

ANTI-DISCRIMINATION {PAY} ACT, 1974

EQUALITY OFFICER'S RECOMMENDATION NO.EP 07/99

PARTIES

Three Named Female Employees

{Represented by S.I.P.T.U.}

and

Dulux Paints Ireland Limited

{Represented by I.B.E.C.}

File No. EP 17/98

1. Dispute

1.1 This dispute concerns a claim by S.I.P.T.U. on behalf

of three named female complainants that they are entitled under the terms of the Anti-Discrimination (Pay) Act, 1974 to the same rate of remuneration as paid to a named comparator.

2 Background

- 2.1** The complainants and the comparator involved in this claim were, at the time of this claim, all employed by Dulux Paints Ireland Limited. The Company is long established in the manufacture of paint and has its manufacturing plant, warehouse/distribution/ head office in Cork. The Company has over 150 permanent employees.
- 2.2** The three complainants, Ms Lilly O'Callaghan, Ms Mary O'Brien and Ms Kathleen O'Doherty, like the named comparator Mr Noel Bevan, at the time of the claim, all worked in the Combined Filling Department. The comparator, a temporary employee, was designated as a Filling Machine Operator. The three complainants work as Fillers.
- 2.3** A works job evaluation programme in the Company was completed successfully in 1983. The Union and the Company agreed in 1996 to establish another works job evaluation programme. The programme was never completed. The Union believes that the complainants perform "like work" with that performed by the named comparator and therefore they are entitled to same rate of pay as paid to him. At the time of the claim the comparator was paid at the Filling Machine Operator rate of £228.47 per week and the complainants were on the weekly rate of £219.75.

2.4 In June, 1998 the Union served a claim in respect of the three named female employees. The Equality Officer held a preliminary joint hearing with the parties. At the hearing the Union confirmed that the claim of like work lies under Section 3(c) of the Act. Subsequent to that hearing the Equality Officer received written submissions from both parties to the case.

2.5 On the 26th and 27th of November, 1998 the Equality Officer carried out inspections of the work of the complainants and the comparator. On 11th December, 1998 the Equality Officer was informed that I.B.E.C. would be representing the Company in relation to the claim. Further submissions were received on behalf of the parties. The Equality Officer held a final joint hearing with the parties on the 26th March, 1999.

3 Summary of the Complainants' Case

3.1 The Union contends that the three complainants do "like work" within the meaning of section 3(c) of the Act with the named comparator and are therefore entitled to receive the same rate of remuneration.

3.2 In support of its case of "like work" the Union points to the job descriptions of the complainants' work as at Appendix 1. The Union accepts that the job description, at Appendix 2, represents the job of filling machine operator and that it includes details of the work of the comparator. It argues that the job of the comparator is that of the long established job of De Vree filling machine operator, as described at Appendix 3. The Union's arguments under Section 3(c) of the Act are at Appendix 4.

4 Summary of Respondent's Case

4.1 The Company rejects that "like work" as defined by Section 3(c) of the Anti-Discrimination (Pay) Act, 1974 exists between the work of the complainants and the named comparator. The Company's descriptions of the work of the complainants and the comparator, are at Appendices 1 and 2. A comparison by the Company between the duties of the complainants and the comparator is at Appendix 5. In relation to the document at Appendix 3, submitted by the Union as a job description, the Company states it is an extract from a training manual and that it does not represent a work grade.

4.2 The respondent maintains "without prejudice" to its arguments on the issue of "like work" that there are "ground other than sex" to justify the higher rate of pay of the named comparator. The Company asserts that "*..... the named comparator did not perform all aspects of the filling machine operator job at the time of the claim this occurred because he was only a short period in that particular job at the time the claim for equal pay was made.*" The respondent points out that it pays its employees, regardless of sex, the rate for the job "*from the first day of appointment to that job irrespective of whether or not that the individual can perform all aspects of the job*". The company's full submission on "ground other than sex" is at Appendix 6.

5. The Conclusions of the Equality Officer

5.1 The Act under Section 2(1) provides that a women is entitled to the same rate of remuneration as a man where both are employed, by the same employer in the same place, on "like work" unless the employer can show under Section 2(3) that the differences in the rates of

pay is justifiable on grounds other than sex. The company in this case disputes that any of the complainants perform "like work", under Section 3(c) of the Act, with the named comparator. The respondent also maintains, "without prejudice" to its arguments on "like work" that there are "grounds other than sex" to justify the higher rate of remuneration paid to the named comparator.

5.2 In making my recommendation in this case I have taken into account all of the submissions, written and oral, made to me by the parties to this case and also the work inspections which I carried out on the work of complainants and the comparator. I am satisfied from my inspections of the work of the comparator and the work of the complainants that the job description of the complainants' work at Appendix 1, as agreed by the parties, fairly reflects the jobs of filler. In relation to the filling machine operator description at Appendix 2 I am satisfied that it encompasses the work carried out by the named comparator.

5.3 I note that the Company accepts that all the complainants do like work with each other. I am satisfied with the benefit of my work inspections that they perform like work with each other in terms of section 3(b) of the Act.

Accordingly for the purposes of my comparisons it is sufficient to compare the work of one of the complainants with the work of the comparator. I selected the work performed by Ms O'Brien for comparison purposes.

At the time of my work inspections Mr Bevan, the comparator nominated by the Union, was not in the employ of the Company. However, I inspected the work of Mr William Haines, who was performing the work Mr Bevan performed at the time of this claim. I am satisfied that my work inspection here did not suffer because of the unavailability of Mr Bevan.

5.4 Section 3(c) states that two persons shall be regarded as employed on like work:-

"where the work performed by one is equal in value to that performed by the other in terms of the demands it makes in relation to such matters as skill, physical or mental effort, responsibility and working conditions."

In regard to my comparisons I have taken account of every relevant aspect of the work performed by the complainant and the comparator in relation to skill, physical/mental effort, responsibility and working conditions.

5.5 The details of my comparison are at Appendix A. In summary I have found that equal demands are placed on the complainant and the comparator with regard to "physical effort" and "responsibility" and that greater demands are placed on the comparator in terms of "working conditions". In relation to "skill", and "mental effort" I have found that greater demands are placed on the complainant. Accordingly, I hold that Ms O'Brien performed "like work" with that performed by Mr. Haines. As Mr. Haines performed the work that Mr Bevan

performed, at the time of this claim, it follows that Ms O'Brien performed "like work" with Mr Bevan. As the complainants do "like work" with each other it must also follow that each of the complainants performed "like work" with the named comparator for the purposes of Section 3(c) of the Act.

- 5.6** As I have found that the complainants performed "like work" with the comparator I will now consider whether, as maintained by the respondent Company, there are grounds other than sex justifying the difference in pay rates between the complainants and the named comparator. Section 2(3), of the Anti-Discrimination (Pay) Act, 1974, provides:

"nothing in this Act shall prevent an employer from paying to his employees who are employed on like work in the same place different rates of remuneration on grounds other than sex".

- 5.7** The onus of proof under Section 2(3) of the Act rests with the employer to show that the difference in rates of pay is on "grounds other than sex". On this issue the Company points out that the named comparator was paid the rate for the job from the first day he was at work, and was in receipt of that wage at the time of this claim, despite the fact that he had not performed all aspects of the filling machine operator job. The Company maintains that it applies the same rules in relation to payment of the rate for the job, regardless of sex, to all employees.

- 5.8** The Union does not dispute that the comparator it nominated was paid the rate for the job from the day of

his appointment or that this payment practice by the Company applies regardless of the employee's sex. However, the Union argues that the job performed by Mr Bevan was the traditional job of De Vree filling machine operator. I note that the Union points out that the De Vree No: 6 machine is in operation everyday.

5.9 I note and accept the Company's assertion that Mr Bevan was employed as a filling machine operator and that there is no such grade as that of De Vree filling machine operator. I further note that it is the Company's practice to start new employees in the filling machine operator grade on the De Vree machine. I also note that in the comparator's three month service with Company, at the time of this claim, he had only worked on the De Vree area and that he had not been trained on all aspects of the filling machine operator job. Having regard to all the evidence available to me on the grounds other than sex argument I am satisfied that the pay differential here is not related to sex.

5.10 In summary I have found that the complainants do "like work" with the comparator. I have also found that the employer has discharged the onus on it that there are grounds other than sex to justify the pay differential between the complainants and the comparator. Accordingly I have found that Ms Lily O'Callaghan, Ms Mary O'Brien and Ms Kathleen O'Doherty have no entitlement to equal pay with Mr Noel Bevan.

6 **Recommendation**

6.1 In view of my conclusions that there was no unlawful discrimination, under the terms of the Anti-Discrimination (Pay) Act, 1974, I find that Ms Lily O'Callaghan, Ms Mary O'Brien and Ms Kathleen O'Doherty have no entitlement to the same rate of remuneration as that paid to Mr Noel Bevan.

Jim Clerkin,
Equality Officer,
29th. June, 1999

COMPARISON:

SECTION 3(c)

APPENDIX A

Ms Mary O'Brien (Claimant) and Mr Noel Bevan (Comparator)

NOTE

The comparator named by the Union, Mr Noel Bevan, a part-time employee was not employed by the Company at the time of my work inspections. I inspected the work of Mr William Haines, another part-time employee, who at the time, was performing the work that Mr Bevan would have been doing if he had been in the employ of the Company.

The claimants and Mr Haines work in the Combined Filling

Department. Ms O'Brien, like the other two claimants, works as a Filler. The job of the comparator is described by the Company as that of Filling Machine Operator.

SKILL

The comparator has the skill to ensure that the pan of paint is connected to the correct head (the batch card identifies the tank to use). He uses minor skills to regulate the flow of paint from the pan and to clean pans/sieves. He uses a higher level of skill to remove/replace sieves.

The claimant has the skill to interpret the filling details on the batch sheet. She has the skill to use the weighing scales. When the need arises she uses minor skills to make height adjustments, and to regulate the paint flow, at the filler. She also has the skill to adjust the lid machine and manually lid 10 litres containers. She also uses basic numery skills to count production and record these details on the batch sheet.

In my opinion the level of skill required of both employees here is low. However, as I am satisfied that the claimant uses a greater variety of skills than the comparator it is my opinion that greater demands are placed on her than on him here.

PHYSICAL EFFORT

The work of the claimant involves her in lifting empty and full cans of paint of varying weights depending on the size of the container. She lifts the full container from the filling stand to the weighing scales and after the lids are affixed she places the containers on a pallet. The weights of the containers vary from approximately 320 grams.(250 ml tin & lid) to 14 kgs (10 ltr container). The Company informed me that on average 30 buckets (10 litre) are filled weekly by the fillers and that the comparator assists the

claimants. The claimant with the aid of a mallet puts lids on those containers holding 5 and 10 litres of paint.

The main physical effort required of the comparator is to remove/replace sieves, together with the cleaning of sieves and pans after use. The cleaning of pans requires him to use a stick and scrap paint from the side of the pan and recover the paint. If the pan had been filled with emulsion paint he uses a water hose to clean it and in the case of gloss paint he would use a solvent. The work also requires some physical effort of him to tilt a portable, with the use of a jack, manually clean and put on sieves.

The claimant either stands or sits, depending on the size of the container being filled and her preference. The work of the comparator keeps him constantly on his feet. He must climb stairs up to the floor where the pans are located. It is not unusual that the claimant, due to unavailability of the comparator and in the interest of production, would also climb the stairs to tilt a portable or to scrap the paint from it.

Having regard to the fact that most of the duties of the employees here entail some level of physical effort in the course of their working day I am satisfied that equal demands are placed on both employees under this heading.

MENTAL EFFORT

The claimant uses mental effort to ensure that the details on the containers to be filled correspond with the information on the batch e.g. colour, batch number and label. She also uses mental effort to take a master weight of the container being filled and that the weight of each and every container filled equals the master weight. In addition she uses mental effort to count production and record these details on the batch sheet. She uses

judgement, when the need arises, to make height adjustments and to regulate the paint flow, at the filler.

The comparator uses mental effort to carry out the instructions of the Supervisor. He must be vigilant to ensure that the portable is connected to the correct head. He uses mental effort to regulate the flow of paint from the pan, and must observe that the sieves and pans are clean.

As the mental effort demands on the claimant is on a continuous basis through out her working day I am satisfied that the demands placed on her here are greater than those placed on the comparator.

RESPONSIBILITY

It is comparator's responsibility to ensure a constant flow of paint to the claimant (Filler). This requires him to ensure that the sieves/pans are clean and that the correct product flows at a regulated speed to the Filler.

The claimant must ensure that the details on the containers to be filled correspond with the information on the batch e.g. batch number and label. She must use the scales to take a master weight of the container being filled and she must ensure that the weight of each and every container filled equals the master weight.

The work of both employees here comes from the Supervisor or the foreman. In the performance of their work both work alone and both work under little or no supervision.

Having regard of the level of responsibility required of both employees here I am of the view that demands placed in them under this heading are equal.

WORKING CONDITIONS

The comparator and claimant both work, in close proximity of

each other in an area that is somewhat noisy and mostly dependant of fluorescent lighting for light.

When the comparator is cleaning sieves he carries out this work in a different area of the plant. The comparator's cleaning duties particularly in using solvents and removing/replacing a sieve is work that is somewhat dirty. The claimant's duties I found overall to be clean work.

Having regard to the overall working conditions of the claimant and the comparator it is my view that there is greater demands placed on the comparator than on the claimant in terms of working conditions.