

# **THE CONTRIBUTION OF JLCS TO A PAY RISE**

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# The Background to JLCs

- A Product of liberal 19<sup>th</sup> century capitalism
  - Introduced in early 20<sup>th</sup> 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 Lavalle 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
  -

# 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?