

**Employment Equality Act, 1977**

**DEC - E - 2000/09**

**A Female Employee  
(Represented by O'Mara Geraghty  
McCourt, Solicitors on behalf of the  
former Employment Equality Agency)**

**V**

**A Hospital  
(Represented by A & L Goodbody,  
Solicitors)**

***File No.*            *EE 08/1999***

***Date of Issue*    *?/11/2000***



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## **SUMMARY**

### **Recommendation DEC - E 2000/09**

#### ***Background:***

The claimant alleges that she was discriminated against by the respondent in terms of Section 2(d) of the Employment Equality Act, 1977 when she was subjected to harassment by a male supervisor.

#### ***Conclusions:***

The Equality Officer found in favour of the claimant in that the respondent failed to provide her with a safe working environment. There was evidence that the claimant's supervisor had behaved inappropriately on a number of occasions and the Equality Officer found that the only action taken by the respondent was to inform him that his behaviour was not condoned by it. In the circumstances the Equality Officer found that this action was not sufficient and held that by failing to take any further action against the claimant's supervisor the respondent did not provide her with a safe working environment.

#### ***Recommendation:***

The Equality Officer found that the respondent discriminated against the named female claimant in terms of Section 2(d) of the Employment Equality Act, 1977. The Equality Officer recommended that the respondent organise a transfer for the claimant's supervisor and that his behaviour be carefully monitored. The Equality Officer also recommended that the respondent pay the claimant £3,000 by way of compensation for the stress suffered over a number of years as a result of the discrimination.

**1. DISPUTE**

- 1.1** This dispute concerns a claim by a named female that a named respondent penalised her in terms of Section 2(d) of the Employment Equality Act, 1977 and contrary to the provisions of Section 3 of that Act.

**2. BACKGROUND**

- 2.1** The claimant commenced employment as a hospital attendant in 1989. She alleges that she was touched inappropriately by a male colleague (hereinafter referred to as Mr. A) in June, 1990. According to the claimant she made a complaint to her Union and local management and, following a meeting, the matter was resolved amicably. In October, 1993 Mr. A was promoted to the position of supervisor and the claimant reported to him. The claimant alleges that Mr. A has subjected her to victimisation, intimidation and bullying since making her original complaint in 1990. The claimant has endeavoured to resolve the situation with management but has failed.

- 2.2** As a result the claimant referred a claim to the Labour Court on 13th July, 1998. In her referral the claimant alleged that the respondent discriminated against her in terms of Sections 2(a), 2(b), 2(c) and 2(d) of the Employment Equality Act, 1977 and contrary to the provisions of Section 3 of that Act. The referral was out of time and, therefore, subject to a time limit-hearing in the Labour Court. In the course of that hearing the claimant withdrew her claims of discrimination under Section 2(b) and Section 2(c) of the Employment Equality Act, 1977. In its decision<sup>1</sup> dated 31st March, 1999 and attached as Appendix A the Labour Court held there were no grounds to extend the time-limit in the claim of discrimination under Section 2(a) of the Employment Equality Act, 1977 which occurred in 1990. Furthermore it held that there were no grounds to extend the time-limit under Section 19(5) of the 1977 Act in relation to claims under Section 2(a) of the Act. The Labour Court also decided that there were reasonable grounds for extending the

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<sup>1</sup> Labour Court Decision No. EET994

time-limit under Section 2(d) of the Act on the basis that the claimant was availing of in-house procedures to pursue her claim.

- 2.3** Following the issue of its decision in relation to time-limits the Labour Court referred the claim under Section 2(d) of the Employment Equality Act, 1977 to an Equality Officer for investigation and recommendation. The claimant referred her claim against the Hospital and the Health Board. At the hearing of this claim on 5th July, 2000 the claimant withdrew her claim against the Health Board and indicated that the Hospital is her employer. The claimant confirmed the withdrawal of her claim against the Health Board by letter dated 7th July, 2000.

### **3. SUMMARY OF THE CLAIMANT'S CASE**

- 3.1** According to the claimant she commenced employment as a hospital attendant in 1989. She was appointed to the X-ray Department in June, 1990. She alleges that, in June of 1990 while in a lift with a patient, Mr. A stood behind her and touched her inappropriately. According to the claimant she made a complaint to her Union and to Local Management and, following a meeting, she understood the matter to be resolved in an amicable manner. However since making the complaint, the claimant alleges that she has been the subject of victimisation, intimidation and bullying by Mr. A.
- 3.2** In October, 1993 Mr. A was promoted to the position of supervisor and the claimant reported to him. According to the claimant she was removed from a receptionist position, singled out for extra supervision, picked on unnecessarily, shouted at and bullied. It is her contention that unnecessary complaints about her were made to management and Mr. A cursed, swore at her and glared at her continuously. The claimant states that she was accused of leaving work early, but she denies this. According to the claimant she was directed to carry beds down from the wards contrary to her Union Representative's advice. The claimant alleges that Mr. A allocated work in an unfair manner assigning her the more difficult tasks.

- 3.3** In early May, 1996 the claimant was unable to go to work because she was suffering from stress which resulted from the discriminatory treatment and her daughter telephoned work on three occasions to say that her mother was sick and would be taking an uncertified sick day. The claimant states that Mr. A told management that the claimant had not reported the absence and she was issued with a verbal warning. It is the claimant's contention that she was penalised as a result of a sick absence which was directly related to the ongoing stress she experienced because of her working conditions.
- 3.4** The claimant states that she has suffered significantly as a result of her treatment and had to take certified sick leave and seek medical attention and counselling. She reported incidents of intimidation and bullying to management. It is her contention that management failed to put a satisfactory remedy in place and she is still subjected to a hostile working environment.
- 3.5** The claimant says that another incident of abusive behaviour towards her by Mr. A occurred on 6th February, 1998 in the presence of hospital patients. According to the claimant she was in the reception area when Mr. A approached her in a very aggressive manner and told her that she could not have one hour off that day because she had taken the previous Monday off on annual leave. The claimant alleges that Mr. A bullied her in a public place and when she walked away he shouted after her. The Union's Shop Steward was present to witness this and the claimant spoke to him. As she did so the claimant alleges that Mr. A stood and glared at her. The claimant says that she reported the incident to management. Subsequently a meeting took place with management and the claimant pleaded for a transfer from the area. In a letter dated 9th March, 1998 the Industrial Relations Officer, on behalf of the Hospital, stated that Mr. A's behaviour was unacceptable and Mr. A had been so informed.
- 3.6** According to the claimant a number of unsuccessful attempts have been made to resolve her complaint. She requested a transfer to a suitable alternative post but she was not accommodated. The claimant states that, despite complaints to management about ongoing victimisation and a hostile working environment, no action has been taken by

management to adequately address the situation. The claimant now considers that she has exhausted all avenues to resolve the complaint and management has failed to deal with it adequately or sufficiently. It is the claimant's contention that she has been subjected to ongoing victimisation and a hostile working environment as a result of reporting Mr. A for alleged sexual harassment.

**3.7** It is submitted, on the claimant's behalf, that the working conditions in which she is obliged to work contravenes Section 3(4) of the 1977 Act. It is also submitted that, because of these intolerable and discriminatory working conditions, the claimant has suffered stress and anxiety and has had to seek medical attention and counselling. It is further submitted, on behalf of the claimant, that the respondent has failed to deal with the ongoing complaints of harassment and victimisation, despite acknowledging in a letter to her dated 30th April, 1996 that there was a breakdown in the relationship. The letter states "*the Hospital was unable to find evidence of serious harassment or intimidation in the workplace*". It must be concluded that the investigation found some evidence of a level of harassment and intimidation. The claimant complained to management because she found the behaviour unacceptable and wanted the discriminatory treatment to stop. Mr. A was advised on that occasion by management that his style of communication to the claimant was unacceptable.

**3.8** The respondent accepts that Mr. A's behaviour on 6th February, 1998 towards the claimant was aggressive and demeaning but, despite the previous acknowledged verbal warning about his treatment of this claimant, no action was taken to provide the claimant with a hostile free environment. It is submitted, on behalf of the claimant, that the respondent failed to put a satisfactory remedy in place. The claimant sought a transfer to a suitable location with similar working conditions but she was not accommodated. The claimant also applied for suitable posts outside the area but was unsuccessful at the interviews. It is submitted that no effort was made to provide the claimant with a transfer. It was because of the respondent's lack of effective response that the claimant referred her claim for investigation to an Equality Officer.

**3.9** The Equality Officer is asked to find that the respondent failed in its duty under the 1977 Equality Act to provide the claimant with non-discriminatory working conditions and a non abusive/harassment free working environment. The Equality Officer is further asked to find that the claimant was victimised following her complaint to management about discriminatory working conditions. The Equality Officer is asked to award compensation to the claimant for the discrimination and victimisation she experienced and the distress and anxiety suffered by her and to recommend a transfer to a more appropriate and harassment free position.

#### **4. SUMMARY OF A LETTER FROM THE RESPONDENT**

**4.1** Having examined the submission from the claimant, the respondent stated that it was unable to deliver a defence to it. The respondent referred to the decision of the Labour Court<sup>2</sup> in which the Labour Court decided that the claimant was not entitled to pursue her claim under Section 2(a) of the 1977 Act. It was also acknowledged that the claims under Sections 2(b) and 2(c) had been withdrawn. Accordingly the claimant's complaint is restricted to an action under Section 2(d) of the said Act. The respondent asked that the claimant clarify the particulars of her claim under this Section of the Act.

#### **5. SUMMARY OF THE CLAIMANT'S RESPONSE**

**5.1** The claimant alleges that she has been penalised for opposing by lawful means an act which is unlawful under Section 2(d)(ii) of the Employment Equality Act, 1977. She was subjected to a sexual assault by Mr. A (an employee of the respondent). The claimant took lawful action by reporting this behaviour to her Supervisor and to her Union Official and she sought to have the matter resolved to her satisfaction. Mr. A, however, was promoted to a supervisory position and became the claimant's supervisor.

**5.2** The claimant contends that she has been repeatedly penalised for taking lawful action by making complaints to the respondent about Mr. A's behaviour and his treatment of her.

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<sup>2</sup> Labour Court Decision EET994

She has been subjected to numerous separate incidences of discrimination, bullying and victimisation perpetrated on her by Mr. A. The claimant has been subjected to intolerable conditions in her employment. She argues that these actions are unlawful under the 1977 Act and that she has sought to oppose them. The claimant says that she has made repeated complaints and representations to the respondent who is aware of the nature and extent of these complaints.

**5.3** The claimant contends that she has been penalised by the respondent's behaviour in leading her to believe that her grievance would be dealt with and resolved. The failure of the respondent to do so has resulted in protracted delay and has resulted in the penalisation by her having to endure further acts of discrimination and victimisation. It is the claimant's contention that she has been treated in this manner by Mr. A because she sought to oppose his behaviour and actions by lawful means and she has been penalised in that this behaviour and treatment of her has been allowed to continue unabated over a protracted period of time. Mr. A (the offending employee) has been allowed to continue as a Supervisor to the claimant despite his very serious misconduct and discrimination towards her.

**5.4** The claimant argues that she has been further penalised under Section 2(d)(i) of the 1977 Act in that the discrimination and victimisation, which she has suffered and continues to suffer, has continued unabated after the making by her of a complaint under Section 19 of that Act. No action has been taken by the respondent to alleviate the claimant's problems since the date of the complaint (13th July, 1998). Rather, it is contended by the claimant that the conduct of the respondent has exacerbated the situation and has caused her further discrimination. The respondent has failed to transfer Mr. A or to take any action in relation to him. The respondent has also failed to secure a suitable transfer for the claimant or otherwise to ensure that her working conditions are not discriminatory. The claimant argues that no positive steps have been taken by the respondent since the making of the complaint under Section 19 of the Employment Equality Act, 1977 and, according to the claimant, she has been penalised for making this complaint.

## **6. SUMMARY OF THE RESPONDENT'S SUBMISSION**

**6.1** According to the respondent the claimant has been employed since 1989 as an attendant assigned to the Diagnostic Imaging Department (DID) of the respondent hospital. The qualifications, particulars of office, duties and general conditions of the claimant's employment are set out in Appendix B.

**6.2** It is the claimant's contention that she was subjected to sexual harassment, discriminatory working conditions and victimisation in her employment. In particular she complained of an incident in June, 1990 when Mr. A touched her inappropriately in a lift. It is the respondent's contention that the claimant did not report this incident to management in 1990 and it had no involvement in relation to its resolution with the claimant's Union representatives. The respondent states that it now understands that the claimant made some complaints at the time to her Union concerning a Shop Steward. The respondent was informed of this by the Chief Shop Steward who explained that these complaints did not constitute sexual harassment. It understands that the matter was resolved amicably. The respondent states that neither the claimant nor the Union reported the matter to it at the time and the Chief Shop Steward informed the respondent that it had never been the intention to report the incident to management.

**6.3** The respondent states that in 1995 the claimant issued proceedings against it in relation to a personal injury claim. This claim was eventually settled on 26th July, 1997. The respondent says that, at no stage during the course of those proceedings, did the claimant or her solicitors make any complaint in relation to harassment, discrimination or victimisation in her employment. According to the respondent it first received a complaint in relation to the matters now referred to on 30th January, 1996. This was in the context of the claimant being called to a meeting, which was convened in line with practised procedures, following her absence from work on 15th January, 1996 and her failure to contact the hospital in respect of same. The claimant attended the meeting and was represented by the Chief Shop Steward. The meeting focused on three issues:

- the claimant's breach of sick leave regulations;

- the claimant's refusal to discuss work issues with her superior and her Shop Steward;
- the concerns of management in relation to a medical certificate which indicated that the claimant was suffering from a hand injury, despite the fact that management had a medical report which stated that the claimant was capable of carrying out a full range of duties.

**6.4** At the meeting on the above issues the respondent says that these issues were discussed between the Union, the claimant and management. Then the claimant read out a lengthy written statement which contained serious allegations about the conduct of the senior attendant, Mr. A. This, according to the respondent, was the first occasion that the respondent was informed of the allegations of the claimant concerning the alleged incident in 1990 or of any of the other allegations contained in the statement. The respondent denies the claimant's statement that the superintendent radiographer "*was aware of the matter as I gave her a copy of my letter*". The respondent states that it did not receive a copy of a letter from the claimant in relation to this alleged incident.

**6.5** The respondent states that the meeting on 30th January, 1996 was a lengthy one. At the end of the meeting, the respondent says that it was accepted by the Chief Shop Steward, on behalf of the claimant, that she must comply with sick leave regulations. The Chief Shop Steward also acknowledged the senior attendant's role in terms of work responsibilities and reporting relationships. It was also agreed that the claimant would be referred to Occupational Health in view of her recent medical certificate.

**6.6** According to the respondent it undertook to investigate the allegations that were made by the claimant in her letter. A protocol was put in place to protect both parties. In a letter to the claimant dated 30th January, 1996 the respondent confirmed the following as discussed at the meeting of that same date:

- It is imperative that the claimant comply at all times with all aspects of the sick leave regulations - this was highlighted following the claimant's absence due to sickness on Monday, 15th January, 1996.
- The role of the Senior Attendant (Mr. A) in terms of work responsibilities and reporting relationships was clearly identified and acknowledged by all

parties at the meeting. With regard to the concerns/allegations the claimant raised against the Senior Attendant it is noted that these will be investigated by management through appropriate procedures - to this effect a meeting has been arranged for 9.00a.m. on Monday, 5th February, 1996 in the Personnel Department.

- In view of the claimant's recent certified sick leave which was identified as relating to a hand injury an appointment has been arranged for her to be seen by the Occupational Health Physician on Monday 5th February, 1996 at 12 noon.

**6.6** The respondent states that the Personnel Officer met with the claimant and the Chief Shop Steward on 5th February, 1996 as agreed. Details were sought of the allegations or harassment that were made and it was agreed that a thorough investigation would be carried out. The respondent confirmed this in writing to the claimant.

**6.7** According to the respondent an investigation was undertaken having regard to its internal recommended procedures including its draft policy on sexual harassment. The investigation was conducted by the Personnel Officer who conducted interviews with a number of the claimant's colleagues and Mr. A, the person against whom the complaints were made. On completion of the investigation the respondent met with the claimant and Mr. A at individual meetings and then finally at a joint meeting. At both meetings the claimant was represented by a Shop Steward (not the Chief Shop Steward). From its investigation the respondent concluded that it was unable to find evidence of serious harassment or intimidation in the workplace. The respondent says that it acknowledged that there had been a breakdown in the working relationship between the claimant and Mr. A. A number of observations were made and proposals put as follows:

- There has been a total breakdown in the working relationship between the claimant and Mr. A;
- The claimant clearly found Mr. A's style of communication offensive and inappropriate on occasions and was of the strong opinion that he "*picked on her*" unnecessarily;
- The Hospital believes that, as a result of the breakdown of the working relationship, both the claimant and Mr. A have become oversensitive and over re-active to everyday occurrences between them. Concerns in relation to these were brought to both their attention.

- Mr. A has been instructed by the Hospital to ensure that he treats the claimant as he would any other attendant in the Diagnostic Imaging Department (DID) and he is instructed to pay particular regard in terms of his communication with the claimant - Mr. A has been informed that the claimant has found his style of communication to be inappropriate (coarse and aggressive) in the past and this is unacceptable to the Hospital.
- As an attendant in DID the claimant must be aware that she reports to Mr. A and, as such, is required to deal with him as would any other attendant i.e. report to him on work related matters and afford him common courtesy (for example, if the claimant is late for any reason she would be expected to advise him of this on arrival as would any other attendant).
- Should it be necessary for Mr. A to raise any matter formally with the claimant (i.e. in line with Hospital disciplinary procedures) he would do so in the presence of an appropriate Trade Union representative at the claimant's request. However any day-to-day work issues would be discussed directly with the claimant.

**6.8** The respondent states that it issued a verbal warning to the claimant for her failure to follow the hospital's sick leave regulations again on Wednesday, 1st May, 1996. The claimant had not reported for duty on 1st May, 1996 and no record of a message from her daughter had been received. The respondent points out that the onus is on the claimant herself to personally ensure that her supervisor is informed that she is taking a day off work sick. This, according to the respondent, was explained to the claimant on a number of occasions including once in writing.

**6.9** The respondent states that the claimant discussed the transfer of Mr. A with it in March, 1997 and subsequently requested a transfer for herself on 2nd October, 1997. The claimant was informed of attendant vacancies on ward areas which she ruled out because she could not be guaranteed working hours from 9.00a.m. to 5.00p.m.

**6.10** *History of the claim and details of correspondence associated with it:*

- (a) In a letter dated 6th June, 1996 the Employment Equality Agency (E.E.A.) [now the Equality Authority] asked the respondent for its comments on the allegations by the claimant. In its response the respondent stated that it had undertaken an investigation on foot of the allegations made by the claimant. No evidence of serious misconduct or intimidation in the workplace was found but difficulties in

relation to the working relationship between the claimant and Mr. A were identified. In this latter regard Mr. A was informed of how he should conduct himself in future. In its letter the respondent stated “*Following on from this the matter has not been raised as an ongoing problem by [the claimant] at a local level*”. The respondent pointed out to the E.E.A. that the incident which had occurred in 1990 had been resolved at local level to the satisfaction of all the parties concerned and in the full knowledge of the claimant’s Trade Union. In this same letter to the E.E.A. the respondent noted that the claimant was originally employed as an attendant in the reception area of the X-ray Department and at a later stage assigned to rotational duties as shared by all attendants in the Department. According to the respondent this move was not a decision taken by Mr. A but rather was one made by Hospital Management in direct response to requests made by the claimant’s colleagues and their Trade Union representatives such that all duties were to be shared by all attendants as opposed to individuals having specific areas of assignment within the Department. Mr. A was appointed Senior Attendant in October, 1993 at which stage, the respondent stated, this issue was already under review. Finally in this letter to the E.E.A. the respondent stated that Mr. A had not singled out the claimant for extra supervision and it noted that the claimant had refused to take instruction from Mr. A.

- (b) The E.E.A. replied by letter dated 16th July, 1996 stating that the claimant was not satisfied with the respondent’s letter of 20th June, 1996 and alleging that the victimisation was still ongoing at the time. The E.E.A. indicated that the claimant proposed to lodge a complaint with the Labour Court but it stated that it would be willing to discuss the matter further with the respondent in an attempt to find a resolution without having to resort to the legal process. The respondent replied by letter dated 24th July, 1996 in which it welcomed the opportunity of attempting to resolve the matters of concern without resorting to the legal process. In this regard the respondent asked that it be informed of the claimant’s position and the specific incidents of ongoing victimisation. The respondent undertook to initiate full investigations in line with established procedures. The respondent subsequently met with the E.E.A. and again asked for specific details of what the claimant wanted. The respondent states that it was informed that the claimant could not work under Mr. A and wanted him transferred. The respondent indicated that, as it could not make a finding against either Mr. A nor the claimant, it could not force a transfer on either. The respondent, however, stated that it was prepared to facilitate a voluntary transfer, that there was a confidential counselling service available which may be of assistance to the claimant and it was willing to offer the claimant a transfer to the Health Care Centre and separately a transfer to the Sterile Supplies Unit. The claimant refused both these offers.
- (c) In September, 1996 the respondent received two written letters of complaint from the Radiographers concerning the claimant’s attitude and performance. The respondent decided not to act on foot of these letters as any action would be viewed, by the claimant, as victimisation.

- (d) On 28th January, 1997 the respondent met with the claimant regarding an alleged incident involving Mr. A and the claimant put her complaint in writing on 30th January, 1997. In her complaint the claimant stated that she approached Mr. A about the rota and her assignment to a particular work area stating that it was not her turn to go to a particular area. The claimant alleges that Mr. A became very abusive and aggressive towards her in front of patients and other colleagues. The claimant indicated that she found this behaviour unacceptable and she asked the respondent to investigate the matter as soon as possible. The E.E.A. also wrote to the respondent regarding this complaint in a letter dated 31st January, 1997 and asked if the respondent had made any progress in bringing this case to a successful conclusion. On 11th March, 1997 the respondent wrote to the claimant repeating an offer of transfer.
- (e) The E.E.A. wrote to the respondent on 25th March, 1997 indicating that the claimant was not satisfied that her complaint had been dealt with adequately and stating that the transfer option was not suitable. The E.E.A. further indicated that the claimant was reluctant to transfer given that she is the person who was subjected to the alleged discrimination. In its response to this letter the respondent expressed its surprise to learn that the claimant considered the transfer offer unsuitable given that no specific details about a particular transfer was discussed. The respondent also stated that it would mount a full defence to any complaint referred to the Labour Court.
- (f) According to the respondent the claimant made a further complaint in relation to an alleged incident involving Mr. A on 22nd May, 1997. This matter was investigated by the Personnel Support Officer and the Superintendent Radiographer. It was concluded that there was no evidence to confirm that Mr. A had been aggressive or demeaning to the claimant. It was found that Mr. A did raise his voice while communicating with another female member of staff (Ms. A) in the presence of patients. This was reported by Ms. A to the Deputy Superintendent Radiographer who spoke to Mr. A about it.
- (g) The respondent states that it received a complaint in writing dated 10th September, 1997 from Mr. A concerning the claimant's refusal to co-operate in work allocation by him. The respondent and the claimant met on 23rd March, 1998 and the claimant was represented by her Union. It was agreed that the claimant would have to work in areas rostered by her superior officer (Mr. A).
- (h) The respondent received a written request from the claimant for a transfer from the X-ray Department to Physio or Occupational Therapy. According to the respondent it endeavoured to accede to her request but was unable to do so and informed her of such by letter dated 8th December, 1997.
- (i) The respondent states that it received another written complaint about Mr. A from the claimant dated 6th February, 1998. According to the claimant Mr. A approached her in the reception area and in an aggressive manner informed her

that she could not take an hour off because she had already taken the previous Monday off annual leave. The claimant alleges that Mr. A shouted at her and bullied her in front of patients and another male attendant from the X-ray Department. The claimant, in her letter of complaint, asked that the matter be resolved as soon as possible. The respondent says that the matter was investigated in accordance with hospital procedures. It was concluded that an unwarranted exchange took place involving Mr. A and that such behaviour was totally unacceptable and not condoned by the hospital. The respondent states that this had been outlined unequivocally to Mr. A and DID Management and the claimant was informed that the respondent did not expect recurrences under any circumstances. In a letter to the claimant detailing the outcome of its investigation the respondent stated that it was still committed to attempting to facilitate the claimant's request for a transfer. It noted the difficulty of getting vacancies in positions where the claimant would be enabled to maintain her current working patterns. A suitable position did arise in the Hospital Sterile Service Unit but the claimant did not find it suitable. The respondent pointed out that there were no vacancies in Occupational Therapy and said that it was looking at the possibility of Day Ward/Day Surgery areas. The respondent said that it would keep the claimant advised of progress.

- (j) The claimant lodged a formal complaint with the Labour Court on 13th July, 1998 and the respondent was notified of this fact by letter from the E.E.A dated 20th July, 1998. The respondent replied to the E.E.A. by letter dated 18th August, 1998 in which the respondent stated that it had reached an agreement with S.I.P.T.U. that, in accordance with her request for a transfer, the claimant would be placed in the next suitable vacancy that would occur in any of the areas she had selected. The respondent indicated that it would be willing to meet with the E.E.A. if it was considered that the matter could be resolved without having to pursue the legal process.
- (k) The respondent, in its submission, included a report of a meeting between the respondent, the claimant and Union Shop Stewards on 18th November, 1998. The details of this meeting are reproduced in Appendix C.

**6.11** In its defence the respondent denies all the claimant's allegations as set out in her submission dated 23rd September, 1999 and her letter dated 14th February, 2000. The respondent notes the Labour Court decision<sup>3</sup> in the time-limit claim which held that the claimant was statute barred from bringing any claim other than one under Section 2(d) of the Employment Equality Act, 1977. The complaint under Section 2(d) of that Act, according to the respondent, is grounded upon discrimination by the employer by reason of

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<sup>3</sup> Decision No EET994 dated 31st March, 1999

the fact that the employee has given notice of an intention to make a complaint under the 1977 Act. It is the respondent's contention that the claimant is confined in her claim of discrimination to those areas where it can be shown that she has been penalised within the meaning of Section 2(d) of the 1977 Act. The respondent says that the claimant must be able to show that the discrimination is directly related to the penalisation under this Section of the Act. According to the respondent it has no knowledge of events which took place in 1990 and which are, in any event, statute barred by the Labour Court time limit-decision.

**6.12** The respondent says that if the claimant is permitted to ground her complaint on incidents occurring before 6th June, 1996 then it (the respondent) denies the following allegations as made by the claimant in her submission:

- The claimant was never employed as a receptionist. The claimant commenced employment as a hospital attendant and has never been notified of any change.
- There is no evidence to suggest that the claimant has been inequitably rostered.
- The claimant is not required to carry beds. The position is that if a patient cannot be moved out of a bed, then it is an acceptable duty for an attendant to push the bed. The beds are on wheels and there is no issue or disagreement with the Union in relation to this duty.
- No complaints about victimisation, intimidation or bullying by Mr. A were notified to the respondent by the claimant prior to 24th July, 1996.

**6.13** The respondent states that the claimant is aware of the hospital procedures in respect of the reporting of uncertified sick leave. On 30th January, 1996 she acknowledged the reporting procedure for sick leave and agreed to comply with it in the future. However, on 1st May, 1996 the claimant declined to follow the established hospital procedure. The respondent says that it is normal for an employee to contact her supervisor on the morning of the day in question. Any messages that are received in the reception area are written on a white board. The respondent has no record of anyone contacting the supervisor on her behalf. The claimant's uncertified absence was reported to the respondent's Personnel

Department in accordance with established policy. The respondent says that the claimant was not penalised for her sickness and she did not have a day's pay deducted from her salary even though the respondent was entitled to do so in the circumstances. Rather the respondent only issued her with a verbal warning.

- 6.14** The respondent denies the claimant's allegation relating to the numerous separate incidents of discrimination. According to the respondent it investigated the allegations made by the claimant on 11th June, 1997 and concluded that there was no evidence to support the allegation that Mr. A was aggressive or degrading to the claimant. The respondent did find that Mr. A had raised his voice while communicating with the claimant's colleague (Ms. A) and Mr. A's behaviour was addressed by a member of the Personnel Department. The outcome of disciplinary proceedings were not communicated to the claimant as they did not directly concern her. The respondent denies that the claimant was penalised for making complaints and submits that all complaints were fully investigated by it.
- 6.15** The respondent denies that it failed to put in place a satisfactory remedy and that the claimant is still the subject of a hostile or intolerable working environment. The respondent says that it investigated the incident reported by the claimant on 6th February, 1998 in accordance with hospital procedure. At the conclusion of the investigation the respondent disciplined Mr. A and reiterated its commitment to facilitating the claimant's request for a transfer.
- 6.16** The respondent denies the claimant's allegations regarding a transfer out of the DID Department. The respondent says that it discussed a transfer with the claimant during the early stages of the investigation into her allegations in 1996 but the claimant rejected an offer of a transfer out of DID Department and expressed her reluctance to transfer on 11th March, 1997. She then applied for a transfer on 2nd October, 1997. The respondent says that it confirmed its commitment to finding a suitable vacancy by letters dated 8th December, 1997 and 9th March, 1998. The claimant refused to transfer to either of two proposed positions in March, 1998. Again by letter dated 4th August, 1998 the respondent confirmed its commitment to retaining the claimant on the transfer list. The

claimant had been interviewed for a position in the Central Pathology Laboratory but was unsuccessful.

**6.17** The respondent denies that the claimant has been subjected to ongoing victimisation and a hostile working environment. It also denies that the claimant was penalised for making complaints and submits that all complaints were fully investigated in accordance with hospital procedure and, where appropriate, disciplinary action was taken. The respondent states that it has made every effort to accommodate the claimant's desire to transfer from her current position notwithstanding its findings that a transfer of either the claimant or her supervisor (Mr. A) is unwarranted. The respondent says that it agreed to maintain the claimant's current level of pay even if she accepted a transfer to a lower grade position. It is the respondent's contention that it has responded to all the specific incidents complained of by the claimant on 30th January, 1997; 22nd May, 1997 and 6th February, 1998. The respondent states that the claimant was released with pay to attend an Occupational Health Physician for up to two appointments each week and a Physiotherapist outside of the respondent's premises. The claimant had suffered a hand injury on 25th July, 1995 and was still seeking treatment up to May, 1999 notwithstanding an assessment of fitness by the Hospital's Occupational Health Physician on 5th November, 1998.

**6.18** It is the respondent's conclusion that it only became aware of the claimant's allegations in January, 1996 in response to issues about her abuse of sick leave procedures. The respondent states that it immediately commenced an investigation into the claimant's allegations and informed the claimant in April, 1996 that it was unable to find evidence of serious harassment or intimidation. The respondent says that it met with the claimant and her representatives on numerous occasions to try and address the claimant's perceived concerns and to attempt to facilitate her with a transfer. The respondent, therefore, asks that the claim by the claimant is rejected.

## **7. FURTHER SUBMISSION FROM THE CLAIMANT**

- 7.1** In this further submission the claimant sets out again the background to the claim. In relation to the investigation which was undertaken by the respondent in early, 1996 the respondent wrote to the claimant in April, 1996 stating that it was unable to find evidence of “*serious*” harassment or intimidation in the workplace. It is contended that the respondent found evidence of harassment and intimidation but did not consider same to be “*serious*”.
- 7.2** In April, 1996 a number of observations and proposals were made by the respondent to the claimant. These included the finding that the relationship between the claimant and Mr. A had broken down totally. There was a conclusion that both the claimant and Mr. A had become oversensitive and over-reactive to everyday occurrences. Mr. A was instructed to treat the claimant in the same way as any other attendant and the claimant was advised that Mr. A had been “*told clearly*” that his form of communication was not acceptable to the respondent. It is argued that the respondent, by virtue of this letter, accepted that the treatment of the claimant by Mr. A was different from his treatment of other attendants and his method of communication towards her required to be addressed. The claimant contends that the respondent failed to appreciate the intolerable work conditions in which she was obliged to work.
- 7.3** The claimant argues that the action taken by the respondent following her complaint in January, 1996 was totally inadequate. The respondent returned her to a situation where a man, who had sexually assaulted her and had intimidated and continuously harassed and bullied her, continued to remain in a position over her as her supervisor. Having accepted that the relationship had broken down totally and having accepted that Mr. A required to be advised in relation to his treatment of the claimant, the respondent failed to take any steps to ensure that the situation would not continue and failed even to ensure that Mr. A’s behaviour would be monitored. It is alleged that the discrimination, intimidation and harassment continued unabated.

- 7.4** In relation to the uncertified sick day which the claimant took in May, 1996 the claimant notes that the meeting with management was set up even before she was asked for an explanation. According to the claimant the procedure, when telephone messages are received relating to sick leave absences, is that the person taking the message either records the message on the message board or passes the message directly to the relevant person. Therefore the claimant was relying on the person who took the message to pass it on and if that person failed to pass it on there was nothing the claimant could do. The claimant contends that the respondent chose to disbelieve her despite having failed to put in place a procedure which ensured that such telephone messages were in fact passed on.
- 7.5** Despite representations from the E.E.A. (now the Equality Authority) the claimant states that she was further penalised by the respondent in being led to believe that her grievance would be dealt with and resolved. The claimant notes that the respondent indicated that it would undertake “*full investigations*” and hold meetings with her to address her concerns, but at no time did it ever suggest that any disciplinary action should be taken against Mr. A nor was it suggested that any other solution was available other than her transfer even though she alleges that she is the innocent party. The claimant contends that no specific offer of any transfer was ever made to her.
- 7.6** It is contended that the respondent’s failure to respond to and remedy the situation resulted in the claimant being penalised by having to endure further acts of harassment, intimidation and victimisation by Mr. A. The claimant lodged a formal complaint with the Labour Court on 13th July, 2000. Since making this complaint no action has been taken by the respondent to alleviate the claimant’s work problems, no offer of a specific transfer has been made to her and her complaint has effectively been ignored. The claimant contends that she has been further penalised for making a complaint under Section 19 of the 1977 Equality Act.

- 7.7** The claimant denies that the respondent offered her transfers to the Health Care Centre and separately to the Sterile Supplies Unit as alleged. According to the claimant the respondent only ever offered to transfer her but it did not identify any suitable vacancy. The claimant also denies any knowledge of complaints made against her by radiographers as alleged by the respondent and she states that she was never shown any letters of complaint. The claimant denies that the respondent endeavoured to comply with her transfer request of October, 1997 and were unable to do so. She further denies that the respondent continued to comply with her request for a transfer and the claimant repeats that she was never offered any specific job transfer.
- 7.8** The claimant notes that the respondent has accepted certain of her complaints and has issued instructions to Mr. A in relation to his behaviour towards her. The claimant denies that she is precluded from relying on any incidents of victimisation, intimidation, bullying or discrimination prior to the 6th June, 1996 as argued by the respondent. This claim is based on the assertion that the claimant has been penalised by opposing by lawful means an act and acts which are unlawful under the Employment Equality Act, 1977 within the meaning of Section 2(d)(ii) of the said Act, in addition to being penalised for having made a reference under Section 19 of the said Act and given notice of an intention to do same, within the meaning of Section 2(d)(i) and 2(d)(iv) of the said Act.
- 7.9** The claimant says that her problems stem from her opposition to the initial conduct of Mr. A when he sexually assaulted her. She denies that the respondent had no notice of this complaint because she informed her supervisor at the time and, according to the claimant, this supervisor was the respondent's representative. The claimant accepts that she was not employed as a receptionist but this had been the duties assigned to her before Mr. A was appointed to a supervisory position. The claimant reiterates that she was inequitably rostered by Mr. A. She was singled out for more difficult work tasks and she was so closely supervised that all her movements were monitored and she was even timed visiting the toilet. It is also the claimant's contention that she was required by Mr. A to lift beds.

**7.10** The claimant states that the respondent continues to penalise her. The respondent continues its failure to address the situation and remedy same. The claimant says that she continues to work in a hostile and intolerable work environment. Her health has suffered and her entire life has been adversely affected. The claimant states that she awaits a specific transfer to an identified job vacancy. She denies that she refused two proposed transfers in March, 1998. The only position which was specifically discussed with her was in March, 1997 when a position was discussed in the DID Department and which had different working hours which were unsuitable for her. The claimant says that she was interviewed for a position in the Central Pathology Laboratory and was not offered the position by the respondent.

**7.11** The claimant alleges that the respondent has made no satisfactory or adequate assessment of her work environment and has taken no adequate steps to remedy the situation which is the source of this complaint. The claimant states that the respondent is aware for years that an employee of theirs, a man who had sexually assaulted the claimant and was subsequently appointed as her supervisor, has caused her continuing difficulties in her work environment. According to the claimant this man was allowed to continue in this position where he could cause and has caused extreme hardship for her in her working environment. It is the claimant's contention that the conduct of the respondent has exacerbated the situation.

## **8. CONCLUSIONS OF THE EQUALITY OFFICER**

**8.1** The issue for consideration in this claim is whether or not the respondent penalised the claimant in terms of Section 2(d) of the Employment Equality Act, 1977 and contrary to the provisions of Section 3 of that Act. In making my decision in this claim I have taken into account all of the submissions (both written and oral) made to me by the parties.

**8.2** Section 2(d) of the Act states that:

*“discrimination shall be taken to occur where a person is penalised for having in good faith*

*(i) made a reference under section 19 or under section 7 of the Act of 1974,*

- (ii) *opposed by lawful means means an act which is unlawful under this Act or the Act of 1974,*
- (iii) *given evidence in any of the proceedings under this Act or the Act of 1974, or*
- (iv) *given notice of an intention to do anything referred to in sub-paragraphs (i) to (iii)”.*

In this regard what I must investigate are any incidents where the claimant was penalised for having opposed by lawful means an action which is unlawful under the Employment Equality Act, 1977 or for having made a reference under Section 19 of the 1977 Act.

**8.3** The Labour Court in its decision on the time-limit issue (see Appendix A) has clearly stated that it:

*“does not consider it reasonable to extend the time-limit under Section 19 (5) of the Employment Equality Act, 1977 to an alleged incident, under 2(a) of the Act, which occurred in 1990”.*

In making my recommendation in this claim I will not, therefore, be considering the merits or otherwise of the alleged incident which occurred in 1990. The Labour Court was also of the view that *“there are no grounds to extend the time-limit under Section 19(5) of the 1977 Act in relation to claims under Section 2(a) of the Act”*. Hence I will not be considering the merits or otherwise of complaints made in terms Section 2(a) of the Act.

**8.4** The claimant referred her claim to the Labour Court in July, 1998. In its time-limit decision the Labour Court notes that the claimant did not refer her allegations until June, 1996. It could be considered reasonable, therefore, to consider the issue of whether the claimant was discriminated against in terms of Section 2(d) of the 1977 Act since that time i.e. June, 1996. However I note, from the submissions received, that the claimant raised allegations of discrimination with the respondent on 30th January, 1996 when she attended a meeting which was convened in line with established procedures following the claimant’s alleged unreported absence from work on 15th January, 1996. I, therefore, propose to address the question of whether or not the claimant was discriminated against in terms of Section 2(d) of the 1977 Act from 30th January, 1996.

8.5 On foot of the allegations made at the meeting of 30th January, 1996 the respondent undertook to investigate them. The investigation was carried out by the Personnel Officer who interviewed a number of the claimant's colleagues and the person against whom the complaints were made (i.e. Mr. A). On completion of the investigation the respondent met with both the claimant and Mr. A individually and subsequently at a joint meeting. The respondent concluded that it was unable to find evidence of serious harassment or intimidation in the workplace. It acknowledged a breakdown in the working relationship between the claimant and Mr. A. The respondent made a number of observations and recommendations as follows:

- “ There has been a total breakdown in the working relationship between yourself [the claimant] and Mr. A, Senior Attendant.*
- *You [the claimant] clearly found Mr. A's style of communication offensive and inappropriate on occasions and were of the strong opinion that he 'picked on you' unnecessarily.*
  - *The Hospital believes that as a result of the breakdown of the working relationship both yourself [the claimant] and Mr. A have become over-sensitive and over re-active to everyday occurrences between you. Concerns in relation to these were brought to the attention of both of you.*
  - *Mr. A, Senior Attendant has been instructed by the Hospital to ensure that he treats you [the claimant] as he would any other attendant in the Diagnostic Imaging Department and is instructed to pay particular regard in terms of his communication with you - he has been told clearly that you have found his style of communication to be inappropriate (coarse and aggressive on occasion) in the past and this is not acceptable to the Hospital.*
  - *As an attendant in the Diagnostic Imaging Department you [the claimant] must be aware that you do report to Mr. A as the Senior Attendant and as such are required to deal with him as would any other attendant i.e. report to him on work-related matters and afford him common courtesy (for example: if you were to be late for any reason you would be expected to advise him of this on arrival as would any other attendant).*
  - *Should it be necessary for Mr. A to raise any matter formally with you [the claimant] (i.e. in line with the Hospital's disciplinary procedure) he would do so in the presence of an appropriate Trade Union Representative at your request. However, any day to day work issues would be discussed directly with you.”*

I am satisfied that the respondent acted on the complaint made by the claimant by carrying out an investigation. It recognised the total breakdown in the working relationship between the claimant and Mr. A and it set out proposals to overcome the difficulties identified.

**8.6** Following this investigation the respondent issued a verbal warning to the claimant for her failure to follow sick leave regulations by notifying her superior that she was taking an uncertified sick day. I note that the claimant contends that her daughter rang on her behalf and left a message with the receptionist. According to the respondent it has no record of such a call being made and the procedure is that incoming messages are recorded on the message board or passed directly to the person concerned. In the absence of notification that she was taking an uncertified sick day off the respondent acted in accordance with prescribed procedures and issued a verbal warning given that, as far as it was concerned, this was not the first occasion that the claimant had taken an unreported uncertified sick day. The claimant produced no evidence to substantiate her claim that she had notified either her superior or her employer that she was taking the day off on sick leave. I am satisfied that the respondent acted in accordance with standard procedures. In my opinion the respondent did not, either intentionally or unintentionally, penalise the claimant for having lodged complaints against Mr. A when it issued her with a verbal warning on foot of her alleged failure to notify her superior or indeed her employer of the fact that she was taking a day off sick leave.

**8.7** In discussing the claimant's case with the former Employment Equality Agency (E.E.A.) [now the Equality Authority] in September, 1996 the Agency indicated to the respondent that the claimant would not work under Mr. A and asked that he be transferred. The respondent refused saying that it could not force the transfer of either the claimant or Mr. A given that it could not make a finding against either. The respondent did, however, say that:

- (a) it would facilitate a voluntary transfer;
- (b) there was a confidential counselling service available which may be of assistance to the claimant, and

- (c) it would be willing to offer the claimant a transfer to the Health Care Service and separately to the Sterile Supplies Unit.

According to the respondent both transfer offers were rejected by the claimant.

**8.8** The claimant made a further complaint on 30th January, 1997 to the respondent concerning Mr. A. In this complaint the claimant alleged that Mr. A had put her down for a particular duty and she approached him about it as this duty is normally undertaken on a rota basis. According to the claimant it was not her turn to carry out the duty. In her complaint the claimant alleged that Mr. A became abusive with her when she pointed this out to him and he shouted at her in front of both colleagues and patients. According to the respondent the Superintendent Radiographer checked the frequency that the claimant carried out this particular duty. She found that the claimant had no more duties there than any of the other female attendants and she set this out in a written statement. I note that this statement is dated 28th July, 1997 which is some six months after the complaint was originally made by the claimant. There is no indication as to the period of time involved in the checking of the roster. The statement does not deal directly with the complaint. According to the claimant there was a rota for this duty, it was not her turn to carry out the duty on the basis of the rota. She questioned her supervisor (Mr. A) as to why she was being assigned to this duty when it was not her turn. The claimant alleges that Mr. A became abusive. I find that the respondent failed to address this issue. There could have been a very reasonable explanation as to why Mr. A wanted the claimant to undertake this duty. However, this has not been explained. If there had been a reasonable explanation it does not make sense that Mr. A would become abusive when questioned about it by the claimant. Consequently I consider it reasonable to conclude that there was no valid explanation for the change in the rota and for Mr. A to ask the claimant to perform the duty. Furthermore the respondent failed to investigate the claimant's allegation that Mr. A had been abusive when she questioned him about the change in the rota and, as a result, no action was taken by the respondent to ensure that Mr. A did not behave in this manner again.

- 8.9** According to the respondent the claimant discussed with it the possibility of transferring Mr. A in March, 1997. The respondent did not consider this appropriate as it considered that there was no reason why Mr. A should be moved as there was not sufficient evidence to support the claimant's allegation of discrimination (see paragraph 8.7 above). The respondent repeated its offer of a transfer to the claimant. However, by letter dated 25th March, 1997 from the E.E.A. (as it was then known) it stated that the claimant "*is reluctant to transfer given that she is the person who has been subjected to the alleged discrimination*".
- 8.10** On 22nd May, 1997 the claimant made a further complaint against Mr. A. In her allegation she stated that Mr. A shouted and used abusive language to her and a female colleague in the reception area in front of patients. The respondent had the matter investigated by the Personnel Support Officer and the Superintendent Radiographer. The investigation concluded that there was no evidence to confirm that Mr. A had been aggressive or demeaning to the claimant. The investigation team found that Mr. A had directed the comments at the claimant's colleague and he was told that, in future, he should call staff aside and deal with the particular issue rather than confront staff in front of patients. I am satisfied that the respondent undertook an investigation of the issue. By its actions the respondent showed that it had taken the allegation seriously.
- 8.11** The claimant made a written request for a transfer dated 2nd October, 1977. In her request she sought a move from the X-ray Department to either Physiotherapy or Occupational Therapy. The respondent informed the claimant that it was not possible to facilitate her request of a move to the Physiotherapy Department and that there was no vacancy in the Occupational Therapy Department. In its written request to the claimant the respondent noted that opportunities to facilitate her request or a transfer to a 5 day care area did not arise frequently but that it had noted her wish in this regard.
- 8.12** The claimant made a further complaint about Mr. A to the respondent on 6th February, 1998. She alleged that Mr. A had approached her in front of a colleague and, in an aggressive tone, informed her that she could not have one hour off work on Friday, 6th

February, 1998 because she had already taken a day off annual leave the previous Monday. Hospital attendants at the time worked a 39 hour week comprising four x 8 hour days and one x 7 hour day on a Friday. If an employee was not rostered to work on a Friday (due to annual or sick leave) they would forfeit the additional hour off. According to the respondent the claimant was given her hour off. The respondent had the matter investigated by the Industrial Relations Officer who concluded that an unwarranted exchange took place involving Mr. A and held that such behaviour was totally unacceptable and not condoned by the Hospital. According to the respondent this was outlined unequivocally to Mr. A and an indication was given that recurrences would not be expected in any circumstances.

- 8.13** I find it difficult to understand how the respondent could give an indication “*that recurrences would not be expected in any circumstances*”. Mr. A behaved in an aggressive and abusive manner on a number of occasions. The only reprimand he appears to have received for his behaviour was to be told by management that this behaviour was unacceptable and not condoned by the Hospital. Despite repeated offences no further action was taken. Mr. A was the claimant’s supervisor and, as such, he had a position of authority over her. I am satisfied that he failed to act in a manner which would be deemed appropriate for someone holding the position of supervisor. I, therefore, find that the respondent failed to provide the claimant with a safe working environment. It could have achieved that by organising the transfer of Mr. A to another area.
- 8.14** The claimant considered that she should not be obliged to transfer given that she was the victim of this behaviour. However due to the respondent’s failure to act she was forced to request a transfer. In seeking a transfer she indicated that her current working hours (i.e. from 9.00a.m. to 5.00p.m.) suited her and that she would not consider a change in these hours. The respondent noted her request and set about endeavouring to facilitate it. I have examined the submissions made by the respondent on its attempts at facilitating the request and am satisfied that it was obliged to work within a number of constraints which resulted in difficulty in fulfilling the transfer request. These constraints included statements submitted by the respondent from staff who criticised the claimant’s work and the respondent

identified a conflict between the claimant and another staff member who worked in an area to which the claimant was willing to transfer. There was also the constraint of transferring the claimant to an area which had the same working hours as she worked in the Diagnostic Imaging Department. I find that the respondent did attempt to facilitate the claimant's request for a transfer to another area but found it impossible due to the various constraints imposed on it and as described above.

- 8.15** Having examined the claim in detail I am satisfied that the respondent failed to act appropriately to ensure that it provided the claimant with a safe working environment. It, therefore, discriminated against her within the meaning of Section 2(d) of the Employment Equality Act, 1977.

**9. RECOMMENDATION**

- 9.1** Based on the foregoing I find that the named female claimant was discriminated against by the named Hospital in terms of Section 2(d) of the Employment Equality Act, 1977 and contrary to Section 3 of that Act.
- 9.2** I recommend that the Hospital organise for the transfer of Mr. A to another area and that his behaviour in that area be carefully monitored.
- 9.3** I also recommend that the Hospital pay the claimant £3,000 by way of compensation for the stress suffered over a number of years as a result of the discrimination.

Gerardine Coyle  
Equality Officer

28th November, 2000

**APPENDIX A**

Labour Court Decision

Reference: EET994

on TIME-LIMIT



**APPENDIX B**

Particulars of Qualifications,  
Duties and General Conditions  
of the Claimant's Employment



## **ATTENDANT ASSIGNED TO DIAGNOSTIC IMAGING DEPARTMENT**

### (A) Qualifications

Each candidate must:-

1. be employed on the full-time, part-time or substitute Attendant Staff of the Hospital;
2. be free from any defect or disease which would render him/her unsuitable to hold the employment and be in a state of health such as would indicate a reasonable prospect of ability to render regular and efficient service;
3. be of good character.

### (B) Particulars of Office

1. The employment will cease on attainment of the age of 65 years.
2. WAGES: £163.72 - £174.18 for 40 hour week. A travel allowance of £12.13 per week is also payable.
3. The person employed will be required to serve a probationary period of six months which the Board, at its discretion, may extend and the employment of that person will cease unless the Board certifies that the service of such person is satisfactory.
4. The employment will be pensionable in accordance with the provisions of the Local Government (Superannuation) Act, 1956 or Local Government (Superannuation Revision) (Consolidation) Scheme, 1986 and appropriate deductions will be made from wages. A contributory Spouses' and Children's Pension Scheme may also apply.
5. Annual leave will be in accordance with the Holidays Acts and will be given at the discretion of the Departmental Head.

Sick leave will be in accordance with the appropriate regulations, approved by the Hospital Board.

Employees are requested to ensure that reasonable notice of their ability to resume duty after illness is given to the appropriate supervisor.

6. Resignation will be submitted in accordance with "Minimum Notice and Terms of Employment Act, 1973".
7. Uniforms must be worn only while on duty and must be always clean and well kept.
8. Attendants will be required to work in accordance with the rosters determined by the Board from time to time.

(C) DUTIES

The duties of the Attendants are performed under the general supervision of the Radiographer in Charge.

The main duties will include:-

1. Collecting patients from, and returning them to, wards, either walking, wheelchair or trolley as required;
2. Changing of helpless patients prior to X-ray examination and attending them while in the Department;
3. Fetching and emptying bed pans for patients, when necessary;
4. Checking that patients have all their belongings before they leave the X-ray Department;
5. Assisting the Radiologist and Radiographer at Barium sessions;
6. To be responsible to the Superintendent Radiographer for checking stocks as required;
7. Changing of X-ray linen, patients gowns and generally helping to keep the X-ray Department clean and tidy;
8. Collecting and delivering X-ray films and charts to the various wards and Hospital Departments, when required;
9. Maintaining the portables, mobiles and standard X-ray units clean at all times and notifying the Superintendent Radiographer regarding any faults that may appear from time to time;
10. Maintaining levels and changing of chemicals, when necessary and washing of processor rollers daily;

11. To perform such other duties as may be assigned to him/her from time to time by the Superintendent Radiographer or other designated officers.

General Conditions

1. Hours of attendance:- 8.15a.m. - 5.15p.m. (Monday to Friday)  
or/ 8.45a.m. - 5.45p.m. (Monday to Friday)
2. Suitable protective clothing must be worn while on duty and will be supplied by the Hospital.
3. Smoking within the Hospital buildings is not permitted.
4. The Hospital Authorities reserve the right to refer to present and former employers or any other sources for reference purposes without further notification to applicants.
5. Employees are not permitted to leave the precincts of the Hospital during the hours of duty without the expressed permission of the Supervisor unless he/she is on official business.

February, 1990

**APPENDIX C**

Note of Meeting  
in  
General Support Services Department  
on  
18th November, 1998

## NOTE OF MEETING

Attendance:- Industrial Relations Officer  
Chief Shop Steward  
2 Other Shop Stewards  
Claimant

1. The claimant requested permission to tape the meeting. She was told that this was not accepted practice in the Hospital and she could take written notes like all other persons present at the meeting.
2. The Chief Shop Steward called the meeting because he wished to clarify certain points of information in relation to the claimant's request for a transfer. He stated that it had come to his attention that there appeared to be misinformation circulating regarding this matter. The Chief Shop Steward asked to be afforded the opportunity to outline his understanding of the situation.
3. The Chief Shop Steward stated that when the claimant indicated that she wanted a transfer he had approached the Industrial Relations Officer and they had discussed possible suitable areas. He made the Industrial Relations Officer aware of the claimant's preference to retain her present work patterns and the Industrial Relations Officer took this on board when trying to accommodate the transfer request. An opportunity arose involving a 3 way transfer between the Hospital Sterile Unit, Physiotherapy Department and the Diagnostic Imaging Department. The Chief Shop Steward identified to the Industrial Relations Officer a possible solution which would have resulted in the claimant being facilitated with a transfer to the Physiotherapy Department. The Industrial Relations Officer supported this proposal and set about effecting it. However, subsequently the Physiotherapy Manager brought information to light regarding a strained relationship between the claimant and another male Attendant in the Physiotherapy Department. The Industrial Relations Officer informed the Chief Shop Steward and as a result Hospital Management decided that transferring the claimant to the Physiotherapy Department was not a suitable option.
4. The Chief Shop Steward, although disappointed at this, accepted that it was not Hospital policy to impose a transfer in this type situation. The Chief Shop Steward and the Industrial Relations Officer continued their efforts to identify a suitable transfer for the claimant. The Chief Shop Steward then asked the Industrial Relations Officer to confirm for the records that he had done nothing to block or prevent the claimant from getting a transfer. He stated that this was important as the claimant was giving the impression around the Hospital grounds that the Industrial Relations Officer had said that the Chief Shop Steward had blocked her transfer. The Industrial Relations Officer stated that she concurred totally with what the Chief Shop Steward had outlined in relation to the progressing of the claimant's transfer. She reaffirmed that both she and

the Chief Shop Steward were seeking the same thing in relation to the claimant i.e. a suitable transfer that satisfied the claimant and also the Hospital's interest.

5. The Industrial Relations Officer denied categorically ever having stated that the Chief Shop Steward hindered the claimant's transfer in any way as there was absolutely no truth in it. She stated that she wanted to set the record straight regarding her own involvement in all of this. It had been relayed to her that the claimant was of the impression that she (the Industrial Relations Officer) had prevented the transfer to the Physiotherapy Department and this was totally untrue. The Industrial Relations Officer would have been delighted if things had worked out. However the reasons why it did not work out were down to the claimant's own behaviour which was outside the control of the Hospital. The Industrial Relations Officer stated that she was hopeful that a suitable transfer could be identified.
6. The claimant stated that there was a vacancy again in Physiotherapy and she wished to be considered for a transfer. The Industrial Relations Officer stated that she would formalise the claimant's request if the claimant so required. The Chief Shop Steward stated that it was useless of the claimant pursuing the transfer to Physiotherapy Department as the Hospital was not going to grant it. The Industrial Relations Officer stated that it was her responsibility to present the claimant's request again and it was a management decision as to how to respond to it. There was obvious discord between the Chief Shop Steward and the claimant.
7. The claimant stated that she had great difficulty contacting the Industrial Relations Officer. The Industrial Relations Officer stated that in light of the circumstances i.e. misunderstandings, misrepresentation of the facts, misinformation, etc. that she had deliberately avoided getting into unwitnessed conversations regarding this issue.

