

1. DISPUTE

- 1.1** This dispute concerns a claim by Mr. Edward Martin Kelly that, on 9th March, 1995, the Commissioner, An Garda Siochana discriminated against him in terms of Section 2(b) of the Employment Equality Act, 1977 and in contravention of Section 3 of that Act by compulsorily transferring him from Ballingarry Garda station to Newcastle West Garda station on a permanent basis.

2. BACKGROUND

- 2.1** Mr. Kelly has been the subject of a number of unrequested permanent transfers since 1983. Between 1988 and 9th March, 1995 Mr. Kelly was based in the Garda Station in Ballingarry, Co. Limerick. He was then transferred on a permanent basis to the Garda Station in Newcastle West, Co. Limerick. This transfer was not requested and the post was not advertised within the Garda Siochana.
- 2.2** Mr. Kelly considers that a major factor in the decision to select him for transfer is his marital status. Consequently on the 19th March, 1995 he referred his complaint to the Labour Court and the Labour Court referred the case to an Equality Officer for investigation and recommendation.

3. SUMMARY OF CLAIMANT'S CASE

- 3.1** The claimant has lodged a complaint about his unrequested and compulsory permanent transfer from Ballingarry, Co. Limerick to Newcastle West, Co. Limerick. This took place on Thursday, 9th March, 1995

following the exhaustion of internal Garda Siochana Appeals Procedures. According to the claimant this transfer is one of many and therefore should be taken in its historical context.

3.2 The claimant joined the Garda Siochana in November, 1978 and was assigned to Castlebar, Co. Mayo in May, 1979. Since that time the history of transfers, in relation to the claimant, has been as follows:

- Unrequested transfer to Portlaoise, Co. Laois in March, 1983;
- Transfer on promotion to Castlefin, Co. Donegal in August, 1984;
- Unrequested transfer to Burtonport, Co. Donegal in July, 1985;
- Unrequested transfer to Pettigo, Co. Donegal in October, 1985;
- Requested transfer, following border duty, to Askeaton, Co. Limerick in May, 1986;
- Unsuccessful attempt to transfer claimant to Roxboro Road, Limerick in December, 1978;
- Unrequested transfer to Ballingarry, Co. Limerick in October, 1988;
- Unsuccessful attempt to transfer claimant to Roxoboro Road, Limerick in April, 1990;
- Unrequested transfer to Newcastle West, Co. Limerick in March, 1995.

3.3 According to the claimant Newcastle West is his fifth permanent Station as a Sergeant in less than eleven years service in the rank and his sixth permanent transfer in twelve years. Since the claimant left the Garda Training Centre in 1979 he has had no less than twelve private addresses and in little over three years,

from March, 1983 to May, 1986, he has served in the four provinces of Ireland.

- 3.4** The claimant is satisfied that, given his knowledge of the internal workings of An Garda Siochana over a period of seventeen years, the decision to transfer him on all the occasions listed in paragraph 3.2 above was attributed to the fact that he is single and not a houseowner. The claimant says that it cost £5.77 to transfer him from Ballingarry to Newcastle West whereas, in 1991, it would have cost about £5,000 to transfer a married Sergeant on promotion to Newcastle West from an adjoining Garda Division. On this basis the claimant does not believe that he would have been transferred if he was a married man with a house and mortgage.
- 3.5** The claimant refers to Circular 118/91 dated Monday, 23rd September, 1991 and signed by the Garda Deputy Commissioner which states that "No closures of stations or transfers of members whatever will take place as a result of the new system". This circular preceded the introduction of the extension of the Community Policing Initiative to the Newcastle West Garda District which includes Ballingarry.
- 3.6** The claimant says that there was never a third sergeant attached to Newcastle West Garda Station. The position was created and filled by his transfer. It was not advertised within the Garda District, Division or Force and, according to the claimant, no other candidate was considered for the position.

3.7 The claimant says that the Garda Authorities may justify the transfer by arguing the following:

- (1) the High Court has endorsed the Commissioner's authority to transfer members;
- (2) this transfer would enhance the claimant's promotion prospects;
- (3) the claimant was required for supervision duty in Newcastle West.

In his defence the claimant responds to these arguments as follows:

- (1) his transfer to Newcastle West was an abuse of this authority;
- (2) he has not put himself forward for upcoming interviews for promotion;
- (3) he was well able to perform his supervisory duties in the Newcastle West area from Ballingarry with the use of the Community Policing vanette.

3.8 The claimant says that, on 21st June, 1994, he sought certain statistical data from the Garda Authorities to enable him pursue his claim of discrimination on the grounds of marital status but this information was refused. The claimant compares himself with other members of his rank in Newcastle West about whose career he is familiar. These details are set out in Appendix A. The claimant points out that all of these officers were married at the time of their promotions. The claimant contends that the information supplied in Appendix A along with the information requested from the Garda Authorities would prove that he was discriminated against on grounds of marital status.

4. SUMMARY OF RESPONDENT'S CASE

- 4.1** The respondent denies that the claimant was discriminated against on the basis of his marital status when he was transferred from Ballingarry (where he was surplus to requirements) to Newcastle West. Rather the transfer was directed in the interest of the Garda service. According to the respondent it is his (the Commissioner's) right (in pursuance of his statutory powers) to effect transfers in the best interests and efficiency of the service and in the interest of efficient administration and this has been consistently upheld in the courts including the Supreme Court.
- 4.2** The respondent says that there are no statutory regulations per se governing the transfer of members of An Garda Siochana. However, the respondent's authority is contained in Section 8 of the Police Forces (Amalgamation) Act, 1925. The policy on transfers is contained in Chapter 7 of the Garda Siochana Code. Set out in Appendix B are the instructions relating to transfers insofar as this claim is concerned and the principles which must be borne in mind when considering transfers.
- 4.3** The respondent says that since 1978 there has been in existence a memorandum of understanding between the Minister for Justice and the Representative Associations concerning amended representative body regulations and an amended Conciliation and Arbitration Scheme. This

agreement was considered necessary because certain issues, including transfers, were raised by the representative bodies during discussions with the Minister on changes to the representative body regulations and the Conciliation and Arbitration Scheme. This memorandum of understanding provides for a review body to review on appeal, individual transfers. Set out in Appendix C is paragraphs 4.1 and 4.2 of the memorandum which contains the agreed position on transfers. The respondent says that paragraph 19(J) of the Garda Conciliation Scheme provides that "principles governing transfers" is a matter appropriate for discussion by the Council. To date no progress has been made at Council on this issue.

- 4.4** Superintendent Mockler made a detailed response, on behalf of the respondent, to the claim made by the claimant. Superintendent Mockler was appointed District Officer in Newcastle West in March, 1992. In the following two years it became clear, based on facts, that there was a pressing need for extended supervision at Sergeant level in Newcastle West Area Headquarters, from where the only 24 hour Garda Service in the District was provided and at which the main administrative and investigative functions were centred. While the two resident Sergeants were doing an excellent job, the real difficulty was a shortage of staff at Sergeant level. Consequently the claimant, then stationed at Ballingarry (some 10 miles away) was regularly required to perform duties in and from Newcastle West Station. In his absence the resident

Garda administered Ballingarry Station efficiently with supervision from Newcastle West.

4.5 Superintendent Mockler was informed of certain difficulties regarding the amount of manhours involved in facilitating the claimant by bringing official transport from Newcastle West to Ballingarry and bringing him home at the end of the duty. Accordingly, Superintendent Mockler suggested that the vanette be retained overnight in Ballingarry to facilitate the claimant but this was rejected by him.

4.6 Superintendent Mockler made reference, in his submission, to being unable to contact the claimant on a number of occasions when he had been on duty in the vanette from Ballingarry. According to the claimant he had changed channels to listen to the Limerick Garda Radio. Superintendent Mockler said that the claimant had not informed the Station Orderly in Newcastle West of this unauthorised change and consequently he was unable to contact the claimant about on-going Garda matters which were important to him at the time.

4.7 Superintendent Mockler says that, because of lack of information in the Station Diary at Ballingarry, there is no accurate record of the precise number of days that the claimant performed duty at Newcastle West Station. However, financial records show that the claimant was paid £3,145.48 in travelling expenses and £2,928.56 in subsistence allowances during the three year period 1992, 1993 and 1994. Disregarding the small amounts of

subsistence allowance that may have been paid for duties outside the District and using the standard 8-hour rate of £11.54 as a measure, Superintendent Mockler contends that the claimant has been paid for a total of 253 (8-hour) tours of duty during the three year period. Similarly, if small amounts of travel expenses outside the district are disregarded and using 57.7p claimed by the claimant as a measure, the claimant was paid for 272 (20 mile) journeys i.e. the distance from Ballingarry to Newcastle West return. According to Superintendent Mockler this information highlights the amount of time the claimant was required for duty in Newcastle West and not in Ballingarry during this three year period. He further points out that this excludes visits to Newcastle West the durations of which were less than five hours when he did not qualify for subsistence. Superintendent Mockler refers to a claim made by the claimant that he was well able to perform his supervisory duties by using the vanette. He refutes this on the basis that the claimant used his private car on approximately 272 journeys during the three years.

- 4.8** Superintendent Mockler estimates that there were 681 working days in the three year period and based on the facts is satisfied that the claimant would have worked more than 50% of his time in Newcastle West and was not required in Ballingarry during that time. Superintendent Mockler says that he fully discussed with the claimant the prospect of a permanent transfer to Newcastle West and the claimant appeared fully aware of the needs that existed there.

4.9 At the time Superintendent Mockler recommended the claimant's transfer (i.e. January, 1994), there were four operational married Sergeants in the District. Two were based in Abbeyfeale and two were in Newcastle West, both of whom were fully and gainfully employed. There was a vacancy in Tournafula and the claimant was in Ballingarry. The Weights and Measures Sergeant is not engaged in operational duties. Superintendent Mockler says that the District Sergeant's strength was not going to be increased and, as the claimant was already engaged more than 50% of his time in Newcastle West and not required in Ballingarry, he was the only Sergeant available to transfer to Newcastle West. This was the affirmation of a practice which had been established over the previous two years. Hence the question of advertising the post either inside or outside the District did not arise. The claimant was stationed in Ballingarry for six years and five months and he has not and will not be replaced there.

4.10 Superintendent Mockler refers to the claimant's comparison of himself with six serving Sergeants in Newcastle West (see Appendix A) and the inferences he has drawn from his findings and Superintendent Mockler points to some relevant data which he feels points to a different conclusion. It is Superintendent Mockler's contention that the claimant can only validly compare himself, in this case, with two married Sergeants who like himself served on the Border following promotion. Superintendent Mockler says that members presenting

themselves for promotion during those years were fully aware of the consequential transfers and they did experience more transfers than those who were promoted when border transfers were not an issue. Superintendent Mockler says that since his promotion the claimant has had six transfers. The two other Sergeants, referred to above, were both married at the time of promotion and one has had six transfers while the other has had three transfers. Set out in Appendix D are details of the total number of permanent transfers for these six Sergeants.

4.11 Superintendent Mockler is satisfied, based on the evidence, that the claimant was not treated any differently than his colleagues in relation to permanent transfers.

4.12 The respondent deals with a number of other issues raised by the claimant in his submission which he (the respondent) deems to be bias, inaccurate and misleading. These issues are as follows:

(A) It is totally untrue that there is an "unwritten rule" in An Garda Siochana that the 'junior single man' was most likely to be transferred.

(B) The claimant's transfer to Newcastle West was his first in six and a half years. Seventy one percent of Sergeants commenced duty at their current station since 1st October, 1988 and the claimant is included in that percentage.

(C) The cost of a transfer is never a deciding

factor. The regulations governing transfers is contained in the Garda Code, Chapter (F) 5 which was submitted to the Equality Officer. The retention of a Garda at one centre and employing him/her at another centre, unnecessarily incurring travelling expenses and subsistence allowance on an on-going basis is an issue which could not be overlooked.

- (D) No member of An Garda Siochana has any assurance that they will remain in their current station/ location/post. Demands on resources, human or otherwise, can vary from time to time. Demands need to be constantly monitored and assessed and changes made to meet those demands. This may involve the increase or decrease of personnel strength in any station at a particular time.
- (E) Whether a member of An Garda Siochana wishes to make himself/herself available to be considered for promotion is optional. However, members are expected to perform duties appropriate to the rank they hold.
- (F) The statistical information sought by the claimant was not available. However, the Employment Equality Agency did request information on the claimant's behalf and the information provided is set out in Appendix E.

5. CONCLUSIONS OF THE EQUALITY OFFICER

- 5.1 The claimant has alleged that the respondent discriminated against him within the meaning of Section 2(b) of the Employment Equality Act, 1977 and in breach of Section 3 of that Act by transferring him from Ballingarry Garda Station to Newcastle West Garda Station on Thursday, 9th March, 1995. In reaching a decision in this case I have taken into account all the

evidence, both written and oral, presented to me.

- 5.2** The claimant submitted, in writing, his response to a number of the points raised by the respondent in its submission. The details of this response are set out in Appendix F. The claimant argues that, had he been married and a houseowner, he would not have been transferred from Ballingarry to Newcastle West. He further argues that, because of his marital status, he has been the subject of more transfers than his married colleagues. The Garda Authorities denies this and says that his transfer was directed in the interests of the Garda service.
- 5.3** According to the claimant the factor determining whether or not to transfer a sergeant is one of cost. The claimant argues that it is more costly to transfer a married sergeant who is a houseowner than it is to transfer a single sergeant who is not a houseowner. On this basis the cost of transferring a single sergeant who owned a house would be the same as transferring a married sergeant who also owned a house. I am, therefore, satisfied that the argument in this case is based on cost and not on marital status.
- 5.4** The respondent, in his submission, indicated that the claimant's transfer was in the interests of the Garda service. At the hearing of this case the respondent gave an outline of the organisation of policing resources within the Limerick District pointing out that it was for this reason that the claimant was transferred

to Newcastle West Garda Station. These details are with the Equality Officer.

5.5 The claimant has compared himself with six other married sergeants and has argued that he has been transferred more often than his colleagues. I note that there is a discrepancy between the claimant's own records and the official records as submitted by the respondent. Since his promotion the claimant's records show that he has been transferred five times while the respondent's records show four times. The respondent said that all transfers are referred to him for formal approval before implementation. He says that there is no record of the claimant's transfer from Burtonport to Pettigo in October, 1985. While I acknowledge that the claimant may have served in Pettigo, in the absence of substantive evidence, I must accept the official records as submitted by the respondent. Therefore in a 12 year period the claimant was transferred four times. This includes his most recent transfer from Ballingarry to Newcastle West. From the official records presented on the six other married sergeants identified by the claimant I note the following:

Officer Reference	Number of transfers since promotion	Over what period up to 1996
15358C	5	19 years
16695B	2	16 years

16519M	1	10 years
20847G	None	5 years
17763F	None	4 years
22771D	2	1 year

From this information I note that officer 22771D has had two transfers within a period of one year. This is half the number of transfers that the claimant has had in a 12 year period. On this basis I cannot accept the claimant's argument that he has received more transfers than his married colleagues.

5.6 The claimant mentioned, in his submission, that a number of unsuccessful attempts were made to transfer him. No evidence was presented to substantiate this claim and this was not apparent from Garda records. The Garda records did not show if there were unsuccessful attempts made to transfer any of the claimant's married colleagues, hence such evidence might change the picture from that which I know to be factually correct for each of the sergeants identified by the claimant.

5.7 On the basis of the foregoing I am satisfied that the claimant has failed to substantiate his claim of discrimination on the grounds of marital status within the meaning of the Employment Equality Act, 1977. The respondent showed that it was in the interests of the Garda service that the claimant was transferred to Newcastle West. Furthermore, I do not accept the

argument that it is cheaper to transfer a single sergeant to a married sergeant on the basis that the difference in cost relates to whether or not the sergeant is a houseowner as both single and married sergeants can own houses. Furthermore the claimant has failed to prove that he, as a single sergeant, has been transferred more times than married sergeant.

6. RECOMMENDATION

- 6.1** I find that the Commissioner, An Garda Siochana did not discriminate against Sergeant Edward Martin Kelly in terms of Section 2(b) and contrary to the provisions of Section 3 of the Employment Equality Act, 1977 by transferring him from Ballingarry Garda Station to Newcastle West Garda Station in March, 1995.

Gerardine Coyle
Equality Officer

Date

APPENDIX A

Details on the transfers
of six married sergeants
as submitted by the claimant

Registered Number	Date of Joining	Date of Promotion	Transfer Details (After Promotion)
15358C	Nov. '63	Sept. '77	<p>From Abbeyfeale to Manorhamilton (on promotion)</p> <p>April, 1978 - Carrick-on-Shannon</p> <p>November, 1978 - Dromcollogher, Newcastle West</p> <p>November, 1987 - Abbeyfeale, Newcastle West</p>
16695B	Aug. '66	June '80	<p>From Newcastle West to Kinlough (on promotion)</p> <p>November, 1981 - Athea, Newcastle West</p> <p>Subsequently - Newcastle West</p>
16519M	June '66	April '86	<p>From Newcastle West to Athea (on promotion)</p> <p>Subsequently - Newcastle West as Weights & Measures Sergeant</p>
20847G	Nov. '77	May, '91	From Kilrush to Newcastle West (on promotion)
17763F	Oct. '70	May, '92	From Newcastle West to Abbeyfeale (on promotion)
22771D	July, '82	April '95	From Tallaght to Newcastle West (on promotion)

APPENDIX B

Instructions relating to transfers
insofar as this case
is concerned

EXTRACT FROM RESPONDENT'S SUBMISSION

All inter-Divisional transfers are effected only on the Commissioner's authority. The Commissioner has delegated to Divisional Officers authority to transfer members within their Divisions as follows:-

- (a) In Dublin Metropolitan Area - members up to and including Inspector Rank.
- (b) Outside Dublin Metropolitan Area - members of Sergeant and Garda Ranks, and temporary transfers of members of Inspector Rank.
- (c) All transfers of members within various Divisions should, before implementation, be referred to Commissioner 'B' Branch (Personnel) for formal approval.

The following are the principles which are kept in mind when considering transfers:-

- (a) the necessity of providing an efficient police service;
- (b) the desirability of allocating efficient members to busy Stations and junior Sergeants and Gardai to Stations where they will get experience;
- (c) the desirability of transferring married members who have long service at remote Stations to towns where educational facilities are available for their families;
- (d) the necessity of maintaining strengths at district Headquarters Stations and large towns;
- (e) that the benefit which will accrue to the public service should justify the expense involved.

APPENDIX C

Agreed position on transfers
as set out in
Paragraphs 4.1 and 4.2 of
the Memorandum of Understanding

EXTRACT FROM THE RESPONDENT'S SUBMISSION

The memorandum of understanding contains the agreed position on transfers in Paragraphs 4.1 and 4.2 as follows:

- 4.1 Transfers present particular difficulties both from the standpoint of the individual member and of the Garda authorities. They are necessary for the discharge of the duties of the Force and, even though liability to transfer is accepted by the member as "**part of the job**", transfers can cause hardship to the member and, if he is a married man with children, possibly even more so to his wife and family.
- 4.2 The problem is intensified by the fact that, apart altogether from sudden transfers that may be made necessary by unusual demands on the Force in particular areas, there inevitably are situations in which a transfer is to a greater or lesser extent related to the conduct of the particular member. While transfers should never be ordered as a disciplinary action, situations can arise where the public interest requires that a member be transferred. Moreover, the member's own interest as well as the interests of the Force may require that he be sent to a different kind of station where he will be doing a different kind of work, subject to a different level of supervision, etc. It is desirable that, in so far as this is possible, principles be agreed that will take account, on the one hand, of requirements of the service and, on the other hand, of the welfare of the members and of members' families.

APPENDIX D

Extract from Respondent's submission
on the total number of
permanent transfers (in Service)
for the six named officers

EXTRACT FROM RESPONDENT'S SUBMISSION

Total Permanent Transfers in Service:

Sergeant Kelly had one permanent transfer after allocation and before promotion

Sergeant 15358C had two

Sergeant 16695B had three

Sergeant 16519M had three

Sergeant 17763F had six

Sergeant 20847G had one

Sergeant 22771D had none

APPENDIX E

Information supplied to the
Employment Equality Agency

EXTRACT FROM THE RESPONDENT'S SUBMISSION

The following information was provided to the Employment Equality Agency from which a request was received on behalf of Sergeant Kelly:-

"Between 1st November, 1989 and 1st November, 1994, 4,468 members commenced duty at their present station. Of those 3,072 have reported their marriage. During the same period 487 female members commenced duty at their present station and 157 have reported their marriage. It should be noted that some of those members may have had more than one transfer. During this period 1,143 males and 296 females were allocated from the Garda college on completion of training".

APPENDIX F

Claimant's Response
to the
Respondent's Submission