

**EMPLOYMENT EQUALITY ACT, 1977**

**EQUALITY OFFICER'S RECOMMENDATION NO. EE 10/1997**

**PARTIES**

**TELECOM EIREANN**

**A N D**

**MS. P. MCGRATH**  
**(Represented by CWU)**

**File No. EE34/95**



## **1. DISPUTE**

This dispute concerns an allegation by Ms. Pearl McGrath that Telecom Eireann discriminated against her contrary to the provisions of the Employment Equality Act, 1977.

## **2. BACKGROUND**

**2.1** The claimant was employed as a Telephonist by the Department of Posts and Telegraphs from 5 January, 1965 to 9 January 1970 when she resigned on marriage. She was subsequently re-employed as a part-time night telephonist on 16 July 1973 and has been in continuous employment with the Department of Posts and Telegraphs/Telecom since that date.

**2.2** The claimant legally separated from her husband in 1990. On 27 May 1991 Ms. McGrath applied for an application form to return to full-time work on the basis that she was separated from her husband. She submitted the completed application form in June, 1991. In July, 1991 her application was turned down. She appealed this decision in January, 1992 and was informed that she did not qualify for reinstatement. She made further applications which were also unsuccessful. Subsequently, the Communications Workers Union pursued the case with the Company on her behalf.

**2.3** On 28 August, 1995 the CWU on behalf of the claimant referred a complaint to the Labour Court that Telecom Eireann discriminated against her in terms of Section 2(b) of the 1977 Act. On 29 July, 1996 the Labour Court found that reasonable cause had been shown why the reference of this issue was not been made in accordance with the provisions of Section 19(5) of the 1977 Act and referred the matter to an Equality Officer for

investigation and recommendation. Submissions were received from both parties and a joint hearing was held on 5 March, 1997.

### **3. SUMMARY OF MS. McGRATH'S CASE**

- 3.1** The CWU submits that the claimant was discriminated against by Telecom Eireann on the grounds of her marital status within the meaning of Section 2(b) of the 1977 Act. Section 2(b) states that discrimination shall be taken to occur :

*“because of his marital status, a person is treated less favourably than a person of the same sex”*

- 3.2** The CWU submits that the claimant's application for reinstatement in a full-time capacity falls within the scope of Section 4 of the Civil Service (Employment of Married Women) Act, 1973 and that the Company discriminated against the claimant in its contention that because she is currently employed in a permanent part-time position with the Company her application for reinstatement in a full-time capacity could not be approved. The Union contends that this is contrary to Section 11, Sub-Section 2(d) of the Civil Service Regulations Act, 1956. It contends that Telecom Eireann failed to apply Section 4 of the Civil Service (Employment of Married Women) Act, 1973 in the spirit in which cases involving women of similar marital status are dealt with in the Civil Service, i.e. in practice such applications for reinstatement are accommodated. Extracts of the relevant sections of the Civil Service Regulations Act, 1956 and the Civil Service (Employment of Married Women) Act, 1973 are at Appendix 1).

- 3.3** The Union asserts that had Telecom Eireann remained as part of the Civil Service she would, in practice, have been afforded reinstatement in a full-time capacity. The Union alleges that the claimant is being treated less favourably by the Company than what would have applied had the

Telecommunications Service remained within the Civil Service. It also alleges that she is being treated less favourably than persons of similar marital status who have applied in similar circumstances in the Civil Service.

- 3.4** The Union referred to Labour Court Determination DEE593 (Department of Finance, Revenue Commissioners and A Worker) and stated that it understood that applications received before the issue of this Determination have and are being processed by the Civil Service. It states that as the claimant made her initial application on 27 May, 1991 she should be treated, in the Union's opinion, in like manner.

#### **4 SUMMARY OF TELECOM'S CASE**

- 4.1** Telecom rejects the claimant's allegation that she was discriminated against in terms of the 1977 Act. The Company considers that the complaint as submitted by the Union is not appropriate to be examined under the terms of the Employment Equality Act, 1977. The Company accepts that it failed to offer the claimant reinstatement in employment in a full-time capacity. However it contends that the Union has not submitted any evidence that the claimant was treated less favourably by the Company than a woman of different marital status. It states that for discrimination to arise under the terms of the 1977 Act, the claimant must show that a woman of a different marital status was treated more favourably than her.
- 4.2** The Company states that Section 11 of the Civil Service Regulations 1956 (as amended by Section 4 of the Civil Service (Employment of Married Women) Act, 1973) does not confer a right to reinstatement on any former female employee who resigned from the civil service for the purposes of, on or following marriage. Reinstatement depends on there being a suitable vacancy. The efforts of the Company in recent years has been

directed in the deployment of staff to areas where vacancies have arisen. Consequently, no individual of whatever marital status has been reinstated pursuant to Section 11 since 1991, which reinstatement was on foot of an application received by the Company in July, 1989. The Company submits that even if the claimant had a different marital status, her application for reinstatement would not have been successful given the general lack of suitable vacancies.

- 4.3** In relation to the Union's argument that Section 4 of the Civil Service Regulations Act, 1956 as amended, was not applied by the Company in the spirit in which cases involving women of similar marital status are dealt with in the Civil Service, the Company submits that the method of application of the terms of the Act by another employer is not relevant to a complaint against Telecom Eireann under the Employment Equality Act, 1977. In any event the Company suggests that this situation has not arisen in the Civil Service as the Civil Service Commissioners do not recruit to permanent part-time positions. However the Company understands that the practice in the Civil Service is that in the case of a woman who resigned from the Civil Service for the purposes of, on or following marriage and who subsequently re-enters the Civil Service on foot of an open competition run by the Civil Service Commissioners, she would not then be deemed eligible for reinstatement under the provisions of Section 11 as amended. It is the Company's view that as the claimant has been in employment with the Department of Posts and Telegraphs/Telecom Eireann on a continuous basis since 1973, she does not have a case for reinstatement under the terms of Section 11 of the Civil Service Regulations Act, 1956 as amended by Section 4 of the Civil Service (Employment of Married Women) Act, 1973. Consequently, the Company would reiterate that the claimant's application was rejected without regard to her marital status. A similar attitude would have been taken to an application from a female part-time permanent member of staff of a different marital status to that of the claimant.

- 4.4** In relation to the Union's argument that the claimant is being treated less favourably by the Company than what would have applied had the Telecommunications Service remained within the Civil Service it states that the Union does not make a connection between this aspect of the complaint and the claimant's marital status. It contends that the Union's perception that the claimant is somehow worse off as a result of the establishment of Telecom Eireann does not of itself have any direct relevance to a complaint under the Employment Equality Act, 1977.
- 4.5** The Company refers to the Union's statement that the claimant is being treated less favourably than persons of similar marital status who have applied in similar circumstances for reinstatement in the Civil Service. Under the terms of the Employment Equality Act, 1977 a complaint of less favourable treatment than persons of the same marital status must be against members of the opposite sex. There is no complaint of discrimination on grounds of sex in this case but in any event the Company disputes that the claimant was treated less favourably than a person of the opposite sex.
- 4.6** The Company states that the Union is arguing less favourable treatment by the Company in its consideration of an application for reinstatement in a full-time capacity from a person who is a part-time employee of the Company than from a person who is not an employee of the Company. The Company contends that this is a distinction based on the existence or otherwise of an employment contract with the Company. No link is made or indeed could be made by the Union to marital status.
- 4.7** The Company referred the Equality Officer to the Labour Court's Determination DEE593 (Department of Finance, Revenue Commissioners and A Worker). Without prejudice, to its contention that no discrimination has occurred, it contended that the Equality Officer in this case cannot

deviate from the Labour Court decision not to award reinstatement to the claimant as it found that the particular provision of the 1956 Act (as amended by the 1973 Act) offended the principle of equal treatment.

- 4.8** In summary, the Company contends that the Union has not established reasons for believing that the alleged act of discrimination, the failure to offer the claimant reinstatement in full-time employment under the terms of Section 4 of the Civil Service (Employment of Married Women) Act 1973, contravened the Employment Equality Act, 1977 and maintains that there is no valid complaint to answer.

## **5 CONCLUSIONS OF EQUALITY OFFICER**

- 5.1** In making my recommendation, I have taken into account all the submissions made to me by the parties.
- 5.2** The claimant alleges that Telecom Eireann discriminated against her in terms of Section 2(b) of the Employment Equality Act, 1977 in relation to its failure to reinstate her to a full-time capacity within the Company. Section 2 (b) of the Act prohibits discrimination i.e. less favourable treatment, in circumstances where a person is treated less favourably because of her marital status than another person of the same sex but of a different marital status.
- 5.3** There are a number of arguments put forward by the Union in this case which may be appropriate for another forum but I consider fall outside the scope of my investigation under the Employment Equality Act, 1977 as they do not relate to discrimination, based on either sex and/or marital status. These are as follows:
- that the claimant is being treated less favourably by the Company in this matter than what would have applied had the Telecommunications Service



remained within the Civil Service,

- that the Company failed to apply the Civil Service ( Employment of Married Women) Act, 1973 in the spirit in which cases involving women of similar marital status are dealt with in the Civil Service,
- that she is being treated less favourably than persons of similar marital status who have applied in similar circumstances for reinstatement in the Civil Service. The only persons who can apply for reinstatement under these provisions are a narrowly defined group of women. Consequently the claimant is arguing that she is treated less favourably than a woman of similar marital status, a claim which is outside the scope of the Employment Equality Act, 1977.

**5.4** Section 11 of the Civil Service Regulations Act 1956, as amended by Section 4 of the 1973 Act (relevant extracts at Appendix 1) provides, in certain circumstances, for the re-admission of women who resigned from the civil service for the purpose of marriage. Both the Company and Union referred to the Labour Court's determination DEE593 (Department of Finance, The Revenue Commissioners and A Worker) in which the Court stated that

*"...the whole scheme for the reinstatement of some women in the civil service is discriminatory and contrary to the principle of equal treatment, and that the proper solution is to recommend the repeal of Section 11 of the 1956 Act, as amended by Section 4 of the 1973 Act. It seems to the Court that the situation with regard to the employment of women has changed fundamentally since 1973 and that there is now no justification in making special provision to enable some women to be re-admitted to the civil service through exceptional procedures. All recruitment to the service should be by open competition through the Civil Service Commission, including the re-recruitment of former civil servants who resigned for whatever*

*reason.... “*

However the claimant's application for reinstatement in a full-time capacity predated this determination as she originally applied in 1991.

**5.5** I note that no individual has been reinstated by the Company pursuant to Section 11 of the 1956 Act (as amended by Section 4 of the 1973 Act) since September, 1991 and that this reinstatement was on foot of an application received by the Company in July 1989. I note that Section 11 of the 1956 Act (as amended by the 1973 Act) clearly refers to a situation where a vacancy in the same grade as that of the woman's original position exists or where a vacancy in a grade equivalent to or lower than her original position exists. The Act also refers to "re-admission" to the Civil Service or in this case Telecom Eireann. However the claimant is already in the employment of Telecom Eireann so the question of her re-admission does not arise. Consequently there is no evidence to suggest that a woman of a different marital status to that of the claimant has been or would have been treated more favourably than the claimant.

**5.6** Although the Union did not refer a claim under Section 2(c) of the Act. I consider that I should state that the evidence available to me does not support a claim that the claimant was indirectly discriminated against on the basis of her marital status.

## **6. RECOMMENDATION**

**6.1** In view of my conclusions above, I find that Telecom Eireann did not discriminate against Ms. Pearl McGrath on the basis of her marital status within the meaning of Section 2 of the Employment Equality Act, 1977.

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Deirdre Sweeney  
Equality Officer

28th April, 1997.