

**OFFICE OF THE DIRECTOR OF EQUALITY INVESTIGATIONS**

**EMPLOYMENT EQUALITY ACT, 1977**

**EQUALITY OFFICER'S RECOMMENDATION NO. EE 13/2000**

**PARTIES**

**Six Named Female Complainants  
{Represented by S.I.P.T.U.}**

**and**

**U.D.V. Operations Ireland Limited  
{Represented by I.B.E.C.}**

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**1 Dispute**

- 1.1 This dispute concerns a claim by six named female complainants that U.D.V. Operations Ireland Limited discriminated against them on the grounds of their sex in terms of Section 2 of the Employment Equality Act, 1977 and in breach of Section 3 in relation to access to permanent employment.

**2 Background**

- 2.1 The company operates a recall list from which it takes temporary people as demand dictates. Thirty three people, including the complainants, were on the list in September 1997, at which time the company advertised six new permanent posts. There were forty-five applicants, 25 males and 20 females, for the positions, including the complainants. Following a selection process five males and one female were appointed to the positions. The six complainants were unsuccessful.

The Union maintains that the complainants were discriminated against by the Company on grounds of their sex within the meaning of Section 2 and in contravention of section 3 of the Act in relation to access to the permanent positions.

- 2.2 In 1998, the complainants through their Union referred the dispute to the Labour Court. The Labour Court referred the case in October, 1998 to an Equality Officer for investigation and recommendation. The names of the complainants, as submitted to the Labour Court by the Union, are Ms E. Caulfield, Ms B. Redmond, Ms M. Reddy, Ms V. Carey, Ms M. Dalton and Ms J Hanlon.. In the course of the Equality Officer's investigation he received written submissions from the parties. After receipt of the submissions a joint hearing with parties was held on 16 July 1999. Subsequent to the hearing further submissions were received from the parties. The last correspondence received in the matter was in March 2000.

**The Complainants' Case**

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**The Complainants' Case**

**3.1** The Union claims that the Company discriminated against the six named complainants in the opportunity for permanent employment in the six new positions of general operatives. The Union maintains that the respondent discriminated against the complainants,

in the criteria used for selection

in the interview procedures

**3.2** In support of its case the Union submits that the complainants have significantly longer service than those appointed on the official temporary recall list, they are equal in skill utilisation's site and they do similar or like work as temporary employees. The Union asserts that therefore there is no objective reason why they would not have been selected for permanent employment other than gender prejudice.

#### **4 The Respondent's Case**

**4.1** The recruitment process involved four separate interview "boards" short-listing applicants to a group consisting of all the Unit Managers and the Production Manager. The Company states that all forty five applicants were interviewed. The company states that the management group, after discussions on the seven males and four females short-listed, made the appointments to the six positions.

**4.2** One interview board, made up of two Unit Managers, interviewed those on a particular shift and drew up a short-list of five people, including the complainant Ms Carey.

Mr D Hogan, a Unit Manager, interviewed four of the complainants and Mr Golderick another Unit Manager interviewed complainant Ms Caulfield. These two Unit Manager, with a third Unit Manager discussed their interviews with one and another and drew up a short-list of six. Ms Caulfield and another

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complainant Ms Redmond (deceased) were among those short-listed here. In relation to Ms Redmond the Company states that before she was referred to the Management Group she withdrew her job application.

- 4.3** The three complainants who were not short-listed were all interviewed by Mr Hogan. The company submits that the reasons why two of these complainants were not short-listed was because they showed a hostile attitude at interview. In relation to the third complainant, not short-listed, the Company submits that she said very little at interview and did not convince Mr Hogan that she really wanted the job.
- 4.4** The Company submits that the two short-lists were then discussed by the management Group. At this meeting each Unit Manager was asked to put down in writing on a piece of paper their own personal choice of the six people each would appoint if given the freedom to do so. The Company states that there were three names which emerged as a choice of all the unit managers. Further debate took place as to who should fill the last three positions. These names were agreed at the meeting.

## **5. Conclusions of the Equality Officer**

- 5.1** The Union contends that the Company exercised unlawful discrimination against the complainants in relation to six new and vacant positions of general operatives. In support of its case the Union points to the criteria used for selection and the interview procedures. The Company rejects that was either direct or indirect discrimination against any of the complainants.
- 5.2** It seems to me that the issues I must examine and consider is whether or not the criteria and procedures used by the Company of themselves and/or their implementation establishes or infers unlawful discrimination.

In my opinion it is not the function of an Equality Officer to decide whether or an employer has adopted the best or most suitable selection process for the filling

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of posts. It is an Equality Officer's function to examine the available evidence and deduce from it whether or not an employer's actions result in a person or persons of a particular sex being treated less favourably by reason of their sex.

**5.3** The selection process adopted by the Company, in the present case, involved all 33, 17 females & 16 males, on the recall list (temporary employees), together with 3 females and 9 males other temporary employees, being interviewed by either a Unit Manager or, in some cases, by two Unit Managers. The Unit Managers nominated 11 employees, all of whom were on the recall list, to be assessed by a Group made up with the nine Unit Managers, plus the Production Manager. The Company advises that the "Group", at the outset, was asked to write down their choice and as three names emerged as a choice by the Unit Managers these were selected. The Company further advises that a discussion and debate took place among the members of the "Group" in relation to the other three positions. The final outcome of the process was that from the four females and the seven males assessed five males and one female were selected to fill the permanent positions.

**5.4** I note that the Company points out that suitability to operate industrial machinery was an essential element of the job. I further note that the Union, in a submission subsequent to the hearing, submits that five of the complainants had experience operating machines prior to working for the Company. The Union also submits that the "interview" book records notes on three of the five successful male applicants and the notes show that two of them had previous machine operating experience. I have examined the "interview" book and I note that it states that one of the complainants, Ms Caulfield, had "no previous exp". I note that this complainant was nominated to the "Group". The "interview" book records notes on four of the other complainants but no reference is made to any of them having previous machine operating experience. In my opinion as at least two of the female applicants and two male applicants nominated to the "Group" had no previous experience in the operation of machines I cannot hold that females

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- 5.5** The Union maintains that there were no objective reasons why the complainants would not have been selected for permanent employment other than gender prejudice, particularly, as the complainants had significantly longer service on the recall list, they were equal in skill utilisation and they do like work with those appointed. I note that the selection of permanent employees was not confined to the recall list but also included 12 other temporary employees. I further note that the Union/Management agreement on the "Temporary Staff Recall Procedure" does not give any right of permanency to those on the list nor does it does give any rights based on a temporary employees position on it. I can find no reason, in the context of equality legislation, that suggests a bias on the part of the Company because it did not have regard an applicant's place on the seniority list as a determining factor.
- 5.6** It seems to me that if one was to accept that the complainants, as claimed by the Union, were equal in skill utilisation and they did like work as temporary employees with those appointed that their seniority on the recall list should be a consideration. As already stated, the selection process in place here is based on the performance of candidates at interview followed by an assessment process. I note that the female appointed, in the present case, was lower placed on the recall list than any other successful applicant. I do not hold with the Union's view that a candidates position on the recall list should be a consideration neither do I take any inference of unlawful discrimination by its absence as a consideration. If the Union's view prevailed it would mean that all 13 applicants, made up of both sexes, who are not on the recall list would have no possibility of being successful.
- 5.7** I have no reason to doubt the Company's statement that two of the complainants, Ms Caulfield and Ms Carey, were nominated to the "Group" assessment. I note that the Company's statement that another nominated candidate Ms Redmond, a

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- 5.5** The Union maintains that there were no objective reasons why the complainants would not have been selected for permanent employment other than gender prejudice, particularly, as the complainants had significantly longer service on the recall list, they were equal in skill utilisation and they do like work with those appointed. I note that the selection of permanent employees was not confined to the recall list but also included 12 other temporary employees. I further note that the Union/Management agreement on the "Temporary Staff Recall Procedure" does not give any right of permanency to those on the list nor does it does give any rights based on a temporary employees position on it. I can find no reason, in the context of equality legislation, that suggests a bias on the part of the Company because it did not have regard an applicant's place on the seniority list as a determining factor.
- 5.6** It seems to me that if one was to accept that the complainants, as claimed by the Union, were equal in skill utilisation and they did like work as temporary employees with those appointed that their seniority on the recall list should be a consideration. As already stated, the selection process in place here is based on the performance of candidates at interview followed by an assessment process. I note that the female appointed, in the present case, was lower placed on the recall list than any other successful applicant. I do not hold with the Union's view that a candidates position on the recall list should be a consideration neither do I take any inference of unlawful discrimination by its absence as a consideration. If the Union's view prevailed it would mean that all 13 applicants, made up of both sexes, who are not on the recall list would have no possibility of being successful.
- 5.7** I have no reason to doubt the Company's statement that two of the complainants, Ms Caulfield and Ms Carey, were nominated to the "Group" assessment. I note that the Company's statement that another nominated candidate Ms Redmond, a

complainant, withdrew her application before assessment by the "Group" is accepted by the Union. I note that the other three complainants they were interviewed by Mr Hogan.

**5.8** In relation to the interviews carried out by Mr Hogan, he stated at the hearing, that he prepared a list of questions which he put to the candidates he interviewed. I note that the outcome of the interviews Mr Hogan carried out on 9 females and 6 males was that two females, including a complainant, Ms Redmond, was nominated to the Group. I further note that he did not nominate any males and that one of the females he nominated was selected by the "Group" for appointment. In my opinion the outcome of Mr Hogan's interviews does not establish or infer unlawful discrimination against the complainants.

**5.9** The Union argues that questions in relation to an aptitude test from Mr Hogan, which featured in some of the interviews he carried out on females, was an "inessential requirement". I note that at least one male was also questioned in this matter by Mr Hogan. I further note, from the "Interview" book that Ms Redmond's attitude to an aptitude test did arise and that it did not arise in relation to the another female nominated by him. There is no evidence available to me that indicates that the question of ones attitude to an aptitude test arose in respect either males or females interviewed by the other Unit Managers. On the evidence available to me I could not hold that applicants' attitude to an aptitude test was a requirement that they had to meet.

**5.10** Having regard to the views that I have expressed in the preceding paragraphs I cannot hold that the criteria and procedures of themselves and/or there implementation establishes or infers unlawful discrimination, either directly or indirectly, against any of the complainants. Accordingly, I find that the respondents did not discriminate against any of the complainants in contravention of Section 3 in terms of Section 2 of the Employment Equality Act, 1977. In reaching my conclusions in this case I have taken into account all the submissions both oral and written made by the parties.

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**6**     **Recommendation**

- 6.1**    In view of my conclusions in the preceding paragraphs, I find U.D.V. Operations Ireland Limited did not discriminate against any of the six named female complainants contrary to the provisions of the Employment Equality Act, 1977.

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Jim Clerkin,  
Equality Officer.

5 April, 2000.