

EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATION NO. EE 46/1999

PARTIES

**Nine Named Female Employees
{Represented by S.I.P.T.U.}**

and

**SaRonix Kony (Ireland) Limited
{Represented by I.B.E.C.}**

1 Dispute

1.1 This dispute concerns a claim by nine named female employees that SaRonix Kony (Ireland) Limited discriminated against them on the grounds of their sex in terms of Section 2(a) of the Employment Equality Act, 1977 and in breach of Section 3 in relation to promotions.

2 Background

2.1 Arising from the introduction of a new production line the Company advertised internally in November, 1996 for five Machine Operators and one Service Operator. The nine complainants all applied for the Machine Operator jobs and six of them applied for the Service Operator post. The complainants are Ms C Scott, Ms H McDonnell, Ms J Reilly, Ms T Owen, Ms S Barron, Ms L Hanlon, Ms L Manning, Ms A Nolan and Ms L Canning.

2.2 Separate interviews were held for the two jobs. The interview boards selected males to fill all six positions. The complainants believe that the Company discriminated against them on the grounds of their sex.

2.3 In May, 1997, the complainants through their Union referred the dispute to the Labour Court. The Labour Court referred the case in July, 1998 to an Equality Officer for investigation and recommendation. In the course of the Equality Officer's investigation he received written submissions from the parties.

2.4 After receipt of the submissions a joint hearing with parties was held on the 27th May, 1999. Subsequent to that date further information, as requested at the hearing held, was received from the Company in July, 1999. This information led to the receipt of further correspondence from the parties; the last of which was received in October, 1999.

3. The Complainants' Case

3.1 The Union submits that the complainants were discriminated against by the Company on the grounds of their sex within the meaning of Section 2(a) and in contravention of section 3 of the Act in relation to internal promotions.

3.2 The Union states that in November, 1996 the respondent advertised a number of vacancies for a manufacturing team for a new line. The positions advertised were for five machine operators (H-Pack) and one service operator (Logistics). The applicants for the one Logistics post were seven female and five male and the other post of H-Pack operator attracted

applications from twelve females and seven males. The results of the both competitions were that six males were successful.

- 3.3** On the 6th December, 1996 the Union met the Company to discuss the outcome of the interviews. The Company in response to queries on the selection criteria informed the Union that the requirements and questions asked had differed in respect of the two posts (H-Pack and Logistics). Following two further meetings on 12th December, 1996 and 6th January, 1997 the Company produced a document setting out the criteria used in filling both positions. A copy of the criteria in respect of both posts is at Appendix 1.
- 3.4** The Union submits two documents received from the Company, after 6th January, 1997 detailing the individual scores, under each heading, one shows the five male applicants and the seven females in respect of Logistics job job and other shows the twelve females and seven males applicants in regard to the H-Pack job. The documents are at Appendix 2.
- 3.5** The Union maintains that *"Significantly, all criteria have now been marked as scoring equally despite the Company statement on the 6 December, 1996, after the event, that some requirements were essential and others merely desirable."* The Union also maintains that the basic requirements for the positions were altered radically from those set out in the original advertisements posted inviting applications.
- 3.6** The Union argues that as some of the female applicants would have been successful had the requirements remained as advertised the inevitable conclusions to be reached is that the requirements and method of scoring were altered to insure that the Company achieved its preferred result, six male appointments.

4. The Company's Case

- 4.1** The Company submits that it did not discriminate against any of the complainants. The respondent maintains that there is no evidence to support an allegation that it discriminated on grounds of gender when it made the appointments to the jobs in question.
- 4.2** The Company points out that two separate interviews boards were involved in the two competitions. The Production Manager and the Personnel Officer were common to both boards. In relation to H-Pack posts the Supervisor was the other member of the board and the Materials Manager was the other member in relation to the Logistics job. The Company states that, prior to interviews, the boards put together a number of factors under which they

would evaluate the candidates. The Company adds that each of the criteria was scored on a scale of 0 - 5.

- 4.3** In relation to the **H-Pack posts** the Company maintains that the factors, under which the candidates were evaluated, were divided into "essential" and "desirable" and they were given the same weighting. There were six essential factors and these were: **Team ability/team experience, Flexibility, Housekeeping, Safety issues, Keyboard abilities and Attendance/Timekeeping.** There were five desirable factors and these were: **Technical experience/qualifications, Continuous flow process experience, High volume automated machinery experience, Ability/willingness to learn and Attention to detail.** The scores obtained by the applicants in this competition are at Appendix 3.
- 4.4** In relation to the **Logistics job** the Company maintains that the factors, under which the candidates were evaluated, were divided into "essential" and "desirable". There were four essential factors and these were: **Attendance and Timekeeping, Attention to detail, Flexibility, and Willingness to work on one's own initiative.** There were three desirable factors and these were: **Stores experience, Computer experience and Paperwork/documentation experience.** The scores obtained by the applicants in this competition are at Appendix 4.
- 4.5** The respondent contends, in respect of both post, that there was no gender discrimination in the evaluations of the candidates. The Company's evaluation of the scores of each candidate in respect of the H-Pack posts and the Logistics job are at Appendices 5 and 6 respectively. It is clear the Company maintains that a number of females were scoring higher than a number of males under certain criteria and that if the interview boards sought to discriminate in favour of males for the posts then there would have to be some evidence of consistency in the evaluation of the criteria in favour of males to support such an allegation.
- 4.6** In summary the Company submits:
- There were clear criteria agreed on by members of the interview boards prior to the interviews.
- Each candidate was evaluated against those pre-determined criteria.
- These criteria are gender neutral.
- There is no evidence to show that they were applied in a discriminatory way.

Females scored as high as males in virtually all of the criteria used and higher than males in some cases.

5. Conclusions of the Equality Officer

5.1 The Union contends that the requirements for the posts were altered after the posts were advertised and the method of scoring were also altered to ensure that the Company achieved its preferred result, six male appointments. The Company maintains that the members of the interview boards, in respect of both competitions, met prior to the interviews and decided on selection criteria. The Company denies that there was any discrimination attached to the selections made by the interview boards.

5.2 I propose initially to comment on the Union's contention that the requirements for the posts were altered so as to ensure that the appointment of males. In my opinion it is not unusual that the requirements for a position(s) advertised do not reflect all the requirements/attributes sought by the employer. In the present case an examination of the marks awarded by the boards to the candidates, under the various headings, does not show that the scores under the "desirable" headings had any affect on the eventual outcome of the competition.

5.3 Notwithstanding the views I have expressed in the preceding paragraph it seems to me in a competition where almost twice as many of one sex compared to the other sex competed for a number of positions and the gender in majority failed to obtain any of the positions, as occurred in the H-Pack competition, such an outcome demands a wide measure of discrimination. In the present case it may be useful here to recall that the agreed breakdown of the gender of the applicants and the outcome of the H-Pack competition are as follows.

APPLIED	SUCCESSFUL	UNSUCCESSFUL
07 males	06 males	01 male
12 females	0 females	12 females

NOTE: There were five positions on offer, however, as one of the candidates was also successful in the Service Operator competition and took up that job, the next highest placed candidate (male) was offered a position.

5.4 In the course of my investigation of this case I ascertained that all the applicants were in Grade 1 positions. I further ascertained that those employees in Grade 1 were all recruited in the like manner e.g. through advertisements and F.A.S. It seems to me as all the applicants for the positions were recruited in like manner and as they were in the same grade

that their abilities on average would be equal and therefore one gender would not have an advantage over the other in relation to a competition to another grade. I recognise, however, in reality it cannot be expected that the outcome of a competition will be that the gender mix of successful candidates will be in equal proportion to the gender of the applicants.

- 5.5** In relation to the allegations of discrimination the company argues that there is no evidence that a pre-determined criteria was applied in a discriminatory manner. I should mention that the members of both interview boards were no longer in the employ of the company at the time of the joint hearing and I was, therefore, not in a position to question any of them in relation to the boards selections. The company's evidence in relation to the selection process is largely documentary i.e. details of marking and an analysis of the markings.
- 5.6** In relation to the H-Pack positions I consider that the differences between the results which would have been expected and the actual results is so large that it is not due to any real differences in the qualities of the applicants or to random variations in the assessment of the applicants but is due to biased judgement that amounts to discrimination either intentionally or unintentionally by the board. I therefore find that there was discrimination under the terms of section 2(a) of the Act in relation to the female applicants.
- 5.7** I note that if there had been an equal proportion of females in the first six candidates then 12/19 of the females would have been offered promotion i.e. approximately 63% or 4 females. As already stated, I recognise that the outcome of competitions will not mirror the gender proportions of the applicants. I consider that in circumstances in which an employee has suffered discrimination in relation to a selection process, it is only fair and reasonable that the benefit of any doubt as to whether or not that employee would have been selected, if there had been no discrimination, should be given to the employee rather to the employer. An examination of the marks obtained by the candidates show that the next four highest marked candidates are female. As Ms L Hanlon (second) and Ms L Canning (third) are the only two complainants among the next four candidates it follows that they are the only complainants adversely affected by the board's selections.
- 5.8** In relation to the competition for the Service Operator position there were seven female and five male applicants. I note that a comparison between the marks of applicants under the heading of "keyboard skills" and in the H-Pack job under "computer skills" in the Service Operator job show differences. I am not in a position to dispute the Company's assertion that "these two criteria are not the same and so different scores for both are perfectly legitimate." However, I must state that I find it odd that a comparison between the marks obtained by Ms Canning and Ms Hanlon, under the heading of "keyboard skills", in the H-Pack job show that they obtained

scores of 2 and 3.5 respectively yet under "computer skills" in the Service Operator competition they received zero, a marking that was not applied to any of the male applicants.

5.9 I have given careful consideration to the evidence available to me on the Service Operator competition and I note the following facts :

two of the three members on the interview board were also on the H-Pack board

females made up the majority of applicants

only one female, at joint third, was placed in the top five by the board

On the basis of the gender breakdown of the applicants here, it seems to me, that an applicant from either sex could have been reasonably expected to be successful in this competition. However, having regard to the aforementioned facts and the outcome of the other competition, it is my opinion, that the outcome here gives rise to an inference of sex discrimination.

5.10 I hold the same view here, as expressed at paragraph 5.6, that the outcome in the Service Operator competition is not due to any real differences in the qualities of the applicants or to random variations in the assessment of the applicants but is due to biased judgement that amounts to discrimination either intentionally or unintentionally by the board. I therefore find that there was discrimination under the terms of section 2(a) of the Act in relation to the female applicants.

5.11 I note that the Service Operator competition was for one post. In my view, for the reasons outlined at paragraph 5.7, the female applicant with the highest marks should have been placed first on the panel. As that person is Ms L Canning it follows that she is the only complainant adversely affected by the board's selection.

I note that I have held Ms Canning was discriminated against by the Company in relation to the H-Pack competition. However, I take the view, as there was only one position on offer, that it is inappropriate to hold that was discrimination against the female applicant with the next highest score.

5.12 In arriving at my decision in this dispute I have taken into consideration all the submissions from the parties, together with the evidence presented at the joint hearing. I also had regard to the Labour Court determination in the case of the Revenue Commissioners and Four Female Clerical Assistants (Taxes) (case No: DEE 02/87)

6 Recommendation

6.1 Having regard to the views that I have expressed in the preceding paragraphs I find that SaRonix Kony (Ireland) Limited discriminated against Ms L. Hanlon and Ms L. Canning, in relation to the position of H-Pack Machine Operator, and against Ms L Canning in relation to the position of Service Operator (Logistics), contrary to the terms of section 2(a) of the Employment Equality Act, 1977 and in breach of section 3 of the Act. In regard to the other seven complainants I find that they have no entitlements under the terms of the Act.

I note that neither Ms Hanlon or Ms Canning suffered any loss of remuneration as a consequence of the discrimination. Ms Hanlon left the employment of the company in January, 1997 and Ms Canning was paid the rate for the job from July 1997 which was the same time as the rate was applied to the successful male candidates. I therefore confine my remedy to one of compensation for the distress suffered by the successful complainants as a result of the discrimination. In the case of Ms Hanlon I recommend that the company pay her the sum of #750.

In the case of Ms Canning I consider that her level of distress is added to because she sustained two counts of unlawful discrimination. Accordingly I recommend that she be paid the sum of #1,000.

Jim Clerkin,
Equality Officer.

15th December, 1999