

EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATION NO: EE 23/1997

P A R T I E S

Employee A
(Represented by a union)

AND

Company B
(Represented by an employer organisation)

File No: EE 25/1996

1. Dispute

1.1 This dispute concerns allegations by Employee A ("the claimant") that she was both harassed in relation to her work and sexually harassed by her supervisor whilst employed by company B ("the Company").

2. Background to the Dispute

2.1 The claimant was employed by the company for over a year. She was recruited in September, 1995 and was employed by the company until November 1996.

2.2 In February, 1996 the claimant made a written report to the General Service Manager of the company claiming that she had been treated in a manner that amounted to sexual harassment. She had previously complained that she was treated in a discriminatory manner. The company investigated her complaints and argues that it found no evidence to substantiate an allegation of sexual harassment. The company found that there had been a breach of its security procedures. The claimant was transferred on the 12th February, 1996. The union referred a claim on her behalf under the 1977 Act to the Labour Court on the 20th June, 1996 who subsequently referred it to an Equality Officer for investigation. Written submissions were sought and furnished in the case and a joint hearing was held between the parties on 24th June, 1997.

2.3 The parties to this dispute asked that it be treated in a confidential manner as the claim relates to an alleged incident of sexual harassment. I have endeavoured to make this recommendation as anonymous as possible.

3. Summary of Union's Case

3.1 The union says that the claimant was employed as a temporary security officer on an assignment from the 29th September, 1995, until her transfer on the 12th February, 1996. The union said although the claimant was a temporary employee, initially, she worked on average 56 hours per week every week. She was rostered to work 5 shifts over a seven day week cycle. The claimant was one of sixteen security officers in total and was one of four females on that assignment. The union says that the claimant's immediate supervisor was also her shop steward up until 1st February, 1996.

3.2 The union says that in mid January 1996 the claimant was instructed by one of her supervisors, a relief supervisor (the person alleged to have sexually harassed the claimant and hereafter referred to as supervisor A), to supply written reports to explain why she had (1) given her personal swipe card to other staff on the 11th and 12th of January and (2) why she had failed to leave her personal swipe card at the designated location on those days. The claimant supplied these reports on the 13th January, 1996 explaining that she had given her swipe card to two other members of staff because they didn't have their own cards with them. She also confirmed that this was the reason why she was unable to leave her swipe card at the designated location (which is the official procedure).

The union says that in her report the claimant also challenged Supervisor A's motivation for seeking these reports. In them she alleged that this was common practice and was well known to him. She also pointed out that a male colleague on the same day (11/01/96) failed to leave his swipe card at the designated location but was not required to furnish a written report.

3.3 The union says that in addition to the swipe card issue, the claimant was also required by Supervisor A to supply him with a written report to explain why she failed to have a hand held metal detector (scanner) at her work station on the morning of 11th January, 1996. In her report of 13th January, 1996 the claimant explained that on her arrival into work the scanner which should have been there was missing and that she reported this to him. She says that when this happens the usual practice is for the supervisor (or relief supervisor) to arrange for a scanner to be sent over to the officer. Once again she challenged Supervisor A's motivation for taking her to task on this matter pointing out that on the following day (12/01/96), a third officer had also reported the scanner missing to Supervisor A who arranged to have a scanner sent to him without requiring him to supply a report.

3.4 The union says that the claimant telephoned the General Service Manager and reported to him that she believed she was being harassed by being treated differently to her male colleagues, i.e. that she was the only person being required by Supervisor A to issue reports. The General Service Manager then apparently spoke to Supervisor A and telephoned the claimant back to confirm that Supervisor A was just doing his job and that she would "have to do the reports" The union says that "He allegedly made no comment about her insistence that she was being harassed".

3.5 The union says that on the 19th January, 1996, the claimant telephoned the senior supervisor on duty, alleging that she had been intimidated by Supervisor A. The union says that the claimant was extremely upset and in tears. This other supervisor came over to her post to

comfort her and advised her to report the matter immediately to Control, which she did. On the 26th January, 1996 the claimant followed this up with a formal written report to the General Service Manager. The main allegations she made against Supervisor A were briefly as follows:

- “1. That he repeatedly laughed at her in a sarcastic way.
2. He had accused her of being the first person to make mistakes (i.e. the swipe card and scanning issues).
3. That he was making an example of her.
4. That he threatened her for reporting him to the General Service Manager.
5. He told her to break the procedures which he had earlier insisted that she follow.”

3.6 The union says that on the 3rd February, 1996, the claimant again verbally reported to the Control Supervisor allegations of further harassment by Supervisor A. The main allegations, which she confirmed in writing, were as follows:

- “1. That he was laughing at her.
2. That he had been smirking and making sly remarks about her work.
3. That he was staring at her.
4. That he had been standing over to “see if she was doing her job properly.”
5. That he had ordered her about in a loud voice.
6. That he had threatened her verbally that “she would never win.”

3.7 The union says that on the 8th February, 1996 the claimant made a further written report to the General Service Manager confirming that on reflection she believed that the harassment she had endured as reported by her had explicit sexual undertones and that it would not have occurred if she had been a male.

3.8 The union says that on the 12th February, 1996 the “claimant was transferred despite a verbal assurance from the General Service Manager to her shop steward that she would not be moved without formal consultation with him. It says that the claimant was moved onto two temporary sites, one of which had no toilet facilities. She also suffered a considerable loss in pay due to less hours being made available to her. The union said that to date it is not aware of any situation in the company where a member was transferred from a site following a grievance being lodged with the company.

3.9 The union says that up until the 1st April, 1996 the company did not have a policy and procedure for dealing with claims of sexual harassment and that furthermore, it believes that the

company's investigation into the claimant's complaints was generally inadequate.

4. Summary of the Employer's Submission

4.1 The company says it is a security company and provides a security guard service to a client company which is involved in the use of computer chips. This is a very valuable product. There was an armed raid on the site in July, 1995 and during this raid three of this company's security officers were held at gunpoint for over an hour. Because of this both the client and the company put great emphasis on all procedures being fully adhered to in the interests of the client's security and the safety of the company's personnel. This is one of the company's largest customers and because of the raid mentioned and the nature of the product on-site, it is the company's highest-risk location and it requires everything to be done strictly in accordance with standard operating procedures. It says that the work of security guards involves searching employees and their vehicles, signing in/out visitors and other normal security guard duties.

4.2 The company says that the claimant was employed as a Temporary Security Officer by the company and was working on the site since September, 1995. Supervisor A, the person against whom the allegation of sexual harassment is made, was working as a Security Guard on this site prior to September, 1995 and on December 21, 1995, was appointed a relief supervisor on the site.

4.3 The company says that the principal role of the relief supervisor is to direct and control the performance of all security guards at work on the location to which the relief supervisor is assigned. Furthermore, the job involves dealing in a timely manner with any irregularity on the part of any employee which affects the interests of the company or its clients. On October 30, 1995 the Site Supervisor, issued a memo setting out the rules in relation to security swipe cards. The memo stated clearly that an individual should not lend their card to anybody else. This memo was followed up on November 21, 1995 with a further memo which underlined the importance of swipe cards and the fact that one must adhere to procedures. (copies of these were supplied to the Equality Officer)

4.4 The company says that the claimant alleges that she was discriminated against on the grounds of her sex on January 11 and 12, 1996, when Supervisor A requested that she explain why she had departed from procedures in relation to her personal swipe card. It says that the claimant alleges that she was required to follow certain work procedures which her male colleagues were not required to follow.

4.5 The company says that when the claimant was asked by Supervisor A to explain why she had broken the procedure in relation to swipe cards her response was that everybody else was doing it. Supervisor A was not happy with this response and as a result requested that she provide an explanation in writing to him. The company says that the claimant is now alleging that this request for a written report by Supervisor A was discriminatory as a male in the same circumstances would not have been asked for such a report. However, given the response of the claimant to Supervisor A's request as to why she had broken with procedure he was left no other option but to request a written report. The company says if the claimant had provided Supervisor A with a verbal explanation as to why she had broken with procedure then there would have been no reason for a written explanation.

4.6 The company says that the claimant alleges in her submission that what she had done was common practice and that this was well known to Supervisor A. It says that this is rejected by Supervisor A. The procedure in relation to swipe cards is well documented. Supervisor A was aware that in his role as Lead Guard that it was important that these procedures were adhered to.

4.7 The company says that on January 11, 1996, the claimant commenced work at 7:00 a.m. However, there was no scanner at her post. It is important to have a scanner at each post or otherwise anyone leaving the building could not be scanned. The claimant did not report this until another officer took up duty at Post D and contacted Supervisor A indicating that there was no scanner at the post. The claimant in a meeting with senior management accepted that there was a breach of procedure in not having a scanner at the post and in not reporting its absence.

4.8 The company says that when Supervisor A asked the claimant why she had failed to report the absence of a scanner at Post D, her response was that everybody does it. However Supervisor A knew that there was an alternative open to the claimant to have a scanner brought over to her, as she could have contacted the night Lead Guard who could have arranged to have a scanner brought over to her. This she failed to do. The company says that as a result of a serious breach in procedure Supervisor A requested that the claimant provide him with a written explanation as to why she had broken with procedure.

4.9 The company says that on January 12, another officer also broke the procedure in relation to the scanner but he was spoken to by Supervisor A and simply stated that he had forgot and the proper procedure was outlined to him. As a result, there was no need to receive a written explanation for the reason why no scanner had been requested by that officer. The

company says that the fact that that officer was not required to produce a written report had nothing to do with his sex. The claimant failed to accept that she had made an error or to explain clearly why she had broken with procedure. On the other hand, the other officer accepted that he had made a mistake and as a result Supervisor A set out clearly to him what the procedures were and that they must be adhered to in the future.

4.10 The company says that on February 3, 1996, Supervisor A was in the Reception area when he was told over the radio that control were looking for him. The claimant was sitting in Post EX in the area. Supervisor A made a call and then got up to walk towards the Human Resources Department. The claimant made some comment which he could not make out and he asked her what did she say. She refused to say anything. He asked her why she was not talking and she continued to remain silent. She then left where she was sitting and moved to the main Reception desk. The company says that Supervisor A then said to the claimant that he didn't enjoy such a negative relationship with the claimant and would rather be her friend. He asked her "why won't you talk to me" and the claimant responded that "you are a two faced fucker" and "a slieveen bollocks". The company says that supervisor A then asked the claimant to return to her post which she refused to do. He told her that if she did not return to her post he would call the Duty Supervisor. He rejects that he raised his voice or shouted at any stage during this exchange between himself and the claimant. He told the claimant to return to her post and then a staff member of the client company appeared and spoke to Supervisor A about getting a TV from Human Resources. They left the area and when they were returning a banter took place between the two of them in which the other man made a reference to doors being open on a Saturday - part of which was overheard by the claimant. The company says that Supervisor A responded that you can't get good staff these days. However, this was not referring in any way to the claimant.

4.11 The company says that on February 9th 1996 the General Service Manager investigated the allegation made by the claimant in her memos dated January 26, 1996. February 3, 1996 in relation to alleged harassment from Supervisor A. Shop Stewards were present at this meeting. The company says that the claimant accepted that she was aware of security procedures but that she disregarded them as in her own words, everyone else was doing the same. It says that the claimant never made any mention of sexual harassment initially at this meeting. However, towards the end of the meeting a recess was sought by the claimant and after a recess of 8 minutes duration she returned with her representatives and presented a memo to the General Service Manager with the previous days date on it and mentioned the issue of sexual harassment for the first time. It says that the issue of sexual harassment was not discussed with her at this meeting as the Shop Steward asked that it be deferred while he sought advice.

4.12 The company says that on February 16 a meeting took place between the General Service Manager and Supervisor A at which the allegations outlined in the two memos were discussed. The issue of sexual harassment was not discussed at this meeting.

4.13 The company says that Supervisor A stated that he had asked others for verbal reports but that the claimant refused to give him one so he sought a report in writing as to why security procedures were breached. He rejected that others breached security procedures. The company says that Supervisor A also rejected that the claimant cried at any time in his presence; that he shouted at her at any stage; that he said that he would win; that he stared at her. He also stated that she called him a “fucker” and a “two faced bollocks” in his presence

4.14 The company says that because the issue of sexual harassment was raised the company then decided to carry out a further investigation and appointed Mr G. to carry out a full investigation into the allegations of harassment and sexual harassment made by the claimant. An investigation was carried out on February 28 at which the claimant, Shop Steward and a Trade Union Official were present.

4.15 The company says that at this meeting the claimant accepted that she had used foul language at work. She stated she did not believe that the harassment was sexual initially but after having spoken with her brother who had told her that sexual harassment does not necessarily involve sex that she reached the conclusion that sexual harassment had occurred. The company says that she stated to Mr. G. that the harassment became sexual when Supervisor A started to stare and leer at her. The company says that when answering Mr. G. what was the sexual nature of the staring the claimant replied that “I do not know”. When asked why the sexual aspect of harassment was not brought up at the start of the meeting with the General Service Manager the claimant’s reply was that the meeting was really to discuss the swipe card and scanner issues and that sexual harassment was not involved in either of these events. However, she had the letter in relation to sexual harassment written prior to the meeting with the General Service Manager and showed it to the Shop Steward who asked her did she really want to do this. The company says that the claimant’s response to this question was “I don’t know”. She told Mr. G. that she was going to wait to see how the meeting went with the General Service Manager before deciding on whether or not to raise the issue of sexual harassment.

4.16 The company says that the claimant admitted to Mr. G. that she called Supervisor A “two faced” and “a slieven” and alleged that he screamed “you are not going to win”. The company

also says that the claimant alleges that Supervisor A said “are we never going to have a civil conversation”.

The company says that in relation to the incident at Reception (Feb 3) she stated that Supervisor A had ordered her back to her post. He had followed her back and looked angry. No physical contact or gestures were used by Supervisor A.

4.17 The company says that following this meeting with the claimant Mr. G. then met with Supervisor A. In relation to the scanner incident Supervisor A stated that he was at Post A when he was informed by Officer B that there was no scanner at the post. Supervisor A then looked at the security camera and saw the claimant and asked her on the phone why she had not brought over the scanner. Her response to this request was that she was running. Supervisor A then asked her why. She replied that she was in a hurry. Supervisor A again asked her why and her response was “do you want a report?” Supervisor A’s response to this was “yes”.

4.18 The company says in relation to the incident at Reception, Supervisor A said that he arrived at Reception as he was told control were looking for him. The claimant was sitting at Post EX. When Supervisor A had finished his phone call he got up and walked towards the Human Resources Department. The company says that the claimant was sitting in Post EX and she made some comment which Supervisor A did not hear. He asked her what did she say. The claimant did not respond. He then asked her why she would not talk to him. The claimant initially remained silent and simply stared at him. The claimant then left and moved and sat at the Reception Desk. Supervisor A again asked her why she would not talk to him and she stated that you are “a two faced fucker” and “a slieven bollocks”. He then asked her to go back to her post. The company says that Supervisor A states that neither party raised their voices during this exchange. Then the employee of the client company appeared in the Reception area.

4.19 The company says that following the meetings with Supervisor A and the claimant, Mr. G. spoke to a number of other employees concerning their experience of working with these two individuals. The company summarised the witnesses’ comments (copies of which were provided to the Equality Officer) as follows:-

“Mr. L: This individual states that he saw nothing and heard only of the alleged incidents after the events were reported. He stated the claimant only mentioned sexual harassment when she was transferred to another site.

Mr. M: He witnessed the phone call in which the claimant made a complaint made about Supervisor A. However, she really referred to Supervisor A giving her a hard time but there was

nothing sexual mentioned in the telephone conversation.

Mr. N: Claimant spoke to him on the phone about abuse by Supervisor A. The claimant did not sound upset.

Mr. P: The claimant contacted him about the verbal abuse from Supervisor A in relation to the swipe card and scanner issues. These are the only comments he had to make.

Ms. Q: In her statement Ms. Q makes reference to the foul language used by the claimant on a regular basis. She also refers to the scanner incident and how it arose that Supervisor A asked the claimant for a written report as to why she had forgotten to bring the scanner to Post D.

Mr. R: In his opinion the claimant is vulgar and does not have any respect for authority. He referred to an incident when the claimant was found eating at her post. He had heard what she had said about Supervisor A - that she had called him a "cunt" and "a bollocks". Mr. R also stated that the claimant had said that Supervisor A was "a bastard" and that "she would get him if it was the last thing she would do". This comment was in relation to a memo he had sent her.

Ms. S: This individual again refers to the claimant's foul language and disrespect for authority. She also states that Supervisor A would correct any individual who was in breach of procedure.

Mr. T: Mr. T accepted that he breached procedure and that this was taken up by Supervisor A with him.

Mr. W: In relation to the Reception incident the claimant admitted to Mr. W. that she had called Supervisor A a "two faced fucker" and a "slieven bollocks". This conflicts with statements that the claimant had made to Mr. G. in relation to what she had called Supervisor A."

4.20 The company says that following the two interviews carried out by Mr. G. with both Supervisor A and the claimant and discussions with the various witnesses Mr. G. concluded that there was not sufficient evidence to establish a prima facie case of sexual harassment. He also concluded that there had been a serious breach of security procedures which would normally warrant disciplinary action but in this particular case it was recommended that no disciplinary action be taken and that the claimant undergo further training to make her fully conversant with her duties.

4.21 The company says that following this the claimant appealed the decision of Mr. G. to the

Chief Executive. However, at the meeting with the Chief Executive at which the claimant's representatives were present no new evidence came to light and as a result the Chief Executive decided that Mr. G.'s conclusion was the correct one in the circumstances.

4.22 The company says that the onus of proof is on the claimant to substantiate the allegation that she was discriminated against on the grounds of her sex. It says that having carried out an investigation the company have reached the conclusion that no discrimination on grounds of sex occurred. Furthermore, there is no evidence to substantiate an allegation of sexual harassment. The company believes it carried out a full investigation and that the conclusion reached was the correct one in all the circumstances. As a result, the company requests that the Equality Officer reject this claim.

5 Equality Officer's Conclusions

5.1 I have taken into account all the submissions both oral and written made to me by the parties in the course of my investigation into this claim when reaching my conclusions in this dispute.

5.2 I note that the claimant makes two allegations. She alleges that she was sexually harassed by her supervisor. This is a very serious allegation and consequently both parties to this dispute have requested that the names of all the people and the companies relating to this claim be kept anonymous. I have agreed to this request. The claimant also alleges that she was harassed by the same supervisor on the basis of her sex in a manner that would not have happened were she a male.

5.3 The claimant alleges that she was sexually harassed by supervisor A on the 3rd February as described in para 3.6 above and further that she was discriminated against when supervisor A requested reports from her which she alleges he did not request from her male colleagues. She argues that a male in her position would not have been treated in a similar fashion. The company argues that she was not sexually harassed and that in relation to the requests for reports that Supervisor A was acting in accordance with his duties and instructions and that he treated the claimant in a similar fashion to all of her colleagues.

5.4 Section 2 of the 1977 Act prohibits direct or indirect discrimination as follows

".....discrimination shall be taken to occur

(a) where by reason of his sex a person is treated less favourably than a person of the other sex"

I consider that the issues for consideration in this case is whether or not

- (a) the claimant was sexually harassed by supervisor A,
- (b) the provision of reports referred to were harassment as she alleges, and
- (c) a male would have been treated in a similar fashion.

5.5 In relation to the allegation that the claimant was sexually harassed I note that she alleges that supervisor A sexually harassed her on 3rd February 1996. I propose to examine both the claimant's and supervisor A's account of the alleged incident and decide whether or not the actions, attitude or demeanour of Supervisor A constituted sexual harassment as claimed by the claimant.

I note that at around 11.00 am that day, supervisor A had attempted to talk to the claimant in a normal fashion but she had refused to respond to his attempts at conversation. I note on the claimant's own admission she was not prepared to speak to him because of his previous instruction to her to provide him with written reports. Later on that day while the claimant was still at the same post supervisor A used a nearby phone. She made a remark when he was leaving the area and he asked her to repeat it as he did not catch it. She refused to repeat it. He asked her if they were ever to have a normal conversation again. At that stage a heated argument arose between them and during this exchange she used the language referred to at paras 4.10 & 4.18 above to him. Subsequently supervisor A remained in the area. I note that the claimant's allegation of sexual harassment against supervisor A was that he remained staring at her following these exchanges and made her feel uncomfortable. I note that the conversation and the entire incident when the sexual harassment is alleged to have taken place did not last more than five minutes and was in a public office. I consider from the descriptions of the exchanges between them that the claimant was not in any way intimidated by supervisor A and on the contrary was well prepared to argue with him.

5.6 I consider that for to establish a claim that a woman has been sexually harassed, it is necessary to establish the existence of unfavourable treatment which includes a significant element of a sexual character to which a man would not be vulnerable. The conduct complained of may amount to one incident or consist of a course of incidents or events. If it is one incident, as in this case, I consider that the incident must be a significant one. Further the conduct complained of must be capable of being categorised as offensive. An assessment of an alleged incident needs to be both subjective and objective and should take account of the effect of the incident on the victim. In this case I note that the claimant did not consider that the incident had any sexual connotations until she discussed it with her brother. Further she was at a meeting to discuss her allegations of harassment concerning requests for reports by

supervisor A and did not raise the issue until the end of the meeting. I consider that if she had found this incident offensive she would have immediately raised it with a member of staff senior to supervisor A and not waited until that meeting. I note that on the first occasion that she was asked by supervisor A for a report in relation to her swipe card at the same time she sent a report to complain about this request to the site supervisor and copied to the general services manager. I consider that had the claimant been sexually harassed by the incident in the reception area she would have similarly raised the issue without delay to her superiors. Consequently, I do not consider that the claimant was sexually harassed by supervisor A.

5.7 The claimant also alleges that she was harassed by supervisor A when he instructed her to provide him with a written report when she had not conformed with company procedures in relation to her personal swipe card. She alleges that this treatment arose because of her sex as no male members of staff were asked to provide reports. I note that initially supervisor A asked the claimant for an explanation as to her actions. She replied that all the staff acted in a similar manner and she then asked him "Did he want a report?". He replied "yes". I consider that if the claimant had accepted at the time the fact that she was in breach of company procedures in relation to these cards, then this would have been the end of the matter. Instead she brought this instruction for a written report upon herself. There was a further incident in relation to a scanner and again when this was drawn to the claimant's attention by supervisor A she argued that there was nothing untoward about her actions. I note that around the same time a male colleague of the claimant was asked for an explanation of a similar breach of procedures and an oral report was accepted from him, particularly as he accepted the need for the company procedures in relation to the scanner. I do not consider that the claimant was discriminated against when she was asked to provide written explanations as she was outside procedures and in fact she was the first to mention written reports.

5.8 I note that the claimant and supervisor A had some heated exchanges concerning her lapses in relation to company procedures in relation to her swipe card and scanner. I have carefully considered all the points made to me and I do not find that the claimant was singled out for a particular type of treatment by supervisor A. On the contrary the claimant instead of conceding that the company had rules and regulations tried to justify her actions by arguing that all other staff also ignored these procedures. I further note that the claimant originally suggested giving the supervisor a report and in this particular site report writing is a normal feature of the day to day work. Having considered all the evidence available to me I do not consider that the claimant was treated a different manner to a male in the circumstances.

5.9 I note that the claimant complained to her manager that she was harassed by

supervisor A. This was investigated at a meeting. She subsequently raised the issue of sexual harassment. The company then appointed a senior member of staff to investigate the claims and having interviewed the claimant, supervisor A and many other members of staff, he came to the conclusion that the claimant was not discriminated against. He noted that there had been a serious breach of procedures which would normally warrant disciplinary action by the company. Contrary to the claim made by the claimant I consider that the company acted on her claims. The claimant also alleged that she was transferred to another site and consequently due to a different shift operation that she suffered a loss of earnings. I note that the claimant was a temporary employee and subject to transfer and that the company on appeal offered her a sum of money to make good any losses incurred by that move.

5.10 In view of my conclusions above I find that the claimant was not sexually harassed by supervisor A or treated less favourably because of her sex when she was asked to furnish these reports.

6 Recommendation

6.1 In view of my conclusions above, I find that the company did not discriminate against the claimant in terms of the Employment Equality Act 1977.

Mary Solan Avison
Equality Officer
11th August, 1997