

EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATION NO: EE 12/1999

Ms. Aisling Scully and 100 Others  
(Represented by MANDATE)

AND

Superquinn  
(Represented by I.B.E.C.)

*File No: EE 08/1998*

**1. DISPUTE**

- 1.1** This dispute concerns a claim by MANDATE, on behalf of 104 named female employees, that they were discriminated against by Superquinn when it refused permission to the named claimants (see Appendix A) to wear trousers. This claim has been referred under Section 2(a) of the Employment Equality Act, 1977.

**2. BACKGROUND**

- 2.1** The 104 named female claimants are employed by Superquinn in its store in Lucan. On 22nd October, 1997 one of the claimants, on behalf of all the named claimants, requested permission of management to wear trousers but this request was refused. The Union, on behalf of the claimants, wrote to the Company and despite receiving a response the issue still remains unresolved. A further exchange, in December of that year, between another claimant and the manager failed to secure permission for female staff to wear trousers.
- 2.2** Consequently the Union referred a complaint to the Labour Court under Section 2(a) of the Employment Equality Act, 1977 on 20th February, 1998. This claim was referred, by the Labour Court, to an Equality Officer for investigation and recommendation.

**3. SUMMARY OF THE UNION'S SUBMISSION**

- 3.1** The Union states that a member of its House Committee approached the Assistant Manager on Wednesday, 22nd October, 1997 and asked him for permission for all female employees to wear trousers. Permission was refused and the Assistant Manager said the trousers would probably form part of the uniform in the future. According to the Union no specific time was indicated. In December, 1997 another member of the House Committee approached the manager on the issue but permission to wear trousers was not forthcoming. The Union says that, on 23rd October, 1997, it formally wrote to the Company on the issue but no reply was received.

**3.2** Hence four months later the Union referred a claim to the Labour Court for investigation. Subsequent to this referral the Company wrote to the Union on 26th February, 1998 but the communication, according to the Union, was of little assistance. The Union replied to the Company on 5th March, 1998 explaining its difficulties with the Company's letter and posing some further questions. According to the Union a meeting took place on 30th March, 1998 in the Sutton store at which the Union asked management directly if women workers were permitted to wear trousers. The initial response was 'YES'. However, when the Union asked if the women could wear jeans management said that the female employees were only allowed to wear the uniform trousers provided by the Company. According to the Union most female employees had not been provided with trousers and it, therefore, appeared that the company position effectively prevented women from wearing trousers.

**3.3** On Friday, 3rd April, 1998 the Union received a letter from the Company. The Union points out that the letter was dated 26th March, 1998 but the postmark was 2nd April, 1998. The Union submit that the Company dated the letter 26th March, 1998 to give the impression that it had been written before the meeting in the Sutton store on 30th March, 1998. The Union replied on 6th April, 1998 and it has received no response.

**3.4** The Union, in its submission, states that the Company calls itself an equal opportunities employer. Its handbook boasts of ensuring that no employee receives less favourable treatment on grounds of sex or marital status. The Union says that it is of the view that the Company's policy on Equal Opportunities is quite meaningless. It cites a reference to uniforms on Page 64 of the staff handbook which says:

*“Always wear your full uniform and all the relevant protective clothing issued. Wear it correctly buttoned or fastened. Ensure it is in good repair with no loose or torn cuffs, belts, hems, etc. that could catch in machinery or on equipment”.*

The Union says that if female employees must “*always wear your full uniform*” and the uniform includes a skirt but not trousers logically the workers must wear all apparel provided and none other. According to the Union there are a number of Departments in the Company where trousers are supplied to, and worn by, both male and female staff.

The concept of women being issued with, and actually wearing trousers is not one which is new to the Company. What exists, however, is a selective application of the trousers rule. In areas such as the bakery, deli and pizza departments women are provided with trousers which are worn during working hours. On the main shop floor and on check-outs women are not provided with trousers and are not permitted to wear them.

- 3.5** According to the Union the issue here is very simple. Females either can or cannot wear trousers. If females were or are permitted to wear trousers then they should be so informed. Failure on the part of the Company to pass on this information is an act of discrimination against female employees. If, on the other hand, females were not or are not permitted to wear trousers, this too is an act of discrimination against female employees. The Union says that all contracts of employment contain an implied term in respect of equality, inserted by Section 4 of the Employment Equality Act, 1977. To prohibit the wearing of trousers by females is an act of discrimination on grounds of sex.
- 3.6** The Union cites the Labour Court decision in the case of *Pantry Franchise Ireland Limited and A Worker*<sup>1</sup>. It says that the view taken by the Labour Court in this case is significant because it effectively summarises the Union view in relation to women wearing trousers i.e. fashion trends have provided for the wearing of trousers by women for decades and, like this case, it is about types of dress rather than standard of dress. The Union says that it accepts the Company's right 'to set standards of dress and appearance for its employees'. It is not, however, entitled to dictate that two different types of dress be worn by employees based on the sex of the workers concerned.
- 3.7** The Union asks that the Equality Officer issue a recommendation that the Company changes its policy so as to allow female employees the right to wear trousers if they so desire. It should also recommend that the Company provide female staff with trousers as part of the Company uniform and that the Company compensate its members by paying each of the claimants £500 in respect of the discriminatory stress and offence caused.

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<sup>1</sup> Labour Court Order No. EE0793

#### **4. SUMMARY OF THE COMPANY'S SUBMISSION**

- 4.1** The Company, in its submission, says that it did not discriminate by refusing to allow any female to wear trousers. The Company says that, in early 1997, it implemented a policy to allow females the right to wear trousers, should they so desire. According to the Company this was before any request was received from or on behalf of any female colleague. Furthermore the issue of female checkout operators wearing trousers had not been raised prior to this time and, according to the Company, since early 1997 no female has been refused permission to wear trousers.
- 4.2** The Company says that the initial request for females to be allowed to wear trousers was made in Lucan in 1996 by shop floor females and permission was granted. Then in October, 1997 a request was made on behalf of checkout operators. The Company, at this time, had adopted a formal position on the wearing of trousers and was well advanced in the supply of trousers as part of the uniform. According to the Company any female who wants to wear trousers is doing so from Company stocks. The Company, in its submission, re-iterate that its policy on the wearing of trousers was formulated well in advance of any request and at no time was any female refused permission to wear trousers. The Company says that there was a temporary difficulty with initial stocks but permission was granted to 'wear your own' until the problem was resolved and supplies freely available. The Company says that, in early 1988, where requests were made to wear trousers and where supplies were not freely available females were allowed to wear their own navy trousers until such time as supplies did become available.
- 4.3** The Company states that it supplies trousers as part of its uniform. It has allowed females in Lucan to wear trousers since 1996 (approx.) when a request was made to the then manager from shop floor females. According to the Company trousers have been in stock and available since January, 1998. In August, 1997 trousers were on trial in the Northside store but problems with the material resulted in further trials taking place from December, 1997 to January, 1998. The Company says that shortly after this second trial full supplies were available. The Company says that the policy to allow females wear trousers was communicated to its managers at a meeting in 1997 and after stocks became available they were reminded on 2nd February and 25th July, 1998. Furthermore all checkout supervisors

were contacted by the Personnel Department to ensure that they were offering them to female colleagues. The Company says that it believes the Union's request for £500 to be paid to each of the claimants is unjustified.

**4.4** In direct response to the Union's submission the Company says that the Assistant Manager in the Lucan store did not refuse permission to wear trousers but did state that he was unclear on company policy and also stated his opinion that trousers would be part of the uniform in the future. At the time it was his belief that this was merely an enquiry into company policy rather than a direct request to wear trousers. According to the Company the Store Manager believes that his response was that trousers would be available shortly. The Company says that no request for trousers from any female has been refused and any female who wishes to wear them is so doing. In response to the Union's complaint that it received no response from the Company to its initial request the Company says that it responds more by word than by writing and this fact is well known to the Union. The Company's Personnel Manager says that he personally informed both the Union and the management of stores that policy allowed for the wearing of trousers and that supplies would be available from January, 1998 and this is set out in writing to the Union in letters dated 8th January and 26th February, 1998.

**4.5** The Company states that, at the meeting in Sutton, it confirmed the Company's position that female staff could wear trousers and the only restriction was that the trousers should be navy. The Company says that it told the Union that females could not wear jeans. The Company says that, in its submission, the Union states 'The management response was simply to repeat that the uniform trousers provided were the only ones permitted'. The Company considers it strange that the Union is claiming compensation for females not being able to wear trousers when it acknowledges the Sutton meeting and that Company policy allowed for the wearing of trousers. The Company said that confusion did arise when initial stocks proved to be faulty and trials had to be undertaken. According to the Company three different types of material were tested before the difficulties were resolved. The Company refers to the Union's submission and says that it acknowledges that the Company had indicated that females 'may wear their own trousers'. This, according to the Company, was a reference to the Sutton meeting.

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

**5.1** The issue to be decided in this claim is whether or not the Company discriminated against the claimants in terms of Section 2(a) of the Employment Equality Act, 1977 by refusing them permission to wear trousers as alleged by the Union and if I find that this allegation is substantiated. 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. A list of the claimants is set out in Appendix A.

**5.2** On foot of the hearing of this claim the Company submitted the following additional information:

- The Company has no record of ever having employed two people listed by the Union as claimants namely Ms. Noleen Elliot and Ms. Ruth Daly.
- 28 claimants were offered and accepted trousers as part of their uniform.
- 10 claimants were offered trousers but did not order them.
- 2 claimants assigned to the Playhouse wear tracksuits which are provided.
- 2 claimants are now working in the Fresh Food Department where trousers are provided.
- 30 claimants are no longer employed by the Company.
- 29 claimants work on the Super Service Team, 18 of whom have now left the Company.

**5.3** From my investigation of this claim I note that both parties presented conflicting evidence with regard to the issue of the request made to management for permission to wear trousers and the meeting at which the issue was raised by the Union. According to the Union one of the claimants, on behalf of all others, requested permission to wear trousers but this permission was refused by the Company. The Company, however, denies that permission was refused. The Union submitted a written note it had made subsequent to the meeting it had with the Company. There was no indication on how long after the meeting this note was made and it only dealt with the issue of the wearing of trousers. The Union, itself, had said that the meeting was convened to discuss other issues and that it had decided to raise the issue of the wearing of trousers. For its part, the Company did not submit any written notes on the issues

discussed at the meeting and said that communication between itself and the Union is generally oral, as opposed to, written. It is not helpful for the Company to adopt a policy of oral, as opposed to, written communication given that conflicts similar to this one can arise.

**5.4** In cases where there is direct conflict in the evidence, as in this case, it is necessary to address the question of whether the balance of probabilities tips in favour of the Union's version of events or the Company's version of events. I note that, from the start of 1998, females employed by the Company could opt to wear trousers as part of their uniform. The Company was in consultations with a design firm about uniforms including trousers from April, 1997. According to the Company a number of trials had to take place before the type of material to be used in the making of the trousers could be agreed. The Company accepted that initially there had been insufficient supplies to meet demand. It said that, where trousers were not available as part of the uniform, staff were allowed to wear their own navy trousers. The Union refuses to accept this. I consider that the Company had adopted a positive approach to the wearing of trousers by its female members of staff and were actively working towards having trousers available as part of the uniform. I, therefore, find that the balance of probabilities favours the Company as opposed to the Union.

**5.5** Under Section 2(a) of the Employment Equality Act, 1977 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”.*

I note that both parties in this claim accept that, before and at the time of the claim, a number of female staff in the Lucan store wore trousers namely those working in the Fresh Food Departments. In this claim the Union states that the female claimants were refused permission to wear trousers and consequently have been treated less favourably than males. If I was to examine the evidence and find the Union's claim substantiated i.e. that females were refused permission to wear trousers, I could not accept that the reason for the Company's refusal to allow females to wear trousers was based on their sex given that other females in the store were permitted to wear trousers. Consequently direct discrimination on the basis of sex within the meaning of Section 2(a) of the Employment Equality Act, 1977 did not occur.

**5.6** In conclusion I find that, even if the Company did refuse to allow the claimants to wear trousers, it was not because of their sex as females working in the Fresh Food Department were already wearing trousers. Hence the claimants were not treated less favourably than persons of the other sex in terms of Section 2(a) of the Employment Equality Act, 1977. Furthermore there is a direct conflict in the evidence presented by both parties but, on the balance of probabilities, I find that the evidence favours the Company more than the Union.

**6. RECOMMENDATION**

**6.1** Based on the foregoing I find that Superquinn did not discriminate against the 101 claimants named in Appendix A within the meaning of Section 2(a) of the Employment Equality Act, 1977 and in contravention of Section 3 of that Act.

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Gerardine Coyle  
Equality Officer

21st July, 1999

**APPENDIX A**

List of Claimants

Ms. Colette Ashe	Ms. Catherien Farrell	Ms. Grace McKenna
Ms. Sandra Bagnall	Ms. Ciara Feeney	Ms. Josie Meagher
Ms. Sarah Barry	Ms. Aoife Finn	Ms. Moritta Moran
Ms. Pamela Benson	Ms. Nicola Finnegan	Ms. Susan Moran
Ms. Wendy Bourke	Ms. Ellen Fitzgerald	Ms. Nuala Morrell
Ms. Anne Brennan	Ms. Vicky Fitzgerald	Ms. Ethna Murphy
Ms. Patricia Burke	Ms. Elaine Flanagan	Ms. Joanna Murphy
Ms. Cliona Byrne	Ms. Jacinta Flynn	Ms. Carol Murray
Ms. Veronica Byrne	Ms. Ann Fox	Ms. Fiona Noonan
Ms. Cathy Caldwell	Ms. Anrea Fox	Ms. Lisa Nicholson
Ms. Emma Callaghan	Ms. Emer France	Ms. Jill O'Cleary
Ms. Vicki Casserly	Ms. Brigid Gallagher	Ms. Rose O'Connor
Ms. Helena Casey	Ms. Nartha Gannon	Ms. Eimear O'Donovan
Ms. Jennifer Chubb	Ms. Rosaleen Gannon	Ms. Jean O'Gorman
Ms. Gillian Clyne	Ms. Patricia Garland	Ms. Juliet O'Neill
Ms. Mary Connolly	Ms. Norah Gillespie	Ms. Veronica O'Reilly
Ms. Petula Connolly	Ms. Theresa Goggins	Ms. Alison Quearney
Ms. Lynn Crofton	Ms. Rosaleen Griffin	Ms. Marian Rice
Ms. Ann Marie Curtis	Ms. Helen Halpin	Ms. Michelle Roche
Ms. Trisha Curtis	Ms. Claire Hayden	Ms. Irene Rock
Ms. Karol Daly	Ms. Yvonne Herrernan	Ms. Geraldine Rooney
Ms. Ruth Daly*	Ms. Ita Irvin	Ms. Val Rothery
Ms. Yvonne Dardis	Ms. Olivia Joyce	Ms. Valerie Rothery
Ms. Laura Deery	Ms. Nora Kearney	Ms. Brigid Ryder
Ms. Helen Desmond	Ms. Ciara Kerrigan	Ms. Eva Scott
Ms. Karen Desmond	Ms. Lorraine Kinsella	Ms. Aislinn Scully
Ms. Josephine Dignam	Ms. Phillipa Lacey	Ms. Jacinta Sheridan
Ms. Mary Doolan	Ms. Sharon Laffan	Ms. Laura Smith
Ms. Carole Doyle	Ms. Cepta Lamb	Ms. Jennifer Stagg
Ms. Dolores Doyle	Ms. Karla Lyons	Ms. Susan Stanley
Ms. Elaine Duffy	Ms. Suzanne Marks	Ms. Jane Stewart
Ms. Bernadette Dunne	Ms. Phylis Martin	Ms. Julie Ann Travers
Ms. Mary Dunne	Ms. Ursula Maycock	Ms. Iris Turpin
Ms. Noleen Elliot	Ms. Catherine McEwan	Ms. Maureen Williams
Ms. Gillian Errity	Ms. Ann McGrath	

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\* No record of this claimant ever working for the Company