

EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATION NO. EE 42/1999

PARTIES

Ms. Frances Hanly

and

Co. Mayo Vocational Education Committee

File No. EE 11/95

1. Dispute

1.1 This dispute concerns a claim by Ms. Frances Hanly that Co. Mayo Vocational Education Committee discriminated against her on the grounds of sex in terms of Section 2(a) of the Employment Equality Act, 1977 and in breach of Section 3 of the Act in the manner in which part-time teaching hours were distributed favoured two male teachers.

2. Background

2.1 Ms. Hanly had been employed by Co. Mayo V.E.C. since 1st September, 1972 originally in a temporary full-time teaching capacity and then in a part-time capacity to 1989. She continued to be employed by Mayo V.E.C. after 1989 on yearly contracts, under the terms of the Eligible Part-Time Teachers Scheme, to the 31st August, 1994 when her employment was terminated.

2.2 Ms. Hanly, over the period she was employed by Mayo V.E.C., taught Secretarial skills, on a one year Post Leaving Certificate Course, at Moyne College, Ballina. In September, 1994 Ms. Hanly was issued with a Notice of Proposed Dismissal for Redundancy (Form RP1), the form states a fall in demand for secretarial services as being the reason for the redundancy.

2.3 Ms. Hanly contends that her case of unlawful discrimination revolves around that the distribution of part-time teaching hours between two male teachers to her disadvantage.

2.4 On the 25th of February, 1995, Ms. Hanly referred the dispute against Co. Mayo V.E.C. to the Labour Court. In

early March 1995, she submitted to the Labour Court that she should have included the names of the Chief Executive Officer, Co. Mayo V.E.C. and the Principal of Moyne College, Ballina as respondents. In April, 1995 the Labour Court referred the case, against Co. Mayo V.E.C., to an Equality Officer for investigation and recommendation. In the course of the Equality Officer's investigation he received written submissions from both parties to the case. After receipt of the submissions a joint hearing with the parties was held on the 29th March, 1996.

- 2.5** In the course of the joint hearing the claimant's legal representative raised certain matters and he presented a document, entitled "list of requirements". After some discussion, between the parties and the Equality Officer, in relation to the requirements sought the Equality Officer requested the claimant's representative to put his application in writing, with an explanation in respect of each item requested. The Equality Officer informed the hearing that he would decide whether or not any of the material sought would assist him in the investigation of the dispute.
- 2.6** In May 1996 a letter, together with a revised list of "documents required", but without an explanation on all the items requested, was received. The Equality Officer later that month wrote to the claimant's representative reminding him of his undertaking to explain all the items required. In a letter, dated 14 June 1996, in response to a further letter from the claimant's representative, the Equality Officer stated, *inter alia*,

that he *"failed to understand the relevance of all the considerable amount of documentation referred to in the list, some of which goes back as far as 1972, to an alleged discriminatory act in 1994"*.

- 2.7** In a letter received in February 1997 the claimant's representative stated that Ms Hanly wished to proceed with her case and he would contact the Equality Officer within two weeks regarding letter of 14 June 1996. In spite of several reminders no further communication was received. In a registered letter dated 16 July 1999 the Equality Officer wrote to the claimant's representative stating, *inter alia*, that he must *"now assume that an explanation on all the various items sought by you will not be forthcoming"* and that he *"had sufficient relevant information available"* to issue a recommendation. There has been no response to this letter.

3 The Claimant's Case

- 3.1** The claimant submits that she was discriminated against by Co. Mayo V.E.C. on grounds of her sex in terms of Section 2(a) of the Employment Equality Act, 1977 and in breach of Section 3 of the Act in that the distribution of part-time teaching hours favoured two male teachers to her disadvantage.

- 3.2** Section 2(a) deals with direct discrimination and it states that discrimination shall be taken to occur:-

"where by reason of his sex a person is treated less favourably than a person of the other sex."

Section 3(1) states that an employer:-

"shall not discriminate against an employee or a prospective employee in relation to employment,"

3.3 Ms. Hanly points out that during her 22 years service she taught Secretarial skills, which she is fully qualified to teach, on a one year Post Leaving Certificate Course in Moyne College, Ballina. She submits that her case of unlawful discrimination revolves around the fact that two male teachers, who are also part-time and also employed under the EPT scheme, were allocated teaching hours, unlike her, for the school year 1994/95. She claims that the manner in which part-time hours were distributed favoured the two male teachers, who have no particular skills essential to school needs, to her disadvantage.

3.4 The claimant considers that the distribution of part-time hours, which make up any job, is unfair and unequitable. The claimant submits that the situation as applied, as set out below in points 1 to 7, as being relevant to her complaint.

"(1) Moyne College has a Leaving Certificate cycle and a Post-Leaving Certificate cycle (in this case Secretarial).

(2) All teaching hours allocated to the school stem from TOTAL enrolment (i.e. Secretarial numbers and Leaving Certificate Cycle

combined).

- (3) The staffing allocation is allocated on the basis of whole-time staff first and then the provision of whatever part-time staff is deemed necessary.
- (4) The subject areas in which both the whole-time staff and the part-time staff work have generally been interchangeable in Moyne College.
- (5) The V.E.C./and/or the school Principal can decide where the part-time staff will be required and in what particular subject areas.
- (6) Part-time service has been used in the Secretarial area for the past 22 years.
- (7) It has also been serviced by Permanent Teachers who also teach in Leaving Cert. Cycle."

3.5 Points 1, 2 and 7 above, the claimant states, show that all staff are allocated from the Total enrolment of Secretarial and Leaving Certificate Cycle. All staff are a shared resource. The claimant states "yet for my employment only, the C.E.O. is saying that Secretarial is a separate area. He is refusing to allow me to avail of a share of the total allocation of hours. He uses the argument that I am a Specialist Teacher and as such cannot be used in the Leaving Certificate Cycle."

3.6 There were many options open to the V.E.C. and the school as to how they assign the teacher resources allocated to them, Ms. Hanly asserts, as outline in Points 3,4,5 and 6 of paragraph 3.4. She further asserts that there is total flexibility as to how the school time-table is put together and what teachers teach the different subjects. She adds that it would be reasonable to retain at least some part-time service in the Secretarial area seeing as it had 18 hours part-time service for the past 22 years.

3.7 If the policy of the school as operated down through the years had applied and the normal practice of re-scheduling staff between subject areas had applied, the claimant maintains that she could quite easily have been accommodated either totally or partially while still meeting the needs of school and students. Ms. Hanly gives the following as examples as to how this could have been implemented.

"(1) (a) The services of the whole-time teachers retained in Secretarial area could have been used for many subjects in the Leaving Certificate Cycle i.e. they could have taught Maths, English, Irish, Commerce (which they have previously done) for at least some of the hours now being taught by the two male part-time teachers.

(b) The permanent teacher now doing computing

with Secretarial could have covered computer hours offered to male part-time teacher.

- (c) There were many other permutations which would have been in line with school policy over the years and would not in any way have conflicted with the best interests of the school or students.
- (2) I also could have been offered the part-time hours in Computers in the Leaving Certificate Cycle as I have acceptable qualifications in this area.
- (3) The second male part-time teacher (who was employed Mid September 1994) is teaching some hours in subjects for which he is no more qualified than I am - i.e. Religion and P.E. Again these are hours which were not offered to me.
- (4) Enrolment Numbers dropped in both Sectors this year. Yet the part-time hours were only removed from the one sector - (Secretarial). Again this favoured the employment of the male teachers and was surely inequitable.
- (5) The C.E.O. states the 13 new EPT's were appointed this year to County Mayo V.E.C. This would have allowed for the transfer of some of the services of the male EPT's in

Ballina to another school. This would not have been out of line with current policy where 25% of Permanent Teachers in Moyne College are already working between 2 centres."

3.8 It should be noted, Ms. Hanly states that the two permanent Teachers now working in the Secretarial area are teachers who were originally and primarily employed not as "Specialist" Secretarial Teachers but as Teachers of Commerce and who worked in the Leaving Certificate Cycle prior to moving to Secretarial area. She adds that the rescheduling of some of their hours would have allowed her to retain my part-time hours in Secretarial.

3.9 In conclusion Ms. Hanly claims that:

- "(1) No consideration was given to the allocating to me of **ANY** part-time hours. (Please note - 11 hours would have secured me a contract and kept me within the EPT scheme).
- (2) No cut in part-time hours was considered for the 2 male teachers.
- (3) In designing the time-table the 2 male teachers were favoured.
- (4) This was a total inequitable distribution of part-time hours.
- (5) This resulted in the unfair termination of my

employment of 21 years with Mayo V.E.C. while the male teachers retained their positions in total."

4 The Respondent's Case

- 4.1** The respondent states that there is no truth in Ms. Hanly's claim that she was treated less favourably, because of her sex, than a person of the other sex. The fact that she was a female and the other two part-time teachers were male never entered the issue. The V.E.C. argues that as a result of the enrolment level of Secretarial Course students at Moyne College, Ballina, in the 1994/95 school year, the claimant was not offered any hours as the permanent teachers were sufficient to meet the demands of teaching services.
- 4.2** The respondent claims that the EPT Scheme for teachers was introduced in 1989 and allowed for the employment of fully qualified teachers on a pro-rata payment basis with permanent teachers. Special conditions were allowed for unqualified part-time teachers who had served for a number of years prior to the introduction of the Scheme. In situations where fully qualified teachers are not available, Eligible Part-Time contracts may be offered to unqualified teachers. The EPT Scheme was agreed between the Irish Vocational Education Association and the Teachers Union of Ireland and it is governed by Circular Letter No. 39/89, dated 31st May, 1989, Appendix 1.
- 4.3** The V.E.C. points out that Ms. Hanly was employed on an EPT contract basis from the introduction of the Scheme.

The two male teachers were a teacher of Science, Mathematics and Computer Applications and a teacher of Irish, English and General Subjects. All three teachers were employed on EPT contracts for the school year 1992/'93. At the start of the 1993/'94 school year the enrolment of Secretarial Course students was initially quite low and the employment of Ms. Hanly was in some doubt. As the enrolment increased, Ms. Hanly was placed on a 17 hour per week EPT contract from 1st November, 1993.

- 4.4** From a review of the teaching services provided by the Mayo V.E.C. during the 1993/94 school year it was very clear, the respondent states, that scarce teaching resources had been used very inefficiently on the Secretarial Course at Moyne College. The fact that other schools in the county Scheme were treated less favourably in the distribution of teaching resources in 1993/94, coupled with increasing enrolments in other schools and Department of Education cutbacks, ensured that the practices of 1993/94 could not be repeated.
- 4.5** Ms. Hanly's claim that the part-time hours at Moyne College, Ballina, for the 1994/95 school year, were distributed inequitably between her and two male teachers does not, the V.E.C. argues, stand up to scrutiny. Under the terms of the EPT Contract (Agreement between the I.V.E.A. and T.U.I., copy of the agreement and a copy of a 'contract' are at Appendix 2). The agreement states at Section 3, Re-employment - 'Eligible part-time teachers will, in practice, be re-employed at the beginning of a new session in the

School/College where the same service is to be provided on a part-time basis and service has been satisfactory.' The service of all three teachers had been satisfactory in the 1993/94 school year.

- 4.6 The weekly teaching service provided by the three part-time teachers under EPT Contracts in 1993/94, the V.E.C. states, were as follows:

Ms. Hanly

Typing	7hr 00m	VPTP
Shorthand	4hr 40m	VPTP
Comp. Applics	1hr 10m	VPTP
Communications	1hr 10m	VPTP
Comp. Applics	3hr 00m	VPTP

Male Teacher No. 1

Comp. Applics	4hr 05m	Jun
Science	8hr 45m	Jun
Biology	2hr 55m	Sen
Comp. Applics	2hr 20m	Sen

Male Teacher No. 2

Irish	8hr 45m	Jun
P. Educ.	0hr 35m	Jun
English	3hr 30m	Jun
Irish	5hr 50m	Sen

- 4.7 The teaching services provided by the two part-time teachers under EPT Contracts in 1994/95, the claimant's former employer states, were as follows:

Male Teacher No. 1

Comp. Applics.	3hr 30m	Jun
Science	8hr 45m	Jun
Biology	2hr 55m	Sen

Male Teacher No. 2

Irish	5hr 50m	Jun
English	2hr 55m	Jun
P. Educ.	0hr 35m	Jun

Comp. Applics. 2hr 20m Sen	Rel. Ed.	1hr 45m Jun
	Past. Care	0hr 35m
		Jun
	Remedial Eng.	2hr 40m Jun
	Irish	2hr 55m
		Sen

4.8 It is obvious from the above details, the V.E.C. contends, that the two male teachers were employed for the 1994/95 school year to provide the same service as they did in 1993/94. Ms. Hanly was employed as a teacher of Shorthand and Typewriting and Computer Skills to Secretarial Classes. Ms. Hanly had not taught their subjects in the previous year. The male teachers were entitled to have the conditions of their EPT Contracts of 1993/94 applied and receive Contracts in 1994/95 for the subjects they taught in 1993/94. No division of the part-time teaching hours available to Moyne College, Ballina, for the 1994/95 school year would have provided an EPT Contract for Ms. Hanly.

4.9 It must be borne in mind that over the previous years, many other part-time teachers either left the school and were not replaced (details of part-time staff employed in 1987/96 are at Appendix 3). In addition to the changes in part-time teachers employed at the College, many permanent teachers were also either transferred to other schools or were obliged to serve in Moyne College and another school during the same year.

4.10 A major factor, the respondent's representative argues, in the Mayo V.E.C.'s inability to continue the

employment of Ms. Hanly at Moyne College, Ballina, has been the changing pattern of student enrolment in Secretarial Courses. In Table 4, at Appendix 4, it is obvious that there has been a drastic decline over the past few years in the numbers of students seeking Secretarial Courses. This is true of the whole county and not confined to any one school. Moyne College, Ballina, and other schools in the county scheme catered for up to three Secretarial Courses in the one year. Times and student requirements have changed. In spite of installing modern computers and software, having teachers' skills upgraded and expensive advertising campaigns, student numbers in this specialised area have halved in the past five years.

- 4.11 The respondent contends that the V.E.C. is bound to provide teaching hours for its permanent teachers in the first instance and thereafter can employ part-time teachers to meet the various curriculum demands of its schools. The dramatic growth in some V.E.C. schools has led to increased demand for teaching services and, in an overall teaching staff reduction era, the continuance of inefficient use of teaching services in any school in the county scheme is impossible.

5 Conclusion of Equality Officer

- 5.1 The claimant's case is that the respondent "*treated her less favourably*" by reason of her sex than two male colleagues, in relation to the distribution of hours to eligible part-time teachers.

The V.E.C. maintains that the reason Ms Hanly was not

offered any teaching hours in 1994/95 is because of the level of enrolment on Secretarial Courses at Moyne College.

- 5.2 The claimant contends in her submissions that various options were open to the respondent in relation to the distribution of available teaching hours that would have ensured renewal of her contract of employment in respect of the year 1994/95. However, the question I must address and decide under the Act is whether or not the actual course of action adopted by the respondent in relation to the distribution of hours in 1994/95 amounts to discrimination on the grounds of the claimant's sex.
- 5.3 It seems to me not unreasonable, when the respondent decided that the same level of teaching hours in the secretarial area would not be required in 1994/95 as in the previous year that he looked at the teaching service being provided by part-time teachers in the College i.e. Ms Hanly and two males. I note that the claimant's employment and that of her two colleagues are governed by the Eligible Part-Time Teachers scheme.
- 5.4 The terms of the Eligible Part-Time Teachers scheme were drawn up with the agreement of the Department of Education, the Irish Vocational Education Association and the Teachers Union of Ireland. I note that the agreement between the I.V.E.A. and the T.U.I. at 3. Re-Employment states "*eligible part-time teachers will, in practice, be re-employed at the beginning of a new session in the School/College where the same service is to be provided on a part-time basis and the service has*

been satisfactory."

- 5.5 I have looked at the details of the teaching service of Ms Hanly and her two male part-time colleagues, as outlined at 4.6 and 4.7. I note the following:

Ms Hanly subjects in the year 1993/94 were in the secretarial area

one of her colleagues taught science and computer skills, and the other general subjects

her two colleagues taught the same subjects, with some slight variations, in the year 1994/95 as they did in 1993/94

the teaching service provided by Ms Hanly in 1993/94 is not included in the teaching service of her two colleagues in 1994/95

- 5.6 Having regard to the above observations I find that neither the respondent's distribution of teaching hours nor the implementation of the E.P.T. scheme amounted to discrimination or, indeed, an inference of discrimination. Accordingly, I find that the claimant was not "*treated less favourably*" than either or both of her former eligible part-time male colleagues.

- 5.7 In reaching my conclusions in this case I have taken into account all the submissions made by the parties. I wish to add here that I invited the claimant's representative, in the course of the joint hearing held,

to submit his views on the E.P.T. scheme. In spite of his undertaking to do so and numerous reminders to him in the matter (and other matters) his views on the scheme never came to hand.

6 Recommendation

- 6.1** In view of my conclusions in the preceding paragraphs, I find that County Mayo Vocational Education Committee did not discriminate against Ms Hanly contrary to the provisions of the Employment Equality Act, 1977.

Jim Clerkin,
Equality Officer,

3rd. September, 1999