

**OFFICE OF THE DIRECTOR OF EQUALITY INVESTIGATIONS**

**ANTI-DISCRIMINATION {PAY} ACT, 1974**

**EQUALITY OFFICER'S RECOMMENDATION NO. EP 04/2000**

**PARTIES**

**Ms Maria Mannix**

**{Represented by the Equality Authority}**

**and**

**Thomas Lenehan & Company Limited**

**{Represented by Mason Hayes & Curran, Solicitors}**

**File No. EP 17/99**

**1. Dispute**

- 1.1 This dispute concerns a claim by the Equality Authority on behalf of Ms Maria Mannix that she is 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 complainant and the comparator involved in this claim were both employed at Capel Street, Dublin by Thomas Lenehan & Company Limited. The Company is long established in the hardware trade.**

**The named comparator, Mr Kelly joined the Company in February, 1998 and in November of that year he took up the position of Manager in another outlet owned by the respondent. Ms Mannix worked intermittently over a number of years for the Company. She was fulltime from December 1996 to 5 March, 1999 when she resigned.**

- 2.2 In June, 1999 Ms Mannix lodged a claim for equal pay with a Mr Dermot Kelly. In August, 1999 the Equality Officer was informed that the Employment Equality Agency would be representing the complainant in relation to the claim. The Equality Officer held a preliminary joint hearing with the parties on 8th September, 1999. At the hearing the Agency 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.**
- 2.3 On 27th October, 1999 the Equality Officer carried out inspections on the work of the complainant and the comparator. At the time of the work inspections Mr Kelly was not available, however, a company representative went through his job with the Equality Officer. Mr Kelly was in attendance at the final joint hearing, which took place on 17th November, 1999.**

### **3 Summary of the Dispute**

**3.1 Ms Mannix alleges that she performed “like work” within the meaning of Section 3(c) of the Act, with the named comparator Mr Dermot Kelly and that she was therefore entitled to the same rate of remuneration as that paid to him.**

**She maintains that she was engaged in precisely the same work with that of the comparator. She submits that she was responsible for buying and selling paints, ironmongery and greenhouses. She adds that her duties also included customer service, answering telephones, providing quotations for greenhouses, receiving and checking deliveries - general housekeeping.**

**3.2 The Company rejects the complainant has any entitlement under the terms of the Act. The Company asserts that Ms Mannix did not perform “like work”, under Section 3(c) of the Act, with Mr Kelly. The respondent submits that the comparator was recruited as an Assistant Manager and that this post carried a higher rate of pay than that applicable to the complainant’s grade of Sales Assistant.**

**The Company contends “without prejudice” to its arguments on “like work” that there are grounds other than sex, within the meaning of Section 3(2) of the Act, justifying the pay differential. The Company’s main argument here is that Mr Kelly was “headhunted” as an assistant to the Manager.**

**3.3 The Company’s submission on the issue of “like work” under Section 3(c) of the Act includes the following arguments “Mr Kelly had a very thorough knowledge and comprehension of the ironmongery and hardware business which was crucial to his role. This, allied with his previous experience had the practical effect that he was able to source suppliers and products and negotiate directly with the Company’s suppliers in order to achieve favourable prices”. Job descriptions**

prepared by the Company in respect of the work of the complainant and the comparator are at Appendix 1.

#### **4 Conclusions of the Equality Officer**

- 4.1** The Act under Section 2(1) provides that a woman 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 maintains that “like work” did not exist between the complainant and the comparator. It also argues “without prejudice” to the issue of “like work” that there are legitimate “grounds other than sex” to justify the higher rate of remuneration paid to the named comparator.
- 4.2** 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 the complainant and the comparator.
- 4.3** Ms Mannix held throughout the course of the investigation that the comparator, Mr Kelly, was not graded as Assistant Manager. She maintains that he was at the same level as herself and four colleagues in the Sales Assistant grade. I consider for the purposes of my investigation that I must address the complainant’s allegation on Mr Kelly’s employment status.
- 4.4** I note that in the Company’s letter dated 26 January 1998 (Appendix 2) to the comparator states that the position offered to him was that “of Assistant to Capel Street Manager with a view to becoming a Branch Manager.” I note that this letter was written at a time when the respondent would not have had any idea that Mr Kelly would be cited in a claim of discrimination. I also note that within some nine months from the date of the letter Mr Kelly had become “a branch Manager”. I further note that the shop Manager, at the final hearing, stated that Mr Kelly was an

assistant to her and that he had relieved her of a lot of work pressure. I accept that Ms Mannix may have believed that Mr Kelly was in the Sales Assistant grade, however, having regard to all the evidence before me on the matter I am satisfied that Mr Kelly's status was that of Assistant to the Manager.

4.5 In relation to the job inspections it was not practical, because of the nature of the work involved, to assess the jobs purely by observation. Accordingly, I relied to an extent on the complainant to explain her work to me and a company representative to explain the work of the comparator to me through an interview format. This they did and following the interviews I visited the shop floor and stores area accompanied by the complainant, her representative and Company representatives.

4.6 As Ms Mannix, in the course of the work inspections, disputed certain aspects of the job description submitted in respect of the work of the comparator e.g. source suppliers and negotiate prices I requested his attendance at the final hearing. At the final hearing I questioned Mr Kelly at some length on his work experience with his previous employer and on the duties contained in the job description, in particular those duties that are disputed by the complainant. Having regard to his evidence and that of the shop Manager I am satisfied that the description of his former work as submitted by the Company accurately reflects his job. I am also satisfied that the Company's description of the complainant's work accurately reflects her former work. The detailed job descriptions of the complainant and the comparator, as prepared by the Company, are at Appendix 1. I did request job descriptions from the complainant in respect of her former work and that of the comparator but none were received.

4.7 I will now consider whether or not the work Ms Mannix performed is equal in value, as claimed under Section 3(c) of the Act, to that performed by the comparator. Section 3(c) of the Act 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 aspect of the work performed by the complainant and the comparator in relation to responsibility, skill, physical/mental effort and working conditions.

4.8 The details of my comparison are at Appendix A. In summary I have found that greater demands are placed on Mr Kelly with regard to “responsibility”, “skill” and “mental effort”. In regard to “physical effort”, and "working conditions" I have found that demands on them under these headings are equal. Accordingly, I hold that Ms Mannix did not perform "like work" with that performed by Mr. Kelly for the purposes of Section 3(c) of the Act.

4.9 As I have found that the complainant did not perform "like work" with the comparator there is no need for me to consider the Company’s “grounds other than sex” arguments. However, it may be useful here to point out that Ms Mannix accepted that she was graded as an Sales Assistant and that she was paid the same hourly rate as the other two males and the two females in that grade. At the final hearing the complainant stated that “Dermot should have been paid the same rate as the four plus myself.” The complainant's representative in the course of the same hearing stated that there was no discrimination within the Sales Assistant grade but argued that the claim here was “a particular discrimination”. It would be my opinion, if I had found that “like work” existed between the complainant and the comparator, because she was part of a grade made up of both sexes, that the difference in pay between the complainant and the comparator is not related to gender

4.10 In summary I have found that Ms Mannix did not perform “like work” with the named comparator Mr Kelly. I also expressed the view, if I had found that “like

work” did exist between the complainant and the comparator that there were “grounds other than sex” to justify the pay differential between her and Mr Kelly. Accordingly I have found that Ms Mannix has no entitlement to equal pay with Mr Kelly.

**5 Recommendation**

- 5.1 In view of my conclusions that Ms Mannix did not perform like work with the work performed by Dermot Kelly, in terms of Section 3 of the Anti-Discrimination (Pay) Act, 1974, I find that she has no entitlement to the same rate of remuneration as that paid to him.**

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**Jim Clerkin,  
Equality Officer.**

**19th. January, 2000.**

**Ms Maria Mannix (Paints) and Mr D. Kelly (Comparator - Ironmongery/Tools)**

**NOTE**

The Company informed me that the floor space in respect of the Ironmongery and Tool departments is 35-40% of the total shop floor space and that 3,500 and 4,000 products are on sale in the department.

The floor space devoted to paints etc., where the complainant worked, is much smaller than that devoted to ironmongery and tools. It did not carry the same level of stock of paints in the off season.

It is accepted by the parties that in order to serve and attend the needs of customers a shop floor employee would not be confined to his/her department.

**RESPONSIBILITY**

The comparator and the complainant had many of the same responsibilities these included, attend and advise customers, answer phones, check stock levels, process orders on the computer and general housekeeping.

A feature of the comparators work in the Ironmongery and Tool departments was that he had to deal with Sales Representatives from some 35 different suppliers. The Company stated that it could take up to five hours to deal with a Sales Representative from one of the bigger suppliers. The comparator was called upon to source product. He used his own initiative to negotiate prices and to switch to a supplier giving the best price for a product. He also fixed the profit margins on product. The comparator before an order was placed went through the order with the Manager.

The complainant ordered stock for the Paint department. She also gave quotations in relation to greenhouses and had an involvement in the ordering of them. There are up to ten main suppliers to the Paint department. The complainant priced product in the department by using a fixed formula. She also mixed paint with the aid of a computer.

As I am satisfied that the comparator had a much greater involvement in the purchase of product than the complainant and having regard to range and diversity of that product, together with its greater profitability to the Company, that overall there were greater demands placed on the comparator than on the complainant in terms of responsibility.

**PHYSICAL EFFORT**

The respondent concedes that the equal demands were placed on the complainant and the comparator under the heading of physical effort. Having carried out inspections on their work I am satisfied that there was no significant differences in the demands on the complainant and the comparator under this heading.

## **SKILL**

**The comparator and the complainant both had the skill to attend, advise and serve the needs of customers. Both had a good knowledge of the range of product on sale in the shop.**

**The complainant dealt with Sales Representatives almost exclusively in the paint area. She had the ability to give quotations in regard to greenhouses and from time to time she was involved in the ordering of greenhouses. She had the ability to price product in the Paint department using a fixed formula.**

**The comparator dealt with Sales Representatives covering a very wide range of product in areas such as plumbing, tools, security products and wood products. He had the skill to negotiate prices with Sales Representatives and he had the knowledge to source product from one supplier to another supplier. He also had the ability to fix retail prices at an acceptable level that maximised profit margins.**

**As I am satisfied that the comparator had a much greater involvement in the purchase of a wide and diverse range of product than the complainant's involvement in paints plus greenhouses and having regard to his price negotiation skills that overall there were greater demands placed on the comparator than on the complainant in terms of skill.**

## **MENTAL EFFORT**

**The comparator and the complainant used similar mental powers to carry out many of their tasks such as, check stock levels, check goods received, input product information into the computer, and impart information to customers.**

**The comparator used mental effort to negotiate prices, source suppliers and fix profit margins.**

**I am satisfied that overall that the demands placed on the comparator were greater on him than on the complainant under this heading.**

## **WORKING CONDITIONS**

**The respondent concedes that the equal demands were placed on the complainant and the comparator under the heading of working conditions. Having carried out inspections on their work I am satisfied that there was no significant differences their working conditions.**

PER REGISTERED POST

Ref: EP17/99

Date 19 January, 2000

Mr G. Hickey,  
Equality Authority,  
Clonmel Street,  
Dublin 2.

**ANTI-DISCRIMINATION (PAY) ACT, 1974**  
**Maria Mannix**  
**(Represented by the E.A.)**  
**- vs -**  
**Thomas Lenihan & Company Limited**  
**(Represented by Mason Hayes & Curran Solrs)**

Dear Mr. Hickey,

My investigation in regard to the dispute under the above Act has been completed and my Recommendation is enclosed.

Yours sincerely,

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Jim Clerkin,  
Equality Officer.

Note The Act provides that any appeal against or request for implementation of an Equality Officer's recommendation must be lodged in the Labour Court within forty two days after the date

of the Recommendation. The notice of appeal must specify the grounds on which the appeal is being made.

PER REGISTERED POST

Ref: EP 17/99

Date 19 January, 2000.

Mr K Langford,  
Mason Hayes & Curran,  
Solicitors,  
7 Fitzwilliam Square,  
Dublin 2.

**ANTI-DISCRIMINATION (PAY) ACT, 1974**

**Ms Maria Mannix**

**(Represented by the E.A.)**

**- vs -**

**Thomas Lenihan & Sons**

**(Represented by Mason Hayes & Curran Solr)**

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Equality Officer.

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Date 19th January 2000.

Mr F. Flood,  
The Chairman,  
Labour Court,  
Tom Johnston House,  
Haddington Road,  
Dublin 4.

Dear Chairman,

Copy of Equality Officer's Recommendation No: EP 02/2000 is attached for your information.

Yours sincerely,

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Jim Clerkin,  
Equality Officer.