

EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATION NO: EE 43/1999

Ms. Amy Cullen
(Represented by MANDATE)

AND

Oxtron Limited
(Represented by I.B.E.C.)

File No: EE 32/1998

1. DISPUTE

- 1.1** This dispute concerns a claim by MANDATE, on behalf of Ms. Amy Cullen, that Oxtron Limited t/a SuperValu discriminated against her, in terms of Section 2(a) of the Employment Equality Act, 1977, for having subjected her to a number of discriminatory measures during her pregnancy and maternity leave which culminated in her resignation.

2. BACKGROUND

- 2.1** The claimant commenced employment with the Company on 31st August, 1993 as a part-time sales assistant working approximately 30 hours per week. From the time the claimant informed the Company of her pregnancy in October/November, 1997 her relationship with management deteriorated to such an extent that she felt that she could not return to work following the birth of her baby.
- 2.2** On 24th July, 1998 the Union, on behalf of the claimant, lodged a claim with the Labour Court under the Employment Equality Act, 1977. The Labour Court subsequently passed the claim to an Equality Officer for investigation and recommendation.

3. SUMMARY OF THE UNION'S CASE

- 3.1** According to the Union the claimant commenced employment with the Company's Bayside store on 31st August, 1993 as a part-time sales assistant working about 30 hours per week. She became a full-time employee some six months later and resigned from the Company on 22nd May, 1998. In October/November, 1997 the claimant informed her store manager (Ms. Helen Crowe) that she was pregnant. From that point onwards the Union says the previously good relationship between the claimant and Company management deteriorated forcing the claimant into the decision that resignation was preferable than returning to work after the birth of the baby. The claimant commenced maternity leave on 17th March, 1998. The Union says that, on hearing of the claimant's pregnancy, the store manager and the supervisors engaged her in only the basic essentials of conversation. All routine greetings and 'small talk' were dropped and replaced by, what appeared to the claimant, as disapproving silence and, on occasion, open hostility.

- 3.2** In the period immediately prior to Christmas 1997 the claimant requested a move from the Deli Section to the checkouts. The Union says that the claimant communicated her request to one of the supervisors who told her that to effect the move the claimant would have to change her working hours. The claimant made the same request of another supervisor after Christmas and according to the Union she was told that she would have to work Saturdays. (Up to this the claimant had worked from Monday to Friday). On 30th January, 1998 the Union says that the claimant informed both supervisors that she would not be changing her day off, at least until the Union and the Company had met to discuss the issue. The Union says that one of the supervisors reacted in a very hostile manner shouting at the claimant and saying “Who do you think you are? You can’t tell us the hours you will work; I’ll ring John Holden and tell him you that you went to the Union behind our backs.” The Union says that the other supervisor made supporting comments in the same tone and manner and that both staff and customers in the shop started to pay attention to the commotion they were causing. According to the Union the claimant asked the supervisors to stop and she left the store in a very distressed state and went home. The Union says that the claimant’s mother was so alarmed at the condition of her daughter when she arrived home that she telephoned the store and asked to speak with Mr. Holden, the area manager. Mr. Holden was unavailable but he rang the claimant’s mother later and supported the stance taken by the two supervisors.
- 3.3** The Union states that, following these incidents, the atmosphere in the store worsened and management communicated even less with the claimant. When the claimant returned to work following hospital visits the Union says that there was much looking at watches by the supervisors and one of them made comments like “how long does it take you to visit the hospital” or “what time is this to come back to work”. The Union says that it wrote to management on 3rd February, 1998 about the issue of the claimant working Saturdays. It says that it advised the claimant not to work Saturdays, unless she wished to do so, pending a meeting with management.
- 3.4** The Union says that, on one occasion, the claimant approached her chargehand in the Deli Section requesting time off to attend ante-natal classes. She was referred to the her

supervisor who informed her that she would have to go on her own time. When the claimant pointed out that, as a full-time worker, she could not go on her own time, the Union says that the supervisor shrugged her shoulders and made no comment. The Union also says that the claimant never attended any ante-natal classes while other females in another of the Company's stores were allowed time off to attend such classes.

3.5 The Union says that on 12th February, 1998 the claimant went into the changing area to get ready to go for a check-up appointment in the hospital. As she was changing the supervisor and the assistant manager entered the changing area and the supervisor shouted at her "where do you think you are going?" The Union says that the claimant explained about her hospital visit as per her notice to management two weeks earlier. The supervisor produced her diary and stated that the claimant had not notified her of the hospital visit as it was not in her diary.

3.6 The Union says that all visits to the doctor or to the hospital relating to the claimant's pregnancy were occasions for comment or action by management and which clearly expressed disapproval by the employer of the claimant's condition. When the claimant's visit to the doctor ran over her lunch break she was not given a meal break on her return to work. The Union says that when the claimant went to the office for cash register change it was pushed aggressively into her pregnant bump by the supervisor. When the claimant's colleague was absent at the deli counter the claimant would ask for assistance but it usually took up to an hour before another sales assistant was assigned to the area. The Union says that there were numerous such periods when the claimant was on her own. The Union also says that when the claimant presented sick notes to the Assistant Manager, he openly scoffed at them and treated them with derision in front of both staff and customers. The Union says that the claimant worked until 7.00p.m. two evenings per week and when she asked for them to be reduced or eliminated, her request was refused. Other staff informed the claimant that management had informed them of the claimant's desire to swop but had emphasised that the swop was not compulsory. The Union says that it should be noted that similar requests by other staff were granted.

3.7 The Union states that the claimant was instructed by management to change her day off from

every Saturday to mid-week. She was specifically instructed to report for work on Saturday, 21st February, 1998 and take off Thursday, 19th February, 1998 instead. The Union says that despite correspondence from it dated 13th February, 1998 confirming arrangements for a meeting, management decided to force the claimant to change her day off. On Thursday, 19th February, 1998 the claimant accompanied by an official from the Union reported for work. Her supervisor made the comment “you came in” and the store manager told the claimant to go and get her till. She then commenced work. The Union says that a meeting took place on Wednesday, 25th February, 1998 between it, the claimant and the Company. The Union raised the issue of the Company attempting to impose new days off on the claimant and the issue of the claimant’s attendance at ante-natal classes. According to the Union the Company’s representatives did not dispute the claimant’s version of events in the store and Mr. Holden apologised to her on behalf of the Company for all that happened.

- 3.8** The Union submits, on behalf of the claimant, that the events outlined above constitute genuine and prolonged discrimination on grounds of sex. It submits that the widespread nature of the discriminatory practices suggests a company-wide bias against the claimant which was not only known to management, but was actively participated in by its individual members. The level of victimisation directed at the claimant was so intense that she resigned from her job rather than risk a continuation of the treatment experienced during pregnancy. The Union requests a recommendation that the claimant be compensated for the stress and injury to feelings suffered and for the loss of employment which resulted.

4. SUMMARY OF THE COMPANY’S SUBMISSION

- 4.1** The Company says that the store manager learnt of the claimant’s pregnancy in September, 1997 and not October/November as claimed by the Union. The Company says that the store manager categorically denies the notion that this piece of information utterly changed the relationship between herself and the claimant. The store manager respected the claimant’s wishes in not broadcasting the good news on account of her being in the early stages of pregnancy. Furthermore the Company says that when the claimant informed the store manager of the news the store manager told the claimant that if she wanted a move to

the checkouts area the Company would be more than happy to facilitate her.

- 4.2** The Company says that it completely refutes any allegation that it treated the claimant in a prejudicial way as a result of her pregnancy. It says that it facilitated all her visits to the doctor in the early stages of her pregnancy. According to the Company there was one occasion when, on her return from a doctor's visit, she informed the store manager that she was bleeding and the store manager offered to drive her home or to the hospital. The Company says that the claimant declined the offer and went home some time later.
- 4.3** The Company says that, although the claimant was employed in the Deli Section, she also worked in the Off Licence Department every Tuesday. On discovering her pregnancy the Company says that the claimant asked to be moved to the checkouts every Tuesday instead of working in the Off Licence Department as the work there tended to be strenuous. The Company states that it granted this request. According to the Company it was most anxious to assist the claimant in whatever way it could to make her work as comfortable as possible during her pregnancy. The Company says that, at all times, it would have preferred the claimant to be working at a checkout and when she approached management in this regard after Christmas the Company says that it was only too delighted to facilitate her request.
- 4.4** The Company says that, during the month of February while the claimant was working on checkouts, it became apparent that overstaffing was occurring on Tuesdays. The store manager sought to remedy the situation by asking the staff if they would oblige by working one Saturday in every four and take Tuesday off instead. Two of the four staff members approached agreed to co-operate while the other two elicited the help of their Union. It was as a result of her talks with the Union that the claimant refused to work on Saturdays. The Company says that it had hoped for the co-operation of all staff to alleviate a short-term problem. Furthermore it contends that the version of the incident outlined by the Union in its submission is not an accurate reflection of what actually happened.
- 4.5** The Company says that the claimant approached the supervisors with a view to reducing the number of 7.00p.m. shifts she worked. To achieve this request the Company says that the claimant's colleagues would have to do some of her shifts. One colleague was not happy

with the idea and when the claimant learnt who this was she became openly hostile to her for a number of weeks. The Company says that the store manager totally rejects the allegation that management engineered staff to respond in any particular way. The Company denies that it refused the claimant time off to attend any of her appointments. Her appointments were normally at 2.00p.m. and the claimant always left at 12 noon and never returned to the shop.

4.6 The Company states that the supervisor (Ms. Boland) rejects that she pushed a bag of coins into the claimant's 'bump' as alleged. She further rejects the allegation that she ostracised the claimant and she says that the opposite is the case. The Company give examples of conversations which were held between the two women. During one of these conversations the supervisor formed the impression that the claimant was unsure about returning to work after the birth of her baby. The Company says that when a member of staff fails to turn up for work it must find a replacement. This takes time and when a replacement is found that person has to get to the workplace. The Company disputes that this has happened on numerous occasions and says that it is more the exception rather than the norm. In relation to the conversation about working hours the Company says that, according to the supervisor, she explained to the claimant that her working hours would have to change on account of the supermarket opening at 9.00a.m. The supervisor says that the issue of Saturday working did not arise. According to the supervisor the claimant was vociferous on the shop-floor and later came her, apologised for her behaviour and blamed it on her 'hormones'. The Company says that the supervisor was also involved in a discussion with the claimant about working Saturdays and in initial discussions the claimant did not appear to have any problems with the proposal. The problems only emerged when a colleague of the claimant's refused the request to work Saturdays.

4.7 The Company says that, during discussions on Saturday working, the claimant alleges that the supervisor (Ms. Hickey) threatened to call Mr. Joe Holden. The supervisor rejects this allegation. According to the supervisor Mr. Holden was on the premises that day, although not present during the incident itself. The Company says that when the claimant's mother rang the store to ask to speak with Mr. Holden, Mr. Holden was not present at that time and the claimant's mother accused both Ms. Boland and Ms. Hickey of being bullies. In

relation to the incident where the claimant was changing to leave the store for a hospital appointment the Company says that it did not have a problem with the claimant attending the appointment but it would have preferred some notice of the appointment. The Company says that the supervisor was, at all times, understanding of the claimant's situation given that she has two children herself. The supervisor facilitated the change of rostered hours in conjunction with another member of staff, she arranged the claimant's holidays around her maternity leave and she arranged for flowers to be sent to the claimant following the birth of her baby. The Company says that the claimant held conversations with the supervisor on various issues concerning her pregnancy including ante-natal classes.

4.8 The Company says that the Deli Chargehand (Ms. Fitzpatrick) was pregnant at the same time as the claimant and they discussed ante-natal classes. The Deli Chargehand tried to impress upon the claimant the benefits of attending these classes but the claimant lost interest immediately she heard that she would not get time off from work to attend these classes.

4.9 The Company says that it strongly believes that the claimant was not treated less favourably than other pregnant colleagues. Furthermore it has never had any allegations of discrimination from other staff who were pregnant apart from the claimant. The Company says that there was an onus on the claimant to make clear if certain behaviour was offensive. According to the Company this was never done by the claimant. She did not invoke the grievance procedure in the Company nor was the Company aware of her complaints at any time prior to this claim. Furthermore the Company says that the Union had given no indication of the claimant being subjected to discrimination at work. The Company notes that, if the situation had been so awful for the claimant, as alleged, and she suffered from stress caused by the work environment, one would expect her attendance record to reflect this. However the claimant's work attendance was good as she was only absent for 2 days after 1st September, 1997. The Company is critical of the Union and the claimant for failing to quantify times, dates and persons involved in many of the incidents cited. It rejects the allegation made that the claimant was subjected to discrimination during her pregnancy or that she was left with no option but to resign in the circumstances.

5. CONCLUSIONS OF THE EQUALITY OFFICER

5.1 The issue for consideration in this claim is whether or not the Company discriminated against the claimant, in terms of Section 2(a) of the Employment Equality Act, 1977 and contrary to the provisions of Section 3 of that Act, as a result of the alleged behaviour of the management at the Bayside store leaving the claimant with no alternative but to resign from her employment following her maternity leave. In making my decision in this claim I have taken into account all of the submissions, both oral and in writing, made to me by the parties.

5.2 Section 2(a) of the Employment Equality Act, 1977 provides 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”.

In this claim the Union is alleging that the claimant was treated less favourably than a person of the opposite sex because of her pregnancy. In making allegations against the Company there is an onus on the Union to substantiate the allegations. The evidence presented by both parties to this claim contains serious conflicts concerning the facts of the case. It is necessary to examine all the evidence and to decide, based on the facts of this case, whether or not discrimination has occurred. Consequently, I will need 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.

5.3 The Union alleges that the management in the store in Bayside treated the claimant with open hostility on hearing that she was pregnant. The Company denies this and says that management respected the claimant’s wishes in not broadcasting this news as she was in the early stages of pregnancy. According to the Company the claimant informed it of her pregnancy in September, 1997 whereas the Union said that the claimant notified the Company of her pregnancy in October or November of that year. It would appear that the claimant’s attendance records (for Tuesday working from September, 1997 until her maternity leave) are consistent with the hours she worked on checkouts and she only commenced Tuesday work on checkouts after her pregnancy became known. The Union has submitted no evidence to substantiate its claim that the Company was informed of the claimant’s pregnancy in October or November, 1997. It is interesting to note that the Union

is not specific as to when the claimant told the Company i.e. was it in October or was it in November? I consider that this incident serves only to provide me with contradictory evidence and is not, in itself, an issue of discrimination.

- 5.4** There is a contradiction between the Union and the Company in relation to the treatment of the claimant by management on learning that she was pregnant. The Union has not substantiated its allegation that management was openly hostile towards the claimant. In the absence of substantiated evidence I cannot make the decision that management did treat the claimant differently on learning of her pregnancy or vice versa. The Company argues that it suggested to the claimant that she might wish to work on checkouts as opposed to the Deli Department. The Union, however, says that it was the claimant who made the request. What is agreed is that the claimant did request a move from off-licence to checkouts and this request was facilitated. It appears strange to me that management would offer to move the claimant from the Deli Department to checkouts and not make such an offer in relation to off-licence where the work could be quite physical. On this basis I consider it questionable if management approached the claimant first regarding a move to the checkouts.
- 5.5** When the claimant sought a move from the Deli Department to checkouts management informed her that she would have to change her working hours. As a checkout operator the claimant would be required to commence work at either 9.00a.m. or 10.00a.m. I am satisfied that the claimant preferred to commence work at 8.30a.m. or 9.00a.m. and for that reason remained working in the Deli Department as opposed moving to checkouts. There is no evidence to suggest that, if the person requiring the move was of a different sex to the claimant, then that person would have been facilitated in terms of working hours. I note also that the claimant was not the only female member of staff who was pregnant and who worked in the Deli Department at that time.
- 5.6** The Union has alleged that, when the issue of working Saturdays arose, there was a heated exchange between the claimant and the supervisor which was started by one supervisor with supporting comments by another supervisor. The exchange was such that it attracted the attention of other staff and customers and the claimant, who was very upset as a result, left

the store and went home. Her mother rang the Company later and asked to speak to the Area Manager to complain about the treatment of her daughter who was, at that time, seven months pregnant. The Company accepts that the incident happened but not in the manner outlined by the Union. It says that only one supervisor was involved and when the issue was raised about working Saturdays the claimant was the one who started to shout at the supervisor and thereby attracted the attention of the staff and customers. The Company accepts that the claimant did leave the premises in a distressed state and that her mother did ring the Area Manager later. Having examined the evidence on this issue I consider that the claimant had more reason to get upset about Saturday working and consequently start shouting at the supervisor than vice versa. At the hearing of this claim the Company said that the issue of working Saturdays resulted from overstaffing and to remedy the situation staff were being asked to work Saturdays which would result in staff working one in every four Saturdays. I am satisfied that the actual issue of working Saturdays was not one which impacted solely on the claimant and was in no way discriminatory in terms of Section 2(a) of the Employment Equality Act, 1977.

- 5.7** The Union alleges that management in the Store made comments to the claimant on her return from hospital visits e.g. “how long does it take you to visit the hospital?” or “what time is this to come back to work?”. The Company denies that these comments were made by management. The Union has not substantiated this claim. The Union also outlined an incident where the claimant was preparing to leave to attend the hospital 12th February, 1999 and she was confronted by the Assistant Manager and the supervisor who asked her where she was going. According to the Union the supervisor accused the claimant of not giving her any notice of the appointment whereas, in fact, the claimant had given two weeks notice. As the appointment was not marked in the diary it is impossible to know if the claimant had told the supervisor and the supervisor had forgotten to mark it in the diary or if the claimant had thought she had told the supervisor but had not actually told her. As the supervisor was not aware of the claimant’s appointment I consider it reasonable for her to ask the claimant where she was going. I note that the Company submitted evidence, after the hearing of this claim, which showed that the claimant’s hospital appointment on 12th February, 1999 was noted in the diary. It is not apparant when this note was made in the diary for instance it could have been noted in the diary after the supervisor had asked the

claimant where she was going.

5.8 The Union alleges that, when the claimant would go to the office to collect the cash register change for the checkout till, one of the supervisors would push the change aggressively into the claimant's bump. The Union said that this happened on two occasions as the claimant avoided going to the office for the change preferring to get a colleague to collect it for her. The Company said that the supervisor categorically denied this. At the hearing of this claim the supervisor in question said that she was horrified that such an accusation was made against her and that she would never do such a thing to a pregnant woman. I note that there were no witnesses to this alleged incident as the supervisor was the only person in the office when the claimant would go in for the cash. I consider this a very serious allegation and cannot understand why the claimant did not report it, at the time, to either the Area Manager or the Union. Given the conflict in the evidence it is impossible, therefore, to find in favour of the claimant or the Company in this regard.

5.9 The Union says that the claimant sought to have the two evenings that she worked until 7.00p.m. either reduced or eliminated. The Company refused this request and the Union alleges that the Company discouraged other staff from agreeing to swop with the claimant so that she could not be facilitated. Futhermore the Union claims that other staff who made similar requests were facilitated. The Company denied that it encouraged staff to refuse to swop with the claimant. It said that, in order to facilitate the claimant, other members of staff would have to cover for her. According to the Company one of the staff members was not willing to undertake the extra hours involved and for that reason the Company could not facilitate the claimant's request. In regard to this incident I am satisfied that the Company did entertain the claimant's request and asked the staff in general if they would cover the claimant's hours. I note that one of the staff members was unwilling to cover for the claimant and for that reason the Company was unable to accommodate the claimant's request. The Union has submitted no evidence to show that the Company would have treated a person of the opposite sex any differently or more favourably than it treated the claimant.

5.11 There is finally the issue of the meeting between the Union and the Company on 25th

February, 1998 at which the Company apologised to the claimant. It is accepted that an apology was made by the Area Manager, on behalf of the Company, to the claimant. According to the Union the Area Manager apologised to the claimant, on behalf of the Company, for all that had happened. At the hearing of this claim the Area Manager said that he apologised to the claimant for any misunderstandings she may have had about anything that maybe was said to her or for any other incidents which may have taken place. He said that it is easy to say 'sorry'. Despite further questioning the Area Manager was unable to give any examples of these misunderstandings or incidents to which he himself had alluded. However, he did say that by making the apology there was no admission of guilt. I find it difficult to understand how a person in a position of authority could make an apology, on behalf of the Company, to a member of its staff where he is unable to give any reason for that apology. Having said that, I am satisfied that there is no evidence available to suggest that the Company accepted that it had discriminated against the claimant on the basis of her sex and, therefore, made the apology.

6. RECOMMENDATION

- 6.1** In view of my conclusions above I find that Oxtron Limited trading as SuperValu did not directly discriminate against Ms. Amy Cullen on the basis of her sex in terms of Section 2(a) of the Employment Equality Act, 1977 and contrary to the provisions of Section 3 of that Act. I find that the Union has failed to substantiate its allegations of discrimination and I find that the balance of probabilities tips in favour of the Company.

Gerardine Coyle
Equality Officer

28th September, 1999