

OFFICE OF THE DIRECTOR OF EQUALITY INVESTIGATIONS

ANTI-DISCRIMINATION (PAY) ACT, 1974

EQUALITY OFFICER'S RECOMMENDATION NO. EP 06/2000

PARTIES

**62 Named Female Employees
{Represented by A.T.G.W.U.}**

and

**Tayto Ireland Limited
{Represented by I.B.E.C.}**

1 Dispute

- 1.1** This dispute concerns a claim by the A.T.G.W.U. on behalf of 62 named female employees that they have an entitlement under the terms of the Anti-Discrimination (Pay), Act 1974 to an additional payment of 3% in pay, as applied to a group of 30 male employees.

2 Background

- 2.1** The complainants and the comparators are described by the Union as General Operatives and they are all employed by Tayto Ireland Limited. The complainants either work on the day shift or on the evening shift.
- 2.2** In 1991 the Company increased its production capacity from seven to eight packing machines. At that time 29 employees received a 3% increase under clause 3 of PESP, the Company states, the payment was on the basis of increased productivity attributed to their direct efforts. Following the introduction of a new machine in the flavouring room the number in receipt of the 3% increased to 30 employees. The Union maintains that despite an increase in production in the whole plant the complainants were never given the additional 3%.
- 2.3** In February, 1999 the Union served a claim in respect of the 62 named female employees. In the course of the Equality Officer's investigation of the dispute the complainants' representative withdrew five Cleaners as comparators and he conceded that those complainants on Chargehand duties - Ms P. Gallagher, Ms B. Harris and Ms P. Byrne, as they are on higher hourly rate than all the comparators, have no claim under the terms of the Act. A list of the names of the complainants and comparators, together with male operatives who did not receive the extra 3% is at Appendix 1. The job titles of the females not in receipt of the 3%, together with their hourly

rates of pay applicable to all the complainants and all the comparators are contained in Appendix 2.

- 2.4** The Equality Officer held a preliminary hearing with the parties. Subsequent to that hearing he received written submissions from both parties to the case. The submission on behalf of the complainants specified that their claim of “like work” lies under section 3(c) of the Act. The Equality Officer carried out inspections of the work of the complainants and the comparators. In November, 1999 he held a final joint hearing with the parties .

3 Summary of the Complainants Case

- 3.1** The Union submits that all operatives employed by the company are in the first instance general operatives. It points out that they are general operatives who attract, on the basis of their responsibility to tend and operate plants, varying grades. The Union submits that all general operatives should have the same basic rate of pay but this is not now the case as there is a whole group of males who currently carry an extra 3% payment which was related to the introduction of a new plant. In relation to its case that the complainants perform “like work” with the comparators, the Union refers to section 3 (c) of the Act. The Union's evaluations of the work of the comparators and the complainants under section 3(c) of the Act are Appendices 3 and 4 respectively.
- 3.2** The 3% extra to the group of male employees, the Union explains, was under the terms of the P.E.S.P. The Union contends that as the 3% was applied to 30 males only, the result is two different rates of basic pay, one for the 30 males and another for the rest of the staff, which is and always has been predominantly female. The complainants contend that once the new plant was commissioned there was an increase in output associated with this new plant and, therefore, all employees should have enjoyed the same treatment in respect of the 3%, as the 30 males.

3.3 The application of the 3% extra to the group of 30 males, the Union holds, is contrary to all of the principles of equality in pay as set out in Article 119 of the Treaty of Rome 1957 and the Union E.U. Directive 75/117 on equal pay. The Union in support of its case points to the following:

“Fact 1: *All members of the A.T.G.W.U. employed at Tayto Ltd are general operatives and as such should have the same basic rate of pay since 1992, they don’t in fact.*

Fact 2: *Prior to the payment of the 3% to thirty men, there was equality on basic rates of pay between male and female operatives and hence, this clearly demonstrated that there was work of equal value by all operatives.*

Fact 3: *The implementation of the 3% P.E.S.P. was structured in a way that excluded women general operatives. An examination of the production process from potato intake at the start, to the warehouse despatch at the end, illustrates the discriminatory nature of the application of the 3% as women sections are leapfrogged and excluded.”*

4 The Respondent’s Case

4.1 The Company rejects the complainants’ claim for equal pay with the comparators. The respondent submits that the complainants do not perform like work, under section 3 (c) of the Act, with the comparators. In support of its case on like work the Company points to the job descriptions of the complainants and the comparators at Appendices 5 and 6 respectively. The Company also points to its detailed analysis of all the comparator and complainant jobs, under each of the five criteria in section 3(c) of the Act, at Appendices 7 and 8 respectively.

- 4.2** The Company submits “without prejudice” to its arguments on like work that there are “grounds other than sex” reasons as to why the 3% payment was not made to any complainant. The respondent maintains that the 3% payment was made to those workers where it was demonstrated that there was a tangible increase in productivity directly attributable to their increased effort. The respondent adds that if a company was to make a payment to all employees simply because the output of the factory had increased and this was not due to any directly attributable increase in effort on the part of all employees then a company would not remain competitive and cost effective in the long term.
- 4.3** The Company states that a claim on behalf of 24 operatives for the payment of the 3% was referred to the Labour Relations Commission and ultimately became the subject of a full Labour Court hearing in 1998. The respondent points out that the Labour Court stated that there would have to be an increase in productivity through increasing the speed of the machine in order to justify the 3% payment.

It is the Company's opinion that the present claim is the same claim as was rejected by the Right's Commissioner Service in 1996 and then the Labour Court in 1998 which has been expanded and tailored to meet the conditions and requirements of the anti-discrimination pay claim based on equality.

5 Conclusions of the Equality Officer

- 5.1** The Union describes its case as *“the restoration of equality in basic pay between men and women general operatives as had been the case for the 20 plus years prior to the anomaly created by the application of the 3% to 30 men only.”* The Company rejects, in the first instance, that “like work” exists between any of the complainants and any of the comparators. It maintains that *“the 3% payment was made to those workers where it was demonstrated that there was a tangible increase in productivity directly attributable to their increased effort.”*

5.2 The Act of 1974 provides for equal pay between a woman and a man where "like work" exists, as defined by the Act. Section 2 (1) specifies that a woman :
“shall be entitled to the same remuneration as a man who is employed in that place if both are employed on like work”.

However, an entitlement to equal pay, where "like work" exists, is not absolute under the terms of the Act. Section 2 (3), allows an employer pay his employees *" different rates of remuneration on grounds other than sex"* .

5.3 The kernel of the Union’s case is the payment of the 3% by the Company to 30 males, which was not applied to the remainder of the operatives, amounted to unlawful discrimination against the gender making up the majority in the grade i.e the 62 named female complainants. I note that some 21 males did not receive the 3% payment. I further note that the Union accepts that there is "interchangeability" between males, not in receipt of the 3%, and the complainants in relation to the work they carry out.

Notwithstanding that questions arise from the matters mentioned in the preceding paragraph I am satisfied, having regard to the provisions of the Act of 1974, that the first question I am obliged to address is whether or not the actual work performed by any of the complainants is “like work” to that performed by any of the comparators. If I find that any of the complainants perform “like work” with any of the comparators I will then consider whether or not the Company has discharged the onus on it that there are *“grounds other than sex”* to justify the pay differential.

5.4 I note that five different hourly rates apply to those named as comparators. I further note that all the comparators are on higher hourly rates than the rate paid to those complainants who are described as General Operatives and that those complainants described as Arrow Operative are on a lower hourly rate than the named comparators, except those comparators working as Packing Area Operatives and Flavour Mixer. I also note that the complainants employed as

Team Leaders and those complainants who carry out the duties on a relief basis are on a higher hourly rate than all the comparators except the Warehouse Operatives.

- 5.5** In order to address the question of “like work” I carried out inspections of the work of the complainants and the comparators. The jobs that I inspected covered all the jobs detailed in the descriptions submitted by the Company. The employees who took me through the jobs of complainants and the comparators were nominated and agreed by the parties. I am satisfied from my inspections of the work of the comparators and the work of the complainants that the descriptions I received, which are agreed by the Union, fairly reflect their work.

The Company accepts, and I am satisfied with the benefit of my work inspections, that all the complainants on the same hourly rate do like work with each other and that those comparators on the same hourly rate do like work with each other.

- 5.6** Having regard to the number of complainants and comparators in this case and the nature of the work involved it was not practical to assess the jobs purely by observation. Accordingly, I relied to an extent on the employees whose jobs I inspected to explain their work to me in detail through an interview format. Following the interviews I went with the jobholders, accompanied by the complainants’ Union representatives and the Company’s representatives, to their different work locations where they each outlined their various duties.

- 5.7** The great majority of complainants are either paid at the basic General Operative rate or the higher Arrow Operative rate. I have for the purposes of my job comparisons selected a complainant who is paid at the General Operative basic rate and a complainant on the Arrow rate with a comparator from each of the grades on a higher rate than applicable to these complainants. I have selected one comparator for comparison purposes from the Packing Area Operatives and the Flavour Mixer Operative as they are all on the same hourly

rate and, as already stated, I am satisfied that these operatives all perform "like work" with each other. In relation to the complainants who work as Team Leaders or relief Team Leaders I propose to compare their work with a comparator on the Warehouse Operative rate, which the only comparator rate higher than that applicable to these complainants.

5.8 The Union submits that its claim of "like work" lies under section 3(c) of the Act. Section 3(c) states:

"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."

I have taken account of every aspect of the work performed by the complainants and the comparators in relation to responsibility, skill, physical/mental effort and working conditions. The details of comparisons are at Appendices A to J.

5.9 At **Appendix A** I have found that Ms Margaret O'Halloran, Team Leader (relief) does not perform "like work" with Mr Jim Shaw, Warehouse Operative. As I found that Ms Halloran does not perform work of equal value with that of Mr Shaw, it follows that the work of each of the complainants paid the Team Leader rate is not "like work" with either Mr Shaw or any of the other comparators paid at Warehouse Operative rate.

At **Appendices B to E** I have found that Ms Catherine Kelly, Arrow Operative does not perform "like work" with Mr Jim Shaw, (Warehouse Operative), Mr Martin Bergin (Machine Operator), Mr Frank Murray (Fryer Operator/Cook or Mr Richard Fitzpatrick (Preperation Area Operative). As I found that Ms Kelly does not perform work of equal value with any of these comparators paid at a higher rate than her, it follows that the work of each of the complainants paid the Arrow Operative rate is not "like work" with the aforementioned comparators or any of the other comparators paid at higher rates.

At **Appendices F to J** I have found that Ms Marie Carey, General Operative (basic rate) does not perform “like work” with Mr Jim Shaw, (Warehouse Operative), Mr Martin Bergin (Machine Operator), Mr Frank Murray (Fryer Operator/Cook, Mr Richard Fitzpatrick (Preperation Area Operative) or Mr Stephen Breheny. As I found that Ms Carey does not perform work of equal value with any of these comparators paid at a higher rate than her, it follows that the work of each of the complainants paid the basic General Operative rate is not “like work” with the aforementioned comparators or any of the other comparators paid at higher rates.

As I have found that none of the complainants perform “like work” with any of the comparators it follows that the Union's claim of unlawful discrimination cannot succeed under the terms of the Act of 1974.

- 5.10** Having regard to my findings on the issue of "like work" it also follows that there is no need for me to consider the question of “*grounds other than sex*”. I should state, however, that in the course of my investigation I ascertained that four males in receipt of the 3%, namely Mr G Murphy, Mr A Lynch, Mr O Hand and Mr D O'Keffee, carry out the same work as the complainants. I note that the Company states that they are “ringed fenced” and that this is accepted by the Union. Having regard to the evidence available to me on these operatives I am satisfied that they are “red circled” and that their situations are protected by Section 2(3) of the Act i.e. there are “*grounds other than sex*” to justify the pay differential between them and the complainants.
- 5.11** 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 complainants and the comparators.

6 **Recommendation**

- 6.1** In view of my conclusions that there was no discrimination I find that the complainants have no entitlement to the same rate of remuneration as that paid to the named comparators.

Jim Clerkin,
Equality Officer.

28 February, 2000

Comparison**Section 3(c)****Appendix A****Ms Margaret O'Halloran (Complainant)****Mr Jim Shaw (Comparator)****NOTE:**

At the time of my inspections of the work in the Multi-Pack area Ms O'Halloran was carrying out the job of Team Leader (Arrow Machine) on a relief basis in place of complainant Ms Kathleen Devaney. Ms Linda Daly, another complainant, acts as relief Team Leader Sandiacre.

The comparison here involves Mr Shaw's job as Warehouse Operative and the job of Team Leader Arrow Machine.

In my comparison here I have taken into account that the complainant covers for the Sandiacre Team Leader as required.

WORKING CONDITIONS

The complainant works in an area that is noisy. At the time of my inspection I found the area reasonably pleasant. In my view, however, the area could be unpleasantly warm in the summer and cold and draughty in the winter.

The comparator generally works in areas that are not as noisy as the complainant's area. The working environment can be either unpleasantly cold or warm depending of the weather.

Having regard to the working conditions of the complainant and the comparator it is my view that there is no significant differences in their working conditions.

MENTAL EFFORT

The complainant uses a level of concentration to ensure that the film reels are correctly threaded/aligned and that packets are correctly aligned on the conveyor. She must be vigilant to check the best before declaration.

The comparator uses some mental effort to complete despatch sheets. When he drives and manoeuvres the fork lift truck he must use a level of concentration.

I consider that the overall demands placed on the comparator are greater than those placed on the complainant under this heading.

PHYSICAL EFFORT

The complainant uses little physical effort in the actual performance of her work. She uses some effort when she handles film reels. She spends her working day on her feet.

The comparator's work includes the manual handling of pallets, together with the mounting and dismounting of the fork lift.

Having regard to the demands placed on the comparator and the complainant in terms of physical effort I consider that overall the demands placed on the comparator are greater than those placed on the complainant.

SKILL

The complainant uses a level of skill to correctly thread/align film reels and to change the best before declaration ribbons. She uses her initiative to ensure stoppages are kept to a minimum and to instruct staff to carry out various duties. The complainant works under a Chargehand, however, she works under little or no supervision.

The comparator's main skill is ensure the movement of product into and out of the warehouse. He uses some skill to drive and manoeuvre a fork lift truck and some basic literacy skills to complete despatch sheets.

Having regard to the overall demands placed on the complainant and the comparator here I consider that there is no significant differences in the demands placed on them in terms of skill.

RESPONSIBILITY

The complainant's main responsibilities are to monitor product, the performance of the machine and to maximise the machine's output. She also has some responsibility in relation to the staff in her area.

The comparator's responsibilities include switch on the Wulftec Stretch Machine, change reels of stretch wrap material on it as required, load filled pallets to the correct trailer and record the variety of product on the pallet onto the dispatch sheet. The comparator is responsible for the safety of others when in driving the fork lift.

I consider having regard to the overall responsibilities of the comparator that there are greater demands placed on him than on the complainant under this heading.

FINDING

I have found here that similar demands are placed on the complainant and the comparator with regard to "skill" and "working conditions" and that greater demands are placed on the comparator in terms of "mental and physical effort" and "responsibility". Accordingly, taking into account the overall demands on the complainant and the comparator, I find that the work performed by the complainant is not "like work" with that performed by the comparator for the purposes of section 3(c) of the Act.

Comparison

Section 3(c)

Appendix B

Ms Catherine Kelly (Complainant)

Mr Jim Shaw (Comparator)

NOTE:

Ms Kelly took me through the jobs of Arrow Machine Infeed Operator and Arrow Machine Boxing Off Operator.

The comparison here involves Mr Shaw's job as Warehouse Operative and the "Boxing Off" job.

I note that it is not uncommon that the complainant carries out other tasks e.g. break cover, such as re-work or tidy up. In my comparison here I have taken the other tasks she carries out into consideration.

WORKING CONDITIONS

The complainant works in an area that is noisy. At the time of my inspection I found the area reasonably pleasant. In my view, however, the area could be unpleasantly warm in the summer and cold and draughty in the winter.

The comparator generally works in areas that are not as noisy as the complainant's area. The working environment can be either unpleasantly cold or warm depending of the weather.

Having regard to the working conditions of the complainant and the comparator it is my view that there is no significant differences in their working conditions.

MENTAL EFFORT

The complainant uses very little mental effort in the manual task of forming cartons and in placing 21 packets in each carton. She must be vigilant that the carton she places on the conveyor passes through the sealer and that it is properly sealed.

The comparator uses some mental effort to complete despatch sheets. When he drives and manoeuvres the fork lift truck he must use a level of concentration.

I consider that the overall demands placed on the comparator are greater than those placed on the complainant under this heading.

PHYSICAL EFFORT

The complainant through out the working day forms cartons, places packets into them and then places the full cartons (4.3 Kg. each) on the conveyor belt. She spends her working day on her feet.

The comparator's work includes the manual handling of pallets, together with the mounting and dismounting of the fork lift.

Notwithstanding that the pallets are heavier than a full carton of crisps, it is my opinion, as the complainant's work involves continuous physical effort that the demands on her under this heading are greater on her than those on the comparator.

SKILL

The complainant's work of lifting packets/placing packets in cartons/placing full cartons on the conveyor belt requires a low level of skill. She uses some skill in forming the carton and uses basic numerical skills to ensure that the correct number of packets are placed in cartons. The complainant's Team Leader works on the line, however, the complainant works under little or no supervision.

The comparator's main skill is ensure the movement of product into and out of the warehouse. He uses some skill to drive and manoeuvre a fork lift and some basic literacy skills to complete dispatch sheets.

As the comparator's skills include driving a fork lift I consider that greater demands are placed on him than on the complainant under this heading.

RESPONSIBILITY

The complainant's main responsibilities are to form cartons/check best before declaration on cartons/fill cartons with packets/place cartons on conveyor belt/ensure that cartons pass through the carton sealer and that they are properly sealed.

The comparator's responsibilities include switch on the Wulftec Stretch Machine, change reels of stretch wrap material on it as required, load filled pallets to the correct trailer and record the variety of product on the pallet onto the dispatch sheet. The comparator is responsible for the safety of others when in driving the fork lift.

I consider having regard to the overall responsibilities of the comparator that the demands placed on him are greater than those on the complainant under this heading.

FINDING

I have found here that similar demands are placed on the complainant and the comparator with regard to "working conditions" and that greater demands are placed on the complainant in terms of "physical effort". I have found that greater demands are placed on the comparator in relation to "mental effort", "skill" and "responsibility". Accordingly, taking into account the overall demands on the complainant and the comparator, I find that the work performed by the complainant is not "like work" with that performed by the comparator for the purposes of section 3(c) of the Act.

Comparison

Section 3(c)

Appendix C

Ms Catherine Kelly (Complainant)

Mr Martin Bergin (Comparator)

NOTE:

Ms Kelly took me through the jobs of Arrow Machine Infeed Operator and Arrow Machine Boxing Off Operator.

The comparison here involves Mr Bergin's job as a Machine Operator and the "Boxing Off" job.

I note that it is not uncommon that the complainant carries out other tasks e.g. break cover, such as re-work or tidy up. In my comparison here I have taken the other tasks she carries out into consideration.

WORKING CONDITIONS

The complainant works in an area that is noisy. At the time of my inspection I found the area reasonably pleasant. In my view, however, the area could be unpleasantly warm in the summer and cold and draughty in the winter.

The comparator working environment is largely the same as that of the complainant. However, he faces the hazards of burns from machines that are hot.

Having regard to the working conditions of the complainant and the comparator it is my view that there is no significant differences in their working conditions.

MENTAL EFFORT

The complainant uses very little mental effort in the manual task of forming cartons and in placing 21 packets in each carton. She must be vigilant that the carton she places on the conveyor passes through the sealer and that it is properly sealed.

The comparator uses some mental effort to monitor product quality and to complete records. He must use a level of concentration while changing blades and minor adjustments on machines.

I consider that the overall demands placed on the comparator are greater than those placed on the complainant under this heading.

PHYSICAL EFFORT

The complainant through out the working day forms cartons places packets into them and then places the full cartons (4.3 Kg. each) on the conveyor belt. The complainant spends her working day on her feet.

He also spends a great deal of his time on his feet. However, the comparator's actual work does not involve any great degree of physical effort.

Having regard to the demands on the complainant and the comparator here I am satisfied that that the demands on the complainant under this heading are greater on her than those on the comparator.

SKILL

The complainant's work of lifting packets/placing packets in cartons/putting full cartons on the conveyor belt requires a low level of skill. She uses some skill in forming the carton and uses basic numery skills to ensure that the correct number of packets are placed in cartons. The complainant's Team Leader works on the line, however, she works under little or no supervision.

The comparator uses his skill to set up the various machines under his control. He also uses a level skill to carry out such tasks as change blades and adjusting belts.

I consider that greater demands in terms of skill are placed on the comparator than on the complainant here.

RESPONSIBILITY

The complainant's main responsibilities are to form cartons/fill cartons with packets/place cartons on conveyor belt/check best before declaration on cartons/ensure that cartons pass through the carton sealer and cartons are properly sealed.

The comparator's main responsibilities are to monitor the performance of the various machines under his control. He ensures the quality of the product i.e. bags are properly formed, sealed and correct date code.

I consider having regard to the overall responsibilities of the comparator that the demands placed on him are greater than those on the complainant under this heading.

FINDING

I have found here that similar demands are placed on the complainant and the comparator with regard to "working conditions" and that greater demands are placed on the complainant in terms of "physical effort". I have found that greater demands are placed on the comparator in relation to "mental effort", "skill" and "responsibility". Accordingly, taking into account the overall demands on the complainant and the comparator, I find that the work performed by the complainant is not "like work" with that performed by the comparator for the purposes of section 3(c) of the Act.

Comparison**Section 3(c)****Appendix D****Ms Catherine Kelly (Complainant)****Mr Frank Murray (Comparator)****NOTE:**

Ms Kelly took me through the jobs of Arrow Machine Infeed Operator and Arrow Machine Boxing Off Operator.

The comparison here involves Mr Murray's's job as a Fryer Operator/Cook. and the "Boxing Off" job.

I note that it is not uncommon that the complainant carries out other tasks e.g. break cover such as re-work or tidy up. In my comparison here I have taken the other tasks she carries out into consideration.

WORKING CONDITIONS

The complainant works in an area that is noisy. At the time of my inspection I found the area reasonably pleasant. In my view, however, the area could be unpleasantly warm in the summer and cold/draughty in the winter.

The comparator works in an area that is noisy and hot. He faces the hazards of burns from extremely hot oils. The comparator when he carries out "caustic boil outs", which task he rotates on with two other cooks, wears full protective clothing.

Having regard to the working conditions of the complainant and the comparator it is my view that there is greater demands placed on the comparator than on the complainant under this heading.

MENTAL EFFORT

The complainant uses very little mental effort in the manual task of forming cartons and in placing the 21 packets in each carton. She must be vigilant that the carton she places on the conveyor passes through the sealer and that it is properly sealed.

The comparator uses some mental effort to set frying temperatures. He must also be alert and use a level of concentration to monitor the hoppers and the slice thickness. He also uses a level of mental effort to complete records on a two hourly basis.

I consider that the overall demands placed on the comparator are greater than those placed on the complainant under this heading.

PHYSICAL EFFORT

The complainant through out the working day forms cartons, places packets into them and then places the full cartons (4.3 Kg. each) on the conveyer belt. The complainant spends a great deal of her time of her feet.

The comparator also spends a great deal of his time on his feet. He lifts 20 Kgs of bags of flavour, every twenty minutes, into hoppers. In addition he exerts effort when he lifts slicers into position.

Having regard to the demands on the complainant and the comparator here I am satisfied that that the demands on the complainant under this heading are greater on her than those on the comparator.

SKILL

The complainant's work of lifting packets/placing packets in cartons/putting full cartons on the conveyer belt requires a low level of skill. She uses some skill in forming the cartons and uses basic numery skills to ensure that the correct number of packets are placed in cartons. The complainant's Team Leader works on the line, however, she works under little or no supervision.

The comparator's monitors the quality of product in such areas as thickness of the slices and colour of product. He uses his judgment as to when a slicer blade should be changed and he makes adjustments in the process to ensure the quality of product.

I consider that greater demands in terms of skill are placed on the comparator than on the complainant here.

RESPONSIBILITY

The complainant's main responsibilities are to form cartons/fill cartons with packets/place on the conveyer belt/check best before declaration on cartons/ensure that cartons pass through the carton sealer and cartons are properly sealed.

The comparator's main responsibilities are to ensures the quality of the cooked product. In this regard he is responsible for the operation of the cookers under his control.

As the comparator is responsible for the cooking of the actual product I consider that the demands placed on him are greater than those on the complainant under this heading.

FINDING

I have found here that greater demands are placed on the complainant with regard to "physical effort" and that greater demands are placed on the comparator in terms of "working conditions", "mental effort", "skill" and "responsibility". Accordingly, taking into account the overall demands on the complainant and the comparator, I find that the work performed by the complainant is not "like work" with that performed by the comparator for the purposes of section 3(c) of the Act.

Comparison**Section 3(c)****Appendix E****Ms Catherine Kelly (Complainant)****Mr Richard Fitzpatrick (Comparator)****NOTE:**

Ms Kelly took me through the jobs of Arrow Machine Infeed Operator and Arrow Machine Boxing Off Operator.

The comparator here works as a Preparation Area Operative. He carries out the duties in the area with another colleague. They alternate each day between “fork lift” duties and “floor duties”. The comparison here is Mr Fitzpatrick’s job and the “Boxing Off” job.

I note that it is not uncommon that the complainant carries out other tasks e.g. break cover, such as re-work or tidy up. In my comparison here I have taken the tasks she carries out into consideration.

WORKING CONDITIONS

The complainant works in an area that is noisy. At the time of my inspection I found the area reasonably pleasant. In my view, however, the area could be unpleasantly warm in the summer and cold and draughty in the winter.

The comparator is based in the raw materials store, which I found reasonably pleasant. However, his work takes him into the production area which is noisy. He also works outside, all year around, in regard to inward deliveries and with material for the skip. The comparator’s work also involves hosing down equipment.

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

MENTAL EFFORT

The complainant uses very little mental effort in the manual task of forming cartons and in placing the 21 packets in each carton. She must be vigilant that the cartons she places on the conveyer passes through the sealer and that it is properly sealed.

The comparator uses some mental effort to ensure that raw materials are available to the production area. When he drives and manoeuvres the fork lift truck he must use a level of concentration.

I consider that the overall demands placed on the comparator are greater than those placed on the complainant under this heading.

PHYSICAL EFFORT

The complainant throughout the working day forms cartons, places packets into them and then places the full cartons (4.3 Kg. each) on the conveyor. She spends her working day on her feet.

The comparator's work includes the manual handling of raw material and with assistance the lifting of fines bins onto and from the fork lift truck.

Having regard to the overall demands placed on the comparator and the complainant I consider, as the complainant's work involves continuous physical effort, that the demands on her under this heading are greater than those on the comparator.

SKILL

The complainant work of lifting packets/placing packets in cartons/putting full cartons on the conveyor belt requires a low level of skill. She uses some skill in forming the cartons and basic numery skills to ensure that the correct number of packets are placed in the cartons. The complainant's Team Leader works on the line, however, she works under little or no supervision.

The comparator's work is low level in terms of skill except for the skills associated with driving a fork lift.

Having regard to the overall demands placed on the complainant and the comparator here I consider, as the comparator's uses driving skills in relation to a fork lift truck, that demands placed on him are greater than those on the complainant under this heading.

RESPONSIBILITY

The complainant's main responsibilities are to form cartons/fill cartons with packets/place on conveyor belt/check best before declaration on cartons/ensure that cartons pass through the carton sealer and cartons are properly sealed.

The comparator's main responsibility are to ensure supplies to the production area. The comparator is also responsible for the safety of others when in driving the fork lift.

I consider having regard to the overall responsibilities of the comparator that the demands placed on him are greater than those on the complainant under this heading.

FINDING

I have found here that greater demands are placed on the complainant with regard to "physical effort" and that greater demands are placed on the comparator in terms of "mental effort", "skill" and "working conditions" and "responsibility". Accordingly, taking into account the overall demands on the complainant and the comparator, I find that the work performed by the complainant is not "like work" with that performed by the comparator for the purposes of section 3(c) of the Act.

Comparison

Section 3(c)

Appendix F

Ms Marie Carey (Complainant)

Mr Jim Shaw (Comparator)

NOTE:

Mr Gay Murphy, who also carries out the Ms Carey's job of cermex Machine Operator, took me through the job.

The comparison here involves Mr Shaw's job as Warehouse Operative and Ms Carey's general operative job of Cermex Machine Operator.

WORKING CONDITIONS

The complainant works in an area that is noisy. At the time of my inspection I found the area reasonably pleasant. In my view, however, the area could be unpleasantly warm in the summer and cold and draughty in the winter. She faces the hazards of burns from the hot glue tank.

The comparator generally works in areas that are not as noisy as the complainant's area. The working environment can be either unpleasantly cold or warm depending of the weather.

Having regard to the working conditions of the complainant and the comparator it is my view that there are no significant differences in their working conditions.

MENTAL EFFORT

The complainant must be alert to top up the glue beaker and be vigilant that cartons are properly shaped and sealed.

The comparator uses some mental effort to complete despatch sheets. When he drives the fork lift truck he uses a level of concentration.

I consider that the overall demands placed on the comparator are greater than those placed on the complainant under this heading.

PHYSICAL EFFORT

The complainant's work involves bending/lifting/placing cartons in the magazine. She also physically removes empty pallets from the Cermex area. She spends her working day on her feet.

The comparator's work includes the manual handling of pallets, together with the mounting and dismounting of the fork lift.

It is my opinion, as the complainant's work involves continuous physical effort, that the demands on her under this heading are greater on her than on the comparator.

SKILL

The complainant's work of lifting cartons and placing them in the magazine requires a low level of skill. She uses some little skill to ensure that the machine remains functional e.g. rectify a jam and to keep the glue tank topped up.

The comparator's main skill is to ensure the movement of product into and out of the warehouse. He uses some skill to drive and manoeuvre a fork lift and some basic literacy skills.

As the comparator's skills include driving a fork lift I consider that greater demands are placed on him than on the complainant under this heading.

RESPONSIBILITY

The complainant's main responsibility is to ensure a continuous supply of properly shaped/sealed cartons to the line. She must ensure that the machine and the glue tank are functioning correctly.

The comparator's responsibilities include switch on the Wulftec Stretch Machine, change reels of stretch wrap material on it as required, load filled pallets to the correct trailer and record the variety on the pallet onto the dispatch sheet. The comparator is responsible for the safety of others when driving the fork lift.

I consider having regard to the overall responsibilities of the comparator that there are greater demands placed on him than on the complainant under this heading.

FINDING

I have found here that similar demands are placed on the complainant and the comparator with regard to "working conditions" and that greater demands are placed on the complainant in terms of "physical effort". I have found that greater demands are placed on the comparator in relation to "mental effort", "skill" and "responsibility". Accordingly, taking into account the overall demands on the complainant and the comparator, I find that the work performed by the complainant is not "like work" with that performed by the comparator for the purposes of section 3(c) of the Act.

Comparison**Section 3(c)****Appendix G****Ms Marie Carey (Complainant)****Mr Martin Bergin (Comparator)****NOTE:**

Mr Gay Murphy, who carries out Ms Carey's job of Cermex Machine Operator, took me through the job.

The comparison here involves Mr Shaw's job as Warehouse Operative and Ms Carey's general operative job of Cermex Machine Operator.

WORKING CONDITIONS

The complainant works in an area that is noisy. At the time of my inspection I found the area reasonably pleasant. In my view, however, the area could be unpleasantly warm in the summer and cold and draughty in the winter.

The comparator's working environment is largely the same as that of the complainant. He faces the hazard of burns from hot machines and the complainant faces the same hazard in relation to the hot glue tank.

Having regard to the working conditions of the complainant and the comparator it is my view that there is no significant differences in their working conditions

MENTAL EFFORT

The complainant must be alert to top up the glue beaker and be vigilant that cartons are properly shaped and sealed.

The comparator uses some mental effort to monitor product quality and to complete records. He uses a level of concentration when he changes blades and carries out minor adjustments on machines.

I consider that the overall demands placed on the comparator are greater than those placed on the complainant under this heading.

PHYSICAL EFFORT

The complainant's work involves bending/lifting/placing cartons in the magazine. She also physically removes empty pallets from the Cermex area. She spends her working day on her feet.

The comparator also spends a great deal of his time on his feet. However, the comparator's actual work does not involve any great degree of physical effort.

Having regard to the demands on the complainant and the comparator here I am satisfied that that the demands on the complainant under this heading are greater on her than on the comparator.

SKILL

The complainant's work of lifting cartons and placing them in the magazine requires a low level of skill. She uses some little skill to ensure that the machine remains functional e.g. rectify a jam and to keep the glue tank topped up.

The comparator uses his skill to set up the various machines under his control. He also uses a level of skill to carry out such tasks as change blades and adjust belts.

I consider that the demands in terms of skill placed on the comparator are greater than those on the complainant.

RESPONSIBILITY

The complainant's main responsibility is to ensure a continuous supply of properly shaped/sealed cartons to the line. She must ensure that the machine and the glue tank are functioning correctly.

The comparator's main responsibility are to monitor the performance of the various machines under his control. He ensures the quality of the product i.e. bags are properly formed, sealed and show correct date code.

I consider having regard to the overall responsibilities of the comparator and the complainant that there are greater demands placed on him than on her under this heading.

FINDING

I have found here that similar demands are placed on the complainant and the comparator with regard to "working conditions" and that greater demands are placed on the complainant in terms of "physical effort". I have found that greater demands are placed on the comparator in relation to "mental effort", "skill" and "responsibility". Accordingly, taking into account the overall demands on the complainant and the comparator, I find that the work performed by the complainant is not "like work" with that performed by the comparator for the purposes of section 3(c) of the Act.

Comparison**Section 3(c)****Appendix H****Ms Marie Carey (Complainant)****Mr Frank Murray (Comparator)****NOTE:**

Mr Gay Murphy, who carries out Ms Carey's job of Cermex Machine Operator, took me through the job.

The comparison here involves Mr Murray's job as Fryer Operator/Cook and Ms Carey's general operative job of Cermex Machine Operator.

WORKING CONDITIONS

The complainant works in an area that is noisy. At the time of my inspection I found the area reasonably pleasant. In my view, however, the area could be unpleasantly warm in the summer and cold and draughty in the winter. She faces the hazards of burns from the hot glue tank.

The comparator works in an area that is noisy and hot. He faces the hazard of burns from extremely hot oils. The comparator when carries out "caustic boil outs", which task he rotates on with other cooks, wears full protective clothing.

Having regard to the working conditions of the complainant and the comparator it is my view that there are greater demands placed on the comparator than on the complainant under this heading.

MENTAL EFFORT

The complainant must be alert to top up the glue beaker and be vigilant that cartons are properly shaped and sealed.

The comparator uses some mental effort to set frying temperatures. He must also be alert and use a level of concentration to monitor the hoppers and the slice thickness. He also uses a level of mental effort to complete records on a two hourly basis.

I consider that the overall demands placed on the comparator are greater than those placed on the complainant under this heading.

PHYSICAL EFFORT

The complainant's work involves bending/lifting/placing cartons in the magazine. She also physically removes empty pallets from the Cermex area. She spends her working day on her feet.

The comparator also spends a great deal of his time on his feet. He lifts 20 Kgs bags of flavour, every twenty minutes, into hoppers. In addition he exerts effort when he lifts slicers into position.

It is my opinion, as the complainant's work involves continuous physical effort, that greater demands are placed on the complainant under this heading than on the comparator.

SKILL

The complainant's work of lifting cartons and placing them in the magazine requires a low level of skill. She uses some little skill to ensure that the machine remains functional e.g. rectify a jam and to keep the glue tank topped up.

The comparator's monitors the quality of product in such areas as thickness of the slices and colour of product. He uses his judgment as to when a slicer blade should be changed and make adjustments in the process to ensure the quality of product.

I consider that demands in terms of skill on the comparator are greater than those on the complainant.

RESPONSIBILITY

The complainant's main responsibility is to ensure a continuous supply of properly shaped/sealed cartons to the line. She must ensure that the machine and the glue tank are functioning correctly.

The comparator's main responsibility are to ensure the quality of the cooked product. In this regard he is responsible for the operation of the cookers under his control.

As the comparator is responsible for the cooking of the actual product I consider that the demands placed on him are greater than those on the complainant under this heading.

FINDING

I have found here that the demands are greater on the complainant with regard to "physical effort" and that greater demands are placed on the comparator in terms of "mental effort", "skill", "working conditions" and "responsibility". Accordingly, taking into account the overall demands on the complainant and the comparator, I find that the work performed by the complainant is not "like work" with that performed by the comparator for the purposes of section 3(c) of the Act.

Comparison

Section 3(c)

Appendix I

Ms Marie Carey (Complainant)

Mr Richard Fitzpatrick (Comparator)

NOTE:

Mr Gay Murphy, who carries out Ms Carey's job of Cermex Machine Operator, took me through the job.

The comparator here works as a Preparation Area Operative. He carries out the duties in the area with another colleague. They alternate each day between "fork lift" duties and "floor duties".

The comparison here is Mr Fitzpatrick's job and Ms Carey's general operative job of Cermex Machine Operator.

WORKING CONDITIONS

The complainant works in an area that is noisy. At the time of my inspection I found the area reasonably pleasant. In my view, however, the area could be unpleasantly warm in the summer and cold and draughty in the winter. The complainant faces the hazard of burns from the hot glue tank.

The comparator is based in the raw materials store, which I found reasonably pleasant. However, his work takes him into the production area which is noisy. He also works outside, all year around, in regard to inward deliveries and with material for the skip. The comparator's work also involves hosing down equipment.

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

MENTAL EFFORT

The complainant must be alert to top up the glue beaker and be vigilant that cartons are properly shaped and sealed.

The comparator uses some mental effort to ensure that raw materials are available to the production area. When driving the fork lift truck he uses a level of concentration.

I consider that the overall demands placed on the comparator are greater than those placed on the complainant under this heading.

PHYSICAL EFFORT

The complainant's work involves bending/lifting/placing cartons in the magazine. She also physically removes empty pallets from the Cermex area. She spends her working day on her feet.

The comparator's work includes the manual handling of raw material and with assistance the lifting of fines bins onto and from the fork lift truck.

Having regard to the overall demands placed on the comparator and the complainant I consider as the complainant's work involves continuous physical effort, that the demands on her under this heading are greater than those on the comparator.

SKILL

The complainant's work of lifting cartons and placing them in the magazine requires a low level of skill. She uses some little skill to ensure that the machine remains functional e.g. rectify a jam and to keep the glue tank topped up.

The comparator's work is low level in terms of skill except for the skills associated with driving a fork lift.

Having regard to the overall demands placed on the complainant and the comparator here I consider, as the comparator's uses driving skills in relation to a fork lift truck, that greater demands are placed on him than on the complainant under this heading.

RESPONSIBILITY

The complainant's main responsibilities is to ensure a continuous supply of properly shaped/sealed cartons to the line. She must ensure that the machine and the glue tank are functioning correctly.

The comparator's main responsibility are to ensure supplies to the production. The comparator is also responsible for the safety of others when driving the fork lift.

I consider having regard to the overall responsibilities of the comparator that there are greater demands placed on him than on the complainant under this heading.

FINDING

I have found here that the demands are greater on the complainant with regard to "physical effort" and that greater demands are placed on the comparator in terms of "mental effort", "skill", "working conditions" and "responsibility". Accordingly, taking into account the overall demands on the complainant and the comparator, I find that the work performed by the complainant is not "like work" with that performed by the comparator for the purposes of section 3(c) of the Act.

Comparison**Section 3(c)****Appendix J****Ms Marie Carey (Complainant)****Mr Stephen Breheny (Comparator)****NOTE:**

Mr Gay Murphy, who carries out Ms Carey's job of Cermex Machine Operator, took me through the job.

The comparison here involves Mr Breheny's job as Flavour Mixer and Ms Carey's general operative job of Ceremex Machine Operator.

WORKING CONDITIONS

The complainant works in an area that is noisy. At the time of my inspection I found the area reasonably pleasant. In my view, however, the area could be unpleasantly warm in the summer and cold and draughty in the winter. She faces the hazard of burns from the hot glue tank.

The comparator works in areas that are warm, noisy and slippy. When he handles bags of flavour mix ingredients he wears a face mask for protection from dust.

Having regard to the working conditions of the complainant and the comparator it is my view that there is no significant difference in demands placed on them under this heading.

MENTAL EFFORT

The complainant must be alert to top up the glue beaker and be vigilant that cartons are properly shaped and sealed.

The comparator uses mental effort to ensure that he assembles the correct ingredients for a flavour mix and that he puts in the correct weight of ingredients into the mix. He must also use a level of concentration to complete the flavour mix sheet.

I consider that the overall demands placed on the comparator are greater than those placed on the complainant under this heading.

PHYSICAL EFFORT

The complainant's work involves bending/lifting/placing cartons in the magazine. She also physically removes empty pallets from the Cermex area. She spends her working day on her feet.

The comparator's work includes some manual handling of bags (25 Kgs.) of ingredients and the use of hand held electric power driven pallet truck. He spends most of his working day on his feet.

Having regard to the overall demands placed on the comparator and the complainant I consider, as the complainant's work involves continuous physical effort, that the demands on her under this heading are greater than those on the comparator.

SKILL

The complainant's work of lifting cartons and placing them in the magazine requires a low level of skill. She uses some little skill to ensure that the machine remains functional e.g. rectify a jam and to keep the glue tank topped up.

The comparator uses some skill to dismantle and re-assemble mixer machine - maintenance tighten up the assembled parts. He also uses basic literacy skills to complete record sheets.

Having regard to the overall placed on the complainant and the comparator here I consider that the demands placed on them under this heading are equal.

RESPONSIBILITY

The complainant's main responsibilities are to ensure a continuous supply of properly shaped/sealed cartons to the line. She must ensure that the machine and the glue tank are functioning correctly.

The comparator has the important responsibility to ensure that the correct ingredients are used in the mix. If fails to use the correct mix the error might not be detected until the product leaves the factory.

I consider having regard to the overall responsibilities of the comparator that there are greater demands placed on him than on the complainant under this heading.

FINDING

I have found here that similar demands are placed on the complainant and the comparator with regard to "skill" and "working conditions" and that greater demands are placed on the complainant in terms of "physical effort". In terms of "mental effort" and "responsibility" I have found that greater demands are placed on the comparator. Accordingly, taking into account the overall demands on the complainant and the comparator, I find that the work performed by the complainant is not "like work" with that performed by the comparator for the purposes of section 3(c) of the Act.