

Civil Service Conciliation and Arbitration Scheme

General Council Report 1327

(Meeting/s of 29 October 1997, 18 December 1997)

Privilege Days/Annual leave

Civil Service Conciliation and Arbitration Scheme

General Council Report No: 1327

(Meetings of 30 October 1996, 27 November 1996, 29 January 1997, 26 February 1997, 26 March 1997, 25 June 1997, 29 October 1997, 18 December 1997 and 25 February 1998).

Official Side Claim to convert Privilege Days to annual leave and Staff Side Claim for a minimum of four weeks annual leave.

1. The Official Side indicated that the purpose of their claim was to address the public criticism about the unavailability of services from many Government Departments and Offices on Easter Tuesday and the first "normal working day" after St Stephens Day. This criticism has arisen in recent years because, in some Departments and Offices, **all staff** are allowed to take their privilege days on the same day, resulting in their offices being closed entirely on those days. The recent practice of placing "opening arrangements" advertisements in the National Newspapers at Christmas and Easter was initiated in response to those criticisms.

2. The Official Side said that the concerns expressed could be positively addressed if the Privilege days were converted to annual leave. This would give Departments and staff greater flexibility as to when the two days in question might be taken.

3. The Staff Side said that they would be strongly opposed to the claim for the conversion of the Privilege days to annual leave if it was also the Official Side's intention to use the claim as a means of satisfying the terms of the EU Working Time Directive. The Directive, amongst other things, provided for a minimum annual leave entitlement of four weeks (20 days based on a five day working week) and the Staff Side considered that this would give the relevant staff, (those with a current annual leave allowance of either 18 or 19 days) an entitlement to either one or two days additional annual leave, exclusive of the privilege days, when the Directive arrangements were brought into effect. The Staff Side, therefore, lodged a

claim for a minimum of 20 days annual leave. They also indicated that if their claim was conceded, in advance of consideration of the Official Side Claim for the conversion of the Privilege Days to annual leave, they would not be opposed, in principle, to the possibility of converting the Privilege Days to annual leave to address the Official Side's concerns about the availability of services to the public.

4. The Official Side said that they considered that the two claims were inter-related and that they were not prepared to deal with them separately. Following discussion of the claims, both sides acknowledged that the question of whether or not the privilege days could be treated as annual leave, for the purposes of complying with the EU Working Time Directive, was essentially a legal issue. It was also acknowledged that, in the absence of agreement on this issue, their respective claims would probably have to be resolved by a third party. In this connection, the Department of Enterprise, Trade and Employment confirmed that under the Organisation of Working Time Act, 1997, the Staff Side would have access to the Labour Relations Commission/Labour Court to resolve issues arising from the provisions of the EU Working Time Directive. However, if, for example, the Staff Side decided to seek redress in the LRC/Labour Court, on the basis that the Official Side's claim for the conversion of the privilege days to annual leave would have the effect of breaching the minimum annual leave provisions of the EU Working Time Directive, this could only be done **after 1 April 1999**, when the 20 day threshold was due to come into effect. The issue could also be processed to a third party under the Conciliation and Arbitration scheme, in advance of that date. It was acknowledged that, in effect, the Staff Side could pursue the issue to a conclusion under the Conciliation and Arbitration Scheme and via the LRC/Labour Court (but only after 1 April 1999 in the case of the latter).

5. At the meeting of the General Council of 29 October 1997 the claims were considered further in the light of the findings of the Adjudication Board under the Conciliation and Arbitration Scheme which issued recommendations on the restructuring of grades represented by the Civil and Public Service Union (CPSU) under Clause 2 (iii) A of the PCW Pay Agreement. In relation to annual leave the Adjudication Board recommended that :-

"in the case of staff who currently have an annual leave entitlement of 18 days two additional days annual leave should be offered. In the case of staff who currently have an annual leave entitlement of 19 days one additional days leave should be offered. This adjustment should be implemented in a way which does not result in further payroll costs. In making this

proposal, the Board does not believe that this concession should form the basis for consequential claims by other groups who currently have an annual leave entitlement of 20 days or more. Nor should it result in claims for additional leave in the event of the statutory minimum being increased to 20 days."

6. The recommendations of the adjudication board were accepted by both the Official and Staff Sides' and the increase in annual leave allowances were implemented, for the relevant CPSU grades, with effect from the 1997/98 leave year. At the meeting of 29 October 1997, the Official Side indicated that, following further consideration of their position and in the light of the adjudication board's recommendations on annual leave, they proposed (i) to withdraw the claim for the conversion of the Privilege Days to annual leave from the General Council Agenda, and (ii) to issue a new instruction to Departments, in due course, to ensure that adequate services are available to the public at Christmas and Easter. The Official Side indicated that Departments will be advised that arrangements must be made to ensure that a service is available to the public on both the Thursday before and the Tuesday after Easter and on the first "normal working day" after St. Stephen's day. If, because of these arrangements, certain staff are not able to avail of the privilege day, they will be allowed an alternative day off within a month.

7. As regards the claim from the Staff Side for a minimum of 20 days annual leave, the Official Side indicated that, having regard to the Arbitration Board finding on the annual leave entitlement of the CPSU grades and in order to avoid consequential anomalies in the agreed annual leave banding arrangements which have served both sides well over a long period of time, they would be prepared to make the following offer :-

- (a) to change the 18 days rising to 19 days annual leave band to a flat rate of 20 days annual leave for **all staff in the band**, and
- (b) to increase, to 20 days, the minimum annual leave threshold for grades above clerical level with an initial annual leave allowance of less than that amount.

The proposed concessions at (a) and (b) above were being offered strictly on the basis of acceptance by the Staff Side of the same conditions as stipulated by the Arbitration Board in the case of the CPSU grades, i.e. that there would be no additional payroll cost, that the adjustments should not form the basis for consequential claims in respect of anyone who currently has an annual leave entitlement of 20 days or more and that this will not result in claims for additional leave when the statutory minimum is increased to 20 days. Following subsequent discussions on the matter, the Official Side agreed that the increase in annual leave could be implemented with

effect from the 1997/98 leave year. In this context, it was accepted that, where a leave year was a calendar year, the leave year ending on 31 December, 1997, would be regarded as a leave year coming within the definition of the "1997/98 leave year".

8. The Official Side said that they were unable to offer any adjustment in the case of staff with a flat 18 days annual leave allowance (viz, support services staff mainly represented by FUGE). They were not of the view that the same considerations regarding avoidance of anomalies arose in respect of that category and they did not consider that it was possible to apply a minimum 20 days annual leave to them without adding to payroll costs. Staff on a flat 18 days annual leave would become entitled to 20 days annual leave from the 1999/2000 leave year under the Organisation of Working Time Act, 1997.

9. Further discussions took place outside of council on the offer made by the Official Side and the proposals in relation to support services staff in particular. The Staff Side indicated that while the offer made was a welcome improvement on the Official Side's previous position, they had difficulties with the Official Side's stance in relation to support services staff who had an annual leave allowance of 18 days. The effect of the Official Side's offer was to discriminate unfairly against lower paid staff in the civil service. The Staff Side said that if support services staff were granted 20 days annual leave, with effect from the 1997/98 leave year, they would be prepared to give a commitment to full flexibility and cooperation with the implementation of the additional annual leave to ensure that additional costs would be minimised or, as is more likely, avoided entirely. The Staff Side also indicated that they would not be prepared to agree to less favourable arrangements for the granting of additional annual leave to support services staff than the offer already made to other staff with annual leave allowances of less than 20 days.

10. Following further discussion, it was agreed that the offer made, as set out in paragraph 7, was broadly acceptable to the Staff Side in respect of the grades covered by the offer, subject only to the question of increasing the annual leave allowance of support services staff to 20 days per annum with effect from the 1997/98 annual leave year being referred to adjudication for a decision.

11. The Official Side indicated that they were agreeable to the support services staff's case being referred to the Adjudicator on the basis that while the claim does not involve "significant extra expenditure" (par. 67 of the Conciliation and Arbitration scheme), they considered that some cost would arise, if the claim was conceded. The Official Side acknowledged that it is

not possible to quantify this cost precisely as it depends primarily on decisions taken at local level regarding the necessity for substitution for cleaners, services officers etc.

12. Accordingly, this report, recording agreement (i) on the offer made by the Official Side, and (ii) to the referral of the support services staff's case for additional annual leave to the Adjudicator for resolution, was adopted on 25 February 1998.

This report was adopted on 25 February 1998