

THE LABOUR COURT
LANSDOWNE HOUSE
LANSDOWNE ROAD
BALLSBRIDGE
DUBLIN 4

TEL: (01) 613 6666
FAX: (01) 613 6667



AN CHÚIRT OIBREACHAIS
ÁRAS LANSDÚN
BÓTHAR LANSDÚN
DROICHEAD NA DOTHRA
BAILE ÁTHA CLIATH 4

EMAIL: INFO@LABOURCOURT.IE
WEBSITE: WWW.WORKPLACERELATIONS.IE

CD/18/119

RECOMMENDATION NO. LCR21792

CCc-162061-17

INDUSTRIAL RELATIONS ACTS 1946 TO 2015
INDUSTRIAL RELATIONS ACT, 1990

PARTIES :

KILKENNY COUNTY COUNCIL

- AND -

FORSA

DIVISION :

Chairman :	Mr Foley
Employer Member :	Ms Connolly
Worker Member :	Ms Treacy



SUBJECT:

1. Alteration to agreed recruitment procedures.

BACKGROUND:

2. The case before the Court concerns a dispute between the Employer and the Union on behalf of its members employed in Kilkenny County Council. It is the Union's claim that the Employer unilaterally altered the terms of agreed procedures in a recent competition which resulted in the post becoming a specialised post. The Union contends that internal staff were disadvantaged due to the changes in criteria for the advertised post and as a result is seeking a competition confined to the Council when the opportunity arises again. The Employer rejects the Union's claim arguing that it applied

the correct protocols with regard to the competition in question. Furthermore, the Employer submits that the post was not specialised and was not advertised as such.

The dispute could not be resolved at local level and was the subject of a Conciliation Conference under the auspices of the Workplace Relations Commission. As agreement was not reached, the dispute was referred to the Labour Court on the 22nd May, 2018, in accordance with Section 26(1) of the Industrial Relations Act, 1990. A Labour Court hearing took place on the 11th September, 2018. The following is the Recommendation of the Court:

RECOMMENDATION :

The Court has given careful consideration to the written and oral submissions of the parties.

The matter before the Court relates to the holding of a competition for Grade 7 (competition B) with an initial assignment as an internal auditor. That competition was held at the same time as a more general competition for promotion to Grade 7 (competition A). Both competitions were open to the common recruitment pool which is an agreed mechanism. The operation of that mechanism in the case of both of these competitions meant that candidates from other local authorities and other public bodies could apply for the advertised positions.

In the event, 39 candidates applied for competition A and 12 candidates applied for competition B. All candidates for competition B were candidates for competition A.

The Council, in advertising for applications for competition B specified that, in addition to the essential requirements for application for a competition for grade 7, it would be desirable that candidates would have certain other specified qualifications, experience or skills suitable to the role of internal auditor.

Both parties agreed before the Court that the post of internal auditor was not an agreed 'specialist' post. The Trade Union contended that the specification of desirable attributes may have discouraged certain candidates from applying for that post. The Council maintained that the competition was run in accordance with relevant protocols.

On the basis of the written and oral submissions of the parties the Court finds that, in practice, the reference to desirable attributes translated into a potential allocation of 10 marks in the marking system to candidates with those desirable attributes. The total marks available in the marking system was 600. The Court finds that, in practice, those 10 marks could also be gained by candidates with other experiences and qualifications.

The Court finds therefore that the Council's decision to run a specific competition for the non 'specialist' post of internal auditor had no meaning in terms of the necessary qualifications for application for the post or in terms of the marking of candidates who presented for the competition. The Court does accept however that certain candidates may have been deterred from applying for the competition by the structure of the competition and the fact of specification of certain attributes as 'desirable', albeit the possession of those desirable attributes had no material benefit for any candidate in the running of the competition over and above other candidates who might have other

education relevant to the post of Grade 7 generally.

Of a total of 39 candidates for competition A, only 12 applied for competition B. Therefore, a maximum of 27 could be argued to have been so deterred.

The Court accepts that the effect of the competition's structure may have been to deter certain candidates. The Court consequently finds that the competition was not executed in accordance with what could be described as best practice given that its structure, in the context of the agreed framework for designating posts as 'specialist' posts, was not typical of grade 7 recruitment competitions in appearance albeit it was similar to such competitions in practice.

The Trade Union seeks that a post at Grade 7 should be reserved to potential candidates from the Respondent Council as a form of compensation for these events. This claim is made notwithstanding that candidates from across the common recruitment pool could have been affected by the structure of the recruitment competition for internal auditor. The Court finds that the remedy sought by the Trade Union is inappropriate in the context of the candidate pool contended to have been affected by the running of the impugned competition.

The Court therefore recommends that, where certain qualifications or attributes are considered desirable for non-specialist grade 7 posts in the future, any reference to such desirable attributes should be more clearly outlined in terms of the meaning of such a reference. In addition, prior to specification of such desirable attributes in a competition, comprehensive engagement should take place with the Trade Union such that all potential candidates are fully informed as to the meaning in practice of the specification of desirable attributes in a competition for non-specialist posts.

Signed on behalf of the Labour Court

Kevin Foley

1st October 2018

SC

Chairman

NOTE

Enquiries concerning this Recommendation should be in writing and addressed to Sharon Cahill, Court Secretary.