

EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATION NO: EE 20/1997

P A R T I E S

Ms. Mary O'Brien

AND

Revocliffe Limited

File No: EE 14/1996

1. DISPUTE

This dispute concerns an allegation by Ms. Mary O'Brien that Revoclife Ltd. discriminated against her contrary to the provisions of the Employment Equality Act, 1977.

2. BACKGROUND

2.1 Ms. Mary O'Brien, the claimant, was employed as a secretary with Sean Fallon & Co. Ltd., Insurance Brokers from June 1978 to September, 1995.

In 1995 the goodwill and trade of the Company was purchased by Revoclife Ltd. The three office staff including the claimant were made redundant by Sean Fallon & Co. Ltd. with effect from 26 September, 1995.

2.2 One of the three office staff, Ms. Margaret Byrne was employed by Revoclife Ltd. on 2 October, 1995. Ms. Byrne had been interviewed by Mr. Tom Fitzgerald, Revoclife Ltd. on 23 September 1995. She had eight years experience with Sean Fallon & Co Ltd. The claimant who had seventeen years work experience was not interviewed.

2.3 On 22 March 1996 the Employment Equality Agency (EEA) on behalf of the claimant referred a complaint to the Labour Court that Revoclife Ltd., discriminated against her in terms of Section 2(a), (b) and (c) of the 1977 Act. On 26 April, 1996 the Labour Court referred the matter to an Equality Officer for investigation and recommendation. Subsequently the claimant advised the Equality Officer that she was not being represented by the EEA. Submissions were received from both parties and a joint hearing was held on 17 June, 1997.

3. SUMMARY OF MS. O'BRIEN'S CASE

- 3.1** The EEA, on behalf of Ms. O'Brien, submitted in her referral form that she suffered discrimination on grounds of her sex and marital status contrary to Section 3 of the Employment Equality Act, 1977, in terms of Section 2 of that Act. However during the course of this investigation she confined her arguments to Section 2 (b) of the Act, which deals with direct discrimination on grounds of marital status and states that discrimination shall be taken to occur where:

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

- 3.2** Ms. O'Brien states that she was employed by Sean Fallon & Co., Ltd., from June 1978 to September, 1995. There were two other staff employed there, Ms. Gabrielle Halpin and Ms. Margaret Byrne. The claimant's work involved typing, accounts, and receptionist duties. She was initially employed on a full-time basis but since January 1988 has worked reduced hours i.e. 2 1 days per week. She is married and has children.
- 3.3** The claimant states that in 1995 the company was taken over as a going concern by Revocliffe Ltd and all three office staff were made redundant by Sean Fallon & Co. Ltd. with effect from 26 September, 1995. Revocliffe Ltd. was to re-employ one member of the staff. She states that on Thursday 21 September 1995 Mr. Fitzgerald of Revocliffe Ltd. called to the office. Both she and Ms. Byrne were in the office. Ms. O'Brien alleges that during the course of the conversation Mr. Fitzgerald asked her if she was married and the number of children she had and also suggested to her that she find a job in a factory on an assembly line. At the end of the conversation he told both Ms. Byrne and herself that the three staff should decide among themselves who should be re-employed, and suggested that if they had difficulties deciding they could draw lots. He asked that their decision be made known to him by Monday 25 September, 1995. Both she and Ms. Byrne indicated that they would have difficulties doing

this.

3.4 The claimant states that on Friday, 22 September, Mr. Fitzgerald's secretary rang the office and told Ms. Byrne (who was the only one working that day) that Mr. Fitzgerald intended interviewing the three staff, the next day, Saturday at 11 a.m. Ms. O'Brien contends that due to the short notice given she was not in a position to attend the interview as she had to attend a funeral. She states that the position was offered to Ms. Byrne on Saturday at her interview and contends that she, the claimant, was not given an opportunity to do an interview. The appointee had eight years experience and had been initially trained by the claimant who had seventeen years experience.

3.5 Ms. O'Brien contends that she was discriminated on the grounds of marital status, in relation to selection for/access to employment and in relation to the appointment itself, as a less suitable single woman was appointed to the position of secretary.

4 SUMMARY OF RESPONDENT'S CASE

4.1 The respondent rejects the claimant's allegation that she was discriminated against in terms of the Employment Equality Act, 1977. Mr. Fitzgerald of Revocliffe Ltd. states that Sean Fallon & Co. Ltd was not taken over by Revocliffe Ltd., the goodwill and trade were purchased. The vendors had been advised that one of the employees would be employed by Revocliffe Ltd.

4.2 He agrees that on Thursday, 22 September 1995 he went to the office of Sean Fallon & Co. Ltd. He called to the office as initially he had been told by the owners that only one of the staff was interested in a job with him and subsequently was told that all three members of staff were interested. He

called to the office to see if they were all serious about the job and whether they might sort it out among themselves as to which one of them should get it. Mr. Fitzgerald said that he was aware Ms. O'Brien was married as he knew her family and asking about her children arose in the context of a social conversation. He refutes completely that this was a discriminatory statement or act. He was making conversation with both the claimant and Ms. Byrne. He made various other comments, most of the details of which he has forgotten.

4.3 He also spoke about the business and he remembers speaking at length about the difficulties he had about choosing which person should get the job. Mr. Fitzgerald did not recollect any conversation with the claimant about changing her occupation. He did explain to both staff there that there was only one job. In this context he may have suggested that it was not the end of the world for the person who did not get it as sometimes having worked for one employer for a long time a change of occupation would be good. He is certain that he would not have said anything derogatory to Ms. O'Brien. Mr. Fitzgerald states that he considered all three members of staff equally competent. He could only employ one of them and as they were equally competent it did not make any difference to him which one he employed. Consequently in order to avoid having to choose between them he told the staff that they should decide among themselves which of them would get the job. He accepts that they did not appear to be happy with this suggestion and he states that subsequently he decided he would hold interviews.

4.4 Mr. Fitzgerald contends that the notice of the interview was short because the agreement for the purchase was to be signed on 27 September and clients' policies had to be serviced, the office files transferred down to Revoclife Ltd. and clients notified. Mr. Fitzgerald states that Ms. Siobhan Jameson, Revoclife Ltd. rang Sean Fallon's office and spoke to Margaret Byrne (who was the only one working on that day) and asked her to arrange

for all three staff to call in on Saturday at 11a.m. for interview. Ms. Byrne made repeated telephone calls to contact Ms. O'Brien throughout the day. Her telephone was constantly engaged. On her way home at 5.45 p.m. Ms. Byrne called to Ms. O'Brien's house but her car was not there, she then called to Ms. O'Brien's parents house but her car was not outside so she assumed she was not there. At home she repeatedly tried to contact Ms. O'Brien on the telephone and eventually at 11 p.m. succeed in contacting her. Ms. O'Brien was a little aggressive and annoyed to be telephoned at this time. She advised Ms. Byrne that she had met Ms. Halpin, the other staff member, at around 7 p.m. and was aware of the interview on the morning. A complication arose in that she was attending a funeral on Saturday morning.

- 4.4** Mr. Fitzgerald questions why the claimant did not contact him or leave a message for him once she knew of the interview at 7 p.m. on Friday, He also asks why it was so difficult to contact her on Friday, her telephone being constantly engaged. He suggests that she could have come for interview after the funeral as she was aware of the urgency of the transfer over of the business. He states that he is not in dispute with the claimant's experience or capabilities. He submits that by non attendance at interview no opportunity was given to him to evaluate her. Mr. Fitzgerald further contends that he has no recollection of ever expressing a preference for a single person and that it is totally at variance with his employment track record of other businesses in which he is involved (details given to Equality Officer). He reiterates that he decided to hold the interviews because the staff did not appear to be happy with his suggestion to decide among themselves and as only one person attended for interview he gave her the job.

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** Ms. O'Brien alleges that Revoclife Ltd. discriminated against her on the grounds of marital status in relation to access to employment and appointment to the position of secretary in terms of Section 2 of the Employment Equality Act, 1977. 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** The matters for consideration are whether the claimant was treated less favourably than Ms. Byrne, a woman of a different marital status in relation to access to employment and to relation to the appointment itself. It is agreed by both parties that Mr. Fitzgerald initially suggested that the three employees of Sean Fallon & Co. Ltd. decide among themselves who should be appointed by him and when this suggestion was not accepted he called the three of them in for interview on 23 September 1995. They were given very short notice of the interview. However each of them received the same amount of notice and they were not treated differently in relation to this. Ms. O'Brien was given the same opportunity to do an interview as the other two members of staff, including Ms. Byrne.
- 5.4** There is a conflict of evidence between the parties in relation to whether the claimant advised the respondent that she would be unable to attend. At the joint hearing Ms. O'Brien stated that she had been absent from the office that day due to a death in the family. Ms. Byrne was aware of this. Ms. O'Brien stated that she met the other member of staff, Ms. Halpin, at 8 p.m. on Friday evening when they were both collecting their children from a scout meeting. Ms Halpin told her of the interviews and that she had rang Mr. Fitzgerald's secretary and told her both of them would be unable to attend, and that the secretary confirmed to Ms. Halpin that she had passed the message on to Mr. Fitzgerald's wife. The claimant confirmed that later

that night she had received a phone call from Ms. Byrne who said that she had tried to contact her during the day and advised her of the interview. She told Ms. Byrne that she could not attend. In relation to Ms. Byrne's stated attempts to contact her by phone during the day, at the joint hearing she said that it was possible that one of the children may have left the phone off the hook.

5.5 Mr. Fitzgerald stated that the first occasion he knew that the claimant was not coming was on Saturday when Ms. Byrne advised him and prior to that he got no message that the claimant could not attend for interview. He stated that he had decided to hold the interviews as the staff did not seem amenable to his suggestion to decide among themselves who should get the job, the staff were aware of the urgency of the transfer over of the business and as only one person attended for interview he gave her the job. Ms. O'Brien stated that as far as she was aware Mr. Fitzgerald had been advised of her inability to attend and there was no need for her to contact him herself. She thought that he would contact her to make other arrangements.

5.6 In relation to Mr. Fitzgerald's questions regarding whether she was married and the number of children she had, both parties were in agreement that this arose in the context of a general social conversation. Both parties agree that Ms. Byrne also took part in this conversation and that clients were coming and going from the office during it and were being dealt with by either of the staff. There is a conflict of evidence as to whether Mr. Fitzgerald suggested to the claimant that she should consider a change of occupation during this conversation. However both parties are also in agreement that Mr. Fitzgerald's suggestion, that the staff decide among themselves as to who should get the job, came at the end of this conversation.

5.7 The evidence available to me, particularly taking into account Mr.

Fitzgerald's proposal to the staff at the end of the conversation with them, does not indicate a preference by Mr. Fitzgerald for a single person and does not suggest that the claimant was not appointed to this position because of her marital status. The evidence suggests that the claimant was not appointed because she did not attend for interview on Saturday, 23 September and while the notice of this interview was short the arrangements the employer made for it were applied equally to the three members of staff. The evidence does not suggest that the claimant's inability to attend for interview on the day in question is linked to her marital status. Consequently, I consider that the evidence available does not support the claimant's allegation that she was discriminated against on the basis of her marital status in relation to access to employment and to the appointment itself. In my opinion the evidence in this case does not justify a finding that Revoclife Ltd. discriminated against the claimant on the basis of marital status in terms of Section 2 of the Act.

- 5.8** Although Ms. O'Brien submitted no arguments in relation to her claims under Section 2(a) and 2(c) of the Act. I consider that I should state that the evidence available to me does not support a claim that she was directly discriminated against on the basis of her sex or indirectly discriminated against on the basis of her marital status.

6. RECOMMENDATION

- 6.1** In view of my conclusions above, I find that Revoclife Ltd. did not discriminate against Ms. Mary O'Brien on the basis of her marital status within the meaning of Section 2 of the Employment Equality Act, 1977.

Deirdre Sweeney
Equality Officer

17 July, 1997.

