

ANTI-DISCRIMINATION (PAY) ACT, 1974

EQUALITY OFFICER'S RECOMMENDATION NO: EP 09/1997

P A R T I E S

61 Named Female Employees
(Represented by MANDATE)

AND

Power Supermarkets Limited
(Represented by Ms. Clare Carroll)

File No: EP 12/1996

1.

DISPUTE

- 1.1** This dispute concerns a claim by the union on behalf of 61 named female claimants that they are entitled under the terms of the Anti-Discrimination (Pay) Act, 1974 to the same rate of remuneration as paid to the comparators.

2 BACKGROUND

- 2.1** The claimants and the comparators involved in this claim are employed by Power Supermarkets Limited as Systems Checkers and Back Stores Chargehands respectively. The employees concerned are employed in various branches of the Company's "Crazy Prices" or "Quinnsworth" supermarkets in different countrywide locations.
- 2.2** The claimants are paid on the general Sales Assistants incremental scales. In the capital the Dublin Joint Industrial Council (Grocery Trade) applies to the claimants and the rate applicable to those outside the scope of the Dublin J.I.C. is the appropriate town or city rate. In Dublin the comparators are paid a rate for the job and are not subject to an incremental service scale. In addition they receive a plus payment which is described as an adjustment. The comparators, where the Dublin J.I.C. does not apply, are paid the equivalent to 7.5% above the maximum of the general Sales Assistants rate and some are also paid the "adjustment".
- 2.3** In March, 1996 the Union served a claim in respect of Deirdre Casey and 68 unnamed others. The claim form

also furnished the name of Sean Brennan and 68 unnamed others as comparators. In November, 1996 a list with the names of 70 claimants and 69 comparators was received. In the course of the investigation the Union withdrew nine of the 70 listed as claimants.

- 2.4** The Equality Officer held a preliminary joint hearing with the parties. Subsequent to that hearing he carried out inspections of the work of the claimants and the comparators on various dates in 1997 and in different locations in Dublin and in the provinces. In the period between the job inspections and the final hearing the Equality Officer received a further submission from each of the parties. He held a final joint hearing with the parties on the 04 June, 1997.

3 SUMMARY OF THE CLAIMANTS' CASE

- 3.1** The Union contends that the 61 claimants do "like work" within the meaning of section 3(c) with the named comparators and are therefore entitled to receive the same rate of remuneration. It rejects the Company's contention that the claims are individual. It argues that the claim is a group submission in that each claimant should be compared to all the other comparators, if necessary. A list of the names of the claimants and the comparators is at Appendix 1. Descriptions of the jobs of the claimants and the comparators drawn up by the Union are at Appendices 2 and 3 respectively.
- 3.2** The Union points out that the claimants named constitute a 100% all female grouping. It adds that on a Company wide basis only five males occupy the grade

of Systems Checker, thus representing a 92% domination of the female gender employed in this capacity.

3.3 The claimants' representative states that for sometime it has been a concern of the Union that the recruitment policy operated by the Company is by nature entirely sex-based. In an effort to allay these concerns representations were made to the Company in the past with a view to negotiating a properly defined Equal Opportunities Policy but without any success. The Union argues, that a disproportionate amount of the higher status well paid jobs have been, and continue to be, the preserve of an all male management structure and in its view is permeated throughout every layer of the Company.

3.4 The Union states that the Company does not have either in practice or theory a job evaluation policy. It further states that the Company's attitude in this regard are rooted in the concept of dated traditional job evaluation which has as its primary purpose security acceptability of a pay structure not the eradication of unequal and discriminatory pay schemes.

3.5 The Union argues that under the terms of Section 3(c) of the Act the claimants perform like work with the comparators. The Union's assessment of both jobs, under the headings of skill, responsibility, physical/mental effort, and working conditions is contained in Appendix 4.

4 SUMMARY OF THE RESPONDENT'S CASE

- 4.1** The Company contends that the claims are individual claims made by the specified claimants for comparison with their specified comparators. It submits the claimants will not be able to establish that “like work” as defined by section 3 (c) of the 1974 Act exists between them and the comparators. The Company argues that it will be able to demonstrate that there are reasons other than the gender of the employees concerned for the differences in their pay. The weekly routine schedule of the claimants’ job and an extract of the goods inward procedures for Chargehands as submitted by the respondent are at Appendices 5 and 6 respectively.
- 4.2** The Company states that this claim is a continuation of a campaign by the Union to have the work of “Systems Checkers/Price Controllers” upgraded to that of “posts of responsibility”. It points out that the Labour Court in its recommendation No: 13941 of 17th. February, 1993 held that there were no grounds to concede the Union’s claim.
- 4.3** There has been no real change in the duties of the claimants, the Company submits, since the Labour Court’s recommendation. The Company adds that it is significant that the Union has not returned to the Labour Court to argue that there are grounds for upgrading the Systems Checkers jobs to “posts of responsibility”. It is the Company’s view that the current claim is merely a “last ditch” attempt to upgrade their members jobs, chiefly on the coincidental grounds that the claimants are women and the comparators men.
- 4.4** As further proof that the Company’s pay scales are non- discriminatory, the respondents submits, that men and women are employed at the same rates as Systems Checkers. It adds that the fact the Union’s original list of claimants included seven men, claiming against other men, is further indication that this claim is really a grading rather than an equal pay claim.
- 4.5** The Company states that an assessment of the work of the claimants and the comparators shows that the work of the comparators scores higher under all the headings of Section 3(c) of the Act. It further states that the differences under the headings taken as whole make the

job of goods receiving Chargehand substantially higher in value than that of the Systems Checker. Details of the Company's assessments of the both jobs, under the headings, mentioned at Section 3(c) of the Act are at Appendix 7 .

5 CONCLUSIONS OF THE EQUALITY OFFICER

- 5.1** The Act under Section 2(1) provides that a women is entitled to the same rate of remuneration as a man where both are employed in the same place, as defined by the Act, by the same employer, on "like work" unless the employer can show, under Section 2(3) that the differences in the rates of pay is justifiable on grounds other than sex. The company in this case disputes that any of the claimants perform "like work" with any of the comparators and without prejudice to its arguments on that issue it also argues that there are legitimate grounds other sex to justify the higher rate of remuneration paid to the comparators.
- 5.2** As the employees concerned in this claim are employed in different locations and in stores of different sizes I carried out, with the agreement of the parties, work inspections in small, medium and large stores in Dublin and in the provinces. I am satisfied from the inspections that I carried out on the work of the comparators and the work of the claimants, that the descriptions submitted by the parties fairly reflect the jobs of the employees involved in this claim. The job descriptions of the claimants and the comparators, as prepared by the Union are at Appendices 2 and 3. The job descriptions submitted by the Company are at Appendices 5 and 6.
- 5.3** The first question I am obliged to address is whether or not the work performed by any of the claimants is equal in value to that performed by any of the comparators in terms of Section 3(c) of the Act. Section 3(c) of the Act states that two persons shall be regarded as employed on "like work":-

"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 and mental effort, responsibility and working conditions.”

I have taken account of every aspect of the work performed by the claimants and the comparators in relation to responsibility, skill, physical/mental effort and working conditions.

5.4 I note that the Company contends that the claims here are made by the specified claimants for comparison with their specified comparators and that the Union asserts that its claim is a “group submission”. As Section 3 specifies that “*two persons shall be regarded as employed on like work*” it seems to me that my comparison must be between two persons. As the Company conceded, at the preliminary hearing, that each of the claimants do like work with each other and each of the comparators do like work with each other, I propose to select a comparator and a claimant, who are employed in the same store, for the purpose of my job comparison. I have selected Ms. Colette Phelan and Mr. Thomas Murphy, who are both employed at the Roscrea branch of Quinnsworth.

5.5 RESPONSIBILITY

The comparator is responsible for all goods, with the exception of fresh meats and hardware, coming into the warehouse area. The Company estimate that the back door Chargehands are responsible for 70% of the main floor stock. The main responsibility of the claimant is to ensure that the price on the stores shelves of the main floor stock represents the current product price.

The claimant in carrying out her daily responsibilities adheres to Systems Checkers Weekly Routine sheet, copy at Appendix 5. The work of the claimant is carried either in the Systems Checker’s office or on the shop floor. The claimant’s office responsibilities include access various reports from the computer, distribute and/or act upon them, print SELs (shelf edge labels), input the PAV count on to the system and order shelf strips/stationery from Head Office. On the shop floor her responsibilities include - place the up to-date SEL at the appropriate shelf site, carry out “integrity price checks”, which she does with a hand-held scanner and count stock for stock taking purposes.

In the exercise of his responsibilities the comparator follows the goods inward procedures as laid down by Head Office, extracts from the procedures are at Appendix 6. The comparator, apart from bringing stock to the shop floor, works almost exclusively at the “back door”. He verifies product by means of a hand-held scanner and manually counts the stock and then inputs the relevant information into the unit, including adjustments in respect of goods not received or damaged/returned goods. When he has the delivery checked he prints a delivery docket containing the details transmitted from the hand-held unit.

The comparator is responsible for the general security in the warehouse area, the opening, closing and locking doors and he must be vigilant to prevent pilfering and/or interference with goods. Mr. Murphy is a keyholder and on Thursdays, when he comes on duty at 6.00 a.m., he is first person on duty. It is his responsibility to ensure that credit is obtained in respect of stock, which had been on the stores shelves, held by him in the “returned goods” area, e.g. out of date or damaged product. He is also responsible for the general safety of those in the area of the “back door”, which is an area often congested with delivery goods vehicles, delivery personnel and a manual pallet truck.

The failure of the comparator to carry out correctly his duties may lead not only to problems with accounting procedures but to actual losses. The Company could suffer losses attributable to the comparator through such areas as pilfering of goods in the warehouse area, damage to goods not properly handled by him and his failure to adhere to the correct credit procedures. The consequences of the failure of the claimant to carry out her duties properly is less serious to the Company. In regard to the claimant a small loss arises where there is a discrepancy between the displayed SEL price and the barcode price; inaccuracies in the system in relation to a PAV count results in the store bearing the cost of the reduction in the price of special promotions rather than Head Office.

The claimant and the comparator here have little or no responsibility for supervision. The work of the comparator is subject to a number of daily spot checks by local management i.e. a delivery is checked against the delivery docket before it is put into stock. Mr. Murphy carries out this responsibility in relation to provisions and hardware deliveries. The System

Checkers work is subject to audit checks approximately every two to four weeks.

Both the claimant and the comparator have trained staff in their respective jobs.

I consider that having regard to the overall demands on the comparator, particularly having regard to the volume and value of goods for which he is responsible for in the back stores area, that there are greater demands placed on him than on the claimant.

SKILL

Mr. Murphy and Ms. Phelan both use some skill to use the pre-programmed scanner units/computers. The claimant uses the computer to extract information, which is sourced at Head Office, such as electronic mail, reports, and SELs - bar coded labels for shelf edges. The comparator is required to enter information in the scanner units used by him to input the details of a delivery e.g. the supplier, and the product count. The comparator use the computer to print delivery dockets containing information entered by him with the hand-held unit. The claimant and the comparator both use a hand-held unit to scan bar codes on stock and they also need basic numery skills to count stock.

Both employees require interpersonal skills to deal with instore personnel. The claimant also needs these skills in dealing with queries raised by customers when her work takes her to the shop floor; the comparator uses these skills, in addition to judgement, in dealing with delivery persons and sales representatives.

The claimant use basic typing skills to type such matters as internal memos, check lists and time tables. It generally falls on the claimant to rectify minor problems with computers/printer; assistance is available at "Systems" in H.O. to rectify faults in the system. The comparator needs some skill to operate the manual pallet truck.

The System Checker and the Chargehand need a good knowledge of the range of stock held by the store and the layout of the store and the Chargehand the back stores area. The claimant has sufficient knowledge of the computer to print such items as reports, E mail, and

SELs etc. The comparator needs to know the documentation requirements for deliveries and credit in respect of returned/damaged goods or missing goods.

Having regard to levels of skill required of the claimant and the comparator, the main skills I have highlighted above, I am satisfied that there is no significant difference in demands placed on the comparator in terms of skill than those on the claimant.

PHYSICAL EFFORT

The claimant spends her working day either seated at the computer and/or on their feet on the shop floor. The task of integrity checks and counting stock may require her to lift items of stock and to climb a ladder.

The comparator spends his working day on his feet. The work requires a fair degree of physical effort from him to lift and move/stack cartons of varying weights. The work often requires him to use a manual lift truck and a platform ladder.

I consider that as the work of the comparator requires a reasonable amount of physical effort through out the working day that the demands placed on him are greater than those of the claimant under this heading.

MENTAL EFFORT

The comparator requires concentration to accurately check goods, which he must physically count, and to input the correct information into the hand-held unit. He must be vigilant at all times to ensure that goods in the area of the back door are not interfered with or pilfered.

A degree of mental effort is required of the claimant to ensure that all the information relative to her area of work is extracted from the computer and that it is either dealt with by her or passed to the relevant person. She must also do integrity price checks and ensure that PAV counts on the shop floor are accurately carried out and that the count is collated and that the details are entered accurately on to the computer system.

Both the comparator and the claimant require some mental effort with their involvement in stock taking.

I consider that overall the demands placed on the comparator in terms of mental effort is not significantly greater than those placed on the claimant.

WORKING CONDITIONS

The claimant works in the office and/or the shop floor in regulated temperatures. While her office is small, compact and functional there is no natural light in the office.

The comparator generally works in an area exposed to the elements of the weather at the back door.

The comparator is often required to contend with the hazard of using a manual lift truck. The work often requires him to use a platform ladder to store product on high shelving. The claimant sometime may have to use a ladder in stock counts etc., however, she generally faces little or no hazards when she is working in her office.

I consider that overall the working conditions of the comparator, particularly because of his exposure to the elements of weather, are more difficult than those of the claimant.

5.6 In summary I have found that greater demands are placed on the comparator in regard to “responsibility”, "working conditions" and "physical effort". In regard to “skill” and “mental effort” I have found that demands placed on the comparator is equal to the demands placed on the claimant.

Accordingly, taking into account the overall demands placed on the claimant and on the comparator, I find that the work performed by the claimant is not "like work" with that performed by the comparator for the purposes of Section 3(c) of the Act.

5.7 As I have found that Ms. Phelan does not perform “like work” with that performed by Mr.

Murphy it follows that each of the claimants does not perform “like work” with any of the comparators for the purposes of Section 3(c) of the Act. I note that the Company contends, without prejudice to its arguments on “like work”, that there are grounds other than sex to justify the differences in pay between the claimants and the comparators, however, as I have found that none of the claimants do “like work” with any of the comparators there is no need for me to consider the grounds other than sex arguments.

- 5.8** In making my Recommendation in this case I have taken into account all of the submissions, written and oral, made to me by the parties to the dispute and also the work inspections which I carried out on the work of the claimants and the comparators.

6 RECOMMENDATION

- 6.1** In view of my conclusions at 5.6 previous that each of the claimants does not perform "like work" with that performed by each of the comparators in terms of Section 3(c) of the Anti-Discrimination (Pay) Act, 1974, I find that they have no entitlement to the same rate of remuneration as that paid to the comparators.

Jim Clerkin
Equality Officer,

29th July, 1997.