

OFFICE OF THE DIRECTOR OF EQUALITY INVESTIGATIONS

3 Clonmel Street
Dublin 2.

Phone: 353 -1- 4173300
Fax: 353-1- 4173399

E-mail: info@odei.ie
Website: www.odei.ie

EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATION NO: EE 03/2000

**Ms. Martina Murphy
(Represented by IMPACT)**

AND

**Eastern Health Board
(Represented by H.S.E.A.)**

File No. EE 31/1998

1. DISPUTE

1.1 The dispute concerns a claim by Ms Martina Murphy that on 14th January, 1998 the Eastern Health Board discriminated against her within the meaning of Section 2(a) of the Employment Equality Act, 1977 and in contravention of Section 3 of that Act as a result of its selection procedure for appointment to the post of Regional Materials Manager.

2. BACKGROUND

2.1 The Eastern Health Board advertised positions of Regional Materials Manager on behalf of the country's eight Regional Health Boards and the Voluntary Hospitals Group in October, 1997. The claimant, who is a female employee of the Eastern Health Board, applied for the Regional Materials Manager position with the same Health Board. The claimant was subsequently informed that she was not being shortlisted for interview. In the case of the seven Eastern Health Board employees who applied for the position, the claimant was the only female applicant and the only one from that Health Board not shortlisted.

2.2 The claimant, represented by IMPACT, referred a complaint to the Labour Court on 13th July, 1998. The claim was subsequently referred by the Labour Court to an Equality Officer for investigation and recommendation. Submissions were received by the Equality Officer from both parties to the claim and a joint hearing was held on 7th April, 1999.

3. SUMMARY OF THE UNION'S CASE

3.1 IMPACT alleges that the Eastern Health Board discriminated against the claimant in terms of Section 2(a) of the Employment Equality Act, 1977. Section 2(a) 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,'

3.2 The Union states that within the Eastern Health Board there were seven internal applicants for the position and of the seven, the claimant was the only female applicant. Subsequent to the closing date for applications, the selection board decided on a set of shortlisting criteria in order to determine which candidates would be called for interview. The Union questions in particular the introduction at the shortlisting stage of a requirement which was not specified in the original criteria for the position i.e. experience in warehousing and distribution. It was the absence of this experience according to the H.S.E.A. which lead to the claimant not being shortlisted for interview.

3.3 The Union states that all of the six male applicants from the Eastern Health Board, many of whom had identical qualifications and similar levels of service to the claimant were

granted an interview and the appeal of another applicant who had not been shortlisted was upheld and the applicant was allowed to compete. The claimant's own appeal to management was turned down. It is the Union's contention that the successful candidate had a similar background, qualifications and experience to that of the claimant.

- 3.4 The Union stated also that a gender imbalance exists at senior levels within the Eastern Health Board.

4. SUMMARY OF THE HEALTH BOARD'S CASE

- 4.1 The H.S.E.A. stated that as a result of the recommendations of the Materials Management Advisory Group each of the eight Health Boards and the Voluntary Hospitals Group were allocated a new Regional Materials Manager post in October 1997. The Eastern Health Board advertised the positions on behalf of all of the above bodies and applicants were asked to indicate the Health Boards they would like to apply to. The job advertisement, qualification requirements and job description prepared by the Eastern Health Board are included as Appendices 1, 2 and 3 respectively.

- 4.2 The Chief Executive Officer of each Health Board nominated a representative to participate on a shortlisting panel to select those candidates who would be called to

interview. The shortlisting panel met in November, 1997 in order to decide on the most relevant criteria which reflected the qualifications and experience necessary for the position of Regional Materials Manager. The panel decided on the following shortlisting criteria:

(a) experience at senior management level in materials management i.e.

experience in both (i) procurement and (ii) warehousing and distribution

(b) in addition to the above, any applicant who was occupying a post at Grade VII level was automatically admitted into the competition.

The claimant was one of 49 applicants (44 male and 5 female) who applied for the position of Regional Materials Manager in the Eastern Health Board. Ten candidates (nine men and one woman) were shortlisted for interview on the basis of the information supplied in their applications.

- 4.3 The H.S.E.A. contends that the shortlisting process was conducted without regard to the gender of the candidates. Candidates were shortlisted for interview based on the information supplied in their application form and with reference to the criteria outlined in paragraph 4.2 above. The H.S.E.A. states that while the claimant satisfied the experience requirement at senior management level with regard to procurement, she did not have the requisite experience of warehousing and distribution nor was she working in a post graded at Grade VII level in the clerical / administrative grading structure.

5. CONCLUSIONS OF THE EQUALITY OFFICER

5.1 The matter for consideration is whether or not the Eastern Health Board discriminated directly against the claimant on the basis of her sex in terms of Section 2(a) of the Employment Equality Act, 1977 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 It is clear that the central issue is whether or not the procedure for selection of candidates for interview was fair and objective and free from any form of gender based bias. The Union has stated that the claimant was the only female among seven 'internal' candidates for the position with the Eastern Health Board and that she was the only 'internal' candidate not called for interview. The competition was however an open competition i.e. it was open to suitably qualified members of the public, including staff of the other seven Health Boards, to apply. The shortlisting panel was representative of all of the Health Boards. I note that the total number of applicants for the disputed position was 49 (44 males and 5 females). Ten candidates i.e. 9 males and 1 female were called for interview. In examining the shortlisting process therefore, I consider that the latter figures for the number called to interview are the relevant figures. The number of candidates for the position with the Eastern Health Board who were not called for interview was 35 males and 4 females. The Union has not advanced any arguments as to why 'internal' candidates should be treated as a separate group for the purposes of

shortlisting for interview. Taking the group of 49 candidates as a whole, the proportion of female candidates shortlisted for interview was the same as the proportion of male candidates shortlisted. I must conclude therefore that the claimant was not directly discriminated against because of her sex.

5.3 As the Union objected to the introduction of shortlisting requirements which were not specifically mentioned in the job advertisement I considered whether or not those shortlisting criteria were relevant and objectively justifiable in terms of the job requirements. The Union specifically objected to shortlisting on the basis of warehousing and distribution experience for candidates who were not serving at Grade VII level. The job description for the post as provided by the H.S.E.A. and included in Appendix 3 sets out the principal responsibilities of the post of Regional Materials Manager. Paragraph (iv) of the principal responsibilities reads as follows:

(iv) The Regional Materials Manager has overall responsibility for all aspects of the materials function - purchasing, warehousing and distribution - and is charged with developing and improving the services provided and implementing policies and procedures in line with best commercial practice.

I am satisfied from the above that experience at warehousing and distribution was a valid criterion to use for shortlisting. In relation to the decision to shortlist candidates at Grade VII level, the H.S.E.A. argued that experience at Grade VII level meets one of

the principal qualification requirements i.e. senior management experience and I consider that this also was a valid criterion to use for shortlisting. I note that the claimant did not meet either of these shortlisting criteria.

5.4 I considered also the issue raised by the Union that a gender imbalance exists at senior levels within the Eastern Health Board. The H.S.E.A. rejected any suggestion that a prejudice existed in relation to the promotion of women to senior positions and no evidence was presented to me to support this claim. To sustain an allegation that there was discrimination on the part of the Eastern Health Board in relation to the promotion of women it would be necessary to examine how each vacancy was filled as it arose in relation to the number, gender, qualifications and experience of eligible officers for each position.

6. RECOMMENDATION

6.1 Having regard to my conclusions above I find that the Eastern Health Board did not discriminate against Ms Martina Murphy in terms of Section 2(a) of the Employment Equality Act, 1977 and contrary to Section 3 of that Act when the Health Board did not shortlist her for interview for the position of Regional Materials Manager and when the Health Board appointed a male candidate to the position.