

THE LABOUR COURT
TOM JOHNSON HOUSE
HADDINGTON ROAD
DUBLIN 4

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



AN CHÚIRT OIBREACHAIS
TEACH THOMÁS MAC SEÁIN
BÓTHAR HADDINGTON
BAILE ÁTHA CLIATH 4

E-MAIL: INFO@LABOURCOURT.IE
WEBSITE: WWW.LABOURCOURT.IE

CD/09/830

DECISION NO. DEC101

INDUSTRIAL RELATIONS ACTS, 1946 TO 2004
SECTION 57(1), INDUSTRIAL RELATIONS ACT, 1946

PARTIES :

IRISH SECURITY INDUSTRY ASSOCIATION (ISIA)
(REPRESENTED BY IRISH BUSINESS AND EMPLOYERS' CONFEDERATION)

- AND -

NATIONAL EMPLOYMENT RIGHTS AUTHORITY (NERA)

DIVISION :

Chairman : Ms Jenkinson
Employer Member : Ms Doyle
Worker Member : Mr O'Neill

SUBJECT:

1. Applicability of Security Industry ERO to Door Supervisors

BACKGROUND:

2. The dispute concerns whether the Security Industry Joint Labour Committee (JLC) applied to a particular category of workers, in this case Door Supervisor Personnel (DSP). The ISIA contends that it does not apply.

The ISIA referred its case to the Labour Court on the on the 29th October, 2009, in accordance with Section 57(1) of the Industrial Relations Act, 1946. A Labour Court hearing took place on the 28th January, 2010,

ISIA'S ARGUMENTS:

3. 1. The current Employment Regulation Order (ERO) S.I. No. 500/2006 has not changed since the first ERO S.I. No. 20/2000 issued. It applies to workers who are security guards on sites under contract to security companies. It does not apply to the type of workers concerned who would be commonly known as "Bouncers".

NERA'S ARGUMENTS:

4. 1. It is NERA's understanding that DSP are security operatives within the plain and literal meaning of the definitions as set out in Part 1 of the current ERO. They perform a range of "security" and "surveillance" functions for the protection of persons and property.

DECISION :**Introduction**

This matter came before the Court by way of an application by the Irish Security Industry Association (the Applicant) for a decision on whether the Security Industry Joint Labour Committee (JLC) and the Employment Regulation Orders (ERO) (Security Industry Joint Labour Committee), 2006 [S.I. No. 5000 of 2006] operate as respects workers in the industry known as Door Supervisors. The application was made pursuant to Section 57(1) of the Industrial Relations Act 1946.

The application arose against the background of an assertion by an Official of the National Employment Rights Authority (NERA) to enforce the application of the provisions of S.I. No. 5000 of 2006 in the case of Door Supervisor Personnel (DSP) employed in the contract security industry. In these circumstances the Court invited NERA to appear before it and make submissions as a *legitimus contradictor* in the proceedings.

The Security Industry JLC

The application was made by letter from the Applicant dated 23rd October, 2009, and relates to the Security Industry JLC. The Security Industry JLC was established by S.I. No. 377/1998 and the definition contained in the Schedule to the Establishment Order, which had been replicated in the first ERO S.I. No. 20/2000 and has remained "*verbatim*" in subsequent EROs, up to and including the current ERO defines its scope at Part 1 as follows: -

"Workers to whom this Schedule applies

Security operatives, namely persons employed to provide a security service as described hereunder for contract clients of their employer, and performing one or more of the functions set out hereunder.

Meaning of "security service":

A service of a security or surveillance nature, the purpose of which is to protect persons and property.

Primary functions of security operatives:

The prevention or detection of theft, loss, embezzlement, misappropriation or concealment of merchandise, money, bonds, stocks, notes or other valuables.

The prevention or detection of intrusion, unauthorised entry or activity, vandalism or trespass on private property either by physical, electronic or mechanical means.

The enforcement of rules, regulations and policies related to crime reduction.

BUT EXCLUDING

Workers affected by an Employment Agreement, that is “an agreement relating to the remuneration or the conditions of employment of workers of any class, type or group made between a trade union of workers and an employer or trade union of employers or made at a meeting of a registered joint industrial council between members of the council representative of workers and members of the council representative of employers.” Industrial Relations Act, 1990, Section 46.

Workers to whom an Employment Regulation Order made as a result of proposals received from another Joint Labour Committee applies.

Managers, assistant managers and trainee managers”.

Position of the parties

The Applicant contended that when the Order was first made in 1998, fixing the statutory minimum rates of remuneration and regulating the statutory conditions of employment of workers in relation to whom the JLC operates, no representations were made to include a separate security discipline, called Door Supervisors (or Bouncers as they were known at the time).

At the time of the negotiations for the establishment of the Security Industry JLC this discipline was not represented in the negotiations and no employer group or Trade Union representative made mention of this category of employee.

The Applicant told the Court that it is the trade association representing the full spectrum of security services of all sizes in Ireland. It was founded in 1972 and represents companies involved in the following eight areas:

- Guarding Services (Security Officers, Retail Security, Mobile Patrols, Alarm Responses, Surveys etc.)
- Transport (Cash-in-Transit)
- Security systems (Intruder and Fire Alarms, CCTV and Access Control)
- Alarm Receiving Centres
- Event and Entertainment (Event Security and Door Supervision)
- Physical Security (Supply of Locks/Safes/Gates/Barriers/Grilles etc.)
- Security Consultants
- Private Investigation

The Applicant stated that the only category represented and involved in the negotiations for the establishment of the JLC were the Guarding Services as described above.

The Applicant held that Section 37 of the Industrial Relations Act, 1946 restricts the Court from making an establishment order for any workers unless it is satisfied that the application "...is made by an organisation or a group of persons claiming to be representatives of such workers..." and that such "claim is well founded." The applicants for the establishment order for the Security Industry JLC did not so claim in respect of DSP workers or their employers. Furthermore,

- (i) no "substantial agreement between (DSP) workers and their employers to the establishment of a joint labour committee" existed within the meaning of section 37(b)(i), and
- (ii) the Court did not have any information before it which would have allowed it to assess the matters raised by section 37(b)(i) and (ii) as regards DSP workers, so
- (iii) the conditions specified by section 37(b) could not have been satisfied in respect of DSP workers.

Therefore the JLC could not make valid proposals to the Court to regulate the remuneration or conditions of employment of DSP workers and the Court could not make an order regulating such matters.

In 1998, the Door Supervisor sector of employees, was very loosely operated, were not represented by the main security employer representative bodies, they were not meaningfully organised by a trade union and did not form a significant body of workers in the employ of the Industry.

Since the introduction of the Private Security Services Act, 2004 the DSP sector have been recognised as a separate discipline within the security industry and since then separate licensing for both employer and employee have been imposed by the Private Security Authority. Under the Act, the criteria for DSP licensing requires separate certified training and individual Door Supervisors cannot perform duties of a security guard unless they apply for a Security Guard Static License and undergo the relevant training.

The 2004 Act which established the Private Security Authority, defines the term "Door Supervisor" as follows:

"door supervisor" means a person who for remuneration, as part of his or her duties, performs any of the following functions at, in or in the vicinity of any premises or any other place where a public or private event or function is taking place or is about to take place:

- (a) *controlling, supervising, regulating or restricting entry to the premises or place,*
- (b) *controlling or monitoring the behaviour of persons therein,*
- (c) *removing persons therefrom because of their behaviour;*

The Applicant contends that this definition is different from that of "security operative" contained in the Security Industry ERO. Furthermore, it points out that the licensing requirements under the 2004 Act are entirely different for the two categories of

workers.

NERA submitted that Employment Regulation Orders are promulgated in the form of a statutory instrument and must be interpreted having regard to the rules of interpretation of statute. It held that the definition of worker to whom the schedule applies namely *“persons employed to provide a security service” “for contract clients of their employer”* whose primary function is *“the prevention or detection of intrusion, unauthorised entry or activity, vandalism or trespass on private property either by physical, electronic or mechanical means.”*

NERA held that the definition is sufficiently clear and unambiguous and on a literal, plain reading of the provisions of the Order this definition precisely describes the duties and functions of Door Supervisors engaged in security duties for contract clients of their employer.

Furthermore, NERA submitted that having regard to Section 19 of the Interpretation Act, 2005, the Court in making its decision may have regard to applicable definitions and interpretations in S.I. 500 of 2006 and its parent Act – the Industrial Relations Act, 1946 but not to definitions or interpretations which form part of the Private Security Services Act, 2004.

Section 19 of the Interpretation Act, 2005 provides;

“A word or expression used in a statutory instrument has the same meaning in the statutory instrument as it has in the enactment under which the instrument is made.”

NERA pointed out to the Court that the JLC specifically excluded three classes of workers from the scope of the Order and has not made explicit provision of for the exclusion of Door Supervisors.

Conclusions of the Court

The Court has carefully considered the submissions made by the parties in this application.

The Industrial Relations Act, 1946 empowers the Labour Court to set up Joint Labour Committees whose purpose is to regulate conditions of employment and minimum rates of pay for all workers engaged in the type of activity of which the members of the committee are representative.

The net question before the Court is whether the definition of ‘security operative’ contained in the Establishment Order can properly be construed so as to encompass Door Supervisors.

The Establishment Order is a statutory instrument and is in the nature of secondary legislation. Accordingly the order must be construed by the normal canons of statutory interpretation, many of which are now codified in the Interpretation Act 2005. In considering the meaning to be ascribed to any provision of the Order the Court must have primary regard to the words and expressions used therein and cannot add to or to delete from the text so as to produce what it regards as a fairer result. This approach was explained by Barr J. in PJ v JJ [1992] ILRM 273 as follows: -

“A Court is entitled to interpret legislation so as to resolve any ambiguity or obvious error therein. However where the statute is clear in its terms, the Court has no power to extend its provisions to make good what is perceived to be a significant omission. If the Court took that course it would entail going beyond statutory interpretation and into the realm of lawmaking, a function which under the Constitution is reserved to the Oireachtas”

It is equally well settled that meaning is to be attributed to words by reference to the context in which they appear and not in isolation. It was submitted by NERA that the reference in the definition of security operative to functions involving *the prevention or detection of intrusion, unauthorised entry or activity, vandalism or trespass on private property either by physical, electronic or mechanical means* covers Door Supervisors. Particular reliance is placed on the words [prevention of] *unauthorised entry or activity, vandalism or trespass on private property*. While these words may, in isolation, support that contention, regard must be had to the context in which the words appear.

Reading the definition as a whole it clearly refers to persons employed in a range of general security duties undertaken by workers in the generality of the security industry. Those duties may involve the prevention of unauthorised entry to buildings but are by no means confined to that activity. As the Court understands it Door Supervisors undertake specific duties which are helpfully described in the definition of the terms contained in the Private Security Act 2004, as set out earlier in this Decision. Those duties are qualitatively different to those of security operatives in the generality of the security industry.

It follows that Door Supervisors do not come within the ambit of the definition of security operative contained in the order and such workers are not covered by the Establishment Order nor the ERO in issue.

Decision

For all of the foregoing reasons the Court is satisfied that the JLC to which this application relates does not operate as respect to workers known as Door Supervisors and hence does not operate to the Applicant herein. Accordingly, the Court is further satisfied that EROs do not apply to workers known as Door Supervisors or to the Applicant.

Signed on behalf of the Labour Court

Caroline Jenkinson

Deputy Chairman

18th February, 2010

CON

NOTE

Enquiries concerning this Decision should be in writing and addressed to Ciaran O'Neill, Court Secretary.