

OFFICE OF THE DIRECTOR OF EQUALITY INVESTIGATIONS

EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATION NO: EE 17/2000

**A Female Claimant
(Represented by Connellan Solicitors)**

AND

**A Company
(Represented by F. J. Gearty & Co. Solicitors)**

File No: EP 25/1999

1. DISPUTE

- 1.1** This dispute concerns a claim of sexual harassment by a named female claimant that a named respondent discriminated against her 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.

2. BACKGROUND

- 2.1** The claimant sets out two occasions towards the end of April, 1999 when she alleges that she was sexually harassed during the course of her employment. She alleges that the respondent failed to take the allegations seriously, failed to investigate the allegations and failed to provide her with a safe working environment.
- 2.2** Consequently the claimant approached a firm of solicitors in an endeavour to achieve satisfaction and the solicitors wrote to the respondent on the claimant's behalf requesting the respondent to take appropriate action within a defined period of time. As a result of the respondent's failure to adequately respond to this request the claimant's representatives referred a claim to the Labour Court on 1st September, 1999. The Labour Court referred the claim to an Equality Officer for investigation and recommendation.

3. SUMMARY OF THE CLAIMANT'S CASE

- 3.1** The claimant has been employed by the respondent organisation as a cleaner since February, 1989. In her submission, she cites two incidences of sexual harassment. On 21 April, 1999 when the claimant started work at about 5.15p.m. there was a pornographic picture, which had been taken from a magazine, lying on the counter in the canteen. According to the claimant it is her belief that the respondent did not have any system in place to ensure that offensive material was not present in the workplace.

3.2 The claimant says that on 24th April, 1999 she commenced work after 9.00a.m. When she opened the door of her locker she found a postcard which had been clearly pushed under her door. The postcard had been posted to an employee of the respondent organisation. It had an offensive picture on the front and the writing contained derogatory comments about the claimant and her daughter. According to the claimant she immediately spoke to her supervisor (the foreman) and unequivocally outlined her concern, annoyance and distress to him. The claimant says that his response was, to say the least, unhelpful and insensitive and he clearly did not view the matter with any degree of concern. In fact his response was to shred the postcard and dump it in the waste bin stating “*this happens everywhere*”. Apart from the distress which the postcard itself caused, the supervisor’s/foreman’s lack of concern and failure to investigate the matter considerably worsened the situation, according to the claimant.

3.3 Following the incident on 24th April, 1999 the claimant approached a firm of solicitors for assistance. On the claimant’s behalf the solicitors corresponded with the respondent by letter dated 26th April, 1999. The claimant says that, on 28th April, 1999 the Director of the respondent organisation called her to a meeting. He confirmed receipt of the solicitor’s letter and held that the claimant was “*blowing it (the incident with the postcard) out of all proportion*” and he wanted to know what the claimant hoped to achieve. The claimant says that she informed him that she wanted the matter investigated and that she wanted an apology. According to the claimant the Director of the respondent organisation made it clear to her that he had no intention of investigating the matter and that no apology would be forthcoming. The claimant says that she asked the Director what he would do if his wife or daughter received such a postcard and his response was that he would “*burn it*”. According to the claimant the Director of the respondent organisation displayed a total lack of concern for her plight and distress and was quite clearly more concerned at the damage which he felt would be caused to the supervisor’s/foreman’s reputation arising from the letter sent by her solicitors dated 26th April, 1999. The claimant says that the Director’s response was to threaten her with a solicitor’s letter and he summarily terminated her employment by stating that she was no longer welcome on the premises.

- 3.4** The claimant's representatives submitted a number of letters in relation to this case. In a letter from the Employment Equality Agency (now the Equality Authority) to the respondent the Agency refer to an allegation by the claimant that she was subjected to unwelcome advances and suggestive comments from two male colleagues at the Christmas party. In the response to this letter from the respondent, the Director of the respondent organisation denied any knowledge of what is alleged to have happened at the Christmas Party. The Director said that the first he heard of the postcard incident was the telephone call from the claimant after she had spoken to the solicitor and the solicitor's letter itself. According to the Director he had always found the claimant to be a good honest worker. The Director said that he asked the claimant what she hoped to achieve apart from drawing more attention to the whole episode. According to the Director the claimant seemed to think that the person that is alleged to have put the card under the shower door would admit it. When the Director said that he did not think so, he said that the claimant became very upset and said that there was no point in her continuing to work in the respondent organisation. According to the Director he parted amicably and he wished her well. It is the respondent's contention that the claimant was not dismissed, rather she left of her own free will.
- 3.5** In August, 1999 the claimant's representatives put, in writing, to the Director of the respondent organisation details of the allegations against the respondent organisation. The details of this letter are set out in Appendix A.

4. SUMMARY OF THE RESPONDENT'S SUBMISSION

- 4.1** According to the respondent it knows nothing whatsoever of the alleged incident referred to by the claimant as having taken place on 21st April, 1999. No mention was ever made to the respondent and this allegation was only first mentioned when the subsequent allegation/complaints were made in relation to the postcard.
- 4.2** The respondent says that the postcard which the claimant states was found by her in her 'locker' was addressed to an employee in the Engineering Section of the organisation. The respondent denies any knowledge of how the postcard came to be put there i.e. a cupboard

in the shower area where various cleaning items were and are stored and not the claimant's 'locker' as suggested. The respondent says that several such postcards were circulating in the locality around this time, having apparently been sent by some members of the local football team and/or their supporters who had gone on a foreign holiday.

- 4.3** The respondent says that it was the claimant's son who first mentioned to the foreman that his mother was upset at seeing the postcard and not the claimant, as is suggested. According to the respondent the foreman immediately went to the claimant in the canteen and was shown the postcard. The respondent says that both the foreman and her son examined the postcard and as it was not addressed to the claimant the foreman tried to assure her that he would look into the matter as far as possible, but as the postcard had not been addressed to her she should not concern or upset herself with it. According to the respondent it was in a genuine effort to ease the situation that the foreman tore up the card and tried to persuade the claimant of its insignificance from her point of view. The respondent says that the foreman did enquire from some of the employees as to how the postcard came to be where it was found but to no avail.
- 4.4** Within a few days of the incident the respondent says that the Managing Director of the respondent organisation received a phone call from the claimant informing him that he would be receiving a solicitor's letter. According to the respondent this was the first notification which the Managing Director had received of the incident from the claimant. The Managing Director later spoke to the claimant and expressed his surprise at receiving such a letter from solicitors on her behalf. The respondent says that the Managing Director tried to explain to the claimant that he had no way of investigating the postcard any further, he had no way of knowing who sent it and as it was not addressed to the claimant he suggested to her that she ignore the card rather than draw more attention to the entire episode.
- 4.5** The respondent says that the claimant left the employment of her own volition and it strenuously and categorically denies that she was dismissed. The respondent submits that all reasonable steps were taken by them (including the foreman and the Managing Director) in relation to the matter and they deny any discrimination against the claimant.

5. CONCLUSIONS OF THE EQUALITY OFFICER

- 5.1** The matter for consideration is whether the claimant was discriminated against by the respondent in terms of Section 2(a) of the Employment Equality Act, 1977 and contrary to the provisions of Section 3 of that Act. In making a decision in this case I have had due regard to the submissions (both written and oral) made to me by the parties to the case.
- 5.2** The claimant was employed by the respondent organisation as a cleaner. She worked on two days per week namely Wednesdays from 5.15p.m. to 7.15p.m. approx. and on Saturday mornings from 9.00a.m. to 11.00a.m. approx. According to the claimant there was a pornographic picture left on the counter of the canteen on 21st April, 1999. The claimant saw it when she attended for work at about 5.15p.m. On 24th April, 1999 the claimant commenced work shortly after 9.00a.m. and on opening the door of the room which contained her cleaning supplies and equipment she found a postcard which had been pushed under the door. This room was located in the gents toilets which was off the canteen. The postcard had an offensive picture on the front of it and was addressed to an employee in the respondent organisation. It was sent from Spain and was signed by a local football club. In the message on the postcard a derogatory comment was made which drew a link between the claimant and her daughter to the offensive picture on the front of the card.
- 5.3** The claimant informed her son, who also worked for the respondent, about the card and asked him to get Mr. A. Mr. A has been referred to by the claimant in her submission as the foreman but, according to respondent at the hearing of this claim, Mr. A is a Director who is second in command in the respondent organisation and who is effectively a supervisor of staff. According to the claimant Mr. A did not view the matter with any degree of concern, despite her annoyance and distress. Instead he tore up the postcard and consigned it to the wastepaper basket and said that "*this happens everywhere*". The claimant alleges that Mr. A's obvious lack of concern and refusal to investigate the matter considerably worsened the situation. The claimant went to her solicitor who wrote to the respondent on her behalf. On receipt of this letter Mr. B (the main Director of the

respondent organisation) called the claimant into a meeting. The claimant alleges that his view was that she (the claimant) was “*blowing it* (the incident with the postcard) *out of all proportion*” and he wanted to know what the claimant hoped to achieve. The claimant asked that the matter be investigated and that she receive an apology. According to the claimant Mr. B made it absolutely clear that there would be no investigation and no apology. The claimant says that she asked Mr. B what he would do if either his wife or his daughter had received such a card and his response was that he would “*burn it*”. It is the claimant’s contention that Mr. B displayed a total lack of concern for her position and her distress and was more concerned at the damage the allegation might have on Mr. A’s reputation.

5.4 The respondent accepts that the claimant showed the postcard to Mr. A after discovering it. It also accepts that Mr. A tore the postcard up and consigned it to the wastepaper basket. According to the respondent Mr. A tore up the postcard in a genuine effort to ease the upset for the claimant and to persuade her of the insignificance of the postcard. The respondent denies that it did not investigate the matter and, in its submission, stated that Mr. A made some enquiries amongst some of the employees to try to ascertain how the postcard had come to be left where it was found by the claimant, but the enquiries were to no avail. At the hearing of this claim the respondent indicated that the nature of the investigation was discreet enquiries by a Mr. C who is the foreman and who has ‘on the ground’ contact with the employees. He obtained no information from his discreet enquiries. Mr. A spoke with the employee to whom the postcard was addressed and asked him why he had not received the card himself. I find that there was no evidence to suggest that the addressee of the postcard had not received it but Mr. A said that if he had received it he would have put it in his pocket and taken it home.

5.5 There were three issues identified by the claimant in this claim. The first relates to the comments of a sexual nature which were made to her at the Christmas Party by two of the respondent’s employees. I note that the claimant did not report the incident at the time to the respondent who became aware of it for the first time on 21st June, 1999. Therefore I am satisfied that the respondent was not in a position to investigate the incident at the time given that it had no knowledge of it. The second issue relates to the pornographic picture which

was left on the counter in the canteen. This incident, according to the claimant, happened on 21st April, 1999. The claimant should have notified the respondent of this incident on the day it happened or even on the next day, but she failed to do so. The respondent became aware of the incident on 26th April, 1999 when it was mentioned to the respondent in a letter from the claimant's solicitor. As the incident had only happened five days earlier there is no reason why the respondent could not have investigated it. The respondent, however, failed to do so. The third issue relates to the postcard (the nature of which is described above) which was pushed under the door of the room containing the cleaning supplies and equipment used by the claimant. I note that the claimant was the only employee who had a key to this door. Mr. B held the spare key to this room in his office. The claimant informed the respondent of the postcard immediately on receipt and was dissatisfied with the response she received.

5.6 In relation to the postcard incident there is no question over the fact of the existence of the postcard and that the claimant immediately informed the respondent of it. However, there is a difference of opinion as to the respondent's attitude to the postcard incident. The claimant states that the respondent was not prepared to undertake an investigation of the incident whereas the respondent contends that it did investigate the matter. There is no evidence that the matter was investigated and if any investigation did take place it was very informal in nature. The claimant has a right to a safe working environment free from any threats including threats of sexual harassment. I am satisfied that the respondent failed in its duty to provide her with a safe working environment free from the threat of sexual harassment. At the time of the incident the respondent employed about 45 staff, at least 40 of whom were male. The claimant was employed as a cleaner while the four other females were employed as office staff. As part of the claimant's job she had to clean the canteen which was used exclusively by the male employees. She also had to clean the gents toilets which were off the canteen. The claimant was, therefore, in a more vulnerable position in relation to threats of sexual harassment than any of the other females employed by the respondent.

5.7 In order to provide the claimant with a sense of security in her work environment the respondent should have made known its objection to this type of harassment to which the

claimant was exposed. It could have proved its commitment to providing a safe place of work by undertaking a formal investigation of the incident. This would have entailed formal meetings between management and each individual staff member and a written record kept of these meetings. There was an onus on management in the respondent organisation to highlight to staff that incidents of this nature were not going to be tolerated within the organisation. At the time of the complaint the respondent organisation did not have a sexual harassment policy. I note that, in a letter to the respondent, the claimant's representatives mentioned the lack of any policy in the respondent organisation. I note also that the respondent did not endeavour to put in place a sexual harassment policy even after the incident and pending the Equality Officer's investigation of this claim.

5.8 At the hearing of this claim concern was expressed that this claim could have a damaging effect on Mr. A's reputation given that he is married with a number of children. In this particular case there is no allegation against any person, including Mr. A, and there was no evidence that anyone sexually harassed the claimant, either physically or otherwise. The issue in this case is whether or not the respondent provided the claimant with a safe working environment free from sexual harassment and I find that the respondent failed in this regard.

5.9 In the respondent's defence its representatives referred to the High Court case of the Health Board and BC and the Labour Court¹. In his judgement Mr. Justice Costello held that "***an employer is vicariously liable where the act is committed by his employee within the scope of his employment***". The Labour Court in the case of A Company and A Worker² held that the Company was liable because the person who was alleged to have sexually harassed the complainant in that case was in a position of authority over her. These cases are not directly relevant to this claim. However it is clear that, from the Labour Court ruling, that there is an onus on the respondent where the conduct towards the female claimant would not have been directed towards a male worker. In this claim the respondent

¹ Reported in Employment Law Reports Vol. 5 No. 1 1994

² Order No. EEO294 of 17th June, 1994

failed to properly investigate the pornographic picture and the postcard incidents and, therefore, failed in its duty to provide the claimant with a safe working environment. This, in my view, would be in accordance with the Labour Court's decision in the above cited case.

- 5.10** The issue of whether the claimant and her son left the employment of their own free will or were dismissed are not issues which are relevant to this forum. Hence it is not appropriate for me to elaborate on these issues in terms of the comments made at the hearing.

6. RECOMMENDATION

- 6.1** Having regard to the foregoing, I recommend that the respondent put in place a sexual harassment complaints procedure in accordance with the Code of Practice drafted by the Employment Equality Agency (now the Equality Authority). I also recommend that the respondent pay the claimant the sum of £1,500 in compensation for the distress she suffered as a result of the above described incidents of a sexual harassment nature and for the respondent's failure to provide her with a safe working environment free from sexual harassment.

Gerardine Coyle
Equality Officer

1st June, 2000

APPENDIX A

Extract from a letter from the
Claimant's Representative
to the Respondent

You may or may not be aware that freedom from sexual harassment is a condition of work which an employee of either sex is entitled to expect. Any denial of that freedom would constitute discrimination within the meaning of the Employment Equality Act, 1977. As the employer, you would have a particular responsibility to ensure that the work environment is free from sexual harassment.

It is our clients view that the following constitute sexual harassment and discrimination towards her:-

- (1) The lack of any policy on your part, as the employer, to prevent sexual harassment in the workplace.
- (2) The presence in the workplace of offensive material.
- (3) The unhelpful, insensitive and “couldn’t care less” response of your *foreman* when a formal complaint was made to him on the 24th April last evidenced as follows:-
 - (a) Rather than addressing the substance of the complaint, he appeared to be more concerned about convincing our client that it was not one of your employees who sent the offensive postcard.
 - (b) Again, rather than deal with the complaint, he tore up the postcard and threw it into the bin.
 - (c) His response was to the effect that “this happens everywhere”.
 - (d) His threat to terminate the employment of our client’s son.
- (4) The unhelpful, insensitive and “couldn’t care less” attitude of the *Managing Director* during a meeting on the 28th April as follows:-
 - (a) Stating that our client was “blowing (it) out of all proportion” and asking “what do you hope to achieve?”.
 - (b) When asked for an apology, he dismissed the notion out of hand. (In your letter dated 3rd August you state that, from investigations carried out, nobody would admit anything. In actual fact, during the course of the meeting on the 28th April you rejected outright any possibility of making any enquiries from the work force).
 - (c) When asked how he would feel if his wife or daughter received a similar postcard his response was that he would “burn it”.
 - (d) Threatening to send a solicitors letter to our client.

- (e) Total lack of concern for our client's plight and distress while at the same time expressing grave concern at the perceived damage to the *foreman's* reputation arising from the fact that a girl from a *named place* was working in the offices of a *named firm of solicitors*.
- (f) Responding to a request for an apology in the following terms:-

"if you are expecting an apology from *the foreman* you'll be waiting a long time - you won't get one!".
- (g) Terminating our client's employment summarily by confirming that she was no longer welcome in the premises.

To compound matters, and while it does not in itself constitute sexual harassment or discrimination, on 1st May our client's son went to work in the normal way. In an aggressive fashion, he was confronted by the *foreman* in relation to the letter written by a *firm of solicitors on behalf of our client*. He was then told that it would be his last Saturday ever working with you, and the *foreman* went on to say that he would personally make sure that he (*our client's son*) would never get a job elsewhere unless "these charges" were dropped.

With respect, these are the issues which our client wants addressed. That you may not know the name of the person who sent the postcard, that you may not know the name of the person who put the postcard under the door and that nobody will admit to anything is, we would respectfully submit, irrelevant and misses completely the substance of our client's complaint.