

THE CONTRIBUTION OF JLCS TO A PAY RISE

**JOE WALLACE, SENIOR LECTURER EMERITUS
PERSONNEL AND EMPLOYMENT RELATIONS
UNIVERSITY OF LIMERICK**

The Background to JLCs

- A Product of liberal 19th century capitalism
 - Introduced in early 20th century
 - Sweated trades and poor conditions
 - Aim as much protect employers as workers
- Why relevant today?
 - Modern capitalist societies *persistent* growth of precarious work
 - Globalisation, financialisation, de-unionisation, unemployment and outsourcing
 - Not merely temporary features of the business cycle
 - Structural transformations
 - Bad jobs are no longer vestigial

Precarious Work

- Characteristics of precarious work
 - Insecure employment and working hours, low job quality, low wages, lack of employee access to justice and less regulatory protection than 'standard' jobs.
- Can have considerable negative effects on employees
 - Income, health, well-being and career prospects.
- Also problematic for economies
 - Lower consumer spending,
 - Higher social welfare spending
 - Higher inequality
- Research consensus that institutions matter
 - Differing institutional interactions lead to varying outcomes
 - Why and how particular institutions are established, change or remain stable
 - Is critical to understanding their effectiveness in regulating precarious employment

Union & Precarious Employment

- Four potential responses
 - Ignore
 - Exclude and oppose
 - Limit numbers and regulate
 - Recruit and integrate
 - Difficulties in all of the above
- Union regulation works best where
 - Union organisation is strong to begin
 - Where collective bargaining is embedded and protected from legal interference
 - Where extension of collective bargaining occurs
 - High employer organisation coverage
 - Institutions with “a high level of centralisation, coordination and inclusiveness are the most effective at protecting workers” (Bosch *et al.*, 2010)
- Political system very important
 - In producing these

An international perspective

- Nordic countries generally
 - Union strength allows them pursue and enforce minimum wages
 - Denmark 8 % of employees are low paid
- Nordic Retails & hotels sector
 - Bottom part of the wage distributions in retail and hotels/restaurants compressed
 - Real minimum wages increased by 49 and 44 per cent respectively, between 1995 and 2007 (Skeinger, 2008)
- Collective agreements
 - Key to solidaristic wage policy & a high minimum wages
- France and the Netherlands along with extended collective agreements
 - Inhibits the growth of low pay in those countries (Bosch et al., 2010)

JLCs Contemporary Developments

- 2005 Report on JLCs (Wallace and O'Sullivan)
 - Covered some 160,000
 - Effective rate unclear
 - Small differentials
 - Hugely important to those covered
- Strong and growing employer opposition
 - Some distortion of competition
 - From piecemeal geographical nature
 - Some archaic & irrelevant
 - Need to rationalise
 - Role of Chair
 - Overstated
 - Inability to pay
 - Should not be allowed
- Major employer reaction to
 - Greater enforcement with establishment of NERA

The JLCs Under Attack

- Reasons for the abolition of EROs
 - High Court's ruling on 'principles and policies' to guide JLCs in formulating such agreements
 - Powers too wide
 - Need for Oireachtas approval
 - Has also seen JICs attacked and
 - REAs struck down
- Arises from a common law legal perspective on work
 - In recent times the autonomy of IR arrangements has come under sustained attack
 - Decline of voluntarism without a secure system of rights to replace it
 - Part of a wider continuing clash
 - Viking and Laval and cases

Duffy & Walsh Report

- Independent review body
 - Make recommendations on the continued relevance, fairness and efficiency of the regulations produced by JLCs
 - Possible legislative changes the JLC framework 'to move to a more streamlined, transparent and flexible wage setting model'
- These terms of reference
 - Framed the nature of the debate to a focus on the employment, wage flexibility and competitiveness of JLC regulations
- Not in term of reference
 - The effectiveness of JLCs in regulating employments with low pay or weak collective bargaining –
 - The original reasons for the establishment of JLCs.
- Narrowed the debate between social partners
 - Problem defined as an institutional
 - Not the wider policy problem of how to address precarious employment

JLC Revival – A Neutered Institution?

- The Industrial Relations (Amendment) (No. 3) Act, 2012
 - Allowed JLCs to be re-established
 - Can agree and update EROs
 - Can still fix minimum pay
 - No more than two hourly rates above the lowest rate on a service basis
 - Have to take account of a wide range of factors
 - Cannot deal with Sunday working or redundancy payments.

Exemptions from ERO's

- Must be approved by the Labour Court
 - It must be satisfied
 - That agreement has been reached with either a union or other employee representatives.
 - That the business is in “severe economic difficulty”
 - Designed prevent conspiracy with employees to get business)
 - Not distort competition in the sector.
- Can get exemptions every five years
 - For between three and 24 months
 - Further exemption for 24 months possible
 - Where first one was for less than 24 months

Situation as of 2014

- **January 2014**
 - **Establishment orders for 6 new JLCs signed.**
- **Power to agree minimum standards in**
 - Hospitality
 - Catering
 - Retail
 - Contract cleaning
 - Security
 - Agriculture (needs primary legislation)

Hughes Report on Retail Sector

- Evidence of symbol operators
 - “driving down wages to minimum wage since JLC was suspended”
 - “the economic effect is entirely against the workers”
 - “will inevitably distort the market in terms of wages both between symbols and between symbols and multiples”.
- Result
 - pressure on pay rates in multiples and symbols operating EROs.
 - Added to by effect of premium payments
- “Create very significant gap in wages
 - those who pay minimum wage only
AND
 - those who pay a higher basic rate
AND
 - those who pay a higher basic rate plus premium payments.”

RETAIL GROCERY JLC

- Retail Sector
 - Reduced JLC coverage
 - Redefines the competitive sector
 - Distinction between multiples covered by JLC
 - Tesco, Superquinn, Marks & Spencer etc
 - Symbol operators - Spar, Centra etc
 - and
 - Those not covered
 - Truly independent operators.

Hotels Sector

- The Hotels JLC is to be retained
 - Hotels (Dublin & Dun Laoghaire) JLC abolished
 - Never activated
- ERO for a Hotels JLC (Excludes Dublin and Cork)
 - Aimed at more accurately reflecting the services hotels offer today
 - Cover employees that work in leisure facilities
 - Those employed by the hotel “or a related business engaged in the provision of personal services such as health, and beautician services provided on the premises to customers of the hotel” as well as outdoor grounds workers
- IHF long opposed to JLCs
 - Question is can it survive attack?
 - Wage differential JLC and Minimum wage 44c

Catering Sector

- Two Catering JLCs (Dublin & Dun Laoghaire, and Other)
 - Single chair but not amalgamated
 - To ensure that consistency in terms and conditions of employment
 - Absence of common ground between unions and employers
 - “they have worked on these issues for decades”
- Maximum wage differential JLC and NMW
 - only 66c per hour.

Security & Contract Cleaning

- Security JLC and contract cleaning
 - Recommended
- Strong employer support for JLC
 - Reason undercutting
 - Old ERO rate €9.50 versus NMW €8.65
 - Transfer of Undertaking
 - Some non-compliance
 - Difficult to enforce
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Neutered and Uncertain Future?

- Powers constrained to set minimum pay and conditions
 - They will have to:
 - Take into account a range of economic factors
 - Approved by the Minister for Jobs, Enterprise and Innovation
 - Laid before Dáil and Seanad
- Key feature the nature of competition
 - Employer support notably security and contract cleaning
 - Employer opposition in some sectors (hotels)
- “Can EROs survive legal challenge?”
 - High Court challenge brought by IHF in April to new Hospitality JLC
 - Based on geographical discrimination

Reasons to be Pessimistic

- High differential between NMW and ERO rates
 - Likely to draw stronger fire from employer bodies
- Important issues not covered such
 - Sunday and premium rates
- Slow pace
 - JLCs need to meet (only one to date)
 - Torturous process of agreeing rates
 - Likely to follow rather than lead developments
 - Questionable implementation
 - Possibility of legal challenge
- Alternatives
 - Organise and collective bargaining?
- Longer term perspective
 - Need to challenged nature of legal system?