

1. DISPUTE

1.1 This dispute concerns a claim of sexual harassment by S.I.P.T.U. and the Employment Equality Agency (EEA), on behalf of a named female claimant, that a named respondent discriminated against her, in terms of Section 2(a), 2(b), 2(c) and 2(d) of the Employment Equality Act, 1977 and contrary to the provisions of Section 3 of that Act. It is alleged that she was subjected to sexual harassment by male colleagues for a number of years.

2. BACKGROUND

2.1 The claimant has been employed by the respondent organisation since November, 1983 and she claims that she has been subjected to sexual harassment by male colleagues for a number of years. This ultimately had an adverse affect on her health and she has been on sick leave since March, 1997. The claimant also alleges that, as a senior staff member, she was allocated work which was more appropriate to junior employees. On making a formal complaint to management about the harassment the claimant contends that she was victimised.

2.2 On 7th August, 1997 the claimant submitted a claim to the Labour Court under each sub-section (i.e. a to d) of Section 2 of the Employment Equality Act, 1977. This claim was the subject of a time limit hearing in terms of Section 19(5) of the 1977 Act. The Labour Court found that reasonable cause was shown as to why the complaint was not referred within the six months time limit and, consequently, it referred the claim to an Equality Officer for investigation and recommendation. At the hearing of this claim the claimant's representative withdrew the claim of discrimination under Section 2(c) of the 1977 Equality Act and confirmed this by letter dated 10th September, 1999.

2.3 Due to the nature of this claim I will not be referring to the claimant and the respondent by name in the interests of confidentiality. A number of witnesses have been named in relation to this claim. Throughout this recommendation they will be referred to by their title e.g. foreman, manager, etc. or by Mr. A, B, etc. or by Ms. A, B, etc. The person at the top of

the respondent organisation will be referred to as Mr. Boss and his assistant will be referred to as Mr. Assistant Boss.

3. SUMMARY OF THE CLAIMANT'S SUBMISSION

3.1 According to the claimant the offensive remarks were made to her by the foreman, the manager and Mr. A. Together with two other male colleagues they were known as the 'clique' and this was marked on their work equipment. The claimant alleges that these people constantly made lewd and sexual comments and that she and another female colleague had to listen to offensive remarks, sexual innuendo, name calling, discussions about blue movies and discussions about their sexual activities. She says that almost every comment made during the working day was taken up as double meaning.

3.2 In her submission the claimant gave examples of comments made. (I have not included all the examples in the interests of anonymity, but full details are available to the Labour Court should it require them.

- In May, 1995 the claimant was pregnant and when she told her work colleagues the foreman said "we were wondering why your tits were getting bigger";
- Around the same time the claimant says that she passed the remark that she was cold and the foreman said "how do you know you are cold, are your nipples sticking out";
- The claimant alleges that references were frequently made to 'blow jobs' and 'dry rides'.

3.3 The claimant states that she was very distressed by this treatment and constantly went home very upset. She says that, on one occasion, her husband called to see Mr. Boss to try to get the harassment stopped. Around November, 1995 the claimant and another female colleague decided to report the treatment to Mr. Assistant Boss. A number of days later the claimant says that the manager called the staff together and said that all the 'dirty talk' was to stop as he did not want to be called to the Labour Court. The claimant says that he also said that the matter should not have been brought to the attention of senior management. The claimant states that she felt that her complaint had not been taken

seriously. She became very upset and Mr. Boss had to take her home. According to the claimant, it was at that time that she told Mr. Boss about the alleged harassment and offensive comments.

- 3.4** The claimant states that, although she was a senior employee, she was allocated work more appropriate to junior employees, all of whom were male. Furthermore she states that she was required to carry out tasks more appropriate to junior staff such as returning ‘punches’ at the end of the day. The claimant alleges that, on one occasion, the foreman asked her to clean his work bench after he had had his lunch. According to the claimant she was required to work with picture frames and she found this task particularly difficult when she was pregnant. The claimant says that this task was always left for her. She says that she was constantly been given this work which could have been undertaken by three of the males who were also qualified and able to do this work. The claimant contends that she was getting an unfair burden of work because of her sex. In her submission the claimant says that the members of the ‘clique’ always went on an early tea break and, on the one occasion when she went on an early tea break, she was reprimanded by the manager.
- 3.5** About the 11th February, 1997 the claimant says that she complained to her manager about the way work was allocated and she requested that the job list be revised. In response the claimant says that the manager said that if she (the claimant) insisted on the job list being changed then she would have to be prepared for the ‘flak’ which she would receive from her male colleagues. The claimant made a formal complaint about her grievances, including harassment to management on 12th February, 1997 and an inquiry was initiated.
- 3.6** The claimant states that, during the inquiry, she was subjected to victimisation and derogatory comments and she was nicknamed ‘the hag’. She further states that she was ridiculed by her male colleagues for example one colleague started singing songs when she entered the room. These songs had the lyrics - “you’ll wish you were dead” or “you’ll never walk alone”. Even though the more blatant offensive comments appeared to stop after the claimant had reported the harassment she says that the alleged harassers adopted a more coded type of language. According to the claimant a number of remarks were made such as to ‘corned beef curtains’, ‘cigar butts’ and ‘are we going egg spotting to-day’. The

claimant alleges that these were all offensive descriptions of the female body.

- 3.7** Following the inquiry a company harassment policy was adopted, but according to the claimant this did not adequately address the problem and the harassment and victimisation continued. The claimant states that when she complained to Mr. Boss about the remark made by the manager in relation to being prepared for the 'flak' (see paragraph 3.5 above) he made light of it. The manager was not interviewed about the remark and no disciplinary action was taken. The claimant says that she was never questioned as part of the investigation.
- 3.8** The Union and the EEA submit that the offensive treatment which the claimant experienced was sex-based and amounted to discriminatory treatment under the 1977 Equality Act. The claimant's representatives further submit that the claimant was subjected to a hostile environment and that this treatment continued despite the inquiry and the putting in place of a harassment policy. The representatives also submit that the inquiry did not adequately address the complaints and that management did not take a further complaint from the claimant seriously. According to the representatives the claimant found the offensive treatment so distressing and intimidating that she had to seek medical attention and is still on sick leave from the respondent organisation.
- 3.9** The claimant's representatives ask the Equality Officer to find that the claimant has been discriminated against because of the hostile working environment in which she was obliged to work, the less favourable working conditions regarding allocation of work and the victimisation which followed her complaints. The representatives ask that the claimant be awarded compensation in respect of the distress suffered by her and for the loss of earnings due to her sick leave.

4. SUMMARY OF THE RESPONDENT'S SUBMISSION

- 4.1** The respondent rejects the allegations made by the claimant that she was sexually harassed

at work for a number of years and that, having made complaints in February, 1997 regarding two sexual harassment incidences, her working conditions deteriorated.

4.2 According to the respondent the claimant commenced employment with it on 21st November, 1983. The claimant worked in a factory environment where, generally speaking, there was a radio playing in the background and staff sat at benches to carry out their work.

4.3 The respondent says that the claimant got married in 1984 and lived initially with her mother-in-law until she and her husband purchased their own home. This was sold in 1989 when the burden of the mortgage repayments became too heavy and the claimant and her husband moved back in with the claimant's mother-in-law. In January, 1993 the claimant's husband, who was then unemployed and did not get a permanent job until 1996, sought a reference from Mr. Boss. Mr. Boss knew the claimant's husband through his family who were in the same business and he supplied him with a reference. On 4th February, 1993 the claimant and her husband met with Mr. Boss and indicated to him that they were in great financial difficulty and sought financial assistance from the respondent organisation. This occurred because the house belonging to the claimant's mother-in-law was, in fact, half owned by the claimant's brother-in-law and he insisted that they buy his half of the house and further because the claimant's husband had allegedly invested approx. £20,000 in a business which had gone bust.

4.4 According to the respondent Mr. Boss brought this request for financial assistance to the attention of the respondent's Board and he was instructed to make available the respondent's chartered accountants to the claimant and her husband. It was arranged that the claimant and her husband would have a private consultation with the chartered accountant who would assess the situation and, advise them in confidence, on how best to deal with their financial difficulties. The bill for this consultation and advice was paid for by the respondent.

4.5 In December, 1996 the claimant stated to Mr. Boss that she was considering giving up work to take care of her children on a full-time basis particularly given the fact that her

husband had secured a full-time job. The respondent asks the Equality Officer to note that over the years it gave employment to the claimant's sister, nephew and niece when it was short staffed. The respondent says that this is not consistent with harassment occurring in the workplace. Furthermore the respondent argues that someone, allegedly harassed or victimised for making complaints of alleged sexual harassment, would not be predisposed to allowing a close relative to work in an organisation in which sexual harassment is tolerated.

4.6 The respondent says that the first and only time an allegation of sexual harassment was made by the claimant to management was in February, 1997 at which time it was alleged that two incidences had occurred. The first had allegedly occurred on 27th January, 1997 and the second on 11th February, 1997. The claimant was asked to put the allegations in writing because of their serious nature and it took her several weeks in which to do so. The respondent says that initially the Union was suppose to be assisting the claimant with her complaint but following a meeting with her Union she informed Mr. Boss that her solicitor would be representing her in the investigation of her complaint. The respondent states that, following a meeting with her solicitor, the claimant informed Mr. Boss that her trade union official would be representing her. The respondent notes that the claimant was paid for time spent attending meetings with her trade union official and her solicitor. She was given the use of the boardroom and also given paid time off to put her complaint in writing. Her written complaint was seen by her trade union official before it was submitted to management. The respondent says that the complaints were dealt with to the satisfaction of both the claimant and her trade union official. The respondent implemented an anti-bullying/sexual harassment policy on foot of this complaint and this policy was agreed with the claimant's trade union. There is a complaints procedure as part of this policy and, according to the respondent, the claimant never made a complaint after this procedure was put in place.

4.7 The respondent, in its submission, refers to an incident on 24th March, 1997 in which the claimant's nephew, who was working for the organisation at the time, was accused of smoking in the gents toilet. Smoking is not allowed in the toilets. The respondent states that

the matter was resolved at the time. However it says that the claimant got involved in the investigation and supplied misleading information. The claimant was found to be totally wrong and apologised.

4.8 According to the respondent the claimant has been absent from work since 24th March, 1997 and has not returned to work since. The respondent says that on 7th May, 1997 Dr. Brendan Deasy, Occupational Health Consultant, examined the claimant, on behalf of the respondent organisation, and concluded that he could not detect any element of depression and that she was medically fit to resume her duties. Dr. Deasy also wrote to the claimant's doctor on a number of occasions seeking his views as to whether or not he believed she was depressed. No reply was received to these requests. The respondent says that it is its policy to pay staff for up to thirteen weeks for properly certified illness. The claimant was paid for the first thirteen weeks absence despite the conflict between the two doctors over her medical condition. The respondent organisation also operates a non-contributory income continuance plan which applies to employees after thirteen weeks absence due to illness. The claimant is free to avail of this plan and Mr. Boss wrote to her on five separate occasions in 1997 in respect of this plan. According to the respondent the claimant has, to-date, refused to fill out the appropriate forms to benefit from the plan.

4.9 The respondent cites the definition of sexual harassment in the Code of Practice of Measures to Protect the Dignity of Women and Men at Work. In it sexual harassment is defined as:

“unwanted conduct of a sexual nature or other conduct based on sex affecting the dignity of women and men at work”.

The code continues:

“it is the unwanted nature of sexual harassment which distinguishes it from behaviour which is welcome and reciprocal”.

The respondent, therefore, contends that the crucial issue in determining the outcome of this claim is whether or not the alleged behaviour (even if it did occur) was unwelcome. It says that the onus is on the claimant to prove that any alleged behaviour was unwelcome. The

respondent says that the claimant's own behaviour (see examples in Appendix A) demonstrates that she had no difficulty with any comments of a sexual nature. According to the respondent the claimant engaged in banter with various other members of staff. She both led and participated in jokes and comments of a sexual nature. The respondent says that the comments and jokes made by the claimant and outlined in Appendix A were witnessed by a large proportion of the staff which it says clearly proves that there can be no dispute that they did in fact occur.

- 4.10** The respondent disputes the claimant's assertion that her husband called to see Mr. Boss to attempt to get the harassment stopped. According to the respondent no such meeting ever took place. The respondent says that if such a meeting had taken place the matter would have been pursued by Mr. Boss as happened in February, 1997. The respondent also rejects the claimant's assertion that she got so upset that a complaint was not taken seriously that Mr. Boss drove her home. According to the respondent the only reason Mr. Boss would have driven the claimant home was either because she was ill at work or on one occasion she had telephoned her mother at home and there had been no reply. The claimant's mother was not in the best of health and lived alone. When there was no reply to her telephone call she expressed her concern for her mother's well-being and as a result was driven home to her mother's house. The respondent rejects the allegation that the claimant was victimised in any way for making an allegation of sexual harassment. It also rejects that work was allocated to her that should have been directed to male colleagues. The respondent states that no victimisation occurred after the claimant made her complaints in February, 1997. It also argues that it is totally inconsistent to make a complaint when no policy was in place and not to make a complaint when a policy is implemented where this policy sets out a clear grievance procedure. The respondent says that this calls into question the credibility of these allegations.

- 4.11** In conclusion the respondent makes the following points:

- The respondent organisation has a history of assisting the claimant. She was not afraid to approach management with personal problems and when she did every effort was made to assist her. The respondent therefore argues that it is inconsistent for her not to have raised alleged sexual harassment, discriminatory

conditions of employment or victimisation for raising a grievance, when past experience shows that she was not reluctant to raise any difficulties or problems.

- The claimant has a history of participating in jokes and comments of a sexual nature. As she is now saying that any jokes or comments of a sexual nature were unwelcome this, the respondent says, demonstrates another example of her inconsistent behaviour.
- The only complaints ever made to management related to alleged incidences which occurred in 1997. The respondent asks why alleged incidences which applied prior to then were not raised at that time. In response the respondent says that either they did not occur or if they did they were not seen as offensive to the claimant.
- The respondent says that no complaint was ever made about discriminatory working conditions or victimisation for making a complaint. Despite the fact that a grievance procedure existed the claimant did not avail of it. On this basis the respondent argues that no discrimination or victimisation occurred.
- The respondent contends that it has no case to answer and requests the Equality Officer to reject this claim.

5. CONCLUSIONS OF THE EQUALITY OFFICER

5.1 The case referred to me for investigation by the Labour Court was that the respondent discriminated against the claimant in terms of Sections 2(a), 2(b), 2(c) and 2(d) of the Employment Equality Act, 1977 and contrary to the provisions of Section 3 of that Act. The claimant alleges that she was subjected to sexual harassment by male colleagues over a number of years. I note that the claimant's representative has withdrawn, in writing, the claim under Section 2(c) of the 1977 Act. In making my recommendation in this claim I have taken into account all of the submissions, both written and oral, made by the parties.

5.2 The evidence presented by both parties to this claim contains serious conflicts concerning the facts of the case. It is necessary to examine the evidence and to decide, based on the facts of this claim, whether or not discrimination has occurred. I will, therefore, need to address the question of whether the balance of probabilities tips in favour of the claimant's version of events or the respondent's version of events.

5.3 I note that respondent accepts that comments of a sexual nature were being made by members of its staff. However, it bases its defence in this claim on the fact that the claimant did not find these comments unwelcome. It further states that what is of concern in this claim are the two allegations of discrimination referred by the claimant in her referral form of this claim and which occurred on 11th and 12th February, 1997. I note that, in her referral form, the claimant indicated that she was subjected to sexual harassment and discriminatory working conditions over a number of years and that she was victimised as a result of complaints she made in this regard on 11th and 12th February, 1997. As already stated this claim was the subject of a time limit hearing and the Labour Court found that the claimant had shown reasonable cause as to why the complaint was not referred within the six months time limit. I, therefore, intend to examine this claim in terms of what was referred by the claimant in her original referral.

5.4 I note that the claimant, along with another female member of staff, complained about the sexual comments to Mr. Assistant Boss in 1995. Mr. Assistant Boss said that he would inform Mr. Boss about the allegations but, according to himself, the claimant asked him not to inform Mr. Boss. Mr. Assistant Boss also said that the claimant subsequently told him that she wished to withdraw the complaint. I note that Mr. Assistant Boss did, however, mention the incident to the manager who took it upon himself to ask staff to refrain from making sexual comments in the workplace, but this had no effect. At the hearing the claimant denied that she had informed Mr. Assistant Boss that she wished to withdraw her complaint. I am satisfied that the claimant did make a complaint to Mr. Assistant Boss about November, 1995 and, apart from mentioning it to the manager, Mr. Assistant Boss took no action. I note that the claimant says that she informed Mr. Boss about the alleged harassment when he took her home because she had become so upset as a result of it. Mr. Boss accepted that he had brought the claimant either home or to her sister's house on more than one occasion but he denies that she was upset because she was the victim of sexual harassment and he also denies that the claimant informed him of the alleged sexual harassment. Because of the contradictory evidence it is unclear whether or not Mr. Boss was informed by the claimant of the sexual harassment. However, it is accepted that Mr. Assistant Boss was aware of the allegation. I consider that the complaint was of a sufficient

serious nature to warrant appropriate action by Mr. Assistant Boss e.g. investigation, even if the claimant had asked for her complaint to be withdrawn. In other words it was not good enough for the respondent to fail to act on foot of this complaint even if it was subsequently withdrawn.

5.5 In her submission the claimant gave examples of the type of comments (set out in paragraph 3.2 above) which forced her to make her complaint to Mr. Assistant Boss. The foreman denied the specific comments which were attributed to him. While the foreman denied that he made these specific comments I note that comments of a sexual nature were made and that the respondent accepts that comments of this nature were made. Furthermore I am satisfied that comments were made by a number of staff members, including the foreman, and in the presence of the manager. The respondent, in its submission and set out in Appendix A, outlined a number of comments/incidents involving the claimant. At the hearing the claimant responded to each of the comments/incidents which were attributed to her by the respondent and her comments are set out in Appendix B. It is noteworthy that, at the hearing of this claim, Mr. C withdrew himself as a witness to five specific comments/incidents set out in Appendix A namely g, i, j, v and w. I consider that the comments/incidents raised by the respondent in its submission must be examined in the context of the claimant's response.

5.6 The claimant was the senior employee at her grade in the organisation. She alleges that she was allocated work which was more appropriate to junior employees. Furthermore she found some of the work difficult to perform when she was pregnant but the work was always left for her to do despite her superiors (the foreman and manager) knowing that she found this task difficult to perform. Her difficulty had more to do with the height of the desk and the type of chair she had to sit on than the actual work involved. The claimant also says that she complained to the manager about what she considered to be the unfair distribution of work and she asked for the job list to be revised. According to the claimant the manager indicated that if she wished for the job list to be revised she would have to be prepared for the 'flak' which she would receive from her male colleagues. At the hearing of this claim the manager indicated that, when the claimant made the complaint to him, he said that there would be 'flak' if the job list was changed. The issue here is that the claimant was the senior

employee in the grade and, at the hearing of this claim, the manager indicated that, as the senior employee, she, first and foremost, should be satisfied with the tasks assigned to her. The claimant obviously was not satisfied with the tasks assigned to her and she informed the manager of this fact. The manager chose to ignore her dissatisfaction and the pertinent question is whether or not the manager would have behaved in the same manner if the claimant had been male. I note that the manager was party to the comments of a sexual nature/innuendo and the evidence suggests that the manager's treatment of the claimant, in terms of her workload, was related to her sex. In her submission the claimant has stated that she was victimised by the respondent in terms of her workload. While I accept that this is the case I am satisfied that it does not fall under the terms of Section 2(d) of the Employment Equality Act, 1977.

5.7 I note that the respondent undertook an investigation following the claimant's written complaint. As a result of this investigation the respondent drew up an anti-bullying/ sexual harassment policy and implemented it in the organisation. According to the respondent the claimant did not bring any complaints in accordance with the complaints procedure which was developed in this anti-bullying/sexual harassment policy. The policy was drawn up after the respondent undertook an investigation of the incidents reported by the claimant on 27th January and 11th February, 1997. The policy was dated 7th March, 1997 and the claimant has been absent from work on sick leave since 24th March, 1997. At the hearing of this claim the claimant was critical of the respondent for not having produced a written report of the investigation and she said that she had the expectation that the respondent would have acknowledged the problem and outlined the actions it proposed to take as a result. Following the hearing of this claim the respondent said that the original notes, taken by Mr. Assistant Boss of meetings with staff as part of the investigation into the written complaints made by the claimant, were not available.

5.8 A number of other issues were raised during the course of this investigation which I consider warrant mention:

- The claimant referred a claim of discrimination on the basis of her marital status in terms of Section 2(b) of the Employment Equality Act, 1977. She argued that the sexual harassment she experienced was related to that fact that she is married and

has a family. Under Section 2(b) of the 1977 Act discrimination is taken to have occurred where because of her marital status the claimant was treated less favourably than another person of the same sex. In this case the claimant contends that she was sexually harassed by male colleagues. Therefore, I am satisfied that she was not discriminated against on the basis of her marital status.

- The respondent, in its submission, stated that on 4th February, 1993 the claimant and her husband met with Mr. Boss and sought financial assistance from the respondent organisation. According to the respondent Mr. Boss had brought this request to the Board of the organisation and he was instructed to make available to the claimant and her husband the organisation's chartered accountant. At the hearing of this claim the claimant denied that she sought financial assistance from the respondent organisation. She stated that she had mentioned her financial difficulties to Mr. Boss and that he had offered her the services of the chartered accountant. The claimant pointed out that the report from the chartered accountant to Mr. Boss regarding the consultation is dated 4th February, 1993 this is the same date as the claimant is alleged to have asked Mr. Boss for financial assistance. According to the claimant it would not have been possible for her to have requested financial assistance from Mr. Boss and for him to have sought permission from the Board of the organisation and for the meeting to have taken place with the chartered accountant all on the same day.
- According to the respondent, in its submission, no language of a sexual connotation was used in the workplace after the anti-bullying/sexual harassment policy was implemented in the organisation. However, in its submission it refers to the fact that a male member of staff told a rude joke after the policy was put in place. The respondent said that the claimant found the joke hilarious and the claimant did not deny this.
- In its submission the respondent said that it took the claimant several weeks to submit a written complaint on foot of its request following her verbal complaint. I note that the complaints related to 27th January and 17th February, 1997 and the written complaint was received by the respondent on 27th February, 1997. I cannot accept the respondent's allegation that the claimant delayed unduly in making her written complaint.

5.9 During the course of this investigation other issues were raised by the parties and discussed at some length. I note them here to record the fact that they were discussed. However, I am satisfied that they are not directly relevant to the main issue of this claim of sexual harassment.

- At the hearing of this claim a dispute arose as to whether or not the claimant worked for a named person. Following the hearing the respondent produced documentary evidence which, it held, proved that the claimant had previously worked for this named person. In response the claimant said that the respondent

requested a reference from the named person but that she actually had been recruited by this person's uncle. In bringing up this issue the respondent sought to undermine the claimant's credibility and said that it brought into serious doubt her credibility in relation to the evidence she had given.

- At the hearing of this claim reference was made to a conference on sexual harassment in Dublin Castle. According to the respondent the claimant had stated at the hearing that no conference on sexual harassment and bullying had taken place in Dublin Castle around January/February, 1997. In a follow-up submission to the hearing the respondent submitted a copy of the conference programme which took place on 24th February, 1997 in Dublin Castle. In response to this the claimant said that the respondent had referred to this conference at the time limit hearing in the Labour Court and had said that after this conference he was hit with a sexual harassment claim. She said that, around 22nd April, 1999 she contacted Dublin Castle to establish if such a conference had taken place and was told that no such conference had been held in Dublin Castle. According to the claimant it was on this basis that she stated that no such conference had taken place. She said that this was the impression she had been given and she had not deliberately lied about this matter.
- The respondent submitted evidence to demonstrate that it had attempted to find employment for the claimant's husband. This had been denied at the hearing of this claim. The claimant in response to the evidence submitted by the respondent said that, she regretted that her husband was being dragged into this investigation. She said that her husband had no recollection of having ever met the person named by the respondent, but he did recall speaking to him on the telephone. It is noteworthy that the evidence submitted by the respondent is a letter from the named person dated 22nd September, 1999 and stating that the contacts with the claimant's husband happened sometime during 1993/1994.
- The respondent said that the Union, at the hearing of this claim, produced evidence which stated in a document dated 6th April, 1998 that warnings which had issued to certain individuals would be scrapped and that their jobs would be guaranteed if these individuals assisted the respondent with this case. The respondent states that the Union was selective in the documents presented and it produced other documents which post-dated the document presented by the Union and which reject any assertions made in the earlier documents.
- The claimant submitted solicitor's letters which she had received from a solicitor acting for Mr. Boss in which he threatened her with a High Court action in relation to an incident which had happened outside the workplace. According to the solicitor's letter Mr. Boss was accusing the claimant of having castigated his character in a most vicious manner in public and audible to many of the people present. In submitting these documents to me the claimant said that it was her belief that Mr. Boss had threatened her with the High Court to intimidate her into withdrawing her claim of alleged sexual harassment under the Employment

Equality Act, 1977.

5.10 In conclusion I find that the claimant was subjected to sexual harassment in her place of work. She informed management of this fact and no action was taken to remedy the situation (paragraph 5.4 refers). I note that the claimant has been absent from work on sick leave since 24th March, 1997. The respondent organisation operates a non-contributory income continuance plan which applies to employees after thirteen weeks absence due to illness. The claimant has failed to complete the appropriate forms to benefit from this plan despite having been asked to do so, by the respondent organisation, on a number of occasions.

6. CONCLUSIONS OF THE EQUALITY OFFICER

6.1 In view of the foregoing I find that the respondent organisation did discriminate against the claimant in terms of Section 2(a) of the Employment Equality Act, 1977 when she was subjected to verbal sexual harassment at her place of work. She withdrew her claim under Section 2(c) of the 1977 Act and I am satisfied that there was no evidence of discrimination in terms of Section 2(b) and Section 2(d) of the Employment Equality Act, 1977.

6.2 I recommend that the respondent organisation pay the claimant the sum of £4,000 in respect of the distress she suffered as a result of the sexual harassment. The claimant could have availed of the respondent's income continuance plan to offset her loss of earnings as a result of her sick leave and failed to do so. On that basis, I do not intend to make any award to her in respect of loss of earnings as a result of sick leave.

Gerardine Coyle
Equality Officer

16th December, 1999

APPENDIX A

Extract from the
respondent's submission

The following comments and instances have been attributed to the claimant and compiled by her work colleagues namely the manager, the foreman, Mr. A, Mr. B, Mr. C and Ms. A. The respondents note that Mr. C is an assistant S.I.P.T.U. shop steward and Ms. A is a S.I.P.T.U. shop steward. According to the respondent the claimant's work colleagues made the following comments of their own free will.

- (a) The incident over the car sticker (car park permit):
 "You cunts, you shower of bastards, you won".
- (b) Money:
 Told a member of staff to shove the money up his *"hole"*.
 The member of staff followed her out of the room and she said:
 "you would do it for the shower of cunts downstairs".
 She made accusations that members of the staff were stealing money from the box.
- (c) When approached by the manager about messing and joking, her response was *"its OK, I'm only having my period"*.
- (d) The claimant asked for a parcel:-
 when the manager went for the parcel into the safe she was heard to say by the majority of staff - *"if you give me a handy parcel, I'll give you a blow job"*.
- (e) A report was given by a member of staff, about the claimant, that she was slapping and pinching. The staff member indicated she did not want to take the matter any further. Other members of staffs faces had been pinched on numerous occasions.
- (f) The claimant encouraged members of staff to tell lewd and very unsavoury jokes, e.g. *"turkey jokes"*. She participated in all forms of jokes, slaggings, stories and never once complained.
- (g) The claimant asked for a loan of and received a *"Blue Movies"* video.
- (h) The claimant used emotional blackmail in order to get decisions to go her way. For example, if she wanted a window open and the rest of the staff wanted it closed she would start to cry and act upset in order to get her way.
- (i) The claimant called Mr. Boss a *"Using Bastard"*.
- (j) The claimant screamed at the top of her voice at the Foreman while he was attending to a customer in the goods entrance (hatch area) because he had corrected an earlier mistake.
- (k) The claimant was having a conversation with a work colleague (Mr. D).

He called her a stupid cow, no offence was taken and she called him a “short arse little git”.

- (l) The claimant had nicknames for members of the staff for example:
 - Manager - Little Hitler
 - Mr. B - Luigi - ‘with the big head’
 - Mr. D - Little Git
- (m) The claimant said that a member of staff was going around the twist. With a pony tail in his hair and wearing female bangles and no member of female staff could walk by without him looking at their arses.
- (n) A slur was made about a member of staff about his height - “he bought his clothes in Mothercare”.
- (o) A member of staff, on going to the punch board, was approached by the claimant with what seemed like an empty plastic see through bag. On close examination the member of staff noticed a hair in the bag. He was told by the claimant that it was pubic hair and they were being put in the bag on purpose by the jewellers concerned.
- (p) Two members of staff were working on a parcel and were having a private conversation. The claimant accused them of talking about her.
- (q) The claimant was constantly talking about being victimised by her neighbours, her previous employer and Mr. Boss’s father.
- (r) No matter what work she was given, the claimant complained.
- (s) After the code of conduct was drafted she claimed it got worse but in fact it was mainly being stirred up by the claimant for example if you walked into the upstairs room the claimant would stop talking about whatever and make you feel awkward. There was nothing said by anybody after the draft and that is a fact.
- (t) In conversation with Mr. C, he told her that he didn’t use bad language and didn’t like to hear women cursing on which the claimant stated that she would rule her out with him.
- (u) On another occasion she pointed out to the Manager “that because he had small feet he must also have a small penis” (the word ‘penis’ may have been substituted for another slang word).
- (v) At a Christmas break-up in the City Hall pub Mr. A and Mr. C felt they had to leave the party because of an incident involving Mr. D and the claimant’s young son. Mr. D was teaching the boy how to perform erotic acts by using his tongue. The child duly obliged to the merriment

of his parents who witnessed everything. Mr. A and Mr. C left as they didn't want to be involved with such lewd behaviour as both men have sons of their own.

- (w) Even after the code of conduct draft had been implemented the claimant was told a rude joke by Mr. D in the downstairs marking room beside the punch boards. To the amazement of those in the room the claimant found the joke hilarious. Mr. D only told the claimant the joke after Ms. A refused to listen, in fact she (the claimant) insisted that he should tell her.
- (x) The claimant asked Mr. C did he have grey pubic hair to match the hair on his head.

According to the respondent the above incidences were witnessed by the following:

Mr. A - a, d, f, g, k, l, m, o, r, s

Mr. B - a, b, d, f, g, h, i, k, l, n, p, q, r, s

Mr. C - a, d, f, g, h, i, j, k, n, p, q, r, s, t, v, w, x

Foreman - a, b, d, f, g, h, i, j, k, l, m, n, o, p, q, r, s, u, w

Manager - a, b, c, e, f, g, h, i, j, k, l, n, p, q, r, s

Ms. A - a, f, h, i, l, n, o, r, w

APPENDIX B

Claimant's comments
on issues raised by the respondent
and set out in Appendix A

Claimant's comments on each of the issues raised by the respondent in its submission and set out in Appendix A:

- (a) According to the claimant it was not necessary to have a car permit when she commenced employment with the respondent organisation. However subsequently it did become a requirement that all staff parking in the grounds would be required to hold a parking permit. The claimant did not park a car at the office but on the encouragement of others in the office she applied for and received a car parking permit. The claimant said that a member of the 'clique' wanted a car parking permit and there were three members of staff with permits who were not using them i.e. herself, the foreman and another member of staff at foreman level. The claimant said that the foreman suggested that they put the three names in a hat but this never happened. The foreman said that he would be getting a car after Christmas and therefore would need his permit, the other member of staff approached Mr. Boss to ensure that his permit was not taken from him and the claimant was told that she had to hand over her permit. The claimant said that when this happened she said:

"Congratulations lads, you've won again".

- (b) According to the claimant this was an incident between herself and the manager. She gave him money to hold for another member of staff who was not at work that day and the claimant had previously borrowed this money from her and wanted to return it to her. The manager was in charge of the in-house Credit Union and the claimant asked the manager to put the money into the Credit Union for the member of staff to whom the money was owed. After that the claimant was absent on sick leave. On her return to work she asked the manager for the money and he said that he could not remember her giving him money and he refused to give it to her. The claimant said that she got so annoyed that she did say to the manager **"Stick it up your arse"**. The claimant denies that after she left the room one member of staff followed her out and that she said 'you would do it for the shower of cunts downstairs'. The claimant questions how this incident could have been witnessed by three members of staff if only one member of staff followed her out of the room.
- (c) The claimant denies this incident categorically.
- (d) The claimant admits that she did use the term **"blow job"** but that she

never used it to the manager. The claimant said that the incident being referred to was one where the manager was preparing dogs for races and part of the preparation was washing them. The claimant said that her sister had just got a wash and blow dry at the hairdressers and the claimant said that she (i.e. the claimant) laughed and said something about this being a blow job.

- (e) The claimant said that her niece was working in the respondent organisation. As an aunt to a niece she would playfully give her a pinch. On one occasion the claimant says that the manager said to the claimant's niece that she did not have to put up with this, but the niece did not want to pursue it. Asked by the claimant to whom the respondent was referring, the latter confirmed that it was the claimant's niece. The foreman said that the claimant had pinched him on the face.
- (f) According to the claimant the one and only time she was at a Christmas function where Mr. Boss was present Mr. D told a lewd 'turkey joke'. She said that she was embarrassed at him telling the joke in front of Mr. Boss and that afterwards in the workplace she did ask him to tell it again.
- (g) The claimant denies this and said that it was her husband who asked the manager for the loan of the "Blue Movies" video. The claimant's husband confirmed this.
- (h) The claimant denied this.
- (i) The claimant said that she did not recall having called Mr. Boss a "Using Bastard". She asked in what context did she call him this. According to the respondent the claimant had been out on two weeks sick leave and Mr. Boss asked if she would work on a Saturday. It was coming up to Christmas and they were busy. The following week the claimant received her pay and was not paid double time for having worked the Saturday because she had not been working the week previous to the Saturday. The respondent said that, on realising that she would not be paid double time, she called Mr. Boss a "Using Bastard". The claimant said that had she known that she would not be paid double time for working on the Saturday she would not have come in and for that reason called Mr. Boss a '**Using Bastard**'.
- (j) The claimant said that she performed a task based on the written instructions. The foreman approached her and asked in an aggressive tone why she had done the task in the manner in which she had done it. He

reported it to Mr. Boss and the claimant said that the manager said to the foreman "I'll get her". The next day Mr. Boss called her to his office and pointed to a fault on something else that the claimant said could not possibly be attributed to her. She said that it was obvious that the manager was "getting it in for her". The claimant became upset and Mr. Boss drove her to her sister's house. The claimant said that she asked Mr. Boss what she should do about this and he asked her to leave it as his wife had had a miscarriage. The claimant said that, as a result, she dropped the matter.

- (k) The claimant said that she could not recall calling Mr. D a "short arse little git".
- (l) The claimant denied that she ever called the various members of staff by the nicknames given by the respondent. She said that Mr. A had given Mr. B his nickname.
- (m) The claimant said that she has no clue what the respondent is talking about. Furthermore she said that she never describes a '**bangle**' as a "female bangle".
- (n) The claimant denied saying this.
- (o) The claimant accepts that this incident did happen. She said that she would possibly have said it to Mr. C and Ms. A and one or two other female members of staff but she definitely did not say it to the foreman.
- (p) The claimant said that she did not know what the respondent was talking about or the identity of the two members of staff. According to the respondent the two members of staff were Mr. C and another male member of staff and the incident occurred pre 1994. The claimant disputed the incident.
- (q) The claimant said that she had been involved in a legal dispute with a previous neighbour and this would have been known to the other staff members. The claimant asked the respondent to clarify the nature of the victimisation with her previous employer and with Mr. Boss's father. After the respondent explained the nature of the victimisation (which concerned her car) with her previous employer the claimant said that the incident could not have happened because she did not work for the person named as her employer by the respondent and at the time of the incident she did not have a car. No details were given by the respondent of the nature of the victimisation with Mr. Boss's father and the claimant said that she got on very well with him.
- (r) The claimant denied that she complained every time she was given work. She did, however, complain about other people being spared certain items

of work.

- (s) The claimant denied this.
- (t) The claimant's comment on this was that it was a form of sexism whereby it was OK for men to use bad language but not for women.
- (u) The claimant denied that she said this and stated that she could not tell the size of the manager's feet.
- (v) The claimant said that she became physically sick when she read this. She asked to be shown what erotic act her 5 year old son had been doing.
- (w) The claimant said that she worked with Mr. D. She said that she would have encouraged him to tell the joke and she would have laughed at it. The claimant said that if she was considered to be as bad as them then why were they amazed that she found the joke hilarious.
- (x) The claimant said that there is no way that she asked Mr. C this question. She said that, as an adult, she could make a good guess on the issue.