

EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATION NO: EE 13/1999

Ms. Adisa Causevic and 96 Others
(Represented by MANDATE)

AND

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

File No: EE 09/1998

1. DISPUTE

- 1.1** This dispute concerns a claim by MANDATE, on behalf of 101 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 101 named female claimants are employed by Superquinn in its store in Sutton. On 27th October, 1997 one of the claimants, on behalf of all the named claimants, requested permission of management to wear trousers and management agreed to follow up on this request. A further approach was made to management in late November, 1997 asking to wear trousers but the request was refused. The Union, on behalf of the claimants, wrote to the Company but the issue has not been resolved to the Union's satisfaction.
- 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** According to the Union a shop steward and claimant in the Sutton store approached a member of management on 27th October, 1997 and asked him for permission, on behalf of all females, to wear trousers. The person from management said that uniforms were undergoing a trial at that time and he would get back to the shop steward in relation to the matter. When management failed to get back to the claimant she repeated her request to the store manager in late November, 1997 and he replied in the negative. The Union says that, on 5th January, 1998, it formally wrote to the Company outlining its concerns in relation to a number of discriminatory practices, including the issue of dress code. The response from the Company, according to the Union, clearly indicates that trousers do not form part of the uniform. The Union wrote to the Company again on 12th January, 1998 with two specific questions - 'Are female staff provided with trousers as part of their uniform at this point in time?' and 'If they

are not so provided are they permitted to wear their own trousers?'. In the absence of any response the Union referred the case to the Labour Court for investigation and recommendation.

3.2 Subsequent to this referral the Company wrote to the Union on 26th February, 1998 but the communication, according to the Union, highlights the Company's confusion in the matter. The Union replied to the Company on 5th March, 1998 drawing attention to the confusion and asking 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*¹. 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.

¹ 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 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. It 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 supplies were not freely available females were allowed to wear their own navy trousers until supplies became available.

4.3 The Company states that it supplies trousers as part of its uniform and they 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 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** Subsequent to the hearing in this claim the Company submitted the following additional information:
- The Company has no record of ever having employed four people named by the Union as claimants. They are Ms. Louise Hales, Ms. Jennifer Dean, Ms. Joanne Kavanagh and Ms. Jocelyn Summerfield.
 - 42 claimants were offered and accepted trousers as part of their uniform.
 - 4 claimants did not accept trousers as part of their uniform, when offered.
 - 6 claimants (of whom 2 have left the Company) work in the Fresh Food Department and are supplied with trousers.
 - 28 claimants work on the Super Service Team of whom 17 have now left the

Company's employment and 6 of these had left the Company before this complaint was made.

- 15 claimants have left the Company, 5 of whom had left before this complaint was made.

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 it had raised the issue of the wearing of trousers. The Company, for its part, did not submit any written notes on the issues discussed at the meeting and said that they generally communicate with the Union orally, as opposed to, in writing. 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 Sutton 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 97 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.

Gerardine Coyle
Equality Officer

21st July, 1999

APPENDIX A

List of Claimants

Ms. Jane Averill	Ms. Sinead Greene	Ms. Caryn McIntyre
Ms. Jennifer Bastow	Ms. Louise Hales*	Ms. Noeleen McMarrow
Ms. Sarah Behan	Ms. Elaine Hayden	Ms. Alison Meledy
Ms. Hazel Bird	Ms. Kathryn Heeney	Ms. Siobhan Miller
Ms. Kimita Bourke	Ms. Clare Holmes	Ms. Claire Milne
Ms. Fiona Breslin	Ms. Philomena Hourigan	Ms. Elaine Moffatt
Ms. Mary Browne	Ms. Barbara Howell	Ms. Marian Moffatt
Ms. Rhona Browne	Ms. Michelle Hutton	Ms. Eileen Murphy
Ms. Sandi Callaghan	Ms. Hazel Jackson	Ms. Carolyn O'Brien
Ms. Marie Canavan	Ms. Gail Kavanagh	Ms. Lisa O'Connor
Ms. Lisa Caraher	Ms. Jeanette Kavanagh	Ms. Mary O'Hanlon
Ms. Adisa Causevic	Ms. Joanne Kavanagh	Ms. Susan O'Hehir
Ms. Eileen Chambers	Ms. Linda Kelly	Ms. Angela O'Kelly
Ms. Susan Cluskey	Ms. Fiona Kenny	Ms. Pamela O'Meara
Ms. Alison Coffee	Ms. Adrienne Keville	Ms. Yvonne O'Reilly
Ms. Patricia Collins	Ms. Alison Knights	Ms. Laura O'Sullivan
Ms. Nicola Cromie	Ms. Elizabeth Knights	Ms. Betty Palmer
Ms. Leslie Currie	Ms. Audrey Lee	Ms. Brenda Prendergast
Ms. Lynda Daly	Ms. Sharon Lennon	Ms. Margaret Preston
Ms. Jennifer Dean	Ms. Janet Lynch	Ms. Catherine Quilligan
Ms. Valerie Daniels	Ms. June Maguire	Ms. Nicola Riordan
Ms. Martina Dodrill	Ms. Miriam Maguire	Ms. Barbara Ryan
Ms. Maria Dowling	Ms. Suzanne Maguire	Ms. Esther Ryan
Ms. Martha Dunne	Ms. Wendy Malone	Ms. Niamh Ryan
Ms. Catherine Farrell	Ms. Liza Manley	Ms. Amy Sheridan
Ms. Mandy Farrell	Ms. Ciara Mannering	Ms. Niamh Shiels
Ms. Emma Finucane	Ms. Ciara Martin	Ms. Caren Stringer
Ms. Carol Flood	Ms. Sandra McAlpine	Ms. Jocelyn Summerfield
Ms. Laura Flood	Ms. Karen McCarthy	Ms. Karen Swaine
Ms. Niamh Foley	Ms. Helena McConkey	Ms. Rachel Teeling
Ms. Breda Gaughran	Ms. Liza McCormack	Ms. Barbara Tingey
Ms. Deli Gibney	Ms. Andrea McDermott	Ms. Sarah Toolan
Ms. Linda Gibney	Ms. Deirdre McDonough	Ms. Tina Walsh
Ms. Bernadette Grant	Ms. Margaret McHugh	

* No record of claimant ever working in the Company