

1. DISPUTE

- 1.1** This dispute concerns a claim by S.I.P.T.U., on behalf of Mr. John O'Connell that he is entitled, under the Anti-Discrimination (Pay) Act, 1974 to the same rate of pay as that paid to two named female comparators listed in Appendix A and to be given the same grade structure as them.

2. BACKGROUND

- 2.1** The claimant is employed as a Switchboard Operator/Porter in the Erinville Hospital which is attached to the Southern Health Board. He is paid on the basis of the non-nursing salary scale which, according to the Union, is not the appropriate pay scale for his post. The two named female comparators are employed as day time Switchboard Operators and are paid on the basis of the clerical officer grade. The Union argues that the claimant should be paid on the basis of this pay scale similar to the two named female comparators.
- 2.2** Efforts were made to resolve this dispute at local level but no agreement was reached. As a result on 8th January, 1998 the Union referred a claim under the 1974 Pay Act, on behalf of the claimant, to an Equality Officer for investigation and recommendation.

3. SUMMARY OF THE UNION'S CASE

- 3.1** The Union states that the claimant has been employed as a Switchboard Operator in Erinville Maternity Hospital for the past fourteen years. This hospital, according to the Union, is one of the busiest maternity hospitals outside Dublin with the claimant carrying out all switchboard duties and other administrative functions including the handling of admissions for births. The claimant is paid on the basis of the non-nursing salary scale and the Union argues that the grade of Switchboard Operator is not even referred to within this grade (see details set out in Appendix B). According to the Union this position all over the county is of clerical officer grade.
- 3.2** The Union says that the claimant is earning a salary of £489 basic per fortnight and he is

seeking equal pay with the two named female comparators who are earning £560 per fortnight for performing 'like work' in terms of Section 3 of the Anti-Discrimination (Pay) Act, 1974. The claimant works a 7 day on, 7 day off shift with his colleague Mr. Ryan covering all night duty. The two named comparators work day time from 8.30a.m. to 9.15p.m. between them. According to the Union the claimant takes over the exact same seat and carries out all the functions as those undertaken by the female comparators.

- 3.3** The Union says that, in addition to carrying out all the same functions as the two named female comparators, the claimant has the added responsibility of being the only male person available in a Portering/Security capacity. It is for security reasons that a male employee is required to work at night.
- 3.4** The Union states that, since 1993, it has been highlighting the plight of male switchboard operators. In this regard it submits a letter which it received from management dated 19th March, 1993 (see Appendix C). Management concedes that male switchboard operators "perform a range of clerical tasks over and above the norm for such a post" and it offered £11.43 per week as compensation. The Union says that, as a result of negotiations last year (1997), management offered to increase this allowance to £28.97 despite the Union's argument for fair play and equality. The Union states that its member is wrongly graded as Group V, non-nursing as this grade refers to Gardeners, Storepersons, Boilerpersons/Groundspersons.
- 3.5** At the preliminary hearing of this claim management held that the number of admissions by day always exceeded those at night. The Union submitted a sample list of admissions (attached as Appendix D) on selective dates during the month of April, 1998 and which it claims proves that night time admissions can be busier. It is, for this reason, that the Union have referred this claim to an Equality Officer for investigation. The Union also points out that management upgraded similar male colleagues at Cork University Hospital to the clerical 3 grade. These male colleagues work similar hours at night. Furthermore, last year the Union says that its members in Mallow Hospital were granted upgrading following conciliation.

4. SUMMARY OF THE RESPONDENT'S CASE

- 4.1** According to the respondent the Union has, since 1992, been seeking to increase the

claimant's rate of pay and grade. The claimant was appointed at non-officer grade on 13/2/1985 at the Group V rate. The respondent states that it investigated the Union's claim in 1992 and held that the claimant's rate and grading were correct under the terms of the rationalisation agreement. The respondent says that the agreed premium of time and a quarter puts the claimant's overall earnings in excess of Switchboard Operators on day duty. The refusal on the grading claim was because Switchboard Operators are part of the clerical/administration structure and different recruitment procedures apply to these posts.

- 4.2** The respondent says that, in January, 1993 it sent comprehensive information to the then Local Government Staff Negotiations Board (L.G.S.N.B.) regarding the duties of Switchboard Operators at some of its hospitals. The outcome of this examination, according to the respondent, was that 90% of the claimant's work was similar to that of the female Switchboard Operators on day duty. The respondent says that this is a unique claim as comparable hospital Switchboard Operators do not do admissions.

- 4.3** The respondent says that it wrote to the Union on 19th March, 1993 making the following core point:

“Having examined the job performed by Mr. John O’Connell, as a Switchboard Operator/Porter at Erinville Hospital, the Board recognises that the claimant performs a range of clerical tasks over and above the norm for such a post. As you are aware, the Group V non-nursing scale currently applies to the post of Switchboard Operator/Porter. The Board is proposing the creation of a special allowance of £8.00 per week applicable from 1st January 1993, to address the clerical dimension of this post. The allowance would be increased in line with future National Wage Rounds.”

The respondent says that this offer was in respect of the unique situation at Erinville and was not to be considered as precedent setting. The offer was accepted by the Union on 19th March, 1993.

- 4.4** In 1997 the respondent says that it became involved in discussions with the Union again on the issue of the claimant's pay. This arose following a request from the claimant for a review of his pay on foot of increases granted to Grade II Clerical staff who are Switchboard Operators. In September, 1997 the claimant was being paid the maximum of Group V (£228.42 per week plus an allowance of £11.43). The clerical telephonists, at the time, were regarded as

Clerical Officers Grade III and their maximum was £280.49 per week. The respondent says that, as the increase granted to telephonists was £28.97 per week, it offered the claimant a special allowance of £28.97 per week in addition to his maximum Group V rate of £228.42 per week. The respondent says it also agreed to consolidate the allowance with basic pay so that it would attract Sunday and night premium payments, where appropriate. The respondent says that there has been no formal acceptance to this offer by the Union.

- 4.5** According to the respondent the Group V non-nursing rate (which is being paid to the claimant) is also being paid to Night Telephonists employed at St. Stephen's Hospital, Gate Porters employed at St. Finbarr's Hospital and Night Watchmen employed at St. Mary's Orthopaedic Hospital. These grades, however, do not receive any special allowance in respect of a range of clerical duties over and above the norm for such posts.

The respondent accepts that the claimant is involved in a number of non-nursing duties such as portering/security, monitoring the fire alarm system and pharmacy alarm, air and oxygen indicator lights and releasing people from the lift if it gets stuck. He is also involved in general lock-up and changing of air cylinders, when needed. The respondent says that the upgrading of male/female telephonists at the Cork University Hospital was done on the basis of their increased workload and clerical duties. The upgrading at Mallow General Hospital concerned a day duty telephonist and the Industrial Relations Officer who was involved in this negotiation stated that this proposal was specific to Mallow General Hospital and could not be cited by either side in any other context.

5. CONCLUSIONS OF THE EQUALITY OFFICER

- 5.1** In making my recommendation in this claim I have taken into account all the submissions, both written and oral, made to me by the parties and also the work inspections that I carried out on the work of the claimant and the comparators. I have drawn up detailed job descriptions for the claimant and the comparators and these are set out in Appendices E and F respectively. There are two comparators named in this claim and both parties agreed that they are completely interchangeable with each other. Therefore, in examining the issue of 'like work' in this case I examined the work undertaken by the claimant (Mr. O'Connell) as set out in Appendix E with the work undertaken by the named comparator (Ms. O'Leary) the details of

which are attached as Appendix F.

- 5.2** Under Section 3(a) of the Anti-Discrimination (Pay) Act, 1974 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”.

Many of the duties undertaken by the claimant at night are exactly the same as those undertaken by the comparator during the day. However, I found, in my work inspections, that there are some differences in the duties carried out by both the claimant and the comparator.

- 5.3** The claimant must actually go to the Out-patient Department to locate patient files when a patient is being admitted whereas the Admissions Office actually hands the file to the comparator. The claimant must change the oxygen cylinder as and when required whereas the comparator calls a porter to carry out this task. The claimant locks and unlocks the gates around the hospital. He must also deal with abusive visitors whereas the comparator calls a porter if a visitor is abusive during the day. The claimant attempts to rectify a problem with a lift if it gets stuck whereas the comparator calls the porter. The claimant has to go to the Medical Records Office to locate a patient's file where a female who has already given birth in the hospital returns with another problem.

- 5.4** The comparator acts as a receptionist for both the Matron and the Administrator whereas these staff members are not present in the hospital at night and hence the claimant is not obliged to carry out this task. The comparator bleeps the porters to take flowers and gifts to the appropriate wards whereas these items are not delivered at night hence the claimant has no role in this regard. The comparator must stamp blood and specimen results received in the hospital and organise their delivery to the appropriate wards. The comparator updates the details of what doctors and consultants are on-call both during the day and at night. The comparator sorts out the internal mail into boxes and she contacts the porters to come and remove the post from these boxes and deliver it to the appropriate areas in the Department. These tasks are not carried out at night by the claimant.

5.5 Consequently, I find that, while most of the duties undertaken by both the claimant and the comparator are the same, they are **not all** the same and, therefore, it cannot be said that the claimant and the comparator are in every respect interchangeable with each other in relation to the work.

5.6 Section 3(b) of the Anti-Discrimination (Pay) Act, 1974 provides that two persons shall be regarded as employed on 'like work' where:

“the work performed by one is of a similar nature to that performed by the other and any differences between the work performed or the conditions under which it is performed by each occur only infrequently or are of small importance in relation to the work as a whole”.

From an examination of the job descriptions of both the claimant and the named comparator it is apparent that the work undertaken by both is very similar and I am satisfied that the differences between the work performed or the conditions under which it is performed by each occur infrequently and are of small importance in relation to the work as a whole. I note that the respondent has argued that the volume of work to be undertaken by day is greater than that which is undertaken by night. I did not find this to be the case on my work inspection. By contrast I found that there is greater pressure on the claimant at night because he is alone and must contend with abusive visitors and emergency cases. The claimant's job is more physically demanding inasmuch as he is going between the reception area and the main door and he must also locate files from the Out-patient's Department where existing patients are being admitted, a task which is done for the comparator during the day.

5.7 As I have found in paragraph 5.6 above that the claimant and the comparator perform 'like work' within the meaning of Section 3(b) of the 1974 Pay Act it is not necessary to examine the work in terms of Section 3 of that Act. As each of the named comparators perform like work with each other as agreed by both parties (see paragraph 5.1 above) I find that the claimant performs 'like work' with each of the named comparators in terms of Section 3(b) of the Anti-Discrimination (Pay) Act, 1974.

5.8 The next issue for consideration in this claim is that of Section 2(3) of the 1974 Pay Act namely "grounds other than sex". I note that, during the day shift, there are two male members

of staff who carry out the duties of a receptionist similar to the named comparators. These male staff members are paid at the same rate as the female comparators. As I have found that the claimant performs 'like work' with the named comparators it follows that he performs 'like work' with each of the male staff members who work during the day. On this basis I find that the reason for the difference in pay between the claimant and the named comparators cannot be because of his sex. A similar finding to this was made by an Equality Officer in the case of *Ms. Denise Wilton v Steel Company of Ireland*¹. This finding was upheld by both the Labour Court² and the High Court³.

- 5.9** The claimant in this claim is seeking to be placed on the same grade as the named comparators. I note that the claimant's actual salary at the date of this claim is higher than one of the named female comparators. I further note that the earning potential of the named comparators is greater than that of the claimant given the differences in their grades and associated pay scales. These pay scales are set out in Appendix G. However, I consider that it is not necessary for me to examine this issue on the basis that I have already found (see paragraph 5.9 above) that there are grounds other than sex for the difference in pay between the claimant and the named female comparators. For the record the respondent, at the final hearing, made an offer to the claimant which would give him a salary equivalent to the named female comparator who is currently on a higher salary to him. It comprises the highest point of the claimant's current salary scale plus an allowance to make up the difference between his pay and that of the named comparator. The respondent said that it could not put the claimant on the same grade as the comparators because the post is a Portering/Security one and it must remain as such.

6. RECOMMENDATION

- 6.1** In view of my conclusions above, I find that Mr. John O'Connell does perform 'like work' with Ms. Margaret O'Leary and Ms. Norma White within the meaning of Section 3(b) of the

¹ Recommendation Ref: EP 03/1996

² Labour Court Determination DEP971

³ High Court Judgement dated May, 1998

Anti-Discrimination (Pay) Act, 1974. However I also find that the Southern Health Board did not discriminate against Mr. O'Connell because there are grounds other than sex for the difference in the rate of pay being paid to Mr. O'Connell and that being paid to Ms. O'Leary and Ms. White in terms of Section 2(3) of the 1974 Pay Act.

Gerardine Coyle
Equality Officer

8th March, 1999

APPENDIX A

Details of the
claimants
and the
comparators

Claimant:

Mr. John O'Connell

Night Switchboard Operator

Paid on the basis of the Porter's Pay Scale

Salary - £246.16 per week

Allowance for Clerical Duties - £11.43 per week

Comparators:

Ms. Margaret O'Leary

Switchboard Operator/Receptionist

Paid on the basis of the Clerical Pay Scale

Salary - £12,402 per annum

Ms. Norma White

Switchboard Operator/Receptionist

Paid on the basis of the Clerical Pay Scale

Salary - £15,396 per annum

APPENDIX B

Grading Details

APPENDIX C

Letter from management

dated

19/12 /93

APPENDIX D

Sample list
of
admissions

APPENDIX E

Equality Officer's
job description
for the
claimant

Name: Mr. John O'Connell

Job Title: Switchboard Operator/Porter

Organisation: Erinville Hospital, Cork

Salary: £246.16
plus £11.43 allowance for clerical duties

Hours of Work: 39 Hour week

Duties:

The duties carried out by the claimant are as follows:

- The claimant answers all incoming calls, answers general queries resulting from these calls or transfers calls to any one of the 65 extensions in the hospital. There can be a lot of calls to the hospital during the night. The claimant also processes all outgoing calls from the hospital with the exception of those made on the 10 direct lines located in the hospital.
- The claimant acts as a receptionist. He answers all queries from visitors to the hospital e.g. what ward a patient is in, where is the smoke room, where is a particular Department, can I speak to an Admissions Officer, etc.
- The claimant operates the hospital bleep system. There are two Senior House Officers with bleeps and two Registrars on-call outside the hospital. The claimant contacts consultants at home if there is a problem and he contacts the Administrator if there is a problem with the switchboard.
- The claimant organises taxis to take blood samples to the Cork University Hospital for tests or to get blood from the blood bank. He could be asked to do this by the Admissions Officer, the Labour Ward, the Neo Unit, etc. When asked to organise a taxi the claimant will check other Departments to see if they have any specimens to be delivered so that they can all be sent in the one taxi.
- The claimant updates the computer system when a patient is being admitted. The Admissions Officer hands him the patient's file (if the patient is new to the hospital) otherwise the claimant must go to the O.P.D. to locate the file which he gives to the Admissions Officer so that the patient can be assessed. If the patient is being admitted the Admissions Officer will pass the patient's file, with the bed number marked on the file, to the claimant who will input the relevant details into the computer system. The claimant prints a cover sheet for the patient's file and passes the file back to the Admissions Officer.
- The Pharmacy alarm is maintained at the reception area where the claimant works. When it goes off he must investigate it and if satisfied that everything is O.K. he resets the alarm, otherwise he calls for assistance.

The claimant monitors the oxygen and medical gas alarms. When he sees that it is low he changes the cylinder. When the claimant has to carry out this task he transfers the switchboard calls to the day ward.

- The claimant keeps a track on the bed situation updating the computer system of the movement of patients from one bed to another. He prints out an up-to-date list of patient and bed details at the end of his shift.
- The keys for various Departments, gates, etc are kept in the reception area and the claimant uses them when going to any of the Departments at night e.g. O.P.D. for a patient's file, to lock the gates, etc. He also passes out Department keys to cleaners and he must ensure that all keys handed out are returned.
- If the fire alarm goes off the system indicates the floor where it has gone off. The claimant then silences the alarm and then checks with this floor to establish the cause of the alarm going off. If it is a genuine fire alert the claimant rings the fire brigade otherwise he re-sets the system. The comparator reports it to the Night Sister.
- The claimant uses the P.A. system mostly only to announce the end of visiting time. For about an hour in the morning the claimant might use the P.A. system to page someone e.g. cleaning supervisor.
- The claimant monitors the ambulance control unit which will bleep in the case of an emergency coming to the hospital. This is generally more active at night than during the day. Where an ambulance has to go out on an emergency call the claimant may have to ring for an Admissions Nurse to accompany the ambulance.
- The claimant has sometimes to check back on patients who were in the hospital some months earlier.
- The claimant locks all, bar one, gates around the hospital grounds at night. He unlocks them in the morning. When he carries out this duty he transfers the switchboard to the day ward. He will carry out this function at a time which suits the day ward staff to take the switchboard calls, generally about 11.00p.m.
- The claimant locks the main door of the hospital when he comes on duty. He uses an intercom system to answer door bell rings and then if he has to let someone in he has to leave the reception area to go to the door and open it to admit the person(s).
- The claimant must keep an eye on the visitors because, on occasions, they can become abusive.
- If there is a problem with a lift e.g. it gets stuck, the claimant will try to rectify the fault himself and if he is unable to do so he contacts the maintenance firm.
- The claimant has to print up labels when they are required either for a patient's file or for a baby in the Neo Unit. The labels for the baby are generally required immediately and the claimant must input the commands into the system to allow for the labels to

print and then he must go to the O.P.D. to collect them.

- The claimant has to go to the Medical Records Section to get a patient's file where that patient has already delivered a baby at the hospital (maybe some months previous) and has now some further medical problem.

APPENDIX F

Equality Officer's
job description
for the
comparators

Name: Ms. Margaret O'Leary

Job Title: Switchboard Operator/Receptionist

Organisation: Erinville Hospital, Cork

Salary: £12,402 per annum

Hours of Work: 35 hour week working on the basis of a six weeks rota.

Duties:

The duties carried out by the comparator are as follows:

- The comparator answers all incoming calls, answers general queries resulting from these calls or transfers calls to any one of the 65 extensions in the hospital. The comparator also processes all outgoing calls from the hospital with the exception of those made on the 10 direct lines located in the hospital.
- The comparator acts as a receptionist. She answers all queries from visitors to the hospital e.g. what ward a patient is in, where is the smoke room, where is a particular department, can I speak to an admissions officer, etc. The comparator checks on the availability of the Administrator or the Matron when people come in to see them. Documents can be passed to the comparator which she has to give to the Matron for her signature. The comparator meets any company representatives who call to the hospital and she contacts the relevant person to meet them.
- The comparator operates the hospital bleep system. There are seven Senior Hospital Officers (S.H.O.s) and four Registrars with bleeps during the day while after 5.00p.m. there are two S.H.O.s with bleeps and two Registrars on-call outside the hospital. When required the comparator re-charges the bleeps using the battery re-charge which is located in the reception area.
- The comparator organises taxis to take blood samples to the Cork University Hospital for tests or to get blood from the blood bank. She also arranges a taxi to Cork Farm Centre to bring pay sheets or collect cheques. The comparator also deals with the van driver who comes three times a day to collect specimens for Cork University Hospital and the Blood Bank.
- The comparator updates the computer system when a patient is being admitted. The Admissions Officer hands her the patient's file and the comparator inputs the relevant details into the computer system. The comparator then prints out a cover sheet for the patient's file and she marks a bed reference number on the file. When a patient is being discharged the comparator is informed and she updates the system with this information including the date of discharge.
- The Pharmacy alarm is maintained at the reception area where the comparator works. If it goes off the comparator contacts the Assistant Matron, the Administrator or

the Pharmacist (if she is available).

- The comparator monitors the oxygen and medical gas alarms. When the comparator sees that the oxygen is low she organises a porter to change the cylinders. If the medical gas is low she orders more. The medical gas is piped into the hospital.
- The comparator bleeps the porters (who are on duty until 5.30p.m.) when they are required in a particular area in the hospital. The comparator gets the porters to take flowers or gifts, which are sometimes left at reception, to the appropriate wards.
- Blood and specimen results received by the Administrator daily from the Cork University Hospital and the Blood Bank are passed to the comparator to stamp and send to the different departments e.g. Medical Records, O.P.D., and the wards for filing.
- On a monthly basis the comparator writes out details of what doctors and consultants are on-call both during the day and at night. Changes can be made to this list at any time during the day and the comparator notes these amendments.
- The comparator sorts internal post into boxes and if these boxes are very full she contacts the porters to come and empty the boxes i.e. deliver the posts to the various areas. If someone comes and asks for the post for a particular Department the comparator passes it out to him/her.
- The comparator keeps a track on the bed situation updating the computer system of the movement of patients from one bed to another. She contacts the various Departments, twice daily at 12.30p.m. and 7.30p.m., to check on what changes have been made in relation to patients and beds. The comparator prints out an up-to-date list of patient and bed details.
- The keys for various Departments, gates, etc are kept in the reception area and the comparator passes out keys to porters when they come looking for them.
- If the fire alarm goes off the system indicates the floor where it has gone off and the comparator checks with this floor to establish the cause of the alarm going off. If it is a genuine fire alert the comparator rings the fire brigade.
- The comparator uses the P.A. system to announce messages for staff members, to direct staff members to particular areas of the hospital or to announce the end of visiting time.
- The comparator monitors the ambulance control unit which will bleep in the case of an emergency coming to the hospital.
- The comparator has sometimes to check back on patients who were in the hospital some months earlier.
- The claimant has to print up labels when they are required either for a patient's file or

for a baby in the Neo Unit.

APPENDIX G

Details of Pay Scales
for the
Claimant & Comparators

CLAIMANT:***Non-Nursing Grade V***

APPLICABLE GRADES	SCALE POINT	SCALE RATE AS AT 8/1/98
Gardener Storeman Boilerman/Groundsman	1st	£233.70
	2nd	£235.32
	3rd	£236.84
	4th	£237.73
	5th	£238.58
	6th	£239.51
	7th	£240.36
	8th	£241.27
	9th	£242.22
	10th	£243.20
	11th	£244.31
	12th	£245.17
	13th	£246.13

COMPARATORS:***Clerical Officer Grade***

	Scale Rate as at 8/1/98
under 19	£ 9,376
at 19	£ 9,887
at 20	£10,397
at 21 and over	£10,905
	£11,404
	£11,902
	£12,402
	£12,901
	£13,400
	£13,900
	£14,398
	£14,897
	£15,396
	£15,896
	£16,399