

# **OFFICE OF THE DIRECTOR OF EQUALITY INVESTIGATIONS**

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## **EMPLOYMENT EQUALITY ACT, 1977**

**EQUALITY OFFICER'S RECOMMENDATION NO: EE 11/2000**

**Mr. R. Francis  
(Represented by O'Mara Geraghty McCourt)**

**AND**

**St. Lukes & St. Anne's Hospital**

**File No. EE 02/1996**

**1. DISPUTE**

- 1.1** This dispute concerns a claim by S.I.P.T.U. and the Employment Equality Agency (E.E.A.), on behalf of Mr. Ronnie Francis, that he was discriminated against by St. Luke's and St. Anne's Hospital when it placed him last on a promotion panel. This claim has been referred under Section 2(a) of the Employment Equality Act, 1977.

**2. BACKGROUND**

- 2.1** At the time of the claim the claimant was employed by St. Luke's and St. Anne's Hospital in the grade of Radiographer. He was one of five applicants for an internal competition for the position of Senior Radiographer in the organisation. The claimant was placed fifth on the panel despite being the longest serving officer in the Radiographer grade who applied for the competition.
- 2.2** The claimant considered that there were no grounds other than sex for the respondent organisation to place him fifth on the panel. Consequently the Union referred a complaint to the Labour Court under Section 2(a) of the Employment Equality Act, 1977 on 18th December, 1995. This claim was referred, by the Labour Court, to an Equality Officer for investigation and recommendation. During the Equality Officer investigation the claimant was represented by O'Mara Geraghty McCourt, Solicitors on behalf of the Equality Authority (formerly the E.E.A.). At the hearing of this claim the Equality Officer was notified of the Union's withdrawal of its representation.

**3. SUMMARY OF THE CLAIMANT'S CASE**

- 3.1** The claimant is employed as a radiographer in the Radiotherapy Department in St. Luke's and St. Anne's Hospital since 1979. He took a career break in 1989 and returned to work in 1993. During his career break the claimant completed a science degree in Trinity College and also spent three summer holiday periods working as a radiographer in hospitals in the UK and the US.

**3.2** In 1995 applications were invited for the position of senior radiographer in the Department of Radiography in the respondent organisation. Five radiographers applied for the promotion position and the claimant was the only male applicant to apply. At that time there were only about 30 radiographers in the Radiography Department of which about 27 were female and 3 were male. Seven of these were ranked as senior radiographers, all of whom were female. The claimant states that radiography is traditionally the preserve of females.

**3.3** According to the claimant previous promotions to senior radiographer had been made on the basis of seniority. He states that, when notice was given of the 1995 promotion, it was generally known that there were likely to be four promotions made from this panel - two appointments to fill existing radiographer vacancies and two appointments to operate two new radiotherapy machines.

**3.4** The claimant states that the four other applicants had the following qualifications and experience:

Ms. J. Healy (1st on panel) - 6 years experience and a Diploma from the College of Radiography.

Ms. S. Burke (2nd on panel) - 9 years experience and a Diploma from the College of Radiography.

Ms. L. O'Neill (3rd on panel) - 6 years experience and a Diploma from the College of Radiography.

Ms. P. O'Neill (4th on panel) - 9 years experience and a Diploma from the College of Radiography.

The claimant was placed fifth on the panel and had 12 years experience, a Diploma from the College of Radiography and a Bachelor of Science degree. In addition he had experience of working as a radiographer in hospitals in the UK and the US. While in the US the claimant had worked on a treatment machine using the new technology which was about to be introduced to the respondent organisation. He also worked *de facto* as a senior radiographer prior to the interviews for this competition.

- 3.5** The interview board for the competition consisted of Ms. Sutton (a superintendent at the time, supervising radiographers in the Department), Mr. Armstrong (a consultant radiotherapist who had worked in the hospital for about six months at the time of the interviews) and Ms. Fitzmaurice (the Personnel Officer). The senior superintendent, who was not a member of the interview board, retired shortly after the interviews and was replaced by Ms. Sutton. According to the claimant his interview was short (10/15 minutes) and pleasant. He was asked some general questions and a couple of questions about aspects of the new radiotherapy machine.
- 3.6** According to the claimant the respondent has stated that the criterion used to evaluate the five candidates was ‘attitude in the workplace’ which comprised ‘attitude to patients, attitude to senior staff teamwork and interrelationships with staff’. The claimant states that he was asked no questions relating to these subjects at his interview. He further states that he has never had any difficulty in the area of interpersonal relations in the workplace. The claimant was promoted to senior radiographer from the promotion panel two years later in April, 1997. However, at the time the promotion panel was set up there was no likelihood that the claimant would be promoted from the panel.
- 3.7** It is the claimant’s belief that he was more suitable than the four successful candidates, having more experience and qualifications. On that basis he submits that the only possible reason for his less favourable treatment was his gender.
- 3.8** The claimant cites the case of *Wallace v South Eastern Education and Library Board*<sup>1</sup> in which the Court stated that where it is established that discrimination has taken place and where the person treated less favourably is a woman and the person treated more favourably is a man, then prima facie an inference of discrimination on grounds of sex is raised. On the importance of drawing inferences from the evidence available Lord Lowry, Lord Chief Justice stated:

*“Only rarely would direct evidence be available of discrimination on the grounds of sex; one is more often left to infer discrimination from the circumstances. If this could not be done,*

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<sup>1</sup> Northern Ireland Court of Appeal (1980) IRLR 193

*the object of the legislation would be largely defeated, so long as the authority alleged to be guilty of discrimination made no expressly discriminatory statements and did not attempt to justify its actions by evidence.”*

The claimant submits that the facts of this case, in particular his experience and qualifications compared with those of the more successful female candidates and the fact that one female candidate was not interviewed at all for this promotion, raises an inference of discrimination on grounds of sex in relation to the promotion to senior radiologist in 1995.

**3.9** The claimant asks that the Equality Officer consider his submission and to hold that discrimination on the grounds of sex occurred to his detriment in 1995. The Equality Officer is asked to award the following remedies:

- The promotion of the claimant with effect from the date the first candidate on the panel was promoted in 1995;
- The payment to the claimant of the difference in pay between that date in 1995 and the date he was promoted in 1997; and
- Appropriate compensation for the distress caused by the discriminatory treatment.

#### **4. SUMMARY OF THE RESPONDENT’S SUBMISSION**

**4.1** According to the respondent it advertised internally for the position of Senior Radiographers and Basic Grade Radiographers in March, 1995. It received five applications for the senior position. Shortlisting took place and as all applicants met the required Department of Health and Children regulations with regard to qualification and experience all were called for interview on 28th June, 1995. As is normal practice for Paramedical Grades in the respondent organisation, the interview board would consist of a Medical Consultant representing the Medical Staff, the Head of Department and the Personnel Officer representing Administration.

**4.2** On this occasion Dr. Armstrong, Consultant Radiotherapist/Clinical Oncologist represented the Medical Staff and acted as Chairperson of the Interview Board. The

other members of the Interview Board on that occasion were Ms. Sutton, Superintendent Radiographer II and Ms. Fitzmaurice, Personnel Officer. According to the respondent all the candidates were interviewed in a fair manner. Following the interviews the Interview Board gave careful consideration to all of the facts and recommended the order of the candidates on the promotion panel. The candidates were appointed to the position of Senior Radiographer as follows:

1st	-	Ms. J. Healy	-	1st July, 1995
2nd	-	Ms. S. Burke	-	1st October, 1995
3rd	-	Ms. L. O'Neill	-	1st June, 1996
4th	-	Ms. P. O'Neill	-	1st July, 1996
5th	-	Mr. R. Francis	-	1st November, 1997

**4.3** The respondent says that in September, 1995 it received a letter from the Employment Equality Agency (EEA) stating that the claimant alleged that he was discriminated against on the grounds of sex in relation to the interview and placement on the promotional panel for the position of Senior Radiographer. The Personnel Officer obtained written reports from the other members of the Interview Board and also obtained advice from I.B.E.C. before replying to the Employment Equality Agency. In January, 1996 the Agency informed the respondent that it had copied the main points of the respondent's reply to the claimant and it would communicate with the respondent in due course. The respondent says that in December, 1995 S.I.P.T.U. referred a complaint to the Labour Court, on behalf of the claimant, under the provisions of the Employment Equality Act, 1977.

**4.4** The respondent says that the Interview Board, in appointing candidates to the panel, took into consideration qualification, experience and suitability. It says that suitability is of extreme importance particularly for that of a senior person when part of the duties of that post is the supervision of other staff and also good communication skills.

## **5. CONCLUSIONS OF THE EQUALITY OFFICER**

**5.1** This dispute concerns a claim that St. Luke's and St. Anne's Hospital discriminated against the claimant Mr. Francis on 28th June, 1995 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 claim I have taken into account all of the submissions, both written and oral, made to me by the parties.

**5.2** In this case the claimant applied for the promotional position of Senior Radiographer within the respondent organisation. He was one of five applicants and the other four applicants were female. Four of the five applicants were interviewed, including the claimant. As a result of the interviews a panel was set up. The interview board placed the applicant who was not interviewed on the panel. This applicant had been previously interviewed by another interview board for participation on a training course. The respondent held that this applicant did not have to undergo a further interview and the interview board placed this applicant third on the panel. The claimant was placed last (fifth position) on the panel. The claimant says that, despite his higher qualifications and longer experience, the four female applicants were all placed higher than him on the panel. Therefore, the claimant argues that the respondent discriminated against him on the basis of his sex when he was placed last the panel for promotion to Senior Radiographer.

**5.3** It seems very strange to advertise a promotion position and then not require a candidate for that promotion to undergo an interview and yet place this same candidate on a panel. This is what happened in the case of the applicant who was placed third on the panel. She was previously interviewed by another interview board for participation on a training course. The interview board members who were interviewing for the promotional position of Senior Radiographer had not assess the applicant in an interview situation yet were in a position to decide that this applicant should be placed third on the panel. This behaviour was unfair on all the other applicants for the promotion but it adversely affected the two applicants who were placed below the applicant who was placed third. As both a male and female applicant were adversely affected by the interview board's decision to place an applicant, whom it had not interviewed, in third position I am satisfied that the decision was not related to sex.

**5.4** According to the respondent the interview board, in assessing applicants, took into consideration qualifications, experience and suitability. With regard to suitability the

respondent emphasised the importance of this for the position of Senior Radiographer given that the duties of this post include the supervision of other staff and good communication skills. I note that the interview board did not complete any scoring sheets. Any notes taken at the interview were destroyed by the respondent organisation and hence were not available for inspection. The decision as to where to place candidates on the panel was, therefore, not the basis of any formal marking system.

- 5.5** In the absence of any formal marking system by the respondent organisation I have examined the Curriculum Vitae of all five applicants for the position. In terms of qualifications I note that each applicant has a Diploma in Radiography. The claimant is the only applicant with further qualifications namely a Degree in Natural Science from Trinity College Dublin and he undertook the exam for the American Registry of Radiologic Technologists. I note that the latter qualification was undertaken by him to enable him to practice in the US. In terms of qualifications I am satisfied that the claimant is better qualified than each of the other applicants for the position of Senior Radiographer.
- 5.6** The claimant has been employed as a Radiographer with the respondent organisation for 12 years. The other applicants have been employed as Radiographers for periods of either 6 or 9 years. From the Curriculum Vitae the claimant's experience relates to his ability to use various machines. This is also the experience of one of the female applicants namely Ms. Burke (placed 2nd on the panel). I note that Ms. Healy (placed 1st on the panel) and Ms. L. O'Neill (placed 3rd on the panel) have had experience in the writing of clinical programmes for the Bachelor of Science in Radiography degree in Trinity College Dublin. From her Curriculum Vitae I note that the applicant Ms. P. O'Neill has mentioned her liaison role with other departments and her responsibility for routine patient care. I am satisfied that these functions would be undertaken by each of the applicants, including the claimant, as part of their everyday tasks. I find that the claimant has the same experience as, at least, two of the other applicants, but his experience is of a longer duration.
- 5.7** The final criteria used by the interview board in assessing applicants for promotion was that of suitability with an emphasis on interpersonal skills. It is difficult to know how

the interview board assessed suitability. According to the claimant the interview was short (10/15 minutes) and he was asked some very general questions and some specific questions on the operation of a new radiotherapy machine which he had used when working in another hospital abroad. I am satisfied, therefore, that suitability was assessed on the basis of the references obtained for each of the applicants. References were obtained from the referees named by the applicants in their Curriculum Vitae. The respondent submitted a copy of all the references which were obtained along with an assessment which was undertaken of each of the applicants by the Superintendent of Radiography in the Therapy Department.

- 5.8** In relation to the claimant I note that the reference submitted on his behalf by a Consultant Clinical Oncologist conflicts with his assessment undertaken by the Superintendent of Radiography. The Superintendent of Radiography gave the claimant a low grading in terms of interpersonal skills whereas the Consultant Clinical Oncologist said of the claimant that “*He was a pleasant, efficient and thoroughly professional radiographer who discharged his duties in a competent manner and showed a very caring and pleasant manner to patient and co-worker and to whoever came in contact with him*”. Where there is a conflict in the evidence concerning the facts the Equality Officer must address the question of whether the balance of probabilities tips in favour of the claimant or the respondent. At the hearing of this claim the claimant stated that, at no time prior to the interview, had the Superintendent spoken to him about his communication skills in relation to staff. The Superintendent was not present at the hearing. In submitting additional information to the Equality Officer following the hearing the respondent said that the Superintendent had, on a number of occasions in the past, discussed with the claimant issues in relation to his communication and other skills with staff. I note that the Superintendent did not herself confirm this in writing nor did she give specific details as to the nature of these discussions. Furthermore there was no written evidence (e.g. appraisals) of the Superintendent having problems with the claimant in relation to his interpersonal or other skills. Finally it should be noted that the claimant, in his Curriculum Vitae, named the Superintendent as a referee. I do not consider that the claimant would name a person as a referee if he was aware that this person had concerns over his ability (in

terms of interpersonal skills) as is alleged in this case. Therefore, I find that the balance of probabilities tips in favour of the claimant in regard to the issue of suitability.

**5.9** On the basis of the foregoing I find that the claimant is better qualified than all of the other applicants. I find that he has equal experience, in terms of the nature of that experience, to two of the other four female applicants (Ms. Burke and Ms. P. O'Neill) and the claimant's experience is of a longer duration. On the balance of probabilities I find that the claimant was as suitable as the other female applicants for the promotion position. It is, therefore, necessary for me to consider whether or not the claimant should have been placed higher than the last position on the panel.

**5.10** In placing Ms. L. O'Neill in third position on the panel the interview board made this decision without having interviewed the applicant. On that basis I consider it reasonable to ignore the ranking of this applicant. As stated above the claimant was better qualified than any of the other applicants. He had the same experience as two of the female applicants (Ms. Burke and Ms. P. O'Neill) and he was as suitable for the promotion as each of the other applicants. I note, from her Curriculum Vitae, that the applicant Ms. Burke had, on two occasions, acted in a Senior Radiographer position. The claimant also acted in a Senior Radiographer position but not until some time after these interviews. On that basis I consider that the claimant should have been placed after Ms. Burke on the panel and ahead of Ms. P. O'Neill on the panel. In conclusion, therefore, I can find no good or logical reason why the claimant should not have been placed third on the panel given that I am ignoring Ms. L. O'Neill's placing on the panel.

**5.11** I consider it relevant to note that throughout this investigation the respondent, whether intentionally or otherwise, frustrated me in my investigation as follows:

- The Superintendent was not present at the hearing of this claim despite the fact that she had assessed each of the applicants for the position and had also been a member of the interview board. Furthermore, in the respondent's submission the Superintendent had been critical of the claimant's interpersonal skills and suggested that a third party may be needed to assist in overcoming his problems. At the hearing of this claim the respondent representatives were unable to expand on these

criticisms or to make any contribution when the claimant denied that the Superintendent had ever spoken to him about his interpersonal skills. It is noteworthy that in submitting additional information, following the hearing, the Superintendent did not herself clarify this criticism and the Personnel Officer said that the Superintendent confirmed that she had spoken to the claimant on a number of occasions in regard to his communication and other skills with staff. The respondent did not submit any written evidence of the Superintendent's discussions with the claimant. There was no evidence that a third party had been asked to assist the claimant in overcoming his problems.

- At the hearing of this claim the respondent confirmed that the interview board had not got set questions which it asked to all applicants at the interview.
- The interview did not use a marking system. Each interview board member had a copy of each applicant's Curriculum Vitae and the respondent acknowledged that the interviewers could have written comments on these C.V.s. However the respondent had disposed of these C.V.s six months after the interviews had taken place. I note that, three months after the interviews for this promotion competition, the respondent was asked for its views on a complaint of alleged discrimination in relation to the claimant. I, therefore, consider that an inference can be drawn from the fact that the respondent destroyed this information despite the complaint.
- At the hearing of this claim I asked the respondent to supply me with copies of references and assessments sought for each of the applicants at the time of this interview. In the interest of confidentiality the respondent removed the names of the other applicants from the references. However the respondent did not keep together for each applicant their assessment and references. I consider that this was intentional to frustrate my investigation.
- The assessments by the Superintendent were not dated hence they could have been completed at any time.

**6. RECOMMENDATION**

**6.1** Based on the foregoing I find that St. Luke's & St. Anne's Hospital directly discriminated against Mr. Ronnie Francis in terms of Section 2(a) of the Employment Equality Act, 1977 and contrary to the provisions of Section 3 of that Act.

**6.2** I recommend that Mr. Francis be placed third on the panel for promotion to Senior Radiographer. This means that his appointment to this position should be with effect from 1st June, 1996 and the arrears in remuneration which would have accrued to him as a result of this promotion date should be paid to him forthwith. Furthermore I recommend that St. Luke's & St. Anne's Hospital pay Mr. Francis the sum of £2,000 by way of stress suffered as a result of the discrimination.

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Gerardine Coyle  
Equality Officer

22nd March, 2000