

ANTI-DISCRIMINATION (PAY) ACT, 1974

EQUALITY OFFICER'S RECOMMENDATION NO: EP 10/1999

Mr. Noel Gethings

AND

Bank of Ireland
(Represented by Dr. Mary Redmond, Solicitor)

File No: EP 27/1987

1. DISPUTE

- 1.1** This dispute concerns a claim by Mr. Noel Gethings that he is entitled, on resignation, to the payment of a marriage gratuity by his employer (the Bank of Ireland) in the same way as female staff received marriage gratuities. This claim was lodged in terms of the Anti-Discrimination (Pay) Act, 1974.

2. BACKGROUND

- 2.1** Female employees recruited prior to 1974 are entitled, on marriage, to claim a marriage gratuity either at the time of marriage or if they resign subsequently. Marriage gratuities are not paid to female employees recruited after 31st December, 1973 and male employees irrespective of when they were recruited.
- 2.2** The claimant commenced employment with the Bank of Ireland in November, 1969. He got married in March, 1978 and resigned his position in the bank in December, 1983. The claimant wrote to the bank claiming a marriage gratuity on 2nd January, 1986 and the bank, by letter dated 22nd January, 1986 refused to concede such entitlement.
- 2.3** On 19th February, 1987 the claimant referred a claim to the Labour Court stating his belief that he was entitled to a marriage gratuity under the terms of the Anti-Discrimination (Pay) Act, 1974. At this time a large number of similar claims were lodged by other male bank officials. A group was formed to represent all these claimants and it was agreed to investigate one claim as a test case. This claim was submitted by Mr. Kavanagh against the Bank of Ireland. The Equality Officer, who investigated this claim, issued a recommendation¹ which was appealed to the Labour Court² and subsequently to the High Court³. The Equality Officer and the Labour Court found in favour of the claimant (Mr. Kavanagh). The High Court, however, overturned the Labour Court's determination. Since this test case seven other marriage gratuity claims have been investigated by Equality Officers⁴, one of which was

¹ Recommendation No. EP 11/1985

² Determination No. DEP 10/1985

³ High Court Ruling (1990) CMLR 87

⁴ Mr. Brian Curran v Allied Irish Bank, Ref: EP 10/1992
Mr. William Deeney v National Irish Bank, Ref: EP 4/1991 & EE 12/1991
Mr. Adrian Hegarty v Bank of Ireland, Ref: EP 02/1998
Mr. Martin Horgan v Bank of Ireland, Ref: EP 03/1998

appealed to the Labour Court and a determination issued⁵.

- 2.4 This claim was assigned to the Equality Officer here concerned for investigation on 22nd July, 1998. Submissions were sought and obtained from both parties to the claim.

3. **ARGUMENTS MADE BY THE PARTIES**

The Claimant:

- 3.1 According to the claimant the High Court decision in Bank of Ireland v Kavanagh, 1987 ruled that these were grounds other than sex for non-payment of a marriage gratuity. On that basis the claimant contends that all relevant conditions entitling certain female employees to a marriage gratuity were met in his case. The claimant says that the Labour Court Determination in the case of AIB and Brian Curran⁶ found that a marriage gratuity is remuneration and that in effect it is also pension linked. The claimant says that, on resignation, he was refused both a pension entitlement and a marriage gratuity.

The Respondent:

- 3.4 The respondent contends that the claimant has no entitlement to a marriage gratuity and says that marriage gratuities are payable to a certain number of female employees who meet certain criteria. In its submission the respondent has raised the following additional points:
- ◆ The Equality Officer must make findings of fact and, as the claimant has failed to supply the facts necessary to support his claim, it should be dismissed.

 - ◆ The 1974 Pay Act lays down the test of determining whether the relationship between pay and work or work's value is different because of one's sex i.e. the test of "like work". The respondent cites the Labour Court determination in Curran v Allied Irish Bank as affirming the need to establish "like work" where equal entitlement to a marriage gratuity was being claimed.

Mr. G. Murphy v Bank of Ireland, Ref: EP 04/1998

Mr. T. Keady v Bank of Ireland, Ref: EP 19/1998

Mr. P. Quigley v Bank of Ireland, Ref: EP 20/1998

⁵ Mr. Curran v Bank of Ireland, Ref: DEP 3/1994 Appeal of EP 10/1992

⁶ Determination No. 394

- ◆ The respondent says that this claim cannot succeed because the claimant has not nominated a female comparator and the equality clause will be implied into his contract only “if [he and his comparator] are employed on like work”⁷.
- ◆ The respondent refers to the historical circumstances relating to the agreement of 1974 and says that but for this collective agreement female employees would have been forced to resign on marriage while male employees in similar circumstances did not face the same prospects.
- ◆ The respondent says that if this claim is maintainable, which it denies, a major portion of it is time-barred as a result of Section 8(5) of the 1974 Pay Act which enacts that a person shall not be entitled to be awarded any payment in respect of a time earlier than three years before the date on which the relevant dispute was referred to an Equality Officer.

The respondent also argues that the High Court decision in *Bank of Ireland v Kavanagh* binds the Equality Officer in her findings in this case.

4. CONCLUSIONS OF THE EQUALITY OFFICER

- 4.1** The issue for consideration by me is whether or not the claimant is entitled to a marriage gratuity in terms of the Anti-Discrimination (Pay) Act, 1974. In making my recommendation in this claim I have taken into account all the arguments made by the parties.
- 4.2** A number of recommendations and determinations along with a High Court ruling have issued under the 1974 Act in similar disputes. The first of these disputes concerned a claim for a marriage gratuity by Mr. Kavanagh from the Bank of Ireland. His claim was allowed by both the Equality Officer and the Labour Court, but the High Court (on appeal) found that the claimant was not entitled to a marriage gratuity. In his findings Mr. Justice Costello said:

“It is obvious that a simple contractual stipulation to the effect that all women married should be granted a gratuity would attract the operation of

⁷ Section 2(1) of the Anti-Discrimination (Pay) Act, 1974

sections 2 and 4 of the 1974 Act in favour of men doing like work because the Bank could not claim that it was paying higher remuneration to women on grounds other than their sex. But that is not what the Bank is doing in this case. A female employee who qualifies for the gratuity and thus gets paid a higher pay not because she is a woman, but because she is a woman who has fulfilled certain conditions, namely, that she has (a) married and (b) had entered the Bank's employment before the year 1974. Her higher pay is not based on her sex but on grounds other than her sex, a point convincingly demonstrated by the fact that all of her female colleagues who marry and who are doing like work will be treated differently from her on the same footing as men if they had entered the Bank's service after 1st January, 1974.

The point can be illustrated by an example. Let us suppose that there was three employees doing like work in a branch of the Bank of Ireland, A, a female employee who entered the Bank's service fourteen years ago in 1973, B, a female employee who recently joined the Bank and C, a male employee who joined the Bank at the same time as A. Let us suppose that all three marry on 19th June, 1987. Only A will qualify for the marriage gratuity. It cannot be said that on her marriage she qualified for the marriage gratuity because she was a woman - if that was the case B should also have qualified. Clearly there are grounds other than her sex which explain the higher pay which she will enjoy over her two colleagues. And so I think that the Bank has been able to establish that the differences in remuneration between their male employees and some of their female employees doing like work fall within the exemption contemplated in subsection (3) of section 2 and that the determination of the Labour Court that there should be imported into Mr. Kavanagh's contract by virtue of sections 2 and 4 of the 1974 Act a term entitling him to the marriage gratuity was incorrect. The appeal, therefore, succeeds."

In all subsequent investigations by Equality Officers in similar disputes they found in line with the High Court ruling i.e. that the claimants had no entitlement to a marriage gratuity. In any of these recommendations which have been appealed to the Labour Court and the appeals have been heard, the latter has upheld the Equality Officer's recommendations.

- 4.3** It is a well established practice of Equality Officers to follow a decision of the High Court unless the case can be distinguished on the basis of the facts. I am satisfied that this case cannot be so distinguished from the case considered by the High Court. On this basis I find that the claimant in this case does not have an entitlement to a marriage gratuity under the terms of the Anti-Discrimination (Pay) Act, 1974.

4.4 In view of my findings above it is not necessary for me to consider in detail any of the arguments advanced by the parties.

5. RECOMMENDATION

5.1 In view of my conclusions above I find that the Bank of Ireland did not discriminate against Mr. Noel Gethings and that he is not entitled to the payment of a marriage gratuity under the terms of the Anti-Discrimination (Pay) Act, 1974.

Gerardine Coyle
Equality Officer

10th August, 1999