

EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATION NO: EE 21/1997

P A R T I E S

Ms. Gabrielle Halpin

AND

Revocliffe Limited

File No: EE 34/1996

1. DISPUTE

This dispute concerns an allegation by Ms. Gabrielle Halpin that Revocliffe Ltd discriminated against her contrary to the provisions of the Employment Equality Act, 1977.

2. BACKGROUND

- 2.1** Ms. Halpin, the claimant, was employed as a secretary with Sean Fallon & Co. Ltd., Insurance Brokers from March 1975 to September, 1995. In 1995 the goodwill and trade of the Company were purchased by Revocliffe Ltd. The three office staff including the claimant were made redundant by Sean Fallon & Co. with effect from 26 September, 1995.
- 2.2** One of the three office staff, Ms. Margaret Byrne was employed by Revocliffe Ltd. on 2 October, 1995. Ms. Byrne had been interviewed by Mr. Tom Fitzgerald, Revocliffe Ltd. on 23 September 1995. She had eight years experience with Sean Fallon & Co. Ltd. The claimant who had twenty years work experience was not interviewed.
- 2.3** On 25 March 1996 the Employment Equality Agency (EEA) on behalf of the claimant referred a complaint to the Labour Court that Revocliffe Ltd., discriminated against her in terms of Section 2(a),(b) and (c) of the 1977 Act. 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 on 8 August, 1996 referred the matter to an Equality Officer for investigation and recommendation. On 30 August, 1996 the EEA advised the Equality Officer that it was not representing the claimant. Subsequently, submissions were received from both parties and a joint hearing was held on 23 May, 1997.

3. SUMMARY OF MS. HALPIN'S CASE

- 3.1** The EEA, on the claimant's behalf, 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 Ms. Halpin 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. Halpin states that she was employed by Sean Fallon & Co., Ltd., from March 1975 to September, 1995. There were two other people employed there, Ms. Mary O'Brien 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 Revoclife Ltd. and all three office staff were made redundant by Sean Fallon & Co. Ltd. with effect from 26 September, 1995. Revoclife Ltd. was to re-employ one member of the staff. She states that on Thursday 21 September 1995 Mr. Fitzgerald of Revoclife Ltd. called to the office. She was not working there that day. She understands from the other staff that he told them that they 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. She understands that the two staff 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 am. The claimant contends that due to the short notice given she was not in a position to attend the interview as she had a commitment involving other people to travel to Galway that day and did not wish to break this commitment. She notified the employer that she could not attend. 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 twenty years experience.
- 3.5** Ms. Halpin contends that prior to the appointment Mr. Fitzgerald expressed a preference for a single person and he enquired of one of her colleagues if she was married and the number of children she had. She understands that he was aware of her own marital status. She submits that she was discriminated on the grounds of marital status, in relation to selection for/access to employment and in relation to the appointment to the position of secretary with the employer on 2 October, 1995, 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 Revoclife Ltd. He states that Sean Fallon & Co. Ltd. was not taken over by Revoclife Ltd., the goodwill and trade were purchased. The

vendors had been advised that one of the employees would be employed by Revoclife Ltd. He agrees that on Thursday, 22 September 1995 he went to office of Sean Fallon & Co. Ltd and told the two staff that were there 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.

4.2 The respondent contends that the notice of the interview was short because the agreement for the purchase was to be signed on 27 September 1995 and clients' policies had to be serviced, the office files transferred down to Revoclife Ltd. and clients notified. The respondent 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 11 a.m. for interview. Ms. Byrne rang the claimant who advised that she was going to Galway on Saturday morning. Later the claimant called to Sean Fallon's office but never advised Ms. Byrne if she was attending for interview or not. Later that day the claimant telephoned Ms. Jameson, Revoclife Ltd., and said we cannot make it because Ms. O'Brien, the third staff member, has a funeral. She then asked that Mr. Fitzgerald be advised whereupon Ms. Jameson advised her that he was away and she was not sure she could contact him. After several attempts to contact Mr. Fitzgerald including ringing his home Ms. Jameson rang the claimant at 6.30 p.m. and advised her that she was unable to contact him.

4.4 Mr. Fitzgerald states that he is not aware of the reason for her visit to Galway on that day or its importance. He contends that if the claimant was really serious about the job she could have contacted him at home on Saturday morning, she could have telephoned Sean Fallon's office at 11 am as she knew he would be there and she knew the urgency of the transfer over of 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 is anxious to know when specifically he expressed a preference for a single person. He states that he considers this action by the claimant to be no more than mischievous and time wasting.

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 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. The claimant 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 the claimant stated that Ms. Siobhan Jameson advised her that she had attempted to contact Mr. Fitzgerald at home and had left a message with his wife that the claimant was unable for interview on the Saturday. Mr. Fitzgerald stated that he got no such message and when the claimant did not call for interview on Saturday he was the first occasion he knew that she was not coming.
- 5.5** While the claimant alleged that Mr. Fitzgerald prior to the appointment expressed a preference for a single person when asked for details of this she referred to a third party, not one of the staff, who had suggested this might be the case. Mr. Fitzgerald denied this and stated that he had not met the third party at the time he is alleged to have expressed this preference. Mr. Fitzgerald stated 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 had suggested that they decide among themselves. As they did not seem amenable to this suggestion he decided to hold the interviews and as only one person attended for interview he gave her the job.
- 5.6** The evidence available to me, particularly, taking into account Mr. Fitzgerald's proposal to the staff that they decide among themselves who should get the job, 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 Ms. Halpin'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.

- 5.6** Although Ms. Halpin 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. Gabrielle Halpin 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.