

CHAPTER 3

LEGAL RESEARCH METHODOLOGY

This chapter provides a legal perspective towards examining wage discrimination against working women. The study applies legal research methodology by presenting three decided equal pay claim cases under the Equal Pay Act 1970 (United Kingdom). The chapter begins with a discussion on the research methodology. The second section deals with the Equal Pay Act, 1970 (UK) and its development in the issue of wage discrimination. The three cases will then be presented and discussed separately.

3.1 Research Methodology

The research method applied in this case is legal research methodology. Three equal pay claim cases which were brought to the industrial tribunal under the Equal Pay Act 1970 (United Kingdom) will be presented and discussed. The three decided cases are *Shields v E.Commes (Holdings) Ltd*, *Bromley & Others v H. & J. Quick Ltd* and *Pickstone & Others v Freemans Plc*. Each case highlights the instance of *like work*, *work rated as equivalent* and *work of equal value* respectively. Each case will be presented systematically in the order of statement of issue, statement of facts, analysis and conclusion.

At this junction, I pause to stress that the legal research method was chosen because it fits the nature of this study: advocacy and persuasion. This is in contrast with empirical social science methodology, which constitutes empirical studies and the testing of hypothesis. The findings of a study conducted under social science methodology aims to test the hypothesis while the legal research methodology outlines statement of issues at the beginning of each case aiming to advocate and persuade the findings of the court in accordance with the principles of the governing law. A fuller description of legal research methodology and its differences with empirical social science methodology was presented earlier in Chapter 1.

The statement of issues for each case will concentrate on whether the working women in the instance of *like work*, *work rated as equivalent* and *work of equal value*, was discriminated against in terms of wages paid by her employer. Following this is a section on statement of facts. The analysis of each case will follow, by "describing and discussing the controlling law" on each of the issues presented earlier.¹⁸⁶ Each case will conclude with a brief summary of the analysis and a conclusion of the issue and affirmation of the principles of the law based on reasoning developed in favour of the plaintiff.

3.2 The Equal Pay Act 1970 (United Kingdom)

The Equal Pay Act (EPA) 1970 of the United Kingdom is a legislation, which

¹⁸⁶ Statsky, W.P., "Legal Research, Writing and Analysis", (Second Edition), New York: West Publishing Company, 1998.

came into force in 1975. It is enforced through the Central Arbitration Committee for complaints by members of the trade union and through the industrial tribunal for individuals complaints.¹⁸⁷ The EPA 1970 aims at "preventing discrimination between men and women as regards [to] terms and conditions of employment".¹⁸⁸ The act applies to "cases where a contractual relationship already exists between the complaint and his or her employer".¹⁸⁹

"The act contains a three-pronged attack on inequality between the sexes".¹⁹⁰ "For the equality clause provision to apply, one of the three tests must be satisfied. These test are, that the women must be employed either on *like work* with a man in the same employment, on *work rated as equivalent* with that of a man in the same employment or on *work of equal value* to that done by such a man".¹⁹¹

3.3 *Shields v E.Commes (Holdings) Ltd [1978] IRLR 263*

3.3.1 Statement of Issues

Was the work performed by the female counter staffs and male counter staffs the same or broadly similar in nature? Was the responsibility assigned to male counter staffs constitute a "difference of practical importance in relation to terms and conditions of [the]

¹⁸⁷ Ratner, R.S., "The Policy and Problem: Overview of Seven Countries". In Ratner, R.S. (Ed), *Equal Employment Policy for Women*, Philadelphia: Temple University Press, 1980.

¹⁸⁸ Smith, I.T. and Sir John C. Wood, "Industrial Law", (Fourth Edition), London: Butterworths, 1989.

¹⁸⁹ Ibid.

¹⁹⁰ Sear, Nancy, "Implementing Equal Pay and Equal Opportunity Legislation in Great Britain". In *Equal Employment Policy for Women*, Philadelphia: Temple University Press, 1980.

¹⁹¹ Smith, opcit, 22.

employment"? ¹⁹² Did the employers rely on sex-role stereotypes when assigning male counter staffs with the additional responsibility of protecting the shop?

3.3.2 Statement of Facts

A betting shop in London employed Miss Shields as a counter staff for an hourly rate of GBP0.92 (MYR4.99) while a male counter staff, Mr Rolls received a higher rate of GBP1.06 (MYR5.76) an hour.¹⁹³ There were in total nine shops operated by the company. These betting shops were considered vulnerable to trouble. They were at risk of potential robberies when the shops opened for business in the mornings. These betting shops were also at risk of disturbances from customers in the shop itself. In order to protect the betting shops from these potential dangers, the company's policy was to employ male counter staffs at every branch. The main duties of these male counter staffs were the same as the female counter staffs. However, the male counter staffs were also required to be present when the shop managers opened for business every morning as a form of reinforcement in case trouble ensued. The male counter staff was also used to transport cash between the nine branches. Nevertheless, there had been "no such incidents or disturbances during the three years Miss Shields was employed".¹⁹⁴ Furthermore, the men had also not "received any training for their security role".¹⁹⁵ Miss Shields claimed an equal pay case against her employers as she felt she should have been paid the same rate as a male counter staff. She felt that male and female counter staffs performed

¹⁹² Statsky, *opcit*, 158.

¹⁹³ Exchange rate is British Pound Sterling (GBP) 1 = Malaysian Ringgit (MYR) 5.4 as at 22 March 2001.

¹⁹⁴ Pitt, *opcit*, 149.

¹⁹⁵ *Ibid*.

similar work. The employers instead "claimed that these shops were at risk of robbery and that a male counter staff was employed at each [shop] for security reasons" while the female counter staff were not required to perform this role.¹⁹⁶

3.3.3 Analysis

The case of *Shields v E.Commes (Holdings) Ltd* was brought to the tribunal under the provision of *like work*. The law governing the issue of this case is The Equal Pay Act 1970 (UK) under the equality clause of *like work* [Equal Pay Act - s.1]. *Like work* applies when work done by a women is "of the same or broadly similar nature" of the work done by a man, and the "differences (if any) between the things that she does and the things that [he does] are not of practical importance".¹⁹⁷

In order for Miss Shields to succeed in her claim in the case of *Shields v E.Commes (Holdings) Ltd*, she "must show that she is employed in the 'same work' or work of a 'broadly similar nature' to her [male] comparator".¹⁹⁸ Men and women entering the workforce may engage in the same employment and perform the same duties. Men and women working in a 'same nature' type employment include "men and women [working as] bank cashiers at the same counter or men and women serving meals in the same restaurant. An example of men and women working in employment of 'broadly similar nature' include male and female shop assistants in different sections of the same department store or female cooks preparing lunches for the directors and male chefs

¹⁹⁶ Pitt, *opcit*, 150.

¹⁹⁷ The Equal Pay Act 1970, EqPA, s.1(2)(a).

cooking breakfast, lunch and teas for employees in a canteen".¹⁹⁹ The facts of the case indicate that Miss Shields and her comparator, Mr Rolls performed the same main duties. Therefore, the work performed by both of them is of same nature and "once [it has been] determined that [the] work is of similar nature, it should be regarded as being *like work*".²⁰⁰

Since it has been established that Miss Shields and Mr Rolls were engaged in *like work*, we proceed to determine if there are any differences in the work they perform and if it was of any practical importance. The employers claim that there was a difference. The employers claim that the male counter staff had an additional role, which includes providing security for the shops against robberies or disturbances and transporting cash between the branches. However, it was established that during the duration of Miss Shields' employment, no such incidents or disturbances occurred. The law states that the industrial "tribunal must look at the duties [which] were actually performed [and] not those theoretically possible".²⁰¹ The facts show that the male counter staff didn't perform any additional duties of protecting the shop. Therefore, this does not make his (Mr Rolls) job any different from the female counter staff. In this issue, the difference was not of practical importance because "it (the difference) was not sufficient to make the two jobs not of the same or broadly similar nature".²⁰²

¹⁹⁸ Painter, *opcit*, 209.

¹⁹⁹ Painter, *opcit*, 182.

²⁰⁰ *Lawton v Capper Pass Ltd* [1979] IRLR 366

²⁰¹ Smith, *opcit*, 393.

In addition, for the male counter staff to carry out his extra responsibilities, he would need to acquire some form of security training, which in this case the employers did not provide. He was not "particularly skilled or specially trained for this extra function [and there was no] trouble for him to deal with".²⁰³ The "degree of responsibility involved in carrying out the job" is important, as it will determine if the male counter staff should be placed "into a different [pay] grade from the female counter staff."²⁰⁴ Paying the male counter staff a higher wage than the female counter could not be justified because he did not receive any training or skill to carry out the added responsibilities. In this third and final issue, the difference in pay between the female and male counter staffs was based on sex.²⁰⁵

3.3.4 Conclusion

The statement of issues of this case posed three questions, which the analysis succeeded in answering based on the governing laws and relevant case law. Therefore, in the case of *Shields v E.Commes (Holdings) Ltd.*:

- 1) the work performed by the female and male counter staffs fell under the instance of *like work* because the work they performed was of the same nature,
- 2) there was no practical difference in the work performed by the female counter staffs because the male counter staff didn't actually carry out his extra responsibilities and
- 3) wage differences between the female and male counter staffs was based on sex-role

²⁰² *Powell v British Leyland Ltd* [1978] IRLR 57

²⁰³ Smith, *opcit*, 394.

²⁰⁴ *Nutall v Eaton Ltd* [1977] IRLR 71

²⁰⁵ *Ibid.*

stereotypes because there was no difference in the degree of responsibility between them, which would otherwise justify the male counter staff being placed in a higher pay grade.

The ruling based on law in this decided case serves to affirm the reasoning developed to show that the sex-role stereotype - wage discrimination link (2a) exists. The arguments and conclusions presented above reiterates the outcome of this case in the court of law. When brought forward to the tribunal, the Court of Appeal "held that the existence of the claimed difference in the men's security role [by the employers] could not be established".²⁰⁶ They further held that the difference in role claimed by the employers "were based purely on stereotypical assumptions about sex rather than any extra duties, which the men had to perform in practice".²⁰⁷

This case is consequential as it highlights that even when man and woman perform the same task, stereotypical assumptions embedded in the minds of people, cast men in roles not allotted to women. They perceive men to be able to carry out these role (in this case, the male counter staff did not carry out this in practice) and award them extra wages for this perceived role. Literature shows this to be true "within blue collar labour, [where] male supervisor's gender stereotypes and discomfort at the presence of women, shape [women's] experiences at work".²⁰⁸ The study further indicates that "supervisors may believe for example that women should be excluded from some jobs so

²⁰⁶ Painter, opcit, 182.

²⁰⁷ Pitt, opcit, 149.

²⁰⁸ Reskin, Barbara and Irene Padavic, "Women & Men at Work", Thousand Oaks, California: Pine Forge Press, 1994.

they do not get hurt. Paternalistic attitudes put supervisors in the position of gatekeepers who maintain the status quo by assigning women to sex-typed jobs".²⁰⁹

The outcome of the case of *Shields v E.Commes (Holdings) Ltd*, follows the premise that stereotypes leads women to be discriminated against because of gender. In conclusion, the occurrence of wage discrimination due to sex-role stereotype exists because of the "devaluation, either conscious, or by tradition of 'women's work' relative to 'men's work'".²¹⁰ Various literature pose the view that "women are paid low wages because the work they do [are] low skilled or less demanding"²¹¹ while other studies indicate that women are paid lower wages because they are segregated in low paying jobs. However, research also confirms a different stand lobbied by pay equity advocates which states that "women's work is low paid because women do it"²¹² or that "women also earned low wages simply because they [are] women".²¹³ This posits can be attributed to sex-role stereotypes regarding men and women. Women looking to break the glass ceiling in the corporate world encounter sex-role stereotypes. They find that their "traits and behaviours [are] out of sync with top corporate positions [and] the orientations [they] have been socialised to adopt towards themselves, their families, careers, organisations, subordinates and the leadership/managerial role are considered to be contrary to the demands of top management".²¹⁴

²⁰⁹ Reskin, opcit, 100.

²¹⁰ Bacchi, opcit. 35.

²¹¹ Bacchi, opcit, 74.

²¹² Ibid.

²¹³ Tentler, L.W., "Wage-Earning Women", New York: Oxford University Press, 1979.

²¹⁴ Crampton, opcit, 89.

3.4 *Bromley & Others v H. & J. Quick Ltd* [1988] IRLR 249

3.4.1 Statement of Issues

Did the employer's carry out a valid job evaluation study? Did the employers assume sex-role stereotype when choosing values used to rank and compare the two jobs? Does instances of *work rated as equivalent* conclude that gender-related job segregation exist in this case?

3.4.2 Statement of Facts

Eleven women who were employed as clerical workers brought an equal value claim against their employers, H. & J. Quick Ltd. They compared the work they performed, with that of male managers. The employers engaged a group of consultants who proceed to carry out a job evaluation study or scheme.

The implementation of a job evaluation scheme or study first requires a selection of benchmark jobs. Factors to be evaluated between the benchmark jobs will be listed and each benchmark job will be analysed in terms of these factors. Following this, a job description of each job will be prepared. The benchmark jobs will be than ranked in order of importance. Meanwhile, the number of grades will also be determined. After determining the number of grades, the benchmark jobs will be allocated or placed into the grades.²¹⁵ The grades are defined in terms of factors such as "knowledge, decisions,

²¹⁵ Paterson, Peter and Michael Armstrong, "An Employers' Guide to Equal Pay", London: Kogan Page, 1972.

complexity, contacts and responsibilities for the work of others".²¹⁶ "Factor 'knowledge' may have been acquired through education at school or vocational training while 'skill' may have been acquired by specific instruction or learned over a period of time by experience. The 'decisions' factor assesses the degree to which the work involves choice of actions, which covers the extent to which the work is prescribed and the closeness of supervision. 'Complexity' covers a variety of task that have to be carried out, the range of skills required and the degree to which the work is subject to sudden changes. The 'contacts' factor covers the extent to which the work performed includes making personal contacts inside and outside the organisation. Furthermore, the 'contacts' factor may also involve fact finding, dealing with queries or interviewing. Finally, 'responsibilities for the work of others' factor, measures the extent to which the job involves the organisation, guidance and direction of others".²¹⁷ All these factors range from one to five in degree of intensity.

Meanwhile in the statement of facts, it was found that the jobs of the eleven women and three out of the four (male) comparators were not assessed using the factor values mentioned above but instead were "merely slotted into job ranking order by the management".²¹⁸ The eleven women claimed an equal pay case against their employers because they felt they should receive the same pay as male managers. They felt their work was equivalent to the work performed by male managers. The employers challenged the claim by stating that the outcome of the job evaluation study showed that

²¹⁶ Paterson, opcit, 123.

²¹⁷ Paterson, opcit, 125.

²¹⁸ Painter, opcit, 216.

the value of the clerical worker was different than the male managers.²¹⁹ Therefore, since the value was different, the clerical workers were not entitled to wages equal to managers.

3.4.3 Analysis

The case of *Bromley & Others v H. & J. Quick Ltd* was brought to the tribunal under the provision of *work rated as equivalent*. The law governing this case is The Equal Pay Act 1970 (UK) under the equality clause of *work rated as equivalent* [Equal Pay Act - s.1(b)]. *Work rated as equivalent* applies when the job performed by women and the job performed by men, have been given an equal value in terms of the demand made on her. The demands made on her is based on factors such as knowledge and skills, decisions, contacts, complexity and responsibilities of the work of others. Furthermore, the comparison is done with the help of a job evaluation study.²²⁰ "Once a job evaluation study has been undertaken and concludes that the job of a woman is of equal value with that of a man, then a comparison of their respective terms and conditions is feasible and the equality clause can take effect".²²¹

In order for the eleven women to succeed in their claim in the case of *Bromley & Other v H.J. Quick Ltd*, the women must show their work was rated as equivalent to that of the male managers. Acknowledging that women and men perform different jobs, a job evaluation study conducted by employers will help to evaluate if their jobs are of equal

²¹⁹ Painter, opcit, 215.

²²⁰ The Equal Pay Act 1970, EqPA, s.1(2)(b).

value. But a job evaluation study carried out by the employers "must be valid".²²² A study is considered not valid when the "employers make subjective judgements concerning the nature of the work before the employee is fitted in an appropriate salary grade".²²³ Furthermore, a job evaluation study is considered complete only until after the parties involved have accepted its validity.²²⁴ However, in this case, the job evaluation study was not valid because not all of the employees (eleven clerical staffs and four managers) were assessed properly according to the factors but instead were "merely slotted into job ranking order by the management".²²⁵ The employers applied their own judgements when they allocated the employees into the ranking order. Therefore, the job evaluation study conducted by the employers in this case was not valid.

Since we have concluded that the job evaluation study was not valid, we proceed to determine whether the employer assumed sex-role stereotype when choosing values used to rank and compare the two jobs. The values chosen were used to compare both jobs and ranked into different grades. However, it was established that the jobs of the eleven women clerical workers and three out of the four male managers were not assessed using these same values. Case law indicates that the job evaluation study or system "must be based on the same criteria for both men and women [in order to] exclude any discrimination on grounds of sex".²²⁶ Though we do not know if the actions of the employers by not assessing all the male and female employees using the same value

²²¹ *O'Brien v Sim-Chem Ltd* [1980] IRLR 373

²²² *Nuttall v Eaton Ltd.* [1977] IRLR 71

²²³ *Ibid.*

²²⁴ *Arnold v Beecham Group Ltd.* [1982] IRLR 307

²²⁵ *Painter*, *opcit.* 28.

²²⁶ *Rummler v Dato-Druck GmbH* [1987] IRLR 32

amounted to discrimination based on sex (sex-role stereotype), we certainly cannot exclude it.

Men and women entering the workforce experience segregation in the job market. Even with women participating in all types of employment, there are still several occupations undertaken "predominantly by women and some by men. There are still very few male secretaries and female mechanics [while] in the textile [industry] men tend to have the skilled tailoring work and women the less-skilled machinists' jobs".²²⁷ Furthermore, in certain highly feminised industries which requires manual work, may employ all female staffs, "although in this case [female staff] will normally [be supervised] by male managers".²²⁸ Gender-related job segregation directs women (and men) into jobs and further segregates them within a particular occupational category, where women are placed in lower positions compared to the men. An example of comparable work among men and women engaged in different occupations, consists of a female sales clerk and a male storeroom clerk. Though different jobs, both should be "paid the same salary because the value of their work is thought comparable".²²⁹ Therefore, the allocation of the instance of *work rated as equivalent* is important for women concentrated in highly feminised jobs. Importantly, also the provision of *work rated as equivalent* concludes the existence of gender-related job segregation in the labour force.

²²⁷ Pitt, *opcit*, 150.

²²⁸ *Ibid.*

²²⁹ Kahne, H. and A. Kohen, "Economic Perspectives on the Role of Women in the American Economy", *Journal of Economic Literature*, Vol. 13 (1975).

3.4.4 Conclusion

The statement of issues of this case posed three questions, which the analysis succeeded in answering based on the governing laws and relevant case law. Therefore, in the case of *Bromley & Others v H. & J. Quick Ltd.*:

- 1) the job evaluation study carried out was not valid because the employers applied subjective judgements when they allocated the employees into job ranking system before they (the employees) could be properly fitted into the appropriate pay grade,
- 2) sex-role stereotypes cannot be excluded because the same values were not applied when comparing and assessing the jobs of the female clerical workers and male managers and
- 3) *work rated as equivalent* acknowledges the existence of gender-related job segregation because it makes allowances for women segregated and concentrated into occupational categories based on sex.

The ruling based on law in this decided case serves to affirm the reasoning developed to show the sex-role stereotype - gender-related job segregation - wage discrimination link (2b). The arguments and conclusions presented above reiterates the outcome of this case in the court of law. When brought forward to the industrial tribunal, the Court of Appeal held that the comparison made using the job evaluation scheme must be valid and for this to happen there must be an accurate description of what each job involves.²³⁰ The ruling further stated that the "criteria must be selected against which the

²³⁰ Pitt, *opcit*, 150.

demands of the job can be measured and scored".²³¹ Therefore, criteria, values of factors used to compare the jobs of clerical workers and managers must be quantifiable.

This case is meaningful as it acknowledges that men and women are segregated into various jobs and therefore perform different duties. But the various criteria needed to perform the job may be comparable. Traditional society defines men and women into roles that are also reflected in the work force. Sex-role stereotype segregates women into occupational categories and further still within an occupation. In the United States, employment laws concerning women include "'protective laws' prohibiting night work and setting maximum hours for women and limiting weights that women could lift were enacted by many states. These laws may have improved working conditions for women on the job, but also have the effect of disqualifying women from certain jobs or limiting their ability to perform those jobs fully".²³²

Findings of the case of *Bromley & Others v H. & J. Quick Ltd*, are relevant to this study because it emphasises the sex-role stereotype - gender-related job segregation - wage discrimination link. This study looks at "segregation [as] the outcome of a process in which people are not free to choose a position because some jobs are closed to persons of a given group".²³³ Studies have shown the "existence of job segregation in the labour force, with women dominating numerically in three low paid occupational categories - clerk, sales and service personnel - and the low wages attached to these occupations".²³⁴

²³¹ Pitt, opcit, 150.

²³² Kahn, opcit. 1272.

²³³ Jacobsen, opcit 224.

²³⁴ Bacchi, opcit, 33.

3.5 *Pickstone & Others v Freemans Plc* [1987] IRLR 357

3.5.1 Statement of Issues

Was the job of a warehouse operative comparable to the job of a warehouse checker? Does the values of the two jobs differ because of gender difference in human capital?

3.5.2 Statement of Facts

Freemans Plc employed Mrs. Pickstone as a warehouse operative. The company also employed Mr Phillips as a warehouse checker. Mrs Pickstone "claimed that her work [as a warehouse operative] was of equal value to that of Mr Phillips (a warehouse checker)".²³⁵ Mr Phillips was paid GBP4.22 (MYR22.93) per week more than Mrs Pickstone. In addition, the company also employed male warehouse operatives who undertook the same work as Mrs Pickstone. Mrs Pickstone claimed an equal pay case against her employer because she felt that she should have received the same pay as a male warehouse checker. She felt that the work of a female warehouse operative is of same value to that of a male warehouse checker. However, the employers claimed the fact that there was a male warehouse operative doing the same work as Mrs Pickstone, constituted a situation of *like work*. The employer felt because of this, she was prevented from claiming equal pay under the provision of *work of equal value*, even though she

²³⁵ Painter, *opcit*, 182.

may have been "performing work of equal value with [Mr Philips] or that the difference in pay may be the result of discrimination on the grounds of sex".²³⁶

3.5.3 Analysis

The case of *Pickstone & Others v Freemans Plc* was brought to the tribunal under the provision of *work of equal value*. The Equal Pay Act 1970 (UK) was amended to include a third category of entitlement to equal pay.²³⁷ This came about when the "European Court of Justice ruled in the case of *EC Commission v United Kingdom of Great Britain and Northern Ireland*"²³⁸ that the existing equal pay laws did not comply with the requirements of the Equal Pay Directive".²³⁹ Therefore, in order "to comply with the judgement, the government introduced by 'regulation'²⁴⁰ a right to equal pay for work of equal value."²⁴¹ *Work of equal value* applies when "the work in terms of the demands that it makes on her, under such headings as effort, skill and decision, is of equal value to that of a man".²⁴² In this regard, the provision of *work of equal value* is similar with the provision of *work rated as equivalent*. However, there are important differences. The provision of *work of equal value* goes further to include the "possibility for equal treatment where there is no similarity of employment between the sexes and [where] there is no job evaluation schemes [or studies] in operation".²⁴³ This simply means that a woman can compare her work with men under the *work of equal value* instance when she

²³⁶ Painter, opcit, 183.

²³⁷ Smith, opcit 396.

²³⁸ *United Kingdom of Great Britain and Northern Ireland* [1982] ICR 578, [1982] IRLR 333, ECJ.

²³⁹ Smith, opcit, 397.

²⁴⁰ The Equal Pay (Amendment) Regulations 1983.

²⁴¹ Smith, opcit 397.

²⁴² The Equal Pay Act 1970, EqPA, s.1(2)(c).

is not doing *like work* or *work rated as equivalent*. The job evaluation study or scheme, though needed under the provision of *work rated as equivalent*, is still entirely dependent on the employer's willingness to institute the study.²⁴⁴ Therefore, not all employees may have the benefit of this study to refer to.

The company employed a male warehouse operative who performed the same task and received the same wage as Mrs Pickstone. Therefore, the employers argued that since "there was a man employed on the same work as [Mrs Pickstone], who also [received] the same pay as [her], the situation of *like work* applied and that [she] could not compare [herself] with a different man"²⁴⁵ (male warehouse checker). However, if this argument was true, any employer could easily employ a "token man"²⁴⁶ undertaking the same work as a women and wage discrimination would go unidentified. To avoid this problem of interpretation of the law, a general rule of comparison in the Act was included. The rule states that a "man chosen [as a comparator] must be in the same employment as the woman which means that he is employed by her employer at the same establishment or employed in another establishment, provided that the same relevant terms and conditions of employment are observed at the two different establishments".²⁴⁷ With reference to this case, the warehouse operative (female) and warehouse checker (male) were employed by the same establishment (Freemans Plc) therefore enabling Mrs Pickstone to compare her work as a warehouse operative with the work of a warehouse checker (Mr Phillips).

²⁴³ Evetts, *opcit*, 34.

²⁴⁴ Pitt, *opcit*, 151.

²⁴⁵ Pitt, *opcit*, 150.

²⁴⁶ *Ibid*.

Men and women may have acquired varying degrees of formal education, experience and training prior to entering the work force. The amount and mix of human capital they acquire determines the types of jobs they enter into and the position or seniority they assume in the work place. Through literature we learn that one reason women acquired lesser human capital is because they do not have equal access to education; they have limited work experience and they received little or no on-the-job training. This was because stereotypes of what men and women's roles should be, prevailed over equality. We acknowledged that women offer considerably less human capital as they entered the work force. This led women to be segregated into less-skilled jobs with lower wages. Even when women engage in different jobs, which are comparable to men, the differences in human capital, is a barrier towards equal pay under this provision. This is because, employers are "not obliged to pay the same salaries to [men and women] who perform seemingly identical tasks [because they] draw upon knowledge and skills acquired in different disciplines and [they] do not have the same qualifications to perform other tasks that may be assigned to them".²⁴⁸ Therefore, values of jobs differ because there are gender differences in human capital acquired.

3.5.4 Conclusion

The statement of issues of this case posed two questions, which the analysis succeeded in answering based on the governing laws and relevant case law. Therefore, in the case of *Pickstone & Others v Freemans Plc*:

²⁴⁷ Smith, *opcit*, 400.

- 1) the job performed by the female warehouse operative and the male warehouse checker was comparable because they were both employed in the same employment or establishment and
- 2) the values of the warehouse operative (female) and the warehouse checker (male) differed because of gender differences in human capital.

The ruling based on law in this decided case serves to affirm the reasoning developed to show the sex-role stereotype - gender differences in human capital - wage discrimination link (2c). The arguments and conclusions presented above reiterates the outcome of this case in the court of law. When brought forward to the tribunal, the "House of Lords held that Mrs Pickstone (warehouse operative) can compare her work with Mr Phillips (warehouse checker) even when there is a man employed as a warehouse operative in the company."²⁴⁹ They further stated that she could not claim equal pay under the provision of *work of equal value* by choosing a comparator who was employed on *like work* or on *work rated as equivalent*".²⁵⁰

The findings of *Pickstone & Others v Freemans Plc*, are relevant to this study because it indicates that as women acquire less human capital, they will receive lesser pay than man even when they perform work which is comparable with a man. Among the predictions offered by human capital theory concerns "gender differences in hourly earnings, [which states that when] women have less human capital than men, they will

²⁴⁸ *Angelstellenbetriebsrat der Wiener Gebietskrankenkasse v Wiener Gebiets-krankenkasse* [1999] C-309-97

²⁴⁹ Smith, opcit, 400.

²⁵⁰ Pitt, opcit, 152.

make less. Women have less incentive to invest in human capital if they are planning to exit the labour force [while] many women feel it is important to exit from the labour force if they are responsible for child-raising"²⁵¹. In addition, because "women have lower earnings to begin with at the high-school-graduate level, education is more important for them than it is for men in order to earn a higher income"²⁵². Therefore the lesson learnt here is that women need to invest more in human capital and besides women themselves participating more in education, policy makers should also provide avenues for more opportunities in education and on-the-job training for women. This will help close the earning gap between men and women as a result of wage discrimination.

The case is significant because it looks at human capital of men and women as a source of equal treatment claims in pay inequalities. Education, experience and training is important towards increasing human capital. However, research shows that even "in the fields of education, colonial policies [further] reinforced local gender segregation"²⁵³. Even as women had limited opportunities to education, the types of educational opportunities accorded to women were also based on gender roles. Studies also show that "prior to entering the labour market, women tend[ed] to invest in less training"²⁵⁴ which could be because of the limited access and opportunities to education. Literature further states that "changes in gender relations outside employment such as [among others] education [will lead to] improve[d] women's access to paid work on a long-term basis"²⁵⁵.

²⁵¹ Jacobsen, *opcit*, 243.

²⁵² Kennedy, Jr. R.E., "Life Choices: Applying Sociology", (Second Edition), Florida: Harcourt Brace Javonovich College Publishers, 1989.

²⁵³ Rogers, *opcit*, 88.

²⁵⁴ Sloane, P.J. (Ed), "Women and Low Pay: Shortcomings in Analyses of Women and Low Pay", London: The MacMillan Press Ltd, 1980.

²⁵⁵ Staggenborg, *opcit*, 25.

Research confirms that "women's returns on investment in education do not equal those of men [and that] "even when women are more highly educated, they receive lower pay than men"²⁵⁶.

Women's lower investment in human capital can also be attributed to women "choosing jobs which require less education and training than men partly because they believe that they will spend fewer years in the labour market"²⁵⁷. "Women may decide to obtain lower levels of training prior to and during child rearing since the level of household earnings which [will be] lost during the years of child rearing will be lower if women rather than men leave the labour force during this period"²⁵⁸. Therefore, there is a incentive for the "household and particularly men to allocate the responsibility of raising the children to women"²⁵⁹. Therefore, we encounter again the role of sex-role stereotypes in influencing women's choices in acquiring human capital.

²⁵⁶ Staggenborg, *opcit.* 25.

²⁵⁷ Redclift, *opcit.* 5.

²⁵⁸ *Ibid.*

²⁵⁹ *Ibid.*