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The Sex Discrimination Act 1975 (Diogenes on law)

The Sex Discrimination Act 1975, which was designed to eliminate a great anomaly, the treatment of women less favourably than men for no other reason than that they are women, will inevitably produce some small anomalies of its own. Its drafting is so complicated and prolix that the chance for astute litigation by the humorous, even the malicious, is multiplied. But neither a sense of fun nor a sense of envy motivated Frederick Peake who triumphed as a litigant in person against his employers, Automotive Products Ltd of Kenilworth, Warwickshire, before the Employment Appeals Tribunal.

Peake's complaint was that he was being discriminated against at 4.25 pm each weekday in that the women were allowed to leave the factory at 4.25 and the men had to wait until 4.30. *De minimis non curat lex*? (The law does not bother with trifles?) The tribunal confessed that its first impression was that the application was unreasonable. But it determinedly, in its own words "put aside their preconceptions."

The first issue was whether the relevant act was the Equal Pay Act, 1970, or the Sex Discrimination Act. As the tribunal observed in another case in which judgment was delivered on the same day, "The act formed a code with the Sex Discrimination Act and was the performance in municipal law of the country's obligations under article 119 of the Treaty of Rome." To fall under the Equal Pay Act the discrimination had, broadly speaking, to do with pay and to be a matter of contract. Women at the factory were after all being paid the same for doing less work than the men, less, that is, by five minutes a day. But as their privilege was a matter of custom, not contract, it fell to be analysed in terms of the Sex Discrimination Act or nothing.

Was the discrimination "on grounds of sex" and therefore forbidden? The employers contended that the whole purpose of the alleged discrimination was to ensure safety, and that that was" a sensible and practical way to go about it wholly free from any intention to discriminate. The appeal tribunal did not accept that "The employers were confusing the purpose of the act complained of with the factual nature of the act itself." One was only required to look to see if what in fact was done amounted to less favourable treatment, and whether it was done because of the person's sex. If so, it was irrelevant that it was done with no discriminatory motive. Safety might be the motive; sex was the basis for distinguishing between those whom safety demanded leave early, and leave later.

In a prophetic, article, the draftsman of the Sex Discrimination Act commented "There must be no special deference, no ostentatious holding open of doors, or so it would seem" This decision may appear in conformity with that grim forboding; and the tribunal made an order for discontinuance of the offending practice within one year, so the Equal Opportunities Commission and trade unions could have their say. The age of chivalry is dead.