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## **ANTI - DISCRIMINATION PAY ACT, 1974**

**EQUALITY OFFICER'S RECOMMENDATION NO: EP 05/2000**

**A Worker  
( Represented by MANDATE )**

**AND**

**A Company  
( Represented by I.B.E.C. )**

**File No. EP 25/1998**

## **1. DISPUTE**

- 1.1 This dispute concerns a claim by MANDATE on behalf of the claimant who is Office Administrator at the Company that she is entitled under the terms of the Anti-Discrimination (Pay) Act, 1974 to the same rate of remuneration as that paid to the (male), General Manager at the Company.

## **2. BACKGROUND**

- 2.1 The claimant and the comparator involved in this claim are employed as Office Administrator and General Manager respectively by the Company at its Sports and Leisure Centre in Dublin. The Company provides sports and social facilities for the parent company's employees, their families and friends. It is registered as a friendly society and is funded by membership contributions and by usage charges for the various facilities. The full management structure and staffing of the Company is given in Appendix 1.
- 2.2 The Union submitted a claim for equal pay for the claimant to an Equality Officer for investigation and recommendation on 13 October, 1998. At the time of the claim, the claimant was being paid an annual salary of £(x) while the comparator was being paid an annual salary of £(x \* 1.52). It is the Union's contention that the claimant is engaged on work of at least equal value to that performed by the comparator.
- 2.3 I held a preliminary joint hearing with the parties. Subsequent to that hearing I carried out inspections of the work of the claimant and the comparator at their place of work. As part of the work inspection process I observed a meeting of the Company's Administrative Committee to which the comparator reports. Subsequent to the work inspections I received a further submission from the Union and a response to that submission from I.B.E.C. A final joint hearing with the parties took place on 9th June, 1999.

### **3. SUMMARY OF THE CLAIMANT'S CASE**

- 3.1 The Union contends that the claimant does “like work” with the named comparator within the meaning of Section 3(c) of the 1974 Act and is therefore entitled to receive the same rate of remuneration. Job descriptions for both posts as outlined by the Union are contained in Appendix 2.
- 3.2 The claimant has been employed by the Company since 1983 when she was recruited as a Clerical Officer. The Company’s offices were located at (*location given*) at that time. Following restructuring of the organisation in 1991, the claimant was promoted to the post of Office Administrator and the administrative office was moved to its present address. The Union states that the Company is run by an Executive Council which meets quarterly. An Administrative Committee appointed by the Executive Council meets fortnightly and deals with day to day issues as they arise. The Union states that the Company has an annual turnover in excess of £1.4 m.
- 3.3 The General Manager was appointed in 1996 following a public competition. A copy of the recruitment notice published in a Sunday newspaper on 1 October, 1995 is given in Appendix 3. The Union argues that having regard to the range of duties carried out by the claimant and by the comparator, the work carried out by the claimant is of at least equal value to that carried out by the comparator. The Union states that the claimant is totally responsible for all administration in the centre whilst the comparator is responsible for operational matters. In relation to financial matters the Union states that the claimant reports directly to the Treasurer and has accountancy skills which the comparator does not have.
- 3.4 In relation to the job advertisement for the position of General Manager as advertised in 1995 and the principal responsibilities of the post as listed in the advertisement, the Union argues that

- the General Manager does not operate to any ‘specific targets’ as no such targets exist
- the future development of the Company is a function of the Treasurer
- the duties of ‘ensuring that efficient and secure systems exist for budget preparation, income and expenditure and provision of accounts, and that they are operated and monitored to a high standard’ are effectively the duties of the claimant
- the task of ‘marketing the facilities and promoting the image of the Company is very much part of the claimant’s duties.

3.5 The Union states that while acknowledging that the comparator has the title and indeed is the General Manager of the Company, they believe that the overall contribution made by the claimant to the efficient running of the Company is, at the very least, equal to that of the General Manager. The Union sought in discussions with management to have the disparity in salary between the claimant and comparator reviewed however received no satisfaction and decided to refer the complaint for investigation by an Equality Officer.

#### **4. SUMMARY OF I.B.E.C.’S CASE**

4.1 I.B.E.C. contends that ‘like work’ as defined by Section 3(c) of the 1974 Act does not exist between the claimant and the comparator. In its initial submission I.B.E.C. also gave reasons as to why ‘like work’ did not exist under Sections 3(a) and 3(b) however as the Union is not claiming ‘like work’ under these sub-sections there is no need to address those grounds here.

4.2 By way of background information I.B.E.C. expands on the information given about the Company at 2.1 above. It has 3,270 full (*named organisation’s*) members and 1871 associate members. Along with spouses and children, approximately 13,000 people are entitled to avail of the Company facilities. I.B.E.C. describes the Company as the second biggest corporate facility of its kind in Ireland with an annual turnover of one and a half million pounds. A list of the facilities provided by the Company is given in Appendix 4. The centre is open from 7 am to midnight Monday to Friday and 9 am to midnight on Saturday and Sunday.

- 4.3 The Company's management structure is headed by four officers i.e. Chairman, Vice-Chairman, Secretary and Treasurer along with an Executive Council and an Administrative Committee. All officers and members of the Council and Committee act in a voluntary capacity. The Executive Council makes all major decisions and approves all major expenditure. Meetings take place every three months. The Administrative Committee has overall responsibility for the management of the Company's affairs subject to the approval of the Executive Council. Meetings take place every fortnight. The General Manager has full authority and responsibility for the management of the Company. He reports to the Administrative Committee each fortnight, to the Executive Council every quarter and to the General Members each year at the AGM.
- 4.4 Job descriptions for both positions prepared by I.B.E.C. are at Appendix 5.

## **5. CONCLUSIONS OF THE EQUALITY OFFICER**

- 5.1 The 1974 Act under Section 2(1) provides that a person is entitled to the same rate of remuneration as a person of the opposite sex where both are employed in the same place, as defined by the Act, by the same employer, on "like work" unless the employer can show, under Section 2(3) that the difference in the rate of pay is justifiable on grounds other than sex. I.B.E.C. in this case disputes that the claimant performs "like work" with that of the comparator.
- 5.2 The question I am obliged to address is whether or not the work performed by the claimant is equal in value to that performed by the comparator in terms of Section 3(c) of the Act. 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 and mental effort, responsibility and working conditions."*

I have taken account of every aspect of the work performed by the claimant and the comparator in relation to skill, physical and mental effort, responsibility and working conditions. In this regard I interviewed the claimant and the named comparator at the offices of the company and observed a meeting of the Administrative Committee at which the General Manager was in attendance. I have prepared job descriptions for the claimant and comparator which are contained in Appendices 6 and 7 respectively.

### 5.3 **Skill**

The duties of Office Administrator carried out by the claimant require a high degree of skill and competence in relation to financial administration and require an in depth knowledge of the financial software used by the Company. The claimant has acquired these skills through sixteen years experience at the Company and holds an Irish Times certificate in accounts management. The duties of General Manager carried out by the comparator require general management skills and in particular skills and knowledge relating to the leisure industry. The General Manager must have the ability to ensure that the facilities sufficiently reflect market trends so as to remain attractive to the membership. The comparator holds a National Certificate in Exercise and Fitness, levels 1 and 2. The General Manager is required to manage a staff of 22. The General Manager has 10 years experience at management level. In terms of skill therefore I consider that the demands made on the comparator are greater than those made upon the claimant

### 5.4 **Physical Effort**

Both the jobs of the claimant and comparator are office based although the General Manager is required to visit different parts of the complex during the course of the day. Physical effort is not therefore a significant requirement of either job and I would not differentiate between them in terms of physical effort.

### 5.5 **Mental Effort**

The claimant's job requires constant attention to detail in order to maintain the integrity of the Company's financial and management accounts system. The mental effort required is largely concerned with the processing of financial data and maintaining computer records.

Her duties in relation to membership and hiring out facilities I consider are less demanding in this respect. I do not consider that the job requires significant creative mental effort on the claimant's part. The comparator's job requires that he be aware of every aspect of the leisure centre's activities on a day to day basis. In exercising his management role he is required to make decisions in relation to staffing and resources on a regular basis. His role in relation to strategic planning and future investment requires creative thinking and can have a significant effect on the future direction of the Company. As a consequence I consider that the mental effort required of the comparator is greater than that required of the claimant.

#### **5.6 Responsibility**

While the claimant has a range of responsible duties in relation to such matters as the day to day administration of the Company's finances, preparation of quarterly management accounts, staff wages, returns to the Revenue Commissioners, handling cash and hire of facilities, I consider that the comparator, who is responsible for the day to day management of the leisure centre and its 22 staff, the upkeep of its facilities, public and employee safety, liaison with external contractors and advising the Administrative Committee on strategic development has more onerous responsibilities than that of the claimant in terms of the impact his failure to carry out those responsibilities competently would have on the Company's continuing operations.

#### **5.7 Working Conditions**

The claimant's position is permanent and pensionable and she works a five day week from 9 am to 5 pm. Additional attendance e.g. required when the quarterly accounts are being finalised, is compensated by time off in lieu. I was informed that the comparator works on average 45 hours per week and is on call 7 days a week, 24 hours a day for security or other contingencies. If a facility is booked for a corporate function after hours the General Manger likes to be in attendance if possible. The General Manager is employed on a three year contract. I consider therefore that the working conditions of the comparator are more onerous than that of the claimant.

- 5.8 I note that disagreement exists between the Union and I.B.E.C. in relation to the roles of the claimant and comparator under a number of headings
- I.B.E.C. states that the comparator has sole responsibility for staff recruitment while the Union states that the claimant took the final decision to recruit a member of relief staff without reference to the comparator
  - the Union states that the claimant reports directly to the Treasurer in relation to financial matters and that the comparator does not have a role while I.B.E.C. argues the comparator has overall responsibility for the operation of the administrative office.

However having interviewed both claimant and comparator at length and having regard to my conclusions at paragraphs 5.3 to 5.7 above I must conclude that the work of the comparator is of greater value than that of the claimant and that the claimant is not therefore entitled to equal pay under the terms of the 1974 Act.

## **6. RECOMMENDATION**

- 6.1 In view of my conclusions above that the claimant does not perform "like work" with that performed by the comparator in terms of Section 3(c) of the Anti-Discrimination (Pay) Act, 1974, I find that the claimant has no entitlement under that Act to the same rate of remuneration as that paid to the comparator.

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Raymund Walsh  
Equality Officer

22 February, 2000