

OFFICE OF THE DIRECTOR OF EQUALITY INVESTIGATIONS

EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATION NO. EE 12/2000

PARTIES

Mr Noel Canavan

and

**Letterkenny Institute of Technology
{Represented by I.B.E.C.}**

File No. EE 04/99

1 Dispute

- 1.1** This dispute concerns a claim by Mr Noel Canavan that Letterkenny Institute of Technology discriminated against him on the grounds of his sex in terms of Section 2 (a) of the Employment Equality Act, 1977 and in breach of Section 3 in relation to access to employment.

2 Background

- 2.1** In early August 1998 Letterkenny Institute of Technology advertised for various posts including Lecturer 1 Engineering (Electronics/Computer Engineering). The Institute received fifteen applications (fourteen men and one woman) for the Lecturer 1 post.
- 2.2** Mr Canavan, an applicant for the Lecturer 1 (Electronics) post, points out that, in spite of a degree in Electronics and seventeen years part-time teaching experience he was not one of the eight shortlisted for interview. Mr Canavan considers that he has been discriminated against on the grounds of his sex because a female shortlisted for interview was at the time only a recent graduate with little or no experience in either teaching or industry.
- 2.3** In January 1999 the complainant referred the dispute to the Labour Court. The Labour Court referred the case on 8 February 1999 to an Equality Officer for investigation and recommendation. In the course of the Equality Officer's investigation he received written submissions from the parties. A joint hearing with parties was held on the 2 July 1999. At the hearing Mr Canavan withdrew his claim of discrimination under Section 2 (c) of the Act. Arising from the hearing further submissions were received from the parties. The last correspondence in relation to the case was at the end of January, 2000.

3. The Complainant's Case

- 3.1** The complainant submits that he was discriminated against by the Institute on grounds of his sex within the meaning of Section 2 (a) and in contravention of section 3 of the Act in relation to access to employment.
- 3.2** Mr Canavan states that when he contacted the Institute, after he had been notified he was not short-listed for interview, the Personnel Officer informed him "the college has a policy of interviewing all candidates for any post on the same day, as there was a large number of applicants for the post, the selection panel short-listed the post to eight candidates. The selection procedure for the selection of candidates was a combination of qualifications and experience."
- 3.3** In the aforementioned conversation Mr Canavan pointed out to the Personnel Officer that he had a 2nd. Class Honours degree in electronics and computing, a Masters Degree in Microelectronics, and eighteen years as a part-time lecturer at the Northwest Institute of Higher and Further Education in Derry. The complainant submits that the response from the Personnel Officer was to the effect that he rated high in qualifications but his experience was found wanting. Mr Canavan states he assumed from the Personnel Officer's response that "the College had short-listed candidates with either higher qualifications and/or better experience."
- 3.4** The complainant explains that sometime after his conversation with the Personnel Officer he learned that a female candidate, who obtained her degree in June, 1998 and who had little or no experience in either teaching or industry, had been appointed on a full-time basis to the post. Mr Canavan submits that information, supplied with the application form, states that one of the criteria for the post was three years experience which the appointed candidate could not possibly have as that she had only two months previously graduated.
- 3.5** Mr Canavan believes that the respondent discriminated against him on the grounds of his sex as the candidate cited by him has lower qualifications and

less experience than he possesses and she did not meet the required criteria as laid down on the application documentation. The complainant maintains that the fact that this candidate has less qualifications and experience than him should have, at least, placed him on the short-list for the post before this candidate. The complainant submission on education and work experience, received after the hearing held, is at Appendix 1.

4. The Respondent's Case

- 4.1** The Institute rejects the complainant's allegation that there was any unlawful discrimination against him on the grounds of his sex. The respondent contends that the female met the criteria for the post of temporary whole-time or part-time positions. The Institute does not accept that the female's qualifications were lower than those of the complainant or that his experience was particularly relevant to the post in question.
- 4.2** The respondent states that there were fifteen applicants (14 male and 1 female) and therefore short-listing was considered necessary. The short-listing was carried out by the Head of Function, in consultation with the Personnel Officer. The respondent submits that the short-listing criteria was agreed in advance with the members of the Selection Board as follows:

"a) That interviews take place for one day

b) That candidates be ranked on the basis of educational qualifications and experience to be scored having regard

to

** The level of primary degree, Higher degree/Ph.D, professional qualification*

** Relevant Experience."*

- 4.3** The Institute maintains that all candidates who were considered to be eligible for either permanent, temporary or part-time appointment were considered in

accordance with the approved procedures and the top eight were called to interview. Mr Canavan was not in the top eight. A copy of the advertisement for the post, and the job description sent with the official application form to each applicant, are at Appendices 2 and 3 respectively.

- 4.4** The respondent explains that the Selection Board recommended three candidates as being suitable for appointment. The candidate placed number one was a male and recommended as being eligible for permanent appointment. The candidate placed number two was female and recommended as being suitable for temporary appointment. The candidate placed number three was male and was recommended as being suitable for temporary appointment. The respondent adds that considering the requirements in the area of Electronics, the Institute decided to offer the recommended candidates appointment as outlined.
- 4.5** In relation to the female candidate's qualifications, the Institute points out that she had been conferred with a first class honours degree in Engineering in July, 1998 i.e. in advance of the closing date for receipt of applications. As such she was eligible for temporary whole-time or part-time employment. The Institute does not accept that her qualifications were less than Mr Canavan's for the post in question.
- 4.6** On the question of experience the Institute submits that the complainant's experience was not particularly relevant for the post in question. The respondent further submits that much of his experience was gained before being qualified academically to lecture. The Institute maintains that most of its lecturing staff are appointed without any previous lecturing experience and Mr Canavan's part-time lecturing experience was not considered particularly relevant. A summary of the qualifications and experience of all the candidates, as extracted from their application forms, is at Appendix 4.
- 4.7** The advertisement for the posts clearly stipulated that they may be filled on either a permanent, temporary whole-time or eligible part-time basis. The

qualifications specified in the job description included two additional qualifications for permanent appointment thereby making it clear that appointment was possible without those two qualifications on a temporary or part-time basis.

- 4.8** It is common practice, the respondent states, that appointments may be made to suitably academically qualified applicants who do not possess the necessary post graduate experience for permanent appointment, in a temporary whole-time capacity. Such appointees, the Institute asserts, must be interviewed again in public competition before they can be recommended for permanent appointment.

5. Conclusions of the Equality Officer

- 5.1** Mr Canavan in the complaint referral form to the Labour Court claims *"discrimination in that the selection procedures could not have been applied fairly to all applicants. The person appointed to the post fails to meet the condition of at least 3 years post graduate experience."* In the course of the joint hearing held in this case the complainant accepted that a male was appointed to the permanent position, which was the only one of the three positions filled with the requirement of the additional 3 years post graduate experience. The other two positions filled were temporary posts and they were filled by a male and a female.
- 5.2** Notwithstanding the position as outlined in the previous paragraph Mr Canavan considers that he was discriminated against on the grounds of his sex, in relation to the short-listing process, as it is his belief that the successful female has lower qualifications and less experience than him. The Institute does not accept that the female's qualifications were lower than those of the complainant or that his experience was particularly relevant to the post in question. A summary of the qualifications and experience of all the applicants prepared by the respondent, as extracted from the application forms seen (and checked) by the Equality Officer is at Appendix 4.

- 5.3** Mr Canavan in his submission subsequent to the hearing, expressed some general points in regard to the short-listing process, but for comparison purposes he focused on the scores he obtained vis a vis those obtained by the female who was shortlisted. I note that of the original 15 applications, two were deemed as not meeting the qualification standard and that eight of the remaining 13 were short-listed, including the only female applicant. I note that the complainant obtained the least marks of all the eligible applicants and that each of the four other applicants, who were not short-listed, scored 10 marks higher than him. The scores obtained by each of the candidates are at Appendix 5.
- 5.4** I am satisfied that the procedure adopted in regard to the policy of short-listing was so that interviews be confined to one day. I therefore cannot hold that there is any discrimination or inference of discrimination attached to this policy. It is my opinion that the selection criteria applied here of relevant experience and academic qualifications of themselves do not infer any bias on grounds of sex. However, it seems to me, that the kernel of the claim before me is the application of that criteria to the eligible applicants.
- 5.5** The highest score of 20 under the heading of experience was awarded to candidate A, together with candidates E, F, G and K. I note that Candidate A, had no teaching experience. I further note that candidates E and F had little or no experience of teaching and that the other two candidates here K and G had both experience as Lecturers. I further note that all the candidates who scored 20 describe themselves as Engineers. It seems to me, on the balance of probability, that the Institute awarded marks under the heading of experience largely based on the level and nature of the work carried out by each of the candidates with little or no emphasises placed on teaching experience. It is therefore my opinion that the complainant's experience should be viewed with the emphasis on the experience associated with his main occupation.

5.6 The complainant, with the successful female score, obtained 5 marks which is the lowest obtained under the heading of experience. Having regard to Appendix 4, which includes a summary of the experience of the various candidates as furnished in their application forms, I note that all candidates at the time of their applications held engineering posts, with the exception of the complainant, candidate J and candidate N (female). I further note that candidate J, who has no teaching experience, was at the time of his application a "Research Assistant" with less than one year's experience with the respondent Institute yet he received 10 marks under the heading of experience. The female candidate states that her experience amounted to post graduate research work. The complainant, who describes himself as a Senior Electronics Technician, places great emphasis on his *"22 years work experience which includes four years industrial and eighteen in academia (electrical electronic and computer engineering)."* I note that the complainant compares the marks awarded to him vis a vis those awarded to the female applicant, however, if Mr Canavan's comparison is applied to Candidate J, it seems to me, that the case he makes here equally lies against Candidate J. In my opinion, the evidence available to me in relation to the marks awarded under the heading of experience is insufficient to hold that there was unlawful discrimination or inference of unlawful discrimination attached to the award of marks to the candidates under this heading.

5.7 The other heading under which marks were awarded to the applicants was qualifications. In regard to this matter Mr. Canavan makes various arguments on the value placed by the Institute on the females degree vis a vis his qualifications. It appears to me that one of his main arguments here is related to his submission that the Institute holds that the Master of Science Degree is subordinate to the unaccredited degree conferred on the female applicant has no basis in fact. The Institute contends that the female candidate was awarded higher points for a BEng (first class honours) in Electronic and Computing, than Mr. Canavan who was awarded for 2.2 degree and pass Masters. I note that the award of 55

marks to the female candidate impacts equally on the other applicants (males).

- 5.8** I note that the complainant in his submission states "*In my opinion the number of points awarded for degrees of the same standard but with different titles is unrealistic and may suggest the allocation of points in favour of the candidate appointed.*" In relation to Mr. Canavan's comments here I presume his reference to the "candidate appointed" refers to the female short-listed and appointed after interview, however, it seems to me that the complainant's rationale here applies not only to points awarded to the female's degree but to the allocation of marks to the degrees of all the other candidates i.e. male candidates.
- 5.9** I consider that the complainant's argument on the value placed on degrees, in the absence of some set criteria to evaluate different degrees, has some validity in that any evaluation of this nature, in my opinion, has a certain element of subjectivity attached to it. However a subjective assessment of degrees does not of itself constitute evidence of discrimination based on sex. I consider that there should be other evidence which intimate that there was discrimination on the basis of sex. In the instant case, it is my opinion, that the evidence is such that I could not hold that the allocation of the marks to the female applicant, in respect of her degree, infers unlawful discrimination against the complainant or his male colleagues on the grounds of sex.
- 5.10** The complainant in his second submission submits that a representative from the respondent Institute at the hearing held mentioned that the RTC had assessed his experience on the grounds of a previous interview and that this in itself is discrimination as it was not applied to others. The Institute holds that it was stated that as Mr. Canavan was previously interviewed that may have had a bearing on his low mark for experience. It seems to me that Mr. Canavan's allegation of discrimination here is not valid, if I was to hold that the position he describes applied, as his claim is that he was disadvantaged vis a vis all the other candidates i.e male and female.

5.11 In reaching my conclusions in this case I have taken into consideration all the submissions, both oral and written made by the parties to me. Having regard to the views that I have expressed in the preceding paragraphs I am satisfied that there was no unlawful discrimination against the complainant. Accordingly, I find that the respondent Institute did not discriminate against Mr. Canavan in contravention of Section 2(a) of the Employment Equality Act, 1977.

6 **Recommendation**

6.1 In view of my conclusions in the preceding paragraphs, I find that Letterkenny Institute of Technology did not discriminate against Mr. Canavan contrary to the provisions of the Employment Equality Act, 1977.

Jim Clerkin,
Equality Officer.

22 March, 2000