An Evaluation of the Irish Labour Court's Effectiveness[1]

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GOVERNMENT participation in the settlement of industrial disputes in Ireland is focused in the Labour Court. Created in 1946, the Court combines conciliation with an investigation and recommendation machinery. The former function is performed by the Conciliation Service, while the latter is performed by the Court's six members.

In a typical year the Court will be asked to intervene in several hundred cases, including disputes over the terms of a contract as well as disputes regarding a contract's interpretation. Management and labour will, of course, contact the Conciliation Service first. If the dispute is not settled in conciliation, the parties may ask the Court to investigate and make recommendations. In a typical year the Court will make recommendations in approximately 100 cases. The parties may ask the Court to arbitrate or appoint an arbitrator, but the number of such cases is quite small. In 1970, for example, there were 7 arbitrations involving only 375 people.[2]

Two of the 1969 amendments to the Industrial Relations Act undoubtedly had an adverse effect upon the Court's case-load. Only disputes in which conciliation failed may be heard by the Court, and only upon the joint motion of the parties or upon the request of the workers (or both parties) and an agreement to accept the findings. In addition, the 1969 amendments established a Rights Commissioner, who is authorised to hear and make recommendations in disputes regarding the interpretation of a contract. Despite these changes, the Court investigated and made recommendations in 80 disputes in 1970, and the number will undoubtedly exceed 125 in 1971.[3]

1. This article was prepared while the author was Fulbright Professor at Trinity College, Dublin, during the academic year 1970–71. The research was supported by a grant from the University of Kentucky's Research Foundation. The author is indebted to numerous individuals in management, labour and the government service who aided him in the preparation of the article.

2. Professor J. D. McCartney reports that there were only 39 such arbitrations to the end of 1965. See his, "Ireland and Labor Relations Law" in Alfred Kamin (ed.), *Western European Labor and the American Corporation*, Washington, D.C., 1970, p. 301.

3. The court made 100 recommendations in the first 8 months of 1971. This increased caseload results directly from the 1970 Employer-Labour National Agreement on Wages. The Agreement limits direct increase in wages to certain levels, but provides for negotiations if "genuine anomalies" (clause 6) and in instances where "sound and valid reasons prevail" (clause 7). The effect of these two clauses has been to increase the volume of cases coming to the Labour Court. I am indebted to Liam Hefferman, an Industrial Relations Officer of the Labour Court, for the data and the observations regarding the increased 1970 volume.

The Irish dispute settlement machinery thus embodies several unusual features. First, it has remained intact and virtually unchanged for a quarter of a century. Second, it has an active effective conciliation machinery. Third, it offers the parties a choice of binding or non-binding recommendations. And fourth, it combines these functions within a single administrative agency. Despite these unusual features, the Court has not been the subject of a single full-length study.

This study is based largely on the Court's published annual reports and a survey of the individuals who participated in a Court hearing in 1970. A few interviews were also held with labour, management, and government personnel. Three major generalisations emerge from the data, questionnaires and interviews. First, there is widespread acceptance of the Court and little likelihood that anyone would propose its elimination. Second, a significant minority of the respondents voiced criticisms of the Court. Third, the available information suggests that the Court is no longer viewed as a "court of last resort", but rather as a forum for dispute-prone industries and companies.

THE CONCILIATION FUNCTION

The number of disputes handled by the Court and the number of settlements by both conciliation and investigation, as well as the number of employees in each category, by five year periods, are presented in Table 1. The number of cases handled by the Court remained stable for about 15 years, and then almost doubled during the 1960 decade. The number of employees involved, however, has risen throughout each five-year period. In the 1960 decade about 100,000 employees (one-seventh of the non-agricultural labour force) were involved yearly in disputes before the Court.

This increased use of the Court can be criticised. A nation's dispute machinery should seek to promote settlements by the parties, thereby decreasing its case load. During the 1960s, however, there was considerable industrial expansion and an in-migration of non-Irish concerns. Under these circumstances, it would have been most unusual if the number of disputes had not increased. Secondly, many of these disputes were settled by the Conciliation Service. In the 1960 decade over two-thirds of the cases involving over 40 per cent of the employees were settled in conciliation, as compared with about half of the cases and one-fourth of the employees in the earlier fifteen years.

The Conciliation Service's success in settling a higher proportion of cases is undoubtedly a reflection of its competence. A survey of management and labour attitudes toward the Service indicated that they believe that Irish conciliators are competent and able. Management and labour respondents were also quite receptive to conciliation, believing that it averts strikes.[4] Unless these attitudes

4. Joseph Krislov, "Irish Attitudes Regarding Conciliation: A Survey of Management, Labour, and Conciliation Officers," *Industrial Relations Journal*, forthcoming.

change dramatically, it is likely that the Conciliation Service will continue to play a key role in promoting settlements in industrial disputes.

THE INVESTIGATIVE FUNCTION

The number of disputes investigated by the Court, the number settled by investigation, and the number of employees in each category, by five year averages, are presented in Table 2.

Long-Run Patterns

Because the parties have increasingly resolved disputes in conciliation, there has been a dramatic rise in the number of cases investigated by the Court. The five-year averages of the Court's case-load have fluctuated only narrowly, between a low of 83 in 1952–56 and a high of 124 in 1962–66. There has, however, been a gradual increase in the number of cases during the 1960 decade. Undoubtedly, the 1969 amendments which discouraged Labour Court proceedings reduced the 1969 and 1970 volume, thereby accounting for the reduction of the average during the 1967–70 period (Table 2).

The number of employees has increased somewhat, from approximately 30,000 yearly in the first decade to over 40,000 yearly (about six per cent of the non-agricultural labour force) in the last 14 years. There was a sharp reduction in the number of employees in 1969 and 1970, apparently a result of the 1969 amendments (Table 2). As a result, the 1966–1970 average was somewhat below those of previous five year periods.

The relative decline of the Court's investigative functions is evident by comparing the 1947–51 years with the 1966–70 period. In the earlier period, almost half the cases culminated in an investigation, as compared with only one-fifth in the latter period. Similarly, the proportion of employees involved in investigations by the Court was reduced from over 80 per cent of all employees in the earlier period, to only 40 per cent in the latter period (Table 2). And, as would be expected, there has been a similar drop in the proportion of all cases settled by investigation. During the 1947–51 period, about 30 per cent of all disputes were settled by investigation, as compared with only 12 per cent in the last four years. Similarly, more than half of all employees were involved in cases settled by investigation in the first five year period, compared with only 20 per cent in the last four years (Table 1).

Employer Participation

Who are the employers that participate in Labour Court proceedings? During 1969 and 1970 over a third were in the public sector. There was considerable concentration among a few employers; 20 employers (or groupings of employers) accounted for 58 (36 per cent) of all disputes during 1969 and 1970. Virtually all the disputes involved general issues, either wages, working conditions or both.

Only one out of eight involved individual problems (either discipline, pay, or working conditions).[5]

Both management and labour in the public sector are likely to bring cases to the Court; consequently, little significance should be attached to the over representation of disputes in that sector. Certain industries are more "dispute prone" than others, and this may account for the large number of cases among a few employers.[6] On the other hand, continued and persistent appeals by individual enterprises (including public bodies) probably indicates a failure of the parties to assume their collective bargaining responsibilities. In 1969 and 1970 one enterprise accounted for 14 disputes (almost one out of ten) before the Court. Surely, such a record suggests that the parties themselves consider changes in their relationship to reduce their dependence on a public dispute machinery mechanism.

The relatively few cases involving only individuals suggest that the creation of Rights Commissioners is not likely to lead to a significant decline in Court cases. Few of these disputes reached the Court in the past; many were undoubtedly resolved in conciliation and will continue to be resolved at that stage.[7]

Rejection of Recommendations

As has been indicated, the Court's recommendations are not typically binding upon the parties. They may accept or reject the recommendations; typically the union, rather than the employer, rejects them. During the quarter-of-a century under review, over 60 per cent of the recommendations were accepted. The five year averages have fluctuated only narrowly, reaching a high of 70 per cent in the 1962–66 years, and a low of 58 per cent in the 1967–70 years (Table 2). Year by year fluctuations are much wider and without any discernible trend.

5. A similar pattern among Court cases during the 1957–1961 was found by David O'Mahoney but he concluded that the data did not permit "anything more than the most highly tentative generalisations". Nevertheless, he made several explanations as to why disputes in the public sector are likely to be carried to the Court, but cautioned that "it would be unsafe to conclude that industrial relations are better in the private sector" simply because fewer cases proportionately were carried to the Court. O'Mahoney was impressed with the concentration of cases among a few firms, emphasising that only 218 firms participated in cases before the Court (an average of about 40 per year). He did not comment on the data regarding the causes of disputes, but pointed out that great care must be used to interpret these data because "the dispute that appears to be about a wages matter may well be due to something else". See David O'Mahoney, *Industrial Relations in Ireland: The Background.* Paper No. 19. The Economic and Social Research Institute, Dublin, 1964, pp. 29–31.

6. Clark Kerr and Abraham Siegel, "The Inter-Industry Propensity to Strike: An International Comparsion" in Arthur Komhausher, Robert Dubin, and Arthur M. Ross, Editors, *Industrial Conflict:* New York, 1954, pp. 189–212. See also McCartney, *op. cit.*, pp. 296–298.

7. The questionnaire queried the parties regarding the effect that the establishment of the Rights Commissioner's Office would have on the number of disputes submitted to the Labour Court. About 40 per cent of the respondents indicated that the number of disputes submitted to the Court would decline, 20 per cent disagreed, and the remaining 40 per cent were uncertain.

The five-year averages of employees involved in acceptances have fluctuated more widely. In 1967–70, half of the employees participated in disputes in which the Court's recommendations were accepted, compared with 80 per cent of the employees in the 1957–61 years. Over all, about 65 per cent of the employees were involved in situations in which recommendations were accepted (Table 2). Year by year fluctuations were apparent, ranging from almost 100 per cent in 1956 to 29 per cent in 1950.

In the 1947–61 period, the proportion of employees in successful terminations was much higher than the proportion of cases terminated successfully. The Court was successful in gaining acceptance of its recommendations in units with large numbers of participants. This pattern was reversed in the 1960 decade; the Court's recommendations were accepted in a higher proportion of disputes and rejections were now concentrated among disputes with large numbers of participants.

In the last four years of the 1960 decade, rejections were more likely than in any time in the Court's history, particularly in units with large numbers of people. By discouraging entry into the Court, the 1969 amendments undoubtedly raised the percentage of acceptances for 1970, which was 70 per cent. It had not reached so high a level since 1964. Nevertheless, the percentage of acceptances (58 per cent) in 1967–70 was lower than any other five year period. The proportion of employees in successful termination during the 1967–70 years was only 50 per cent, a sharp decline from all previous periods.

When the parties reject a recommendation, the dispute remains unsolved. Beginning with 1966, the Court collected and published data on these unresolved disputes. During 1966–70 an average of 31 cases (over one-fourth of the Court's case load), with about 14,000 employees (over one-third of all employees involved in the Court's case load) were successfully terminated by the parties. Apparently the parties regard the Court's recommendations as a basis for a settlement and then negotiate modifications. If these modifications are minor, then the Court, undoubtedly, played a key role in effecting a settlement. A study of the Court's recommendations and the settlement terms would, undoubtedly, prove useful in evaluating the Court's effectiveness. It may also prove useful to the Court to know what aspects of its recommendations the parties found unacceptable.

A small number of disputes remain in which rejections took place but no solution was negotiated before the Court's annual report was completed. In 1970, for example, there were nine such disputes involving approximately 4,800 employees. Negotiations were continuing in these two disputes (with 3,500 employees), and presumably settlements were reached during 1971. In the remaining seven cases involving 1,300 employees, no negotiations were reported. Because these cases involve relatively few employees, efforts for settlement may have been judged as burdensome. It is also possible that a rejecting party (particularly a union) may have indicated that it would acquiesce in the recommendation, but that it could not publicly accept it. Such a position may be typical of a union's reaction to an adverse recommendation in a discipline case.

Promotion of Settlements

What has been the Court's over-all effectiveness in promoting settlements? The combined settlement percentage of the twin activities of the Court have often invoked praise from students of Irish industrial relations.[8] In each five-year period, the Court has successfully terminated the following proportions of cases involving the following proportions of employees:

Year	Percentage Successfully Terminated	
	Number of Cases	Number of Employees
1947–51	76	85
1952–56	79	71
1957–61	84	85
1962–66	88	69
1967–70	85	68

The Court has successfully resolved about four out of five cases. Moreover, its record in disputes has improved, and particularly during the 1962–66 years when it resolved about nine out of ten cases. The pattern involving employees has been irregular, fluctuating from a low of 68 per cent in the last four years to a high of 85 per cent during 1947–51 and 1957–61. However, the percentage of employees in cases successfully terminated during the 1960 decade was less than 70 per cent.

The "settlement percentage" is not, of course, a perfect measure of the Court's effectiveness. After all, the vast majority of disputes would have been settled even if the Court had not existed. Disputes between parties which were not settled did not necessarily result in a work stoppage. Moreover, work stoppages occurred following the Court's entry into cases and continued despite its entry. In addition, the Conciliation Service and the Court may have delayed a settlement by their entry or simply because the parties used the dispute machinery to delay a settlement.[9] In short, a more sensitive measuring device than settlement percentages is necessary to test the Court's effectiveness. Unfortunately, no one has developed such a measure.

8. O'Mahoney, *op. cit.* p. 5.

9. Similar reservations have been expressed by O'Mahoney in *The Irish Economy*, Cork, 1967, p. 170.

MANAGEMENT AND LABOUR ATTITUDES TOWARD THE INVESTIGATIVE FUNCTION

One possible approach in testing the Court's effectiveness is to ask the parties that have participated in a Court hearing. This approach is, of course, subject to all the weaknesses of surveys, but it does result in objective evaluations by the people who are most acquainted with the Court. Moreover, no such survey of Irish management and labour has been available.

A questionnaire soliciting views regarding the Court was sent to companies and unions participating in a 1970 hearing. The letter was addressed to the individual who was designated as the party's spokesman. Because some individuals participated in several Court hearings, they were asked to return more than one questionnaire. Their general attitudes were tallied only once, but each of their responses regarding separate hearings were counted. As a result, 61 responses regarding general views and 72 responses regarding individual experiences were tabulated. Usable replies thus averaged about 45 per cent of the eligible responses in both situations.

To encourage responses, the individual was not asked to indicate whether he was a labour or management representative. Consequently, no data are available as to the attitudes of each party. Presumably, however, as in most surveys, proportionately more management respondents replied than did labour respondents.

Virtually all the respondents (95 per cent) indicated that the Court serves "an important function and any effort to abolish it would be a serious error". About two-thirds were so committed to the Court that they agreed that "the parties should be required by law to submit all unresolved disputes to the Court before a strike could legally begin". Undoubtedly, management and labour viewpoints (had they been available) would have differed sharply on this latter issue.

There appeared to be little hesitancy on the part of the respondents to submit disputes to the Court. About 90 per cent of them disagreed with the assertion that "submitting a dispute to the Labour Court is a sign of immaturity". Management was viewed as more enthusiastic about submitting disputes to the Court than labour. About 90 per cent of the respondents believed that management generally agreed to submit disputes to the Court, as compared with only 60 per cent indicating that labour representatives had a similar pre-disposition. When the respondents were queried regarding their 1970 experience, over 80 per cent indicated that both management and labour quickly decided to submit the dispute to the Court when it appeared that conciliation would fail.

The parties indicated overwhelmingly (90 per cent or higher) that, during their 1970 experience, they were given adequate time to "present their views and to argue their positions" before the Court; that the Court members "showed no favouritism toward either party"; and that the Court members queried "the parties to obtain additional information". The respondents also indicated that the Court's recommendations were "easily understood".

A significant minority, however, voiced criticisms. About one fourth disagreed that the Court had scheduled their hearing without "significant delay". And about one third did not agree that the Court's recommendations were made without "significant delay". The problem of delay plagues many systems of justice[10] (both public and private), and it would be unusual if the Labour Court did not receive some criticism on this aspect.

More serious are a number of substantive criticisms. Almost 15 per cent of the respondents disagreed that the Court's recommendations were "fair and reasonable", and an additional 20 per cent were "uncertain" regarding the fairness of the Court's recommendations in their 1970 experience. The parties indicated that the Court's recommendations are not easily anticipated, suggesting that the Court has not developed consistent criteria. About 55 per cent of the respondents replied that the Court's recommendations were about what they had expected. The remaining 45 per cent (equally divided) either indicated that the recommendations were quite different from what they had expected or that they were "undecided" regarding the predictability of the recommendations.

The respondents were not overwhelmingly impressed with the Court's "knowledge of collective bargaining". About 60 per cent of them agreed that the Court demonstrated such knowledge, while the remainder either disagreed or were undecided. Two thirds of those who were not affirmative were "undecided" rather than "negative".

The parties do not regard these deficiencies as the cause of the increased rejection rate. Instead, the parties regard themselves, rather than the Court, as being responsible for the increased rejection rate. Two thirds of the respondents agreed that "the increased rejection rate means that the parties are merely using the Court as a tool of collective bargaining, rather than a Court as a last resort". Half agreed that the increased rejection rate means that "unions and their members are becoming quite unreasonable". But only one fourth agreed that the increased rejection rate means that the Court was "losing its ability to develop solutions to management-labour disputes".

Responses to questions regarding the Court's past and future roles suggest that the parties are aware of shifts in the Court's role but they are not certain of the future direction of these shifts. Most disagreed with the assertion that the Court would "play a decreasing role in industrial relations during the 1970s" but 20 per cent agreed, and an additional 25 per cent were undecided as to whether the Court's role would decrease. There was a comparable uncertainty regarding the Court's past role. About 40 per cent of the respondents agreed that the Court's role in 1970 "was quite different from its role in the formative years". About one fourth disagreed and the remaining 35 per cent were undecided.

10. See Katherine Bell, *Tribunes in the Social Services*, London, 1969, pp. 89–90; Brian Abel-Smith and Robert Stevens, *In Search of Justice*, London, 1965, pp. 85–88 and 207–13; and Arthur Ross, "The Well Aged Arbitration Case", *Industrial and Labor Relations Review*. Vol. II, January, 1958, pp. 262–271.

The influence of the criticisms expressed by the respondents is evident in their answers regarding the Court's role in averting strikes. Only two thirds of the respondents replied affirmatively when queried "whether the number of strikes would increase significantly if no continuous public agency existed to issue recommendations in labour disputes." And only a little more than half (38 out of 72) replied affirmatively that it was "doubtful if we would have settled this problem without a strike if the Court had not been involved".

The percentage of these affirmative responses can be usefully compared with those obtained with the survey of labour and management officials regarding conciliation. Over 80 per cent of the respondents indicated that "the number of strikes would increase significantly without conciliation"; and about 80 per cent believed that the conciliation officer "prevented or reduced the possibility of a strike" in their last conciliation experience.[11] Apparently Irish management and labour officials see the conciliation officer as averting proportionately more strikes than the Court. Because the simpler and more routine disputes would be settled in conciliation, it is puzzling that Irish management and labour should see the conciliation officer averting proportionately more strikes than the Labour Court.

CONCLUSIONS

That the Court has been in existence for almost 25 years and retains the confidence of the vast majority of management and labour personnel is in itself an obvious testimony to its effectiveness. Moreover, the Labour Court's existence has not resulted in an atrophy of collective bargaining or in an eclipse of conciliation. On the contrary, the Irish Conciliation Service has expanded significantly and now resolves more cases proportionately than it did in earlier years.

This expansion of conciliation has led to a relative decline of the Court's investigative function. And the 1969 amendments to the Industrial Relations Act also discouraged recourse to the Court. As a result, it seems likely that the Court will intervene in a lower proportion of cases in the 1970s than it did in the past. The Irish dispute machinery system has not resulted, therefore, in a higher proportion of adjudicated cases rather than settlements by the parties.

The Court's case load has been concentrated in the public sector and among a few employers. Undoubtedly, this concentration reflects some "dispute-prone" areas but it probably stems from the failure of some parties to assume their bargaining responsibilities. Perhaps the Court (acting through its Conciliation Service) could focus on these situations to reduce the number of disputes flowing to the Court.[12]

11. Joseph Krislov, *op. cit.*

12. The US Mediation Service has developed a "preventive mediation" programme. See Federal Mediation and Conciliation Service, *23rd Annual Report*, Washington, 1970, pp. 39–50.

In the past decade the Court has been plagued by an increasing number of rejections of its recommendations.[13] These rejections do not obviously enhance the Court's authority, but the "damage" may not be serious. As has been indicated, the parties to a number of rejections apparently settled the disputes following additional bargaining. Moreover, unions undoubtedly acquiesced in some unfavourable recommendations which they were unable to accept publicly. Hence, there were only a few rejections that resulted in actual work stoppages.

Although the parties express strong support for the Court, some criticisms were voiced by significant minorities. It would not be difficult to reduce some of the criticisms. A determined effort to issue recommendations promptly would reduce criticisms of delays. On the other hand, it may prove quite difficult to remedy other criticism, e.g., decisions were "unfair" or "decisions were not predictable". In short, some of the criticisms and unhappiness is inevitable, but the fact that few people suggest fundamental changes indicates that the Court's performance is adequate.

Regardless of any remedial action which will be taken by the Court, there appears to be some scepticism regarding the Court's role. The respondents see the Court as averting far fewer strikes proportionately than the Irish Conciliation Service. Many (perhaps a majority) believe that the Court's role has changed during the past 25 years. And almost half were uncertain whether the Court's role would decrease during the 1970s. Clearly, the Court's image as a "court of last resort" will vanish completely if these attitudes spread. And if the present conception of the Court is abandoned, a new role for the Court will have to be developed. There has been little, if any, thinking as to the nature of this new role. The information gathered in this study suggests that the Irish industrial relations community should be considering this question.

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13. A similar phenomenon is developing in the United States. Union members are rejecting about one out of seven contracts presented to them by their leadership for ratification. See Wiliam E. Simkin, "Refusals to Ratify Contracts". *Industrial and Labour Relations Review*, Vol. 21, July, 1968, pp. 518–41.

APPENDIX

TABLE 1: *Labour Court, 1947–1970: Number of disputes handled; number of disputes settled by conciliation; number of disputes settled by investigations; and number of employees in each category.*

Five Year Averages

Year	Number of Disputes	Number of Employees	Settled by Conciliation				Settled by Investigation			
			Number	%	Number of Employees	%	Number	%	Number of Employees	%
1947–51	223	36,925	103	45	8,450	23	70	31	23,088	63
1952–56	213	47,310	118	55	12,760	27	52	24	21,020	44
1957–61	249	67,000	131	53	18,280	27	77	31	39,280	58
1962–66	404	99,138	265	66	38,305	38	87	22	30,703	31
1967–70*	534	98,098	391	73	47,070	48	63	12	19,866	20

*Four Year Averages *Only*.

TABLE 2: *Results of Labour Court Investigations and Recommendations, 1947–1970*

Year	Disputes Investigated		Settled by Investigation			
	Number	Number of Employees	Number	%	Number of Employees	%
1947–51	102	30,737	70	69	23,088	75
1952–56	83	32,240	52	63	21,020	65
1957–61	119	48,580	77	65	39,280	80
1962–66	124	48,907	87	70	30,703	63
1967–70*	108	39,726	63	58	19,866	50

*Four Year Average *Only*.