

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 10/2000

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

AND

Dublin Coporation

File No. EE 37/1998

1. DISPUTE

- 1.1 The dispute concerns a claim by Ms Breege Murphy that in December, 1997 Dublin Corporation 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 when she was turned down for the position of Rate Collector.

2. BACKGROUND

- 2.1 The claimant is employed at Senior Staff Officer (Grade VI) level in Dublin Corporation and holds the position of Rates Inspector. The dispute concerns her being placed third on the panel for appointment to the position of Rate Collector behind two male candidates. It is the claimant's contention that she was better qualified for the position than the two candidates ahead of her and that the reason why she was placed lower on the panel than the first two candidates was that she was a woman. The male candidates placed first and second on the panel will be referred to as Candidates A and B respectively in this Recommendation.
- 2.2 The claimant referred a claim to the Labour Court in June, 1998. 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 30th March, 1999. Further correspondence in the case between the Equality Officer and the parties took place subsequent to the hearing.

3. SUMMARY OF THE CLAIMANT'S CASE

3.1 It is the claimant's case that Dublin Corporation discriminated against her 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 because of his sex a person is treated less favourably than a person of the other sex'

3.2 The claimant is employed at Senior Staff Officer (Grade VI) level in Dublin Corporation and has held the position of Rates Inspector since 1994. The position of Rate Collector represents a promotional opportunity for the claimant and in 1996, on her third occasion to apply for the position, she was successful in her application and offered the position. However on that occasion she turned down the offer for family reasons. When the claimant applied for the position again in 1997 she was placed third on the panel with two male candidates ahead of her, effectively meaning that she would not be appointed from that competition. It is the claimant's contention that the reason why she was placed lower on the panel than the first two candidates was that she was a woman. The Union

points out that in 1996, unlike the 1997 competition, the entire interview board was made up of members who were external to Dublin Corporation.

- 3.3 The male candidates who were placed first and second on the panel were Senior Staff Officers, the same level as the claimant, although her position was that of Rate Inspector. The Union states that the position of Rate Inspector was always regarded as a stepping stone to the position of Rate Collector and that the 1997 competition was the first occasion on which a Senior Staff Officer was placed ahead of a serving Rate Inspector. The Union goes on to say that a Senior Staff Officer has not been successful in a Rate Collector competition in 12 or 13 years.
- 3.4 The Union states that since her appointment to the Rates Office in 1990, the claimant has built up extensive knowledge, experience and skill in all aspects of Rates and Rating Law and since being appointed Rate Inspector in 1994 she would have developed a deep understanding of the Rate Collection process. The Union adds that every Rate Inspector who competed prior to the 1997 competition, including the claimant on the previous occasion, was successful in the competition.
- 3.5 The claimant acted as a temporary Rate Collector for a seven week period in 1997 and according to the union, during this time she demonstrated an exceptional collection rate, to the extent that the Assistant Principal Officer in the Rates Office at the time described

the claimant as a “natural born Rate Collector”. In the 1996 competition, when the claimant was offered the Rate Collector position, she came ahead of the two male candidates who were placed first and second in the 1997 competition. The Union argue that the claimant did not disimprove in terms of her knowledge, experience, skill or suitability during 1997 but on the contrary, her experience was enhanced by her highly successful period as temporary Rate Collector.

- 3.6 In support of its argument that the interview board had certain preconceptions in regard to the claimant based on her gender, the Union argues that a candidate’s rate collection statistics is vital from the point of view of assessing suitability as a Rate Collector. Both the claimant and Candidate A had rate collection experience and presented the interview board with statistics for their collection periods. However the board retained the statistics of the male candidate whilst returning the claimant’s statistics to her at the end of the interview. As further evidence of bias on the part of the interview board against the claimant, the Union states that when the claimant left the interview room and went to the reception area to collect her coat, a member of the interview board arrived enquiring about the lunch arrangements and remained there for some minutes. The Union argues that it was contrary to normal practice whereby an interview board should assess each candidate immediately after their interview.

- 3.7 The Union states that the final member of the interview board showed no interest in her as a candidate. He stated that she had been extensively interviewed by the other two board members and asked her a number of cursory questions before concluding the interview. He did not ask her any questions about her experience as Rate Collector. The Union states that because of his position within the Finance Department of Dublin Corporation, he was directly aware of the claimant's personal situation and her reasons for turning down the position following the 1996 competition. The Union contends that the claimant's earlier refusal of a Rate Collector position was resented by Dublin Corporation who appear to have taken the position that a woman who refused a position for domestic reasons was not a reliable person to offer another post to.
- 3.8 The Union draws attention to the fact that the interview board did not keep any notes of the interviews apart from the actual marking sheet and say that this is contrary to guidance given by the Corporation's own training consultants who are used to train interview boards. The Union also drew attention to the fact that the interview board was made up of two male and one female members. The female member was of a lower grade than the two male members and chaired the board. The Union referred to a Corporation policy document entitled 'Quality Through Equality in Dublin Corporation' which lists measures to eliminate gender discrimination. In relation to the composition of interview boards the document reads 'document the status of interview board members and ensure that the women have equal standing to the men'.

3.9 The Union states that on checking the staff file in the Rates Office in the course of her duties, the claimant found that there was no reference to her period as Acting Rate Collector on file and furthermore, in conversation with the Finance Officer and Treasurer prior to the competition, it transpired that he was unaware of her period as Acting Rates Collector. The Union suggests that records of the claimant's successful period of rate collection were not properly recorded or brought to the attention of senior management.

3.10 The Union argues that despite 'great strides' on the part of Dublin Corporation to reduce gender discrimination, there are a number of 'bastions' of male domination in the Corporation and that the Rates Office is one of them. The Union points out that while there are 12 Rate Collector posts there has never been a female Rate Collector apart from the claimant's period in an acting capacity.

4. SUMMARY OF RESPONDENT'S CASE

4.1 Dublin Corporation contends that the selection process for the position of Rate Collector was conducted in a fair and objective manner and rejects any suggestion that the claimant was discriminated against because of her gender. The Corporation states that four candidates were found to be suitably qualified for the post and placed on a panel in order of merit with the claimant being placed third. The panel would have a life

span of on year from 14th November, 1997 with discretion for extension by a further year.

- 4.2 In relation to the claimant's experience as acting Rate Collector, the Corporation argue that this experience would have been taken into account by the interview board and add that the candidate placed first on the panel had acted for temporary periods also including the period from 24th April, 1997 to his date of appointment following the competition.
- 4.3 The Corporation state that it is not and never was a prerequisite for candidates to be in positions of Rate Inspector or to have acting experience as Rate Collector. The Corporation provided a list of Rate Collector appointments going back as far as 1963 which names five Senior Staff Officers who were appointed Rate Collector in that period. Furthermore, the Corporation do not accept the Union's argument that the fact that the claimant was successful in a previous competition for Rate Collector should have had a significant bearing on the subsequent competition.
- 4.4 In relation to the claimant's record of rate collection, the Corporation say that where a candidate has had previous rate collecting experience, the assessment of suitability for the post of Rate Collector is not judged on the candidate's rate collection record. To do so would be to discriminate against those who fulfil the advertised application

requirements but who do not have such experience. The Corporation reject the Union's contention that the fact that the claimant's collection records were handed back to her by the interview board while those of the successful candidate were retained was an indication that the interview board did not take her candidature seriously. The Corporation similarly rejects the Union's argument that because a member of the interview board went to the reception area immediately after the claimant's interview, this precluded a proper assessment of her performance at interview.

4.5 The Corporation do not accept that the interview board was in breach of the training consultant's guidelines with regard to the retention of the interview notes as argued by the Union. The Corporation states that the guidelines in question related to training for competence based interviews and that the disputed interview was not a competence based interview. In any event the Corporation would argue that in this respect all candidates were treated the same way.

4.6 The Corporation reject the Union's contention that the final member of the interview board to question the claimant showed little interest in her as a candidate. The Corporation state that as Deputy Finance Officer and Treasurer he would be familiar with the claimant's work, was aware of her success in the previous competition and her reasons for turning down the position at the time.

4.7 The Corporation included in their submission the C.V.'s of the male candidates placed first and second and that of the claimant along with a copy of the marking sheet for the interviews showing the marks of each candidate under the headings of (i) Education, (ii) Knowledge and Experience and (iii) General Suitability. In their submission and during the hearing, the respondents stated that at the end of all of the interviews, the marks awarded to individual candidates would be reviewed to ensure that the markings correctly reflected the interview board's opinion of the relative merits of the candidates.

5. CONCLUSIONS OF THE EQUALITY OFFICER

5.1 The matter for consideration is whether or not Dublin Corporation discriminated 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 From the evidence provided in the submissions of both parties and at the joint hearing held between the parties, it is clear that the central issue is whether or not the selection interview board conducted its proceedings in a manner which was fair and objective and free from any form of gender based bias. The Union have made the case that by being placed third on the panel for appointment to the position of Rate Collector behind two male candidates, the claimant was directly discriminated against because she was a

woman. The Corporation on the other hand argue that their bona fides in this matter is demonstrated by the fact that the claimant was in fact deemed suitably qualified for appointment and placed on a panel from which future vacancies would be filled, albeit in third place. I must consider therefore whether the placing of either of the male candidates ahead of the claimant was as a result of discrimination within the meaning of the 1977 Act.

5.3 The Union argues that for the first time in a Rate Collector competition, a serving Rate Inspector was not appointed. The Corporation have countered this argument and detailed a number of instances where Senior Staff Officers were appointed as Rate Collectors.

5.4 The internal advertisement for the competition is included as Appendix 1. The eligibility requirements are expressed simply in terms of the need for applicants to be on a salary scale of not less than £21,049 (excluding Long Service Increments). The advertisement does not specify any particular educational or experience requirements and states that the duties of the post will be those prescribed by statute and by such rules and regulations as may be made from time to time by the Minister for the Environment or assigned by the local authority. The marking scheme used by the interview board was as follows:

Criteria	Marks
Education	100

Knowledge and Experience	200
Personality and General Suitability	400
Total	700

The Corporation included in their submission the marks given to each candidate at interview. In deference to the right to confidentiality of the various candidates, I am limited in the amount of information which I can include in this Recommendation regarding the marking, however the information can be made available to the Labour Court if required. The Union attached particular significance to the fact that the claimant had seven weeks experience as acting Rate Collector, coupled with the fact that she was a serving as a Rates Inspector. While the candidate placed first had approximately seven months acting Rate Collector experience, the Union argued that when the claimant's rate collection records over her seven week assignment were compared with this candidate's rate collection records for the same period, they would show a higher percentage level of collection against targets. The Corporation provided the relevant statistics after the hearing and these would support the Union's argument in relation to the claimant's collection performance. The Corporation would argue that external factors can affect the level of rate collection e.g. the geographical area, the nature of the property and the affluence of the tenants, and that a cursory examination of collection statistics would not give the full picture. On examining the marks awarded for knowledge and experience I note that the claimant was marked lower than the candidate who came first (Candidate A) but higher than the candidate who came second (Candidate B). I note from the C.V.'s supplied that Candidate A had two

years more service overall with the Corporation than the claimant while Candidate B had two years less service. Candidate B had no acting experience as Rate Collector. All three had similar levels of education and received the same mark under this heading. Taking the marks under the headings of (i) Education and (ii) Knowledge and Experience together, I am satisfied that there is an objective basis for the marks under these headings. The third heading is that of Personality and General Suitability and this heading is allocated 57% of the available marks. In considering the allocation of marks under this heading I am particularly mindful of the Corporation's statement (referred to in paragraph 4.7 above) that the marks allocated were revised at the end of the interviews to ensure that the marks reflected the interview board's opinion of the relative merits of the candidates. I consider that this approach undermines the objectivity of the marking system particularly where such a high proportion of the marks are allocated to Personality and General Suitability and where there is a total absence of interview notes to show how these marks were determined. Candidates A and B were both awarded higher marks than the claimant under this heading with Candidate B getting the higher mark. The Union have pointed out that the claimant came ahead of both of these candidates in the 1996 competition when she was offered and turned down the position. The Union argued that the claimant's personality and general suitability for the position of Rate Collector did not deteriorate relative to the other candidates during this period but that the interview board perceived her as being less suitable for the position because of previous rejection of the position for family reasons.

5.5 It is not the role of the Equality Officer to determine whether the best candidate was appointed to a position but rather to determine whether unlawful discrimination took place. Having regard to my comments at paragraph 5.4 above regarding the objectivity of revising marks in order to ensure that they fit in with the interview board's overall assessment of the candidates, I must consider the claimant's placing on the panel having regard to those factors. As stated above, the advertisement for the position of Rate Collector did not specify any particular educational or experience requirements and referred to the statutory nature of the duties. In that context therefore, a satisfactory period of acting service in the position of Rate Collector would, from the Equality Officer's viewpoint, rank a candidate as better qualified for the position than a candidate who had no such acting experience, no additional relevant qualifications or other particularly relevant experience. In the case of the disputed competition, Candidate A had seven months acting experience as against the claimant's seven weeks. I am satisfied that the placing of Candidate A in first position on the panel does not, from the evidence available to me, suggest that discrimination took place in relation to that placing. However in relation to Candidate B, this candidate had no acting experience. Having regard to the fact that the claimant was placed ahead of Candidates A and B in a previous competition and the fact that she was serving as a Rates Inspector, the position from which Rate Collectors have been appointed in recent years,

I am satisfied that there is sufficient evidence in relation to the placing of Candidate B ahead of the claimant in second place to support a claim of discrimination.

6. RECOMMENDATION

6.1 On the basis of the foregoing, I find that Dublin Corporation did discriminate against Ms Breege Murphy on the basis of her sex in terms of Section 2(a) and in contravention of the provisions of Section 3 of the Employment Equality Act, 1977. Having found that the claimant was discriminated against by Dublin Corporation on grounds of her sex it remains for me to deal with the question of remedial action. I note that only one appointment was made from the panel and that the claimant would not have been appointed to the position of Rate Collector from this competition if she had been placed second on the panel. I recommend therefore that Dublin Corporation pay the claimant £2,000 compensation for the distress she has suffered as a result of the discrimination and in referring the complaint for investigation.

Raymund Walsh

Equality Officer

21 March, 2000

APPENDIX 1

ADVERTISEMENT FOR THE POSITION OF RATE COLLECTOR