2004: WATERSHED YEAR FOR CONSTRUCTION PENSION SCHEME

by Jill Kerby

Will 2004 be the year that the Irish construction industry finally comes to grips with the pension scheme problems that have dogged it for so long? Will every worker, working on every building site, make their required contributions this year? Will every employer ensure their workers are registered and their contributions collected?

These are the matters that have been at the heart of the recent protests by the construction unions who are demanding that employers abide by the legal obligations under the CIF registered employment pension agreement which is registered with the Labour Court and was first set up 40 years ago. Some are demanding that employers found to be in breach of the regulations, or whom they allege have withheld contributions, be jailed.

The biggest difficulty over the years with the 40 year old compulsory scheme agreement, say both the union and employer side, not to mention the pension fund administrator, has been the policing and regulation of the scheme, which has effectively been left to the industry itself. It is this matter which is now being addressed with negotiations between the employers, the unions and the jointly set-up pension Monitoring Agency.

The pension fund itself, says scheme administrator Pat Ferguson, is a separate, independent entity, and operates like all other schemes with trustees and administrators and, like all other schemes, is under the supervision of the Pensions Board. The operation of the pension fund, he says, is not part of the dispute between the unions and CIF, though it has been working under the shadow of tension that exists with many employers less than supportive of the whole notion of a nation-wide industry scheme, says Mr Ferguson. The scheme regularly accepts arrears from employers.

Today, out of as many as 100,000 eligible construction workers perhaps only 40,000-50,000 are members of the pension scheme, though it is difficult to get definitive numbers. It is further estimated that of 5000 or so companies that should be in the CIF scheme, only about half of the 3000 CIF companies are actual members, though those in construction manufacturing (about 10%) are not obliged to be. The other 2000 are non-CIF members.

By the late 1980s, compliance by CIF member and non-member companies in the scheme had become so fraught that a Monitoring Committee was set up in order to get companies to comply with their obligation to register members and collect their pension fund contributions, which amounts to €8.74 per week, which is tax deductible for both the company and worker.

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According to Brian Daly, the current head of the Monitoring Agency, which is funded by a small weekly levy and a budget of c.€1 million a year, the authority of the Agency was watered down over the years. Central to this is that it can only investigate complaints of non-compliance against the approximately 2000 non-CIF companies that should be participating in the pension scheme; the CIF monitors complaints against its own members and this, says Daly, is also at the heart of the trade union protests last year.

Nevertheless, the Monitoring Agency, "has had spectacular success in the past two years", with 680 companies, representing 4000 workers "brought into the scheme" and €4.4 million in contribution arreas paid.

The work of the Monitoring Agency is done by Brian Daly, his two secretaries and approximately 20 trade union officials around the country who work part-time on the compliance programme on a fee per case basis. (Each company brought into the scheme results in c.€500 payment for the respective union.).

According to Mr Daly, because of the fact that there was no 'bounty' for reporting non-compliance amongst CIF companies, the unions did not bother following up complaints. The Monitoring Agency now pursues these cases and sent about 35 of them to the CIF last year, which are under investigation by the Federation.

"A CIF-specific investigator is to join the Agency now," he told Irish Pensions, and there is more cooperation with the CIF to bring their members into the scheme "although the CIF does not oblige scheme participation as part of joining the CIF", this despite the fact that it is a compulsory registered agreement.

The unions say that some CIF and non-CIF companies are breaking the agreement by not registering workers and collecting their contributions; they even allege that contributions that are being collected are not being passed onto the pension fund for investment on behalf of the worker. This situation was brought to a head in the Autumn, Eric Fleming of SIPTU told Irish Pensions when the dependants of members who had been killed in site accidents, and who believed that their loved one was a member of the pension scheme discovered they had never been registered.

"The fraud is mainly perpetrated by employers refusing to register their employees, under-declaring the size of their workforce and registering only a handful of workers; making under-payments to the scheme and failing to hand over contributions deducted."

However, both Brian Daly and Pat Ferguson, the pension fund administrator pointed out that where it was shown that a registered member's contributions had not been passed on by the employer to the fund, the employer was legally responsible for the payment of benefits, including any death in service benefits.

All sides agree that the nature of the industry – with many self-employed workers only employed by builders on sites for limited periods; the transient nature of the work; poor widespread non-compliance of other regulations, like on-site safety regulations and considerable collusion by workers with many employers not to pay their correct level of income tax, let alone pension scheme contributions – means that the pension compliance task was always going to be an uphill struggle.

Brian Daly would like to see the official agencies of the state – the Department of Social & Family Affairs, the Pensions Board, the Revenue Commissioners – more proactive; he wishes there was more whistle blowing by workers. But he is generally optimistic that real progress is finally happening and there is greater commitment by the CIF to ensure compliance.

This is also the message that the CIF are sending out; its director of industrial relations Terry McEvoy said that major improvements were being made to the scheme from this year, (including the raising of the death benefit from €20,000 to €63,000) and that compliance was improving.