

ANTI-DISCRIMINATION (PAY) ACT, 1974

EQUALITY OFFICER'S RECOMMENDATION NO. EP 02/1997

P A R T I E S

Ms. Teresa Hynes  
(Represented by S.I.P.T.U.)

AND

Eason & Son Ltd.  
(Represented by I.B.E.C.)

**1. Summary of Recommendation**

- 1.1** I find that the claimant does not perform "like work" as defined by Section 3 of the Anti-Discrimination (Pay) Act, 1974 with that performed by the named comparator and accordingly, I find that she is not entitled to the same rate of remuneration as that paid to the named comparator.

## **2. Dispute**

- 2.1** This dispute concerns a claim by the union, on behalf of Ms. Teresa Hynes, that she is entitled to be paid the same rate of remuneration as that paid to a named comparator, Mr. Pat Ridgeway, in terms of Sections 3(a), 3(b) and 3(c) of the Anti-Discrimination (Pay) Act, 1974.

## **3. Background**

- 3.1** Both the claimant and the comparator were employed as sales representatives in the wholesale division of the company, Eason and Son Ltd. The claimant resigned in February, 1994. The comparator is still employed with the company.
- 3.2** In October, 1992 an offer was made to the claimant and the named comparator to become salaried employees. The comparator was offered £19,100 (alleged by the union to be £20,160) which he accepted, while the claimant was offered £15,620 which she rejected. They had both previously been waged employees on the same pay structure, the comparator being at a higher point due to his longer service. As waged employees, both would have received overtime pay for any overtime worked. The offer of a salary was inclusive of anticipated overtime.

#### **4. The Claimant's Case**

- 4.1** The union submits that the claimant and named comparator worked as sales representatives from the company's wholesale division in Dublin and were each involved in selling magazines, newspapers and periodicals to retailers. The claimant was responsible for covering Dublin 2, Dublin 4, Kildare, Laois, Carlow, Westmeath and Offaly, while the comparator covered part of Dublin 6, Sligo and Donegal. The union maintains that the sales representatives had discretion as to who to call on, the frequency of calls etc.
- 4.2** The union states that sales targets were never discussed and turnover of the company was never made known to reps. Cash collected was mostly handled through a direct debit system but, where same did not exist (e.g. for larger customers), the sales representative would collect a cheque. The union maintains that there was no monitoring arrangements in the company for evaluating performance of individual representatives in terms of sales, turnover, new customers, cash collection etc. Sales representatives also had a merchandising role and were supported by a sales manager and five customer liaison staff based in Dublin.
- 4.3** The union states that, in practice, a sales representative would be "on the road" from Monday to Friday morning and would use Friday afternoon to pursue queries and arrange any necessary appointments for the following week.
- 4.4** The union submits that there are two categories of employees in the white collar grades in the

company i.e. unionised staff (with agreed pay scales, overtime payments etc.) and staff grades where union membership was discouraged by, amongst other things, the termination of the "deduction at source" facility. The staff grades were paid an all inclusive salary while the unionised grades were paid a salary scale max of £14,788 plus the normal overtime arrangements etc. The union submits that the comparator would have reached the max of his scale some years back while the claimant would only have reached her max in 1992.

- 4.5** The union states that in late 1992 management approached the claimant and the named comparator with offers to transfer to the "staff grade". However, the union contends that the offer of £15,600 to the claimant was rejected, knowing as she did of a £20,160 offer to the comparator. SIPTU argues that management acknowledged that they had made a higher offer to the comparator as, in response to an expression of unfairness by the claimant to the manager, his response was that what was being offered or paid was a matter of his prerogative as manager.
- 4.6** The union states that in October, 1992 the sales manager, who previously also worked as a sales representative for the Sligo area, ceased his representative function and left it to the four remaining staff to reorganise coverage of his area amongst themselves. The union maintains that at no stage was it said or inferred that the nature of the work in any of the areas, including Sligo, was different or warranted a different category of sales representative. Accordingly, the union submits that, on a purely voluntary basis amongst the four reps, the Sligo area fell to the

comparator. The union recognises, however, that coverage of the Sligo area requires an overnight stay.

**4.7** SIPTU contends that the claimant was offered a reduced salary because she was female despite the fact that there was total equality in terms of job content, physical and mental demands etc. The union argues that management, at a conference with the union on 16/9/93, agreed that the two roles (claimant and comparator) were identical and, therefore, it contends that there is no justification for the difference in pay. SIPTU states that both the claimant and comparator were on the maximum of their scale, both were to be assimilated onto the staff grades having regard to similar exposure to overtime working etc. and yet the offer made to the claimant was nearly £5,400 less than that made to the comparator.

**4.8** The union contends therefore that, under Sections 3(a), (b) and (c) of the 1974 Act, the claimant is entitled to the same rate of remuneration as that paid to the named comparator for the following reasons:

**(i) Same Work - Section 3(a)**

The union submits that the areas serviced by the claimant and the comparator were interchangeable, they both looked after groups of newsagents (i.e. AM-PM, NewsExtra etc) that overlapped the other's geographical area. For example, the NewsExtra group were all in the comparator's Tallaght Area and serviced by the

claimant while some of the AM-PM stores were in the claimant's area but were serviced by the comparator. They both visited each other's agents if either were on holiday, ill or absent and it was not uncommon for any representative to visit another's area if that representative was not available. All the company's office facilities were shared by the four representatives (computer, phone etc) and each representative dealt with queries for the other.

**(ii) Similar Work - Section 3(b)**

The union submits that the size of the geographical area had no bearing on the amount of calls a representative was required to make or the intensity of effort. The four separate areas were agreed between the representatives themselves taking into account the actual workload. The union argues that the difference in mileage involved in covering the respective areas has no significance as roughly 40% of the claimant's agents were situated in the Dublin postal areas of 1, 2, and 4. The comparator's overnight stay occurred once every fifth or sixth week and the union contends that, as such, it required less physical effort than the claimant's work travelling to and from the city centre.

**(iii) Work of Equal Value - Section 3(c)**

The union contends that the physical effort which the company claims was exclusive to the comparator (due to travel) was more than equalled on the part of the claimant

when servicing a run such as "south city" where parking is almost impossible. In addition, there were severe traffic congestion problems which caused considerable stress to the claimant - i.e. walking long distances and carrying stock over a three hour period would invariably expend energy equal or greater than driving a long distance over the same period.

## **5. The Respondent's Case**

**5.1** The employer submits that prior to October, 1992, both the claimant and the comparator were on the same pay structure. They were both waged employees but the comparator was at a higher point on this structure because of his longer service; in addition to basic pay both the claimant and the comparator would have received overtime pay for any overtime worked. Because of the fact that the comparator was covering a much larger geographical area (and consequently working longer hours) than the claimant, the employer states that he was earning significantly more overtime pay than she.

**5.2** The employer submits that in October, 1992 an offer was made to both the claimant and the comparator to become salaried employees; both were offered the same increase i.e. £2,400 and account was taken of the overtime, payment in lieu of bonus and basic pay which each earned at the time. As a result, the employer states that the comparator was offered £19,100 per annum which he accepted, but that the claimant was offered £15,620 per annum which



she rejected. The comparator's salary was later increased by the terms of the PESP. The employer points out that if the claimant had agreed to be paid by salary then she would have received an equivalent increase under the PESP; however, her wage was increased by the terms of the PESP and in addition she received a 2% bonus as did all waged employees.

**5.3** The company rejects the allegation by the claimant that she was discriminated against on the grounds of her sex contrary to the terms of the Anti-Discrimination (Pay) Act, 1974 and it contests that "like work" as defined by the Act exists between the jobs of the claimant and the named comparator. In addition, without prejudice to this argument, the employer maintains that there are legitimate "grounds other than sex" as defined by Section 2(3) of the Act which explain fully the different salaries offered to the two people concerned.

#### **5.4 "Like Work"**

The company rejects the allegation that the jobs of the claimant and the comparator are either the same, similar or equal in value as defined by the Act.

##### **(i) Same Work**

The employer states that the claimant and the comparator do not perform the same work; both operate in different parts of the country covering different sized geographical areas and, therefore, they are not inter-changeable with one another in relation to the work.

**(ii) Similar Work**

The company argues that while the jobs of the claimant and the comparator are both sales representative jobs, they are not similar in nature as defined by the legislation as the differences in the jobs occur on a frequent basis. The employer maintains that both are operating in different parts of the country and covering different sized geographical areas on a daily and weekly basis. For example, the employer points out that the claimant is covering towns which are quite close to Dublin e.g. Athy, Athlone, Carlow, Portlaoise, Newbridge and Tullamore while the comparator would be travelling to Donegal, Monaghan, Ballybay, Dundalk, Sligo and Cavan. Furthermore, the employer argues that these differences are significant in relation to the work as a whole as the comparator would travel approximately 50% more miles each week than the claimant and he would also have to stay away overnight as required because of the long travel distances involved. The employer further maintains that the jobs are not of a similar nature as defined by the legislation because the differences occur on a frequent basis and are also significant enough to justify a higher rate of pay for the comparator's job.

**(iii) Work of Equal Value**

The company accepts that the jobs of the claimant and comparator involve the same

skill, mental effort and responsibility. However, it argues that there is significantly greater physical effort and more adverse working conditions involved in the comparator's job and that these are sufficient to justify his higher rate of pay. In relation to physical effort, the employer states that the comparator is driving over 1,200 miles per week compared to the claimant's mileage of less than 800 miles per week and that, the longest round trip in mileage terms which the claimant would make is 160 miles. In contrast, the employer points out that the comparator's longest round trip involves 368 miles and because of the significantly greater distances involved, it makes his job significantly more demanding in terms of physical effort than the job performed by the claimant. In regard to working conditions, the employer states that the comparator must stay away from home as required because of the distances he travels and that this results in more unsociable working hours on his part.

## **5.5 Grounds other than Sex**

Without prejudice to its arguments in relation to "like work" the company also contends that there are "grounds other than sex" to explain the different salaries paid to the two people concerned. Section 2(3) of the Act provides that:

*"nothing in this Act should prevent an employer from paying to his employees who are employed in like work in the same place different rates of remuneration on grounds other than sex".*

The employer submits that both the claimant and the comparator were offered the same amount of money to transfer from a wage-based pay system to a salary-based pay system. However, the comparator was on higher basic pay and was also earning more overtime due to the longer number of hours he worked and that this was taken into account when offering him a salary. The employer maintains that the same principles were applied in the case of the claimant, - i.e. her average overtime was taken into account when offering her a salary. The employer contends that the comparator's average salary, including basic pay, overtime and pay in lieu of bonus was £17,367 per annum while the claimant's salary was £14,202 per annum. The employer contends that the same basis was used to calculate the salaries it proposed to offer to both the claimant and the comparator, - i.e. their basic pay, overtime and pay in lieu of bonus were taken into account plus service pay and VDU grade payment. As both were offered the same amount of money to transfer to salary, the employer maintains that no discrimination on grounds of sex occurred.

## **6 Conclusions of Equality Officer**

- 6.1** In making my recommendation in this case I have taken into account all submissions, both written and oral, made to me by the parties and also the work inspection which I carried out on the work of the claimant and that of the named comparator.

**6.2** In summary, the claimant argues that she is entitled to the same rate of remuneration as that paid to the named comparator in terms of Section 3 of the Anti-Discrimination (Pay) Act, 1974. The employer argues that "like work" as defined by Sections 3(a), 3(b) and 3(c) of the 1974 Act does not exist between the jobs of the claimant and the named comparator as the jobs are not the same, similar or equal in value as defined by the legislation. Furthermore, without prejudice to its arguments in relation to like work, the employer contends that there are legitimate grounds other than sex to justify the higher salary level of the comparator, as the basis used to calculate the salaries offered to both the comparator and the claimant had nothing to do with the sex of either party.

### **6.3 "Like Work"**

In order that a claim succeed under the Anti-Discrimination (Pay) Act, 1974, it must firstly be established that "like work" as defined by Section 3 of that Act exists between the jobs as performed by the claimant and the named comparator. The first question for decision, therefore, is whether "like work" as defined by Sections 3(a), 3(b) and 3(c) of the 1974 Act exists between the two jobs in question. In this regard I interviewed the claimant and the named comparator at the offices of the company. The parties agreed that it was not necessary or practicable to inspect the jobs while they were being performed due to the nature of the work involved. Detailed job descriptions in respect of the work of the claimant and that performed by the named comparator are attached to this recommendation at Appendices I and II respectively.

**6.4** Section 3(a) of the 1974 Act defines "like work" as occurring:

*"where both perform the same work under the same or similar conditions, or where each is in every respect interchangeable with the other in relation to the work".*

While the jobs of the claimant and named comparator are similar in regard to their actual representative functions when visiting newsagents (see job descriptions at Appendices I and II), both operate in different parts of the country covering different sized geographical areas. I accept that the claimant and comparator both operate in the Dublin area, but while the claimant's work is centred predominantly in Dublin, the comparator's work is predominantly country focused. I also accept that the claimant and the named comparator covered for each other in certain circumstances (e.g. in the event of sick leave or annual leave) but I consider that such flexibility is inherent in many jobs which are not the same nor equal in value. The comparator also worked longer hours than the claimant. Accordingly, I am satisfied that the jobs of the claimant and the named comparator are not inter-changeable with each other in relation to the work and, therefore, "like work" as defined by Section 3(a) of the Act does not exist.

**6.5** Section 3(b) of the 1974 Act defines "like work" as occurring:

*"where the work performed by one is of a similar nature to that performed by the other and any differences between the work performed or the conditions under which it is performed by each occur only infrequently or are of small importance in relation to the work as a whole".*

The claimant's area of responsibility comprised Dublin and towns which are comparatively close to Dublin, Athlone being her farthest call point from the capital. The comparator's area of responsibility extends to Dundalk, Cavan, Sligo and Donegal. I consider that these differences are significant in relation to the work as a whole, particularly as they require the comparator to drive approximately 50% more miles each week and work longer hours than the claimant. Occasionally the comparator is also required to spend an overnight outside Dublin due to the size of his area and the distances involved. Accordingly, I am satisfied that the jobs of the claimant and the named comparator are not of a similar nature as defined by Section 3(b) of the Act because such differences occur on a frequent basis and are significant in relation to the work as a whole.

**6.6** Section 3(c) of the 1974 Act defines "like work" as occurring:

*"where the work performed by one is equal in value to that performed by the other in terms of the demands it makes in relation to such matters as skill,*

*physical or mental effort, responsibility and working conditions".*

I note that the company accepts that the jobs of the claimant and the named comparator are equal in regard to the demands placed on the incumbents in terms of skill, mental effort and responsibility. Accordingly, I must make my assessment in regard to the demands placed on the claimant and the named comparator by the level of physical effort and the working conditions associated with each job.

## **6.7 Physical Effort**

The employer submits that at the time of the claim the comparator was driving in excess of 1,200 miles per week while the claimant was driving less than 800. However, during the work inspection the comparator informed me that he was driving in excess of 2,000 miles per week (25,000 per year) at the time of the claim. Further, the longest round trip made by the claimant was 160 miles whereas the comparator's longest round trip was over 350 miles, although this would not occur frequently. The union does not dispute these figures but argues that the physical effort involved in driving the comparator's route is more than equalled by the claimant's route in the city where traffic congestion causes stress and parking is extremely difficult, resulting in the need to physically carry stock considerable distances to newsagents. While I agree with the union in this regard, I consider the fact that the comparator was working longer hours due to the distances involved, and that during these additional hours he was driving - an essential element in the jobs of both the claimant and comparator - makes his



job significantly more demanding in terms of physical effort than the job of the claimant.

## **6.8 Working Conditions**

In regard to working conditions the employer relies on the same arguments in regard to:

- (a) the distances travelled by the comparator,
- (b) the fact that he works longer hours than the claimant, and
- (c) the requirement for him to stay away overnight on occasions due to the distances travelled, as justification for his higher rate of remuneration.

**6.9** Prior to and during 1992 both the claimant and the named comparator were waged employees on the same pay structure although the comparator was on a higher point of the scale due to his longer service. At that time, both received overtime pay for any overtime worked. The comparator moved onto salary in 1993 and the company contends that his salary reflects the level of overtime which he was working previously. In this regard the company has provided evidence of the comparator's higher overtime levels in 1992 - see copies of pay slips of 1 October 1992 (week 26) at Appendix III. Therefore, I consider that the company, in essence, is accepting that the two jobs are equal in value except for the additional hours which the comparator's job requires him to work. In this regard I concur with the company view that the additional hours worked in travelling longer distances, coupled with the need for occasional "overnights", result in more unsociable working hours in respect of the comparator's job. Accordingly, I consider that his job is more demanding in terms of working

conditions than the job of the claimant.

**6.10** Essentially the employer's arguments at 6.9 above are also the arguments put forward to justify the different salaries paid to the two people concerned on "grounds other than sex". I think it is important to point out that I consider the difference in value between the jobs relates solely to the fact that the comparator worked longer hours than the claimant and that these longer hours were spent, for the greater part, driving. The union has not disputed the fact that the comparator worked longer hours than the claimant. Accordingly, if there was a mechanism for paying overtime in respect of these additional hours, I would have found the jobs equal in value. Nonetheless, as I have already said at paragraph 6.7, driving is an essential element of the two jobs in question and, accordingly, I find that the claimant's job is not equal in value to that performed by the named comparator in terms of the demands placed on both with regard to physical effort and working conditions. I consider, therefore, that the claim for equal pay must fall on the basis that "like work" does not exist under Sections 3(a), 3(b) or 3(c) of the Act.

**6.11** As I have found that "like work" does not exist within the meaning of Section 3 of the Anti-Discrimination (Pay) Act, 1974 there is no need for me to consider further the arguments put forward by the employer under Section 2(3) in regard to "grounds other than sex".

**6.12** I consider that the claimant's main grievance in this case concerned the fact that she felt she

was offered a less favourable transition to salary than the offer made to the named comparator. In reaching this conclusion I note that she did not dispute the fact that the comparator worked longer hours while driving. While I am sympathetic with her view in this regard, it is not an issue for consideration by me under the 1974 Act. As I stated at paragraph 6.3 earlier, the first requirement for a claim to succeed under this Act is the need to establish that "like work" as defined by Section 3 exists between the jobs of the claimant and that of the named comparator. In the absence of such a finding the claim must fail.

- 6.13** I feel it is also important to state that while the geographical areas of responsibility were divided between the sales representatives on a voluntary basis, this is not a factor which affects my comparison of the two jobs in question. In addition, while the union alleged that the company was being less than transparent in showing the transition process which it had used in offering salaries to the claimant and the named comparator and suggested that I should seek further details of wage records, I consider that this matter would only be relevant had I found that "like work" as defined the Act existed between the two jobs.

## **7 Recommendation**

- 7.1** Having regard to my findings at paragraphs 6.4 to 6.10 previous that "like work" as defined by Sections 3(a), 3(b) and 3(c) of the 1974 Act does not exist between the jobs of the claimant and that of the named comparator, I find that the claimant is not entitled to be paid the same rate of remuneration as that paid to the named comparator.

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Gary Dixon,  
Equality Officer.

12th March, 1997.

## **APPENDIX I**

### **JOB DESCRIPTION - CLAIMANT**

- 1.** Drive to designated area to represent Eason & Son Limited with prime agents. The claimant's designated area comprised Dublin (3 days per week) and parts of Westmeath, Offaly, Laoise, Kilkenny, Carlow and Kildare. (The claimant would normally spend one full day on a round trip to Athlone while another day would be dedicated to covering the towns in her area).
- 2.** Visit newsagents to ensure they are maximising sales as follows:
  - (a) check shelves to ensure availability of top titles (papers, magazines and partworks);
  - (b) examine agents' sales control book to identify titles with low or no unsolds;
  - (c) liaise with agent re any problems or queries he/she might have;
  - (d) advise agent on display of news products;
  - (e) advise agent on new titles and forthcoming promotions;
  - (f) arrange instore promotions with agent;
  - (g) collect payments when requested by accounts department.
- 3.** Advise sales manager of trends and happenings in the marketplace.
- 4.** Follow up customer queries which may require the use of computer equipment.

5. Make up specific orders for customers as required.
6. Merchandise new outlets.
7. Assist in stocktaking duties as required.
8. Ensure company supplied vehicle is maintained in good conditions and serviced regularly.

## **APPENDIX II**

### **JOB DESCRIPTION - COMPARATOR**

1. Drive to designated area to represent Eason & Son Limited with prime agents. The comparator's designated area comprised Dublin (two days per week), Louth, Monaghan, Cavan, Leitrim, Sligo and parts of Roscommon, Mayo and Donegal. (Due to the distances travelled and the high number of visits required in the Sligo area, coverage of this area requires 1-2 overnights per month).
2. Visit newsagents to ensure they are maximising sales as follows:
  - (a) check shelves to ensure availability of top titles (papers, magazines and partworks);
  - (b) examine agents' sales control book to identify titles with low or no unsolds;
  - (c) liaise with agent re any problems or queries he/she might have;
  - (d) advise agent on display of news products;
  - (e) advise agent on new titles and forthcoming promotions;
  - (f) arrange instore promotions with agent;
  - (g) collect payments when requested by accounts department.
3. Advise sales manager of trends and happenings in the marketplace.

- 4.** Follow up customer queries which may require the use of computer equipment.
- 5.** Make up specific orders for customers as required.
- 6.** Merchandise new outlets.
- 7.** Assist in stocktaking duties as required.
- 8.** Ensure company supplied vehicle is maintained in good conditions and serviced regularly.