

ANTI-DISCRIMINATION (PAY) ACT, 1974

AND

EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATIONS NO: EP 48/1999 & EE 39/1999

Mr. Dermot O'Meara
(Represented by Hamilton Turner, Solicitors)

AND

Ulster Bank
(Represented by Dr. Mary Redmond, Solicitor)

File No: EP 20/1989

1. DISPUTE

- 1.1** This dispute concerns a claim by Mr. Dermot O'Meara that he is entitled, on resignation, to the payment of a marriage gratuity by his employer (Ulster Bank) in the same way as female staff received marriage gratuities. This claim was lodged in terms of the Anti-Discrimination (Pay) Act, 1974 and the Employment Equality Act, 1977.

2. BACKGROUND

- 2.1** Female employees recruited prior to 1974 are entitled, on marriage, to claim a marriage gratuity either at the time of marriage or if they resign subsequently. Marriage gratuities are not paid to female employees recruited after 31st December, 1973 and male employees irrespective of when they were recruited.
- 2.2** The claimant commenced employment with the Ulster Bank on 1st March, 1973. He got married on 30th August, 1985 and resigned his position in the bank on 1st August, 1985. According to the claimant he wrote to the bank claiming a marriage gratuity and the bank refused to concede such entitlement.
- 2.3** On 6th October, 1989 the claimant referred a claim to the Labour Court stating his belief that he was entitled to a marriage gratuity under the terms of the Anti-Discrimination (Pay) Act, 1974 and the Employment Equality Act, 1977. At this time a large number of similar claims were lodged by other male bank officials. A group was formed to represent all these claimants and it was agreed to investigate one claim as a test case. This claim was submitted by Mr. Kavanagh against the Bank of Ireland. The Equality Officer, who investigated this claim, issued a recommendation¹ which was appealed to the Labour Court² and subsequently to the High Court³. The Equality Officer and the Labour Court found in favour of the claimant (Mr. Kavanagh). The High Court, however, overturned the Labour Court's determination. Since this test case seven other marriage gratuity claims have been investigated by Equality Officers⁴, one of which was appealed to the Labour Court and a determination issued⁵.

¹ Recommendation No. EP 11/1985

² Determination No. DEP 10/1985

³ High Court Ruling (1990) CMLR 87

⁴ Mr. Brian Curran v Allied Irish Bank, Ref: EP 10/1992

Mr. William Deeney v National Irish Bank, Ref: EP 4/1991 & EE 12/1991

2.4 This claim was assigned to the Equality Officer here concerned for investigation on 22nd July, 1998.

3. ARGUMENTS MADE BY THE PARTIES

The Claimant:

3.1 The claimant argues that, as all females who were recruited prior to 1974 and who married while in the service of the bank are entitled to a marriage gratuity (in accordance with an agreement of March, 1974 entered into between the Bank and the Irish Bank Officials Association), he too should also have the same entitlement. In making his claim the claimant relies upon the provisions of the 1974 Pay Act, Article 119 of the EEC Treaty and Equal Pay Directive 75/117.

3.2 The claimant contends that, in the High Court case of Bank of Ireland and Kavanagh the learned Trial Judge erred in law in finding that the payment of a marriage gratuity to a female employee, employed prior to 1974, did not constitute discrimination contrary to the Anti-Discrimination (Pay) Act, 1974. In his judgement Mr. Justice Costello noted that the “marriage gratuity is not payable to all Bank’s female staff on marriage”. While the claimant accepts that this is correct, he notes that the marriage gratuity is payable to females meeting certain conditions which he too is able to meet. The claimant, therefore, contends that the only and appropriate comparison to be made is one between himself and a female in the same position i.e. who commenced employment with the bank prior to 1974 and married while in that employment.

3.3 In this context the claimant cites the judgement in Barber -v- Guardian Royal Exchange Assurance Group⁶ in which the Court of Justice compared a male and a female of the same

Mr. Adrian Hegarty v Bank of Ireland, Ref: EP 02/1998

Mr. Martin Horgan v Bank of Ireland, Ref: EP 03/1998

Mr. G. Murphy v Bank of Ireland, Ref: EP 04/1998

Mr. T. Keady v Bank of Ireland, Ref: EP 19/1998

Mr. P. Quigley v Bank of Ireland, Ref: EP 20/1998

⁵ Mr. Curran v Bank of Ireland, Ref: DEP 3/1994 Appeal of EP 10/1992

⁶ ECJ Case C-262/88, [1990] 1 AER 660

age. The Court of Justice stated as follows:

“It is contrary to Article 119 of the Treaty for a made compulsorily redundant to be entitled to claim only a deferred pension payable at the normal pension age when a woman in the same position is entitled to an immediate retirement pension as a result of the application of an age condition that varies according to sex”

The claimant submits that, in order to give full effect to Article 119, the Equality Officer is obliged to apply the rationale set out European Court of Justice in the Barber decision to his claim for a marriage gratuity.

The Respondent:

- 3.4** In a letter to the Equality Officer the respondent’s representative pointed out that, from the claimant’s submission, it appears that the claimant was not married at the date of his resignation. For this reason the respondent’s representative contended that this claim falls *in limine* and must, therefore, be dismissed.

4. CONCLUSIONS OF THE EQUALITY OFFICER

- 4.1** The issue for consideration by me is whether or not the claimant is entitled to a marriage gratuity in terms of the Anti-Discrimination (Pay) Act, 1974 and the Employment Equality Act, 1977. In making my recommendation in this claim I have taken into account all the arguments made by the parties.
- 4.2** The first issue for consideration is whether or not this claim relates to remuneration and is covered by the 1974 Act or whether it relates to conditions of employment and is appropriate for consideration under the 1977 Act. Remuneration is defined in the 1974 Act as “*any consideration whether in cash or in kind which an employee receives, directly or indirectly in respect of his employment from his employer*”. As this dispute concerns entitlement to a marriage gratuity which is a monetary payment, I am satisfied that it specifically relates to remuneration and is appropriate for investigation under the 1974 Pay Act and not the 1977 Equality Act.
- 4.3** I accept the respondent’s argument that the claimant, based on his submission, was not

married on the date of his resignation. On this basis I find that the claimant is not entitled to seek a marriage gratuity.

5. RECOMMENDATION

5.1 1974 Pay Act:

In view of my conclusions above I find that the Ulster Bank did not discriminate against Mr. Dermot O'Meara and that he is not entitled to the payment of a marriage gratuity under the terms of the Anti-Discrimination (Pay) Act, 1974.

5.2 1977 Equality Act:

I find that this claim relates to remuneration and it is, therefore, excluded from the application of the provisions of the Employment Equality Act, 1977 by virtue of Section 3(1) of that Act.

Gerardine Coyle
Equality Officer

10th August, 1999