

In binding decision, IR body tells aircraft controllers to work call-in scheme

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IRN has learned that an internal industrial board at the Irish Aviation Authority has told the Fórsa air traffic controllers branch that that its members must cooperate with a disputed call-in scheme and recognise “commitments designed to ensure service continuity”.

The Internal Dispute Resolution Board (IDRB) said it could not accept that this commitment fell with the rejection of a negotiated Comprehensive Labour Agreement (CLA).

A decision of Fórsa’s ATC Branch not to participate in the disputed call-in scheme, “not alone constituted a work to rule, it also was a flagrant breach of the terms of a mediated agreement which was accepted by both sides”, the Board asserted.

There can be “absolutely no ambiguity” about the IDRB’s binding recommendation

Implemented in June 2020, the scheme was designed “to support the continued uninterrupted operation of the call-in scheme”, the IDRB explains.

“With respect”, the tribunal also informs the union, the recommendation of the IDRB, “requires more than a communication from the Branch to its members encouraging cooperation”. Responsibility rests with the union “to ensure compliance with agreements that they entered into”.

There can be “absolutely no ambiguity” as to the binding recommendation issued, the IDRB says. Air traffic controllers should provide “full cooperation” with the operation of the call-in scheme, “with immediate effect and make themselves available to participate in the scheme and ensure service continuity”.

Seen by IRN, the IDRB’s recommendation and the communication with Fórsa are the latest development in the recently reported difficulties in the industrial relations arena between the company and the ATC branch of Fórsa. In tandem with the IR issues, relationships have also been very difficult between the parties, as recent media reports have shown.

FÓRSA BACKS BINDING DECISIONS

A union spokesman told IRN that Fórsa fully accepts “the binding determination of the IDRB”. He said the IDRB had made it clear that the air traffic controllers must cooperate with

the call-in scheme. But he said the Board had also observed a range of other “legitimate issues”. Although these the IDRB said are “unrelated” to the operation of the call-in scheme (pensions in the context of the separation of the IAA and concerns regarding trainees), the union says they are matters for a separate engagement with the company. (See also [IRN 34 – 23-09-2021](#)).

What this means is that the ATC branch must abide by the IDRB ruling, because the IAA and the union/ATC branch all signed up to an agreement involving disputes procedures with binding arbitration as the agreed end point of dispute resolution.

If the IDRB decision on the call-in scheme is accepted, however, other “legitimate concerns” can then be pursued through formal union/management engagement. But if the air traffic controllers don’t abide by the decision, then not only would relations be at a standstill, the dispute may only worsen with unforeseen consequences a possibility.

FINAL & BINDING

What the IDRB’s recommendation and the follow-up letter to the union demonstrate is that the internal disputes body is clear that any work-to-rule type action by ATCs, who refuse to operate the call-in system, is in breach of what both sides have agreed. The IDRB’s recommendation “is final and binding on all parties”, under the IDRB’s Charter.

Last week, reports revealed that many ATCs remain unhappy with the call-in system, while pension concerns remain a central issue in the context of a restructuring of the company.

The ATCs listed instances where they argue that safety was an issue when some controllers refuse to comply with call-in, while the company refuted the view that safety was at issue. But what both sides are unlikely to dispute is that relationships have reached a low point, with the union struggling to get members to get back to abiding by procedures as the only way to process concerns on issues like pensions.

The ATC Branch is the only section of five groups of Fórsa members in the Authority not to have balloted in favour of the recently negotiated comprehensive labour agreement (CLA). AHCPS members – the sixth group – also accepted that deal.

The IDRB said it “has some difficulty understanding why it was decided to include the outcome of an already agreed mediation as an integral part of the CLA”. In other words, that matter was already decided by binding arbitration in a process that both management and unions have given their allegiances to.

The IDBR in the IAA is one of a number of such internal dispute mechanisms across a number of state-owned operations. Similar tribunals operate in RTE, the daa and Coillte, while in ESB, a long standing joint industrial council pre-dates all of the others.

WHY IT HAPPENED

The IDRB's decision on the disputed call-in system was issued to the parties on July 30, after the IAA wrote to the board requesting a hearing to deal with the dispute.

The IDRB said it was concerned at the "fractious nature of the relationship between the Company and the ATC Branch that has manifested during the course of the last 12 months which was very evident in both the submissions and the exchange of correspondence that took place prior to the referral".

Its report sets out the IDRB's "objective view of the terms of the agreement governing the call-in scheme" and "why there was a failure to secure a continuation of participation of a large number of ATCOs recruited before 2015 in the scheme beyond the current year".

The Board explains that the call-in scheme was established as a result of Labour Court Recommendation 19158, issued in February 2008. Agreement led to the introduction of a scheme to cover "the exigencies of providing a service where rostered ATCOs are not available due to illness or other eventualities."

"It appears, that the scheme was to operate for a period of 18 months, but following a review in 2013 the scheme has continued by agreement, to ensure continuity, of what are by any standard, essential services", it said.

The call-in scheme "operates through a combination of ATCOs recruited since January 1st 2015 participating as a requirement of their contract and other ATCOs participating on a voluntary basis". Controllers who participate are remunerated for providing stand-by and call-in liabilities.

SUBMISSIONS

The submissions described in some detail events that led to a potential withdrawal by ATCOs from participation in the scheme in 2020.

The IAA stated that the existence of a call-in scheme is not in dispute. "However, they pointed out that the decision of the ATC Branch members not to participate in the current year, not alone constituted a work to rule, it also was a flagrant breach of the terms of a mediated agreement which was accepted by both sides and implemented in June 2020 to support the continued uninterrupted operation of the call-in scheme".

The IAA argued that this action was also a clear breach of the terms of the IDRB Charter. The management submission addressed the effect of the action, which is "posing challenges to the provision of continuous and essential air traffic management services at a time when the aviation industry is still at the very early stages of trying to recover from the devastating effects of the Covid pandemic".

The Fórsa submission stated that the ATC Branch at discussions on a new Collective Agreement to cover the period 2020-2024, "sought changes to the call-in scheme including the removal of the contractual requirement for ATCOs recruited after 1/1/2015".

The union submission also confirmed that staff “were requested to desist from signing up from participation in the call-in scheme at the 2020 renewal and this led to the need for the parties to seek the assistance of a Mediator”.

As a result of the mediation, the IDRB said following report from Joe Mc Dermott issued and both sides accepted the terms. It said that ‘ATC/Fórsa’ “recognise the essential services provided by the IAA on behalf of the state” and in this regard commit to the following to ensure service continuity:

- ‘1. ATC Branch Fórsa will not issue any direction to members, EITHER DIRECTLY or INDIRECTLY, that would have the effect of influencing non participation in the call-in scheme.
2. ATC Branch Fórsa accept the contractual obligations of Controllers appointed from 2015 to participate in the call-in scheme unless or until there is agreement to alter this obligation.
3. ATC Branch Fórsa acknowledge that any incidence of non-cooperation from a Controller/s to partake in a call -in duty, having received payment in lieu of having a call-in liability, will result in the Company recovering the €4,500 call in allowance from the staff member/s concerned.’

CURRENT DISPUTE

Addressing the “current dispute”, the IDRB was satisfied that what followed ultimately led to the dispute. The union’s submission stated that the (ATC) Branch accepted the mediation report “with the condition that it would form part of the 2020-2021 Scheme only, and it, along with any subsequent agreed changes, would be included for ballot in the CLA”.

The wording of the mediation, along with other changes to the scheme, were included in their entirety in the CLA 2020-2024 document and “this was rejected overwhelmingly in a ballot of the ATC membership”.

“As a consequence”, the IDRB said, “the ATC Branch concluded that the commitments in the mediation, report *no longer exist* as the mediation formed part of the CLA and was rejected in its entirety by the Branch membership in the June 2021 ballot”. (*IRN emphasis*)

The IDRB said the IAA response to this is that the mediated agreement was concluded “outside of the CLA talks process”. Mediation was needed because ATCOs had been asked to desist from signing up to the scheme in 2020, it observed. “The successful and agreed outcome to mediation had nothing to do with the negotiations on the CLA and the inclusion of the text of that agreement in the CLA was agreed to ensure that all matters relating to ATCOs were comprehended within the proposed CLA.”

The IDRB said that it had, however, “some difficulty understanding why it was decided to include the outcome of *an already agreed mediation* as an integral part of the CLA”. (*IRN emphasis*)

It noted a motion passed at an EGM of the (ATC) Branch on 2/6/21 was also advanced as the reason why members are declining to continue to volunteer as participants in the call-in scheme:

“Members of ATC Branch Fórsa direct the NEC not to enter into any collective agreement to extend or introduce a call-in scheme and members will not append their signature to any call-in scheme until SCP 17 and 18 are restored to training, an Industrial Relations Agreement on Separation has been agreed and ratified by the members and pension issues in dispute have been resolved. This motion will be set aside in the event that the CLA is ratified by the ATC Branch Membership.” (IRN emphasis)

CHARTER

The IDRB said that the parties are signatories to the Charter and at the hearing, “both confirmed that they fully support the structures, procedures and processes for resolving disputes”.

“In the light of the stated commitments to the Charter the IDRB consider that the following highlighted extracts from Section 7 of the Charter merit serious consideration, if this current dispute is to be resolved, but also whether or not the Charter is to continue to have any relevance to the future conduct of industrial relations within the IAA,

- The parties agree to conduct all industrial relations discussions in an atmosphere conducive to reaching agreement and where neither side seeks to pre-empt the outcome by exerting pressure on the other side.
- The parties agree that they will seek to resolve disagreements where they arise promptly and within the timelines agreed under the IDRB process. While matters are being dealt with under the terms of this Charter the status quo ante will apply. As such, **no unilateral changes will be made or any form of industrial action initiated while an issue is being dealt with under this process. In this regard the Parties commit to preserve the smooth running of the operation as per existing arrangements.**” (IRN emphasis)

CONCLUSION

The IDRB was satisfied that the call-in scheme is now “well established as a long-standing arrangement” and said this is accurately captured in the letter from the Union to the Company on April 25th 2013, which described it as a “permanent arrangement by operation of custom and practice”.

Both sides, the IDRB said, are fully aware that the successful operation of the scheme cannot be achieved simply by relying on the participation of controllers who, by virtue of contractual obligations, have no choice but to participate. “Unless and until an alternative arrangement is agreed and put in place the continued participation of controllers employed prior to January 1st 2015 is essential”, it said.

"This view is re-enforced by the agreement that emerged from the mediation facilitated by Joe Mc Dermott which clearly states that ATC/Fórsa recognise the essential nature of this service with commitments designed to ensure service continuity."

For these reasons, the IDRB said it "cannot accept that this commitment fell with the rejection of the CLA or that it simply expired at the end of the 2020/2021 period, particularly when no agreed alternative arrangement was in place".

AGREEMENT "BREACHED"

The emergency motion adopted at the EGM of the Branch sought to attach a wide range of conditions to continued participation in the call-in scheme, the IDRB said. "The issues raised and the detailed reasons included in the submission, as the driving force for the motion, are issues, which the IDRB accept are of legitimate concern to the ATCOs."

However, the motion "clearly states that members will not append their signature to any call-in scheme until essentially all issues identified in the motion are resolved".

"It is reasonable to conclude that the circulation of the text of the motion and the condition not to append a signature to the call-in scheme had a significant influence on large numbers of ATCOs not participating in the scheme", the IDRB said.

It said the motion was clear in its intent – advise members not to operate the call-in system "to exert pressure on the Company to achieve a resolution of other issues". Whatever the motivation, it said, "the effect resulted in a breach of both a long-standing agreement and the commitments set out in Section 7 of the Charter".

PRESERVE STATUS QUO

In the light of the commitments expressed at the hearing to support the continuation of the IDRB Disputes Charter, "it follows that any matter relating to the ATC Standby/Call-in Scheme should be dealt with under the terms of the Charter", the IDRB said.

In accordance with section 7(c), "while matters are being dealt with under the terms of this Charter the status quo ante will apply". As such, "no unilateral changes will be made or any form of industrial action initiated while an issue is being dealt with under this process". In that regard, the parties "commit to preserve the smooth running of the operation as per existing arrangements".

ATCOs should provide "full cooperation with the operation of the call-in scheme with immediate effect and make themselves available to participate in the scheme and ensure service continuity".

The number of controllers who participated voluntarily in the call-in scheme over the last 5 years (185 in 2020, 194 in 2019, 190 in 2018, 209 in 2017, 217 in 2016) "confirms the high level of support available".

"It's a matter for the Union to decide what measures are required to give full effect to this recommendation which under section 11(d) of the Charter is final and binding on all parties," the IDRB said.

Separately, the IDRB also noted the list of other diverse issues included in the union submission in a section headed "Reasons for EGM Motion". Many of the outstanding matters listed, it said, "although unrelated to the operation of the call-in Scheme", are of concern, not alone to controllers but other groups represented by the staff panel.

The IDRB said the crisis in civil aviation caused by the Covid pandemic "are inhibiting factors in the conduct of normal industrial relations".

Consistent with the commitment of the parties under the Charter regarding respectful and cooperative relationships, the IDRB said it is imperative that the parties meet to agree a structure and possible timelines for addressing issues that are "clearly a source of frustration and contributing to the fractious relationship referred to in the opening paragraph".

The training of SCP 17 and 18, and the pending separation of the regulatory and operating functions of the IAA, "may be considered priority issues when both sides engage", it said.

LETTER TO UNION

The subsequent September 1, 2021, letter from the chairman of the IDRB, Peter McLoone to Ian McDonnell, Assistant General Secretary, Fórsa, deals with the "interpretation you presented of the binding recommendation contained in our Report on the operation of the call-in scheme for Air Traffic Controllers".

"There can be absolutely no ambiguity as to the binding recommendation contained in that report which clearly stated, ATCOs should provide full cooperation with the operation of the call-in scheme with immediate effect and make themselves available to participate in the scheme and ensure service continuity", the IDRB chairman said.

It was a matter for the union to decide what measures are required "to give full effect to this recommendation which under section 11(d) of the Charter is final and binding on all parties".

Mr McLoone observed that the words "in its entirety" did not in fact feature in the IDRB recommendation. The chairman continues, that reference to the union deciding what measures are required to give immediate effect to the binding recommendation - by ensuring co-operation with the operation of the call-in scheme - is "a simple recognition of the fact that the Charter is an agreement between the Union and the IAA and compliance is a matter for the Union".

"With respect", the chairman says, "the IDRB recommendation requires more than a communication from the Branch to its members encouraging cooperation and that is why

the IDRB recognised that responsibility rests with the Union to ensure compliance with agreements that they entered into in respect of both the Charter and the call-in scheme”.

NO LINKAGE - IDRB

In an effort to recognise “entirely unrelated issues” raised in the union submission, the IDRB noted a list of other diverse issues.

In response to “your invitation to the IDRB to comment on your understanding that this means that it is the Union’s prerogative to decide what issues need to be resolved and what structures and timelines are realistic”, the IDRB chairman responds that he “can confirm that interpretation is incorrect”.

“That was not and is not the IDRB’s intention’, he said.

“There is no linkage between the binding recommendation on the call-in scheme and the recommendation that the Staff Panel and the IAA meet to agree a structure and timelines for addressing issues,” the letter concludes.