

ANTI-DISCRIMINATION {PAY} ACT, 1974

EQUALITY OFFICER'S RECOMMENDATION NO. EP 03/1997

PARTIES

37 Named Female Claimants
{Represented by S.I.P.T.U.}

and

The National Rehabilitation Hospital
{Represented by I.B.E.C.}

1 Dispute

- 1.1** This dispute concerns a claim by the Union on behalf of 37 named female claimants that they are entitled under the terms of the Anti-Discrimination (Pay) Act, 1974 to the same rate of remuneration as that paid to the comparators.

2 Background

- 2.1** The claimants and the comparators involved in this claim are employed by the National Rehabilitation Hospital as Assistant Nurses and Attendants respectively. The National Rehabilitation Centre operates the national spinal injuries unit and the national limb fitting service. The Hospital is also involved in the treatment of related disease, i.e., strokes, head injuries and muscular disease which require rehabilitation.
- 2.2** The weekly wage scale of the claimants is a thirteen point scale £163.05 to £206.27. The comparators are on an eight point weekly wage scale of £208.13 to £227.08.

A shift allowance operates in respect of certain attendances of the claimants and the comparators.

2.3 The Union requested an investigation by an Equality Officer of the dispute. The parties agree that the date of dispute is the 26th July, 1995.

2.4 In the course of the Equality Officer's investigation of this case a preliminary joint hearing with the parties was held and subsequent to that hearing he carried out job inspections on the 29th and 30th May, 1996. He held a final joint hearing with the parties on the 10th June, 1996 and subsequent to that hearing further submissions were received from the parties.

3 The Claimants' Case

3.1 The Union contends that the 37 claimants do like work within the meaning of the Act under Section 3(a), (b) and (c) with the 40 comparators and are therefore entitled to receive the same remuneration. A list of the names of the claimants and the comparators, together with their respective wage rates, as submitted by the

Union, are at Appendices 1 and 2.

3.2 Section 3 of the Act provides at sub sections (a), (b) and (c) that:-

Two persons shall be regarded as employed on like work:-

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

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

(c) *"Where the work performed by one is equal in value to that performed by the other in terms*

of the demands it makes in relation to such matters as skill, physical or mental effort, responsibility and working conditions."

3.3 In support of its case that the claimants perform like work with of the comparators the Union points to its job descriptions of the work of both grades and to Appendix 3 which shows that there is no real difference in the claimants' work with performed by the comparators. The job descriptions are at Appendices 4 and 5.

3.4 Under Section 3(c) of the Act the Union contends that under the headings of responsibility, skill, physical and mental effort and working conditions there are not significant differences between the work of the claimants and that of the comparators. The Union further contends that the work inspections highlight that there is no significant difference in the work of the claimants and the comparators.

4 The Respondent's Case

4.1 The Hospital rejects that "like work" as defined by Section 3 of the 1974 Act exists between the claimants

and the comparators and therefore the claimants are not entitled to equal pay. Descriptions of the jobs of the claimants and the comparators as submitted by the respondent are at appendices 6 and 7.

- 4.2** The respondent disputes that "like work" as defined at Section 3(a) exists between the jobs of the Assistant Nurses and the comparators. The respondent states that Attendants carry out duties which the are not carried out by the Assistant Nurses e.g.

lifting patients who arrive by helicopter
doing manual bowel evacuations
pre-operation skin preparation

The Assistant Nurses, on the other hand, the Hospital states, carry out duties which are not performed by the comparators e.g.

check in-linen delivered
work in children's section
tidy linen presses

The Hospital submission on the question of "like work"

as defined under Section 3(a) is contained in Appendix 8.

4.3 The Hospital accepts that the claimants and the comparators are involved in assisting the Nursing staff they do not perform "similar work" within the meaning of section 3(b) of the Act. The respondent argues that the differences which occur between the jobs are significant enough to justify a higher rate of pay in the case of the Attendants job. The Hospital points out that the Attendants carry out "acute lifts" of patients which if not done correctly could be the difference between a patient walking or not walking again and manual bowel evacuations, as two tasks not carried out by the claimants. The Hospital full submission on Section 3(b) of the Act is at Appendix 9.

4.4 The Hospital does not accept that "like work" as defined by Section 3(c) of the Act exists between the jobs of the Attendants and the Assistant Nurses. Its arguments under this sub section are at Appendix 10.

5 Conclusions of the Equality Officer

5.1 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 this case and also the work inspections which I carried out on the work of the claimants and the comparators. I am satisfied from my inspections of 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 detailed job descriptions of the claimants and the comparators, as prepared by the Union and the Hospital are at Appendices 4 to 7.

5.2 On my first visit to the respondent Hospital I informed the parties to the case it was clear, from the job descriptions submitted by the parties, that the work of the claimants and the comparators mainly revolves around persons i.e. male and female patients who have no involvement in the claim. I went on to state that as much of the work performed by these employees was of a very personal nature it was not my intention to invade the privacy of any of the patients or indeed ignore their right to their dignity and, therefore, I did not

propose to observe the employees carry their various tasks. As there was no objection to this proposal my job inspections in this case took the form of an interview with claimants and comparators. Notwithstanding that I did not observe the employees perform their tasks I am satisfied with my job inspections.

- 5.3 In order to decide the question of whether or not the work of the claimants and that of the comparators is "like work" within the meaning of Section 3 of the Act, I considered, in the first instance, whether the work performed by the claimants is the same work to that of the comparators in terms of Section 3(a) of the Act. Section 3(a) states that two persons shall be regarded as employed on like work -

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

- 5.4 I interpret Section 3(a) to mean that like work is performed where two persons do exactly the same work

(under the same or similar conditions) or there is full interchangeability between them.

I note that the claimants and the comparators both work in the area of care of the patients in the Hospital. However, the claimants' duties relate generally to female patients and the duties of the comparators generally relate to male patients but not exclusively. I note that the comparators are required to carry out duties that are not proper to the Assistant Nurse grade and these include bowel evacuation, pre-operation skin preparation and "acute lifts". I am satisfied from the job descriptions and from my work inspections that the claimants do not perform "like work" with the comparators within the meaning of Section 3(a) of the Act.

- 5.5** As I found that the comparators and the claimants do not perform like work within the meaning of Section 3(a), I then considered whether or not the work performed by the claimants is equal in value to that performed by 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 or 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 and mental effort and working conditions.

5.6 RESPONSIBILITY

The main responsibility of the claimants and the comparators is in the area of patients care in the Hospital. The claimants are usually involved with female patients and the comparators are generally involved with male patients but they are required to assist in such tasks as lifting and turning of female patients.

The claimants and the comparators grades are both

responsible for the washing, dressing, escorting and feeding of patients. The level of responsibility of the claimants in the general dusting and cleaning in the area of the wards is not significantly different to that required of the comparators in vacuuming and buffing of floors.

The comparators have responsibility for other functions such as "acute lifts", manual bowel evacuation on male patients and the pre-operation skin preparation of male patients. When the need arises to carry out a manual bowel evacuation on female patients that function is performed by Nurses. On rare occasions the claimants are involved in "acute lifts" but when they do so they hold the feet of the patient.

I was informed in the course of my job inspections that an "acute lift" is performed where a patient's injuries have not stabilized or when the extent of the injuries are not known at the time. An "acute lift", which I saw demonstrated on a training film, involves the hands of a three person team being placed under the patient in a particular order and the patient being lifted by the

team in co-ordination. I was also informed that it is essential that an "acute lift" is done properly, if it is not then it may mean the difference between a person walking or not walking again. In relation to male and female patients, as already stated, and those who arrive by helicopter with spinal injuries that function is carried out by the Attendants.

On the second day of my work inspections, I was informed, when I enquired about the procedures and importance of the manual bowel evacuation function, that if this function is not carried out properly a perforation could occur and such an occurrence would be very serious to the patient.

I note that the duties of some of the claimants and comparators have additional responsibilities to those of their respective colleagues. In the case of the claimants for example one of them collects/delivers/sterilises equipment and makes up sterilised packs and the same claimant also does relief work on the switchboard for two half hour periods each day, another claimant on a daily basis operates an

elevator for the purpose of the movement of patients from the wards to different departments. In the case of the comparators one assists in the x-raying of patients, files x-ray records and maintains the equipment in the x-ray department and another two are assigned to drive the ambulance, which arises two or three times a week.

Having regard to the various responsibilities of the comparators and the claimants which I have highlighted above and those other responsibilities which are included in their respective job descriptions and bearing in mind that the comparators have the responsibility to carry out "acute lifts" and manual bowel evacuation, both tasks which are carried out in relation to female patients by Nurses, I am satisfied that in terms of responsibility the demands placed on the comparators are greater than those on the claimants.

SKILL

The claimants and the comparators require a relatively low level of skill to carry out regular daily common tasks such as washing, dressing, escorting and feeding

of patients. The level of skill required of the claimants in the general dusting and cleaning in the area of the wards is not significantly different to that required of the comparators in vacuuming and buffing of floors. The work in both grades requires dexterity and some knowledge as to the correct use of such equipment as roller boards, hoists and wheelchairs.

I note that the duties of some of the claimants and comparators require them to use additional skills to those required of their respective colleagues. In the case of the claimants one collects/delivers/sterilises equipment and makes up sterilised packs and this claimant also does relief work on the switchboard for two half hour periods each day, another claimant operates an elevator. In the case of the comparators one assists in the x-raying of patients, files x-ray records and maintains the equipment in the x-ray department and another two are assigned to drive the ambulance, which arises two or three times a week.

Having regard to the various skills of the comparators and the claimants which I have highlighted above and

those other skills which are included in their respective job descriptions and bearing in mind that the comparators have the skill to carry out "acute lifts" and manual bowel evacuations; manual bowel evacuations on female patients are carried out by Nurses, I am satisfied that in terms of skill the demands placed on the comparators are greater than those on the claimants.

PHYSICAL EFFORT

The work of the claimants and the comparators require them to constantly use some physical effort in the washing, dressing, escorting and feeding of patients and in the operation of such equipment as hoists, roller boards and wheelchairs.

Having regard to the various tasks of the claimants and the comparators, a lot of them are physically demanding, I am satisfied that in terms of physical effort that the demands placed on the claimants and on the comparators are equal under this heading.

MENTAL EFFORT

The type of patients that both grades assist and care

require a degree of concentration to carry out tasks that would normally be considered routine e.g. cleaning, escorting and feeding of patients. The claimants use a degree of mental effort in maintaining laundry records.

In the case of the comparators the execution of an "acute lift" requires concentration. I am satisfied that the level of concentration required of the comparators to carry out bowel evacuations is such that greater demands are placed on the comparators than on the claimants in terms of mental effort.

WORKING CONDITIONS

The claimants and the comparators both generally work in the Hospital building. Both face the hazards involved in lifting patients and in the use of equipment such as hoists and boards. While the comparators are involved in manual bowel evacuations I consider that function is not any more unpleasant than the cleaning of soiled patients or the emptying of urine drainage bags which both grades carry out. I consider that the claimants and the comparators work under similar working conditions.

5.7 In summary I have found that similar demands are placed on the claimants and on the comparators with regard to "working conditions" and "physical effort" and that greater demands are placed on the comparators with regard to "responsibility" and "skill" and "mental effort". Accordingly, I find that the work performed by the claimants is not "like work" with that performed by the comparators for the purposes of Section 3(c) of the Act.

5.8 As I found that the comparators and the claimants do not perform like work within the meaning of Section 3(a) or (c), I then addressed the question of "like work" under Section 3(b) of the Act. Section 3(b) provides that two persons shall be regarded as employed on like work:-

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

5.9 The claimants and the comparators both work in the care of patients in the Hospital. Having examined the work performed by them I am satisfied that the work performed by the claimants is similar in nature to that performed by the comparators. The question to be decided in terms of Section 3(b) of the Act is whether or not the differences, between the work performed by each of them and the differences in the conditions under which it is performed, are of small importance in relation to the work as a whole.

5.10 Having examined the work of the claimants and the comparators I am satisfied that differences in work are such that greater demands are placed on the comparators which are significant in relation to the work as a whole.

The comparators and the claimants carry out many tasks that are of a similar nature, albeit that the claimants work is generally connected with female patients, such as cleaning, dressing, escorting and feeding of patients and in keeping wards/floors clean and tidy. However there are differences in the work carried by both grades

for example:

Comparators

lifting of patients who arrive by helicopter

preparation of the equipment for the helicopter

acute lifts

bowel evacuation on male patients

pre-operation skin preparation on male patients

Claimants

ensure adequate stocks of linen for wards

maintain linen stock records

wash laundry in washing machines

relief work on switchboard

operate an elevator

I consider that differences which exist between the work of the claimants and the comparators are important differences which demand a greater degree of skill and responsibility of the comparators than that required of the claimants. Accordingly I am satisfied that the difference between the work of the claimants and the comparators constitute objective reasons which I

consider warrant a difference in remuneration. I find therefore that the claimants are not employed on like work with the comparators, in terms of Section 3(b) of the Act.

6 Recommendation

6.1 In view of my conclusions at Paragraphs 5.4 to 5.10 previous that the claimants do not perform "like work" with that performed by the comparators in terms of Section 3 of the Anti-Discrimination (Pay) Act, 1974, I find that the claimants have no entitlement to the same rate of remuneration as that paid to the comparators.

Jim Clerkin,
Equality Officer

12th March, 1997.