

**EMPLOYMENT EQUALITY ACT, 1977**

**EQUALITY OFFICER'S RECOMMENDATION NO: EE 26/1997**

**P A R T I E S**

**Ms. Ann Madden  
(Represented by MANDATE)**

**AND**

**Powers Supermarket Limited  
(Represented by I.B.E.C.)**

*File No: EE 24/1996*

## **1 Dispute**

**1.1** This dispute concerns a claim by MANDATE on behalf of the claimant Ms. A. Madden. It alleges that her employer Powers Supermarket discriminated against her by asking her a discriminatory question during an interview for the number one cash office position and that it further discriminated against her when it did not appoint her to that position.

## **2 Background**

**2.1** The claimant worked for Power Supermarkets Limited since 1980. She took leave of absence in 1993 and until that time she was employed as a number one cash office person. Her leave of absence was granted on the basis that she would return to a position but not necessarily the one that she had vacated. The number one cash office position attracts the payment of a differential above the standard sales assistant grade which she has retained. The claimant now works as a sales assistant.

**2.2** In January 1996, the claimant became aware that a vacancy was due to arise for the position of number one cash office person. As it seemed to the claimant that the company did not appear to be organising a competition to fill the vacancy, she raised the matter with the store manager. Subsequently the vacancy was advertised and interviews held. The claimant applied and was unsuccessful. She claims that she was treated in a discriminatory fashion at the interview by the company.

**2.3** The union lodged a claim on behalf of the claimant with the Labour Court on the 15th April 1996. The Labour Court requested further information from the union. On receipt of this information it referred the dispute to an Equality Officer on 3rd July 1996. Submissions were sought from the parties and a hearing was held between them on the 31st July 1997.

## **3 Summary of the Case made by the Claimant**

**3.1** The union says that Ms. Ann Madden has been employed by Power Supermarket Limited in their Crazy Prices, Ballyfermot store since 1980. The union says that she took leave of absence in 1993 and until then she was, in the main, engaged in the capacity of

number one cash office person. The terms of this absence was that Ms. Madden took one year off on the basis that she would return to a position, but not necessarily the one which she had vacated. The union says that the number one cash office person is a senior management position within the local store structure and it attracts a payment above the standard sales assistant grade.

**3.2** The union says that Ms. Madden became aware that the number one cash office position was to become available. The union says that she was concerned that the post was not advertised and says that she was led to believe that the number two person in the cash office was told by the store manager that the job was hers if she wanted it. The union says that when the claimant asked the manager if this was the case he denied it. She says she then enquired when the interviews would take place only to be told by the manager that he did not need to interview her.

**3.3** The union says that job advertisements were actually placed after the individual who occupied the number one cash office position had vacated it. It says that in fact the number two had assumed the role in practice of the number one. Four individuals formally applied for the vacant position amongst them Ms. Madden.

**3.4** The union says that the claimant was interviewed on 25th January, 1996 by Mr. Jim Minahan (Store Manager) and Ms. Ann Croghan (Staff Trainer). It says that during the initial stages of the interview the claimant was asked general questions about cash office procedures. She says neither of the two interviewers took active notes during the interview and no written reference material was relied upon. The claimant alleges that Ms. Croghan asked her the following question.

*"Since your circumstances have changed do you think this will effect your ability to do the job?"*

The claimant says she was amazed at such a question and tried to afford it relevance to her own personal circumstances. When she enquired further from Ms. Croghan exactly what she meant Ms. Croghan stated

*"Staying after 6pm"*

The claimant says that it became clear to her that the reference to the change in her personal circumstances was that she had become engaged to be married a short time previously. The claimant says that she replied that such a development would have no effect on her ability to do the job and in fact could not understand why it had been

mentioned in the first instance. The interview lasted for about 15 to 20 minutes. The union says that Ms. Madden was informed that she was unsuccessful in her application and that the job had been given to the current holder of the number two position.

**3.5** The union says that the claimant was unhappy with the treatment which had been afforded her so she instructed her trade union representative to request a meeting with company representatives to discuss the issues surrounding the recruitment and selection of the number one cash office position. A meeting was arranged and held on 12th March, 1996 and the store and area manager represented the company and G. Light (Union official), and P. Barry (Shop Steward) represented the claimant. At that meeting the union alleged that the manner in which Ms Madden was treated was unfair and discriminatory. Clarification was sought as to the relevance of Ms. Croghan's line of questioning during the course of the interview. The union also sought to have made available to them guidelines in relation to the criteria used for assessment of candidates. It also requested interview notes and evaluation charts.

**3.6** The union says that management responded along the following lines

*(1) Ann Madden was not treated unfairly*

*(2) It was the business of the company who they actually recruit*

*(3) No specific information detailed by the union would be made available."*

The union says it sought suitable alternative employment along with compensation in recognition of the treatment meted out by the company.

**3.7** The union says that management representatives said they would respond in the near future. A further meeting was held on 27th March, 1996, at which management restated their position of the previous meeting.

**3.8** The union says that it takes the view that management have clearly failed to give a reasonably credible explanation for the interview board's selection and its subsequent treatment of Ms. Madden. It says that the inference can be drawn that such a subjective decision does, and did in this case, at the very least constitute unintentional discrimination.

**3.9** The union says that the failure of the interview board to base its selection on an

assessment of the candidates under predetermined criteria made it more difficult for them to demonstrate that the decision arrived at was not discriminatory and contrary to the terms of the relevant section of the 1977 Act. The union says because of this it has submitted a claim on behalf of Ms. Madden under the 1977 Employment Act.

**3.10** The union says in summary that during the course of the interview on the 25th January and by the subsequent appointment of an individual to the position of number one cash office person, the company discriminated against Ms. Ann Madden contrary to the terms of Section 2(b) of the Employment Equality Act, 1977. It also says that the company have contravened the terms of the 1977 Act as outlined in Section 3(6) in the manner they offered access to the opportunity for promotion. It claims that Ms Madden should be offered employment of equal status to that of the number one cash office person and that she be compensated because of the treatment meted out by the company.

## **4 Summary of the case made by the Company**

**4.1** The company says that in January, 1996, the number one cash office position became vacant in Crazy Prices, Ballyfermot. The company says that initially it did not plan to interview anyone for the position but was simply going to make an appointment. However, MANDATE objected to this and it was decided to advertise the vacancy. It says that the advertisement stated that a cash office vacancy existed and that anyone interested should apply to the Manager of the store. This advertisement was put on a notice board in the shop.

**4.2** The company says that three females responded to the advertisement and all three were interviewed. The company says that one of the applicants, made it clear at the interview that she was not interested in the number one cash office position but was only interested in the number two cash office position. It says that on the other hand, the successful applicant and the claimant made it clear that they were interested only in the number one cash office position.

**4.3** The company says that the appointee at the time of interview held the number one cash office position in the store on a temporary basis. The claimant had held the

position on a permanent basis prior to taking a one year leave of absence break from work. However, on her return to work the claimant did not return to that position. She was simply guaranteed a job in the store. The claimant has retained the seven and a half per cent pay differential that attaches to the position since her return from leave of absence and thus has lost no income as a result of not being successful in her application for this position.

**4.4** The company says the interviewers for the post of both number one and number two cash office positions were Ms. Ann Croghan, Training Officer and Mr. Jim Minihan, Store Manager in Crazy Prices, Ballyfermot. It says that the interviews took place in a room where there was no table between interviewer and the interviewee. The Store Manager took no notes during the interview but the Training Officer had a time-manager on her lap in which she had listed questions to be asked at interview and also took some notes. Amongst the questions asked by the Training Officer at interview were:-

*“Why are you applying for this job?*

*There are certain qualities necessary to be suitable for this job. What do you think they are?*

*What is your timekeeping record like?*

*Would you be in a position to be flexible taking your personal circumstances into account?”*

The company says that the claimant did ask the Training Officer at the interview what this last question meant. The Training Officer then referred to working late nights, and days off, as examples. The claimant answered that this was not a problem.

**4.5** The company says that following the interviews the Store Manager and the Training Officer discussed the interviewees and decided to appoint Ms. Harwood, the person who currently held the number one cash office position in the store. It took the absenteeism level of applicants into account in reaching this decision. The appointee had no absenteeism in 1995. On the other hand the claimant had 25.5 days absence. These absences occurred on eight different occasions.

**4.6** The company says that the Store Manager never stated to the appointee that the job was hers if she wanted it. It says that if he had said such a thing to her there would have been difficulties when the job was advertised. It says that the appointee applied for the job in the same way as the claimant and underwent an interview. The company says that the Store Manager does accept that he did say to the claimant at one stage that he did not need to interview her for the post in question. He said this because at that time he

did not plan to advertise for the post but to make an appointment without any interviews taking place. However, the company says that when the union objected it was then decided to advertise the post and carry out interviews.

**4.7** The company says that it is incorrect to state that neither of the interviewers took active notes during the interview and that no written reference material was relied upon. The Training Officer did take some notes at the interview and also used her time-manager as a reference in relation to certain questions she planned to ask.

**4.8** The company says that the Training Officer, Ms. Croghan, denies asking the question alleged by the claimant. The question asked was “would you be in a position to be flexible taking your personal circumstances into account?” It is also incorrect to state that the claimant was amazed at such a question. There was no such reaction from the claimant at the interview and it continued as normal after the above question was asked and the claimant asked what was meant by the question. The company refers to the claimant's submission (paragraph 3.4 above) and says that the claimant doesn't state that any reference to her recent engagement was made at interview. The company says that she then goes on to say that she stated at interview that

*“such a development would have no effect on her ability to do the job”*

and that in fact she could not understand why it had been mentioned in the first instance. The company says that is, in answering at interview that such a development (company's emphasis) would have no effect on her ability to do the job implies that the issue of her recent engagement was discussed at interview. Thus, it argues that she appears to be stating on the one hand that no mention was made of her recent engagement by the interviewers and then on the other hand stating that such a specific reference was made. It says that clearly there is an inconsistency in this record of events and this must call into question the accuracy of recall of the claimant.

**4.9** The company says that the claimant is alleging that she was discriminated against on the grounds of marital status under the terms of the Employment Equality Act, 1977. It argues that “engaged” is not a marital status. It says that marital status means that either one is single, married, separated or widowed. Therefore, it argues that alleged discrimination because of “engagement” is not covered by the terms of the Employment Equality Act, 1977.



**4.10** The company rejects that it discriminated against the claimant under Section 3(6) of the 1977 Act. It says that this section of the Act refers to the way an employer offers or affords an employee access to opportunity for promotion in certain circumstances of which another eligible and qualified person is offered or afforded such access or if in those circumstances he refuses and deliberately omits to offer or afford that employee access to opportunity for promotion. It says that the claimant was given the same opportunities as anyone else to apply for the number one cash office position. She was interviewed and asked the same types of questions as any of the other applicants.

**4.11** The company rejects that it discriminated against the claimant under Section 2(b) of the 1977 Act. It says that no discrimination, whatsoever, on grounds of marital status occurred against the claimant. It says that “engaged” is not a marital status and whether or not someone recently got engaged has no relevance to an equality case under the terms of the Employment Equality Act, 1977. Without prejudice to its statement in the last paragraph the company rejects that it asked any alleged discriminatory question of the claimant at interview. The questions she was asked were asked of the other applicants and no mention was made of any change in her personal circumstances. Because of the above the company requests that the Equality Officer reject this claim of discrimination.

## **5 Conclusions of the Equality Officer**

**5.1** In my investigation into this claim I have taken into account all the submissions both written and oral made by the parties.

**5.2** The claim under investigation concerns allegations by the claimant that she was discriminated against when she was not promoted to the number one position in the company's cash office in January 1996. She has claimed that

(a) the company discriminated against her in contravention of Section 3.6 of the 1977 Act in relation to access to promotion,

and

(b) the company discriminated against her as she was asked a discriminatory question in relation to her marital status at the interview.

**5.3** In relation to the claimant's allegation concerning access to promotion I note that the claimant has alleged that the company intended making an appointment to this post without conducting a competition. I further note that after she raised the matter with the store manager the post was advertised and interviews held to fill it. Consequently I do not consider that the claimant was denied access to the post by the company.

**5.4** Three women applied for the post and were interviewed. At the interview one of them indicated that she was only interested in the number two position. Effectively there were only two women in contention for this position.

**5.5** I have examined the claimant's claim of discrimination based on her marital status in relation to the Act. Section 2 of the 1977 Act states that .... *"discrimination shall be taken to occur in any of the following cases*

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

*(b) where because of his marital status a person is treated less favourably than another person of the same sex,*

*(c) where because of his sex or marital status a person is obliged to comply with a requirement, relating to employment .... of which the proportion of persons of the other sex or of a different marital status but of the same sex able to comply is substantially higher"*

I note that the claimant and the appointee at the time of the alleged discrimination were both single females. I note that the claimant has argued that she was engaged to be

married at the relevant time but I do not consider that this is a status defined in the Act that sets her apart from the appointee. As they were of similar sex and marital status I do not consider that the claimant has a claim under section 2(b) of the Act.

**5.6** I have also examined the claimant's allegation that the company discriminated against her at the interview at which she alleges she was asked a discriminatory question. I note that the company says that the claimant was asked whether or not she was "*in a position to be flexible taking her personal circumstances into account?*" in relation to the hours of attendance required when working in the cash office. I note that this is one of the standard questions asked by the training officer at interviews for this post and the company argues that she asked this question of both the claimant and the appointee. The claimant alleges that she was asked "*Since your circumstances have changed do you think this will effect your ability to do the job?*" and in a reply to a question from the claimant the interviewer expanded on the question by saying "*staying after 6 pm*". The claimant alleges that the questioner put a particular slant on this question when she put it to her.

**5.7** I have examined all the arguments made by the claimant. I note that in addition to alleging that she was asked a discriminatory question at the interview she also argues that she was senior to the appointee, had greater work experience and so was better qualified for the position. She argues that consequently when she was not appointed to the post that she was discriminated against.

**5.8** The company argues that the person best suited to the post was appointed and denies that there was any discrimination on its part when it made the disputed appointment. It says that it conducted fair and unbiased interviews, that all the applicants were asked the same questions and that it did not slant the question in relation to the claimant's ability to cope with the cash office attendance hours in the manner alleged by the claimant. The company argues that on the day both the claimant and the appointee did good interviews but the claimant had a poor sick leave record in the previous year (eight absences totalling 25.5 days) . It said that even though this sick leave was medically certified it still meant that she had a large number of absences. It argues that although the claimant had a good attendance record in the past this is now irrelevant. It argues that it is the most recent period of work (and of attendance) that a manager looks

at when appointing a member of staff to a post.

**5.9** I note that there was general agreement between the parties at the hearing that the other questions listed by the training officer as used by her normally in these interviews were in fact asked of the claimant. There was also agreement that where the management had information about the claimant the relevant questions on that list were not asked of her. I consider that it is very difficult to be precise about the wording of a question after an interview. On balance I do not consider that the interviewer framed this question in a discriminatory manner or that her non appointment arose from the import of this question but from the company's stance on the claimant's attendance record.

**5.10** In summary I do not consider that the company discriminated against the claimant in relation to access to the post as it advertised it and gave staff members the opportunity to apply for it. Further I do not consider that the company discriminated against her in terms of the 1977 Act when it appointed the other candidate to the post.

## **6. Recommendation**

**6.1** I find that Power Supermarkets did not discriminate against Ms Madden in terms of the Employment Equality Act 1977.

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Mary Solan Avison  
Equality Officer

30 Oct 1997