

EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATION NO: EE 25/1997

P A R T I E S

Mr. Jeremiah Murphy

AND

Waterford Corporation

File No: EE 51/1996

1. DISPUTE

- 1.1 This dispute concerns an allegation by Mr. Jeremiah Murphy that Waterford Corporation discriminated against him contrary to the provisions of the Employment Equality Act, 1977 on 28 August, 1996.

2. BACKGROUND

- 2.1 In July 1996 a vacancy arose for the post of Supervisor for a Community Employment Scheme in the City Library, Waterford. The Corporation placed an advertisement in the local FAS offices, NRB offices, City Library and other organisations to fill the post. The claimant applied for the position. He was interviewed on 28 August, 1996 and was subsequently notified on 4 September, 1996 that he was unsuccessful in his application.
- 2.2 On 17 November, 1996 the claimant referred a complaint to the Labour Court that Waterford Corporation discriminated against him in terms of Section 2(a), (c) and (d) of the 1977 Act. On 16 December, 1996 the Court referred the matter to an Equality Officer for investigation and recommendation. Submissions were received from both parties.

3. SUMMARY OF MR. MURPHY'S CASE

- 3.1 The claimant contends that Waterford Corporation discriminated against him in terms of Section 2(a), (c) and (d) of the 1977 Act.
- 3.2 He states that the advertisement specified two qualifications : previous supervisory experience and a knowledge of computers. At the interview he states that there was minimal discussion of either his knowledge of computers or supervisory experience. He states that the interview was conducted by three people less qualified than himself and having less experience. He maintains that this led to questions about the difference

between the Inland Revenue and the Revenue Commissioners, about why he had returned to Ireland, whether he was from Dublin and his lecturing experience. He claims that none of these questions were asked of the successful female candidate as she was already employed on the Community Employment Scheme and had followed a different career path.

3.3 He alleges that Waterford Corporation wanted to appoint a female candidate in view of the untimely departure of the previous incumbent and it wanted a candidate already employed on the Community Employment scheme. He further alleges that the Corporation ignored professional qualifications and experience and excluded male candidates. In addition, he claims that he was penalised by Waterford Corporation for making complaints against the local VEC and Waterford Regional Technical College and for refusing to participate in 1991 in another Waterford Corporation Community Employment Scheme.

3.3 He states that there were five female candidates and eleven males and suggests that on the balance of probabilities one would expect a male candidate to be successful.

4 SUMMARY OF WATERFORD CORPORATION'S CASE

4.1 The Corporation rejects the claimant's allegation that he was discriminated against in terms of the 1977 Act.

4.2 The Corporation states that the claimant was an unsuccessful candidate for a post as Supervisor on a Community Employment Scheme in the City Library. The purpose of this post is to supervise a minimum of twelve Community Employment participants on the Scheme. The project involves the automation and indexing of the "Waterford News" for the years 1914-1928. The qualities required to successfully carry out the job are supervisory skills, computer skills, local history and information/retrieval

skills. There were sixteen applicants for the post (eleven male, five female). All but one candidate were interviewed. The claimant was interviewed on 28 August, 1996. Following these interviews a successful candidate, a female, was selected. A small panel was also formed to fill any further vacancies which might arise. This consisted of three males and one female. The claimant, Mr. Murphy, was not selected for the post or for inclusion on the panel.

4.3 The Corporation does not accept Mr. Murphy's claim that the interview panel was not qualified to competently select a person for the post. The interview panel consisted of the Senior Staff Officer, Personnel Department, a History Advisor, and the City Librarian. All have relevant experience in their respective areas. It states that prior to interview the panel formed a marking scheme for the interviews. Each candidate was assessed independently by each member of the interview panel under this criteria i.e. Education, Experience, and Suitability. This process resulted in the unanimous choice of the successful candidate who was chosen following an objective and fair assessment of each applicant. The Corporation asserts that the fact that there were five female candidates compared with ten males does not guarantee that a male will be successful as the most suitable candidate can be any of the fifteen candidates and may be of either sex. It states that the position of Supervisor was filled by a male on two previous occasions.

4.4 The Corporation contends that there is no basis for the claimant's allegation that he was penalised because of a complaint he made against the VEC and the WRTC. It states that prior to his allegation the Corporation were not aware that he had made a complaint against these bodies and is still not aware of the substance of these complaints. The Corporation further contends that there is no basis for his allegation that his lack of success in this competition is linked to an offer to him of a place on a Community Employment Scheme in 1991. The Corporation points out,

for the record, that the interview panel was not aware of his offer of a Community Employment Scheme place in 1991.

- 4.6** The Corporation asserts that it is an equal opportunity employer and strives to ensure its recruitment and employment practice are free from discrimination and bias. It contends that the competition for the post of Supervisor on the Community Employment Scheme in the City Library was run in accordance with these principles.

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 Waterford Corporation discriminated against him in terms of Section 2(a), 2(c) and (d) of the Employment Equality Act, 1977 in relation to an appointment to a post of Supervisor for a Community Employment Scheme in the City Library, Waterford. Waterford Corporation rejects this claim.
- 5.3** The first question for consideration is whether or not the claimant was treated less favourably because of his sex when he was unsuccessful in his application. I note the claimant was not selected for the post or for inclusion on the panel. It is a fact therefore that he was treated less favourably, in that he received a lower overall ranking, than the successful candidate and the four other applicants who were placed on the panel. The issue then is whether this less favourable treatment was “because of his sex”. I note that the successful candidate and one of the applicants placed on the panel were female and the other three applicants placed on the panel were male. This does not suggest that the claimant’s lower ranking in the competition was because of his sex.
- The evidence does not support the claimant’s contention that the interview

board were not adequately qualified for the job. The questions, that the claimant outlines were asked, relate to his career history about which an interview board would be expected to ask and do not indicate any discriminatory intention.

5.4 In relation to the claimant's contention that taking into account the gender breakdown of applicants one would expect a male candidate to be successful, I consider that in a situation where only one post is filled, the most suitable candidate can be any of the fifteen candidates interviewed and may be of either sex and the fact that the successful applicant in this case is female is not statistically significant and does not raise an inference of discrimination. However I consider that I should also examine the claimant's contention in relation to both the post filled and the panel set up as a consequence of these interviews. In this regard I note that on 29 February, 1996 the Supreme Court found in relation to indirect discrimination in the case of *Nathan v Bailey Gibson Ltd. & Others* that if the complainant shows that "the practice complained of bears significantly more heavily on the complainant's sex than on members of the other sex..... the complainant has established a prima facie case of discrimination." The relevant statistics here show that the proportion of females successful, i.e. either being selected for the post or for inclusion on the panel, was 40% (two out of five female interviewees) and the proportion of males similarly successful was 30% (three out of ten male interviewees). While the proportion of females who were successful is greater than the proportion of males I do not consider in these circumstances that the difference is substantially higher and that men were significantly more adversely effected than women. I consider that a prima facie case of discrimination has not been established.

5.5 The claimant also alleges that Waterford Corporation penalised him under Section 2(d) of the Act for making complaints against the local VEC and Waterford Regional Technical College and for refusing to participate in 1991 in another Waterford Corporation Community Employment Scheme.

Section 2(d) prohibits, inter alia, penalising a person for having in good faith asserted a right to equality of treatment under either of the employment equality acts. On the evidence I do not consider that the refusal of the claimant to participate in a Community Employment Scheme comes within the ambit of asserting a right to equality under the 1977 or 1974 Acts. The evidence available to me does not support a claim that the claimant was penalised by Waterford Corporation for making complaints against other employers.

RECOMMENDATION:

- 6.1** I find that Waterford Corporation did not discriminate against Mr. Murphy in terms of Section 2 of the Act and contrary to Section 3 of the Employment Equality Act 1977 .

Deirdre Sweeney
Equality Officer
28th August, 1997