

**EMPLOYMENT EQUALITY ACT,1977**

**EQUALITY OFFICER'S RECOMMENDATION NO: EE 8/1999**

**PARTIES**

**Ms. Elizabeth Farrell Cassidy  
(Represented by S.I.P.T.U.)**

**AND**

**Boxmore Plastics Ltd.  
(Represented by I.B.E.C)**

*File No: EE25/1997*

## **1. DISPUTE**

- 1.1 The dispute concerns a claim by Ms Elizabeth Farrell Cassidy that on 27th January, 1997 Boxmore Plastics Ltd discriminated against her within the meaning of Section 2(a) and 2(b) of the Employment Equality Act, 1977 and in contravention of Section 3 of that Act as a result of its selection procedure for appointment to the post of General Operative (Weekend Shift) in Boxmore Plastics Limited.

## **2. BACKGROUND**

- 2.1 The company, in early 1997, advertised vacancies for General Operatives (Weekend Shift) internally and in the Anglo Celt Newspaper. The claimant applied for a position, was interviewed and was subsequently advised that she was unsuccessful in her application.
- 2.2 The claimant, represented by S.I.P.T.U., referred a complaint to the Labour Court on 15th June, 1997. The claim was subsequently referred by the Labour Court to an Equality Officer for investigation and recommendation. Submissions were received by the Equality Officer from both parties to the claim and a joint hearing was held on 4th December, 1998.

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

- 3.1 S.I.P.T.U. alleges that the Company discriminated against the claimant in terms of Section 2(a) and (b) of the Employment Equality Act, 1977.

Section 2(a) states that discrimination shall be taken to occur

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

Section 2(b) states that discrimination shall be taken to occur

*‘where because of his marital status a person is treated less favourably than another person of the same sex,’*

3.2 The Union states that on the occasion of the claimant’s interview for the position of General Operative (Weekend Shift) she was kept waiting for one and a half hours prior to the interview. The interview was carried out by one interviewer. The Union states that on the way to the interview room the interviewer referred to the fact that the claimant’s husband was employed by the company and was also a SIPTU Shop Steward in the company. It is alleged that the interviewer intimated that the claimant was privy to SIPTU dealings with the company by virtue of her family connection in the company. The claimant alleges that her application was discouraged during the interview and that her husband was continually referred to during the interview.

3.3 The Union claimed that at the interview aspects of the claimant’s private life which were not mentioned in her application form were raised at the interview. At the joint hearing the claimant said that the interviewer referred to the fact that she had owned a boutique even though she had not volunteered this information in her application form. This comment it is claimed was linked to comments that she would find the job boring and repetitive.

3.4 In its referral of the claim to the Labour Court, the Union states that other candidates, both male and female, single and married, who were less qualified for the positions than the claimant, were appointed.

3.5 The Union states that they wrote to the company on two occasions following the interview in relation to their allegations but received no response from the company.

#### **4. SUMMARY OF I.B.E.C.'S CASE**

4.1 I.B.E.C. rejects the claimant's allegation that she was discriminated against in terms of the 1977 Act. I.B.E.C. state that the post of General Operative (Weekend Shift) was advertised by the company internally and externally in early 1997. No record was available of the total number of applicants for the positions however 16 candidates (10 male and 6 female) were selected for interview and 5 candidates (3 male and 2 female) were successful in being appointed.

4.2 I.B.E.C. accept that the claimant was delayed a considerable length of time prior to interview but state that the reason for the delay was that the interviewer was delayed with a safety and health audit and had nothing to do with the gender or marital status of the claimant.

4.3 I.B.E.C. deny that any personal comments or questions particular to her gender or marital status were put to the claimant at interview. I.B.E.C. further state that the reasons why the claimant was unsuccessful at interview were that she failed to convince the

interviewer that she could meet the time commitment of the job nor that she would stay long term in the job.

4.4 In relation to the complaint that the claimant was actively discouraged during the interview and that reference was made during the interview to aspects of her private life which were not mentioned in her application, the respondent denies that there was any intention to discourage the claimant and that any such personal questions in relation to her private life were asked at interview. At the joint hearing the claimant said that the interviewer referred to the fact that she had owned a boutique even though she had not volunteered this information in her application form. The respondent accepts that reference was made to the fact that she owned a boutique but states that this information was volunteered by the claimant. A copy of the claimant's application form for the position was provided to the Equality Officer subsequent to the hearing. The form was only partially completed by the claimant as the Union state that she was told by the company that her details were already on file from a previous application. The section headed 'present and past employment' was not completed by the claimant but was apparently completed by the interviewer. An entry for the period 1990 to 1993 shows 'managing boutique' and the name of the business is shown as 'Liz's Boutique'. The company states that comments that the job was boring and repetitive were made to both male and female candidates.

4.5 I.B.E.C. states that the claimant's case is that she was discriminated against at interview because of the trade union activities of her husband . I.B.E.C. states that the claimant accepts that other candidates both male and female, married and single were appointed to positions as a result of the competition and that clearly the gender or marital status of the

applicants was not therefore an issue in the selection process. The company stated also at the hearing that there were other employees in the company with SIPTU connections.

4.6 I.B.E.C. state that the claimant was already working 39 hours per week in another job and that the company would be in breach of the 60 hours per week statutory maximum working hours per week laid down in the Conditions of Employment Act, 1936 if it were to employ the claimant for a further 24 hours per week.

4.7 I.B.E.C. states that on a previous occasion, approximately one year prior to the disputed competition, the claimant was successful when she applied for a full time position but turned the offer down. The Union reject this claim and state that the claimant did apply for a position previously but having been offered and accepted a job elsewhere she attended at the scheduled interview out of courtesy and advised the interviewer that she was withdrawing her application. The company could not produce documentary evidence that a position was in fact offered to the claimant on that occasion.

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

5.1 The matter for consideration is whether or not the company discriminated directly against the claimant on the basis of her sex in terms of Section 2(a) of the Employment Equality Act, 1977 or on the basis of her marital status in terms of Section 2(b) of that Act, 1977 and contrary to the provisions of Section 3 of that Act. In making my recommendation in this case I have taken into account all of the evidence, both written and oral, made to me by the parties to the case.

5.2 I will deal individually with the grounds for complaint cited by the Union in sub-paragraphs 5.2.1 to 5.2.3 following:

5.2.1 the claimant was kept waiting for one and a half hours prior to interview -

The respondent accepts that the claimant was delayed a long time prior to interview and has stated that the reason for the delay was that interviewer was tied up with a health and safety audit in the factory. The company stated that no other candidates were interviewed on the day in question but that other candidates may have been delayed prior to interview on other days. The respondent denies that the delay was an attempt to treat the claimant unfairly because of her gender or marital status and there was no evidence available to me to suggest that this was an attempt to so discriminate.

5.2.2 reference was made prior to and during the interview to the claimants husband's role as a shop steward in the company and the interviewer intimated that she was privy to S.I.P.T.U.'s dealings with the company -

The respondent accepts that reference was made prior to the interview to the claimant's husband's role as a shop steward in the company. This arose by way of explanation for the delay when the interviewer said to the claimant that her husband would know all about the health and safety audit. The company reject the suggestion that the claimant was believed to be privy to SIPTU dealings with the company and that a comment to this effect was made at the interview. The claimant stated also that the interviewer did not elaborate on the terms and conditions of the advertised job during the interview but said that her husband could fill her in on the details. The company deny that the claimant's husband was referred to in this way. The evidence available to me did not support the

claim that any reference to the claimant's husband was part of an effort on the part of the respondent to discriminate on grounds of gender or marital status.

5.2.3 the complainant was actively discouraged during the interview and reference was made during the interview to aspects of her private life which were not mentioned in her application -

The respondent denies that there was any intention to discourage the claimant and that any such personal questions in relation to her private life were asked at interview. At the joint hearing the claimant said that the interviewer referred to the fact that she had owned a boutique even though she had not volunteered this information in her application form.

The respondent accepts that reference was made to her previous ownership of a boutique but have stated that this information was volunteered by the claimant. This was the only alleged reference to the claimant's private life. This reference did not appear to me, on the basis of the evidence presented, to be an attempt to discriminate against the claimant on grounds of her gender or marital status.

5.3 The respondent has stated and the claimant accepts that males and females were appointed to the position of General Operative (Weekend Shift) as a result of the selection process. There was no evidence available to me to indicate that the claimant was treated less favourably than male candidates on grounds of her female gender. In relation to Ms Farrell Cassidy's claim that she was discriminated against in terms of Section 2(a) of the Act, the evidence available to me does not support this claim.

5.4 The respondent has stated and the claimant accepts that married and single candidates

were appointed to the position of General Operative (Weekend Shift) as a result of the selection process. I enquired from the respondent as to the ranking of the various candidates after the interviews in order to determine if there was any pattern indicating that single females were generally more successful than married females in the selection process however no such information was available. There was therefore no evidence available to me to indicate that the claimant was treated less favourably than single female candidates on grounds of her marital status. In relation to Ms Farrell Cassidy's claim that she was discriminated against in terms of Section 2(a) of the Act, the evidence available to me does not support this claim.

## **6. CONCLUSION**

6.1 I find that Boxmore Plastics Limited did not discriminate against Ms Elizabeth Farrell Cassidy in terms of Section 2(a) and 2(b) of the Employment Equality Act, 1977 and contrary to Section 3 of that Act when the company found her to be less suited than the successful candidates for the position of General Operative (Weekend Shift) and when the company turned her down for the position.

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Raymund Walsh  
Equality Officer  
21 May, 1999