

**1. DISPUTE**

- 1.1** This dispute concerns a claim by Mr. Pat Doyle that, on 19th May, 1995, Eagle Star Insurance Company (Ireland) Limited discriminated against him in terms of Section 2(b) and Section 2(c) of the Employment Equality Act, 1977 and in contravention of Section 3 of that Act by denying him continuing access to the company's discount on personal insurance scheme.

**2. BACKGROUND**

- 2.1** The claimant has been employed by Eagle Star Insurance since July, 1984. From December, 1993 to June, 1995 he held a discounted joint motor policy with his female partner. The policy was reviewed for renewal purposes in May, 1996 and, as a result, it was amended to make the claimant the main policy holder and his female partner a named driver.
- 2.2** The claimant was dissatisfied with the change in the policy and is of the opinion that he has been treated less favourably than a person of the same sex but different marital status constituting discrimination under the Act. On this basis he referred a claim to the Labour Court in November, 1995 and the Labour Court then referred it to an Equality Officer for investigation and recommendation. The investigation of this claim was delayed because the Employment Equality Agency took eight months to advise the Equality Officer that it would not be in a position to represent the claimant.

**3. SUMMARY OF CLAIMANT'S CASE**

3.1 The claimant has been a full time permanent member of staff of Eagle Star Insurance Company since 1984. The Company grants discounts on personal insurances to full time permanent members of staff and where a staff member is married the discount scheme extends to the married couple. The claimant and his partner/Common Law wife have held a discounted motor policy in their joint names with Eagle Star from December, 1993 until June, 1995.

3.2 In May, 1995 the Company reviewed the policy for renewal purposes. As a result it amended the policy, making the claimant the main policy holder and his partner a named driver. When the claimant asked for an explanation for the change in the policy he was referred to the rules of the staff discount scheme attached as Appendix A. Point (a) (iii) of the rules titled Motor Insurance states:

***"The vehicle(s) must be insured in the name of the employee or in the joint names of the employee and spouse."***

The claimant says that he explained his circumstances to the Company and he was told that nothing could be done as the word 'spouse' in the terms of the scheme implies 'married'.

3.3 In his defence the claimant cites the case of Central Bank of Ireland V A.S.T.M.S.<sup>1</sup> in which the Central Bank had a requirement that married staff should have five years service and single staff eight years service before being eligible to apply for a loan under the Central Bank's House Loan Scheme. The Equality Officer, in that case, took the view that the scheme discriminated against employees on the basis of their marital status and that the bank was, therefore, contravening Section 2(b) of the Employment Equality Act, 1977.

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<sup>1</sup> Case No. EE 04/1980

3.4 The claimant believes that he has been discriminated against under the terms of the Employment Equality Act, 1977 on the basis that he is being treated less favourably than a person of the same sex but different marital status by being denied access to a joint discounted policy.

3.5 The claimant asks the Equality Officer to find that he has been discriminated against on the grounds of his marital status in relation to access to a discounted joint motor policy. He further asks that the Equality Officer recommends a revision of the policy by the Company to provide for equal treatment between single staff and married staff in relation to access to the company's discount on motor insurance.

#### 4. SUMMARY OF COMPANY'S CASE

4.1 The Company, in its submission, states that Section 2(b) of the Employment Equality Act, 1977 provides that 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".*

4.2 According to the Company the term **marital** connotes a relationship between a husband and wife in the context of marriage and if a male (married) employee was able to establish that he was adversely affected by a discriminatory act on the part of his employer which did not affect a single male employee, this would, without further ado, offend Section 2(b) of the Act of 1977. The Company says that any other interpretation of the term *marital status* would not merely be illogical but would also amount to an unconstitutional attack on the

institution of marriage and an inducement to men and women to live together without entering into a contract of marriage.

**4.3** The Company says that the notion of common law wife or partner is not recognised under Irish Law and is not in particular provided for in the Employment Equality Act, 1977.

**4.4** It is the Company's contention that the claimant has no marital status for the purposes of the Act of 1977 (or at all) in that he is unmarried. The Company says that only married persons are encompassed by Section 2(b) of the 1977 Act and, for that reason, the claimant is not entitled to invoke the protection of that Act.

**4.5** The Company argues that no protection is extended by the equality legislation to unmarried persons who are treated less favourably than other persons of the same sex by their employer. Hence where a particular male employee is cohabiting with a woman and they are unmarried, the Company contends that Section 2(b) of the 1977 Act does not entitle that individual to complain that he is suffering a detriment or other disadvantage by comparison with some other married male in the same employment.

**4.6** The Company says that it places an artificial construction on Section 2(b) of the Employment Equality Act, 1977 to argue that marital status connotes or encompasses unmarried persons since if this was so, one would have a situation where a notional unmarried (but engaged) male could successfully argue that he is suffering sex discrimination by reference to another single man under the heading of his future marital

status. The Company cites the English case of *B.C. Bick v Royal West of England Residential School for the Deaf*<sup>2</sup>. The circumstances in this case were as follows:

Ms. Bick, who was engaged to be married on the 31st January, 1976, was given notice of termination of her employment as a Child Care Officer to take effect on the 31st of January, 1976. Ms. Bick invoked Section 3 of the English Sex Discrimination Act of 1975 and submitted that her termination constituted discrimination against a married person. Section 3 of the English statute provided:

"(1) A person discriminates against a married person of either sex in any circumstances relevant for the purposes of any provision of Part II if -

(a) On the ground of his or her marital status he treats that person less favourably than he treats or would treat an unmarried person of the same sex,"

In applying Section 3 of the Act, the English Industrial Tribunal dismissed Ms. Bick's claim, and observed that the alleged discrimination took place when notice of termination of her employment was furnished on the 30th of December, 1975. They then proceeded to accept that this action on the employer's part was not discrimination on the grounds of Ms. Bick's marital status since she was not married at that time.

**4.7** Notwithstanding the textual variation in the English and the Irish legislation, the Company claims that the user of the expression "marital status" is to be construed strictly, and is calculated to distinguish the individual who is actually married, from the person who is either intending to get married, - and has announced

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<sup>2</sup> Case No. 1976 IRLR 326

his or her intentions, or the co-habitee who is living in a quasi married state.

4.8 In conclusion the Company says that it is not possible to construe marital status within the meaning of the 1977 Act, in terms other than marriage while the expression "common law wife" is merely a colloquialism used to denote the relationship of a man and a woman who live together as man and wife without having gone through a legal ceremony of marriage. In other words a "common law marriage" has no legal significance and is not recognised by the Employment Equality Act, 1977.

4.9 The Company states that the case of Central Bank of Ireland V A.S.T.M.S.<sup>3</sup> as cited by the claimant has no relevance to the facts of this case.

## 5. CONCLUSIONS OF THE EQUALITY OFFICER

5.1 In this case the claimant has alleged that the Company has discriminated against him by denying him access to a joint discounted motor insurance policy on the basis that he is not married. In making my recommendation I have given consideration to all the submissions, both oral and written, that I have received from the parties.

5.2 From December, 1993 to June, 1995 the claimant held a discounted motor insurance policy in the joint names of himself and his partner/Common Law wife. In May, 1995 the Company reviewed the policy and decided that the claimant was not entitled to have a discounted policy in the joint names of himself and his partner. Under the rules of the discount scheme for motor insurance the discount applies to a maximum of two saloon cars per

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<sup>3</sup> Case No. EE 04/1980

married couple or one saloon car in the case of a single person. Furthermore the vehicle(s) must be insured in the name of the employee or in the joint names of the employee and spouse. The Company's decision to deny the claimant access to the discounted policy was based on the fact that his partner is not his spouse as he is not married.

5.3 A "**spouse**" is defined as a husband or wife. The term "**Common Law wife**" is a colloquial term used to denote the relationship of a man and a woman who live together as if man and wife but without having gone through a legal ceremony of marriage. Hence a Common Law wife is not the same as a spouse. I, therefore, find that the claimant fails to comply with the provision that "the vehicle(s) must be insured in the joint names of the employee and spouse".

5.4 In its submission the Company argues that the claimant has no marital status for the purposes of the Employment Equality Act, 1977. It further states that "No protection is extended by equality legislation to unmarried persons who are treated less favourably than other persons of the same sex by their employer". The claimant rejects this argument and says that "every person has a marital status of one form or another and that such a status is not only acquired after entering a marriage". The claimant further argues that 'single' and 'married' are not the only two categories of marital status. He states that in *Moran v Revenue Commissioners*<sup>4</sup> the Equality Officer found that the marital status of a widow must be regarded as being different to that of a woman who is married. The Equality Officer in that case

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<sup>4</sup> Case No. EE 20/1991 & EE 21/1991  
Appealed to the Labour Court (Case No. DEE 593)  
Appealed to the High Court [1991 ELR 187]

held that if a widow is treated more favourably, because she is a widow, than a woman who is married, then the treatment must be regarded as being 'because of her marital status'. The claimant argues that marital status under the Employment Equality Act, 1977 includes, inter alia, widows. In the case of an Employee v An Employer<sup>5</sup> the claimant says that the Equality Officer held that "there was a perception/impression by the employer that the claimant had a difficulty with her transferability/flexibility and that the employer's perception was based on the claimants domestic/family responsibilities". The claimant contends that this case supports a wider interpretation of the term 'marital status' to include for example 'separated persons' and 'persons with care of children'.

5.5 The claimant contends that there are more than two categories of marital status. He says that persons who live in unmarried cohabitation do not regard themselves as 'single' and are not regarded as such within the community. Rather they constitute a discreet category of marital status. According to the claimant discrimination as between an employee who is living in unmarried cohabitation and one who is married contravenes Section 2(b) of the Act.

5.6 Section 2(b) of the Employment Equality Act, 1977 provides for discrimination taking place where a person is treated less favourably, because of his/her marital status, than another person of the **same** sex. If one accepted the Company's argument, then a situation would pertain whereby only married persons could be directly discriminated against on the basis of their marital status because the Company claims that marital status implies married, thus covering only married person.

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<sup>5</sup> Case No. EE 03/1995



This is contrary to the Equality Officer's decision in the case of Central Bank of Ireland v A.S.T.M.S.<sup>6</sup> cited by the claimant. I cannot accept the Company's argument that the claimant has no marital status. As the claimant is not married, I am satisfied that he is single, hence his marital status is single. Furthermore, I reject the claimant's argument that he is not single and I consider that community perception of his marital status is irrelevant.

**5.7** The claimant alleges that the Company has discriminated against him by denying him access to a joint discounted policy because he is not married. Hence he claims that the Company is treating him less favourably than a person of the same sex but of a different marital status. I find that the Company treats married persons more favourably than single persons by providing them with a discounted policy for two cars while the single person only receives a discount for one car. In this case if the claimant was married he would benefit from a joint motor insurance policy. However as he is single he is denied the benefit and is, thus, being directly discriminated against on the basis of his marital status within the meaning of Section 2(b) of the Employment Equality Act.

**5.8** As I have found that the Company has directly discriminated against the claimant on the basis of his marital status it is not necessary to examine the issue of indirect discrimination under Section 2(c) of the Employment Equality Act, 1977.

## **6. RECOMMENDATION**

**6.1** Based on the foregoing I am satisfied that Eagle Star

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<sup>6</sup> Case No. EE 04/1980

Insurance (Ireland) Ltd discriminated against Mr. Pat Doyle in terms of Section 2(b) of the Employment Equality Act, 1977 and in contravention of Section 3 of that Act. I recommend that Eagle Star Insurance (Ireland) Ltd revise its motor insurance policy for staff so as to provide equal treatment for both single and married staff. I, further, recommend that Eagle Star Insurance (Ireland) Ltd pay Mr. Doyle the sum of £1,000 by way of compensation for stress caused as a result of their actions.

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Gerardine Coyle  
Equality Officer

22nd April, 1997

**APPENDIX A**

Rules  
for  
Staff Discounts  
on  
Motor Insurance