



Industrial Court

ANNUAL REPORT

2004-2005



***This report on the activities of the Industrial Court for the period
1 April 2004 to 31 March 2005 was sent by the Chairman of the Industrial
Court to the Department for Employment and Learning on 15 June 2005.***

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Chairman/Deputy Chairman's Review of the Year



Richard Steele
Chairman



Professor Barry Fitzpatrick
Deputy Chairman

2004-05 has been a year of preparation for significant legislative developments for the Court but relative inactivity in terms of statutory recognition applications. In relation to legislative developments, the original statutory recognition regime, as set out in Schedule 1 to the Trade Union and Labour Relations (NI) Order 1995 (as inserted by Article 3 of the Employment Relations (NI) Order 1999) has now been significantly amended by the Employment Relations (NI) Order 2004. There are now clearer powers on the part of the Court to require information from employers, and unions can gain some access to the bargaining unit at an earlier stage than the ballot.

The most important change involves potential “unfair practices” on the part of the employer or the trade union with a view to influencing the result of a recognition or derecognition ballot. The Court has had some experience of allegations about behaviour during the course of a ballot. Until now, there was merely a duty of co-operation on the employer, whereas now it is open to the Court to make a finding of “unfair practice” on the part of either side. This is a very different adjudicatory process to that which applies to the rest of the Court’s remit and consideration will have to be given to the issue of the degree of formality which the Court will have to employ in these circumstances.

The second major legislative development has been the extension of the Court's remit to include the Information and Consultation Regulations. The legislation came into effect immediately after the end of the financial year but much energy has already been expended in making preparations for the new jurisdiction. The Regulations only apply from 2005 to "undertakings" of 150 or more employees, from 2007 to undertakings of 100 or more employees and, from 2008, to undertakings of 50 or more employees.

As is always the case, the Court has benefited greatly from its close association with the Central Arbitration Committee. Both of us regularly attend the CAC quarterly meetings and we have had the opportunity to discuss this new jurisdiction with our colleagues both on the Committee and in the Secretariat. Once again, the Information & Consultation Regulations present a particular challenge to us as, unlike the statutory recognition procedures, they are governed by an EU Directive. Hence the Court will have to take on board the lessons learnt in relation to other areas of labour and equality law in terms of the significance of a Directive in interpreting the legislation which has been put in place to implement it.

In terms of case law, the Court has had a quiet year. Although five applications were received, two were 'repeat applications'. Despite previous experience of the Court in this regard, on two occasions the description of the 'proposed bargaining unit' in the union's application did not coincide with the description in the original 'letter of request' made to the employer, as required in the Schedule.

The *Diageo* application reinforces the point that statutory recognition is a multi-stage process. The case went through to a positive vote in favour of recognition leading to a declaration of recognition. For the first time, it appeared that the Court might have to consider the 'method of bargaining' stage in the process. However, the parties reached agreement just as the Court was ready to intervene. This is an outcome which is fully in keeping with the statutory scheme which is geared towards producing durable agreements. In this sense, the Court can view with satisfaction a situation in which its services are not required as the parties have reached a voluntary agreement amongst themselves.

During the year the Chairman gave presentations on the role of the Industrial Court in the statutory recognition process to the Communication Workers Union and the Northern Ireland Committee of the Irish Congress of Trade Unions.

Roles, Objectives, Targets and Results

Main Role

- ◆ Statutory applications for recognition and de-recognition of trade unions;
- ◆ Statutory applications for disclosure of information for collective bargaining;
- ◆ Disputes over the constitution of European Works Councils; and
- ◆ Voluntary arbitration

Objectives

- ◆ To manage the statutory adjudication process dealing with trade union applications to the Industrial Court in an efficient, professional, fair and cost effective manner;
- ◆ To achieve outcomes which are practicable, fair, impartial, and where possible, voluntary;
- ◆ To give a courteous and helpful service to all who approach us. We aim to publish clear, accessible and up to date guidance and other information on our procedures and requirements, and will answer enquiries concerning our work, although we do not offer legal advice;
- ◆ To provide an efficient service, and to supply assistance and decisions as rapidly as is consistent with good standards of accuracy and thoroughness, taking account of the wishes of the parties and the statutory timetables; and
- ◆ To develop an Industrial Court secretariat with the skills, knowledge and experience to meet operational objectives.

Performance Measures and Targets (Based on Objectives)

- ◆ Proportion of applications for which notice of receipt is given and responses sought within one working day (target: 95%)

100% of applications received a notice of receipt and response sought from employer within one working day.

- ◆ Proportion of written enquiries and complaints to receive a substantive reply within three working days (target: 90%) and the remainder to be acknowledged within three working days and a substantive reply within ten.

100% received a substantive reply within 3 working days.

- ◆ To produce an Annual Report on the work of the Industrial Court in 2004/2005.

Report sent to the Department for Employment and Learning on 15 June 2005.

Membership of the Industrial Court 2004-2005

Chairman: Mr Richard Steele

Deputy Chairman: Professor Barry Fitzpatrick

**Members with
Experience as
Representatives of
Employers**

Mr George McGrath
Retired Deputy Chief Executive
BT (NI)

Mr W F Irvine McKay
Retired Chartered Accountant and Stockbroker

Mr Maurice Moroney
Retired Employment Relations Manager
Ulster Bank Ltd

Mr Mervyn Simpson
Self Employed Business Consultant /
Ex Business Development Manager
Du Pont

Ms Caroline Whiteside
Personnel Manager
Ulster Carpet Mills Ltd

**Members with
Experience as
Representative of
Workers**

Mr Joe Bowers
Retired Regional Officer
MSF

Mr Bob Gourley
Regional Officer
USDAW

Ms Avril Hall-Callaghan
General Secretary
UTU

Mr Jim McCusker
Retired General Secretary
NIPSA

Mr Peter Williamson
Irish Regional Secretary
AMICUS

Mrs Fiona Cummins
Regional Industrial Organiser for Women
And Equality
ATGWU

The Industrial Court's Caseload in 2004-2005

The Industrial Court has dealt with the following applications during the period 1 April 2004 to 31 March 2005:

PARTIES:	CASE REF NO:
ATGWU and J.E McCabe Ltd	IC22/2003
AMICUS and Diageo Baileys Global Supplies	IC24/2004
AMICUS and Diageo Baileys Global Supplies	IC25/2004
AMICUS and Atlas Communications NI Limited	IC26/2004
AMICUS and Atlas Communications NI Limited	IC27/2004
TSSA and Knock Travel	IC28/2004

Specific decisions relating to each application can be found on the Industrial Court's website: www.industrialcourt.gov.uk

Review of Cases

IC24/2004 - AMICUS AND DIAGEO BAILEYS GLOBAL SUPPLIES

The Union, in its initial letter of request for recognition to the Company described the proposed bargaining unit as 'all employees', which was a different description to that given in its application to the Industrial Court. The Court considered that given this discrepancy it was not appropriate to use the information provided in the application form to determine whether the proposed bargaining unit, as set out in the letter of request, satisfied the validity and admissibility tests in the Schedule. In these circumstances, the Court concluded that the application must be rejected.

IC 25/2004 - AMICUS AND DIAGEO BAILEYS GLOBAL SUPPLIES

Following the Court's decision that the earlier application by Amicus in respect of Diageo Baileys Global Supplies could not be accepted, the Union submitted another application for recognition. Due to conflicting information supplied by both Parties in respect of the total number of employees in the Union's proposed bargaining unit, the panel instructed the Case Manager to conduct a Membership/Majority Likely to Support check. The results showed that Union membership of the proposed bargaining unit was 20%, and a petition in support of the Union's application for recognition showed a further 25.7% of non members signing. Based on this information, the Court decided that the majority of employees within the Union's proposed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on their behalf. In arriving at this decision the Court considered an application to the Central Arbitration Committee in respect of *GMB and G Plan Upholstery Ltd* which concluded *"the Panel must make a judgement that the majority of employees would be likely to favour recognition of the Union. This prediction can never be precise. In the Panel's experience, a level of support and membership just below the majority are often indicative of circumstances where in a subsequent ballot, it is shown that a majority of employees favour*

Union recognition.” The Court accepted the application, and it was decided at a subsequent hearing that the Union’s proposed bargaining unit was appropriate.

A membership check was conducted by the Case Manager on 15 October 2004 and the Parties were notified that on this date the Union had 54.5% membership within the bargaining unit. However, following this check, it was made known to the Court that arrangements for workers to pay their union subscriptions directly through the employer had not actually been set up, and therefore many of those workers constituting the 54.5% were not in fact members of the Union, as the Union had not been receiving subscriptions from those individuals. This new information rendered the Case Manager’s report incorrect. In light of the new evidence, the correct percentage of Union membership on the specified date was only 6.06%. Parties were given an opportunity to comment on a revised Case Manager’s report and asked, without prejudice to a decision of the Court under Paragraphs 22 and 23 of the Schedule, if a ballot was ordered, what their preference would be regarding the form of ballot. By a decision dated 4 November 2004 the Court decided that a secret ballot should be arranged, and conducted by a combination of workplace and postal voting.

The Qualified Independent Person appointed by the Court to conduct the ballot notified the Industrial Court of the result, which showed the number of workers voting in favour of union recognition as 76.5% in the bargaining unit. The Court accordingly awarded a declaration of recognition on 17 December 2004.

The Parties were unable to agree on a method of collective bargaining during the 30 day time period, and the Court received a request for the Court’s assistance under Paragraph 30 of Schedule 1A, with regard to establishing a method of collective bargaining. This was the first time the Industrial Court had been asked to become involved at this stage in the statutory process. The Court intended to arrange an informal meeting to try and progress the matter, but before it could do so, received notification from both parties that they had been able to agree on a method of bargaining, and that the Court’s assistance under Paragraph 30 was no longer necessary.

IC26/2004 - AMICUS AND ATLAS COMMUNICATIONS NI LTD

An application for statutory recognition was received from AMICUS in respect of Atlas Communications NI Ltd. The Court noted a discrepancy between the Company’s name and the name used by the Union on the application form (Netcom/Atlas Communications NI Ltd), but on this occasion did not take this into consideration when reaching its decision. In its application to the

Industrial Court for recognition the Union described the proposed bargaining unit differently to their initial letter of request to the employer. The Court considered this discrepancy and did not consider it appropriate to use the information provided in the application form to determine whether the proposed bargaining unit, as set out in the letter of request, satisfied the validity and admissibility tests in the Schedule. The Court's decision was that the application was inadmissible and therefore could not be accepted.

IC27/2004 - AMICUS AND ATLAS COMMUNICATIONS NI LTD

Following the Court's decision that Amicus' earlier application for statutory recognition in respect of Atlas Communications NI Ltd could not be accepted, the Union submitted another application to the Industrial Court, which was accepted by the Court on 22 November 2004. The appropriate bargaining unit was decided at a hearing on 26 January 2005, and following a membership check it was found that the proportion of Union members in the Bargaining Unit was 50%. The Court was not, therefore, satisfied that a majority of the workers constituting the Bargaining Unit were members of the Union. The Parties were subsequently informed that under Paragraph 23(2) of the Schedule the Court intended to arrange for a secret ballot in which the workers in the Bargaining Unit, would be asked whether they want the Union to conduct collective bargaining on their behalf. Both parties were invited to make submissions on the form of the ballot and based on these submissions the Court decided that in the circumstances it would be most appropriate for the ballot to take place by postal voting.

This case is presently ongoing and the current position is that following an informal meeting held between the Parties, the Chairman and the Case Manager, a number of issues regarding access arrangements for the ballot were agreed. The Court was then asked by the Union to make a decision on a few issues which were still outstanding and following this a Qualified Independent Person has been appointed to conduct the postal ballot.

IC28/2004 – TSSA AND KNOCK TRAVEL

The Union submitted an application to the Industrial Court dated 24 November 2004 that it should be recognised for collective bargaining purposes by Knock Travel (the Undertaking). In their application the Union stated that the Undertaking employed 21 people, but in their response to the Court the employer stated that only 19 people were employed. Paragraph 7 of the

Schedule stipulates that the Union's request is not valid unless the employer, with any associated employers, employs (a) at least 21 workers on the day the employer receives the request, or (b), an average of at least 21 workers in the 13 weeks ending with that day. The Court decided that the Case Manager should carry out further checks and as a result it found that on the day the employer received the request the Undertaking employed 19 people and, furthermore when an average of the number of workers employed in the 13 weeks was calculated it was found to be 20.9. Therefore, as Paragraph 7(1)(b) of the Schedule was not satisfied the Court concluded that the application was not admissible and was therefore not accepted.

The Court, in its decision, had to consider whether or not the Proprietor of the Undertaking, acting as sole trader, and her husband, were "workers" for the purposes of Article 2(2) of the Trade Union and Labour Relations Order 1995. The Proprietor as sole trader simply drew from the after tax profits of the Undertaking, and the Case Manager was informed that the Proprietor's husband was an officer of the Undertaking in name only for the purposes of travelling to conferences with his wife. It was found that they could not be considered to 'perform personally any work or services for another party.' Since the Court was unable to find any other party to the contract, the Proprietor and her husband could not be considered as workers for the purposes of Article 2 of the 1995 Order. They could therefore not be considered in the calculation of the number of workers employed.

Resources

Industrial Court

Number of Members		13
Of which:	Chairman and Deputy Chairman	2
	Members	11

Staffing

Number of Staff (part-time)		4
Of which:	Management/Operations	2
	Administration	2

Financial Information

Fees and Expenses of Chairmen and Members	£43,944.42
Staff Costs	£89,320.58
Other Costs (inc. travel and accommodation)	£10,753.42
Total	£144,018.42

Staff and Contact Details

Staff (as at 31 March 2005)

Secretary:	Vacant
Senior Case Manger:	Mrs Joanna Calixto
Case Manager:	Miss Brenda Slowey
Head of Administration:	Mr Paul Cassidy
Administrative Support:	Miss Áine Magee

Contact Details

**The Industrial Court
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BT2 8FD**

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E Mail: enquiries@industrialcourt.gov.uk
Website: www.industrialcourt.gov.uk

User Satisfaction

If you are asked for your views on any aspect of our service, we would appreciate your co-operation. However, if you have any comments, whether of satisfaction, complaint or suggestion, please do not hesitate to contact us. If you are dissatisfied with any aspect of our service, please let us know so that we can rectify the matter/s. If you cannot resolve your problem/s with the person who dealt with you originally, please ask to speak to the Secretary who will investigate your complaint.

If you wish to complain or you have any other comments, please write to or contact:

Mrs Joanna Calixto
Senior Case Manager
Industrial Court
Adelaide House
39-49 Adelaide Street
BELFAST
BT2 8FD
Tel No: 028 902 57600
E-mail: joanna.calixto@delni.gov.uk

In the event of any complaint, we hope that you will let us try to put things right but if necessary you can write to your MLA, who can tell you how to have your complaint referred to the Parliamentary Commissioner for Administration (the Ombudsman).



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