

EMPLOYMENT EQUALITY ACT,1977

EQUALITY OFFICER'S RECOMMENDATION NO: EE 41/1999

PARTIES

**Ms Sheelagh Brennan
(Represented by Lavelle Coleman, Solicitors)**

AND

**St Michael's House, Special National School and
St Michael's House Human Resources Department
(Represented by I.B.E.C.)**

File No: EE19/1997

1. DISPUTE

- 1.1 The dispute concerns a claim by Ms Sheelagh Brennan that in December, 1996 the Board of Management, St Michael's House, Special National School (SNS), Ballymun and St Michael's House Human Resources Department, Goatstown discriminated against her within the meaning of Section 2(a), 2(b) and 2(c) of the Employment Equality Act, 1977 and in contravention of Section 3 of that Act when she was turned down for the position of Childcare Assistant at Ballymun SNS.

2. BACKGROUND

- 2.1 St Michael's House Special National School, Ballymun caters for pupils with learning disabilities ranging from moderate to profound and operates under the patronage of St Michael's House. The school advertised a vacancy for the position of Childcare Assistant on 7th November, 1996. The claimant, who is married and who was seven months pregnant at the time, applied for the position, was interviewed and was subsequently turned down for the position. The successful candidate was a single woman. It is the claimant's contention that she was the most qualified person for the job and that the reason why she was turned down for the position was that she was married and pregnant at the time she was interviewed.
- 2.2 The claimant referred a claim to the Labour Court in May, 1997. The claim was subsequently referred by the Labour Court to an Equality Officer for investigation and recommendation. Submissions were received from both parties and a joint hearing of the complaint was held on 24 February, 1999. At the start of the hearing the claimant withdrew her claim that she was discriminated against within the meaning of Section 2(a)

of the 1977 Act i.e. on grounds of her sex.

3. SUMMARY OF THE CLAIMANT'S CASE

- 3.1 It is the claimant's case that the Board of Management of St Michael's House Special National School and St Michael's House Human Resources Department discriminated against her in terms of Section 2(b) and 2(c) of the Employment Equality Act, 1977.

Section 2(b) states that discrimination shall be taken to occur

'where by because of his marital status a person is treated less favourably than a person of the same sex,'

Section 2(c) states that discrimination shall be taken to occur

'where because of his sex or marital status a person is obliged to comply with a requirement, relating to employment... which is not an essential requirement for such employment... and in respect of which the proportion of persons of ... a different marital status but of the same sex able to comply is substantially higher'

- 3.2 In support of its claim that the claimant was discriminated against on grounds of her marital status the claimant's representative states its belief that the claimant was the most qualified candidate for the position. This argument is based on the contention that the claimant had 17 years experience as a Child Care Assistant in a similar St Michael's House special national school dealing with the full range of duties that would be expected

of her in the post in Ballymun. The claimant's representative describes the claimant's service during this period as exemplary and that she enjoyed excellent relations with colleagues, pupils and parents alike. During the hearing the claimant's representative also referred to the many relevant training courses which the claimant completed while working at Raheny SNS. The claimant's representative contends that the respondents could not have applied themselves to a proper and objective assessment of the relative strengths of the claimant's candidature relative to that of the successful candidate as had it done so the claimant would have been appointed.

3.3 Subsequent to the hearing the claimant's representative furnished copies of certificates in relation to a range of training courses completed by the claimant.

4. SUMMARY OF I.B.E.C.'S CASE

4.1 I.B.E.C. state that the post of Childcare Assistant at Ballymun SNS was advertised publicly on 7 November, 1996. There were nine applicants for the post, all of whom were female and seven (including the claimant) were interviewed. There were three people on the interview board, 2 males and 1 female. The Chair and Principal of the school were on the interview board.

4.2 I.B.E.C. state that the qualifications and conditions of service for the job of Childcare Assistant employed in special schools are determined by the Department of Education and Science and has furnished a copy of same (Appendix 1). They describe the job as that of assistant to the teacher in the school under the general direction of the Principal.

4.3 I.B.E.C. state that the fact that a candidate worked at another St Michael's House special national school would not give them priority over another candidate who did not. While the claimant worked at St Michael's House SNS in Raheny, the two schools are different employers although they both have the same Chairman. The Board of Management in each school is a separate and an independent entity under the patronage of St Michael's House.

4.4 I.B.E.C. lists four criteria which it states the interview board used to assess candidates as follows (i) knowledge and skills, (ii) education and training, (iii) experience and (iv) personal attributes. Further details under each heading are given in Appendix 2. I.B.E.C. further state that the interview board unanimously concluded that the successful candidate was superior in relation to all four criteria and gives an evaluation of the successful candidate versus the claimant in Appendix 3. I.B.E.C. state that the job involves mainly working with older children in the primary school cycle. They say that the claimant's main experience was with older children with a physical disability and that at interview she continuously referred to her gymnastics expertise which was not seen as a priority for the school given pupil needs at the time. By comparison, I.B.E.C. state that the successful candidate displayed an exceptional and insightful knowledge of working with people with physical and learning disabilities and their needs and demonstrated a vibrant and genuine enthusiasm towards all aspects of the position.

4.5 In relation to the complaint that the claimant was discriminated against on grounds of her marital status i.e. she was married, I.B.E.C. argue that it was known to the interview board members prior to the interview that she was married and that if it were the intention

to discriminate against her why call her for interview ?

- 4.6 I.B.E.C. reject the claim that the claimant's pregnancy was a factor in her being turned down for the position. They state that the female interviewer was herself pregnant when she successfully applied for a post in St Michael's House and would feel very strongly that pregnancy must not be an issue in any appointment. One of the male interviewers sat on an interview board which appointed a pregnant woman to a position of Care Assistant in a day development centre even though she would be on maternity leave on her first day in the new post. I.B.E.C. further state that 80% of the St Michael's House workforce is female (90% in the case of Ballymun SNS) and therefore maternity and pregnancy is not an issue for the organisation or for members of management who sit on interview boards.

5. CONCLUSIONS OF THE EQUALITY OFFICER

- 5.1 The matter for consideration is whether or not the company discriminated against the claimant

- on the basis of her marital status
- by the imposition of an inessential discriminatory requirement

in terms of Section 2 of the 1977 Act and contrary to the provisions of Section 3 of that Act. In making my recommendation in this case I have taken into account all of the evidence, both written and oral, made to me by the parties to the case.

- 5.2 In any dispute concerning discrimination contrary to the terms of the Employment Equality Act, 1977, an Equality Officer expects that the person making the allegation should have prima facie evidence for his or her allegation and consider it reasonable to dismiss as

without proper foundation any allegation for which no such evidence is presented. On the other hand, where such evidence has been presented, the onus falls on the employer concerned to give a convincing alternative explanation for his actions. Where the employer concerned fails to do so, the Equality Officer considers it is equally reasonable to find in favour of the claimant. “Prima facie” evidence means evidence which in the absence of any convincing contradictory evidence by the employer would lead any reasonable person to conclude that discrimination has occurred. In this case the claimant’s representative submitted the following grounds for her allegation of discrimination i.e. “The claimant’s case is that as she was patently the most qualified candidate for the post advertised her non selection must have been based on discriminatory grounds, namely her married status and her pregnancy”.

5.3 I will first of all consider the assertion that the claimant was the most qualified candidate for the post. The respondents state that the candidates were assessed under four headings namely (i) Knowledge and Skills (ii) Education and Training (iii) Experience and (iv) Personal Attributes. The respondents have given a comparative table showing the claimant and the appointee under each heading (Appendix 3) and state that the interview board unanimously found the appointee to be more suitable under each heading.

(i) Knowledge and Skills

In relation to knowledge and skills, the table shows and the respondents re-iterated at the hearing, that the claimant’s focus was very much in the area of gymnastic training while the appointee showed a wider interest in the education of the pupils. The respondents stated that the vacancy in question was at the reception level ages and that the claimant’s emphasis on gymnastics was more appropriate to the older age groups. I consider that the

interview board had objective reasons for favouring the appointee under this heading.

(ii) Education and Training

Education

The qualification requirements for the post of Child-Care Assistant in Special National Schools laid down by the Department of Education and Science are set out in Appendix 1. The educational requirements are at Intermediate/Day Vocational Certificate pass level in specified subjects or equivalent standard. The claimant's second level educational standard satisfied this requirement while the appointee holds a Bsc degree and also qualified as a secondary teacher (Higher Diploma in Education). While teaching was not a requirement of the post, I would consider that such a qualification would be an advantage in a teaching environment and that the respondents would be justified in giving the appointee a higher ranking in relation to formal education.

Training

Subsequent to the hearing the claimant provided certificates/information in respect of nine courses which she undertook during her working career. Two courses related to behavioural techniques and sign language while the other seven were in physical education related topics and gymnastics in particular. The appointee had attended typing and word-processor training. I would consider that the additional training attended by the claimant would have been of more benefit in the post than that attended by the appointee.

(iii) Experience

The claimant had, at the time of the interview, 17 years experience working in another St Michael's House SNS at Raheny. She started working with younger children but in later

years was working more with older children. She worked once a week with 4 to 10 year olds on gymnastics. The claimant states that she worked with children of very low ability and was often referred to for advice by her colleagues. The appointee on the other hand had four years work experience in three different positions after she left full time education. She worked and lived with people with learning difficulties at a residential care centre, cared for a woman with a physical disability and carried out general housekeeping duties for groups in another position. I would expect that the claimant's 17 years experience in a similar position to the disputed post and in a similar school should place her in better standing than the appointee under this heading.

(i) Personal Attributes

In the 'Criteria Used to Assess Candidates' supplied by the respondents (see Appendix 2) the criteria under this heading are "Commitment to working in a caring, creative and sensitive way with people with learning disabilities as well as assessing the personality of the individual to ensure they can work with the established team of staff within the school". In the comparative table supplied by the respondents both the claimant and the appointee are shown to be committed to working with people with learning disabilities however the claimant's emphasis on gymnastics is shown in a negative light while the appointee is given credit for her sensitivity towards people with learning difficulties and is said to have projected herself as a 'calm, sincere and highly committed individual who would enhance and be a unifying presence on a team'. I consider therefore that in terms of the vacancy to be filled, the interview board had objective reasons for favouring the appointee under this heading.

Having regard to the above considerations, it would appear to me that while the claimant was stronger under some headings than the appointee, the respondents had, on balance, sufficient objective reasons for favouring the appointee for this particular vacancy which were not influenced by the claimant's marital status and pregnancy and that a prima facie case of discrimination has not been established.

- 5.4 The claimant in her original referral of the complaint stated that she was discriminated against in terms of Section 2(c) of the 1977 Act when she was obliged to comply with an inessential requirement which a substantially higher proportion of single women was able to comply. The submission on behalf of the claimant did not elaborate on this aspect of the complaint and no additional evidence was offered at the hearing. I must assume that the inessential requirement as understood by the claimant in this instance was that she should not have been pregnant and it is her contention that a higher proportion of single females would have been able to meet this requirement. No statistical information was presented in support of this argument however as I have outlined in paragraph 5.3 above, I consider that the respondents demonstrated that they had objective reasons for favouring the appointee over the claimant and that the pregnancy of the claimant was not a factor in her non-appointment.

6. RECOMMENDATION

6.1 On the basis of the foregoing, I find that the Board of Management, St Michael's House Special National School, Ballymun and St Michael's House Human Resources Department, Goatstown did not discriminate against Ms Sheelagh Brennan in terms of Section 2 of the Employment Equality Act, 1997 and in contravention of the provisions of Section 3 of that Act.

Raymund Walsh

Equality Officer

25 August, 1999