with a much decreased level of industrial strife. Excellent economic growth in 1994 and 1995 is. continuing in 1996. However, high levels of unemployment and redundancy have persisted and have probably been a major restraining factor in respect of expectation of pay rises. Many factors have contributed to the current "virtuous cycle" in industrial relations but the Labour Court, the Conciliation Service, and more recently the Labour Relations Commission, have played an important part.

As the Labour Court faces into its second half-century, there are indications of major future changes which will affect the work of the industrial relations institutions. In July, 1995 a document by a Review Group entitled "Managing Change" was submitted to and welcomed by the Biennial Conference of I.C.T.U. Among its proposals was provision of additional resources for the industrial relations institutions, including the Court, for dealing with disputes consequent on investment proposals, business and marketing strategies and production systems. Discussions were also proposed on 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 implementation of its recommendations. The Labour Relations Commission published a discussion document in April, 1996 entitled "Improving Industrial Relations — A Strategic Policy". The document includes suggestions for having certain types of disputes at present dealt with by the Court referred to Rights Commissioners and also for discussion of measures to strengthen the position of the Court as the forum "of last resort" in industrial disputes.

The current Programme for Competitiveness and work expires at the end of 1996 and what succeeds it is very much in the melting pot at present. If a further programme is negotiated it is likely to differ substantially from its predecessors. If not, the type of industrial relations procedures which operated since 1987 under the three programmes are most unlikely to apply. Since the Labour Court was instituted in 1946, it has shown great flexibility and adaptability in responding to the impact on its work of the great variety of changes

— *international, economic, social, political, structural, organisational, legal and procedural – which have taken place in the past fifty years. That record is the best evidence that the Court can respond effectively and positively to the challenges which the future will bring.*

PART TWO

1996 to 2021

Written by Andy Prendergast and Colman Higgins

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FOREWORD
by Kevin Foley

The establishment of the Court was, itself, a foundation stone for the institution's culture of continuing commitment to serving the needs of workers and employers and their representatives who find themselves in dispute. The Court was a concept developed in true tri-partite fashion by the State and the representative organisations of workers and employers working together. That concept was one where the responsibility for industrial dispute resolution rested upon the disputing parties themselves but where the State, in an underpinning framework of voluntarism, would make available a trusted body to express an opinion based on the merits of an industrial dispute as to how that dispute might be resolved.

That voluntarist approach to industrial dispute resolution in disputes where the law is not an issue, continues to be a cornerstone of our institutional framework to this day. That face of the Court has, over the course of 75 years, been added to by the creation of a jurisdiction in employment law which, in 2015, resulted in statutory assignment of the Court as the sole appellate body across the entire body of employment law and its designation as the body charged with the determination of all appeals in disputes between employers and workers based on that legal framework.

The Court, therefore, has adapted across the decades to become a unique institution which could be said to have two faces. Firstly, the Court is mandated to offer non-binding opinions on request from the disputing parties, as to how their dispute should be resolved where no element of employment law is involved. Secondly, the Court is mandated to engage in the limited administration of justice within the meaning of the Constitution where its decisions in appeals based on the law are binding and may only be appealed to the High Court on a point of law.

The fact that the Court has so successfully adapted to this evolved role is a testament to generations of members who have assiduously adhered to their fundamental ethos of impartiality and independence so as to deliver credible opinions in industrial relations matters and legally robust decisions in matters involving employment law.

The Court has functioned effectively across 75 years of economic and social development in the State and can be said to have provided a sound underpinning and stability to the conduct of employment relations as the world of work changed radically between 1946 and 2021. It is clear that the original respectful concept of ensuring that workers and employers remain the final decision makers in the manner of resolution of their disputes against the background of the proposition that the Court is the third party 'Court of last resort' continues to be a cornerstone of our voluntarist system of industrial dispute resolution.

The Court will continue to strongly advocate for these concepts and, working with the Workplace Relations Commission and the social partners, will continue to give meaning and strength to this foundation of the State's institutional framework.

The key to the resilience of the Court as an institution throughout its first 75 years has been the capacity of the members and staff of the Court to adapt to the changing nature of the laws governing the rights and obligation of employers and workers and adapting to the changing nature of work itself. In that context, the Court has been excellently served by the nominees of the ICTU and IBEC who have been appointed by the Minister in those years to serve as members of the Court. The key to their past and continuing credibility among workers and employers has been their capacity to step away from their background and into their role as independent and impartial third parties whose sole focus is the provision of credible opinions as to how industrial disputes should be settled and legally sound decisions where the law is the basis for the dispute.

The Court has been supported in its independent roles by the consistent support of the generations of civil servants of the various departments who have carried budget responsibility for the Court since 1946. In my experience as Chairman, their discharge of their administrative functions has never strayed into any engagement with the independent discharge by the Court of it statutory functions. I want to publicly acknowledge their professional and conscientious adherence to the statutory exigencies in this respect.

Finally, I must acknowledge the excellent administrative staff of the Court who have been assigned over the years to it from the administrative staff of the various Government departments. Those staff have delivered excellent service to the public and to the Court itself. In recent years the challenge has included the adoption of new technology in order to improve the quality of service we can provide and the development of new approaches to administrative service delivery and administrative case management utilising all available technologies. I firmly believe that the expertise and commitment of the staff of the Court has placed the institution on a modern pathway to excellent accessibility and comprehensive efficiency in all of its administrative functions and I commend these public servants for their continuing achievement in that respect.

Kevin

Foley

Chairman
Summer 2024

INTRODUCTION

The Labour Court's 75th anniversary was an opportune occasion to document and reflect on the Court's substantial body of work, with its perennial success in dispute resolution and the adjudication of employment rights.

The first official history of the Labour Court, written by Ian Finlay, covered the first 50 years of the Court's existence, 1946-1996. The Labour Court, like the Republic of Ireland, has undergone significant change in the years since then, with its ambit now extending to all employment laws.

This new history, covering the years 1996-2021, builds on Mr Finlay's account, adopting a similar chronological approach by covering the years under the headings of the successive Chairmen of the Court. In addition, this book will also explore significant themes of the Labour Court's work, including in the area of industrial dispute resolution and maintaining industrial peace, its role in national and public sector pay agreements, its role as the appellate court for employment rights claims, as well as taking a broad look over the Court's 75-year history.

Major changes have taken place during the 1996-2021 period, which encompasses the early years 'Celtic Tiger' boom in the economy and the trauma of the financial crisis to economic recovery and the Covid-19 pandemic.

There were four Chairmen over the period since 1996. Evelyn Owens's Chairmanship, which began in 1994, is covered in full, including her key role in the development of equality law (note: the term 'Chairman' is the statutory term for the position and is used for all Labour Court Chairmen regardless of the person's gender). Finbarr Flood became Chairman in 1998, taking in the height of the Celtic Tiger years, bringing his considerable business experience to the role. The longest period as Chairman was served by Kevin Duffy, whose legal expertise helped the Court to take on increased responsibility for employment law, while the period was also marked by the financial crisis and its aftermath. The period of the current Chairman, Kevin Foley, from 2016, has seen the Court responding to increased pay pressures from economic recovery, as well as the Covid-19 pandemic.

Thematic chapters

For many members of the public, the best-known function of the Court is in the resolution of industrial disputes between employers and trade unions. The first thematic chapter, 'The Labour Court and industrial relations', looks at how the Court brought its considerable skills in this area to resolve some of the more intractable disputes, while at the same time, largely below the radar, resolving many other industrial relations issues that as a result avoided industrial action.

In both the private and public sectors, pay determination has always been one of the key flashpoints between employers and trade unions. The chapter entitled 'The Court and national pay agreements' shows how the Court has played a major role in defusing issues over pay, through providing recommendations reflective of the submissions of the parties themselves, rather than trying to frame a resolution founded externally set norms.

The period since 1996 has also seen a gradual expansion in individual employment rights, through both European and domestic legislation. The chapter on 'The Labour Court and the Law' looks at how the Court has dealt with its increased responsibilities in this area, culminating in 2015 with its assumption of its current role as the sole appellate body for employment rights cases, with many of the precedent-setting cases analysed.

Finally, the '75 Years of the Labour Court' chapter takes a broader sweep of the Court's history, to give an overview of the full period since the Court's beginning, looking at the Court's considerable achievements over its lifetime, while also looking to how its role may evolve in the future.

What is the Labour Court?

The Labour Court was established under the Industrial Relations Act, 1946, to exercise the functions assigned to it by the Act. The functions of the Court have been altered and extended by subsequent legislation, including the Workplace Relations Act 2015, which provided for the most profound changes since the 1946 Act. Under the provisions of the Act, the Labour Court now has sole appellate jurisdiction in all disputes under employment rights enactments.

When exercising its jurisdiction under Industrial Relations legislation the Labour Court is not an ordinary Court of law. In that industrial relations role, the Court operates as an industrial relations tribunal, hearing both sides in a case and then issuing a Recommendation (or Determination/Decision/Order, depending on the type of case), setting out its opinion based on the merits of the dispute as to the terms on which it should be settled.

Recommendations made by the Court concerning the investigation of disputes under the Industrial Relations Acts 1946–2015 are not binding on the parties concerned. However, the parties are expected to give serious consideration to the Court's Recommendation. Ultimately, however, responsibility for the settlement of a dispute rests with the parties.

The Court's determinations under the Employment Rights enactments are legally binding.

The Court's membership is currently made up of the Chairman, three Deputy Chairmen and six Ordinary Members (three Worker Members and three Employer Members). In addition, the Court also has a Registrar who is the Court's legal adviser. The Court operates through three separate divisions currently (although certain issues may require a meeting of the full Court). A division is made up of the Chairman or a Deputy Chairman, an Employers' Member and a Workers' Member. Hearings are held in Lansdowne House in Dublin and, as required, at venues throughout the country. Hearings are also held remotely, in a virtual or hybrid courtroom.

THE LABOUR COURT AND INDUSTRIAL RELATIONS

As the final stage in the State's industrial relations dispute resolution process, the Labour Court often has a fine line to walk, in terms of ensuring credibility with both unions and employers in the public and private sectors. This chapter examines some of key disputes the Court has been involved in since 1996, discerning important themes in how it works and showing why the Court remains central to the management and resolution of industrial relations in Ireland.

Each year the Labour Court resolves hundreds of industrial relations cases – and often dozens of strikes and potential strikes. While the Court generally appears most prominently on the public stage in high profile intractable disputes, it can be easy to forget that the vast majority of the Court's recommendations on industrial relations issues are accepted.

Indeed, it is this solid track record in resolving hundreds of issues every year that leads the parties in the more difficult disputes to look to the 'court of last resort' for a solution. Conversely, its success in these sort of disputes also enhances its institutional reputation as a reliable problem-solver.

Over the last decade or so, the Court has usually been dealing every year with between 100 and 200 joint referrals of collective disputes under Section 26(1) of the 1990 Industrial Relations Act. These include high-profile disputes where strike action was threatened - but also many issues involving smaller numbers of workers, where the parties felt it necessary to go all the way to a Court recommendation.

There are also many appeals of individual cases taken under Section 13(9) of the Industrial Relations Act, 1969, to Adjudication Officers (before 2015 to Rights Commissioners) and cases referred by unions or workers only under Section 20(1) of the 1969 Act – which, while often not accepted by the employer, provide unions with an independent view on their claim, which can be used to argue their case with the employer and others.

Below is a table of the number of referrals under these three types of industrial relations cases between 2010 and 2021, which shows the scale of the work being undertaken by the Court on a constant weekly basis (Labour Court, 2011-2022).

Year	Section 39(1)	Section 20(1)	Section 26(1)
2010	176	94	188
2011	108	80	196
2012	133	158	158
2013	144	192	166
2014	155	125	182
2015	144	106	160
2016	160	86	145
2017	143	82	154
2018	194	70	132
2019	127	207	131
2020	89	141	62
2021	74	93	100

It is the Court's ability to resolve higher-profile disputes that show its skill – and how calls are made by divisions of the Court in the most difficult situations.

Nurses and teachers

During the latter years of the 1990s, as the economy grew rapidly, the Court was called upon to resolve disputes involving pay pressures across the economy, but particularly in the public service, where various unions sought to stretch the provisions of national wage agreements as far as possible.

The first of these major disputes involved the nursing unions, which rejected an adjudication decision under their local bargaining 'restructuring' clause of the then national agreement, the Programme for Competitiveness and Work (PCW). The Court, which up to then did not generally deal with the health service (it was under conciliation and arbitration (C&A) schemes) became involved at first on an informal basis, giving it the option of not holding a hearing if it felt it could not be

of assistance.

At one point, the leadership of the INO nursing union made clear to its members that the union's executive would stand by its demands regardless of any intervention by the Court. Industrial Relations News (IRN) describes the situation: "It was understood that the Court was less than pleased with this stance and did not want to be placed in a situation where it had to capitulate to either side. However, a communication from the INO general secretary PJ Madden to Court chairperson Evelyn Owens regarding the matter was felt to have eased tensions with the Court."

In the end, the Court issued a recommendation for just under a third of the gap between the parties at the time of the hearing, hours before a national nursing strike had been scheduled to begin. This led to deferral of the strike and eventual settlement of the immediate claim. However, further groups sought follow-on claims stretching the local bargaining provisions of the then national wage agreement over the coming years.

Following the nurses' 1997 dispute, most of the health sector and local authorities followed them into the remit of the then Labour Relations Commission (LRC) and Labour Court, leaving their traditional C&A schemes. Even before the nurses' dispute, it had become apparent that the old C&A system was incapable of dealing with the restructuring claims, with a new adjudication system for the public service set up in 1996.

The Court was also seen as being more flexible and user-friendly than the relatively formal C&A system. This led to a significant expansion in the Court's role in dispute resolution in the public service, with just the civil service, teachers, Gardaí and Defence Forces remaining outside its remit.

Before long, it was drawn into teachers' issues when second level teachers' union ASTI decided to leave ICTU in pursuit of a 30% pay claim, which if conceded would have breached the national agreement. When LRC proposals were rejected, the Court agreed to a referral from the LRC on an 'ad hoc' basis (which gives it the ability to hear disputes in sectors not normally within its remit). Notwithstanding this, ASTI initially sought an earlier hearing and a three-week timescale for issuing the recommendation.

Frawley (2001) in IRN observed that while the stricter timetable ASTI wanted "was to fit in with a new schedule of action in the event the process fails, the Labour Court will hardly be enamoured with being told by one of the parties that it is to hear such an important case in a little over a week and issue the finding in less than three weeks". The Court issued a recommendation in its own timescale and did not respond to ASTI, with the recommendation rejecting the union's claim. The dispute was settled on the basis of payments for supervision and substitution, which applied to all teachers, along with the same increases as other teachers under national agreements, including under the benchmarking process.

'Court of last resort'

How the Court interacted with social partner involvement in dispute settlement overthepast 25 years, in theformofbodieswithemployerandunionrepresentation like the Employer Labour Conference and the National Implementation Body (NIB), is also part of the rich tapestry of industrial relations and dispute resolution in Ireland. It says something about the enduring strength of the Labour Court that it came through these years with its standing and position intact. What has helped in this regard is the fact that the players, whether from ICTU, Ibec or from within the public service, ultimately understood that their efforts had to assist the IR system, not to undermine it.

But the existence of these well-meaning external dispute efforts meant that on occasions a difficult line had to be traversed when it came to upholding the Court's role as a 'court of last resort' in industrial relations disputes. The sort of problems that had to be managed included, for example, how to hear disputes where Labour Court recommendations had already been rejected, or what was the appropriate role for the Court in regard to disputes concerning the terms of national-level agreements.

During the period of national pay bargaining in the 1970s and early 1980s – and the 'free for all' period of local pay bargaining that followed in the mid-1980s, the Employer Labour Conference (ELC), which had representation from both union and employer sides, with an independent chair, had played the role of guiding disputes back into the formal process. After the return of national pay bargaining in 1987, the ELC took a lower profile and the 'troubleshooting' role was taken on by the Central Review Committee (CRC) of the new social partnership agreements.

However, a system of social partner intervention resembling the ELC – although more informal and flexible – dealt with some of the most intractable industrial relations disputes, under the joint intervention of then Ibec director Turlough O'Sullivan, and the then assistant general secretary of the ICTU, Kevin Duffy. Both had strong reputations in their role as industrial relations 'trouble-shooters', a role very much based on their personal abilities in this area and the fact that they worked well together. This informal system was a key factor in helping to sustain consensus in the face of some major disputes that had the potential to unhinge their own social partnership agreements. A vital part of supporting a national agreement was also ensuring that they did not undermine the role of the Court.

'Revolving door'

A different issue was raised in the late 1990s by the Court's chairman Finbarr Flood, who was conscious that a 'revolving door' had emerged, whereby one or other of the parties rejected a Court recommendation and then went back to the conciliation service of the LRC to resolve a dispute. To take control of this phenomenon, the Court and the LRC agreed a formula by which consensus was required between the two institutions before, in rare cases, this could happen.

Mr Flood (2006) found that this new policy "raised major difficulties at times for some people". Unions and employers that should be supporting the Court "often did all in their power to break it", he said. While most employers and unions adhered to agreements, certain union officials pushed their case through the LRC and Labour Court as quickly as possible, "to get on with the confrontation", with some being "extremely successful" and securing pay increases above national wage agreements. At one stage, said Mr Flood, "it appeared that those trade union officials who were abiding by the rules were, in fact, disadvantaging their members".

Similar tensions between the Labour Court's 'last resort' role and the exigencies of industrial relations stability arose during the era of the National Implementation Body (NIB), which in essence was a more formal version of the Duffy-O'Sullivan "double-act". This was set up in December 2000, under a review that led to an upward revision of the terms of the social partnership agreement known as the Programme for Prosperity and Fairness (PPF). The NIB was to act as a sort of pay 'watchdog' but it ended up encroaching into more disputes than perhaps was originally intended. It adopted a 'troubleshooting' role similar to that played in the 1990s by the Duffy/O'Sullivan partnership, but on a more formal basis – and more frequently used.

Severance disputes

After the terrorist attacks of September 11, 2001, one of the major sectors affected was aviation, with Aer Lingus seeking to cut staff by a third in response to the fall off in passenger traffic. Terms were agreed with most staff, but agreement with pilots over severance terms and work practices remained elusive up to May 2002. After a one-day strike by pilots' union IALPA, followed by a management decision to hire aircraft – effectively 'locking out' the pilots, the NIB intervened. Previous efforts at resolution had involved the LRC and two independent consultants, but the Labour Court had kept its 'powder' dry and the NIB referred the dispute to it for a successful resolution. This approach ensured that the Court was accorded respect for its role as the court of last resort.

Another bitter dispute over severance arose in 2002 at the Irish Glass Bottle company, where the unions (SIPTU, TEEU, UCATT and BATU) sought higher severance terms for the compulsory redundancies due to the closure of the plant. The Court recommended five weeks' pay per year of service, inclusive of statutory redundancy, but this was rejected by the company. Following a sit-in by the workers, the Court brokered a deal allowing partial payment of the terms, providing the company could access the plant to remove stock to fund these payments. An eventual settlement was reached on the broad basis of the Court's terms, with the final binding proposals lodged with the Court. As a result of this dispute, the issue of statutory severance gained heightened prominence, culminating in the more than doubling of statutory severance terms in 2003, after agreement to this effect under the new Sustaining Progress national agreement.

The Irish Ferries dispute of 2005 was one that tested not just those directly involved, but posed serious challenges to the social partnership system and to the authority of the Labour Court. Workers at the ferry operator were offered voluntary severance and replaced with migrant workers at much lower wage rates. The dispute delayed the start of talks on a replacement social partnership agreement for Sustaining Progress. The Labour Court recommended that a 2004-2007 agreement on pay with SIPTU be upheld, but this was not accepted (or formally rejected) by the company.

Dobbins (2005) said that the Court "tried to uphold the fundamental principles of voluntarist collective bargaining", telling the company it had not justified "a unilateral termination" of the agreement. However, most of the workers accepted severance terms and strike action by about 50 remaining workers led to a resolution involving a legally-binding contract on pay and conditions. The prominence of the 'displacement' issue led to an increased focus on employment rights and labour inspection in the Towards 2016 social partnership agreement reached in the following year, 2006.

In a dispute over redundancies at Irish Sugar in 2006, management declined a Labour Court invitation to a hearing aimed at clarifying the Court's original recommendation on severance. A clarification hearing went ahead with just the unions in attendance and several weeks later the then Taoiseach, Bertie Ahern, told the Dáil: "The State always honours Labour Court decisions. In the decades since 1946 (the foundation of the Labour Court), it is very rare for it not to honour cases. I expect any company, especially large public companies, to do likewise" (Ahern, 2006). By February 2007, the company reversed its position and attended the Labour Court, whose final clarification was accepted by both parties. The dispute ended with the workers – represented by SIPTU and TEEU – receiving a half to two-thirds of the difference between the parties' interpretations of the original recommendation from the Court.

Pay and Pensions

In late 2005, the Labour Court backed payment of basic pay rises under Sustaining Progress at An Post, provided that a set of changes – set out by a three-person technical group appointed by the Court itself – was implemented. The main union involved, the Communications Workers Union (CWU), rejected the Court's recommendation, seeking amendments to the change plan and the breaking of the link between change and pay increases. After a day of limited industrial action, the dispute was considered by the NIB, which referred it back to the Court, which then recommended immediate payment of the increases, as well as implementation of an amended change plan, thereby ensuring that the Court had the last word.

Disputes over the restructuring of defined benefit (DB) pension schemes were common in the mid-2000s. One such dispute at Bank of Ireland – where management implemented a hybrid pension scheme for new entrants without agreement with the main union, the Irish Bank Officials Association (IBOA) - was referred to the Labour Court by the NIB, which found itself split down the middle

on the issue. This was just a few months after the new Towards 2016 agreement had allowed referral of pension issues to the NIB. The division of the Court faced a daunting task in dealing not only with the dispute, but also in saving this element of the social partnership agreement. Its recommendation sent the parties into an intense process of engagement, with LRC assistance, while criticising the bank's action in implementing the hybrid scheme for new entrants. The eventual agreement, reached in October 2007, was arrived at during this process, but was also submitted to the Labour Court for endorsement.

IRN commented at the time: "It is significant that the LRC and the Labour Court both played critical roles in securing this agreement. Bank of Ireland's agreement to enter the LRC process as advised by the Court, also marks an important endorsement by a major employer of the state's dispute resolution agencies." The outcome demonstrated that the social partners understood that whatever role they might play in dispute resolution themselves, ultimately this had to be subservient to the leading role of the Labour Court.

Economic crash hits

As the banking and property crash hit the country in 2008 and 2009, widespread restructuring and rising unemployment in the private sector put new demands on dispute resolution agencies, including the Labour Court. An official strike over cost-cutting in Dublin Bus was avoided by clarifications of a Labour Court recommendation in 2009, while later in the same year, a strike by electricians on construction sites was resolved by a combination of LRC and Labour Court proposals, with the Court focussing on the pay issue, while the LRC dealt with all other issues. The social partnership system that had been in place since 1987 buckled in the economic crisis and finally collapsed in December 2009, with the end of centralised pay bargaining in the private sector (see chapter on pay formation).

In the public service, the economic crisis was marked by pay cuts – firstly in the form of a pension levy and, after social partnership, cuts to basic pay. This sparked limited industrial action and talks that led to the Croke Park Agreement, which renewed a national framework for the public service. A key element in that agreement in terms of dispute resolution was the introduction of binding decisions, including binding Labour Court decisions. This was important for both sides in bringing finality to issues, enabling change to be implemented more quickly than in the past.

This was a key feature of all public service agreements up to the Building Momentum agreement in 2021-22. While not binding in law, recommendations by agreed third parties were to be binding in industrial relations terms, meaning that any party rejecting such a recommendation would also be seen as directly challenging the national agreement.

New pay pressures

As the economy recovered through the 2010s, pay pressures began to build again among certain groups of workers that had industrial power. Public transport again figured prominently, as well as key public service groups like Gardaí and nurses (see separate chapter on pay formation). In the public service, the Croke Park Agreement approach of Court decisions that were binding in industrial relations terms was continued through the Haddington Road, Lansdowne Road, Public Service Stability and Building Momentum agreements, with the Labour Court's role being that of resolving disputes while trying to preserve this key framework for industrial stability as much as possible.

In the private sector, while no national agreement was in place, informal pay norms emerged to form a backdrop against which the Court had to resolve disputes that arose. The absence of social partnership meant that for the Workplace Relations Commission (WRC) or the Labour Court, there were no firm ground rules or agreed parameters outside of the public service. (The Workplace Relations Commission replaced the LRC in 2015.)

Several major industrial disputes took place in 2016, the first of which involved Luas light rail workers, employed by private operator Transdev and represented by SIPTU. They lodged an extraordinary pay claim for up to 52% for some workers (although the actual increase in pay bill initially sought was about 40% over five years).

The dispute went through a lengthy internal process but eventually arrived at the Labour Court, which said at an initial hearing in September 2015 that there had been "no meaningful engagement" on "the multiplicity of cost-increasing claims before it". It told the parties to get an independent report on the costs of the union's claim and the company's financial position. Once this was furnished to the Court, it recommended that the parties engage for four weeks at the WRC. However, this was rejected by the workers, who engaged in a series of short strikes over the spring of 2016.

Timing became a key issue for the Labour Court in this lengthy and intractable dispute, as in so many others. If it intervened too early, its role as the court of last resort might be undermined by rejection, but if it intervened too late, it could face accusations of inaction. After a WRC intervention in March that led to a rejected proposal for increases of 10-18% over five years, the Court held counsel. Finally, in May the Court made its move, with some assistance from ICTU general secretary Patricia King, resulting in the division of the Court managing to craft an exceptionally skilful recommendation, giving something to both sides, whilst respecting the work of the WRC. The result was accepted by the workers, ending a five-month dispute.

The Luas dispute set a headline for Dublin Bus workers, represented by SIPTU and NBRU, who were negotiating their own first post-recession pay deal. The Court recommended 8.25% over three years in July, which was rejected, but this recommendation had left open the option of further talks at the WRC and then the Court, for a 'definitive' recommendation. Here again, timing was of the

essence as the dispute led to several city-wide bus strikes. A resolution was eventually agreed at the WRC, for 11.25% over three years, but with a commitment to productivity attached.

Subsequently, the most serious public transport strike of the decade, in terms of disruption to the public, took place at Bus Eireann in the spring of 2017, with three weeks of continuous strike action in which the very future of the main public transport provider outside Dublin hung in the balance. The Court's recommendation provided for a new 'composite' pay rate, while the company's need for cost cuts was dealt with by a reduction of about 10% in staff numbers, through voluntary redundancy – which was accepted by the workers. As in the Luas dispute in 2016, the Labour Court was careful not to play a role in the dispute until the parties were close to settlement, allowing it to maintain its 'court of last resort' position.

Garda dispute

A further challenge emerged later in 2016, when the two largest Garda representative bodies said their individual members would take strike action over pay. The WRC became involved and when its proposal was rejected, the Court was the next logical port of call. Even though Garda industrial relations was normally under a conciliation and arbitration (C&A) scheme rather than the Labour Court, the Court was able to hear the dispute on an 'ad hoc' basis (as had been the case with nurses and ASTI teachers in earlier years).

The WRC proposal had been rejected without a ballot, raising the prospect of the Garda associations doing the same with a Court recommendation. However, when the dispute was heard by the Court – on the eve of a threatened stoppage – both associations agreed to defer the action and ballot their membership on the recommendations – which were later approved by members of both associations, the GRA and AGSI.

One element of the Court's recommendations was to provide a process by which all Garda bodies could access the Court and WRC, with 'ad hoc' access to continue in the meantime. However, securing formal statutory admission to the IR system also implied that the garda associations would in future be subject to the legal strictures and behaviours that trade unions must adhere to. The setting up of a new Garda IR system, with an internal disputes procedure, took several more years and primary legislation, but came into effect in February 2020. The internal disputes procedures were designed to ensure that most issues were dealt with before going to the WRC and the Court.

In this critical and unique dispute, the Labour Court had helped to prevent what would have been a very serious strike, one that could have exposed the State, the citizenry and business to potential hazards. Some €30m had already been on offer in WRC talks, with the Court's recommendation adding an extra €12m to this sum. The Court had skilfully built on the WRC's work, wrapping the Garda bodies into the then Lansdowne Road Agreement, while committing all parties to future access on a statutory basis to the WRC and the Court.

Post Covid-19

Dispute activity fell off somewhat during the Covid-19 pandemic, with the Court moving to online hearings for the most part (for more on this, see chapter on Mr Kevin Foley's period as Chairman). However, as the pandemic began to abate and skill shortages and rising inflation became the emerging issues from late 2021, there were a number of key disputes on private sector pay in larger multinational firms.

One was at Bausch and Lomb in Waterford, where the Labour Court was told by the company that a reversion to cost levels that preceded a 2017 restructuring programme would lead to an "anti-Waterford" bias on future investment decisions. While the Court's recommendation of 8.25% over three years was rejected by the workers, they eventually backed a WRC proposal that built on the Court's recommendation, for 9.75% over three years.

Another pay dispute in a locally-important multinational was at Kyte Powertech in Cavan, where a Court recommendation for 9% over three years – plus a further potential 3% linked to operational efficiencies – was rejected by the workers. After two one-day strikes, the Court intervened again and made a supplemental recommendation for 1.5% more on basic pay but with only 1.5% of the original 3% available for efficiencies. This was accepted by the workers.

Conclusion

Looking back at how the Labour Court has handled disputes over the past few decades, several clear themes recur. Chief among these is protecting its role as the industrial relations 'court of last resort', while at the same time showing some flexibility on the most intractable disputes that have 'lost their way'. Often the Court – faced with a dispute where the parties are far from a resolution – has sent the parties back for further discussions, while leaving open the option of a further role for the Court at a later stage. By acting in this way, the Court has avoided many disputes getting 'lost' in the first place.

Timing of interventions by the Court in major disputes has been vital to maintaining its 'last resort' role. Moving too early – as can often be called for by some politicians and media commentators – can result in more disputes ending up in 'limbo' where they may require additional external assistance to find a resolution.

The Court's ability to craft solutions in difficult private, public service or commercial semi-state disputes is in less demand these days given that there are fewer industrial disputes. Nonetheless, as this overview of its work over 25 years has shown, the skillset that the Court has demonstrated over many decades remains available to the parties who avail of its services. This provides great comfort not just to the social partners, the state's job creation agencies and the Government, but also to the citizenry, knowing that in the Labour Court we have a body that distinguishes itself in arriving at respected and balanced recommendations and decisions.

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THE COURT AND NATIONAL PAY AGREEMENTS

The Labour Court's role in the lifetime of national pay agreements in the private and public sectors over the period since 1996 was guided by the parties themselves, rather than affording the Court a role in setting pay policy 'from above'. In this way, the Court played an important role in resolving pay disputes within the parameters the parties had agreed, which in turn helped to ensure a high level of industrial stability across various sectors.

For over half of the 1996-2022 period, pay policy in both the private and public sectors was dominated by social partnership national agreements. Unusually in Europe, this meant a single schedule of pay increases for all unionised employments. From the outset, the Court's response to the beginning of this consensus-based approach to pay formation in 1987, set the tone for the 22 years that followed, up to the collapse of the last partnership agreement in 2009 – and arguably for the period beyond.

The first of these agreements, the Programme for National Recovery (PNR), was a response to the wage/inflation spirals of the 1970s and 1980s, whereby unions sought increases to match inflation but generally fell short, leading to falls in real living standards for much of the 1980s, especially during the period of 'free collective bargaining' after the collapse of the 'National Understanding' in 1982.

The broad bargain reached under the PNR, therefore, was to break this cycle by setting relatively modest pay increases across the unionised private and public sectors, in return for income tax cuts that would mean at least the maintenance of net post-tax real income over the three-year period, which covered the three calendar years 1988-1990.

However, even after the agreement was approved by union members, there was uncertainty as to whether it would 'hold' through individual local pay negotiations on the ground, all of whom now had to follow the agreement's schedule of pay increases of no more that 2.5% in each of the three years, in return for negotiations on a reduction of one hour in the working week and income tax cuts making substantial progress towards bringing two-thirds of income tax payers on the standard rate.

Letter of support

In response to this, the then Chairman of the Labour Court, John Horgan, issued an important letter in October 1987, to the effect that the Court would support the new national agreements and uphold the pay terms within them.

The letter stated: "At its meeting this afternoon, the Labour Court welcomed the acceptance by all sides of the proposals for agreements on pay in the public and private sectors over three years. The Court regards the ratification of the agreements as a major stimulus to industrial harmony for the next three years of economic recovery and its policy will be to support the implementation of those agreements."

As Grafton (1987) explained, this meant that the Court was "placing both unions and employers who are parties to the programme on notice that the Court is not available as a forum for circumventing the nationally agreed terms. That still leaves it open to employers and unions to directly negotiate terms above or below the terms of the national pay agreements. But neither can look to the Court to bring forward a recommendation which breaches the terms of the agreement."

Without the prospect of a favourable Labour Court recommendation, any union seeking to beat the PNR's pay terms would have to resort to industrial action – a challenging prospect at a time of double-digit unemployment, which had already reduced strike activity to much more subdued level than that of the 1970s.

The Court's letter was also very much in keeping with its longstanding policy at enterprise and national level of being led by the collective agreements of employers and unions themselves on pay policy rather that setting pay policy for them to follow. The Court was not going to undermine such national collective agreements by backing individual unions seeking higher increases – or individual employers seeking lower increases (save those claiming inability to pay under the terms of the agreement itself).

This statement of the Court's support for the new national agreements also played an important role in the acceptance of the PNR at shop floor level. A survey by Industrial Relations News (IRN) found that just 7% of pay agreements exceeded the PNR terms – a compliance level that helped to bed down what was the first of a series of social partnership deals. Unemployment and increasing

global competition also played an important part in moderating pay settlements, but an agreement that had the institutional weight of government, unions and employers behind it, was further bolstered by the Court's letter.

Local bargaining clause

A new element in the next national agreement for 1991-1993, the Programme for Economic and Social Progress (PESP), was a local bargaining clause that allowed for pay increases of up to 3% on an "exceptional" basis in year two, on top of the moderate annual increases. Many differences arose in the interpretation of this, with unions seeking it wherever possible, while employers insisted on a restrictive meaning of the word 'exceptional', allowing it only for significant productivity concessions.

Compliance with the basic terms of the agreement largely held at about 90%. As many as 31% of private employers who paid the basic terms of the PESP also paid the 3% local bargaining increase, with over half of employers receiving some concession in return.

The public service did not get this extra 3%, due to uncertain Government finances at the time, but it was carried forward into the next partnership agreement, the Programme for Competitiveness and Work (PCW), which covered the 1994-1996 period, following the same formula of moderate pay increases and tax cuts. Under the 3% clause, different public service grades and/or groups could engage in local pay restructuring to the value of the 3% of the wage bill for that grade or group.

Partnership 2000, covering 1997-2000, provided for modest pay increases over the 39 months of 7.25% plus an extra 2% under a local bargaining clause with a less ambiguous wording, which meant it was paid in most private sector employments. Despite increasing pay pressures, an analysis of SIPTU private sector settlements showed there was an 88-89% compliance rate.

Public service pay disputes

However, in the public service, the 3% local bargaining clause held over from the PCW eventually led to agreements with groups such as teachers and civil servants, with average increases allowed under a 1996 Government-ICTU understanding to exceed the 3%, up to 5.5%. Then, in early 1997, in the face of a threatened national nursing strike, a Labour Court recommendation led to an average increase of 14%. The Court's recommendation successfully averted a national nursing strike at a time when the Government was under extreme pressure to avoid a dispute. This pressure was added to by the fact that a general election was looming. The Court had recommended IR£30 (€38) million on top of IR£50 (€63.5) million already on offer, or less than a third of the extra IR£100 (€127) million then sought by the Irish Nurses Organisation (INO).

The nurses' deal was soon followed by an increase for paramedic grades in the health service later in 1997, also recommended by the Court. A 'twin-track' approach to public service pay was emerging, with civil servants and teachers

confined to the traditional conciliation and arbitration schemes and major groups with industrial muscle in essential services, like the nurses, having their claims heard in the Labour Court "in the public interest in an election year", as IRN observed.

Following 9% increases for Gardaí and firefighters in 1998 – on top of the 3% they had earlier got under the restructuring clause – the nursing unions threatened a further strike over pay in 1999, which did go ahead. While the nurses won an additional 12%, with the Labour Court recommending the proposals that ended the dispute, much of it had already been offered before the strike.

While the Court's remit was to find a resolution that was most likely to be accepted by both parties, in this case the Government had already made an offer that exceeded the strict terms of the national wage agreement before the dispute even reached the Court. In those circumstances, the Court could hardly have recommended less. This showed that a Government's willingness to find a resolution to a dispute is something the Court always has to be acutely aware of when devising a recommendation.

Meanwhile, at end of 1999 the Court had to deal with the unusual issue of 'millennium' claims for special lump sums for those who would be on duty on the night and day of the dawn of the new millennium. The claims were driven by Year 2000 (Y2K) computer bug fears and compensation for missing the 'party of a lifetime'. The Court was asked to recommend on the payments that would apply across the public service, and did so by setting a maximum of IR€540 (€685) – although some private sector workers received over IR£540 (€1,269).

Pay deals over national terms

It was in this atmosphere that the Programme for Prosperity and Fairness (PPF) was agreed in early 2000, providing for increases of 5.5% for 12 months, 5.5% for 12 months and 4% for nine months. This was significantly higher than previous agreements, yet it very soon came under much greater pressure in the private sector than the four previous agreements. By the start of 2001, SIPTU figures showed that about 25% of its private sector employments had agreed deals above the national norm. About half of these had some productivity element, but almost half of these were unlikely to have covered the full cost of the increase. Many such agreements were done outside of the Labour Court, at local level or LRC, with unions possibly conscious that they were unlikely to secure outcomes beyond the terms of the prevailing national agreement from the Court.

By late 2000 this new PPF agreement was coming under pressure from a resumption of inflation, which reached 7% by the autumn. Workers had grown used to low inflation and tax cuts during the 1990s. Uniquely during the social partnership period, the parties revised pay terms upwards, with an extra 2% plus a 1% lump sum agreed. At local level in the private sector, Ibec interpreted this clause as meaning that companies did not have to pay the 2% if they had already paid an increase above the PPF. Yet a SIPTU study of its western region in 2001 showed that 95% of its members benefitted from the 2%.

Importantly, in the few cases where an employer challenge to the 2% got as far as the Labour Court, the Court's understanding was that where it was contended that payment of the additional 2% would put competitiveness and employment at risk, "then it is up to the employer to establish for the Court that competitiveness and employment would be undermined by applying the 2%". Employers could still plead inability to pay, but they "must supply evidence to the Court to this effect, which will be considered by the Court before making its recommendation". (Higgins 2001b)

As part of the PPF review deal, the employer side secured agreement regarding pay claims recommended on by the Court. For the first time this provided for Labour Court decisions on pay in which "the parties agree to comply with the Court's findings" – a provision that was to be further developed in later social partnership agreements. This gave extra 'teeth' to the policy first outlined in the original 1987 letter from the Labour Court supporting the PNR.

National Implementation Body

It was this same review that also provided for a new 'virtual body', the National Implementation Body (NIB), made up of leading social partner figures (from ICTU, Ibec and the Department of An Taoiseach), in order to police their own agreement. The idea behind the NIB was "to ensure delivery of the stability and peace provisions of the PPF". It could be "convened at short notice", where "particular difficulties arise or are anticipated".

NIB's role soon widened out into being a general dispute-settling body. A study of the 63 NIB interventions during its eight-year history between 2001 and 2009 found that only about 27% of its work was in ensuring pay stability (Higgins & Roche, 2016). Individual unions or employers could request an NIB intervention through ICTU or Ibec respectively, but in cases where the national agreement was under threat, the NIB could intervene on its own initiative.

Because the Labour Court had, since 1987, been an effective 'guarantor' of the national partnership agreements, there were concerns that the NIB could end up adding an 'extra layer' to the dispute resolution system. However, the NIB members themselves were sensitive to this possibility and sought to confine their recommendations to procedural issues. In this way, the NIB 're-directed' disputes that had become procedurally 'lost', behaving as a 'traffic policeman', usually pointing them back to the LRC or the Court.

Meanwhile, by late 2002, the Court was taking a strong line against pay deals above the norm in the retail sector, rejecting a pay claim by Mandate at four Dublin-based Supervalu outlets owned by Oxtron Limited in LCR17288. As Frawley (2002a) said: "It would appear that as the downturn shows little sign of abatement, the Labour Court is sending out a strong signal to the unions that no more cost increasing claims will be entertained, thus bringing the wage explosion in the retail sector to an end."

Benchmarking and ASTI

Separately, in the public service, the perception of some groups that they had reached 'restructuring' deals too early was managed by adding an extra 3% for 'early settlers' under the PPF. This covered about 70% of the public service, including teachers and civil servants. However, this did not stop attempts at 'leapfrogging' and efforts to take a 'second bite' of the 'restructuring cherry', as one commentator memorably described it.

To streamline matters and establish a more level playing field, a new Public Service Benchmarking Body (PSBB) set out to benchmark public service pay against the private sector. Its key decision was to recommend pay increases for all groups in one report. A central aim of this exercise was to prevent parity claims and avert industrial action, as well as breaking traditional pay linkages between the different public service groups.

When one of the three teacher unions, the ASTI, sought a pay increase of 30% and left the ICTU fold to pursue it, placing it well outside the social partnership consensus, the Labour Court (in March 2001) completely rejected the union's claim. As IRN explained, the Court was under enormous pressure, not just from the Government but also indirectly from the public sector unions, to keep the PPF and the benchmarking process afloat. One senior public sector trade union leader said before the Court recommendation that if the teachers got 'even a ha'penny', it would mark the end of PPF.

In July 2002, the Benchmarking Body recommended increases that varied between different groups, the average rise working out at 9%. The report was to come in for much criticism, particularly when the financial crisis hit in 2008, but at the time it was somewhat below union member expectations. Nonetheless, it was clear the report was the 'only game in town' and was accepted by the public service unions as a group. The following years saw far fewer public sector pay disputes than the late 1990s.

Binding recommendations

In the private sector, issues emerged early in 2002 between ICTU and Ibec over the interpretation of the 1% lump sum under the revised PPF agreement from December 2000.

Draft ICTU guidelines suggested that the unions would include regular overtime and other non-basic pay elements, but Ibec responded that the 1% applied to basic pay only. Several weeks later, the social partner-led NIB issued a statement clarifying that the 1% included any pay element to which national wage agreements applied. This statement was sent not just to ICTU and Ibec, but also to the LRC and Labour Court. It was also noted that in December 2000, SIPTU's top three officials had told its officials and members that the agreement reached that month provided that the additional PPF increases "will not become the subject of industrial action". This meant any third party recommendation

on these increases "would, effectively, seem to be binding in all but name", according to IRN.

This concept was further developed in the new social partnership agreement negotiated in early 2003, Sustaining Progress (SP), which introduced binding procedures for disputes over implementation of the pay terms of the agreement. These included binding Labour Court recommendations on disputes as to what constituted a breach of the agreement. This meant that if unions threatened industrial action in pursuit of a pay claim above the national agreement, the company concerned could claim a breach of the agreement and look to the Court to uphold the terms of the national agreement. While this clause was rarely invoked, the fact that it was there meant that the level of above-the-norm pay deals seen during the PPF wasn't repeated. Moreover, this clause was part of all national deals up to 2009.

As late as 2006, the TEEU craft union's regional organiser for Cork and Kerry, Pat Guilfoyle, told his union's biennial conference that the union's ability to negotiate increases over and above the minimum terms has been "severely curtailed" because of the "restrictive nature" of the binding processes in Sustaining Progress and its successor, Towards 2016. Around the same time, Ibec director general, Turlough O'Sullivan, said that this binding clause meant that now "the pitch was more clearly marked out".

Sustaining Progress also provided for LRC-appointed independent 'pay assessors' to examine the accounts of employers who claimed inability to pay the terms of the agreements. The Labour Court had to take account of such reports before issuing binding recommendations (although if an employer was seeking cost offsets in return for the basic pay terms, the Court's recommendation was a voluntary one, with just a three-week 'cooling off' period before any action by either side). This made the unions warm more to the more 'binding' nature of SP, although both changes meant a partial move away from 'voluntarist' industrial relations. Importantly, while these types of recommendations came under Section 20(2) of the 1969 Industrial Relations Act, where the parties agree in advance to accept the outcome, this meant they were binding in a voluntarist industrial relations sense only, not legally enforceable.

The SP pay terms were at first agreed for just 18 months, due to uncertainty over inflation, which was approaching 5% by the end of 2002. This shorter duration unavoidably weakened a key benefit of the deals – certainty on pay into the future – although further terms were agreed as promised for a second 18-month period in 2004.

Financial crisis hits

A seventh social partnership deal was reached in early 2006. While Towards 2016, as it was named, had a ten-year framework, it followed the Sustaining Progress pattern of agreeing pay increases for shorter periods, with a 27-month schedule of pay increases: 3% for six months, 2% for nine months (or 2.5% if under €10.25 per hour); 2.5% for six months and 2.5% for six months.

When this pay deal came up for renewal in mid-2008, the country was already in the grip of a housing market collapse and the Government bank guarantee was just around the corner. The Government and social partners – mindful of how consensus had helped in past crises – still felt it best to agree a national deal. But many private sector employers, facing a rapidly deteriorating situation, baulked at the increases set out in the agreement (3.5% for six months and 2.5% for 12 months), even if they were preceded by a three-month pay pause. The CIF – facing a collapse of the construction sector – never signed up to the deal and Ibec sought renegotiation within weeks of signing it. At the same time, a significant minority of companies – many of them in exporting sectors that were relatively insulated from the financial crisis – did pay some element of the increases, with half of these even paying the second phase.

One of the few cases on pay under the Transitional Agreement to reach the Labour Court was at state-owned utility Bord Gáis, where the Court backed payment of the 3.5%, with talks on putting the 2.5% into the pension scheme. The Court made it clear that this was due to the company's strong profitability despite the economic crisis, noting that the national pay deal was "a matter of controversy between the Social Partners. It would be inappropriate for the Court to enter that controversy or to express any view on how it should be resolved" (LCR19667).

Within weeks of this recommendation, the NIB wrote to the Court to clarify the position on the national agreement, stating that "a process of engagement with the Social Partners at national level is taking place aimed at exploring the scope for reaching an agreement on an integrated national response to the current economic crisis" – concluding with: "Perhaps the Court would bear this in mind in its approach".

Finally, in December 2009, Ibec formally withdrew from the private sector national agreement, following the failure of talks on a revision of the deal. This brought 22 years of national private sector pay bargaining – and the NIB itself – to an end.

In early 2010, Ibec and ICTU, possibly wary of the danger of leaving a vacuum, agreed a 'protocol' to govern local bargaining in the private sector. This provided for issues like maintenance of employment and competitiveness to be taken account of in any company-level pay discussions, as well as adherence to procedures, including the use of the LRC and Labour Court where necessary. For cases on pay already in train at the time of Ibec's withdrawal, these could still be processed if both employer and union sides wanted them to be – and the option of binding Labour Court recommendations under Section 20(2) was also available on the same consent basis.

Croke Park agreement

In the public service, the Transitional Agreement was abandoned from January 2009, with the Government introducing a new public service pension levy in February. This sparked a day of strike action across the public service and while talks on revising the agreement took place during 2009, these eventually broke

down in December, a few weeks before Ibec's private sector withdrawal, leading to an actual pay cut from January 2010. After several weeks of limited industrial action in early 2010, talks began again, leading to the first Public Service Agreement (known as the 'Croke Park' deal) in April 2010.

This provided for a guarantee of no further pay cuts, in return for major change in each public service sector and binding decisions on disputes in relation to the agreement, whether the relevant third party was the Labour Court, or the arbitrator in sectors that did not have access to the Court. This was seen by public service management and the trade unions as a valuable way of progressing issues to finality.

Similar provisions have been part of every public service agreement since then. For example, major changes in the public service sick leave scheme were decided by a binding Labour Court recommendation in 2012 (LCR20335), which came into effect in 2014 after issues over critical illnesses that were to be exempt from reductions in sick pay periods were subject to a further binding Court recommendation in late 2013 (LCR20667).

The first major challenge to this post-crisis approach to public service pay – by then embodied in the Lansdowne Road Agreement – involved the two largest Garda representative bodies, the GRA and AGSI, who represented rank-and-file Gardaí and sergeants/inspectors respectively. While they do not technically have the right to strike, given their special disciplined status and role in public safety, they had taken mass 'sick leave' actions in the 1990s and in late 2016 they said individual members would take industrial action on several Fridays in November – a formula which allowed the GRA to claim it was not coordinating the action, although it did agree emergency cover provisions.

In the face of certainty that widespread industrial action across An Garda Síochána was imminent, the Labour Court agreed to hear the dispute on an ad-hoc basis on the eve of the strike. That intervention resulted in a recommendation that settled the dispute.

The Court recommended an additional €12 million or so to a €30 million offer already made by the Government at WRC conciliation. As a result, the public service unions felt they needed something extra on top of their Lansdowne Road Agreement with the Government. This union-wide claim was dealt with on a once-off basis, with the Government agreeing to make €120 million available to bring forward the general Lansdowne Road pay increase by five months, rather than adding to permanent costs.

An even larger challenge to the public service agreements came in 2019 with a nurses and midwives strike led by the Irish Nurses and Midwives Organisation (INMO). This was eventually resolved by the Labour Court, which recommended a new enhanced practice nurses' scale, with the majority of nurses and midwives benefitting by between 2% to 7% more than the public service agreement in place at the time, the Public Service Stability Agreement (PSSA). As in the case of the 2016 Garda dispute, the response of other public service unions was to look

for an across-the-board set of local deals. Their campaign wasn't immediately successful and later got bogged down due to the Covid-19 pandemic, but eventually their collective case was acknowledged in the form of a 'sectoral bargaining clause' in the original Building Momentum agreement negotiated at the end of 2020.

Return to local bargaining

When local pay bargaining began to revive in parts of the private sector from 2011 onwards, it was focussed mostly on the more prosperous manufacturing companies. From the union side, it was led by SIPTU and TEEU, the main unions for general operatives and craft maintenance staff in that sector. These initially followed a strategy of targeting 2% per annum, which delivered gradual improvements in real income, given that inflation was close to zero in those years. Indeed, the unions were keen to avoid any linkage with inflation, as this could be used by employers to argue for lower increases when prices were static. By late 2014, SIPTU manufacturing division organiser Gerry McCormack was able to tell his division's biennial conference that 234 local pay agreements had been reached over the previous four years, most of them covering multi-year periods. Private sector unions and Ibec were happy with this position, with leaders of both confirming in 2014 that they were not seeking a return to national wage talks.

During this period, most of the deals were done at local level, without recourse to the LRC or Labour Court. However, by 2016, some cases were coming before the Labour Court, with an IRN review of pay agreements for that year showing that 20 out of 160 deals went to a Court hearing.

In six cases the parties ended up with local agreements on terms that built on those recommended by the Court (Thermo King, Flextronics, Hollister, Bausch and Lomb, Dublin Bus and United Drug). Most of the Court's recommendations followed the established trend of backing the 'norm' at the time – 2% per annum. By 2017, this trend had increased to amounts between 2% and 2.5% per annum, rises that featured in recommendations concerning some major firms: Kerry Ingredients (LCR21376); Rentokil Initial (LCR21416); Gate Gourmet (LCR21436) and Rosderra (LCR21470).

Covid-19

When the Covid-19 pandemic hit in 2020, several companies cited the fallout from the economic disruption it caused when they were arguing their case on pay in the Labour Court. The Court set out its stall on this point in a case at laundry services firm Berendsen (LCR22265), when it said that while the "pandemic has the potential for implications to arise" for a company's ability to increase pay, "the economic and commercial effects of the pandemic are not uniform and the Court is obliged to examine the circumstances of each case on its individual merits". Even though the workers involved were on the Government's wage subsidy scheme, this was "not a sufficient basis for the Court to refuse to recommend any pay increase".

An honourable record

Over the entire period since 1996, the Court's approach has been to follow pay trends or benchmarks set by the parties themselves, whether this be in the form of national level agreements in either the public or private sectors, or in the form of agreements at enterprise level. In this way, the Court was doing as it had always done, taking as its lead the norms and arrangements established by the voluntary users of its services, mindful of not upsetting broad parameters established through local agreements, or more specific terms laid down in across-the-board national pacts.

In adopting this approach, the Court has remained a force for stability and certainty, valuable attributes in a small open economy seeking to attract inward investment, while avoiding any possible charge that it might encourage wage inflation. Moreover, it has also sought to ensure that workers should secure pay benefits set down in agreements and enjoyed by the majority of working people.

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THE LABOUR COURT AND THE LAW

Though it was established as a voluntary dispute-resolution body in 1946, from its beginning, certain aspects of the statutory framework culminated in outcomes which carried the weight of legal enforceability including as regards the mechanisms of sectoral bargaining provided for in the statute relating to the formation of Employment Regulation Orders (EROs), emanating from Joint Labour Committees (JLCs) and Registered Employment Agreements (REAs). While the acceptance of Labour Court recommendations on industrial relations disputes has always been a voluntary matter reserved to the parties involved, the enforceability of sectoral wage orders has always struck a note of contradiction to the concept of industrial relations 'voluntarism' in Ireland.

Yet, it was not until Ireland's accession to the European Economic Community and the concomitant obligation on Ireland to apply European law that the Labour Court would take under its remit the power to adjudicate on employment law rights. The first area of employment law the Court would take responsibility for was in the equality sphere, with the Anti-Discrimination (Pay) Act, 1974, and then the Employment Equality Act, 1977. As former Labour Court chairman Evelyn Owens described, the Labour Court, in the 1970s, "was moving into the area of prescribed, rather than agreed, rights" (Owens, 1996). How this initially impacted the Labour Court was revealed in the Court's annual report of 1978, when Chairman Maurice Cosgrave said that the Court's responsibility for employment equality was requiring the Court to spend more time on "legal aspects of its actions and its decisions" which was "depriving it of the flexibility which it enjoys when dealing with cases referred to it under the Industrial Relations Acts" (Owens, 1996).

Nevertheless, it would be another two decades until the Court would take on other areas of employment law, when it adopted appeal jurisdiction for claims taken under the Organisation of Working Time Act, 1997. During the two decades in between, it was still the case that disputes were more likely to be handled collectively and the majority of workers that came before it were unionised. Individual employment rights began to grow in the 1990s, following European directives; unionisation – and industrial action – had mostly been in decline but it wasn't until the 1990s that union density fell below 50%. Before it took responsibility for adjudicating on working time claims, 95% of the Court's workload was occupied with industrial relations matters.

The Court's demonstrable capabilities in handling equality cases since the 1970s, and working time claims since 1998, helped convince legislators to funnel to the Labour Court powers of adjudication for new employment laws. Appeals

under the National Minimum Wage Act, 2000, the Protection of Employees (Part-Time Work) Act, 2001, the Protection of Employees (Fixed-Term Work) Act, 2003, the Safety, Health and Welfare at Work Act, 2005, the Protection of Employees (Temporary Agency Work) Act, 2012 and the Protected Disclosures Act, 2014 – to name the most significant – would all go to the Labour Court.

Then, in 2015, with the passing of the Workplace Relations Act, the Labour Court became the single appellate employment rights dispute body, subject to supervision by the High Court by way of appeal on a point of law and judicial review. The growing workload the Court would take on in 2015 necessitated the creation of an extra division of the Court and the hiring of two extra Deputy Chairmen. Over the course of several decades, the Labour Court has handed down significant employment law rulings, which have come to be relied upon not only by the Court in subsequent decisions but also by the Workplace Relations Commission in its adjudication decisions.

Still, the choice of the Labour Court as the single appeals body to deal with employment rights claims was not a foregone development. The dispute resolution machinery in Ireland had been mired in complexity since the turn of the century. By 2007, there were five distinct bodies: the Labour Relations Commission; the Labour Court; the Employment Appeals Tribunal; the Equality Authority and the National Employment Rights Authority. Growing demands on these services had led to greater delays in the processing of claims. Various reform scenarios had been mooted, such as all employment rights appeals being handled by the Employment Appeals Tribunal, while the Labour Court would handle only industrial relations disputes. However, given the expansion of laws under the Court's adjudication remit since the late 1990s – and the discontent many practitioners had with the more legalistic Employment Appeals Tribunal – the Labour Court emerged as the logical choice. A new government in 2011 and the Minister for Jobs, Richard Bruton TD, decided that the Labour Court would take the mantle.

As the Labour Court has taken on more of a role in ensuring compliance with employment rights, it has naturally resulted in more interaction with the superior courts, who can uphold the Court's decisions, or overturn them and remit them back to the Court to be reheard. The Labour Court's development has also drawn a connection to the Court of Justice of the European Union (CJEU), applying European law as decided by the CJEU but also through appeals to the CJEU of cases the Labour Court has handled – or by direct referrals by the Court to the CJEU.

Due to its expanding appeal ambit over the last three decades, the Labour Court's workload had shifted by 2021 to a position where it handled an approximately equal number of employment rights based appeals as it did industrial relations disputes in that year. Employment rights cases typically require more time to bring to completion than it does industrial relations dispute referrals. Adjudicating on rights issues requires adherence to constitutionally mandated fair procedures and the application of relevant caselaw to each case before it. This stands in contrast to the more informal, problem-solving approach the Court has taken to industrial relations disputes since 1946.

Significant determinations of the Labour Court

The Labour Court has appeal jurisdiction for over 40 different employment rights statutes and delivers hundreds of appeal determinations each year. Over the years the Court has set down many influential decisions which have come to be relied upon for answering critical questions and applying key tests for the variety of employment rights based claims that arise, not just at the Court itself but also for adjudication officers of the Workplace Relations Commission.

One of the most regularly cited Labour Court determinations since 2003 is Cementation Skanska v Carroll (DWT0338). This decision deals with the statutory test for the extension, for reasonable cause, of time permissible for the making of complaints under statute. Here, the Court outlined that an explanation for such a delay "must be reasonable, that is to say it must make sense, be agreeable to reason and not be irrational or absurd." There must be "a causal link between the circumstances cited and the delay" and the claimant should satisfy the Court, "as a matter of probability, that had those circumstances not been present" the claim would have been initiated in time.

The case of State Laboratory v McArdle (FTD063) was one of the first of several major determinations of the Labour Court on the application of rights for fixed-term employees under the Protection of Employees (Fixed-Term Work) Act, 2003. In this case, the Court, applying Irish and European caselaw, provided a thorough account of how the Act was to apply in the circumstance of civil servants working in a government department. The Court addressed the key areas of claims under the Act: relevant comparators; less favourable treatment – and whether there is objective justification for such and the coming into effect of a contract of indefinite duration by operation of the law. The Labour Court's determination in McArdle was challenged, but upheld, by the High Court, in the case of Minister for Finance v McArdle (2007).

In Melbury Developments Ltd v Valpeters (EDA0917) the Court dealt with a case where a construction company was alleged to have racially discriminated against a worker by misclassifying his employment status. The Court first outlined the difficulty of applying a common law rule so as to offset or supplant the clear statutory requirements of the Employment Equality Acts, which transpose European law. The Court said that the probative burden in making a prima facie claim of discrimination must rest with the claimant and to do otherwise would be an "impermissible departure from the plain language and clear import of Section 85A of the Act and the Community law provision upon which it is based."

The Court then applied its "knowledge and experience" to the facts of the case, noting that many employers in the construction industry wrongly classify workers who are in reality employees as sub-contractors, as a device to avoid their responsibilities under employment, tax and social welfare legislation and that this practice "is by no means confined to workers whose national origin is outside Ireland." It added that "as an expert tribunal", the Court "is entitled to take account of the knowledge and experience of its members in concluding facts", and that this proposition was supported by the Court of Appeal for England and Wales in London Underground v Edwards (No.2) (1998) "where it was acknowledged that [tribunals] do not sit in blinkers and are entitled to make use of their own knowledge and experience in the industrial field."

In Portroe Stevedores v Nevins, Murphy, Flood (EDA051) the Court set down important parameters for dealing with age discrimination. It said: "Discrimination is usually covert and often rooted in the subconscious of the discriminator. Sometimes a person may discriminate as a result of inbuilt and unrecognised prejudice of which he or she is unaware. Thus, a person accused of discrimination may give seemingly honest evidence in rebuttal of what is alleged against them." Nevertheless, the Labour Court "must be alert to the possibility of unconscious or inadvertent discrimination and mere denials of a discriminatory motive, in the absence of independent corroboration, must be approached with caution."

The Court pointed out that evidence of discrimination on the age ground "will generally be found in the surrounding circumstances and facts of the particular case." It illustrated this point with examples: job applications from candidates of a particular age being treated less seriously than those from candidates of a different age; candidates in a particular age group being deemed unsuitable or might not fit in, where an adequate appraisal or a fair assessment of their attributes has not been undertaken and questions asked at interview which suggest that age is a relevant consideration.

The application of CJEU caselaw to employment rights cases has become a common feature of Labour Court determinations. A further example of this is in the 2014 case of Gorey Community School v Wildes (FTD1419), where the Labour Court explored in detail three CJEU rulings in deciding on whether there were objective grounds to deny a school teacher a contract of indefinite duration (Kerr, 2014).

The Court's stature in adjudicating on employment rights

The Labour Court's status as a body that administers justice in the sphere of employment law is underpinned by two major judgments: Minister for Justice and Equality, Commissioner of An Garda Síochána v Workplace Relations Commission from the Court of Justice of the EU in 2018, and Zalewski v An Adjudication Officer & Ors from the Supreme Court in 2021. While both of these cases were centred on the functions of the Workplace Relations Commission, which was a party to both cases, the import of the CJEU and Supreme Court's rulings apply also to the Labour Court.

The CJEU judgment in Minister for Justice and Equality, Commissioner of An Garda Síochána v Workplace Relations Commission (C-378/17) ruled that specialist tribunals, such as the Labour Court, must give full effect to EU law and, if necessary, to refuse to apply "any conflicting provision of national law, without requesting or awaiting the prior setting aside of that provision of national law by legislative or other constitutional means." In Zalewski v An Adjudication Officer & Ors (2021 IESC 24), the Supreme Court confirmed, for the first time in the Irish courts, that the Labour Court is a body engaged in the "administration of justice" and therefore the constitutional requirements for such a body must apply also to the Labour Court.

The Minister for Justice and Equality, Commissioner of An Garda Síochána v Workplace Relations Commission case dealt with an age discrimination claim taken by three applicants to An Garda Síochána. In 2009, a preliminary ruling from an Equality Officer (of the then Equality Tribunal) indicated that Irish law may have to be disapplied if it was in conflict with EU law, in the case of the three applicants. This was resisted by the Minister for Justice on the basis that a quasi-judicial body, such as the Equality Tribunal, did not have the power to disapply Irish law; such a power was vested only with the High Court, as per the Irish Constitution. However, the CJEU decided that the Workplace Relations Commission and the Labour Court, as the bodies responsible for ensuring rights under the Equality Directive 2000/78, are obliged to provide the legal protection which individuals derive from EU law and "to ensure that EU law is fully effective, disapplying, if need be, any provision of national legislation that may be contrary thereto."

The case of Zalewski v An Adjudication Officer & Ors dealt with the adjudication procedures of the Workplace Relations Commission but the fundamental question was whether the WRC and the Labour Court were bodies that were engaged in the administration of justice. A majority judgment of the Supreme Court, overturning the High Court, concluded that the Labour Court is a body engaged in the administration of justice. Mr Justice O'Donnell said that Article 37 of the Constitution of Ireland "must be capable of being the administration of justice which means, at a minimum, a State-supported decision-making function capable of delivering a binding and enforceable decision". The judgment required significant changes to the practice of the WRC adjudication service but less so for the Labour Court; for example, employment rights case hearings at the Labour Court were already held in public, prior to the ruling of the Supreme Court.

Of further relevance to the Labour Court in Zalewski was Mr Justice O'Donnell's comments about the membership of the Court not being regulated by the Workplace Relations Act but by the provisions of the Industrial Relations Act 1946, which provides for appointments for a fixed term and removal for stated reasons "but does not contain any express statement of the independence of such members." While this issue was not contested in the Zalewski challenge, it would, "at a minimum, require careful scrutiny in the light of the conclusion of this Court that the functions being performed are functions of a judicial nature involving the administration of justice under the Constitution", the judge cautioned. Section 10 of the 1946 Act was amended by the Workplace

Relations (Miscellaneous Provisions) Act 2021 following the Zalewski decision by the insertion of subsection 13 which reads: "The Chairman and the ordinary members shall be independent in the performance of their functions."

Whether the Court Chairman and Deputy Chairmen should carry legal qualifications has been a discussion point since the creation of the Labour Court itself. A proposal to establish the Labour Court with a legally qualified Chairman was heavily rejected (Kerr, 2014). While the first Deputy Chairman of the Court, Francis Vaughan Buckley, was a barrister, it was not until 2003 that a qualified barrister became Chairman, with the appointment of Kevin Duffy. While the legislature has resisted making it a statutory requirement for Chairmen and Deputy Chairmen of the Court to have a legal qualification, there has been a tendency for officials of the Court to have or accrue such qualifications. As of 2021, two of the Court's two of the Court's Deputy Chairmen are qualified barristers, Alan Haugh and Louise O'Donnell, whilst the Chairman and other Deputy Chairmen and members otherwise hold a variety of legal qualifications with an emphasis on employment law.

The Labour Court and the superior courts: Curial Deference

The topic of curial deference is often mentioned when Labour Court decisions have been appealed to the superior courts. 'Curial deference' refers to one of the superior courts showing deference towards a statutory quasi-judicial body, such as the Labour Court, when a decision being appealed to a superior court comes under a specific area, such as workplace dispute resolution – the expertise of the Labour Court. Essentially it means a superior court accepting that the Labour Court is best placed to decide on an issue within its expertise and, therefore, it should be reluctant to interfere with a decision of the Labour Court. Curial deference is therefore shown to the Labour Court on industrial relations matters. However, deference towards the Labour Court on employment law decisions – though a key function of the Labour Court – has a more varied history.

The Supreme Court ruling of Henry Denny & Sons v Minister for Social Welfare (1997, IESC 9) is a landmark ruling on the issue of curial deference. Chief Justice Liam Hamilton said the courts "should be slow to interfere with the decisions of expert administrative tribunals. Where conclusions are based upon an identifiable error of law or an unsustainable finding of fact by a tribunal such conclusions must be corrected. Otherwise it should be recognised that tribunals which have been given statutory tasks to perform and exercise their functions, as is now usually the case, with a high degree of expertise and provide coherent and balanced judgments on the evidence and arguments heard by them it should not be necessary for the courts to review their decisions by way of appeal or judicial review." This comment from the Chief Justice has often been cited in subsequent judgments as a modern foundation for curial deference of the higher courts to the Labour Court.

In Ashford Castle Limited v SIPTU (2006, IEHC 201), Mr Justice Frank Clarke stated: "it seems to me that the Labour Court, when exercising its role under the

Act, is very much towards the end of the spectrum where it is required to bring to bear its own expert view on the overall approach to the issues. It, correctly in my view, identified that its decision must be one which is fair and reasonable to both sides. Precisely what is fair and reasonable in the context of terms and conditions of employment is a matter upon which the Labour Court has great expertise, and, in my view, the Labour Court is more than entitled to bring its expertise to bear on the sort of issues which arise in this case. For those reasons it does seem to me that a very high degree of deference indeed needs to be applied to decisions which involve the exercise by a statutory body, such as the Labour Court, of an expertise which this court does not have."

In Bonczak, Bilicki v Cosgrave Transport Limerick Ltd, Mr Justice Moriarty said when assessing the "reasoned and careful judgment", of the Labour Court, in cases DWT1595 and DWT1596, taken under the Organisation of Working Time Act, 1997, saying that it "cannot be said that the matters in the Labour Court fall outside of the curial deference to which they are entitled" and that the Labour Court's analysis of the law was correct as was their interpretation of the law and regulations; therefore, the Labour Court "did not fall into error in any of its decisions" (Prendergast, 2017).

However, other judgments of the superior courts have been more nuanced in relation to the interface between questions of law and questions of facts. In National University of Ireland Cork v Ahern (2005, IESC 40), which was an equal pay claim, Mr Justice McCracken of the Supreme Court qualified the deference argument by explaining that the High Court (or a higher court) can still examine the factual basis on which the Labour Court has made its conclusions: "The relevance, or indeed admissibility, of the matters relied on by the Labour Court in determining the facts is a question of law. In particular, the question of whether certain matters ought or ought not to have been considered by the Labour Court and ought or ought not to have been taken into account by it in determining the facts, is clearly a question of law, and can be considered on an appeal."

In Andrius Babianskas v First Glass Ltd (2016, IEHC 598), which was an appeal on a point of law, Mr Justice Hunt remarked: "The scope of this type of appeal was helpfully explained by Baker J. in Health Service Executive v. Abdel Raouf Sallam [2014] IEHC 298, by reference to the decision of the Supreme Court (per McCracken J.) in National University of Ireland Cork v. Ahern [2005] 2 I.R. 577. Baker J. concluded that this Court may, on such an appeal, consider whether the Labour Court wrongly took into account or ignored a fact or a piece of evidence, incorrectly applied a legal test in coming to its conclusions, or erred in law in its interpretation of the law. Baker J. also noted that whereas the High Court must show appropriate curial deference to the Labour Court, such deference only arises when that Court deploys its particular expertise on industrial relation issues. Such deference does not extend to instances where the notice party deals with questions of law.

In Nano Nagle School v Daly (2019, IESC 63)), Mr Justice MacMenamin explicitly addressed the reliance on Henry Denny & Sons and the topic of curial deference, stating he did not think Henry Denny was "the last word on this issue."

Mac Menamin J went on to say that a convenient summary of the present law was to found in the case of the Attorney General v. Davis, The Supreme Court, 27th June, 2018 [2018] IESC 27. There McKechnie J., speaking for the Court, identified what may be regarded as issues of law which may be considered on a case stated. These included (i) findings of primary fact where there is no evidence to support them; (ii) findings of primary fact which no reasonable decision-making body could make; (iii) inferences or conclusions which are unsustainable by reason of any one or more of the matters listed above; or which could not follow or be deducible from the primary findings as made; or which were based on an incorrect interpretation of documents. (See para. 54). He then went on to say: "If not included in that category, I would add a determination which is ultra vires, where there is a failure of statutory duty. Undoubtedly, deference is due to an administrative tribunal acting within the scope of its duty. But, when there is a substantial failure of compliance with that statutory duty, a court must intervene."

A key part of fulfilling its statutory duty is for the Labour Court to outline the relevant facts and evidence on which its reasoning is based. It is this point which leaves the Labour Court exposed to challenges of its decisions.

Industrial relations recommendations: not justiciable

A foundational ruling on the enforceability of industrial relations decisions being outside the remit of judicial reviews is that of the High Court in State (Stephen's Green Club) v Labour Court (1961). Here, Mr Justice Walsh dismissed an attempt to prevent the Labour Court investigating a trade dispute under the Industrial Relations Act, 1946. The judge said the 1946 Act did not provide any machinery "for enforcing the recommendation or of translating the recommendation into findings binding upon the parties and it does not provide for the taking of any consequential action by a superior authority."

In MacDonncha v Minister for Education and Skills (2013, IEHC 226), the High Court ruled that when issuing recommendations under s. 26(1) of the 1990 Industrial Relations Act, in the context of a public sector agreement, the Labour Court "will often – perfectly properly – adopt a purely pragmatic and practical approach to such questions. Its role in such cases is to resolve disputes and to maintain industrial peace and the criteria which underpin its recommendations are not strictly legal ones."

In Chanelle Mullally & Ors v The Labour Court and Waterford County Council (2015, IEHC 351), Mr Justice Noonan said the Labour Court "is not finally determining any issues of law or fact" under section 20(1) of the 1969 Industrial Relations Act. This is "amply illustrated", he said, by the fact that if the Labour Court's recommendation in the case had been that Waterford County Council should recognise the PNA/IFESA union, it was not binding on the Council – it was binding only on the union. The applicants in a section 20(1) case are "only bound because they undertook in advance of the investigation to accept the recommendation as a prerequisite to the Labour Court embarking on an investigation under the section." Such an investigation "is not an adjudicative process and creates no res

judicata", the judge clarified. The Labour Court's recommendation "has no strictly legal effect but rather relies upon the moral authority of the expert statutory body from which it emanates" and it "does not give rise to justiciable rights such as would permit the applicants to seek judicial review."

Sectoral bargaining wage orders

As aforementioned, the outcomes of certain procedures relating to sectoral wage setting established by the Industrial Relations Act, 1946 took the form of legally binding orders. Such procedures have been contested in the superior courts, on occasion, during the Court's first six decades, such as National Union of Security Employers v Labour Court, in 1994, and Serco Services Ireland Ltd v Labour Court, in 2002. However, in the early 2010s, a more assertive legal approach against sectoral bargaining materialised, with constitutional challenges against sections of the 1946 Industrial Relations Act which underpinned the Joint Labour Committees (JLC's) and Registered Employment Agreements (REA's). The 2011 High Court ruling in John Grace Fried Chicken v Catering Joint Labour Committee rendered JLCs (as they were then) inoperable and then, two years later, the Supreme Court, in McGowan v The Labour Court, ruled that part III of the 1946 Act was unconstitutional, which destroyed the legal basis for REAs. The legislative response to these rulings was to reform the legal basis for JLCs, in 2012, and to replace the old REAs with Sectoral Employment Orders (SEOs), with the introduction of the Industrial Relations (Amendment) Act, 2015.

Some resistance to sectoral bargaining has persisted, however and several employer driven challenges to the procedures for the establishment of binding pay terms in some sectors have been successful at the High Court since 2014. Arguably the most significant of these legal challenges, taken by an employer body, NECI, in the electrical contracting sector, made its way to the Supreme Court in 2021. Mr Justice McMenamin ruled that Chapter 3 of the 2015 Amendment Act, providing for SEOs which were binding on all workers within the sector was not unconstitutional but that in the case at issue, the Labour Court had not provided sufficient reasons in its 2019 recommendation to the Minister for the particular SEO (2021, IESC 36). There remains a readiness by some employers to challenge the Labour Court, and other relevant parties, on its statutory wage-setting function, something which the former general secretary of the Irish Congress of Trade Unions, Patricia King, described as a "distinctive litigation strategy on employment law" (Prendergast, 2021).

Referrals to the CJEU

To date, the Labour Court has referred six cases directly to the Court of Justice: Hill and Stapleton v The Revenue Commissioners; North Western Health Board v McKenna; IMPACT v Minister for Agriculture; Parris v Trinity College Dublin; Horgan and Keegan v Minister for Education and MG v Dublin City Council.

The first reference from the Labour Court to the European Court of Justice came in July 1995, in the equal pay case of Hill and Stapleton v The Revenue Commissioners (C-243/95), where the Court asked whether the EU principle

of equal pay is contravened when job-sharing employees – mostly female – were made full-time employees but on a lower pay scale than their full-time comparators due to the criterion of service calculated by time worked in a job. The Court of Justice ruled that the principle of equal pay for men and women precludes legislation "which provides that, where a much higher percentage of female workers than male workers are engaged in job-sharing, job-sharers who convert to full-time employment are given a point on the pay scale applicable to full-time staff which is lower than that which those workers previously occupied on the pay scale applicable to job-sharing staff due to the fact that the employer has applied the criterion of service calculated by the actual length of time worked in a post."

In the pregnancy discrimination case of North Western Health Board v McKenna (C-191/03), the Labour Court referred questions to the European Court on whether the claimant, Ms McKenna, was the victim of unequal treatment because her absence from work, due to pregnancy-related illness, was offset against her total sick-leave entitlement, with the result that the value and duration of sickness benefit due to her over future years would be diminished or exhausted and whether it was necessary to consider whether the claimant was discriminated against in terms of pay by reason of the fact that she was placed on half pay after her first 183 days of absence. While a precursor Opinion of the Advocate General Leger had found in favour of Ms McKenna, the Court's final judgment ruled it was not discriminatory under EU law to treat pregnancy related illness, which only affects women, the same as any other illness. Had the decision went in favour of Ms McKenna, it would have had a major impact on many employers' sick pay schemes at the time.

The case of IMPACT v Minister for Agriculture (C-268/06) is a landmark case for the Labour Court and its application of EU law. A group of civil servants employed on fixed-term contracts claimed they experienced less favourable treatment compared to permanent employees. The Council Directive 1999/70/EC on fixed-term work was supposed to be transposed by EU member states by 2001; it was not transposed in Ireland until 2003, with the Protection of Employees (Fixed-Term Work) Act, 2003. The civil servants were claiming in respect of a period that the Directive was in place – but not the 2003 Act. The Labour Court asked the CJEU whether it had jurisdiction to apply EU law with direct effect to the case at hand. The CJEU determined that not only did the Labour Court have the jurisdiction to do so but being the statutory body responsible for hearing the claim, it was required to do so and that the Court could hear a claim based on the relevant Article of the Directive covering the period between the transposition deadline of 2001 to the enactment of the Fixed-Term Act in 2003. The Court of Justice explained that if national legislation was not in force by the time limit set for transposition "it would be excessively difficult for an individual to pursue a claim based directly on the directive before a different domestic court", i.e., other than the Labour Court.

The IMPACT v Minister for Agriculture case emphasised the degree to which the Labour Court had become a body in the exercise of fundamental rights of citizens, a subject which would arise again in 2018, in the aforementioned

cases of Minister for Justice and Equality, Commissioner of An Garda Síochána v Workplace Relations Commission, and Zalewski v An Adjudication officer & Ors.

In Parris v Trinity College Dublin & Ors (C-443/15), the Labour Court referred three questions to the CJEU on a case of a university lecturer, David Parris, who alleged he was discriminated against when his former employer did not grant his request for his civil partner to be able to access his pension upon Mr Parris's death. To grant his request, Trinity College required a civil partnership or marriage to be registered before the employee reached the age of 60 – which was impossible for Mr Parris to achieve, as Civil Partnership law did not take effect in Ireland until January 1, 2011, at which point Mr Parris was 64. The Labour Court asked whether the circumstances of Mr Parris's case constituted age discrimination, sexual orientation discrimination, or a potential hybrid of both. While a preceding Opinion from Advocate General Kokott found direct discrimination on the grounds of age and indirect discrimination on the grounds of sexual orientation, the CJEU, in its judgment, concluded there was no discrimination on any of the three possible grounds.

In Horgan and Keegan v Minister for Education (C-154/18), the Labour Court referred four questions to the CJEU, regarding the case of two primary school teachers who claimed they were subjected to age discrimination due to their pay being less than other teachers who were appointed prior to 2011, when a 10% reduction in the pay scale was introduced as a measure to lower the public service pay bill during the economic crisis. The CJEU found against this claim, noting that the new pay levels introduced by Irish Government "were not based on a criterion which is inextricably or indirectly linked to the age of the teachers, so that it cannot be considered that the new rules establish a difference of treatment on grounds of age."

In MG v Dublin City Council (C-214/20), the Labour Court asked the CJEU if the Working Time Directive 2003/88 must be interpreted as meaning a worker, when on stand-by at a location of his choosing but required to be able to respond to a "call in" within a maximum turn-out period of ten minutes, is engaged in working time while on stand-by. Earlier CJEU rulings, such as Ville de Nivelles v Rudy Matzak (C-518/15), have endorsed the dichotomy of 'working time' and 'rest periods' but 'stand-by' periods, common for firefighters, can traverse this boundary. In addressing the questions from the Labour Court, the CJEU determined that the Directive must be interpreted as meaning that a period of stand-by for a part-time firefighter, where the worker carries out a professional activity on his or her own account but must, in the event of an emergency call, reach his or her assigned fire station within ten minutes, did not constitute 'working time.' It is not working time, the CJEU said, if the constraints imposed on the worker during the stand-by period "are not of such a nature as to constrain objectively and very significantly the ability that he or she has freely to manage, during the said period, the time during which his or her services as a retained firefighter are not required."

These six cases illustrate the breadth of employment law considerations the Labour Court has come to deal with since the 1990s. They show that the Labour Court handles fundamental and complex employment rights issues that require the interpretation of the highest court in the European Union, and further demonstrate the Labour Court's stature as being a body engaged in the permissible administration of justice.

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75 YEARS OF THE LABOUR COURT

On its 75th anniversary, the Labour Court's 'mission statement' reads: To provide high quality, fair and impartial arrangements for the resolution of industrial disputes and the determination of appeals in disputes based on employment law. It describes the dual purpose of the Labour Court today: to contribute to the resolution of individual and collective industrial relations based disputes and to adjudicate on disputes founded on the application of employment law. It is adapted from the Court's first mission statement, introduced in the 1990s, which read: 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.

The recent modification of its mission reflects the changes in the Court's remit over the last 25 years, but also the standards expected of its services today. Originally envisaged by Sean Lemass as being a public authority on wage determination, the Labour Court was established as voluntary dispute resolution body in September 1946. (Roche, 2008) Though not intended to be a voluntary body in its initial design, Lemass was pressed by the trade union argument to keep Labour Court decisions short of being legally binding (except for ensuring sectoral bargaining wage orders). Labour Court recommendations became the bedrock of post War voluntarist industrial relations in Ireland that has prevailed ever since. The approach taken by its first Chairman, Ronald Mortished, helped establish the Court as a tribunal that practitioners have to take seriously, but also one where "common sense" prevailed. Though he was of a trade union background, Mortished conducted hearings in a rigorous way that was unfamiliar to some practitioners at that time. Mortished's footprint has helped to cement the Court's role as a trusted organisation, best placed to resolve some of the most complex and intractable employment disputes of interest and rights. The Court has come to play a key role in public life, securing the trust of its users. The stability in industrial relations the Court has helped to ensure during this time is also part of the foundation that has helped Ireland to prosper. In its first year, the Court handled 251 industrial relations referrals. By 2023, it was handling 1141 appeals/referrals, of which 353 were under the Industrial Relations Acts and 788 were under employment rights legislation.

While the Court is an omnipresent feature of modern day industrial and employment relations, at various points of its more than 75 years it could have been set on a different path. This was particularly so in its first few decades and coming into the 1960s in what has been referred to as the "decade of upheaval." (McCarthy, 1973) Fluctuations in the economy have had a knock-on effect on the Court, in one way or another. A degree of uncertainty for the Court remained even after the turn of the century, when various models for reform

of the State's dispute resolution machinery were being explored. However, the Court's record at resolving collective and individual disputes over its history, and its more favourable, widely accepted status within the industrial and employment relations community has persevered.

That is not to say the Labour Court has always avoided controversy, or that it has not been severely tested on occasions over its long history; indeed it has, but remarkably, it retains its place as a 'court of last resort', at the epicentre of industrial relations dispute resolution in a modern Republic. Indeed, IR experts cannot have failed to notice that in the UK, from whose common-law roots Irish employment legislation springs, the status of ACAS (Advisory, Conciliation and Arbitration Service) in the industrial relations dispute resolution sphere - by comparison – has diminished relative to the continued relevance of the Labour Court, which remains the ultimate 'go to' dispute resolution body in Ireland.

External forces

While the Court has met its challenges through the years, external economic and political forces are beyond its control. The periods of greater pressure the Court has faced often follow fluctuations in the economy. For example, the increased pressure on the Court in the late 1950s with a series of disruptive strikes was a by-product of an improving economy and a concomitant increase in industrial agitation. From 1959 to 1961, the country witnessed several debilitating strikes, including the petrol distribution row, involving 11 days of strike action (1959), the CIE bus workers' row (1961), a cement industry dispute (1961) and the most significant of all: the ESB strike in the autumn of 1961. All of these disputes came before the Court, which was unable to prevent the great disturbance they caused. A review of the dispute resolution machinery of the State that began in 1959 continued right through to 1963; during this time the Court attracted some criticism and disappointment in failing to prevent the public disruption of major disputes. While the Court adapted its approach to conciliation during this time to be able to better deal with difficult disputes, there was a perceived decline in the Court's reputation. This in turn meant that the future of the Court was far from certain. But it was during the 1960s that the Court was able to expand, given extra resources to meet the challenges it had been tasked with solving. The necessary expansion of the Court in the 1960s is a perennial reminder that the Court needs to be equipped with the resources necessary to meet the challenges of the day.

By the mid 1990s, semi-states had become the epicentre of industrial disputation due to the major changes they faced brought about by increased competition and market forces. Prior to the period of economic growth in the mid-1990s,

semi-states were not exposed to the same commercial pressures evident in the private sector. Companies like Irish Steel, TEAM Aer Lingus, Irish Rail, An Post and RTÉ, all had experienced serious disputes in the early to mid 1990s – and these disputes would land before the Labour Court at one point or another. Later, a series of high-profile employer rejections of Court recommendations in the mid-2000s arguably undermined the "moral force" of the Court's industrial relations recommendations (Sheehan, 2004). Yet, for all the strikes that could not be offset, there are the countless industrial disputes that the Court has expertly steered to a resolution, preventing the escalation of hostilities. It is this work that goes unsung – understandably, perhaps, as the disputes were settled before a public outbreak – but which is, nevertheless, not lost on industrial relations professionals, and has come to garner the Court's reputation as a reliable problem solver.

The Court has also had to navigate challenges to its authority as well as bifurcation in the avenue of dispute resolution. It is not unknown for a major collective agreement to impact the status of the Labour Court in an unintended way. In 2020, the public service agreement, Building Momentum, originally outlined a dispute resolution procedure that was somewhat at odds with the traditional role of the Court as being the 'court of last resort.' That matter was soon corrected, however, to "ensure that the proper standing and role of the Labour Court is made clear" (Sheehan, 2021).

At the beginning of the 21st century, reform of the State's dispute resolution services came into view once again, as the overall system, particularly as regards disputes based on the application of employment law, became increasingly complex and claim processing times mired in delay. A 2005 reform proposal, which would have curtailed the Employment Appeals Tribunal, was met with resistance by the legal community and was soon stalled. Another idea would have amalgamated the EAT and the Labour Court – the EAT handling rights appeals, the Court handling just industrial relations issues. This would have reduced the capacity of the Court, running counter to its growing responsibility since the 1970s; hearing equality law appeals, and then, from the mid-1990s, taking appellate jurisdiction for all new employment laws. However, that measure was also hedged and the reform question was parked until the financial crisis and political change presented an opportunity to return to the question.

Speaking in 1986, then Court Chairman John Horgan welcomed the Labour Court taking on new powers in the interpretation of labour law, believing it would "build up its existing 'equitable' type jurisdiction and would enhance and increase respect for labour law in our community", as well as going some way to "ensure that the rigidity which is an inherent part of the juridification process might be ameliorated by the application of common sense." (Horgan, 1986) Arguably, it was this 'common sense' – espoused by the Court's first Chairman – that won out with the design of the reform of the dispute resolution system, first announced in 2011 by the Minister for Jobs, Richard Bruton, and which came into play in 2015, placing the Court as the sole appellate body for employment law based claims.

The composition of the Court

The Court has had 10 Chairmen since 1946, broadly representative of the tripartite structure of workers, employers and the State: three had trade union backgrounds – Maurice Cosgrave, Evelyn Owens and Kevin Duffy; three were from the management side – John Horgan, Kevin Heffernan and Finbarr Flood; while three more were civil servants before being appointed to the Labour Court – Martin Keady, Timothy Cahill and Kevin Foley. The Court's first Chairman, Ronald Mortished, was both a civil servant and a trade unionist before his time at the Labour Court.

For most of its history, the Court's full-time members have been appointed following nominations from the social partners, with a rotation system facilitating a balance between employers and trade unions – sometimes referred to as 'musical chairs'. That began to change in 2004 when Deputy Chairman Ray McGee was chosen via a Public Appointments Service managed competition. Mr McGee had been the Head of Conciliation at the Labour Relations Commission The indication from the Minister at the time, Mary Harney TD, was that the future filling of Chairman or Deputy Chairman vacancies would be filled by open public competition. This met with disfavour from both ICTU and Ibec. Although any such appointment to a major role at the Court had to be approved by the relevant Minister, the 'musical chairs' system had been the norm for decades. Yet, in 2010, when Mr McGee himself retired from the Labour Court, his successor, Brendan Hayes, was nominated by the union side (Mr Hayes was a former vice president of SIPTU), which seemed to suggest a return to the social partner nomination procedure. However, since 2015, appointments to the Chairman and Deputy Chairman positions have been conducted via open competition run by the Public Appointments Service. Ordinary Members are still selected based on nominations from ICTU and Ibec.

The 2021 Supreme Court judgment in Zalewski v An Adjudication Officer & Ors confirmed the Labour Court "is a body engaged in the administration of justice" as per the Irish Constitution when adjudicating on employment rights cases. This means the Labour Court, in hearing employment rights appeals, must "comply with the fundamental components of independence, impartiality, dispassionate application of the law, openness, and, above all, fairness, which are understood to be the essence of the administration of justice." This admonition will most likely ensure that the Court's Chairmen and Deputy Chairmen will continue to be appointed via open public competition into the future. Its Ordinary Members, however, who fully participate in the decision-making process with Court Chairmen, may continue to be selected by the social partners, Ibec and ICTU.

Keeping up to speed

An ongoing longitudinal review of user satisfaction of the WRC and Labour Court shows a favourable satisfaction rate with the administration and processing of claims at the Labour Court (Barry, 2021). The satisfaction levels with the Court's competence and consistency in rulings has increased since the Labour Court became the single appellate dispute resolution body in employment law

in 2015. Some 70% of service user respondents agreed that the Labour Court had adapted well to its larger capacity, handling all employment rights appeals.

The Court's adaptability to changes in the economic, political and social landscapes will continue to be fundamental to its success. Embracing the possibilities of technology is one such aspect, which the Labour Court has developed, precipitated by the outbreak of the Covid-19 pandemic in 2020. During 2021, the Court held around 500 hearings in a "virtual" courtroom. The Court's modernisation is perhaps most visible in its gender balance today. The Court's chairmen, deputy chairmen and ordinary members were exclusively male until 1984, when Evelyn Owens was appointed Deputy Chairman and Padraigín Ní Mhurchú was made a Worker Member. Evelyn became the first female Chairman of the Court in 1994 and the Court achieved its first all-female division in April 2009: Deputy Chairman Caroline Jenkinson, Employer Member Sylvia Doyle, and Worker Member Padraigín Ní Mhurchú. As of 2021, the Court has a broadly 50:50 gender balance amongst its full-time members and registrar.

Looking forward

How the Labour Court will continue to influence workplace relations in Ireland will depend on the economic, political and social dynamics of the country, and, as the Covid-19 outbreak in 2020 amply demonstrated, international events, too. The Court itself identifies several challenges to its sound functioning into the future, such as providing relevant and impartial mechanisms for the resolution of industrial relations and employment rights disputes "that meet the needs of employers, workers and the economy more generally", maintaining expertise across the Court "to ensure the delivery of sound decisions in employment law matters" and to ensure that the Court "is adequately resourced to deliver a high quality and efficient service, capable of operating through policy changes and external pressures" (The Labour Court, 2021). The Court will keep abreast of developments outside of its control to safeguard its status as the court of last resort for workplace disputes.

Ireland, broadly speaking, still operates under a voluntarist industrial relations system – but such a tradition is not immutable. What has worked well for yesterday may not do so for tomorrow. Underlying the Court's ability to tackle the workplace issues of the day is the statutory regime, namely the series of Industrial Relations Acts since 1946, the Workplace Relations Act, 2015, and the plethora of employment laws for which it has jurisdiction. When ruling on employment law matters, the Court is in the permissable limited administration of justice. But not so for industrial relations issues. In 1996, Chairman Evelyn Owens posited whether some decisions by the Labour Court under the Industrial Relations Acts, should be made legally binding, giving examples of cases taken under section 20(2) of the 1969 Industrial Relations Act, whereby both parties to the dispute agree in advance to be bound by the recommendation – but such a recommendation has no force in law. To now, the Court has relied on "its moral authority and integrity, as an independent dispute resolution body rather than any legal powers of enforcement to support its recommendations" (Calleary, 2010).

Former Labour Court Chairman, Maurice Cosgrave noted before that the "success of the Labour Court rests to a very large degree on the confidence which employers and workers repose in it" (Cosgrave, 1986). Some would argue that the Court can command the authority to lay down legally enforceable rulings on industrial relations at a broader level. Yet however, it is apparent that legally binding Sectoral Employment Orders and Employment Regulation Orders arising from Joint Labour Committees, for example, are increasingly subject to challenges at the superior courts, underscoring the difficulty of legislating in the field of industrial relations.

Its standing is undiminished

Crucially, political parties or political ideologies have not impacted on the standing of the Court in a way that these forces and currents might have done. The strength of the Labour Court is rooted in the respect it has been accorded not just by employers, trade unions, legal practitioners and the law courts, but also by politicians and the political system. This lack of political interference isn't a given. Up to this point in the Court's 75-year history, its position has been hard earned by careful adherence to core principles by successive Chairs. Yet most of all, it has been the Court's adaptability and common sense approach to industrial relations that has helped it to play an invaluable role – and retain its moral force – over seven and half decades of enormous social and economic transformation. In this regard, the Court remains a crucial stabilising force in our society and economy, not just for many organisations and their employees, but for the smoother running of many important private and public sector entities.

Whatever change may occur, it is indubitable that since its beginning, the Court has built "a strong reputation for impartiality and fair dealing in its investigation of trade disputes and employment rights appeals", as acknowledged by Minister Frances Fitzgerald TD in 2016, who added, "in large measure the Court's success in that regard is dependent on the trust and confidence which the users of its services have in the Chairman and the Deputy Chairmen of the Court."

The von der Leyen European Commission is implementing measures to boost collective bargaining across the EU, namely the 2022 Directive on Adequate Minimum Wages. Within this context, in 2022 a High Level Group on industrial relations and collective bargaining, working under the auspices of the Labour Employer Economic Forum, outlined recommendations to bolster industrial relations and collective bargaining in Ireland. Whether or not these policy developments would lead to an increase in collective bargaining coverage in Ireland – and therefore the workload of the Court – it, having established a consistent and strong reputation for resolving industrial disputes for over 75 years, and adjudicating on employment rights since the 1970s, remains well placed to retain its status as the court of last resort for long into the future.

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THE LABOUR COURT IN 2014

Left to right (seated): Mary Cryan (Employers' Member), Caroline Jenkinson (Deputy Chairman), Kevin Duffy (Chairman), Brendan Hayes (Deputy Chairman) and Pádraigín Ní Mhurchú (Workers' Member).

Left to Right (standing): Jerry Shanahan (Workers' Member), Sylvia Doyle (Employers' Member), Linda Tanham (Workers' Member) and Peter D.R. Murphy (Employers' Member). Not pictured: Andrew McCarthy (Workers' Member).

THE LABOUR COURT IN 2016

Left to right (seated):): Alan Haugh (Deputy Chairman), Caroline Jenkinson (Deputy Chairman), Kevin Duffy (Chairman, Retired June 2016), Kevin Foley (Chairman, Appointed July 2016), Mary Cryan (Employers' Member) and Brendan Hayes (Deputy Chairman).

Left to right (standing): Peter D.R. Murphy (Employers' Member), Sylvia Doyle (Employers' Member), Andrew McCarthy (Workers' Member), Linda Tanham (Workers' Member), Gavin Marie (Employers' Member), Louise O'Donnell (Workers' Member) and Jerry Shanahan (Workers' Member).

THE LABOUR COURT IN 2023

Left to right (seated): Tom Geraghty (Deputy Chairman), Louise O'Donnell (Deputy Chairman), Kevin Foley (Chairman), Katie Connolly (Deputy Chairman) and Alan Haugh (Deputy Chairman)

Left to right (standing): Jacqueline Kelly (Court Registrar), Peter D.R. Murphy (Employers' Member), Paul Bell (Workers' Member), Sylvia Doyle (Employers' Member), Gavin Marie (Employers' Member), Arthur Hall (Workers' Member), Clare Treacy (Workers' Member), Paul O'Brien (Employers' Member) and Linda Tanham (Workers' Member).

1994 - 1998
Chairman
Evelyn Owens

The Labour Court handled major disputes during the 1994-1998 period and took a large step forward in its function as an adjudicative body on employment rights.

Ms Evelyn Owens was appointed Chairman of the Labour Court in August 1994, the first – and to date, only – woman to hold that position at the Court. She succeeded Kevin Heffernan who had served as Chairman since 1988. Having been involved in trade union activism since the early 1960s, Owens had served as president of the Irish Local Government Officials' Union and was appointed to the Public Services Committee of the Irish Congress of Trade Unions in 1967, before becoming a Labour Senator, serving from 1969 to 1977. She was first appointed to the Labour Court, as Deputy Chairman, in 1984.

Owens took over the Chair position at the dawn of economic prosperity in Ireland in the mid-1990s. At this point, while the recorded impact of collective disputes had been continuing on a downward trajectory – with individualised, non-pay issues making up a greater share of disputes in general – industrial agitation remained (Teague et al, 2015). Owens's time as Chairman was bookended by major industrial disputes, from TEAM Aer Lingus and Irish Steel in 1994, to Ryanair in 1998. Perhaps the most significant pay dispute that came before Owens was the Nurses pay dispute in 1997.

It was during Owens's Chairmanship that further progress in the field of equality law was made – an area of rights that Owens's name is inextricably linked with, having put her stamp on the campaign for equal pay for women before she joined the Court. It was not long after joining the Court as a Deputy Chairman that Owens would make her mark in adjudicating on anti-discrimination cases, with a landmark determination on sexual harassment. Owens had been a prominent campaigner for equal pay for women during her trade union days and, when serving as a Senator, she had a key role in ensuring the passing into law of the Employment Equality Act 1977, which outlawed employment discrimination on

grounds of sex and marital status. This Act would begin the era of the Labour Court becoming a rights adjudication body in addition to its traditional industrial relations remit. It was also during Owens's time as Chairman that the Labour Court made its first referral to the Court of Justice of the EU (CJEU), in 1995, with the equal pay case of Hill & Stapleton v Revenue Commissioners and Department of Finance.

The Chairman also brought changes to how the Court presented itself to the public. She changed the format of the Court's annual reports, making them more accessible, and developed a mission statement for the Labour Court, for the first time in its history. This mission statement read:

"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."

While the mission statement of the Court has since been updated to reflect its role in adjudicating on employment rights, the tenor of Owens's statement rings true today.

Industrial disputes

The first major industrial dispute that came before Owens as Chairman was TEAM Aer Lingus, an aircraft maintenance division of the then State-owned airline. The year before, a restructuring plan, known as the Cahill report, aimed to secure up to £50m (€63.5m) in cost savings across the Aer Lingus group; nearly 30% of which was to come from the TEAM division, to be achieved mostly through voluntary redundancies and a pay freeze. An initial set of measures to reduce costs were deemed insufficient and another round of cost reduction measures were met with rejection. The dispute – marked by poor communications between management and craft unions – came to involve direct intervention by the Minister for Enterprise and Employment, before being referred directly to the Court. The dispute, serious in and of itself, was also considered a stern test of the consensus-based Social Partnership system that prevailed at the time, particularly as the craft unions had taken a different approach to industrial relations issues at the airline than the larger union, SIPTU.

In a comprehensive recommendation in August 1994 – and subsequent clarifications – the Court managed to steer the company and the craft unions involved to a settlement, amidst unofficial industrial action, lay-offs, and administration proceedings at the High Court. A Court recommendation (LCR14552) reiterated an earlier independent assessment of the dispute that found a "blame" culture existed at the airline, and said that "a totally new approach from management and staff will be required" – that the "constant allocating of 'blame' will only lead to more mistrust and will pollute the working environment at a time when total co-operation is essential." The Court urged the parties "to put history behind them and face the challenge of the future in a new spirit of co- operation." Though it took a series of clarifications that November, on the original

set of recommendations, the Court's terms on the TEAM dispute ultimately managed to find a middle ground that would enable the necessary changes to be made to ensure the company's viability but also to secure acceptance from the unions' side. TEAM Aer Lingus disputes would come back before the Court again during Owens time as Chairman. The company was eventually sold in 1998.

At the beginning of 1994, difficulties had been simmering at the semi-state company Irish Steel. A rationalisation plan was drawn up in the spring of that year, involving redundancies and significant pay cuts at the Cork-based plant. Once again, a divergence between the more general unions and the craft unions led to a splintered approach to the company's survival plan. A Labour Court recommendation from July 1994 was accepted by the general unions but rejected by the craft group. The dispute rumbled on for some months until agreement was reached on the number of redundancies that would be opened and when those taking redundancy would receive their enhanced redundancy payments. While the company was saved from closure that year, further issues emerged in 1995, regarding overtime and redundancy for temporary workers – both of which the Court made recommendations on. In 1996, the company was bought by an Indian company, Ispat, before being shut down permanently five years later.

Another protracted dispute during Owens's time was at Packard Electric, a major employer at the time, based in Tallaght, Dublin. The company lost a major client in May 1994, necessitating a restructuring of its operation. A series of industrial relations issues befell the plant thereafter. In July 1994, the Court made a recommendation on overtime, which was accepted by trade unions SIPTU and the ATGWU, and work returned to normal. Later that year, the company required more cost savings with a proposed 10% pay cut. The matter escalated and the Court was called upon to intervene. Owens drew up a recommendation following the efforts of the Labour Relations Commission's then head of conciliation Ray McGee, based on the company's restructuring proposals. The Court's recommendation was rejected but a further clarification by the Court came on 30 December, in a "last ditch" effort to get union agreement and save the plant. In this clarification, Owens asked the union negotiators to "agree immediately in writing to recommend […] acceptance to their members. This condition is essential if the company is to have any hope of retrieving the contract which is vital to maintenance of employment." It was believed at the time that Owens was uncomfortable with having to issue regular clarifications to Court recommendations on matters that had already been dealt with.

Soon after the Court's clarifications, key figures from the Government and the Industrial Development Authority (IDA) got involved in further attempts to save the plant and it's 1,000 jobs. These follow-on interventions raised a dilemma for the Court (and the LRC before it): would these further interventions by Government or the social partners undermine the Court's position as the 'court of last resort'? The Packard Electric crisis relaxed by late January 1995, with agreement on a new 41-hour working week, but the company and its unions were back before the Court again later in 1995, on matters to do with lay-off and redundancy. Despite the many efforts of the Court and other State actors since

1994, Delphi, the parent company of Packard Electric, pulled the plug on the Tallaght plant, which closed down in 1996.

In the summer of 1995, a 'casualisation of work' dispute flared up at Dunnes Stores. The Mandate trade union had long sought recognition at the major retailer, who maintained a tradition of making business decisions by itself – and had not engaged in conciliation efforts with the union at the LRC or Labour Court. Mandate members went on strike in June and Dunnes was forced to close some of its stores. Pressure mounted on the retailer, and it agreed to participate in a Labour Court process – for the first time in 13 years. The Court's recommendation, written by Deputy Chairman Finbarr Flood, included improved Sunday premium payments and introduced a 15-hour minimum weekly working hours contract, as well as the establishment of an internal tribunal (with a company nominee, an ICTU nominee and an Independent Chairperson) to develop proposals and structures to deal with industrial relations issues. The terms were accepted by the Mandate and SIPTU unions and Dunnes Stores, ending a three-week strike. A further dispute on Sunday working in the run up to Christmas came before the Court in 1997, with Chairman Owens accepting the company's proposal for double the hourly rates for the four Sundays in scope, but added that, in recognition of those who had before enjoyed a treble hourly rate, that Dunnes compensate that cohort. However, Dunnes opted to reject the Court's terms, setting the retailer on course for another bout of industrial action. As it neared Christmas 1997, the company put new proposals to workers, which were substantially the same as what the Court had earlier outlined. It is notable that Owens had remarked, one year earlier, that the Court had "no difficulty" being the "court of last resort" but that this "role has to be accepted as such by all concerned" and that "there must be a general acceptance that no other party will try to 'adjust' the Court's Recommendation" (Owens, 1996).

By early 1995, the Irish Press newspaper was in very poor financial health. Two disputes at the paper came before the Court, one regarding journalists' expenses, the other concerning a bonus scheme for some staff. The Court made recommendations on both matters in the context of the difficulties the company was experiencing. Then, in May of that year, the Press dismissed its business editor, apparently over its satisfaction with what he had written about the industry in another newspaper. This led to a sit-in at the paper's premises in Dublin and a stop to the printing of the paper. The Labour Court intervened directly in the dispute, under section 26(5) of the Industrial Relations Act, 1990, but did not have a basis to deal with the inflammatory issue of the business editor's dismissal. The company was moved into liquidation and the Irish Press did not print again.

Owens had noted that many of the cases the Court had been dealing with in the 1990s stemmed from the requirement of firms to restructure to meet the growing challenge of national and international competition, and that the "liberalisation of international trade [was] a growing factor in industrial relations problems" (Owens, 1996). She also observed an increase in the number of cases being referred directly to it under Section 20 of the 1969 Industrial Relations Act – a system of direct referral to the Court, bypassing conciliation, in return for an advance

undertaking by at least one party to accept the Court's recommendation. This referral route is common for unions seeking negotiating rights at non-union firms but also came to be used for other issues normally handled by conciliation. Owens posited whether the option of the Section 20 referral came from "a growing requirement for 'instant' service, or at least an early hearing of the cases concerned" (Owens, 1996). Cases referred to the Court under section 20(1) of the 1969 Act (binding on the claimants only) are still common today. Referrals under section 20(2) of the Act (binding on both parties) are far less frequent.

Public Sector Pay

A landmark pay dispute for the Labour Court under the Chairmanship of Owens was in early 1997. Nurses, led by the Irish Nurses Organisation (INO), had been seeking higher pay since 1993. In January of 1997, the union balloted for industrial action. Taoiseach John Bruton said he wanted the row resolved before it led to strike action but also warned of "leapfrogging" claims in the public sector, whereby one cohort of public servants winning a pay increase above the national wage agreement level causes other groups to seek a similar higher increase. In February, the Court intervened in the dispute. Chairman Owens, in LCR15450, explicitly stated that the Court's recommendation regarding nurses was "unique" and that the "discontent" on the part of the nurses was due to the "failure to deliver on an earlier promise" to establish a pay commission for nurses, which featured in previous national wage agreements. The cost of what the Court recommended was four times what had originally been offered to nurses by the Department of Health. The Court had the invidious task of having to outline pay terms to deter a potentially crippling strike while unavoidably breaking the limits of the national wage agreement in scope. Shortly after the nurses pay recommendation, a series of other claims within the public service emerged. Other health workers secured 12% at the top of their scale and prison officers won between 5% to 13% increases. In late 1997, the Gardaí, primarily based on the claim conceded to prison officers, re-opened their previous pay deal, eventually securing an "interim" top up of 9% of payroll, with some Gardai getting over 13%. Public sector craftworkers and some 30,000 related operatives also got their prior-agreed deal re-opened, securing another 9% increase. The Defence Forces then secured an additional 4% under their 'second bite' at restructuring.

While the resolution of the nurses' dispute in 1997 was seen as a watershed moment on pay in the 1990s in that it opened the "floodgates" and undermined pay restraint, the settlement of the nurses dispute cannot be extricated from the political context at that time, with a general election due that year.

In 1998, SIPTU baggage handlers at Ryanair began limited industrial action, leading to 'public interest' intervention by the Labour Court. While an offer was extended to both SIPTU and Ryanair to attend the Labour Court, the airline declined. In response, Owens said, "it is regrettable that Ryanair did not attend and counter [SIPTU's] claims […] in documented form which would have enabled the Court to make a value judgement as to which case stood up." She cited a 1988 Court recommendation that advised the airline should recognise the union

on behalf of its members and negotiate a procedural agreement to regulate the relations between the company and the union, adding: "The Court is still of that view and sees it as a first practical step towards resolving the claims of its staff members and bringing the current dispute to a conclusion." The 1998 dispute at Ryanair would drag out over the course of that year.

The Court expands its employment law remit

Ireland's accession to the European Economic Community in 1973 brought a sea change to the country's approach to employment equality. The passing of the Anti-Discrimination (Pay) Act, 1974, and the Employment Equality Act, 1977, began to address the problem of pay inequality in Ireland. In one of her last acts as a Senator, Owens was instrumental in ensuring passage of the 1977 Act was not delayed, countering an effort by the then government to postpone its implementation. Both Acts would create a new adjudication role for the Labour Court, recalled as a "radical departure" for the Court by Owens in 1996.

Owens, as Labour Court Deputy Chairman in 1985, delivered a ground-breaking determination on sexual harassment in the workplace. In a confidential but widely reported case, the Court ruled that the complainant was constructively dismissed after suffering continuous sexual harassment at her job and awarded her compensation. Speaking about the case in 1996, Owens said it was a "landmark" case for the Court and for workers and employers because it established that, "freedom from sexual harassment is a condition of work which an employee of either sex is entitled to expect." The 1985 determination 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", said Owens.

It was during Owens's tenure as Chairman that the Labour Court would expand its function of adjudicating on employment rights beyond the anti-discrimination remit. The Court would take responsibility for the Organisation of Working Time Act, 1997, which transposed the working time directive, granting a minimum amount of annual leave for employees and a maximum working week. In Owens's final year at the Court, Ireland updated its workplace anti-discrimination law, repealing the 1974 and 1977 Acts, replacing them with the Employment Equality Act, 1998. The new law provided for more protections against discrimination and expanded the discriminatory grounds from sex and marital status to also include age, race, religion, disability, family status, sexual orientation, and membership of the Traveller community.

During her time as Chairman, Owens noted there was "an increasing readiness" by parties to equality appeals before the Labour Court to judicially review the Court's determinations to the High Court but that "few have been referred back to the Labour Court following judicial review" (Owens, 1996).

Whilst she was Court Chairman, Owens was appointed Chairperson of the National Centre for Partnership (under the social partnership agreement Partnership 2000) and was also appointed as Chair of the National Minimum Wage Commission. This Commission was tasked with recommending how a national minimum wage could be introduced, to tackle low pay and exploitation of workers, while also considering how it might have an adverse impact on competitiveness and affect small and medium enterprises. A statutory minimum wage would be introduced in Ireland in 2000.

Evelyn Owens retired from the Court in July 1998, and was succeeded by Deputy Chairman Finbarr Flood. Ms Owens died on 26 September 2010.

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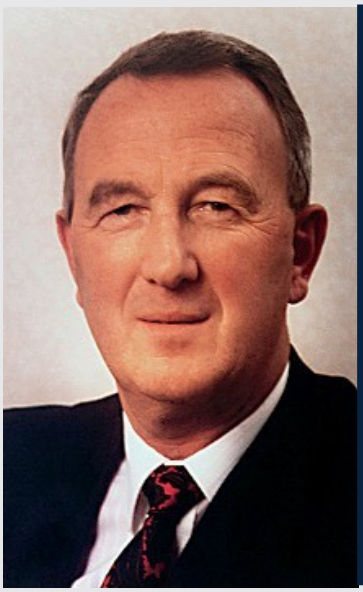

1998 – 2003
Chairman
Finbarr Flood

Finbarr Flood served as Chairman of the Labour Court from 1998 to 2003, a time of great change and unprecedented prosperity. He introduced many reforms to the operation of the Court and its interactions with unions, employers and other industrial relations institutions.

Finbarr Flood joined the Labour Court as a Deputy Chairman, nominated by Ibec, in 1994. He was appointed Chairman of the Court in 1998, on the retirement of Evelyn Owens, making history by becoming the first Labour Court Chairman to have been a managing director in the private sector, having held that role in Guinness just before his appointment to the Court.

In his 2006 autobiography, 'In Full Flood: A Memoir', Mr Flood said that having previously been before the Court as Guinness personnel director, "I was only too conscious of the difficulties that were involved for people who were coming to present their cases". He added that coming from a position of having been a managing director making all the decisions, he had to learn to work on achieving a consensus with the union and employer members in his division of the Court in each case. He said that he was quite "taken aback" in some of the early dismissal cases he heard at the Court, realising that "with my background in Guinness, I naively thought that employers generally looked after their employees" (Flood, 2006, p.148).

It was this background and his working-class roots, having started at the long-established brewer as a messenger boy – coupled with having also achieved the pinnacle of success in business – that enabled him to bridge the employer and union gap in a unique way.

Increase in legal cases

The increase in labour legislation during the 1990s had also begun to change the nature of the Court's work, with an increasing proportion of legal rather than industrial relations cases. During Mr Flood's five-year period as Chairman, the Court became the appeals body (from first instance Rights Commissioner or Equality Officer cases) for four new pieces of employment legislation:

- *The greatly expanded Employment Equality Act 1998, which included grounds beyond gender for the first time, such as age, disability, race, family status, sexual orientation, religion and membership of the travelling community.*
- *The National Minimum Wage Act, 2000, which provided for a national minimum wage for the first time, with the Court not just the appeals body but also the body for ruling on employer claims of inability to pay the new wage standard.*
- *The Protection of Employees (Part-Time Work) Act, 2001, which implemented into Irish law a new EU directive that prevents discrimination in employment conditions against part-time workers because of their part-time status.*
- *The Protection of Employees (Fixed-Term Work) Act, 2003, which implemented into Irish law a new EU directive that prevents discrimination against fixed-term contract workers, including provisions against the abuse of successive contracts.*

In his memoir, Mr Flood said that "one equality case could take the same amount of the court's time as half a dozen industrial relations cases". From the outset, he was "impressed with the courage" of individuals without representation, who often faced "a battery of barristers, solicitors and directors of companies", yet frequently won their cases. If people presented a meritorious case factually and accurately, their chances were as good as those incurring major legal costs, which is "one of the great benefits of the Labour Court".

However, he felt that in sexual harassment cases in particular, hearings went on for several days, leading to mounting legal expenses, sometimes forcing claimants to settle early. Since the Court could not award legal costs like a civil court, the claimant's award after expenses could be reduced significantly and he felt that the Court should be able to award costs in such cases.

He also insisted in such cases that all parties swear oaths, given the dangers of conflicting evidence. While some argued that this made "little difference", Mr Flood "always believed that it did have an effect on some".

'A great tranquilliser'

On the industrial relations side, one of the first major disputes Mr Flood handled in the Court as a Deputy Chairman in 1995 was at Dunnes Stores, over 'zero-option' contracts and Sunday working, with the Mandate trade union seeking a specified minimum number of hours. In his memoir, he said this taught him

the importance of timing interventions and the issuing of recommendations. He said the good weather of July 1995 was "a great tranquilliser" for those on the picket line, notwithstanding their worries over the dispute. The Court issued a recommendation just as the good weather broke, and while he was not saying the advent of less pleasant weather resolved the dispute, he felt that it got enough people to look more seriously at the proposals than would otherwise have been the case.

Another major dispute involved the ASTI teacher union's claim for a 30% pay increase. Mr Flood learned from the TV news during a recess in the Court's hearing of the matter that the union was planning a one-day strike for the next day. The Court cancelled all talks until the union called off its strike action. Frawley (2001) at the time described the Court's plea to defer action as "unprecedented", but that the ASTI decision to proceed with action during Labour Court talks also "surprised observers". It was understood that the union's decision-making Standing Committee felt it was not hearing enough on what was happening during the hearing and they decided to "jump first". While the strike went ahead the following day, two further days of action were deferred to allow the Court to reconvene.

Also during the ASTI strike, Mr Flood saw a video of a Dáil Education Committee session, in which a TD claimed there was no sense in the parties going back to the Labour Court, as the TD claimed "he had spoken to the Court and knew its views on the matter". Mr Flood immediately phoned the TD and "left him in no doubt as to how damaging his statement was for the independence of the Court", writing also to the Dáil Education Committee emphasising the Court's independence (Flood, 2006, pp.151-152).

In another major dispute in the public sector, the Court had to deal with complex issues in early 2002 involving 1,300 childcare workers in the intellectual disability sector, represented by IMPACT, who sought parity with a 19% to 27% pay increase awarded to residential childcare workers for increasing professionalisation of their role. The dispute was complicated by a separate but related claim, for a similar increase, by a larger group of 4,000 care assistants, largely represented by SIPTU. While SIPTU deferred action to allow the Court to hear the dispute, IMPACT did not do so until a later point, resulting in two separate Court hearings. The Labour Court's recommendation backed the union claim that the issue fell to be dealt with outside the then ongoing Benchmarking Body process, but skilfully it referred a final decision to a further expert committee report, making it likely that any significant repercussions for other major groups in the health sector would come after the Benchmarking Body process had been completed (Frawley, 2002).

Review of Court operations

When Finbarr Flood became Chairman in 1998, he began a complete review of every activity and operation in the Court. No fewer than 15 project teams were set up, but there was a particular focus on the smooth running of the Court, its financial and administrative performance and the service it provided to its clients.

This was undertaken with enthusiasm by Court members and staff.

One of the main proposals was to issue all recommendations within 21 days, other than equality cases (which were more complex). This was implemented, and they achieved a success rate of 80%. Another improvement was to speed up inspections for breaches of minimum pension conditions, by improving linkages between the Court, the Construction Industry Federation, the Construction Monitoring Board and the Labour Inspectorate.

As well as these reforms, the Court dealt with an issue that had emerged over difficulty in scheduling dates for Court hearings in industrial relations cases, with unions being slow to agree dates if the company was looking for something from them – or companies doing the same when facing a union claim. To counter this, the Court introduced a 'two strikes and you're out' policy, which meant that if either party turned down two dates, a date was imposed and a hearing went ahead with no option for postponement. This policy was extremely successful and considerably improved the delay time in cases going through the Court.

It was also agreed with the parent Department of Enterprise, Trade and Employment that the Labour Court would become responsible for managing its own budget, which had not been the case up to that point. Importantly, it was also later agreed that if the Court made savings, it could use those savings in other areas. Up to then, the budgetary system had sought cuts in the previous year's spending rather than the previous year's budget. This had created pressure to spend the Court's full budget each year, so that it would get a similar budget next year.

Over the years, Labour Court recommendations had been signed by one person, usually the chairman of the division hearing the case. Some members of the Court felt that, because of this, the media tended to report cases as if only their chairman had heard the case. Therefore, it was agreed that the names of all three members of the division, including the worker and employer members, would appear on the recommendation. Mr Flood said he was impressed by the care taken by all members of the Court to ensure that every party before it got a fair hearing and had every opportunity to present their arguments, as well as "the professionalism and concern shown by all the members of the Court when considering cases".

Mr Flood also took the same approach to projecting the Labour Court nationally as he had with Guinness as managing director, speaking at various seminars and conferences. In early 2000, at the Industrial Relations News (IRN) annual conference, he called for a complete review of Irish industrial relations, including the industrial relations machinery, saying that the best time to conduct such a review was from a position of strength – with his suggestion taken up by the then Minister for Labour Affairs, Tom Kitt, the following year. This started a debate on institutional reform which continued, on and off for some time, but reached a culmination 15 years later in the Workplace Relations Act 2015, which consolidated the industrial relations and employments rights institutions into the current WRC and Labour Court.

'Revolving door'

In his 2000 address to the IRN conference, Mr Flood also stressed the importance of the Labour Court as a court of last resort, saying that the practice of interventions by third parties after the recommendation was issued had created a perception that recommendations were just a starting point, rather than the end of the process.

One problem that had emerged was that some groups were able to put pressure on politicians after the rejection of a Labour Court recommendation, to get a "white knight" to resolve the problem, which could undermine the Court's 'last resort' role. Often a Minster or company would ask the 'white knight' to resolve the problem, regardless of cost or the wider implications. One concrete measure taken after the review of the Court's operations was to end the "revolving door" that had developed, where after a recommendation was rejected, the parties somehow ended up back at the Labour Relations Commission (LRC). It was agreed with the LRC that the agreement of the Court was required before any case that had been heard by the Court could go back to the LRC. This was seen as being of major significance, in that it prevented the practice of another level of appeal being put in place after a hearing of the Court (Flood, 2006, p. 140).

Until this period, Court chairmen generally did not speak to the media. However, Mr Flood was conscious of the danger of recommendations being inaccurately reported and made it clear to the media, employer and trade union officials that he had no problem with them ringing him up to clarify a recommendation – provided that the information could be made available to the other side in the dispute. He also watched the media keenly for indications of the parties' thinking during a dispute. One of the first things he did as Chairman was to get a television for the office, so they could watch the parties speaking on the evening news, which "could be quite helpful when hearing the case" (Flood, 2006, p.144).

Celtic Tiger

Mr Flood's time as Chairman coincided with some of the most rapid growth ever seen in the Irish economy, in the early Celtic Tiger period. One phenomenon he noticed was that the Court was "frequently confronted by unions insisting that more employees should be made redundant than the company had proposed". He presumed this was because the easy availability of jobs meant it was attractive to be made redundant, receive a severance payment, and then get another job elsewhere.

He was also critical of the way many public service managers were not permitted to act as managers, within guidelines, citing the example of the 'millennium' claims for working over the New Year period in 2000. He said that in July/August 1999, this could have been "put to bed" for IR£100-200 (€127-254). Yet because a decision was taken by the Department of Finance that there would be no payment, it became a major issue for the unions and it was only resolved later in the year by a Court recommendation for up to IR£540 (€685), costing the State a lot more.

In his last few years in the Court, he found that hearings involving the Departments of Health and Education would have officials from the Department of Finance present, "presumably riding shotgun and overseeing the proceedings" (Flood, 2006, p.142). He always felt it appropriate to address questions to these officials.

In public service disputes, he found that management was often not opposed to the claim, but that the Department of Finance was. This made him feel that the Court's time was being wasted, with it being "used to get the 'Harp' on the recommendation so that the Department of Finance would have to concede the claim". He said: "The Department of Finance must keep an eye on the public purse, but it must do so in such a way that the cost to the public does not increase. In many instances, the approach in these cases does just that: increases the cost. If management was left to its own devices, it is possible that a reasonable compromise would be found. If there is no confidence in the local management, this matter should be addressed – but not, as at present, by making a mockery of the machinery of the State" (Flood, p.153).

Another difficult behaviour he encountered was the way that some people in very senior positions tried to put pressure on so that certain cases would be heard as a priority in the Court, in situations where the parties involved had behaved very badly. These could be employees voting for strike before using procedures, or companies refusing to engage and then facing strike action. "While I believe we have to be pragmatic and ensure that the country does not come to a halt, this kind of behaviour from people at the top does nothing to encourage the honouring of agreements and respect for the agreed procedures" (Flood, 2006, p.154).

In launching the Court's annual report for 2000, Mr Flood said that while the resources of the Court were always there to help resolve trade disputes, the Court was "not in favour" of rewarding bad behaviour by giving precedence to parties who have not adhered to the procedures over those who have.

Sheehan (2001) commented at the time that "the fact that Mr Flood says he is not in favour of rewarding them means that there is not a lot the Court can do in the case of serious national disputes. The political pressure in some cases, or the sheer importance of some disputes, effectively forces these cases down a fast-track anyway."

In trade union recognition disputes, the 2001 Industrial Relations (Amendment) Act set up a procedure where unions could refer claims at non-union companies to the Labour Court, with the eventual possibility of a binding decision. Unions had traditionally sought union recognition under previous 1969 legislation, under which Court recommendations were binding on the union only – which usually ended with a favourable recommendation that, while it could not be imposed on the company, carried a certain moral force. The availability of the new procedure from 2001 led the Court to start recommending to unions that they make use of it, which initially appeared to close off the other option. However, the lack of timescales in the 2001 Act meant long delays, with unions dissatisfied with the new procedure. By 2003 the Court was showing flexibility in its recommendations in such situations, reverting to the traditional recommendations in certain cases,

for example, at Foodpak (LCR17356) and Greenstar (LCR17490). This did not necessarily signal a change by the Labour Court – which was still expected to send many disputes into the new procedure – and a crucial factor differentiating the two cases above from others was the relatively high level of union membership in those companies (Dobbins. 2003).

Court awards

Mr Flood was also critical of the lack of enforceability of awards and the 104-week limit on earnings. Claimants frequently found they had to go to the civil courts to enforce awards, while the 104-week limit "fails to take account of low wages and can result in the actual amount of the award failing to reflect the gravity of the case" (Flood, 2006, pp.154-155).

After retirement, Mr Flood served as chairman of the Government's Decentralisation Implementation Board, as well as being chairman of the Fatima Regeneration Project and the St. Michaels Regeneration Board, both in Dublin's south inner city. He was also chairman of Shelbourne Football Club for a period having been a player for the club earlier in his life. He died in 2016.

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2003 – 2016
Chairman
Kevin Duffy

The years 2003 to 2016 constitute a critical period of the Court's history, during which it had its largest expansion of members, cementing its status as a tribunal for both industrial relations and employment law dispute resolution

Kevin Duffy was appointed chairman of the Labour Court in December 2003. A former bricklayer and trade unionist, he qualified as a barrister several months before he became Court Chairman – the first Labour Court Chairman to be called to the Bar. Mr Duffy's detailed grasp of employment law was instrumental in the Labour Court straddling the two planks of industrial relations and employment rights, as the 21st century shift in employment disputes continued to turn to a more individual, rather than a collective basis.

Mr Duffy had served as a Deputy Chairman of the Court since 1997, having been nominated to the Court by the Irish Congress of Trade Unions, where he had served for 10 years, rising to assistant general secretary. His appointment as Chairman of the Court was well received. Already possessing a strong record in dispute resolution from his days in ICTU, his pragmatism and objectivity were not lost on employers. The trade union movement appreciated the rise of one of their most prominent senior officials to the top position of the Court; three of the four chairmen before him, in the two decades prior, came from management backgrounds.

Serving as Chairman for 13 years – the second longest tenure at the Court's top position to date – Duffy was at the helm from the economic prosperity of the mid 2000s, through to the financial crisis, and on to the recovery period of the mid 2010s. During this 2003-2016 period, the Court saw one of the most significant changes in its design and function, through the passing of the Workplace Relations Act, 2015. This law expanded the Court's remit, becoming

the single appellate employment dispute resolution body in the country. Mr Duffy played an important role in the reform of the dispute resolution system, where his experience and common sense helped to steer policy makers to streamline the avenues for resolving disputes – to the chagrin of some in the legal community.

There were also major changes to industrial relations legislation during Duffy's stewardship; first, the 2004 amendment of the Industrial Relations Act of 2001, the Supreme Court's disruption of that legislative mechanism with its 2007 Ryanair judgment, to the law's further adjustment in 2015. Colloquially referred to as the 'right to bargain' law, whereby trade unions can seek improvements in pay and working conditions at non-union firms, it has been Ireland's policy response to the complex issue of union recognition. Mr Duffy's name is inextricably linked to the IR Acts 2001 to 2015. Successive recommendations under the 'right to bargain' Act expanded the remit of the legislation. However, it was the growing reach of this law, compounded by some infirmities in how it was drafted, which set it on a course that ended inside the Supreme Court; the 2007 Ryanair ruling would then render the law inoperable for most of Duffy's time as Court Chairman.

As Court Chairman, Mr Duffy also had a decisive role in the reforming aspects of public service industrial relations, such as the modification of sick leave entitlement and revision of allowances. Mr Duffy's lasting influence is also evident in his decisions on employment rights cases that have become a staple of how the Labour Court and the Workplace Relations Commission determine employment rights issues.

Mr Duffy was to be the final Chairman appointed using the social partner nomination procedure. His replacement as Deputy Chairman, Raymond McGee, was the first person to be appointed as a result of public open competition. Upon taking up the Chairman position, Duffy expressed concern with the complexity of an expanding corpus of employment legislation, suggesting consolidation of employment statutes could be the solution. He identified the need for demarcation between the various employment bodies and agencies, of which, at the time, there were five: the Labour Relations Commission (LRC), the Labour Court, the Equality Tribunal, the Employment Appeals Tribunal (EAT) and the National Employment Rights Authority (NERA). While industrial relations disputes were channelled through the LRC and Labour Court, rights-based cases could be routed through the LRC, the EAT, the Labour Court, or the Equality Tribunal – depending on what Act a claim was made under. It was a system that even experienced practitioners found confusing. While there had been a general acceptance that the dispute resolution system was unwieldy and in need of reform, it required determined political will to move on this issue. The EAT was favoured by legal professionals but less so by trade unions.

The 'right to bargain' years

The first major legislative change during Duffy's time as Chairman came in the form of the Industrial Relations (Miscellaneous Provisions) Act of 2004, which amended the 2001 Industrial Relations Act. The 2001 'right to bargain' Act was the political and legislative solution to the complex question of union recognition in Ireland. Union density had been plummeting since the 1980s: a density figure of around 60% in the early 1980s had dropped to below 40% by 2003. While mandatory trade union recognition was short of political support, there was nevertheless a push to address pay and other working conditions at non-union employers. The 2001 Act was referred to as a "halfway house" in this regard, whereby a trade union could not gain recognition rights but could gain a unionised standard of terms and conditions at non-union employers, via the Labour Court. A hope harboured by trade unions was that the Act, and its updated versions since, would encourage non-union employers to engage with unions, rather than have pay rates set down for them by the Court once a claim was initiated.

The 2004 Act simplified some of the procedures involved in taking claims under this Act to the Court, most notably speeding up the timeframe during which claims had to be dealt with. Hitherto some cases taken under the 2001 Act were subject to lengthy delays. The 2004 Act resulted in more cases taken to the Labour Court, leading to more recommendations and binding decisions under the Acts.

A landmark 2001-2004 Act case was Ashford Castle v SIPTU, with a pay recommendation in 2004 (LCR17914), and subsequent binding determination to apply the terms of the recommendation in 2005 – both delivered by a division of the Court led by Kevin Duffy. The Court ordered the non-union hotel to boost pay rates, as well as to implement a sick pay scheme. The original recommendation also noted "nothing contained in this recommendation should be construed as providing for collective bargaining." Ashford Castle challenged the Court's determination at the High Court, but Mr Justice Frank Clarke dismissed all grounds of appeal. Significantly, Clarke J stated: "[A] very high degree of deference indeed needs to be applied to decisions which involve the exercise by a statutory body such as the Labour Court of an expertise which this Court does not have." (2006, IEHC 201) Referred to as 'curial deference' – where the specialist Labour Court is granted authority on industrial relations matters – it is an important theme that would arise again in subsequent court rulings where a Labour Court ruling has been challenged at the superior courts.

Around the same time of the Ashford Castle recommendation, the Court stated, in Cooley Distillery v SIPTU (LCR17908) that the employer should apply the pay increases of the Social Partnership national wage agreements, including any future increases due under the national agreement system. Other Court rulings of note under this law were Quinn Cement v SIPTU (DIR059), in which the Court ordered the employer to use a standard 39-hour working week and, in Sercom Solutions v SIPTU (LCR18772), the Court required the employer to adopt a different pay scale. These recommendations, delivered by a Court division led by Mr Duffy, demonstrated what the Court could do under the Acts. Yet, not all

trade union claims were bound to succeed, with the Court rejecting a number of pay-related claims, namely at larger firms, Analog Devices and GE Healthcare. Most of the claims pursued under the Acts were against smaller firms, where pay standards were more likely to be lower than the unionised standard. By the start of 2007, the Court had delivered 95 recommendations under the Acts, with 24 cases leading to a further binding determination.

However, it was a claim taken by the IMPACT trade union against Ryanair that brought about the disruption of the 'right to bargain' legislative regime. In 2005, in a preliminary ruling (DECP051), the Labour Court found there was a basis for it to investigate the union's claim under the Acts. Ryanair objected to this conclusion and appealed to the High Court. In 2005, Mr Justice Hanna rejected Ryanair's appeal but the airline appealed further to the Supreme Court. In February 2007 (2007, IESC 6), Mr Justice Geoghegan ruled that the Labour Court did not apply fair procedures in the initial hearing of IMPACT's claim and that it did not have sufficient evidence to make conclusions on three key aspects: whether there was a trade dispute between Ryanair and its pilots; whether Ryanair engaged in collective bargaining; and whether the airline operated an internal dispute resolution procedure. Furthermore, a chink in the legislation's drafting – the absence of a definition of "collective bargaining" – came to the fore, with the Supreme Court criticising the Labour Court's reliance on the trade union's definition of collective bargaining. Figuratively speaking, the Supreme Court's ruling in Ryanair took the wind out of the 2001-2004 Acts' sails. Claims under the Acts dried up and there were just a handful more recommendations that followed the Ryanair ruling. In Bell Security v TEEU (LCR19188) the Court's findings were clearly confined by how the Supreme Court interpreted the Acts. Mr Duffy, writing the recommendation, noted: "If the Court were considering the factual matrix of this case in an industrial relations context it might take a different view. However, it must apply the law as it finds it and following the decision in Ryanair there can be no doubt as to the correct legal approach to the questions arising in this case."

The Ryanair decision made the 2001-2004 Acts largely inoperable, in the manner of how it had been used up to February 2007. The law was not struck down, however, avoiding the fate of legislation that underpinned joint labour committees and registered employment agreements in 2011 and 2013, respectively. In 2015, the 2001-2004 Acts were amended further; some of the snags identified in the Acts in Ryanair were addressed, such as providing a statutory definition of collective bargaining, as well as giving more clarity to the Labour Court on how it was to decide cases that came before it. In 2016, the first case to be decided under the revamped legislation was Freshways v SIPTU (LCR21242, coincidentally one of Duffy's final Court recommendations) which set out phased pay increases for the food preparation company's employees as well as requiring the company to "provide for trade union representation in processing individual grievances and disciplinary matters, where an employee wishes to avail of such representation." The Court's recommendation was not implemented as set down but it did, nevertheless, encourage the employer to agree to a union recognition agreement the following year. Freshways was another landmark ruling under the 'right to bargain' legislation and caused consternation in some quarters, particularly with employer representatives, who objected to having to provide for

trade union representation in grievance and disciplinary matters. In a 2016 event at University College Dublin, a former Labour Court Chairman, John Horgan, who had represented several employers defending against claims during the 2001- 2007 era of 'right to bargain' claims, came out strongly against the Freshways decision. He claimed the amended Acts would be struck down at the Supreme Court – a development which has not occurred to date.

The inherent difficulty in legislating on industrial relations matters is demonstrated in the fact that after the Freshways recommendation, there was to 2022, just one more full recommendation under the 2015 Amendment Act. Conduit Enterprises v CWU (LCR21722) involved workers at the Emergency Call Answering Service (ECAS). Similar to Freshways, the recommendation was not implemented by the employer per se, but BT Ireland, who held the ECAS contract with the Department of Communications, took the service in-house and increased the pay and other conditions of staff. Two other claims pursued under the 2015 Amendment Act, Enercon Windfarms v Connect (LCR21741) and Zimmer v SIPTU (LCR21729), could not proceed to a recommendation on substantive issues due to deficiencies in the claims. These latter two cases would exemplify the difficulties trade unions face in pursuing claims under the 2015 Amendment Act, particularly on the point of comparable employments within a given industry.

Handling major disputes

Aer Lingus was at the centre of many Court recommendations during Duffy's time as Chairman. In 2004 the airline – for the first time in its history – rejected a Labour Court recommendation. The issue centred on the relocation of cabin crew staff, from Shannon to Dublin, which the airline maintained it was within its right to do. The Court disputed the airline's argument, finding favour with the IMPACT union's interpretation of an agreement it had with the airline. The airline's subsequent rejection of the Court's recommendation was followed by the company's HR delegation withdrawing from a Court hearing on an Aer Lingus pension issue. These factors strained relations between the airline and the Court for a brief period. The following year, in handling an outsourcing dispute, the Court wrote directly to the airline's chairman at the time – bypassing the Aer Lingus HR department. Separately in 2004, a Court recommendation attempting to avert a strike at Brinks Allied was rejected by that company's management, and Independent Newspapers rebuffed an invite from the Court to resolve a redundancy dispute. The National Implementation Body (NIB), which was a 'trouble-shooter' for issues that emerged with the implementation of the national agreements under Social Partnership, was also seeing more issues referred to it during this time, but remained conscious of the need for employers and unions to respect the traditional channels of dispute resolution: the LRC and the Labour Court.

A major test of the Social Partnership system came the following year, in 2005, with the Irish Ferries outsourcing dispute. The ferry company had opted to replace around 500 unionised workers with cheaper labour from abroad, sparking a major row with SIPTU and the Seaman's Union of Ireland. The Court issued a number of recommendations during this dispute, attempting to preserve industrial relations order and stability but was essentially in an invidious position, given the company's decision to move ahead with the outsourcing move regardless. Irish Ferries vetoed the Court's recommendations, claiming they were "incapable of acceptance and implementation in the circumstances given that an overwhelming majority of the staff involved (90%) have applied for the severance package and, by so doing, have expressed their wish to sever their employment with the company" (Dobbins, 2005). The Irish Ferries dispute was particularly damaging. It was eventually ended via an agreement with SIPTU, brokered by the LRC.

In 2008, the Court's intervention in a dispute at the Irish Aviation Authority was critical in avoiding a strike which could have had international ramifications. An overtime dispute between the Authority, which oversees air traffic in and out of Dublin airport but also partly controls transatlantic flights, and the IMPACT trade union was resolved by a Court recommendation (LCR19158) under section 26(5) of the Industrial Relation Act, 1990 – a sparingly-used means of the Court intervening in a dispute that carries "exceptional circumstances." The Court's recommendation, led by Duffy, found a pragmatic resolution that allowed the employer to stay within its principles but which also satisfied ar fraffic controllers' demands, via a standby payment. The Court also had to be mindful that its terms would not open the floodgates for industrial relations claims at other employments.

In the mid 2000s, employers began to curtail defined benefit pension schemes following new rules on pension funding which involved more scrutiny. The social partnership agreement, Towards 2016, handed an increased role in pension disputes to the national agreement "trouble-shooter", the National Implementation Body (NIB). One of the first big tests of this new mechanism was in 2006, when Bank of Ireland moved to introduce a 'hybrid' pension scheme for new entrants, leading to a dispute with the Irish Bank Officials Association (IBOA). The NIB could not resolve the pension dispute and it was handed over to the Court, which, in January 2007 (LCR18819), outlined terms that included a once-off option for entrants to join the pre-existing pension scheme, but was implicitly critical of the bank's approach to introducing the new pension scheme. The Court's recommendation stated that situations "can arise in which urgent action is required and the full utilisation of procedures may not be feasible", but that the Court "cannot accept that this was such a case." The Court continued: "It is a well-understood requirement of good industrial relations practice that employers and trade unions honour the terms of the collective agreements to which they are party. The Court is satisfied that the agreed procedures were not fully utilised in this case and that, in consequence, the manner and timing in which the disputed changes were introduced was not in accord with the agreement concluded between the parties."

Another pension row referred to the Labour Court by the NIB involved a new hybrid pension at the State broadcaster, RTÉ. In July 2008 the Court, in LCR19281, recommended RTÉ improve its pensions offer to staff, who had balloted for industrial action over the issue. RTÉ staff accepted the pension terms later that year.

Dispute resolution reform

The 2011 General Election brought Fine Gael and Labour to power with Richard Bruton TD becoming Minister for Jobs, Enterprise and Innovation. One of his first moves as Minister was to outline his reform plans for the State dispute resolution bodies, which would replace the existing five bodies with a single body dealing with workplace grievances and disputes in the first instance and another body dealing with appeals. There would be a single point of entry for claimants in the form of a new consolidated disputes body, which would come to be called the Workplace Relations Commission (WRC) – essentially an amalgam of the LRC, NERA and the Equality Tribunal – with the EAT to be wound down. The Labour Court would become the sole appellate body for all employment claims, as well as continuing its function as the primary industrial relations dispute resolution body.

There had been alternate proposals mooted before the WRC and Labour Court model was chosen; one idea mooted was for the EAT to remain, as the sole appellate body for employment rights claims, while the Labour Court would become an industrial relations disputes body only – something which would have went against the grain of the Court's growing stature as an employment law tribunal during Duffy's time as Chairman, and which would have, arguably, reduced the Court's status. However, such a proposal would have denied the fact that employer and union representatives were more favourably inclined to the Labour Court. The EAT had a more adversarial, legalistic character where employment lawyers were more comfortable. The Labour Court, having demonstrated its capability in managing the industrial relations and employment law spheres for several decades at this point, was the rational choice to be the appellate body. During the reform period, Duffy spoke on the merits of the design for the new dispute resolution system, sometimes in the face of stern criticism of the reform project from within the legal community. He argued that an "extensive jurisprudence" had developed out of the determinations of the Court, particularly so in the fields of equality law, the law relating to the rights of part-time and fixed- term workers and the organisation of working time. He also reiterated the need to make the dispute resolution bodies accessible and that for lower tribunals to try and replicate superior courts "would undermine their own purpose." (Prendergast, 2015) The complexity of the reform project was evidenced in the fact it took over four years for it to be realised. The Workplace Relations Act was passed on 20 May 2015, with the WRC established on 1 October of that year. The bulky Workplace Relations Act had to be amended before the law could commence. Mr Duffy had been due to retire as Chairman in June 2014, but was persuaded to stay on in the role for another two years, until the new WRC-Labour Court system was up and running.

To meet the extra demands that would be placed on the Court in its new, sole appellate role, the divisions of the Court were expanded, from three to four, and two new Deputy Chairman positions were created to complement the two serving Deputy Chairmen at the time, Caroline Jenkinson and Brendan Hayes. While it had seemed that the filling of the top jobs at the Court had reverted back to the social partner nomination system in 2010 – when Hayes replaced Raymond McGee – the new positions were filled via public competition run by the Public Appointments Service (PAS), cementing the open competition approach for the chair and deputy chair positions from thereon. Kevin Foley and Alan Haugh were successful in the competition, appointed as Deputy Chairmen in September 2015. Mr Foley had been director of conciliation at the former LRC, while Mr Haugh had been an employment lawyer and academic. The ordinary members of the Labour Court (worker and employer) continued to be filled via nomination by ICTU and IBEC.

Employment rights rulings

The Labour Court came to deal with more and more employment rights cases during Duffy's time as Chairman – a reflection of the trend towards individual, rather than collective channels of resolving disputes, but also a demonstration of the Court's growing stature in the field of employment law. The Court had previously maintained jurisdiction on employment equality case appeals (from the then Equality Tribunal) but also came to handle working time cases – something Duffy encouraged the Court to take on, prior to him taking over as Chairman. Employment law decisions and determinations by Duffy and Deputy Chairmen of the Court during his time as Chairman were detailed, lengthy explorations of Irish and EU caselaw on the matters at hand – something which stood out in contrast to the often terse decisions of the Employment Appeals Tribunal.

One determination the Court delivered by a division led by Duffy (just before he took over as Chairman) was Cementation Skanska v Tom Carroll (DWT0338). This ruling has come to be one of the most cited decisions of the Labour Court, on the matter of whether to allow an extension for reasonable cause of the time permissible for lodgement of claims beyond the statutory time limit.

Duffy also came to handle a succession of significant cases taken under the Protection of Employees (Fixed-Term Work) Act, 2003. Arguably, the most significant of the fixed-term work cases that came before the Court during Duffy's time was IMPACT v Minister for Agriculture (C-268/06). This case centred on the issue of the application of direct effect of a European directive. The 2003 Act put into effect the requirements of the Fixed Term Work Directive 1999/70, which was supposed to be transposed by Member States by July 2001. However, it was not transposed into Irish law until two years later. The union's claim was in respect of the years 2001 and 2002. The case was referred by the Labour Court to the European Court of Justice (this was the second reference by Duffy of an employment rights issue to the European Court; the first being North Western Health Board v Margaret McKenna). The Court of Justice ruled that not only could the Court apply the doctrine of direct effect of the Directive to the case at hand, but that it was obliged to do so.

In the case of Department of Foreign Affairs v Group of Workers (FTD071) the Court rejected the employer's argument that short breaks in service for 15 fixed- term workers (who were seasonal staff) in the Passport Office could be used to deny them contracts of indefinite duration. A significant issue in the case was how the breaks in service were treated, with the Court noting there was a "significant qualitative difference" between the 1999 EU social partner agreement on fixed-term work, which referred to "successive" contracts, and the 2003 Act itself, which referred to "continuous" service. The Court's determination noted European jurisprudence on this matter, citing the 2006 case of Adeneler & Others v Ellinikos Organismos Galaktos, which found a Greek law confining continuity of contract to situations where the break in service was 20 days or less to be against the object of the 1999 social partner agreement on fixed-term work. The Court found for the Passport Office workers and was "reinforced" in this view as it was in harmony with the object of the 1999 EU social partner agreement.

In the 2012 appeal determination in Dawn Country Meats v Roisin Hill (DWT12141) the Court pointed out an apparent contradiction between what the Organisation of Working Time Act, 1997, outlines in section 19(1) – that an employee has to work a minimum number of hours to entitle them to a minimum of annual leave – with what the Court of Justice of the EU caselaw determines as the employee's right to accrue annual leave while on sick leave. This issue was flagged again in 2014, in Sparantus ltd v Agnieszka Jemiola (DWT14110), in which the Court touched on the doctrine of conforming or consistent interpretation, where a Directive does not have direct effect. This doctrine is "not without its limitations and cannot be used as a basis for a contra legem [against the law] interpretation of national law", the Court said, and that, "identifying the boundaries between a permissible conforming interpretation of a statute and one that is contra legem is a question of law of some complexity." It is notable that a few years earlier, an age discrimination claim taken by applicants to An Garda Síochána had gone to the then Equality Tribunal, where an equality officer's attempt to hear the claims – with the possibility of applying EU law over national law – was challenged in the superior courts. What came to be the fundamental question of that case was whether a statutory, specialist tribunal has the power to disapply national law if such law is not in accordance with EU law. This question was not decided by the CJEU until 2018. However, in light of the Court's rulings on Dawn Country Meats and Sparantus, the Organisation of Working Time Act was amended, in 2015, to permit the carryover of annual leave where it could not be taken, due to sick leave, for a period of up to 15 months.

Another notable decision of the Court during Duffy's time as Chairman was Irish Water v Patrick Hall (TED161), in which a finance professional sought compensation for technical breaches of employment rights, such as not being told in writing what his rest periods were. Mr Hall's case was described by Duffy as "an unacceptable squandering of public resources" because the alleged contraventions had no practical consequences for the claimant. The Court's determination in this case has been oft-cited since 2016, used as a reference point for frivolous or vexatious claims.

Public sector reform

One of the most significant decisions of the Labour Court during Duffy's time was Department of Public Expenditure v Public Service Committee of ICTU (LCR20335), reforming the sick leave and pay scheme in the public service. The Public Service Agreement of 2010 (also known as the Croke Park Agreement) set out to reform the costly public service sick pay scheme, which had been running at a cost of around €500m per annum, with comparatively high absenteeism rates. In a binding recommendation, the Court essentially halved the entitlement to paid sick leave, from six months' full pay and six months' half pay, to three months' full and three month's half pay, over a rolling four-year period. Delivered in July 2012, the new terms were due to take effect on January 1, 2014, but implementation was delayed until March of that year, to allow for commencement regulations to be drawn up.

In Kevin Duffy's final year as Labour Court Chairman, he was tasked with finding a way to settle a major industrial row that had erupted at the transport company operating the LUAS tram, which had seen five months of industrial action, one of the most high-profile and intractable industrial disputes in Ireland since the turn of the century. Just as with the IAA dispute of 2008, the recommendation from Kevin Duffy's division, under section 26(5) of the Industrial Relations Act, expertly navigated the intricacies of the fraught dispute and managed to land at a proposal that gave both parties to the dispute, Transdev and SIPTU, something to take away. The Court's terms were accepted in June 2016, following further intervention of key union personnel. The following month Kevin Duffy retired as Chairman of the Court.

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2016 to present
Chairman
Kevin Foley

The period of the current Chairman of the Labour Court, Kevin Foley, bedded in reforms that increased the Court's role, against a background at first of rising prosperity and more recently through the huge challenges of the Covid-19 pandemic and the cost-of-living crisis.

Kevin Foley is the first Court Chairman to be appointed through an open public competition and is also the first from a professional dispute resolution background – rather than a former employer or union side representative – to fill the top role in the Court.

Open public competition for appointment to Labour Court Chairman and Deputy Chairman posts was stipulated in the 2015 Workplace Relations Act. Before that, there had been an informal system for several decades where every second Court Chairman came from either a union or employer background.

Mr Foley began his career in the then Department of Labour in the 1970s before working with the Sylvia Meehan led Employment Equality Agency throughout the 1980's and then joining the new Labour Relations Commission (LRC) on its foundation in 1991. He gained a strong reputation as a skilled Conciliation Officer working across significant disputes in the public and private sectors, especially in the areas of construction (where he chaired the Joint Industrial Council (JIC) for the sector), health (where he chaired the Health Service National Joint Council) and public transport, among others. He was the central conciliator in major disputes involving, for example Irish Steel, Iarnrod Eireann, Beamish & Crawford, Irish Ferries, Waterford Crystal and Aer Lingus, and part of the small LRC team which worked on major disputes including those across the State's airports, TEAM Aer Lingus and the Croke Park Agreement. Mr Foley also served as Chairman of the ESB industrial Council for a period of ten years.

In 2004 he became director of the Conciliation and Mediation Service of the LRC (now the Workplace Relations Commission (WRC), when the then director

Raymond Magee was appointed a Deputy Chairman of the Court in 2004.

Overall, Mr Foley was about 25 years working in the Conciliation Service of the Labour Relations Commission. In an interview for this book (Foley, 2022), he says that period was one of continuing evolution in the relationship between workers and employers, with an increasing willingness on the part of employers to share information about their businesses. This was accompanied by the corresponding willingness of workers and their trade unions to understand the businesses they were employed in and to grapple constructively and effectively with the challenges which face their enterprises and consequently the sustainability of employment.

This increasing openness to respectful engagement was supported and encouraged, he says, by the culture generated and sustained by the prevailing commitment to social partnership across the 1990s and 2000s. He adds that this meant that when the financial crisis hit in 2008, workers and employers really did engage with the problems they faced. Although social partnership itself did not survive, it left "a legacy of trust, engagement and understanding", he says – in both the private and public sectors.

Mr Foley headed up the Conciliation Service for over a decade, when in 2015 he was appointed a Deputy Chairman of the Labour Court. He was appointed Chairman in 2016.

From 2015, the Labour Court began operating with four divisions rather than three, to enable it to meet the greatly expanded number of cases it was dealing with as the single appeals body for employment rights cases. The total membership of the Court in 2021 consists of 14: one Chairman, four Deputy Chairmen, four Employer Members, four Worker Members and the Court Registrar.

Mr Alan Haugh was appointed Deputy Chairman at the same time as Mr Foley in 2015, as part of the expansion of the Court to four divisions. Louise O'Donnell, who was a Worker Member of the Court since 2015, was appointed Deputy Chairman in 2017, filling the vacancy left by Kevin Foley when he became Chairman in 2016. Tom Geraghty was appointed Deputy Chairman in 2018, to replace Brendan Hayes who retired. Katie Connolly, who was an Employer Member of the Court since 2017, was appointed Deputy Chairman in 2022, to replace Caroline Jenkinson who retired. Several Worker and Employer Members have also been appointed since 2016. They include Clare Treacy and Arthur Hall (both in 2017) and Paul Bell (2020) on the worker side, with Gavin Marié (2015) and Paul O'Brien (2022) on the employer side.

Case management

One of the main reforms of the Labour Court's operations after the 2015 Act was to rely more on active case management, which cuts down on the number of unnecessary hearings and speeds up both dispute resolution and, in employment law cases, the administration of justice. The system has enabled the Court to deal with the rapid expansion in the number of employment rights cases referred since the enactment of the 2015 Act.

A requirement under the Rules of the Court is that the Court receives submissions from the parties well enough in advance for the members of the Court to familiarise themselves with the details of the case before they walk into the courtroom on the day of the hearing. This enables the Court to a focus on the key relevant issues. In this way, the Court division involved can focus on the value that a hearing can bring, in terms of allowing the Court's members to clarify issues directly with the parties and allowing the parties to engage with each other.

The Court can convene a case management conference with the parties before the main hearing, and also has the option of the chairman or deputy chairman sitting alone where appropriate, to hone the issues down.

The provision of written submissions in advance of a hearing and active case management has allowed the Court to ensure that an appropriate allocation of Court hearing time is made, so as to allow in the majority of cases the complete hearing of an appeal in one sitting. Overall, case management allows the Court to avoid the level of adjournments experienced in the past, speeding up service to users.

Non-collectively bargained workplaces

While 2015 is best known for the restructuring of the employment rights and industrial relations institutions - as a result of the 2015 Workplace Relations Act – two other major changes in the framework of industrial relations were also ushered in by the separate 2015 Industrial Relations (Amendment) Act, both of which involve a major role for the Labour Court.

One was the new provision allowing a trade union to seek Labour Court recommendations on pay and conditions in companies where collective bargaining does not exist. These amended previous provisions in the 2001 and 2004 Industrial Relations (Amendment) Acts, which had, in the apparent view of trade unions, been rendered difficult to operate after the Ryanair Supreme Court ruling in 2007.

The 2015 Act introduced a new definition of collective bargaining that clarified the statutory interpretation of that term and raised the 'bar' for the independence of in-house employee representation bodies, as well as new higher standards of evidence for unions' claims about their level of membership in an employment and allowing comparisons with pay and conditions in non-unionised as well as unionised companies.

The new standards of proof in the 2015 Act arguably resulted in very big challenges for both the union and employer sides. If a trade union does not have any members in the comparator employment, it can be difficult to prove what the rates of pay and conditions there are. Neither do employers necessarily know what pay and conditions in their competitor companies are and consequently, they face difficulty in defending claims.

In essence, these provisions of the Act can be seen to create significant challenges for unions to advance their case, as well as making it difficult for employers to defend them. Several cases were taken in the early years of the legislation, but given the length of time taken for each to yield results, if at all, it would appear that the unions eventually began to take the view that while the Act was useful in some cases, more widespread development of collective bargaining would have to take another form (Cullinane, Dobbins & Sheehan, 2020).

Sectoral bargaining

A suggestion by SIPTU in recent years has been to expand the use of sectoral wage setting mechanisms to deliver outcomes across whole sectors, without having to seek recognition in every individual employment.

One of these sectoral wage setting mechanisms, by which a set of minimum pay and conditions could be made binding on all employers and workers in a sector, was another major part of the 2015 IR (Amendment) Act – Sectoral Employment Orders (SEOs). This was aimed at overcoming the constitutional defects of the old Registered Employment Agreement (REA) system, which had allowed unions and employer bodies who were "substantially representative" of workers and employers in a sector to reach agreements that could then be made legally binding across that sector. These were struck down as unconstitutional by the Supreme Court in the McGowan case in 2013. The 2015 Act tried to address the issues raised by the Supreme Court through giving the Labour Court a more direct role in conducting an investigation, on application by unions, employers or both, after which it could propose minimum pay and conditions. The proposals would then be approved by the Minister responsible for employment and both Houses of the Oireachtas – providing a political oversight that had not been a feature of the REA system.

The largest of the old REA sectors, construction, with about 50,000 craft and operative workers, saw an SEO formulated by the Court and approved by the Minister and Oireachtas in 2017 and it has been updated several times since. Another, smaller sector – involving about 10,000 plumbers and pipefitters (mechanical crafts) working for contracting firms – also saw an SEO in 2018, although attempts to update this since then have been subject to several legal challenges, which have by 2021, prevented further SEOs in this sector.

In a third sector, about 13,000 electricians working for electrical contractors – which had been the subject of the McGowan case that struck out the REA system – a 2017 application by the union involved, TEEU, was withdrawn following a High Court challenge by National Electrical Contractors Ireland (NECI), an employer body opposed to the application. While an SEO for the sector went through the legal process in 2019, with new minimum pay rates made law, a renewed NECI High Court challenge resulted in a judgment that found the whole SEO legislation to be unconstitutional in June 2020, with the electrical contracting SEO struck out separately due to what the High Court said was the lack of information provided by the Labour Court in its report to the Minister responsible for signing the SEO into law. A stay was placed on the other SEOs, allowing them

to remain in place pending a Government appeal to the Supreme Court. In 2021, the Supreme Court on appeal backed the constitutionality of the SEO system, saying that the Oireachtas had substantial powers over an SEO, which requires a vote from each House before it becomes law. A new electrical SEO was obtained by the end of 2021, although this was struck out in 2022 following a new High Court challenge by NECI.

The other sectoral wage setting system, the Employment Regulation Orders (EROs), which are negotiated by Joint Labour Committees (JLCs) for lower-wage sectors, was also the subject of a High Court challenge in 2021 in the security sector. While this case was settled and the ERO approval process started again at an earlier stage, a renewed challenge was lodged in August 2022, just before the ERO came into effect.

Major disputes

In terms of major disputes during this period, the Court dealt with the full gamut of issues, from restructuring in Bus Eireann in 2017 to private sector pay pressures driven by inflation in Bausch & Lomb and Kyte Powertech (see chapter on dispute resolution for more detail on these). However, the largest challenges were presented by two major public service disputes, involving pay claims by both Gardaí and nurses, each of which was resolved by the Court.

The Garda dispute posed unique challenges, because not only did they not usually have access to the Labour Court, but an earlier WRC proposal had been rejected without a ballot. The access issue was dealt with by hearing the disputes on an 'ad hoc' basis, with the recommendation also providing for eventual formal WRC and Labour Court access on an ongoing basis. Resolution efforts went right to the eve of the threatened strike, with the Court securing a commitment from the two associations representing most Gardaí to defer the action and to ballot their members on the recommendation, thus heading off any possibility of rejection without a ballot. The Court's two recommendations – issued separately to both the Garda Representative Association and Association of Garda Sergeants and Inspectors – were accepted by the members of both bodies.

Another powerful public service group – the nurses – went ahead with strike action in early 2019, in pursuit of parity with certain other groups of health professionals. The Court waited in the wings for a period, timing its intervention until it felt the parties were ready to reach agreement. The resulting recommendation tested the credibility of the public service agreement, but IRN said at the time that any assessment of the strike "must acknowledge the work done by the Labour Court in bringing the dispute to an end by crafting a set of proposals that seek to square off the seemingly irreconcilable" (Sheehan, 2019).

Employment rights

A key legal case that clarified the status of the Labour Court was that of Zalewski v An Adjudication Officer and Others, which challenged the position of the WRC Adjudication Service and the Labour Court as administrators of justice. Their status as such was backed by a majority Supreme Court decision in 2021, which overturned a High Court decision. The Supreme Court judgment was seen as hugely significant, as if it had gone the other way, it could have undermined many of the new functions given to the Court in the 2015 Workplace Relations Act (see chapter on the Labour Court and the law for more detail).

One of the major changes for the Court after the 2015 Act was its new jurisdiction as the appeals body for unfair dismissal cases. These rose from zero in 2014 to 174 by 2020, making up a significant part of the Court's workload. These appeals involved the Court interpreting legislation and the decisions of higher courts in deciding appeals of dismissal case decisions by Adjudication Officers of the WRC.

In the case Tesco v Barbara Maciejewska (UDD1760), the Court overturned an Adjudication Officer finding, with the Court ruling that the worker had the required one year's service to take a claim under the Unfair Dismissals Acts. The worker's employment started on July 29, 2014 and as she was dismissed on July 28, 2015, the Adjudication Officer said she was not covered. However, the Court cited the 2005 Interpretation Act, which says that where a period of time is said to begin or end on a particular day, that day is included in the period. The Court awarded Ms Maciejewska €17,000, due to the lack of procedures in the dismissal.

Dismissal under the 'cloak' of redundancy arose in a case at Tanneron v Gerard Conolin (UDD2151), where the Court awarded €23,000 and overturned an adjudication decision that the dismissal was not unfair. It said the Court has to be "extra vigilant" to ensure that an employer cannot use a redundancy situation to deal with a perceived performance issue.

Among the other issues the Court dealt with in dismissal cases was the determination of employment status. For example, at Fastway Couriers v John Read (UDD225), the Court determined that Mr Read, a driver for the courier firm, was employed on a contract of service and was unfairly dismissed by the company, which had regarded him as an independent contractor. It cited similarities with the 2019 High Court case in Domino's Pizza v Revenue Commissioners, noting that in both cases, the workers provided their own vehicles, insurance and tax arrangements, but remuneration was set by the employer. In another case, DMG Media v Joseph Dunne (UDD2260), the Court ruled that a newspaper photographer was not an employee and so could not be unfairly dismissed. Among other factors, it cited the "interposition" of a limited liability company – established at DMG's request but with Mr Dunne's agreement – which undermined the argument that the photographer was an employee.

Covid-19

The advent of Covid-19 in early 2020 challenged the Labour Court to react quickly to maintain services, while keeping parties and staff safe. It had to quickly gain an understanding of what ICT-based platforms were needed to maintain its services virtually, with the assistance of information technology experts from the Department of Enterprise, Trade and Employment.

A project team was put together in the Court, involving members and staff, which was tasked to devise a 'virtual courtroom' system. This involved understanding the technology and engaging with users and clients, such as employer and union representatives, in order to ensure full stakeholder involvement in the design at speed of a new delivery platform.

The result of all this work was that while the Court suspended in-person hearings in March 2020, by mid-May 2020 it was doing 'mock hearings' with users to test the new system and it started real hearings in a virtual setting by June 2020. While these started from a low base, virtual hearings accounted for about 80% of court hearings from when the pandemic hit in March to the end of 2020 (in-person hearings were able to resume for certain periods of more relaxed restrictions, accounting for the other 20% of hearings). The proportion of hearings in 2021 that took place in a virtual setting was similar.

Some people, who found it too difficult to do virtual hearings (be it through lack of technology, broadband connectivity or other reasons), went on a list for hearings in a physical courtroom, to ensure that they still had access to the services of the Court. The virtual Labour Court setting could be challenging for representatives on both sides. For those involved in employment law cases, especially those from a legal background, they were used to having the full attention of a courtroom, with some feeling that cross-examining witnesses in the virtual courtroom was more difficult.

The main objective, as stated by Kevin Foley at the time, was to ensure that the procedures in all courtrooms, including virtual courtrooms, remained fair and legally sound. No more than many organisations, the Labour Court was catapulted into having to become quickly familiar with technology, a process which would most likely have been a lengthy one at any other time. Its success in doing so enabled it to offer a full programme of services throughout most of the Covid-19 pandemic – without which a major backlog of cases could have emerged.

Virtual future

Indeed, the post-pandemic thinking is that the Labour Court will continue to use virtual courtroom settings into the future. This innovation has the potential to assist in the Government's climate action goals, with less people travelling, while making scheduling of hearings easier and more efficient, as well as reducing costs for parties in terms of travel and time.

The Court has invested in the construction of 'hybrid courtroom' facilities in its Lansdowne House headquarters in Dublin. These will contain not just traditional courtroom facilities like a main bench, tables and chairs, but also video monitors and microphone facilities, so that participants from outside the room can get as close to the in-person courtroom experience as possible and indeed so that evidence can be taken in a physical courtroom from individuals who are not present in the room.

Court hearings continue to take place in the regional centres that currently hold them, such as Cork, Limerick, Waterford, Wexford, Galway, Sligo and Donegal. While virtual and hybrid hearings will address some of the challenges posed by physical distances (especially for participants who may no longer be resident in Ireland), these regional hearings provide the Court's services closer to where people live and work.

Led by Mr Foley, the Labour Court is emphatic that notwithstanding technological developments and innovation in court room design, it is critical to protect the idea that a hearing of the Court is 'no small thing' but an event to be taken seriously whatever format it takes. Therefore, even in a virtual courtroom, there will always be a level of formality involved with the proceedings.

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APPENDICES

Appendix 1: Chairmen, Deputy Chairs and Members of the Labour Court 1996 to 2022

Chairmen	
1946-1952	Ronald Mortished
1952-1962	Martin Keady
1962-1977	Timothy Cahill
1977-1984	Maurice Cosgrave
1984-1988	John Horgan
1988-1994	Kevin Heffernan
1994-1998	Evelyn Owens
1998-2003	Finbarr Flood
2003-2016	Kevin Duffy
2016-	Kevin Foley
Deputy Chairmen	
1946-1948	Francis Vaughan Buckley
1948-1959	John Ingram
1959-1961	John Purcell
1962 (2 months)	Timothy Cahill
1962-1972	James Rice
1973-1977	Maurice Cosgrove*
1973-1980	Patrick D. McCarthy
1977-1984	John Horgan*
1980-1984	James G. McCauley
1980-1993	John O'Connell
1984-1994	Evelyn Owens*
1985-1989	Nicholas Fitzgerald
1989-1997	Thomas McGrath -
1994-1997	Finbarr Flood
1997-2003	Kevin Duffy*

2004-2009	Raymond McGee
1998-2021	Caroline Jenkinson
2010-2018	Brendan Hayes
2015-2016	Kevin Foley*
2015-	Alan Haugh
2017-	Louise O'Donnell
2018-2023	Thomas Geraghty
2022-	Katie Connolly

** Later appointed Chairman*

Worker Members	
1946-1956	Thomas Johnson
1946-1969	Cathal O'Shannon
1956-1982	Patrick Doyle
1969-1984	Dominic F. Murphy
1973-1990	Séan O'Murchú
1980-1997	Seán Walsh
1982-1992	Christopher Devine
1984-2014	Padraigín Ní Mhurchú
1990-2000	Bernard Rorke
1997-2011	Noel O'Neill
2000-2004	Jimmy Sommers
2004-2011	Jack Nash
2011-2017	Jerry Shanahan
2011-	Linda Tanham
2014-2020	Andrew McCarthy
2015-2017	Louise O'Donnell
2017-2023	Arthur Hall
2017-	Clare Treacy
2020-	Paul Bell

Employer Members	
1946-1962	Peter Mc. McGloughlin
1946-1956	William M. Bruce
1956-1969	Ernest E. Benson
1962-1976	Joseph Quigley
1969-1975	Hugh Lennox
1973-1983	Redmond Power
1975-1984	Frank E. Tate
1976-1983	Henry J. Bambrick
1980-1982	Michael Collins
1983-1989	Arthur Shiel
1983-2001	Cormac P. McHenry
1985-1989	Kevin Heffernan*
1989-1994	Declan Brennan
1989-2003	Vincent J Keogh
1995-2003	Patrick Pierce and June 2005 to Sept 2005 in a temporary capacity
1997-1997	Declan Brennan temporary appointment Jan to June 1997
2001-2005	Eamonn Carberry
2003-2009	Robert Grier
2003-2010	John Doherty
2005-2024	Peter D.R. Murphy
2009-	Sylvia Doyle
2010-2016	Mary Cryan
2015-	Gavin Marie
2017-	Katie Connolly
2022-	Paul O'Brien

** Later appointed Chairman*

Appendix 2: Labour Court Statistics 1996 to 2021

Period	Referrals Received	Hearings	Recommendations Issued	Cases Settled prior to or at hearing	No. of Disputes	No. of man days lost
1996	724	560	522	31	30	114,585
1997	685	511	501	41	28	74,508
1998	701	502	466	26	33	37,374
1999	825	534	487	52	32	215,587
2000	779	504	447	48	39	97,046
2001	884	533	493	32	26	114,613
2002	940	590	547	44	27	21,257
2003	1,220	770	608	69	24	37,482
2004	1,484	788	601	98	11	20,784
2005	1,392	882	680	132	16	26,670
2006	1,364	952	679	149	10	7,352
2007	924	819	549	100	6	6,038
2008	1179	830	641	93	12	4,179
2009	1,433	878	638	235	23	329,706
2010	1,452	1,139	831	255	14	6,602
2011	1,254	1,043	774	245	8	3,695
2012	1181	938	691	192	5	8,486
2013	957	737	655	145	12	14,965
2014	849	698	568	104	14	44,015
2015	810	613	518	110	9	32,964
2016	1121	707	587	161	10	71,647
2017	1093	708	530	152	10	50,191
2018	1169	-	504	175	10	4,050
2019	1182	-	587	300	9	n/a*
2020	940	611	335	61	8	21,704

**The CSO were unable to establish the no. of days lost in Q4 2019 and therefore were unable to provide a total no. of days lost in 2019.*

Appendix 3: Acknowledgements to Part 2

Tom Geraghty, Deputy Chairman of the Labour Court

Kevin Foley, Chairman of the Labour Court

Kevin Duffy, Former Chairman of the Labour Court

Brian Sheehan, IRN

Rosanna Angel, IRN

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