

**OFFICE OF THE DIRECTOR OF
EQUALITY INVESTIGATIONS**

EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATION NO: EE 18/2000

PARTIES

**Ms Siobhan O'Callaghan
(Represented by S.I.P.T.U.)**

AND

**Irish Dairy Board
(Represented by I.B.E.C.)**

1. DISPUTE

- 1.1 The dispute concerns a claim by Ms Siobhan O'Callaghan that in November, 1995 the Irish Dairy 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 when she was turned down for promotion.

2. BACKGROUND

- 2.1 The Claimant commenced employment as a Secretary with the Irish Dairy Board in 1983 and at the time of the dispute was working as a Secretary in the Butterfat Department. The dispute concerns the filling of a position of Sales Support Assistant in the Butterfat Department. A male was appointed to the position following an interview based competition and it is the claimant's contention that she was better qualified for the position than the male candidate and that the reason why she was not appointed was that she is a woman.
- 2.2 The Claimant referred a complaint to the Labour Court in April, 1997 under Section 19 of the 1977 Act. As the discrimination was alleged to have taken place in November, 1995, some sixteen months prior to the referral to the Labour Court, the Claimant was required to satisfy the Labour Court that reasonable cause existed as to why the complaint was not referred within six months of that date. The Labour Court determined that reasonable cause was shown and referred the complaint to an Equality

Officer for investigation and recommendation. Submissions were received from the parties to the claim and a joint hearing of the complaint was heard on 22nd July, 1999. Further correspondence in the case took place subsequent to the hearing.

3. SUMMARY OF THE CLAIMANT'S CASE

3.1 It is the claimant's case that Irish Dairy Board 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 commenced employment as a Secretary in the Irish Dairy Board in 1983.

At the time of the complaint she was assigned to the Butterfat Department. In November, 1995 the Board held an internal competition to fill a post of Sales Support Assistant. The Claimant was interviewed for the position on 21st November, 1995 and the results of the competition were announced on 18th December, 1995. A male candidate was appointed from the competition. The Union argues that the Claimant had already been working in the Butterfat Department for six years, had a comprehensive knowledge of the work of the Department and was at least as well qualified academically as the appointee. The Union argues that in the past, the Claimant would

have covered for the Sales Support Assistant during periods of absence and would have been familiar with the roles of the job in relation to product and customers. By comparison, the appointee had no experience in the Butterfat Department.

3.3 The Union states that having been unsuccessful in a number of previous promotional competitions, the Claimant was advised by management to seek additional qualifications and she subsequently achieved a gold medal from An Bord Tráchtála following a three year Certificate in Marketing course. The Claimant also holds a Diploma in Foreign Trade.

3.4 The Union states that the Claimant made 15 applications for various positions in the six years preceding the complaint and that she was unsuccessful in them all. It is her belief that there is an attitude among certain members of management that is against the advancement of women in the organisation. The Union refers to comments such as 'some women are secretaries all their lives' and adds that on the 17th September, 1998 the Managing Director of the Board in a presentation to staff criticised members of staff who persisted in availing of the services of external agencies in processing staff matters and exhorted staff to only use internal procedures. The Union states that this was seen by most of the Claimant's colleagues as a direct reference to her. The Union also states that her achievement of the gold medal in marketing was belittled by her own Manager.

4. SUMMARY OF RESPONDENT'S CASE

4.1 Irish Dairy Board contends that the selection process for the position of Sales Support Assistant was conducted in a fair and objective manner and rejects any suggestion that the Claimant was discriminated against because of her gender.

4.2 The Irish Dairy Board is the major international exporter of Irish dairy products and its principal objective is to market the products of its members. The Board has approximately 2,500 employees world-wide, 170 of whom are based in Ireland. I.B.E.C. states that promotional opportunities in the Board are limited because of a low level of staff turnover and a flat management structure. Promotion from one grade to the next higher grade is the norm. Promotion over two grades is, according to I.B.E.C., fairly unusual and promotion over three grades is exceptional. The disputed post is at Grade J level within the Board's grading structure while the Claimant was serving effectively two grades below at Grade N level (there are no relevant posts in between at Grade L).

4.3 I.B.E.C. states that in the last three years the Board filled 49 promotional vacancies internally. Of these 21 were filled by women and 28 by men. Of these, 52% of the female appointees were appointed at Grade J level or above as against 57% for males. Recruitment is interview based and the interview board comprises a member from the Personnel Department and at least one member from the department in which the

vacancy exists, including the person to whom the appointee will report. In the case of the disputed post, a temporary vacancy arose because the incumbent, who is female, was being temporarily assigned to Germany for six months. At the time of her appointment to the position in 1994 there were 4 male candidates and 2 female candidates in the competition and the interview board comprised the same three members as interviewed the Claimant in the disputed competition. According to I.B.E.C., these facts clearly demonstrate that the Board could not be accused of discriminating against female candidates based on its past record.

4.4 I.B.E.C. states that of 17 positions for which the Claimant unsuccessfully applied, 11 were two or three grades above her present grade and were filled by males and females. I.B.E.C. points out that the Board sponsored the Claimant in her third level studies and respects her achievements on those courses. They also point out that many other staff members have acquired similar qualifications and that a sizeable proportion of them did not gain any promotional benefit.

4.5 I.B.E.C. states that the principal requirements of the post of Sales Support Assistant is to provide administrative support to the Trading Executives and to assist in the commercial administration of the Butterfat Department. The job involves negotiation of sales to a reasonably significant degree and there is also extensive interface with customers. The appointee is expected to have an understanding of the Board's trading

environment and all relevant components which have a bearing on it, e.g. the CAP system, pricing, refunds, currencies, product intelligence etc. The negotiation of contracts in certain cases means that ability to conduct business in a continental language is a distinct advantage. There were four internal candidates for the position, three female and one male. The interview board comprised the Personnel Manager, the Manager of the Butterfat Department and the Trading Executive of the Butterfat Department. Interviews were held on 14th November, 1995 and each candidate was allocated approximately 30 minutes and asked the same list of questions. Arising from the interviews the male candidate was placed first on the panel, another female candidate was placed second and the Claimant was placed third. I.B.E.C. states that the two top ranking candidates were at the time of their application in higher graded positions than the Claimant.

- 4.6 I.B.E.C. state that in the opinion of the interview board, the Claimant did not demonstrate the depth of experience or skills required for the job. Her previous experience as Department Secretary and Product Assistant did not equip her for the role of Sales Support Assistant which was three grades higher and her qualifications, while creditable, did not automatically make her suitable for the role. I.B.E.C. rejects the Union's contention that the Claimant discharged the duties of Trading Executive or Sales Support Assistant during the absence of those more senior personnel and states that there are no grounds to suggest that she did any more than a Secretary would

normally do during such absences. The bulk of the appointee's experience was in the Food Ingredients Department where his duties involved both sales and customer services activities, duties which according to I.B.E.C. were very similar to those of the Sales Support Assistant. His knowledge of German was also of benefit according to the Respondents.

5. CONCLUSIONS OF THE EQUALITY OFFICER

5.1 The matter for consideration is whether or not Irish Dairy Board 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 The principal question to be addressed is whether or not the Irish Dairy Board conducted the selection process in a manner which was fair and objective and free from any form of gender based bias. I must consider therefore the requirements of the position to be filled, the manner in which the interview was conducted and the basis on which the appointee was placed ahead of the Claimant. A copy of the staff notice advertising the temporary vacancy in the Butterfat Department is included in Appendix 1. The Respondents furnished copies of the C.V.'s of the appointee and of the Claimant to the Equality Officer subsequent to the hearing. I note that the job

advertisement does not specifically set out qualification and experience requirements for the job but lists the nature of the duties attached to the post i.e. inputting of contracts, negotiation of certain sales, servicing of customer requirements and execution of policy as decided by management. The advertisement states that ability to transact business in a European language other than English and a working knowledge of Lotus 123 would be an asset.

5.3 The Respondents have made the case that the Claimant's background as Department Secretary and Product Assistant did not equip her for the role of Sales Support Assistant while the successful candidate's experience as Marketing Executive in the Food Ingredients Department involved both sales and customer service activities, similar duties to those required of the Sales Support Assistant. I note that the successful candidate was at Grade K level at the time of the competition while the Claimant was at the lower Grade N level. At the time of the competition the Claimant held a Diploma in Foreign Trade and a Certificate in Marketing (subsequently obtaining Graduateship in Marketing in May, 1996) while the successful candidate held a Degree in Business Studies, a Diploma in Italian, a Diploma in International Trade and a Diploma in German.

5.4 The Union argued strongly that the fact that the Claimant was actually working in the Butterfat Department at the time of the competition and had been doing so for six years

should have weighed heavily in her favour. I must accept however the respondent's argument that the successful candidate's five years experience as Marketing Executive (level K) in the Food Ingredients Department was superior to the Claimant's experience as Secretary and Product Assistant (level N) in the Butterfat Department. As regards the conduct of the interview, I.B.E.C. has stated that all of the candidates were asked the same set of questions and these were listed in its submission. The Claimant has indicated that she had no complaint in relation to the conduct of the interview and no evidence was presented to the Equality Officer to suggest that the line of questioning or behaviour of the interview panel was discriminatory. Having regard to the level of the appointee's third level qualifications, including his German language qualification and the level of his experience, I am satisfied that the Respondents had an objective basis for placing the appointee ahead of the Claimant in the competition. I note that the Claimant was placed third in the competition and that another female candidate was placed second ahead of her.

- 5.5 In its submission and during the course of the hearing, the Union referred to the Claimant's career history with the Irish Dairy Board and referred to the many promotional competitions in which she was unsuccessful, despite her many years of experience and educational development since joining the Board. The Respondents argued that many of these posts were a number of grades above the Claimant's grade and that in many cases female candidates were appointed. The Respondents rejected

the suggestion that there was systematic discrimination against the Claimant on account of her gender and I consider that the evidence presented does not support such an allegation.

5.6 The Union in its submission also referred to comments attributed to the Managing Director when addressing staff at a general meeting in September, 1998. The Union claims that the Managing Director criticised staff who persisted in availing of the services of external agencies in processing staff matters and exhorted staff to use internal procedures only. The Union had previously referred a dispute to the Labour Court under the Industrial Relations Acts concerning the Claimant's lack of career progression. The Union claim that this was seen by the Claimant's colleagues as a direct reference to her. I.B.E.C. stated at the hearing that the allegation related to remarks made subsequent to the referral of the present complaint to the Labour Court and was therefore outside the scope of the present investigation. I consider however that there is insufficient evidence to demonstrate that the alleged remarks were directed at the Claimant, that they arose from her referral of a complaint under the 1977 Act and that they would constitute discrimination against the Claimant within the meaning of the 1977 Act. I do not consider it necessary therefore for me to decide on the issue raised by I.B.E.C. with regard to the date of the alleged remarks.

6. RECOMMENDATION

6.1 On the basis of the foregoing, I find that Irish Dairy Board did not discriminate against Ms Siobhan O'Callaghan 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.

Raymund Walsh

Equality Officer

2 June, 2000

APPENDIX 1

**STAFF NOTICE ADVERTISING A
TEMPORARY VACANCY AS SALES
SUPPORT ASSISTANT IN THE
BUTTERFAT DEPARTMENT**