

Reference No: E103/2/79; **Date:** 23/04/93

23/04/1993 LP:- Re: Annual Leave Allowance of Clerical Assistants promoted to Executive Officer

Dear Personnel Officer,

I am directed by the Minister for Finance to refer to civil service Arbitration Report 575 which found that where a serving Clerical Officer secures appointment to the position of Executive Officer (whether departmentally or by open or confined competition), all of the appointee's prior service in the civil service should be reckoned as Executive Officer service for the purpose of progressing to the maximum annual leave allowance of the Executive Officer grade (21 days). Sanction for the implementation of the findings of this report were conveyed in circular 5/92.

I refer also to General council Report 1227 in which it was agreed that Clerical Assistants, in addition to their existing entitlement to compete at open EO competitions, would also be allowed to compete at interdepartmental and departmental EO competitions. A confined EO competition, for which CAs were eligible, has already been held (Circular 11/92).

In view of the fact that the Executive Officer grade is now a direct promotion grade for Clerical Assistants, it has been decided that the terms of Circular 5/92 should, with effect from the current leave year, be extended to Clerical Assistants who secure appointment as Executive Officers through departmental, open or confined competition. Accordingly, the service as Clerical Assistants of such promotees should be reckoned as service at Executive Officer level for the purpose of progressing to the maximum annual leave allowance of 21 days.

Yours sincerely

Michael Scanlan
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Extn. 3202

Civil Service Arbitration Report

Report 575

Claim by the Public Service Executive Union that Executive Officers who have been promoted from the grade of Clerical Officer be given a leave allowance of 21 days from the date of commencement in their new grade.

Terms of Reference

To consider and submit a finding on a claim by the Public Service Executive Union that Executive Officers who have been promoted from the grade of Clerical Officer be given a leave allowance of 21 days from the date of commencement in their new grade.

1. The claim was submitted to the Board in accordance with the provisions of the Scheme of Conciliation and Arbitration for the civil service. The parties had agreed in advance to dispense with oral advocacy and the claim was considered by the Board in private, on 10 June 1991. The Finding was given on 27 June 1991.

Submission on behalf of the Union

2. The Union outlined the basis of the claim. Clerical Officers promoted to Staff Officer received an automatic annual leave allowance of 21 days in their new grade. However, Clerical Officers promoted to Executive Officer were given an annual leave allowance of 21 days only if they had held an annual leave allowance of 19 days for at least five years. As the grade of Executive Officer was a higher grade than that of Staff Officer this was an anomaly. The justification for this anomaly was that the Executive Officer was an entry grade whereas the Staff Officer grade was a promotion grade and as such, had a single leave allowance while both grades were in the same leave "band". A similar claim had come before the Arbitration Board in 1980 (Arbitration Board Report 438) where the Chairman had ruled that principles contained in Circular 21/76 had been implemented for many years past, and that it was not appropriate to alter them save for compelling reasons which had not been considered to exist in the particular case.

3. The Union referring to the 1980 claim argued that the point had not been made then that for those promoted from Clerical Officer to Executive Officer, the Executive Officer was a promotion grade and there was no apparent reason to apply provisions to them which were designed to reflect the fact that their new grade happened to be an entry grade also. Because this point had not been made it was contended that the Chairman could not have taken account of this argument in his findings.

4. Another development since 1980 was that the annual leave banding system had been formalised to an even greater extent in a letter from the Official Side to the Staff Side in 1988. This document showed that the Staff Officer and Executive Officer annual leave allowances were firmly placed within the same "band". Therefore, concession of the claim would not in any way interfere with the system of "banding" but would rather remove an anomaly which existed within one particular "band".

5. The Union maintained that it was neither equitable nor logical to have a situation where it was more advantageous for staff to accept promotion to a lower grade i.e. Staff Officer rather than a higher grade i.e. Executive Officer.

6. The Board was asked to concede the claim.

Submission on behalf of the Official Side

7. The Official Side stated that the present claim was in reality a re-activation of the unsuccessful 1980 claim, advanced on essentially the same grounds as previously, viz a comparison between the flat-rate leave allowance applicable to Staff Officers (now 21 days) and the graduated allowance (19 to 21 days) applicable to Executive Officers. The only difference between the claims was that the new claim sought to have officers promoted from Clerical Officer to Executive Officer advance to the maximum level immediately, regardless of the length of their prior service, whereas the 1980 claim required 5 years prior service as a minimum.

8. The Official Side rejected the Union contention that the Board had not previously taken account of the fact that for those Clerical Officers who secured appointment to Executive Officer by promotion, the Executive Officer grade was, like staff Officer, a promotion grade. It was patently clear from the text of Arbitration Report 438 that the Chairman fully understood all the substantive facts of the case, including the fact that appointment to Executive Officer constituted a promotion for the claimants. On this basis it was quite unreasonable to suggest that the 1980 finding would have been materially affected if the Staff side presentation had been different in style but not in substance.

9. The Official Side further rejected the Unions contention that the 1988 correspondence between the Official Side and civil service General Council Staff Panel had any direct bearing on the substance of the present claim. The three grades referred to in the claim (Clerical Officer, Staff Officer and Executive Officer) were not in any way affected by the variations to the annual leave system agreed in that correspondence.

10. The Official Side stated that concession of the claim would have repercussive effects throughout the civil service generally, in respect of all "dual entry" grades (viz grades to which appointments may be made either by open or confined competition).

11. The Board was asked to reject the claim.

Findings

12. The Board having considered the claim and having failed to make unanimous findings in relation to same, the following were the findings of the Chairman:

(a) The claimants have identified a clear anomaly which should be corrected even if this constitutes a small deviation from the strict rules relating to civil service annual leave. So that the curing of one anomaly will not lead to the creation of another however, it is considered that the claim should be conceded to Officers who have served for five years in a grade of lesser entitlement.

(b) Since the signing of Arbitration Report 438 the Executive Officer can now be a straight promotional grade from Clerical Officer. This further reinforces the promotional aspect of the grade though of course Clerical Officers can continue to become Executive officer by the traditional routes referred to in that Arbitration Report.

(c) In reviewing Arbitration Report 438 it is considered that undue importance was attached to the comparison between a Staff Officer promoted to Executive Officer on the one hand and a Clerical Officer promoted to Executive Officer on the other hand. It would not appear that any injustice would be caused to a Staff Officer promoted to Executive Officer if this claim were conceded subject to the five year limitation whereas the rejection of the claim perpetuates an unjust anomaly adversely affecting the Clerical Officer promoted to Executive Officer.

(d) There are compelling reasons therefore for deviating from Arbitration Report 438 and after such a long lapse of time the claimants were entitled to have the report reconsidered.

(e) The interlocking arrangements between Clerical Officer, Staff Officer and Executive Officer are not to be found as between any other grades in the civil service. Accordingly concession of this claim can have no repercussive effects.

(f) It is therefore recommended that where a serving Clerical Officer secures appointment to the position of Executive Officer (either departmentally or through open or confined competition), all of the appointee's prior service in the civil service should be reckoned as Executive Office service for the purposes of progression to the maximum annual leave allowance of the Executive Officer grade. This arrangement should apply with effect from the commencement of the current (1991/92) leave year, and the annual leave allowance of serving Executive Officers should be adjusted accordingly, where appropriate.

Hugh Geoghegan