

ANTI-DISCRIMINATION {PAY} ACT, 1974

EQUALITY OFFICER'S RECOMMENDATION NO.EP 22/1998

PARTIES

27 Named Female Employees

{Represented by S.I.P.T.U.}

and

Rangeland Meats Limited

File No. EP 05/98

1. Dispute

1.1 This dispute concerns a claim by S.I.P.T.U. on behalf

of 27 named female claimants that they are entitled under the terms of the Anti-Discrimination (Pay) Act, 1974 to the same rate of remuneration as paid to 10 named comparators.

2 Background

- 2.1** The claimants and the comparators involved in this claim are employed by Rangeland Meats Limited, a meat processing plant, as general operatives. The Company has approximately 70 employees. It supplies burgers mainly to the catering industry.
- 2.2** The comparators all work in the production process and the claimants are normally involved in the packing of production. The comparators are all paid at the same hourly rate which is higher than the hourly rate applicable to the claimants.
- 2.3** At the end of February, 1998 the Union served a claim in respect of 28 named female employees and nominated 10 comparators. The Equality Officer held a preliminary joint hearing with the parties. Subsequent to that hearing he received written submissions from both parties to the case. The submission on behalf of the claimants stated that Ms. B McCartney was withdrawn as a claimant and it specified that the claim of "like work" lay under Section 3(a), (b) and (c) of the Act. A list of the names of the 27 claimants, together with the names of the comparators is at Appendix 1.
- 2.4** On dates in October and November, 1998 the Equality Officer carried out inspections of the work of the claimants and the comparators. The Equality Officer held a final joint hearing with the parties on the 20th

November, 1998.

3 Summary of the Claimants' Case

- 3.1** The Union contends that the 27 claimants do "like work" within the meaning of section 3(a), (b), and (c) of the Act with the ten named comparators and are therefore entitled to receive the same rate of remuneration.
- 3.2** In support of its case of "like work" the Union points to its job descriptions of the claimants and the comparators work as at Appendices 2 and 3 respectively. The Union's arguments, under Section 3(a),(b) and (c) of the Act are at Appendix 4.

4 Summary of Respondent's Case

- 4.1** The Company rejects that "like work" as defined by Section 3(a), (b) and (c) of the Anti-Discrimination (Pay) Act, 1974 exists between the work of the claimants and the named comparators. The Company's descriptions of the work of the claimants and the named comparators, together with its comparisons between the duties of the claimants and the comparators are at Appendices 5 and 6 respectively.

5. The Conclusions of the Equality Officer

- 5.1** The Act under Section 2(1) provides that a women 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 in this case disputes that any of the claimants perform "like work" with any of the comparators. It makes no arguments on "ground other than sex" to justify the higher rate of remuneration paid to the named comparators.

5.2 I note that the claimants are on the grade 1 rate of pay and that the comparators are paid at the grade 3 rate and that a three point incremental scale applies to both grades. At the time of the claim the maximum of the grade 1 hourly rate was £4.0881 and the maximum hourly rate of the grade 3 scale was £4.4116. The Company operates two shifts i.e. the day shift (08.00 to 16.30) and the evening shift (16.30 to 00.30). The employees are permanently on one shift. A shift allowance of 15% of the appropriate hourly rate applies to both grades on the evening shift. I was informed by the Company in the course of my investigation that the shift allowance is in respect of the unsocial hours of attendance.

5.3 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 claimants and the comparators. I am satisfied from my inspections of the work of the comparators and the work of the claimants, that the descriptions submitted by the parties broadly reflect the jobs of the employees involved in this claim. The detailed job descriptions of the claimants and the comparators, as prepared by the Union are at Appendices 2 and 3, those submitted by the Company are at Appendix 5.

5.4 I note that the Company accepts that all the claimants do like work with each other. I am satisfied with the benefit of my work inspections that they perform like work with each other in terms of section 3(a) of the Act.

In relation to the ten comparators nominated by the Union I note that they are all employed as Operatives in production process. I further note that the Company accepts that they perform like work with each other. I am satisfied with the benefit of my work inspections that the work differences of the comparators are of small importance to their work as a whole and that they are employed on like work with each other in terms of section 3(b) of the Act.

Accordingly for the purposes of my comparisons it is sufficient to compare the work of one of the comparators with the work of one of the claimants.

5.5 In order to address the question of whether or not the work of the claimants and that of the comparators is like work within the meaning of Section 3 of the Act, I have selected Mr Kevin McSkeane and Ms Sandra Duffy for comparison purposes.

5.6 I considered, in the first instance, whether the work performed by the claimant is the same work to that of the comparator in terms of Section 3(a) of the Act. Section 3(a) states that two persons shall be regarded as employed on like work:-

"where both perform the same work under the same or similar conditions, or where each is in every

respect interchangeable with the other in relation to the work,"

- 5.7** I interpret Section 3(a) to mean that like work is performed where two persons do exactly the same work (under the same or similar conditions) or there is full interchangeability between them.

I note that Mr McSkeane, like the other nominated comparators, works in the processing of the beef and that the claimant's work, like that of the other claimants, is mainly involved with the finished product i.e. burgers. I further note that the comparator here works on the ground of the plant, mainly in the deboxing room, and on his own. The claimant mainly work upstairs in packing burgers or in the pallet area. I am satisfied from the job descriptions received and with the benefit of my work inspections that Ms Duffy does not perform like work with Mr McSkeane within the meaning of Section 3(a) of the Act. It therefore follows that none of the claimants do like work with any of the comparators.

- 5.8** As I have found that the comparators and the claimants do not perform like work within the meaning of Section 3(a), I then considered whether or not the work performed by the claimants is equal in value to that performed by any of the comparators in terms of Section 3(c) of the Act. Section 3(c) 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 relevant aspect of the work performed by the claimant and the comparator in relation to skill, physical/mental effort, responsibility and working conditions.

- 5.9** Section 3(c) of the 1974 Act requires that the work of a claimant be compared with that of a comparator in terms of "equal in value". In my opinion, the demands placed on the work being compared does not require that the work of one be shown to be precisely equal to the demands of the other. I note that in *Murphy -V- Bord Telecom Eireann* Justice Keane in the High Court, in relation to the term "equal in value", stated:

"No doubt, the words should not be used so as to require a mathematical exactitude of equality, having regard to the statutory context in which they are used."

Accordingly, I have carried out the comparison in this case mindful of Justice Keane's remarks.

- 5.10** The details of my comparison are at Appendix A. In summary I have found that equal demands were placed on the claimant and the comparator with regard to "working conditions" and that greater demands were placed on the comparator in terms of "physical effort". In relation to "skill, "mental effort" and "responsibility" I have found that greater demands were placed on the claimant.

Accordingly, I hold that Ms Duffy performed "like work" with that performed by Mr. McSkeane for the purposes of Section 3(c) of the Act. As I have found Ms Duffy performs "like work" work with that performed by Mr McSkeane it follows that each of the claimants performed "like work" with each of the comparators for the purposes of Section 3(c) of the Act.

- 5.11** As I have found that the each of the claimants perform "like work" with each of the comparators within the meaning of Section 3(c) of the Act there is no need for me to address the question of like work under Section 3(b) of the Act.

As the Company has not argued that there are grounds other than sex to justify the difference in pay rates between the claimants and the comparators I hold that each of the claimants has an entitlement to equal pay to that of the comparators.

6 Recommendation

- 6.1** In view of my conclusions that each of the claimants performed like work with each of the comparators, in terms of Section 3(c) of the Anti-Discrimination Act, 1974, I find that they have an entitlement to the same rate of remuneration as that paid to the named comparators.

The claims for equal pay were received on the 2nd March, 1998. Section 8(5) of the Act provides for the payment of arrears of remuneration up to a maximum of three years from the date on which the relevant dispute

was referred. I therefore recommend that the appropriate retrospection be paid to the claimants, including those claimants i.e. Ms Karen Taylor, Ms Imelda Mooney and Ms Melinda Mooney, whose employment ceased prior to the issue of this recommendation. I wish to add that those claimants i.e. Ms Alison Greenan, Ms Colette Doherty and Geraldine O'Reilly who are either currently acting up or were within the three years prior to the date of receipt of the claims for equal pay are entitlement to arrears in respect of time worked, within that period, in grade 1.

Jim Clerkin,
Equality Officer,
22nd December, 1998

COMPARISON:

SECTION 3(c)

APPENDIX A

Mr Kevin McSkeane (Comparator) and Ms Sandra Duffy (Claimant)

NOTE

At the time of my inspection of the work of Mr McSkeane he was engaged in the transfer of the unprocessed beef from the de-boxing room into the production area. He is one of the four comparators on processing work on the day shift. Three of these operatives, including Mr McSkeane, rotate on three of the processing jobs on a monthly basis. The other comparator Mr Colin Hanaway, at the time of my inspections,

informed me that he is generally on the formax machine, the other processing job.

Ms Sandra Duffy, who works on the day shift, like the other claimants generally works in packing. The claimants work in three teams and they rotate on the different jobs in the course of their working day, with the exception of the pallet duty. One of the claimant's performs the pallet duty for a full shift and on average a claimant works once a week on that duty. The claimants also cover for Mr Hanaway on the formax machine, including break times and lunch times, but they do not carry out the full range of duties.

At the time of work inspections some of the work practices had changed due to further computerisation in the plant. The affected employees, at the work inspections, informed me of the work as it had been carried out at the time of the claim.

SKILL

The comparator needs some skill to count the contents of the pallets received from materials, and to weigh/record the blocks of beef put into production. He also needs a level of skill to observe that he puts the correct cut of beef into production.

The claimant constantly uses basic numery skill in counting burgers and that those burgers which are for the retail market are stacked in the correct number for the packing machine. She also uses speed and dexterity in lifting the burgers from the conveyor belt and placing them in boxes; the speed of the conveyor is outside her control. The claimant must observe that the machine she is working at is

carrying out its function properly e.g. sealing and coding boxes. She has the skills to carry out minor correction functions on machinery such as re-thread the tape on the flow wrapper.

She must be vigilant to observe that the burgers for both the retail and catering markets are packed and coded properly. She must be observant when she is packing and at the "Formax" to ensure that the burgers are formed properly.

When the claimant is on palletising she needs some skill to ensures the boxes are safely/correctly placed on the pallet and that the correct number of boxes are on it. She needs some minor writing skills to record details of the pallet load.

Having regard to the level of skill required of both employees here I am of the view, as the claimant uses a variety of skills, albeit at low level, that greater demands are placed on her than on the comparator here in terms of skill.

PHYSICAL EFFORT

In the case of the comparator he lifts a large block of beef from a pallet to the deboxing table, he removes the beef from a crate or carton and places on the conveyor table which brings the beef into the production area. This he does on a continuous basis throughout his working day. The beef he handles could be either chilled or frozen and it could weigh from 20kgs to 27.5 kgs.

The claimant's work includes lifting frozen burgers from a conveyor belt and packing them into boxes. When she has filled a carton she lifts it and places it on another

conveyor belt. The full box, depending on its size, could weigh up to 14.4 kgs.

When the claimant is on pallet duties she lifts full boxes of products, from the two lines in operation, and places them on pallets. The pallets could be from 5 feet to 6.5 feet high. When an operative is not available from "Materials" to remove a full pallet, which happens occasionally, she moves the full pallet using a hand held mechanical fork lift.

In the course of the claimant's work at the "Formax" machine the tasks she carries out include pushing trolleys of minced meat, approximately 120 kgs in weight, to the hoist at the "Formax" machine and shovelling the meat from the hopper into the machine.

Notwithstanding that the claimant when she is on pallet duties, which occurs on average once a week, lifts boxes of burgers on a continuous basis, in essence all the beef that the comparator has put through the system that day, it is my opinion, that the comparator because on a daily basis lifts blocks of beef, which are heavier than that the heaviest box lifted by the claimant, that greater demands are placed on him than on her under this heading.

MENTAL EFFORT

Both employees need some mental to carry quality checks. In the case of the comparator he must observe that the beef is fit for processing. The claimant must observe that the burgers packed have met the required quality standard.

The claimant is required to count the burgers packed and ensure that the correct number of burger are in the box and

that the weight of the full box is also correct. She must check that the box is correctly coded and sealed. The comparator must ensure that he puts the correct cut of beef into production and that it is weighed and that the weight is recorded.

When the claimant is on pallet duties she must ensure that the boxes are placed safely/correctly on the pallet and that the correct number of boxes has been packed on it. She must also record various details in relation to each pallet.

Having regard to the demands placed on the comparator and the claimant in relation to mental effort I am satisfied because there is a more constant demand of mental effort required of the claimant than that required of the comparator the demands placed on her are greater than those placed on him under this heading.

RESPONSIBILITY

It is comparator's responsibility to check the delivery of beef from materials to him for production against the batch input sheet, which also gives such details as weights and cuts for the different batches. He must also ensure that the correct cut of beef and quality goes into the production area.

The claimant, while she is packing burgers is part of a team, must ensure that the correct number of burgers are placed in the box and that the weight of the box is correct. It also her responsibility, at the packing stage, to carry out the final quality check on the finished product before despatch to the customer.

It is the claimant's responsibility to observe that the machine she is working at is carrying out its function

properly e.g. sealing and coding boxes. It also falls on her to carry out minor correction functions on machinery such as re-thread the tape on the flow wrapper.

When the claimant is on pallet duties she has the responsibility to record production output and transfer stock to Materials.

The comparator and the claimant work under little or no supervision. The comparator from time to time carries out hands on training. The claimant has no training responsibility, this task is assigned to two other claimants.

Having regard to the overall level responsibility of the operatives here, it is my opinion, that the greater demands are placed on her than on the comparator under this heading.

WORKING CONDITIONS

The comparator works in the deboxing room which is on the ground floor. The room is reasonably large with a high ceiling, without a door but has a heavy duty plastic strip curtain.

The packing and the box preparation departments are upstairs. The noise of the machinery in processing can be heard in the claimant's and comparator's work locations.

Both employees here spend their working day on their feet and both handle frozen product.

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