

EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATION NO: EE 22/1997

PARTIES

Ms. Anne Dunne
(Represented by the E.E.A.)

AND

Sheelin Screens Ltd
(Represented by M.S.S.)

File No: EE 10/1996

1 Dispute

1.1 This dispute concerns a claim by the Employment Equality Agency on behalf of the claimant Ms. A. Dunne that Sheelin Screens Ltd. discriminated against her when it did not appoint her to production manager.

2 Background

2.1 The claimant worked for Sheelin Screens Ltd since 1987 and reported to the Production Manager. He was promoted by the company in August, 1995 to another post and Mr. Derek Flanagan was promoted Production Manager to fill this vacancy. The claimant alleges that she should have been promoted to this post. At the time of this promotion the claimant says that Mr. Flanagan reported to her and subsequent to his promotion she was required to report to him. The claimant says that this promotion was made at a point in time when she was commencing maternity leave. She alleges that she was not promoted to fill this vacancy because she was commencing maternity leave and that on return to work she would have two children. This claim was submitted to the Labour Court who referred it to an Equality Officer for investigation and recommendation on the 12th March, 1996. Submissions were requested from and furnished by the parties and a hearing was held on 11th February 1997. Additional information relating to the qualifications of the appointee was furnished subsequent to the hearing by the company and gave rise to further correspondence. This correspondence was completed in July 1997.

3 Summary of the Case made by the Claimant

3.1 The claimant says that she joined the company in 1987 and worked as part of a team which consisted of John Downey and herself. She says the company did not have its own upholstery production area at that time and they were required to get it up and running and she was also required to train in new staff. In 1989 Mr Flanagan joined the team and was taught to assemble chairs and in the last few years the claimant trained him in upholstery.

3.2 The claimant says that Mr Downey was promoted to take charge of production, warehouse and transport with the title of Production Manager. She says that subsequently he called a meeting of the Production team and told them that she was their supervisor and that she would be in charge of the Production Department. She says she reported to Mr Downey who was her immediate superior and at that time, Mr Flanagan reported to her. She says that on 30th August, 1995 she was asked to attend a meeting in Mr Stanley's office one week prior to

commencing maternity leave. Mr Stanley is a Director of the company. She was told at that meeting that Mr Downey was to be promoted again and moved from production and that the resulting vacancy was to be filled by Mr Flanagan. She considered that she should have been appointed to this vacancy but she says that the reasons for her non appointment given to her by the Director were

- “1. I might not go back to work full time.
2. I might not go back to work at all.
3. I couldn’t manage the job with two children
4. I couldn’t commit to the job 100% because I have two children.”

3.3 The claimant says that Mr Stanley never gave her an opportunity to reply to these assumptions. In her opinion the outcome of the conversation was that she could not be promoted due to her marital status. Consequently, she alleges, she was told that on returning to work after her maternity leave ended, she was to report to Mr. Flanagan, the new Production Manager. She says he is Production Manager in charge of the section where she was employed, unlike the previous manager who was also in charge of the warehouse and transport. She claims that the director says he wants the person in this position to be able to give one hundred percent even one hundred and fifty percent and she alleges that he said that she could not as she has two children.

3.4 The claimant alleges that the company believes that because she has two children, she does not meet the requirements of the job. She argues that when she had no children there was never a problem concerning her job or her capabilities for running the production department. She says that she had always thought she would be with the company until retirement and that in her own way she played an important part in the company. She further alleges that the problem has arisen because of a man who obviously thinks that when you have children you must be brain dead and physically disabled afterwards.

3.5 The claimant also says that she was treated for depression subsequent to the meeting on the 30th August and prior to the birth of her child and points out that probably the company does not realise the damage it has done to her health and well-being.

4 Summary of the case made by the Company

4.1 The company says that Ms. Dunne was employed by the company as an upholsterer/machinist in the seating assembly section and that due to her experience and service, she would have been regarded as a senior operative.

4.2 The company says that the seating assembly section was part of Sheelin Screens and another part of the company deals with the production of screen systems and assembly of same.

4.3 The company says that during 1995 it reviewed the management structure of Sheelin Screens. Prior to the changes complained about by the claimant the manager for the area involved was Mr Downey. The company says that as a result of this review it was decided in June 1995 that Mr Downey would take overall responsibility for the day to day operation of Sheelin Screens and Stanley and Ferguson (the company's distribution arm). As a result there was a need to appoint a replacement Production Manager in Sheelin Screens Ltd.

4.4 The company says that Mr Flanagan was considered as the person most suitable for the post on the following grounds.

- 1.** He joined the company in July 1988 and worked in Stanley and Ferguson which deals with stores and distribution. In 1989 he was transferred to Sheelin Screens where he trained in the upholstery of screens, chairs and the assembly of chairs which is the complete activities of Sheelin Screens.
- 2.** The company says that he showed the ability to get on with fellow workers and had good communication skills.
- 3.** The company says that he showed a positive desire to improve himself in the company and this was evidenced by his attaining a certificate in Advanced Supervisory Studies on his own initiative.

4.5 The company says that in reaching this decision it did not consider that the claimant due to her sex or status could not do the job. The company says that it willingly states that she is an excellent upholsterer but it did not consider her as a suitable candidate for a management position within the company.

4.6 The company says that the claimant did not hold a management position within the company but it does acknowledge that she may have covered the area when Mr Downey was not around. However, it says she did this as a Senior Upholsterer only.

4.7 The company says that the claimant was due to commence maternity leave on 8th September, 1995 for the birth of her second child. It points out that when she had previously taken maternity leave, she had requested to return on a part-time basis after the child was born and Mr Downey asked her in August 1995 if it were her intention to return to full-time working after the birth of her second child or would she be seeking the same facility again. She was asked to consider this and revert to him so that the necessary arrangements could be put in place again. This was not clarified until 30th August, 1995.

4.8 The company says that the claimant was asked on 30th August, 1995 by Mr Downey to attend a meeting in Mr. Stanley's Office. The purpose of this meeting was to advise the claimant of the decision that had been made regarding the planned changes in management as she would be on leave when they came about. It says that this was done out of courtesy to the claimant and for no other reason.

4.9 The company refutes the allegations made by the claimant with regard to what she claims was said to her, as outlined in paragraph 3.2 above, at the meeting on 30th August 1995. It says that it did not give these reasons to her for not appointing her to the new post and said that there was no discussion on the matter at all. The company denies emphatically that any such comments were made. It also says that these matters did not arise as the claimant had not been considered for the vacancy.

4.10 The company points out that the claimant's initial reaction when she heard that Mr Flanagan had been given the position, was that she would not work under him and that if his appointment was ratified she would not return to work. She later wrote to the company indicating her intention to return to work and sought clarification regarding her supervisor. This was subsequently notified to her.

4.11 The company refutes the allegations made by the claimant that the company discriminated against her on the grounds that she had two children and that if she had not had the children her career opportunities would have been enhanced.

4.12 The company also says that it does not accept that at any time the claimant was appointed

as a supervisor by the company. This in fact would run contrary to the point she is now making, that she was being denied the opportunity to enhance her career.

4.13 The company says that it would have been an understatement to say that both Mr Stanley and Mr Downey were surprised at the allegations made by the claimant. It says that these allegations run contrary to everything they have done to help and assist the claimant in the past and were willing to do again on this occasion.

4.14 The company says that it considers that the claimant was aggrieved because the person she saw as her junior was promoted. The company says that at no time was he regarded as a junior by the company and at no time was the claimant ever led to believe that this was the case. It further points out that her comment at the meeting of 30th August, 1995 indicates that she would have worked under someone else but not the appointee and it argues that this undermines her claim that she was discriminated against.

5 Conclusions of the Equality Officer

5.1 In my investigation of this claim I have taken into account all the submissions both written and oral made by the parties.

5.2 The claim under investigation in this case concerns the allegations by the claimant that she was discriminated against when she was not promoted to Production Manager in August 1995. She claims that this was discrimination based both on her sex and on her marital status.

5.3 There are many conflicts of evidence in this case. I note that the claimant alleged that the director of the company made certain remarks to her, outlined at paragraph 3.2 above, and he in turn disputes that these or any such remarks were made.

5.4 The claimant has alleged that she was senior to the appointee and was better qualified for the position and consequently when she was not appointed to the post that this was discrimination on basis of sex and marital status.

5.5 As a result of a close study of the submissions and the information gleaned at the hearing, I accept that the claimant had a supervisory function in the production area in the

absence of the Production Manager. This was confirmed to me at the hearing by the previous Production Manager, Mr Downey, who referred to an incident in 1995 when Mr Flanagan (the appointee) was reprimanded by him. Following this incident Mr Downey told the staff in the production area that the claimant was in charge of the area in his absence. I also note that the claimant was told about the promotion of Mr Flanagan at a meeting between the claimant, Mr Stanley and Mr Downey and not in the same manner as the rest of the staff who were informed through a notice with their pay packet the following day (ref appendix 2). The company argues that the reason the claimant was told about the impending promotion was because she was due to commence maternity leave and the changes were to be implemented during her maternity leave. I note that she was not due to commence her maternity leave until 8th September, one week later. I consider that the real reason she was told in this manner was because she had worked as a supervisor and so was in a different position to the remainder of the workforce.

5.6 Having established that the claimant had a supervisory role over the appointee, I also note that she had 10 -12 years experience as an upholsterer/machinist prior to joining the company. She was recruited by the company in 1987 as an experienced worker. On the other hand the appointee was recruited a year later, aged 16/17 years and originally worked as a helper in the stores. He has worked in the screen assembly area in the company as well as in the seating. The company pointed out that the appointee has two certificates in management and it set great store on the fact that he had undertaken these courses in management. A copy of a certificate from one of these courses as supplied by the company at the hearing and is at appendix 1. However I note that the company at the hearing was unaware of the content, duration, issuing college or indeed any information concerning this course. It also referred to the fact that the appointee had attended other courses and forwarded other certificates in respect of these after the hearing. These certificates are at appendix 3. The company similarly was unable to comment about these courses. This total lack of knowledge about these courses (or studies) leads me to the conclusion that they were not a significant factor when the decision was made on the appointment to this promotional vacancy. I consider that in relation to work and total work experience that the appointee was less qualified than the claimant. In this context I note that the claimant had experience over many years of organising work to meet schedules and the deadlines of customers' orders.

5.7 The certificates concerning the courses attended by the appointee were supplied for the first time at the hearing and subsequent to it. The claimant's representative sought an

opportunity to study these further. By letter dated the 4th July the claimant's representative wrote to me as follows;

"I have been in touch with Dun Laoghaire College concerning the certificates in Supervisory Management and it has been confirmed to me by the College Secretary that the certificates in respect of Mr Flanagan were not presented by that College. The course in question is organised by the IMI in Dun Laoghaire College and the Certificate in Supervisory Management is presented by the IMI, the course is of two years duration and runs from September to April each year."

She goes on to argue that while the company took the appointee's qualifications into account when selecting him over the claimant for the promotional position it now appears to her that the certificates relied upon by the employer were not issued by the College named on it. I note that the company argued that it was aware that the appointee wished to further his education and that his attendance at this course was an indication of this intent. I note that he has since attended further courses at his own request to improve his supervisory skills. (ref Appendix 3) I have noted the arguments made by the parties in relation to the relevance of these courses and certificates. As I have already stated in the previous paragraph, I consider from the facts that emerged at the hearing and since, the company at the hearing and consequently when it was making the decision to appoint, was unaware of the content, duration, issuing college or indeed any information concerning these courses. This total lack of knowledge about these courses leads me to the conclusion that they could not have been a significant factor when the decision was made on the appointment to this promotional vacancy.

5.8 I also note that the company argues that the appointee was appointed on the grounds of his suitability and capability and ability to co-operate with other staff. Having examined this argument made by the company, I find that the claimant had greater experience. She had been a trained upholsterer/machinist prior to her recruitment by the company. She supervised the production department in the absence of the production manager, and this responsibility had not been given by the company to the appointee. The company argued at the hearing that the claimant was difficult to work with, but it could not substantiate this. However it did refer to a difficulty between the appointee and the claimant. This in fact, led the production manager to instruct the appointee, and then publicly the remainder of the staff, that the claimant was in charge in his absence. I consider that the company is now using the difficulties caused by the appointee to discredit the claimant.

5.9 I consider that the claimant was more highly qualified than the appointee for the post in question. I note that in the case of Wallace-v-South Eastern Education and Library Board,

the Court of Appeal for Northern Ireland found that “....*the fact that the successful candidate was a man and the unsuccessful but better candidate was a woman is itself evidence of discrimination on grounds of sex*”. Taking this finding into account and the fact that the company did not take into account the claimant’s experience and training, I am satisfied that the claimant was discriminated against on the basis of her sex when she was not appointed to the post of production manager. I find that the claimant was treated less favourably on the basis of her sex within the meaning of Section 2 of the 1977 Act.

6. Recommendation

6.1 I find that Sheelin Screens Ltd discriminated against Ms Dunne in terms of Section 2 and contrary to Section 3 of the Employment Equality Act 1977. Having found that Ms Dunne was discriminated against by the company on grounds of her sex, the next question to be addressed is the question of remedial action. I note in this case that the claimant has sought monetary compensation in relation to loss of earnings and compensation for the upset and distress caused to her. I note that the claimant no longer works for the company so I consider that the appropriate remedy is to make an award for the distress suffered by the claimant. I recommend that the company pay the claimant the sum of £5,000.

Mary Solan Avison
Equality Officer

11th August, 1997