



EQUAL PAY—SOME MORE EQUAL THAN OTHERS?

The Equal Pay Act (NI) 1970 was introduced over 30 years ago to eradicate discrimination between men and women in relation to all aspects and conditions of their pay at the same work establishment.

In the event that there is a difference, that cannot be objectively justified for a reason unrelated to sex, a tribunal will deem an equality clause into the contract of employment to ensure they remedy this.

Recently the Industrial Tribunal in Northern Ireland, had to consider whether “red-circling” (when an higher paid employee pay is frozen until their colleague's pay reaches the same level) of a salary was a genuine material defence to a claim for Equal Pay. They issued their decision in June of this year.

Elizabeth Hamilton was employed by the Department of Finance and Personnel as a security guard at Grade SGB 2 pay band. Elizabeth had been on Grade SGB pay band 2, since she commenced employment in the Civil Service in September 1998.

The employer accepted that she was paid less than males who did the same work. The employer in this case explained that in February 1998, it was recognised that security guards who were paid at SGB 1 level—all of whom were male—had been incorrectly graded.

Therefore, the trade union and management entered into an agreement that after February 1998 all security guards would be graded at the lower SGB 2 level.

Part of the agreement was that those existing security guards would be “red-circled” at SGB 1 level and continue to be paid at that grade. This was to protect their contractual rights to the payment at the higher level and was not tainted by sex discrimination.

The Claimant was one of a number of security guards appointed after the 1998 Agreement who were a mixture of males and females.

What the Claimant sought to argue was that for the period between her appointment and the appointment of the next male security guard in August 2001, statistically, the pay differential had a disparate, adverse impact on women in comparison with men, because there were no males appointed at her lower grade.

The Claimant argued that the three year period during which there was sex discrimination, has caused the material factor to become tainted by sex. This historical inequality prevents the respondent relying on a genuine material factor defence. The pay differential must therefore be objectively justified.

The tribunal dismissed the claim of Equal Pay. In doing so it took into consideration, the fact that all security guards appointed after the 1998 Agreement were appointed at the SGB 2 band, regardless of whether they were male or female.

The Tribunal stated that: “The failure of the employer to take any steps since 1998 to reduce the effect of the pay differential, or to ensure that the preservation of the redcircling accorded with ‘current notions of good industrial practice’ does not alter the fact that there is no evidence of sex discrimination in this case”—it went on to say that: “The tribunal is mindful that the obligation under the Equal Pay Act is to ensure that there is no inequality in remuneration between men and women, not to ensure fairness between employees”.