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EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATION NO: EE 01/2000

**Ms. Agnes Kenneally
(Represented by the Equality Authority)**

AND

**Micro Bermuda Limited
(Represented Mason Hayes & Curran)**

File No. EE 05/1999

1. DISPUTE

- 1.1** This dispute concerns a claim by Ms. Agnes Kenneally that Micro (Bermuda) Limited discriminated against her on the basis of her sex and her marital status in terms of Section 2(a) and Section 2(b) of the Employment Equality Act, 1977 when it did not offer her the position of Production Supervisor.

2. BACKGROUND

- 2.1** Micro (Bermuda) Limited, trading as Microsemi Ireland Limited, is a subsidiary company of an American multi-national based at Ennis, Co. Clare. It is involved in the manufacture of semiconductors for supply to the aerospace industry and there are currently 150 employed in the Company's plant at Ennis.
- 2.2** The Company advertised internally for the position of Production Supervisor. There were seven applicants for the position and following a preliminary interview three applicants (including the claimant) were invited to a second and final interview. The claimant was unsuccessful at the second interview and the position was offered to a male applicant.
- 2.3** The claimant then spoke to each of the interviewers and received different reasons for her failure to secure the position. She invoked the Company's grievance procedure and met with the General Manager. The claimant was not satisfied with the responses she had received and, on 1st February, 1999 she referred a claim to the Labour Court. The Labour Court referred the claim to an Equality Officer for investigation and recommendation.

3. SUMMARY OF THE CLAIMANT'S CASE

- 3.1** The claimant has been employed by the Company since 1983. She has a total of 16 years experience working in almost all general operative areas as a member of Quality Assurance. For the past six years she has worked in the Shipping Department hence the need for daily communications with shipping staff, customer service, engineering and management.

3.2 On 4th September, 1998 the position of Production Supervisor was advertised internally and the claimant applied for the position. There was a total of seven applicants and the claimant was successful in her first interview which was conducted by the Floor Manager (male) and the Operations Manager (female). According to the claimant two male applicants were successful in their preliminary interviews. The second interviews were conducted by the Personnel Manager (male) and the Quality Assurance Engineering Manager (male). The claimant was not successful at this interview and the position was offered to a male applicant. According to the claimant the successful applicant was twenty one years old and has been employed by the Company for one year hence having far less experience than herself.

3.3 The claimant says that she spoke to all the managers who interviewed her to establish why she was not offered the position. According to the claimant the various managers said the following:

Personnel Manager - She (the claimant) should have done a supervisor's course and she was a 'bit' tied to her current job.

Operations Manager - Mentioned education.

Floor Manager - The successful candidate had more 'get up and go' and 'it did occur to me that you (the claimant) might decide to have a couple more babies and I would be left without a supervisor'. There was nothing between the applicants.

Q.A. Manager - The job was awarded to the successful applicant because of his technical background.

Following the meetings with the interview boards members the claimant availed of the Company's grievance procedures. She met with Mr. Finn (General Manager) who, the claimant says, told her that he must abide by the decision of the management team.

3.4 According to the claimant she is well qualified for the position of Production Supervisor as she has worked in a number of different areas in the Company for the past 16 years and has had a lot of responsibility. She also possesses an excellent knowledge of the product and the product flow having worked in every Department in

the Company. The claimant says that educational qualifications were not a prerequisite for the position and the successful candidate did not have extra educational courses completed at the time of his appointment. According to the claimant the successful applicant worked in the Engineering Department testing units under the control of the Engineering Manager and had neither the same level of experience or responsibility as herself. The claimant says that the employee handbook states that “decisions on promotion will be made on the basis of recent performance ratings, attendance, skills and seniority”. According to the claimant she had received a positive rating from her supervisor.

- 3.5 The claimant states that she fully met all the criteria for the position. She alleges that a discriminatory remark was made to her by one of the managers following the interviews. The claimant, therefore, argues that this infers that a discriminatory criteria applied to the selection process. In deciding to appoint the successful candidate the claimant contends that the Company failed to give any consideration to her seniority and skills. The claimant cites the case of Anne Dunne and Sheelin Screens Limited¹ as one which contains facts somewhat similar to her own claim. In that case the Equality Officer held:

*“I consider that in relation to work and total work experience that the appointee was less qualified than the claimant. In this context I note the claimant had experience over many years of organising work to meet schedules and the deadlines of customers’ orders I consider that the claimant was more highly qualified than the appointee for the post in question. I note that in the case of **Wallace -v- South Eastern Education and Library Board**, the Court of Appeal for Northern Ireland found that ‘... the fact that the successful candidate was a man and the unsuccessful but better candidate was a woman is itself sufficient evidence of discrimination on the grounds of sex’. Taking this finding into account and the fact that the company did not take into account the claimant’s experience and training, I am satisfied that the claimant was discriminated against on the basis of her sex when she was not appointed to the post of production manager. I find that the claimant was treated less favourably on the basis of sex within the meaning of Section 2 of the 1977 Act.”*

¹ Equality Officer recommendation EE 22/1997² Case Reference C-409/95

The claimant contends that the rationale in the above case should be applied to her claim. She argues that she has been treated less favourably than the successful male applicant despite her greater suitability for the position. This she claims raises an inference that the less favourable treatment was on the grounds of sex.

- 3.6** The claimant also cites the judgement by the European Court of Justice in the case of **Hellmut Marschall and Land Nordrhein-Westfalen²** in which the Court stated:

“As the Land and several governments have pointed out, it appears that even where male and female candidates are equally qualified, male candidates tend to be promoted in preference to female candidates particularly because of prejudices and stereotypes concerning the role and capacities of women in working life and the fear, for example, that women will interrupt their careers more frequently, that owing to household and family duties they will be less flexible in their working hours, or that they will be absent from work more frequently because of pregnancy, childbirth and breast feeding. For these reasons, the mere fact that a male candidate and a female candidate are equally qualified does not mean that they have the same chances.”

The claimant, therefore, contends that she was more qualified and experienced than the successful male appointee but she did not have the same chance of promotion.

- 3.7** In terms of remedy the Equality Officer is asked to find that the claimant has been discriminated against on the grounds of sex in relation to promotion and to recommend that she is appointed to the position of Production Supervisor, is awarded compensation for the loss of earnings as a consequence of the discrimination and is awarded compensation for the distress suffered.

4. SUMMARY OF THE COMPANY'S SUBMISSION

4.1 According to the Company it advertised internally for the position of Production Supervisor on 4th September, 1998 and applications had to be submitted in writing by 9th September, 1998. A total of seven employees (four males and three females) applied for the position. All applicants were called for preliminary interview conducted by Ms. Moroney, Production Manager and Mr. Morgan, Section Manager and held on 15th September, 1998. Following the preliminary interviews the claimant was one of three applicants invited to attend a second interview. The other two applicants were Mr. Mulcahy and Mr. Healy. The second interviews were conducted by Mr. Keane, Personnel Manager and Mr. Dillon, Quality Assurance Manager and were held on Wednesday, 23rd September, 1998. All four interviewers met on Friday, 25th September, 1998 and after discussing the respective merits of the three candidates it was decided to offer the position to Mr. Mulcahy. After that meeting Mr. Morgan and Ms. Moroney called the three interviewees together and announced that there had been very little between the candidates but that Mr. Mulcahy had been selected for the position as he was the candidate who had stood out.

4.2 According to the Company the claimant was aggrieved by the decision and sought and was granted separate meetings with each of the four interviewers to discuss why she had not been offered the position. These meetings took place between 5th and 12th October, 1998. The claimant then completed the employee grievance form and met with Mr. Finn, General Manager on 15th October, 1998. The Company says that it facilitated the claimant in every way and ultimately decided not to overturn its decision to appoint Mr. Mulcahy to the position.

4.3 The Company says that it did not formally adopt any selection criteria. However it was looking for, inter alia, the following characteristics:

- Initiative
- Technical knowledge and relevant experience
- Development potential
- Educational courses

According to the Company the questions asked of candidates were loosely based on those set out in Appendix A.

4.4 The Company states that Mr. Mulcahy was selected for the position of Production Supervisor for the following reasons:

- (1) He displayed by far the best initiative in terms of what he felt he could add to the job, as well as what he could change for the better. For example, he said he would initiate daily counts of the product in order to stop production losses.
- (2) He was a Product Technician who worked on the production side of the Company's operations. He displayed a high degree of technical knowledge about the product and product flow. The claimant is a General Operative in the Quality Assurance area, which is part of the sales side of the business rather than the production side. Overall, it was felt that Mr. Mulcahy had better relevant experience.
- (3) He showed himself to have the best development potential of the candidates. It is important to point out that the Company was seeking to fill the post of Production Supervisor with the future in mind i.e. that the successful candidate might go on to be promoted to the position of Production Manager.
- (4) The question of education is also relevant. While Mr. Mulcahy does have an excellent leaving certificate, the claimant does not have a leaving certificate qualification. Furthermore, Mr. Mulcahy had indicated to the Company an intention to pursue an engineering course in the future, which would be helpful to him in the role of Production Supervisor.
- (5) Overall, it was the general consensus among the interviewers that Mr. Mulcahy had put in the best performances at both interviews.

4.5 The Company says that, while the claimant came across well in her interview, she did not answer some of the 'key' questions as well as the successful applicant. When the claimant was asked what she would change if she got the job she said that she would change nothing. The Company says that other answers to questions on how to tackle problems of lost units and failure to meet production targets were answered in a similar fashion and the claimant showed no sign of pro-activity or leadership. According to the Company these qualities were evident in the answers given by the successful candidate and these traits would be considered very important in people who show a desire to supervise others.

4.6 The Company states that it rejects the claimant's contention that she was not granted the promotion on the grounds of her sex under the provisions of the Employment

Equality Act, 1977. With regard to the claimant's contention that she was discriminated against on the grounds of marital status the Company points out that Section 2(b) of the 1977 Act provides that discrimination is taken to occur where because of marital status a person is treated less favourably than a person of the same sex. As the claimant is a woman and the successful candidate is male the Company submits that there can be no claim for discrimination on the grounds of marital status.

- 4.7** The Company says that its workforce is primarily female and it is Company policy and practice not to discriminate against staff on grounds of sex. The Company notes that five of its eleven supervisory jobs are occupied by females and the last supervisory position to be filled was filled by a female coming from the same Department as the claimant. According to the Company the claimant has applied for a number of positions in the past. She was previously successful in her application for the position of Relief Telephonist/Receptionist. Three other positions she applied for namely Accounts Payable Clerk (Oct. 1992), Space - JANS Supervisor (July, 1997) and Training Officer (Nov. 1997) were filled by females who had less seniority to the claimant.
- 4.8** The Company says that no questions regarding the claimant's sex or marital status were ever raised at any time during the recruitment process and at the interviews, nor were they asked of other candidates. According to the Company it responded positively to the claimant's request to meet with her and to give her feedback as to why her application for the position of Production Supervisor was unsuccessful.
- 4.9** With regard to the claimant's submission the Company makes the following points:
- The Company states that seniority is just one of a number of factors to be taken into account and it has been ignored in the past e.g. in the cases mentioned above where females with less seniority to the claimant were successful in other promotion competitions.

 - The Company says that the claimant did not have the same relevant experience as the successful candidate. While it accepts that she received a positive recommendation, performance at interview, according to the Company, is by far the most important factor in selecting an employee to fill

a position. The Company says that the age of the successful candidate is irrelevant.

- While education and qualifications were not a prerequisite for this position the Company says that the successful candidate had indicated a willingness to undertake a course which was regarded as a sign of initiative and which would benefit him in the position of Production Supervisor.
- The Company says that Mr. Morgan (who interviewed the claimant at the first interview) categorically denies making the following statement (“it did occur to me that she might decide to have a couple of more babies and I would be left without a supervisor”). The Company says that it can be seen, from his notes, that the claimant raised this issue herself by asking whether the fact she was a woman held her back. According to the Company Mr. Morgan replied that it did not and to assure her of this he commented how could it hold her back when she had a grown up family and would not be having any more children. The Company says that the claimant is misinterpreting the comment that there was nothing between the candidates which the claimant attributed to Mr. Morgan. Rather Mr. Morgan and Ms. Moroney had brought the three candidates together and, as a way of praising everyone’s performance, had said that there was not much to choose between them only that the successful candidate had something extra.
- The Company says that the General Manager gave due consideration to the claimant’s grievance. However, he felt that the claimant was more concerned with the question of her pay rate.

5. CONCLUSIONS OF THE EQUALITY OFFICER

5.1 The issue for consideration in this claim is whether or not the Company discriminated against the claimant on the basis of her sex and marital status in terms of Section 2(a) and Section 2(b) of the Employment Equality Act, 1977 when it did not offer her promotion to the position of Production Supervisor. In making my decision in this case I have taken into account all of the submissions, both oral and written, made to me by the parties.

5.2 Under Section 2(a) of the Employment Equality Act, 1977 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”.

In this case the claimant has argued that she was treated less favourably on the basis of her sex than her male colleague when she was not successful in her application for the position of Production Supervisor. The claimant has worked for the Company for 16 years and argues that she has greater experience for the job than the successful male candidate who has only been employed by the Company for one year.

- 5.3** According to the Company the successful male candidate performed better at interview and demonstrated a higher level of initiative than the claimant. It was contended by the claimant and accepted by the Company that the successful male applicant had worked on the production side of the organisation and was, therefore, able to propose ideas for change. The claimant never worked in production. It is a fact that the successful candidate's experience in Production proved beneficial to him in his interview and I am satisfied that this fact is unrelated to his sex.
- 5.4** The claimant was critical of the Company when it pointed to the difference in educational qualifications between herself and the successful male candidate. She said that no requirement had been set in relation to educational qualifications for this position and the job notification had specified no educational prerequisites. I accept that the Company did not set any educational prerequisites for this job. However in assigning the job it did take account of the candidate's educational qualifications. This cannot, in itself, be held to be discriminatory in terms of the provisions of the Employment Equality Act, 1977. If the Company had taken account of educational qualifications of male candidates and ignored those of female candidates then the claimant could justifiably have made an argument of having been discriminated against in this regard.
- 5.5** The claimant and the Company have conflicted over what the Section Manager (Mr. Morgan) said to the claimant about her failure to succeed at interview. According to the claimant the Section Manager said that it had occurred to him that she 'might decide to have a couple more babies and I would be left without a supervisor'. The Company denied this and said that the claimant, in speaking to the Section Manager, asked whether the fact that she is a woman held her back. The Company said that the Section Manager told her that it did not and to assure her of this he commented on how could it hold her back when she had a grown up family and would not be having

any more babies. From the evidence submitted it is apparent that the Section Manager, who was involved in the initial interview, recommended that the claimant be offered the job. If the Section Manager was of the opinion that the claimant would be taking pregnancy related leave it would follow that he would not be recommending her for the job. For that reason the comment ascribed to him is at variance with his recommendation. Therefore, on the balance of probabilities I find the Company's version of events more credible.

5.6 Under Section 2(b) of the Employment Equality Act, 1977 discrimination shall be taken to occur where:

“Because of his marital status a person is treated less favourably than another person of the same sex”.

The claimant's argument under this Section of the Act was that the remark made by the Section Manager as referred to in paragraph 5.5 above was made in the context of her marital status. The Act provides for discrimination on the basis of a person's marital status where that person is treated less favourably than another person of the same sex but a different marital status. In this case the claimant is arguing that she was treated less favourably than the successful male candidate. No other female applicant was short listed for the second interview, hence there is no evidence that the claimant was discriminated against on the basis of her marital status.

6. RECOMMENDATION

6.1 In view of the foregoing conclusions I find that Micro (Bermuda) Limited did not discriminate against Ms. Agnes Kenneally in terms of Section 2(a) and Section 2(b)

of the Employment Equality Act, 1977 and contrary to the provisions of Section 3 of that Act.

Gerardine Coyle
Equality Officer

18th January, 2000

APPENDIX A

**Questions put to Candidates at the
Second Interview**

- ◆ What is the job of Production Supervisor, as you see it at the moment? (Not what you can do in the job, just describe the job itself).
- ◆ Would you change any aspect of the job as you perceive it at the moment?
- ◆ How are you in conflict situation and how would you handle difficult employees?
- ◆ What is your understanding of our disciplinary procedure or are you familiar with it at all?
- ◆ Do you really see yourself being able to control, discipline or demand respect from people you have worked side by side with up to now?
- ◆ Why did you apply for this job?
- ◆ What are your future ambitions, if any? Have you any further education plans? Have you any third level education?
- ◆ What importance do you place on “on-time delivery” and why?
- ◆ If you were in a situation where your production targets were falling behind in the month, how would you attempt to rectify the problem?
- ◆ Would you be willing to roll up the sleeves to meet production targets? Have you stayed back much in your existing job to help meet targets?
- ◆ Why you?