

1. DISPUTE

- 1.1** This dispute concerns a claim by Mr. Michael Dempsey that, on the 14th November, 1995, Superquinn Supermarkets Limited discriminated against him within the meaning of Section 2(a), 2(b) and 2(c) of the Employment Equality Act, 1977 and in contravention of Section 3 of that Act when, during the course of a promotional interview, he was asked to shave off his beard and he was questioned about his family circumstances.

2. BACKGROUND

- 2.1** Mr. Dempsey has been employed by Superquinn Supermarkets in Sutton as a Sales Assistant since 31st April, 1984. In November, 1985 he applied for a promotional post and his interview took place on 14th November, 1995. Mr. Dempsey says that, during the course of this interview, he was asked about his family circumstances and he was told that he would be expected to shave off his beard.
- 2.2** MANDATE, on behalf of Mr. Dempsey, wrote to the Company expressing his dissatisfaction at the interview and requesting a meeting to attempt a resolution. The Union says that, as there was no progress with the Company, it referred the claim, on Mr. Dempsey's behalf, to the Labour Court on 8th May, 1996. The Court, subsequently, referred the claim to an Equality Officer for investigation and recommendation.

3. SUMMARY OF CLAIMANT'S CASE

3.1 The Union says that in November, 1995 the claimant applied for the vacant post of chargehand in the Wine Section of Superquinn in the Blanchardstown store. He was interviewed for the position on Tuesday, 14th November, 1995. The interview panel consisted of Mr. Michael Donnellan (Wine Specialist), Mr. Gerry Fitzpatrick (Personnel Department) and Mr. Brian Webb (Store Manager). The Union states that, during the course of the interview, Mr. Webb put the following questions to the claimant:

"Are you married"?

"What does your wife work at"?

"Have you got any children"?

The Union says that Mr. Webb also questioned the claimant as to the level of flexibility he would be able to exercise in the course of his work in the chargehand position. The Union says that Mr. Webb suggested that the claimant would not be flexible as he had to collect and deliver his child before and after work. At the joint hearing in this case the claimant said that he is currently working late one night a week. He also said that, throughout his employment with the Company, he has been flexible at busy periods e.g. Christmas, Easter and when construction work was being carried out in the store. The Union submits that the combination of these questions constitutes a clear indication of discrimination on grounds of marital status.

3.2 The Union says that, as the interview progressed, Mr. Webb pointed out that he expected the claimant to shave off his beard. The Union pointed out that Mr. Fitzpatrick, a member of the interview board, also wears a beard. The Union submits that such a question constitutes discrimination on grounds of sex in that the Company is not likely to ask a female applicant to change her hairstyle in the event of promotion to the

position of chargehand.

3.3 The Union considers that the Company is also in breach of its own Equal Opportunities Policy (E.O.P.) which is set out in Appendix A. Under the heading of 'Interviewing Procedure' the E.O.P. states:

- '1. It is essential that there is no bias against candidates on grounds of sex or marital status in the selection interview process. Those involved will not make assumptions about the suitability of individuals for certain types of work on grounds of sex or marital status.
2. All interviewers and relevant managers will be trained in good interviewing practice and in the prevention of discrimination.
3. Questions at interviews will relate to the requirements of the job. Personal questions will only be asked where relevant, and care will be taken to ensure that they are not discriminatory. The interviewers will explain why a particular question is being asked if its relevance might not be immediately obvious.'

The Union argues that a straight comparison between the questions asked of the claimant by management at the interview and the Equal Opportunities Policy points to a clear case of discrimination on grounds of sex and marital status contrary to the terms of the 1977 Act.

3.4 The Union says that it wrote to the Company on 23rd November, 1995 (see Appendix B) indicating the

claimant's dissatisfaction with the interview and suggesting 'that some level of discrimination took place'. The Union requested a meeting with the Company and proposed that 'the position be held open until we have an opportunity to relay our views' to the Company. The Union says that it made itself available for an early meeting so as not to unnecessarily delay the appointment, but the Company proceeded with the appointment. The Union wrote to the Company again on 18th December, 1996 (see Appendix B) pointing out that it believed that the Company had discriminated against the claimant contrary to the terms of the Employment Equality Act, 1977. The Union says that it accepted a Company proposal to meet directly with the claimant to attempt a resolution. However, no progress resulted from the meeting and therefore the Union referred the matter to the Labour Court for investigation by an Equality Officer.

- 3.5** The Union submits that the Company improperly treated the claimant and this represents discrimination on grounds of sex and marital status. The Union seeks a recommendation that the claimant be given the chargehand position in Blanchardstown and that he receives the chargehand rate of pay from the date that the appointment was made. The Union further proposes that the claimant receive additional compensation for the stress and other upset caused to him by the discriminatory behaviour of the Company.

4. SUMMARY OF COMPANY'S CASE

- 4.1** The Company, in its submission, says that the interview for the position of chargehand in Blanchardstown took place on 14th November, 1995 and the interview panel was as stated by the Union. The Company also says that the

claimant was well known to Mr. Webb as they had worked together when Mr. Webb was manager in the Sutton Store from 1984 to 1986.

4.2 The Company says that, in 1988, it negotiated a new agreement with the Union which allowed for a change in employee contracts. The claimant is employed under an 'Old Contract' which limits his working hours from 9.00a.m. to 6.15p.m. whereas under the 'New Contract' employees can be asked to work from 7.00a.m. to 9.00p.m. The Company says that it was planning to extend the trading hours in its Blanchardstown store beyond 6.00p.m. every Monday, Tuesday and Wednesday. Therefore, at this interview it was seeking employees to agree to operate as per the new contract situation.

4.3 The Company states that, at the interview, Mr. Webb sought to establish if the claimant was willing to be flexible on his working hours. Therefore, questions similar to those outlined below were put to him:

'Could you work two half days?

Could you work up to 7.00p.m.?

Could you start earlier?'

According to the Company the claimant indicated that he would be unable to comply with these working time requirements as he had to leave his child off in the morning and collect his child in the evening.

4.4 The Company says that Mr. Webb sought to establish how flexible the claimant would be, if he came to work in the Blanchardstown store, in terms of changing the ways he works for example moving to other departments, doing things differently, etc. At the interview the claimant asked what Mr. Webb had in mind and he asked the claimant if he would shave off his beard?

- 4.5 The Company says that no other questions were put to the claimant relating to the claimant's wife or family. The Company further says that both Mr. Webb and Mr. Fitzpatrick were aware of the fact that the claimant was married and had a child.

5. CONCLUSIONS OF THE EQUALITY OFFICER

- 5.1 The case before me is that Superquinn Supermarkets Limited is alleged to have discriminated against the claimant, Mr. Dempsey on 14th November, 1995 in terms of Section 2(a), Section 2(b) and Section 2(c) of the Employment Equality Act, 1977. In making my recommendation in this case I have taken into account all the submissions, both written and oral, made to me by the parties.
- 5.2 The Union says that the claimant was asked questions about his wife and his family and he was also asked if he would shave off his beard. The Union contends that this line of questioning constitutes discrimination within the meaning of the 1977 Act.
- 5.3 The Company rejects that the interview board asked the claimant any questions relating to his wife or his family. However it accepts that the claimant was asked if he would shave off his beard by one of the board members. The Company considers that this question was irrelevant and inappropriate for the position that was advertised and for that reason it sent a letter of apology to the Union for any offence caused. A copy of this letter is attached at Appendix C.
- 5.4 I am satisfied that the claimant was asked if he would

shave off his beard by Mr. Webb (one of the board members). The Union strongly contended that Mr. Webb did ask the claimant questions about his wife and family. It also pointed out that the Company was incorrect in saying, in its submission, that Mr. Webb was well known to the claimant given that they had worked together in the Sutton store. The Union said that, while Mr. Webb had worked in Sutton from 1984 until 1986, the claimant had not been assigned there until 1989. The Union further argued that, as the claimant was not known to Mr. Webb, Mr. Webb asked him questions about his wife and family.

- 5.5 At the hearing the Company admitted that it had been mistaken in its submission and it confirmed that the Union was indeed correct in saying that Mr. Webb and the claimant had not worked together. However, it argued that the claimant would have been well known to Mr. Webb and it denied that Mr. Webb asked the claimant questions relating to his wife and family. Furthermore the Company said that, according to the other members of the board, these questions were not put to the claimant. However, I note that, during the interviews, none of the board members took any notes. At the hearing the Company said that Mr. Webb had left the Company since December, 1995, but it was unable to give his exact date of departure. Mr. Webb was not present at the hearing and the Company said that it was unable to contact him. I note that the Union first wrote to the Company on 23rd November, 1995 (see Appendix B) regarding the treatment afforded to the claimant by the interview panel. The Company said that it discussed this letter with Mr. Webb prior to his departure and Mr. Webb denied that he had put any questions to the claimant regarding his wife or his family. The Company indicated that it was only, in effect, repeating what Mr. Webb had said.

5.6 I note that there is no concrete evidence to prove whether or not questions relating to his wife and family were put to the claimant. However, I am satisfied that the Company has submitted inaccurate information in its submission about Mr. Webb and the claimant working together. At the hearing the Company indicated that, when questioned about the Union's letter of 23/11/95, Mr. Webb said that he did not ask the claimant any questions at the interview relating to his wife or family. In its letter to the Company the Union said **".....our member has expressed serious dissatisfaction with the treatment he received from the interview panel and it would appear that some level of discrimination took place."** The Union did not specifically mention the questions relating to the claimant's wife and family. Based on what the Company said I must, therefore, question the reason behind Mr. Webb referring to these particular questions. Then, in its submission, the Company included the following sentence: **"No other questions relating to his wife and family were asked"**. By implication this means that some questions were asked of the claimant relating to his wife and family. However, the Company said that the word **"other"** was added in error to this sentence. Furthermore the Company, in its letter of apology to the Union dated 14th March, 1996 (attached as Appendix C), said that **".... some of the questions asked at the interview by our Manager came within a questionable area as to their purpose"**. At the hearing, when asked what these questions were, the Company again said that this was a mistake and there was only the one question relating to the claimant shaving off his beard.

5.7 As the evidence presented by both parties to this claim

contains serious conflicts concerning the facts it is necessary to examine the question of whether the balance of probabilities tips in favour of the claimant's version of events or the Company's version of events. The Company has, by its own admission, provided a number of inaccuracies both in its submission and in its letter of apology to the Union. While there is no documentary evidence to substantiate the claimant's case I accept that the claimant's version of events are more creditable given that the Company has contradicted itself on a number of occasions as outlined in paragraphs 5.5 and 5.6 above. On this basis I accept that the Company asked the claimant questions relating to his family and these were discriminatory as they would not have been put to male candidates with a different marital status. The Company admits that it asked the claimant about shaving off his beard and this question was also discriminatory as it would not have been put to a female.

- 5.8** The next issue for consideration is whether or not the claimant would have been appointed to the position but for the discriminatory questions he was asked at his interview. At the hearing the Company said that there were no written applications for this position. Furthermore, the Company said that it did not set any criteria when deciding which candidate to select. The Company submitted a resume of each of the three candidates interviewed for the position. These are attached as Appendix D. The Company informed me that candidate 1 who was offered the position, refused it and it was then offered to candidate 2. The claimant was not offered the position. From the information supplied I note that the claimant is longer with the Company than each of the other two candidates. I note that candidate 1 was the only candidate to hold the position of Wine

Chargehand. Both candidate 2 and the claimant had relief experience in the Wine Department. I note that both candidate 1 and the claimant held a Certificate in Wine Appreciation and a Higher Certificate in Wine and Spirits Appreciation while candidate 2 held a Certificate in Wine Appreciation.

- 5.9** I note that the claimant had received the same training as candidate 1 and more training than candidate 2 and he had the same level of experience as candidate 2. However, as the successful candidates were both male and were both married, I cannot infer that the claimant was discriminated against, on the basis of his sex or his marital status, in relation to the filling of the position. The first candidate offered the position was married with a family at the time that he was offered the position. The second candidate was married and did not have children at the time he was offered a position, but had a child subsequently. Having satisfied myself that the claimant was asked questions about his family circumstances at the interview, and no evidence to the contrary was presented to me, I am satisfied that this is the reason for him not being offered the position in preference to candidate 2. However, I must point out that discrimination on the basis of family circumstances is not covered by current legislation and therefore, I cannot find that the Company discriminated against the claimant, in terms of the Employment Equality Act, 1977, by not offering him the position.

6. RECOMMENDATION

- 6.1** In view of my conclusions above, I find that Superquinn Supermarkets Limited did ask Mr. Michael Dempsey discriminatory questions at the interview for a position as chargehand in the wine section of the Blanchardstown Store constituting a breach of Section 2(a) and Section 2(b) of the Employment Equality Act, 1977.

I note that the Company offered the position to candidates of the same sex and the same marital status as Mr. Dempsey. Therefore, I find that the Company did not discriminate against Mr. Dempsey in terms of his sex or his marital status by not appointing him to the position.

Accordingly, I recommend that Superquinn Supermarkets Limited pay Mr. Dempsey the sum of £750 in compensation for the distress suffered as a result of the discriminatory questions.

Gerardine Coyle
Equality Officer

23rd January, 1997

APPENDIX A

Superquinn Supermarkets Ltd
Equal Opportunities Policy

APPPENDIX B

Copy of the Letters
sent by the Union
to the Company

APPENDIX C

Letter of Apology
from the Company
to the Union

APPENDIX D

Profile
on each of the
three candidates
interviewed for the
position