

1. DISPUTE

This dispute concerns a claim by Ms. Christine D'Arcy that Jurys Hotel and Towers discriminated against her on grounds of sex and marital status in terms of Section 2(a) and Section 2(b) of the Employment Equality Act, 1977 and in contravention of Section 3 of that Act when they did not appoint her to the position of Hall Porter or Commissionaire.

2. BACKGROUND

- 2.1** In March, 1995 Jurys Hotel and Towers advertised for the positions of Hall Porter/Commissionaire. Ms. D'Arcy submitted an application in April, 1995.
- 2.2** Ms. D'Arcy was given an initial and final interview for a position, but she was unsuccessful. She had previously, on a number of occasions, applied for a position as Hall Porter and, while she had always been placed on the short-list, she had been unsuccessful on each occasion.
- 2.3** The positions advertised in March, 1995 were offered to candidates who had not previously applied for such positions and to a candidate who had not previously been short-listed to the same extent as Ms. D'Arcy. For this reason S.I.P.T.U., on behalf of Ms. D'Arcy, referred a complaint to the Labour Court on 17th July, 1995 and the Labour Court referred the case to an Equality Officer for investigation and recommendation.

3. SUMMARY OF UNION'S CASE

3.1 The Union says that the claimant has been employed by Jurys Hotel and Towers for the past 16 years. She was assigned to the Accommodation Department and during her time there was invited by the Company to become their facilitator on the Customer Care Programme. The Union says that the claimant represents the Accommodation Section on the Union Section Committee and on the Company/Union Project Future Committee in a representative capacity. The claimant also undertook a manual handling course.

3.2 According to the Union the claimant applied for the position of Commissionaire/Hall Porter, as advertised by the Company, in April, 1995. This was the claimant's fourth occasion to be considered for a position of Front House Porter* with the Company. The Union says that, on the third occasion, when the claimant applied for the position she was short-listed but failed to get an appointment on the grounds that, whilst she was of equal competence/qualifications for the position as her competitor, her competitor had the advantage that he had more applications for the position.

3.3 The Union claims that in the case of the most recent appointments the jobs as advertised were offered to candidates who had not previously applied for such positions and to a candidate who had not previously been short-listed to the same extent as the claimant. The Union submitted the following details for the successful candidates:

Mr. P.J. Ward	assigned to Room Service as a casual commissionaire. He had three and a half years service with the Company as a casual waiter. This was his
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* Front House Porter is the same as Hall Porter.

first application into the portering grade.

Mr. Tom Flynn had ten years service with the Company, was employed in Jurys Inn, Christchurch and previously in Jurys, Cork. This was his second application for a portering position. He had failed to get as far as the claimant in the previously advertised position and he had not applied for the previous temporary position which was advertised.

Mr. Martin Donnelly employed by an external security company (Delta Security) and had no direct hotel experience. He was successful on his first application and had only done two interviews before been appointed.

3.4 The Union states that the claimant has consistently applied for the position of Front House Porter each time a position was advertised since April, 1991, in total four times. On each of these occasions, the Union says that the claimant had cause to formally complain to management that the jobs had been filled before due process of interview. Specifically she complained that the jobs had been earmarked for people in respect of her application in 1991.

3.5 The Union says that, in relation to the application in 1991, the claimant made representations to Mr. Pat McCann, who was, at that time, General Manager, in the presence of the Chief Shop Steward, Mr. Andy Burke. She

protested that the jobs had been marked out for people before they were even advertised and given without the stipulated qualifications (i.e. driving licence). According to the Union Mr. McCann agreed that what the claimant was saying was correct but it was too late to do anything about it as the job had been filled.

3.6 The third job for which the claimant applied in September, 1994 was as a temporary Night Porter. Interviews were held and it was a tie between the claimant and Mr. Ray Smith. During the course of the claimant's interview she was asked by Mr. Sean Twohig "the fact that she was a woman would she have difficulty in delivering room service to a male's room?". Mr. Smith was appointed to the position and the claimant was advised of the appointment by Mr. Frank Timmons who informed her that the only advantage Mr. Smith had over her was the number of applications he had made were greater than the number of applications she had made.

3.7 The Union says that the claimant applied on the fourth and most recent occasion for the advertised position of Hall Porter/Commissionaire. Three interviews were held prior to the formal appointment and each of the seven applicants were interviewed on the three occasions. The first interviews were conducted by Mr. Gabriel Doyle and Mr. Fredrick Schaffer (Assistant General Manager). The second interviews were conducted by Mr. Doyle, Mr. Schaffer and Mr. Declan McCarthy (Towers). The final set of interviews were conducted by Mr. Richard Bourke, General Manager, Jurys Hotel and Towers. Mr. Bourke prefaced the interview by stating that this was the final lap and that most of the work in the context of interviewing had been done.

3.8 At the first interview the Union claims that Mr.

Schaffer had asked the claimant how her family felt about her applying for the position. In response the claimant had said that she had only discussed it with her husband. At the second interview Mr. McCarthy asked the claimant how she would handle heavy baggage. The claimant was not successful in her application and was ranked fifth in order of preference for the position.

3.9 The Union says that the claimant had been advised in the course of the interviews that the General Manager (Mr. Bourke) would be making the final decision. However, at the final interview with Mr. Bourke and, at which no other management personnel were present, Mr. Bourke indicated that this interview was a little chat and all the work had been done at this stage.

3.10 The claimant was notified of her failure to secure one of the positions by letter which was handed to her by Mr. Timmons. She informed Mr. Timmons that she would be appealing this decision to Mr. Malone, Group General Manager as she considered it unfair given her previous ranking, previous history of job applications and her current record and status within the Company. Mr. Bourke (General Manager) requested a meeting with the claimant and Mr. Andy Burke (Chief Shop Steward) at which he informed her that he was standing by his original decision in relation to the appointments hence it was pointless appealing it. The claimant was still very dissatisfied and sought a meeting with Mr. Malone, Group General Manager and Mr. Simon Murphy, Head of Human Resources. This meeting was scheduled for 8th May, 1995. Mr. Malone excused himself from the meeting because of pressing business and the appeal was heard by Mr. Murphy. The Union says that Mr. Murphy took the view that the issue in dispute was "Jurys Ballsbridge problem" and he would refer back in one week.

3.11 The Union says that another meeting with Mr. Richard Bourke was scheduled to take place on 23rd May, 1995 but was cancelled and re-arranged for 29th May, 1995. At this meeting, which was attended by the claimant and the Chief Shop Steward, Mr. Bourke advised the claimant that he was standing by his original decision on the grounds that he had made the appointments from a Commissionaires point of view only. The Union states that Mr. Bourke offered the claimant the "next walk-in position without interview". The claimant rejected this offer on the grounds that, if such an appointment was made on that basis to any other employee, she would be the first to complain.

3.12 The Union contends that the claimant had demonstrated her competence and qualifications for filling the position of Front House Porter. This was recognised by management by virtue of the ranking order she received and also the encouragement and compliments she received on an unsolicited basis from management in respect of her applications. The Union further contends that the claimant was the most qualified candidate for the position of Front House Porter/Commissionaire and should have been appointed to one of the aforementioned positions. In awarding the positions to Mr. Ward, Mr. Flynn and Mr. Donnelly the Company had treated these applicants more favourably than the claimant on the grounds of their sex and thus discriminated against the claimant in terms of the Employment Equality Act, 1977.

3.13 The Union also claims that the Company discriminated against the claimant by asking her discriminatory questions during the course of the interviews for the positions during this and also previous competitions i.e. how her family felt about her applying for the

positions, how she would handle heavy baggage and would she have difficulty in delivering room service to males rooms.

4. SUMMARY OF COMPANY'S CASE

4.1 The Towers on Lansdowne Road is owned by the Jury's Hotel Group plc. It opened in 1989. The Towers concept was to provide exclusive accommodation with five star plus standards. According to the Company the Towers is monitored to ensure that the facilities meet customer demand. As a result of this monitoring process the Company embarked on a major refurbishment programme costing over £1.25million which included the construction of a separate entrance into the Towers in order that guests did not have to come through the main Jury's Hotel. This necessitated the provision of a full Porterage service, Commissionaire service and Reception service. Upon examination it was established that three Hall Porters and three Commissionaires were required.

4.2 The Company says that, in view of the importance of the positions (in particular the Commissionaire positions), it decided to advertise externally as well as internally. The intention had been to fill the Hall Porter positions from within the existing Hall Porter numbers in the main Hotel (i.e. Jury's Hotel). However, no agreement had been reached on this prior to the advertisement being published in the newspaper on Thursday, 23rd March, 1995. The internal job notice was posted up on Friday, 24th March, 1995. According to the Company it had been decided, by that time, to fill the Hall Porter positions from within the Hall Porter establishment. Consequently the internal job notice was for Commissionaire positions only. A copy of the internal and external job notices are attached as

Appendix A. The Company argues that, as the claimant responded to the internal job notice, she applied for the position of Commissionaire and not Hall Porter.

- 4.3** The Company states that three interviews were held to decide who to appoint to one of the three Commissionaire posts. Some of the initial interviews were conducted by Mr. Doyle and Mr. Schafer. Initial interviews at a later date included Mr. McCarthy. The details of the interviews held were as follows:

Interview Board	Interview Date	Interview Type
Mr. Schafer Mr. Doyle	30/03/95	1st Interviews 14 Interviewed
Mr. Schafer Mr. Doyle	03/04/95	1st Interviews 6 Interviewed

Interview Board	Interview Date	Interview Type
Mr. Schafer Mr. Doyle Mr. McCarthy	04/04/95	1st Interviews 1 Interviewed
Mr. Schafer Mr. Doyle Mr. McCarthy	04/04/95	2nd Interviews 16 Interviewed
Mr. Schafer Mr. Doyle Mr. McCarthy	10/04/95	1st Interviews 5 Interviews
Mr. Schafer Mr. Doyle	10/04/95	2nd Interviews

Mr. McCarthy		1 Interview
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4.4 Following the 2nd interviews a short-list of seven candidates was drawn up (including the claimant) and this list was submitted to the General Manager Mr. Richard Bourke for final interview. The Company says that no ranking of candidates and no recommendations were made by the previous interviewers to the General Manager in relation to the seven people he was to interview. He interviewed the seven candidates by himself and following the interviews he ranked the seven candidates in order of merit as follows:

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|--------------------|---------------------|
| 1. Martin Donnelly | 5. Christine D'Arcy |
| 2. P.J. Ward | 6. J. Nolan |
| 3. Tom O'Flynn | 7. K. Hannon |
| 4. Ray Smith | |

4.5 The Company says that, at the final interview, the intention was that it would take the form of a chat as opposed to a formal interview. In order to make the candidates feel relaxed the General Manager said to each candidate at the start of the interview that "this is a little chat. All of the work has been done at this stage". Each candidates was asked to talk about the job. In deciding on the most suitable of the seven candidates for the positions the General Manager took account of four factors namely appearance, conversational ability, demeanor and personality. These factors were not ranked in any order of importance. Each candidate was marked out of ten on each of these four criteria. The scores which each of the candidates received as a result of the interview were as follows:

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Candidate's Name	Candidate's Marks
Martin Donnelly	36
P.J. Ward	35
Tom O'Flynn	34
Ray Smith	32
Christine D'Arcy	31
J. Nolan	23
K. Hannon	20

4.6 The Company summarises the results awarded to the claimant as follows:

Appearance:- The claimant scored the same as each of the successful candidates.

Conversational

Ability:- The claimant scored the same as two of the successful candidates and less than one of the successful candidates.

Demeanor:- The claimant scored less than all of the successful candidates. The successful candidates scored higher because they were evaluated as being more relaxed and outgoing. In contrast the claimant was seen as being reserved and serious. Mr. Smyth, while ranked higher than the claimant, scored less than the successful candidates. He was seen as over confident even though he was evaluated as being more relaxed.

Personality:- The claimant scored less than the

three successful candidates because the successful candidates were seen as extrovert and gregarious whereas the claimant was evaluated as being slightly introverted. The same score, as was given to the claimant under this heading, was awarded to a male candidate (an existing employee) since he was regarded as being over familiar with the guests.

The Company, therefore, argues that male candidates did not score consistently higher than the claimant in relation to some or all of the criteria used. It varied from individual to individual.

4.7 The Company rejects that it discriminated against the claimant on the grounds of either sex or marital status. Under Section 2(b) of the 1977 Act discrimination on the grounds of marital status can only occur where one person is treated less favourably than another person of the same sex. As none of the successful candidates were of the same sex as the claimant the Company argues that the claimant cannot allege that she was treated less favourably because of her marital status. The Company also says that marital status has nothing whatsoever to do with determining whether or not an individual was appointed to a post.

4.8 The Company says that the claimant alleges that it discriminated against her on the grounds of sex under the 1977 Act. In effect this means that the General Manager ranked the male candidates higher than the claimant just because they were male. The Company argues that, on this basis, if the claimant had been

male or the male candidates had been female then the claimant would have been ranked amongst the top three candidates and therefore would have obtained one of the Commissionaire posts. The Company says that the onus of proof is on the claimant to substantiate the allegation and to date she has failed to show that she was discriminated against because of her sex.

4.9 The Company made some comments on the Union's submission and in summary these comments are as follows:

- The claimant responded to the internal job advertisement and hence applied for the position of Commissionaire and not the position of Hall Porter.
- This is the first time that the claimant applied for the post of Commissionaire. Being previously short-listed for other posts to a greater extent than the successful candidates is irrelevant to the claim.
- On the claimant's third application for the position of Hall Porter there was no difference between the successful male candidate and the claimant as regards suitability. The only reason the male candidate was offered the position was because he had been applying for it longer. The Company point out that this basis for selection was used only because both candidates were deemed equally suitable. The number of applications did not become relevant in the selection procedures for the job of Commissionaire as no two candidates were evaluated as being equally suitable.

- The Company disputes that Mr. Schafer asked the claimant how her family felt about her applying for the position and that Mr. McCarthy inquired as to how she would handle heavy baggage. Furthermore the Company says that the alleged act of discrimination took place on 24th April, 1995 while the preliminary interviews were completed by 10th April, 1995.

- The Company says that Mr. Bourke offered the claimant consideration for the next available position in the Hall Porters area as a gesture of goodwill by the Company. The claimant had scored well in her previous interview for the position of temporary night Hall Porter and was seen as suitable for that particular position.

4.10 The Company says that, as a result of the selection process, one cannot say that the unsuccessful candidates were unsuitable for the position of Commissionaire. Rather they were not regarded as being as suitable as the successful candidates. The Company outlines the experience of the successful candidates because it says that the Union's reference to these candidates in its submission fails to reflect their experience accurately:

P.J. Ward	Employed as a casual waiter and relief room-service Head Waiter and had regular contact with the customers.
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Tom Flynn	Previously worked in Jury's Cork and Christchurch in the Front House Portering role and also had regular contact with customers.
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Martin Donnelly Worked for six months in Jury's Ballsbridge as a security guard and had regular contact with customers.

Claimant Employed as a House Assistant i.e. making up bedrooms and general housekeeping. Hence she did not have regular customer contact.

4.11 The Company rejects the allegation that it discriminated against the claimant on the grounds of sex or marital status when it did not appoint her to the position of Commissionaire.

5. CONCLUSIONS OF THE EQUALITY OFFICER

5.1 The case before me is that Jurys Hotel and Towers discriminated against the claimant Ms. D'Arcy on 17th July, 1995 in terms of Section 2(a) and Section 2(b) of the Employment Equality Act, 1977. In making my recommendation I have taken into account all the submissions, both written and oral, made to me by the parties.

5.2 The Union and the Company are in dispute over whether or not the claimant applied for the position of Hall Porter/ Commissionaire or the position of Commissionaire only. The Union says that the claimant applied for the position of Hall Porter/Commissionaire as she was aware of both the internal and external advertisements. The Union claims that the internal advertisement as submitted by the Company is not the same as that posted on the noticeboard at the time. I note that the Union are not in a position to submit a copy of the internal advertisement hence I must accept the internal

advertisement as submitted by the Company and set out in Appendix A.

- 5.3** The Company says that the reason the external advertisement describes the vacancy as Hall Porter/Commissionaire and the internal advertisement describes it as Commissionaire is because it was only after the external advertisement was given to the national newspaper that it was decided to fill the Hall Porter positions from within the existing Hall Porter staff. Three positions for Hall Porter were filled by existing staff and these staff were not interviewed.

At the hearing the claimant said that, when the vacancies were advertised, she informed Mr. Timmons that she wished to apply. It was agreed that her application for a previous Porter position would be acceptable for this competition. As a result there is no documentation between the claimant and the Company regarding this competition.

I note, however, that the letter sent by the Company to the claimant informing her that she had been unsuccessful in the competition referred to the position for which she had applied as that of Commissionaire/Hall Porter (see Appendix B). At the hearing the Company indicated that this was a mistake.

Based on the foregoing I am satisfied that the claimant applied for the position of Hall Porter/Commissionaire.

- 5.4** The next issue for consideration is the allegation by the Union that the claimant was asked discriminatory questions at the preliminary interviews.

- 5.5** The Union said that, during the course of the first

interview, Mr. Schaffer asked the claimant "how her family felt about her applying for the position?" and, at the second interview, Mr. McCarthy asked her "how she would handle heavy baggage?" The Company denied that the first question was asked and said that the second question as stated by the Union was not asked. Rather the question asked was "how would someone dealing with baggage while at the same time a guest is looking for a taxi deal with the matter?". I accept that the Union may have difficulty in producing evidence to substantiate a claim. However, having examined the totality of the evidence I cannot infer that the first question was, in fact, asked. I am satisfied that a question in some form was asked about handling baggage. I consider that, given the nature of the positions being filled i.e. Hall Porter/ Commissionaire, that a question of this nature could have been asked of both female and male candidates. For this reason I do not consider that this was a discriminatory question and hence would not have adversely affected a female candidate because of her sex. The Union says that a further discriminatory question was put to the claimant, during an interview for a previous competition, when she was asked if she would have difficulty in delivering room service to a male room. I am satisfied that this question is outside the scope of this investigation as it relates to a previous competition.

- 5.6** The Union has also argued that, following a previous competition for Hall Porter, the claimant was told that she was not successful because the Company held that the person who was appointed to the position had applied for it on more occasions. In this competition the Union says that the claimant had made more applications for the position of Hall Porter than any of her competitors. In its defence the Company argues that, on the third

occasion the claimant applied for the position of Hall Porter, there was no difference between the successful male candidate and the claimant as regards suitability. The only reason the male candidate was offered the position was because he had been applying for it longer. The Company point out that this basis for selection was used only because both candidates were deemed equally suitable. The Company, further, argues that the claimant did not apply for a position of Hall Porter, given that these positions were filled from the existing staff resources, rather she applied for the position of Commissionaire and this was her first application for this position.

- 5.7 The Union said that, at the final interview, the General Manager (Mr. Bourke) advised the claimant that *"it was a little chat, that all the work had been done by this stage"*. On this basis the Union argues that the Company had made its decision on who it was going to appoint. The Company said that the General Manager had said this to all the applicants at the final interview. No evidence was presented to contradict this. The Company did, however, submit the notes that the General Manager maintained at the time of the interviews. He set four criteria (namely Appearance, Conversation, Demeanour and Personality) by which he examined each of the candidates. He made notes on each of the candidates and he marked the candidates out of 10 points on the basis of their performance under each of the criteria. The total marks awarded to each of the candidates is set out in paragraph 4.5 above. I accept, on the basis of the evidence presented, that the criteria set by the General Manager was not sex based and was applied to equally all the candidates.

5.8 Under Section 2(b) of the Employment Equality Act, 1977 discrimination shall be taken to occur:

"where because of his marital status a person is treated less favourably than another person of the same sex".

As none of the successful candidates were of the same sex as the claimant, I am satisfied that the Company did not discriminate against her because of her marital status.

6. **RECOMMENDATION**

6.1 Based on the foregoing, I find that Jurys Hotel and Towers did not discriminate against Ms. Christine D'Arcy in terms of Section 2(a) and 2(b) of the Employment Equality Act, 1977 or contrary to the provisions of Section 3 of that Act by not appointing her to a position of Hall Porter/ Commissionaire.

Gerardine Coyle
Equality Officer

22nd January, 1997

APPENDIX A

Job Advertisements:

- (1) External Job Notice
- (2) Internal Job Notice

APPENDIX B

Letter from the Company

to the claimant

dated 24th April, 1995