

**OFFICE OF THE DIRECTOR OF  
EQUALITY INVESTIGATIONS**

**EMPLOYMENT EQUALITY ACT, 1977**

**EQUALITY OFFICER'S RECOMMENDATION NO: EE 19/2000**

**PARTIES**

**Ms Niamh Kelly  
(Represented by I.N.T.O.)**

**AND**

**Board of Management, Scoil Naomh Colmcille  
(Represented by Arthur O'Hagan Solicitors)**

*File No: EE53/1998*

## **1. DISPUTE**

1.1 The dispute concerns a claim by Ms Niamh Kelly that on 9th July, 1998 the Board of Management, Scoil Naomh Colmcille, Mount Hanover, Drogheda, Co. Meath discriminated against her within the meaning of Section 2(a) and 2(c) 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 is employed as Vice-Principal at Scoil Naomh Colmcille primary school. The dispute concerns the filling of the Principal position at the school. There are four teaching posts in the school (including the Principal post) and at the time of the vacancy the school had an enrolment of 104 pupils. A male was appointed to the Principal 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 was a woman.

2.2 The INTO referred a complaint to the Labour Court in November, 1998 under Section 19 of the 1977 Act. The Labour Court 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 23rd September, 1999. In the original referral of her complaint to the Labour Court the INTO stated that the Claimant

was treated less favourably than a male and that she was obliged to comply with an inessential discriminatory requirement however no evidence was presented in relation to the latter grounds for complaint.

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

3.1 It is the claimant's case that the Board of Management, Scoil Naomh Colmcille discriminated against her in terms of Section 2(a) and 2(c) of the Employment Equality Act, 1977 when it failed to appoint her to the Principal position.

Section 2 states that discrimination shall be taken to occur

(a) *'where by because of his sex a person is treated less favourably than a person of the other sex'*

(c) *'where because of his sex or marital status a person is obliged to comply with a requirement, relating to employment or membership of a body referred to in section 5, which is not an essential requirement for such employment or membership and in respect of which the proportion of persons of the other sex or (as the case may be) of a different marital status but of the same sex able to comply is substantially higher'*

3.2 The Claimant commenced employment as an assistant teacher in Scoil Naomh Colmcille in 1981 and has been Vice-Principal since 1985. In July, 1998 the Board held a

competition to fill a post of Principal arising from the retirement of the former Principal. A copy of the advertisement for the position is included at Appendix 1. The Claimant was interviewed for the position on 9th July, 1998 and according to the Union, the Board of Management at a meeting on 14th July, 1998 decided to offer the position to the male appointee. The Claimant was informed by letter in August that she had been unsuccessful in the competition. The Union argues that the Claimant had already been serving as Vice-Principal at the school for 13 years and had a an excellent record in all areas including teaching, administration, community based relations, staff relations, policy development and innovation .

3.3 Seven applicants were called for interview for the post, 4 male and 3 female. The Union states that the Chairperson of the Board of Management, having previously stated that he would absent himself from the interview board because he was acquainted with the Claimant and two other candidates, sat in on her interview although he did not ask any questions. The interview board members were a Parish Priest from Navan, a male Religion Teacher from a Co. Meath school and a female Vice-Principal from another Co. Meath school.

3.4 The Union contends that the interview board did not ask her searching questions in relation to her suitability for the role of principal thereby denying her the opportunity to demonstrate her talents and expertise. The Union lists questions which were put to the

Claimant which are of a general nature in relation to teaching and says that she was not asked about her administrative abilities, relations with parents or her vision for the school in the future. The Union argues that the line of questioning was more appropriate to a teaching post rather than a principal post. The Union states that because the Claimant was not happy with the interview she made a detailed written account of the interview immediately afterwards and this was copied to the Equality Officer. A list of the questions asked of the Claimant at interview as recalled by the Claimant are included at Appendix 3.

- 3.5 The Union outlined the Claimant's career history since first qualifying as a teacher in 1977, her contribution to the development of Scoil Naomh Colmcille since joining the staff as a teacher in 1981 and later progressing to the grade of Vice-Principal in 1985. The Union refers to the Claimant's natural ability and states that the Chairman of the Board of Management in his reference for the Claimant refers to her administrative and management abilities, her excellent rapport with pupils, her firm discipline and her reliability and trustworthiness.
- 3.6 The Union contends that women are less likely to be appointed to positions of principalship in Co. Meath and particularly in the parish of Mount Hanover. In support of this contention the Union says that according to figures supplied by the Department of Education and Science there are in Co. Meath 71 male principals as against 32 females

i.e. a ratio of 2.2 to 1 whereas there are in total 154 male and 510 female teachers (including principals) in the county i.e. a ratio of 1 to 3.3. The Union argues that these figures clearly indicate that women are grossly under represented as principals of primary schools having regard to their numbers in the profession in Co. Meath. In the particular parish of Mount Hanover there are 5 primary schools and all 5 have male principals. Of the other 21 teachers in the parish 20 are female.

- 3.7 In conclusion, the INTO states that the appointee had less experience than the Claimant having qualified in 1983. His teaching experience was in large urban schools without any additional responsibilities comparable with the Claimant's 13 years service at Vice-Principal level. The Union referred the Equality Officer to the cases of Wallace and South Eastern Education and Library Board (1980) IRLR 193 and O'Donoghue and Guardian Royal Exchange (EE 07/1994) and argues that the tests used in those cases should be applied in this case.

#### **4. SUMMARY OF RESPONDENT'S CASE**

- 4.1 The Respondent contends that the selection process for the position of Principal at Scoil Naomh Colmcille was conducted in a fair and objective manner and rejects any suggestion that the Claimant was discriminated against because of her gender. The Respondent outlined the conduct of the competition as follows. The post was advertised in May, 1998 and 13 candidates, made up of 7 males and 6 females applied.

On the basis of an assessment of their C.V.'s, seven candidates were shortlisted for interview i.e. 4 males and 3 females. One of the shortlisted females withdrew prior to interview.

4.2 The interview board was made up of three members as outlined at paragraph 3.3 above. The Chairperson of the Board of Management, Fr Connaughton, sat in on the interviews in order to assist with queries in relation to the school but chose not to participate as a member of the interview board as he was personally acquainted with a number of the applicants. Candidates were assessed on five criteria i.e. personality, qualifications, natural abilities, motivation and adaptability and given a mark between 1 and 5 under each of these headings by each interview board member. The marks for all of the candidates were included in the Respondent's submission and the marks show that the Claimant was placed last of the six candidates who were interviewed. The first placed candidate who was male turned down the position and the second placed candidate who was also male was offered and accepted the position.

4.3 The Respondent contends that the candidates were assessed against objective criteria which were unconnected with the Claimant's sex and adds that in the case of *Nimz v F H Hamburg* (1991) ECR the European Court of Justice found that the evaluation of experience can only be held to be discriminatory where that experience has been evaluated subjectively rather than objectively. The Respondent states that the Claimant

ranked lower than the other candidates in terms of the particularity of her educational qualifications and her responses to questions intended to show her natural abilities. The Respondent rejects the Claimant's assertion that the interview board did not adequately explore her capabilities in a number of areas and states that the Claimant, like the other candidates, was afforded the opportunity to expand herself on areas which she wished to cover at interview.

- 4.4 The Respondent rejects the Claimant's contention that the statistical breakdown of male and female principal teachers in the Meath area supports her claim that she was discriminated against on grounds of her sex. The Respondent argues that the existence of a gender imbalance in a particular occupation is not, in itself, evidence of unlawful discrimination on grounds of sex and states that the INTO offered no statistical analysis in relation to the number of men and women who actually applied for promotion as examined by the Equality Officer in the case of *Turley-McGrath v Donegal VEC* (Equality Officer's recommendation EE 4/1996). The Respondent also adds that the tests used in the cases cited by the INTO in support of the claim i.e. *Wallace v South Eastern Education and Library Board* (1980) IRLR 193 and *O'Donoghue v Guardian Royal Exchange* EE 7/1994 are not the appropriate tests to be used in this case as there is no evidence that the Claimant was better qualified or had more relevant experience than the appointee.

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

- 5.1 The matter for consideration is whether or not Scoil Naomh Colmcille discriminated against the Claimant on the basis of her sex in terms of Section 2(a) and 2(c) 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 Scoil Naomh Colmcille 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.
- 5.3 The minimum eligibility requirements for the position of National School Principal are laid down by the Department of Education and Science and they vary according to the number of pupils enrolled at the school. Scoil Naomh Colmcille is in the 80 to 199 pupils category having an enrolment of 104 pupils. To be eligible for appointment a person must have successfully completed a recognised course of training, have satisfactorily completed probation, have a minimum of five years' service of which the last three years has been satisfactory. The interview board in this case agreed the

assessment criteria that would be used in the selection of a candidate and the following is the text of a hand-written note signed by the three interview board members:

*"It was agreed that successful applicants should be fully qualified, have a good health record, and a teaching experience relevant to the needs of this particular school which is expanding over the past few years due to the increased attendance of town pupils at what was once a mainly rural school."* (copy of document included in Appendix 2).

Of the 13 applicants, 7 were shortlisted for interview. The Respondent provided a copy of the Record of Applications prepared by the interview board where the 13 candidates were rated Very Good, Strong and Average. I note that 3 males were rated Very Good and 3 females and 1 male were rated Strong. The remaining 3 males and 3 females were rated average.

- 5.4 While 7 candidates were shortlisted for interview only 6 attended for interview. As stated at paragraph 4.2 above, the Respondent provided a copy of the marking sheets used by the interview board. The marks from each board member were aggregated to form an overall ranking for each candidate. I have included an extract from this table below. I note that the marking sheets indicate that all three interview board members were agreed on the first placed candidate (who turned down the position) and two members were agreed on the next candidate (the appointee). Two board members also agreed on placing the Claimant in sixth or last place while the third member placed

her fourth. Her overall placing was sixth with the result that two male candidates and one female candidate were placed ahead of the Claimant and after the appointee who was placed second. In addressing the Claimant's allegation of discrimination I am mindful of the Labour Court's determination in the case of Gleeson vs The Rotunda Hospital and The Mater Misericordiae Hospital (DEE003 / 2000) where the Labour Court stated :

*"The first named respondents advance the case that some of the other candidates had academic qualifications equal if not superior to those of the appellant and, therefore, the appellant was not discriminated against on the grounds of her sex. The Court cannot accept this contention. It can only judge the appellant vis-a-vis the successful candidate."*

Having regard to the above, I will examine the basis on which the appointee was placed ahead of the Claimant in the markings. The appointee was awarded 59 marks at interview as against the Claimant's 41 marks broken down as follows:

	<b>Appointee</b>	<b>Claimant</b>
Personality	12	9
Qualifications	14	9
Natural Abilities	11	8
Motivation	11	8
Adaptability	11	7
<b>Total</b>	<b>59</b>	<b>41</b>

5.5 I questioned the interview board members at the hearing as to the basis for their allocation of marks to the appointee and the Claimant under the various headings. I was

informed that natural abilities measured areas such as teaching ability, conflict resolution, vision and the ability to lead and manage people. Motivation was measured against past performance, reading, attendance at courses, keeping abreast of curricular developments. Adaptability measured coping with change, dealing with difficult situations. The candidates were marked under these headings on the range and depth of their answers at interview. The interview board members stated that compared with the appointee, the Claimant's answers were short, lacked enthusiasm and placed an undue emphasis on loyalty. They found it difficult to keep the interview going. Having regard to the marks awarded for qualifications, the appointee, who started primary teaching in 1984, holds a B.Ed. Degree, a Diploma in Religious Studies, a Diploma in Management Education, a Certificate in Teaching English as a Foreign Language and attended a special course in Physical Education. The Claimant holds a B.Ed. Degree, and attended in-career development courses in drama, special education, nature study, computer studies, physical education, gaelic games, art & craft and European studies. The Claimant started teaching in 1977 and has been vice-principal at Scoil Naomh Colmcille since 1985. The Respondents held that the appointee's qualifications were superior to those of the Claimant and that this is reflected in the marks while the INTO argued that the Claimant's several years experience at vice-principal level should have outweighed the appointee's Diploma in Education Management. It is not the role of the Equality Officer to resolve differences of opinion on the relative merits of a particular qualification or level of experience but to satisfy him or herself that the selection panel

had objective grounds for their decision which were not influenced by the Claimant's sex. I am satisfied from the available evidence that the selection panel was not influenced by the Claimant's sex in its allocation of marks. I consider that while the Claimant has demonstrated that she was well qualified for the position and this is accepted by the Respondent, I am not satisfied that she has demonstrated that she was better qualified for the position than the appointee and that the test referred to in the cases of *Wallace v South Eastern Education and Library Board* (1980) IRLR 193 and *O'Donoghue v Guardian Royal Exchange* (EE 7/1994) cannot be used to support the Claimant's claim of discrimination based on her sex.

- 5.6 The INTO argued that the Claimant's many years as vice-principal were not adequately taken into account by the interview board. The Respondent stated in response that vice-principal experience was not a requirement for the position of principal and cited the case of *Nix v Oola National School* (Equality Officer's recommendation EE 2/1999) where the Equality Officer found that in a competition to fill a principal teaching post, the interview board discriminated against Ms Nix when it gave preference to candidates who had previous experience at principal level. On that occasion male candidates were significantly more likely to have such experience and the consequences of not having principal experience bore more heavily on female candidates. The Respondent in the present case contended therefore that to have given preference to candidates with vice-principal experience could similarly be found to be discriminatory.

However the Respondent did not support this line of argument with any relevant statistics in relation to candidates in the disputed competition.

5.7 The INTO argued that as a proportion of their numbers in teaching in Co. Meath, females are significantly underrepresented at Principal level in the county (see paragraph 3.6 above) and more particularly in the parish of Mount Hanover where all 5 primary schools have male principals. However the INTO has not demonstrated any connection between the disputed competition and other appointments in the parish or county. As I have not found any evidence that the interview board in the present case acted in a discriminatory manner, I do not consider that I am in a position to draw any inference of discrimination from the wider statistics for the parish and county put forward by the INTO.

5.8 The INTO in their submission and at the hearing drew attention to the fact that Fr Connaughton, Chairman of the Board of Management of the school, sat in on the interviews although he had previously indicated that he would exclude himself from the interviews as he was acquainted with a number of the candidates. Fr Connaughton sat in on all of the interviews and has indicated that his reason for doing so was so that he could help out with any questions about the school. No evidence was presented to suggest that Fr Connaughton's presence influenced the interview proceedings or contributed to a bias against the Claimant on grounds of her sex.

5.9 The INTO challenged the line of questioning to which the Claimant was subjected at interview however the Respondent states that the interview board agreed beforehand on the line of questioning and states that all the candidates were asked similar questions. The Claimant provided what she believes to be an accurate record of the interview which she wrote down after the interview. There was some disagreement between the parties as to the depth of the Claimant's answers to some of the questions however the questions asked by each board member were in line with their respective roles as outlined at the hearing and it has not been suggested and there was no evidence to suggest that any of the questions were discriminatory. The Claimant's record of questions asked would indicate that she was asked several open questions such as "tell us about yourself", "what are the qualities of a good teacher", "what quality do you have that you consider makes you suitable for this post" which would have allowed her to expand. The Claimant was given an opportunity at the end of the interview to raise further issues if she so wished. On the basis of the above, I do not consider that the Claimant was subjected to a discriminatory line of questioning at interview.

5.10 The INTO did not present any evidence to support the claim that the Claimant was discriminated against in terms of Section 2(c) of the 1977 Act i.e. that she was obliged to comply with an inessential requirement which a substantially higher proportion of male candidates was able to comply and I must find that no such discrimination took place.

**6. RECOMMENDATION**

6.1 On the basis of the foregoing, I find that Scoil Naomh Colmcille did not discriminate against Ms Niamh Kelly on the basis of her sex in terms of Section 2(a) and 2(c) and in contravention of the provisions of Section 3 of the Employment Equality Act, 1977 in its appointment of a male candidate to the post of Principal.

Raymund Walsh

Equality Officer

6 July, 2000

# **APPENDIX 1**

ADVERTISEMENT FOR THE POSITION OF PRINCIPAL AT SCOIL

NAOMH COLMCILLE

# **APPENDIX 2**

**SELECTION CRITERIA ADOPTED BY INTERVIEW BOARD**

## APPENDIX 3

### CLAIMANT'S RECORD OF QUESTIONS ASKED AT INTERVIEW

1. We've read your c.v., now tell us about yourself ?
2. Why did you become a teacher ?
3. What are the qualities of a good teacher ?
4. What quality do you have that you consider makes you suitable for this post ?
5. Having worked in both, what would you see as the difference between an urban and a rural school ?
6. Do you see the school growing in size ?
7. How would I know if I visited this school that it was a good school ?
8. How important do you think planning i.e., teacher's early scheme, weekly notes and monthly reports are ?
9. What aspect of the maths programme for middle classes would you change ?
10. What are your views on the teaching of poetry ?
11. Do you think that children should have to memorise poetry ?
12. What are your views on rote learning ?
13. Time-tabling, would you like to have strict time-tabling ?
14. What is important in the teaching of music in the curriculum ?
15. How would you cope with a teacher refusing to teach religion ?
16. If a parent withdraws a child from religion class and then complains about holy pictures in the classroom and prayers being said during the day what would you do ?
17. What would you do if a teacher was undermining the teaching of religion, as reported to you by parents ?
18. Would your colleagues have problems giving you notes ?
19. Have you any questions to ask us ? For example, the enrolment for next year etc. You probably know more than we do about the school ?