

**OFFICE OF THE DIRECTOR OF EQUALITY INVESTIGATIONS**

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

**EQUALITY OFFICER'S RECOMMENDATION NO: EP 10/2000**

**Mr. Paul Price**

**AND**

**FÁS**

*File No: EP 19/1999*



## **1. DISPUTE**

- 1.1** This dispute concerns a claim by Mr. Price that he is entitled to the same rate of remuneration as that paid by FÁS to Ms. Margaret Byrne in terms of Section 3(a) and Section 3(c) of the Anti-Discrimination (Pay) Act, 1974.

## **2. BACKGROUND**

- 2.1** The claimant, in his referral of this claim, stated that a higher pay scale was recently introduced in FÁS and, in his opinion, was unfairly distributed to the workforce. The claimant came to this conclusion from the fact that people who have less working experience in FÁS than himself were placed on the higher pay scale.
- 2.2** As a result of his contention above the claimant says that he is employed on 'like work' with the named female comparator and he, therefore, referred a claim under Section 3(a) and Section 3(c) of the Anti-Discrimination (Pay) Act, 1974 to an Equality Officer for investigation and recommendation.
- 2.3** A preliminary hearing took place on 24th September, 1999 at which the Company indicated that 'like work' is not in dispute and that it would make arguments in this claim on the basis of Section 2(3) of the Anti-Discrimination (Pay) Act, 1974 on grounds other than sex. It was, therefore, agreed that the Company would make its submission first and the claimant would be given an opportunity to respond.

## **3. SUMMARY OF THE RESPONDENT'S SUBMISSION**

- 3.1** The respondent, in its submission, states that the claim arises out of appointments to the Higher Scale for Instructors (Grade 8 Higher Scale). The respondent says that it is the claimant's contention that he is being discriminated against in that a person of the opposite sex is being paid a higher rate of salary for doing the same job as that being performed by him. It is accepted by the respondent that 'like work' exists between the claimant and the named female comparator. According to the respondent this claim relates to appointments

to the higher scale by selection following a competition and is not related to other appointments to the higher scale which were made on the basis of seniority.

**3.2** The respondent says that in May, 1997 it concluded a Pay and Restructuring Agreement with S.I.P.T.U. and with the other Unions representing its staff. S.I.P.T.U. represents a significant majority of the staff in the respondent organisation and is the only Union that negotiates on behalf of Instructors. The pay elements of the PCW Agreement were based on the pay agreement for Higher Executive Officers (HEO) and Executive Officers (EO) in the Civil Service which included Standard Scales with Long Service Increments and Higher Scales. The respondent says that Grades 8 and 10 in its organisation have long established relationships with these grades in the Civil Service. The pay agreement provides for 30% of Instructors to be assigned to the Higher Grade 8 scale with 80% of the initial number being appointed on the basis of seniority with the balance by selection. This is basically the same as applied to the HEO grade in the Civil Service except that in the Civil Service 50% of the initial number of appointments was based on seniority and 50% was based on performance related criteria. The process for making appointments by selection (20%) is attached as Appendix A. This process was amended slightly following representations by S.I.P.T.U. (see Appendix B). The amended process provided for the candidates to submit a curriculum vitae rather than a special application form and it was agreed that all applicants would be interviewed.

**3.3** The respondent says that each FÁS region and Head Office was given an allocation of the 20% of the Higher Scale opportunities to be filled by selection. These opportunities were allocated to each region/head office on a pro-rata basis as provided for in Section 3.4 of the pay agreement as set out in Appendix A. The Higher Scale opportunities were advertised internally (see Appendix C) as agreed with S.I.P.T.U. and interested candidates were invited to submit a curriculum vitae to the local manager - Finance and Administration. According to the respondent this was the only process by which the Higher Scale opportunities could be applied for and anyone who did not submit a curriculum vitae could not be considered for appointment to the Higher Scale. The respondent says that the

claimant did not respond to the advertisement or submit a curriculum vitae as required and, therefore, could not be considered for appointment to the Higher Scale by Selection.

- 3.4** According to the respondent the claimant, in 1998, referred another dispute to the Labour Court under Section 20 of the Industrial Relations Act in which he claimed that he had been unfairly treated in the allocation of appointments to the Higher Scale by Seniority. The Court rejected his claim in Recommendation No. LCR 15841. In the course of the Labour Court hearing the respondent says that the claimant confirmed that local management had met with him, that they had fully explained the process of making appointments to the Higher Scale to him and that he understood the process.
- 3.5** When the claimant first raised this present claim management in the respondent organisation asked him why he had not submitted an application (i.e. curriculum vitae) for the Higher Scale. According to the respondent the claimant contended that it (the respondent) should have known that he was interested in the appointment because of his previous claim to the Labour Court. He, therefore, considered that there was no need for him to submit an application. The respondent says that the claimant also contends that the respondent organisation would already have a copy of his curriculum vitae.
- 3.6** The respondent states that it is clearly set out in the pay agreement and the advertisement that interested candidates were required to submit an application by way of a curriculum vitae. The respondent, therefore, argues that it was the responsibility of the claimant to ensure that he did this if he wished to be considered for appointment. According to the respondent the fact that it might already have a curriculum vitae on file could apply to any number of candidates, but they were still required to submit an application in response to a formal advertisement if they wished to be considered for the opportunities advertised.
- 3.7** The respondent says that, in regard to the selection competition which took place in the Dublin West and Kildare region where the claimant is based, there were six Higher Scale Instructor opportunities to be filled. Thirty six instructors submitted Curriculum Vitae applications of which 33 were from male applicants and 3 were from female applicants. All

of these applicants were interviewed and five males and one female instructor (i.e. the named female comparator) were appointed to the Higher Scale. It is as a result of this process that the named female comparator is in receipt of a higher rate of pay than the claimant as she is on the Higher Grade 8 Scale while the claimant is on the Standard Grade 8 Scale.

- 3.8** In conclusion the respondent rejects the claimant's allegation of discrimination. The introduction of a Higher Scale for Instructors was negotiated with the Trade Union representing the majority of Instructors in the respondent organisation. The process of making appointments by Selection was also agreed with this Union and all eligible Instructors were invited to apply. The respondent says that the claimant did not apply and was, therefore, not considered. According to the respondent the fact that the named female comparator is now in receipt of a higher rate of pay than the claimant is not as a result of her sex but is the result of a collective agreement negotiated with the Trade Union and applied equally to males and females. The respondent submits that there are grounds other than sex for the difference in pay between the claimant and the named female comparator.

#### **4. SUMMARY OF THE CLAIMANT'S SUBMISSION**

- 4.1** The claimant states that his argument with the respondent organisation is that a member of the opposite sex is being paid more than him for doing the same work. The claimant contends that this has been conceded by the respondent hence he has won his case. In his submission the claimant makes the following points:

- The competition for appointment to the Higher Pay Scale was not fair and open. In his submission the claimant questions the integrity of the selection panel for the Higher Pay Scale competition.

- All Instructors are Grade 10 employees not Grade 8 as alleged by the respondent.
- The change from the special application form was by mutual agreement between the respondent and the Union and was not voted on by the Instructors.
- In March, 1998 the claimant took a claim to the Labour Court because he felt that he had been unfairly treated by management in the respondent organisation. According to the claimant he had been in the employment of the respondent organisation for a longer period of time than the person who received the Higher Pay Scale on long service.
- The staff information notice re: the Higher Pay Scale stated that canvassing would disqualify but the claimant alleges that a letter from the Chairman of the respondent organisation's mediating panel did just that.
- According to the claimant there was no need for him to submit a Curriculum Vitae as he was not seeking a different position or a change in his duties as an Instructor. The claimant says that there has always been a Curriculum Vitae on his Personnel File since 1978.
- The claimant states that his interest in the Higher Pay Scale was well known by management in the Ballyfermot Training Centre, Personnel and Industrial Relations who were present at the hearing of the claim relating to the Higher Pay Scale based on seniority before the Labour Court. The claimant says that he fails to understand why he was not interviewed or asked if he had changed his mind regarding the Higher Scale given that he had made such an issue of it previously.

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

- 5.1** In making my recommendation in this case, I have taken into account all the submissions (both written and oral) made to me by the parties. As 'like work' was not in dispute in this claim the parties made their arguments on the basis of Section 2(3) of the Anti-Discrimination (Pay) Act, 1974 on grounds other than sex.
- 5.2** At the joint hearing of this claim the respondent accepted that the claimant and the named female comparator undertake 'like work' with each other. There was, therefore, no dispute in this regard. However the respondent did argue that there are grounds other than sex in terms of Section 2(3) of the 1974 Pay Act for the difference in pay between the claimant and the named female comparator. Just because 'like work' exists between the claimant and the named female comparator does not in itself mean that the claimant is entitled to equal pay with the named female comparator nor does it mean that he has won his claim as he alleges. Rather the issue of grounds other than sex must also be examined before it can be held that the claimant has won his claim.
- 5.3** In terms of grounds other than sex the respondent has outlined the procedure that it adopted for appointing applicants to the Higher Scale where the appointment was to be made by Selection. The Higher Scale posts were advertised and applicants were asked to apply for consideration for these posts. At the behest of the Union applicants were asked to submit a Curriculum Vitae instead of the standard application form. The claimant did not submit an application of any form for the Higher Scale posts and adopted the attitude that the respondent had a copy of his Curriculum Vitae on file since 1978 so he did not have to re-submit it. It is clear that the claimant expected the respondent to automatically consider him to be a candidate for the competition especially given the fact that he had brought a claim to the Labour Court regarding the appointment to Higher Scale posts on the basis of seniority.

**5.4** I note that the respondent advertised the competition. It set out the method for application for the posts. All interested persons, irrespective of sex, were asked to apply by way of a Curriculum Vitae. The claimant did not apply. I am satisfied that the respondent could not have been expected to anticipate his desire to be considered for one of the posts without any indication from the claimant that he wished to be considered. On this basis the respondent would have had to consider all Instructors for the Higher Scale posts whether they had applied or not. One then must ask why bother going to the trouble of advertising the posts and requesting potential applicants to make an application by submitting their Curriculum Vitae. I find that the procedures adopted by the respondent in relation to the Higher Scale posts on the basis of Selection were fair and equitable.

**5.5** In conclusion I am satisfied that there are grounds other than sex in terms of Section 2(3) of the Anti-Discrimination (Pay) Act, 1974 for the difference in pay between the claimant and the named female comparator. The named female comparator applied for a Higher Scale post and was successful. The claimant failed to apply for that post. I note that five other male applicants were also successful in the competition. These five male applicants are also employed as Instructors and perform 'like work' with the claimant. If the claimant had been able to prove that he had been discriminated against in relation to the named female comparator then he would also be claiming that he was discriminated against in relation to the five successful male applicants and then the discrimination would not be on the basis of his sex. Therefore, such a claim would not be proper to the 1974 Pay Act.

**6. RECOMMENDATION**

- 6.1** In view of the foregoing I find that Mr. Paul Price does not have any entitlement to the same rate of remuneration, in terms of the Higher Pay Scale, as that paid by FÁS to the named female comparator.

---

Gerardine Coyle  
Equality Officer

10th April, 2000

**APPENDIX A**

**Pay Section  
of the  
PCW Agreement**

**APPENDIX B**

**Representations**

**by S.I.P.T.U.**

**APPENDIX C**

**Advertisement  
for the  
Higher Pay Scale posts**