

**1. DISPUTE**

- 1.1** This dispute concerns a claim by Ms. Caoimhe McCarthy that, on 26th February, 1996, the Inchicore Vocational College discriminated against her within the meaning of Section 2(a), Section 2(b), Section 2(c) and Section 6 of the Employment Equality Act, 1977 and in contravention of Section 3 of that Act, when it did not allow her to graduate from the Higher National Diploma in Caring Services course in September, 1996.

**2. BACKGROUND**

- 2.1** The claimant has been a student in the Vocational College, Inchicore for the past three years. Following receipt of a Certificate in Caring Services the claimant embarked on a two year course entitled Higher National Diploma in Caring Services. One of the requirements of the course is that participants satisfactorily complete work placement which has been approved and moderated by the College.
- 2.2** During the second year of the course the claimant advised the College that she was pregnant. She availed of maternity leave and was not present when the block work placement took place. The College said that the claimant had failed to fulfil the minimum attendance requirements for the course and for that reason it could not award her the Diploma.
- 2.3** The claimant disputes the attendance records maintained by the College and argues that she should have been awarded the Diploma. As no agreement was reached between the claimant and the College the claimant referred the claim to the Labour Court on 22nd August,

1996. The Court, subsequently, referred the claim to an Equality Officer for investigation and recommendation.

**3. SUMMARY OF THE CLAIMANT'S CASE**

**3.1** The claimant says that she was a student in the Inchicore Vocational College for three years. She undertook a Certificate course in Caring Services during the first year and was awarded the Certificate. Then she commenced the Higher National Diploma Course in Caring Services. Upon successful completion of this course the claimant could apply for a degree course in the University of Manchester.

**3.2** One of the requirements of the course was that all the course participants, including the claimant, undertake a work experience programme. In September, 1995 the claimant says that she informed the Course Co-ordinator that she was pregnant and that she would be taking maternity leave. She says that the Course Co-ordinator told her that she could complete her work experience during the Summer of 1996 instead of January and February, 1996 when the block placement was arranged. The claimant says that she did her work experience during the months of March, April and May, 1996 in the Norton Nursing Home in Rathgar. She says that, during her first year on the course, she had undertaken her work experience in the Norton Nursing Home. The claimant says that the opportunity to undertake her work experience arose during the College's term break at Easter and she was unable to inform the Course Co-ordinator. She says that, at her earliest possible convenience, she informed the Course Co-ordinator that she had commenced the work experience and she would complete the 220 hours requirement before May, 1996. The claimant states that the Course Co-ordinator

informed her that her work experience would not be accepted by the College. While deeply upset the claimant says that she completed her work experience.

**3.3** The claimant states that, as part of the work experience, she was obliged to submit assignments to the College for examination purposes. The College refused to accept them.

**3.4** The claimant says that the College, in estimating her attendance, overlooked the amount of time she spent on work experience. She, therefore, submits that she has been discriminated against because her work experience was omitted from her course attendance due to her maternity leave. The claimant argues that it should be absolutely unnecessary for her to have to repeat the work experience which she has done and for which she obtained a high quality reference.

**3.5** The claimant says that, under Section 6 of the Employment Equality Act, 1977 she should be entitled to maternity leave for her work experience programme. She points out that she has suffered great distress at not being able to graduate with her fellow students in September, 1996.

**3.6** The claimant says that if she was a female of a different marital status or a male of either marital status she would be encouraged rather than discouraged from completing the Educational Diploma she had set out to attain.

#### **4. SUMMARY OF THE COLLEGE'S CASE**

**4.1** The College states that the claimant's allegation

revolves around her second year at Inchicore. The Course Co-Ordinator submitted a statement regarding the claimant's placement and this is attached as Appendix A. Set out in Appendix B is a copy of correspondence between the Course Co-Ordinator and the claimant dated 25th June, 1996.

- 4.2** The College denies that it gave the claimant permission to take her work placement during the Summer of 1996. The course for which the claimant was enrolled finished at the end of May, 1996 at which time the external moderator appointed by Stockport College had completed his work and verified the results. According to the College, students who had not completed the work placement and who had not submitted the professional assignment by this date could not be awarded the Higher National Diploma.
- 4.3** The College says that the Norton Nursing Home was not accepted as a work placement setting because the claimant had not received prior approval to do her second year work placement in this place. The College states that the claimant did not inform the Course Co-Ordinator of the work placement in the Norton Nursing Home until 16th April, 1996. This was after the block placement which commenced on 15th January, 1996 and it overlapped with the claimant's leave. On this basis the placement in the Norton Nursing Home could not have been supervised by the College.
- 4.4** The College says that the unauthorised arrangement entered into by the claimant for her work placement cannot be validated by the School. Hence, in order for the claimant to gain the Diploma she must complete the professional practice module which includes work placement. This placement must be approved and

moderated by the School.

- 4.5 The College rejects as outrageous the claimant's suggestion that she would have been treated more favourably had she been of a different marital status. The College says that the regulations governing the issuing of the award of the Higher National Diploma are set out in detail in the Student Handbook (of which the claimant has a copy). These regulations apply to all students irrespective of marital status. According to the College the comparison made by the claimant in relation to sex is irrelevant because the claimant's pregnancy is fundamental to her claim.

## 5. CONCLUSIONS OF THE EQUALITY OFFICER

- 5.1 According to the claimant the Vocational College, Inchicore, Emmet Road, Dublin 8 discriminated against her within the meaning of Section 2(a), Section 2(b), Section 2(c) and Section 6 of the Employment Equality Act, 1977 when it refused to award her a Diploma in Caring Services. The College rejects this claim. In making a decision in this case I have taken into account all of the evidence, both written and oral, that was made to me by the parties.
- 5.2 During the academic year 1995/1996 the claimant undertook the second year of a two year Business & Technician Education Council (BTEC) Higher National Diploma (HND) course in Caring Services. BTEC is a U.K. body which validates courses and qualifications in Ireland, the U.K. and Europe. Because Inchicore Vocational College has a franchise agreement with Stockport College in the U.K., it can offer this course in Ireland. Inchicore College supplies a student handbook to all students taking this course. This

handbook sets out the details of the course including attendance requirements and is based on the Stockport College handbook. These handbooks are available to the Labour Court should it require access to them. To qualify for the Higher National Diploma (HND) in Caring Services students have to achieve at least a Pass in all modules and fulfil minimum attendance requirements in both college and placement attendance.

- 5.3** The course year, about which this claim relates, commenced in September, 1995 with students being required to attend classes on three days each week. They were also required to do a work placement. This was scheduled to take place over five days for a period of six weeks in January and February, 1996. Where students were unable to attend all of the block placement, they could complete their work placement on additional days. This was provided for on Page 4 of the student handbook<sup>1</sup> which states:

*"This is a full-time course of two years duration. It requires attendance of approximately thirty three weeks per academic year. This includes 450 hours of placement attendance over the two years. This is accumulated by completing two block placements in Year 1. In Year 2 there will be one block placement of six weeks. The placements should be attended for approximately seven hours per day to build up the required quota. Any shortfalls can be compensated for by attendance on additional days"*

The College said that, at the start of the year, students were told that where they were unable to undertake the block placement programme they could fulfil their placement requirements in between class attendance i.e. on the two days each week when they were

---

<sup>1</sup> Page 4 refers.

not required to attend class. I note the claimant's argument that the students were told that they must attend the block placement and they were not advised of the option of attending work placement outside the block placement programme in exceptional circumstances. While there is no written evidence of what was told to students at the start of the academic year I am satisfied that the students were aware of the concept of doing work placement outside of the block placement programme as this was provided for in the student handbook.

**5.4** To be awarded a BTEC Higher National Diploma in Caring Services students had to pass all the modules and had to fulfil specified class and work placement attendance. All students were familiar with these requirements at the commencement of the course. During the academic year 1995/1996 (i.e. the second year of this course) the claimant was absent on maternity leave. This impacted on her attendance at class and work placement.

**5.5** The College, in its submission, said that the claimant failed to meet the minimum required attendance levels at course work. The details set out in the submission from the College are as follows:

	Number of days in School Year	167 days
	Minimum number of work placement days	37 days
	Remaining days for course work	130
days		

days	Minimum attendance required (60% of 130)	78
	Claimant's attendance at course work	60 days <sup>2</sup>
	Shortfall in non attendance	18 days

The College also submitted the record of attendance

---

<sup>2</sup> According to the College the claimant's 60 days course work attendance comprises 43 days actual attendance and 17 days allowed for exams, etc.

which it maintained of all the other students in the claimant's class during 1995/1996. Having examined this, I note that the maximum number of days that any student could have attended course work was 70 days. The College said that 17 days were allowed for exams, etc. and taking account of these days the total attendance at course work was 87 days. The College said that the 167 days of the course year was a requirement set by the Department of Education.

5.6 The College said that students were free on the two days per week when they were not required to attend class. However, these two days could be used to attend work placement or to do research. The College considered that these two days were counted towards the total number of days in the school year. The claimant said that, as far as all the students were concerned, they were free on these two days each week unless a student had a problem undertaking all of their block placement and used these two days each week to fulfil their placement requirement.

5.7 I note that the College has presented me with conflicting evidence about attendance days. For the purpose of this investigation, and based on the facts as presented to me, I am satisfied that the total attendance for the course year was 87 days. I note that the claimant was present on 43 days and allowing 17 days for exams, etc. the claimant had a total of 60 days course work attendance. On this basis she had a 69% class attendance rate in the academic year 1995/1996. I am satisfied that this attendance rate did not meet the 80% minimum required to pass. From the evidence available to me I note that a number of other students did not meet the minimum attendance rate. The College said that where students failed to meet the minimum

required attendance they were obliged to undertake penalty assignments in order to be awarded the Diploma. In the 1995/1996 course year, the College said that all those students (with the exception of the claimant) who failed to meet the minimum required attendance, successfully completed penalty assignments. There was no evidence available to me to substantiate this claim.

**5.8** In relation to the work placement I note that the claimant did not undertake the block placement programme. The claimant said that she commenced her work placement when the College was closed for the Easter vacation and, for that reason, was unable to contact the Course Co-Ordinator to obtain approval for the placement. However, she said that, after the Easter break, she advised the Course Co-Ordinator of her work placement and that she had completed 56 hours.

**5.9** I note that the College accepts that the claimant mentioned the work placement to the Course Co-Ordinator. However, it said that the claimant told the Course Co-Ordinator that she had completed 70 hours. I consider the claimant's evidence unreliable in relation to the number of hours completed by her on work placement during the Easter vacation because she later said that she had completed 48 hours that week.

**5.10** The College also said that the Course Co-Ordinator asked the claimant to come to her office<sup>3</sup> to discuss her work placement but the claimant failed to come. I note that the claimant conflicted with her own evidence on this point. She initially said that she was unsure whether or not the Course Co-Ordinator asked her to go

---

<sup>3</sup> According to the College all the students, including the claimant, knew the times that the Course Co-Ordinator was available in her office to discuss issues.

to the office about the matter and later she said that she was not asked to attend at the office. The College said that the claimant did not inform the Course Co-Ordinator that she intended to do further work placement hours in the Norton Nursing Home, hence these additional hours were not supervised.

**5.11** According to the College the first indication that the Course Co-Ordinator had that the claimant had completed her work placement in the Norton Nursing Home was at the initial joint hearing of this claim. The claimant said that she did advise the Course Co-Ordinator of her intention of completing her work placement during April and May, 1996. There was no evidence available to me to substantiate this claim.

**5.12** In relation to the completion of her work placement the claimant submitted as evidence, to the Equality Officer, her work placement attendance record and a reference which was signed by the Director of the Nursing Home where she undertook her work placement. These are set out in Appendix C. According to the claimant the record of attendance supplied by the Norton Nursing Home was based on records which she had maintained herself. The claimant did not submit this record of attendance and reference to the College because, according to herself, the Course Co-ordinator would not accept it. I note that, while the Course Co-ordinator had refused to accept the claimant's work placement assignment (because she had not obtained the Course Co-Ordinator's prior approval to undertake her work placement in this Nursing Home and the College had been unable to moderate it) the claimant did in fact submit it to the College for the attention of the Course Co-ordinator on 29th May, 1996. At the final hearing of this case the claimant said that she had probably obtained the record of attendance and

reference from the Norton Nursing Home at the end of May. The claimant failed to explain why she did not hand in the attendance record and reference either with the assignment or subsequently. I note that the claimant submitted her work placement assignment in the full knowledge that the Course Co-ordinator had refused to accept it. I cannot, therefore, accept this as the reason for not submitting her attendance record and reference.

**5.13** The College said that certain procedures must be followed in relation to the work placements. These had been made known to all students, including the claimant, at the start of the year. They included:

- the need to sign a contract between the College and the work placement;
- the need to determine if the work placement would cover insurance;
- the need to obtain from the work placement signed log sheets verifying the student's attendance where the placement was outside the normal block placement;
- the completion by students of a portfolio which could only have been obtained from the Course Co-ordinator.

The College said that these procedures were not followed in the case of the claimant. However, these procedures were followed for all the other students, both male and female.

**5.14** The claimant attached a cover sheet to her work placement assignment which she handed into the College for the attention of the Course Co-ordinator. This cover sheet (set out in Appendix D) was dated 29/5/96 and contained the following details:

**"Work Placement:  
Norton Nursing Home  
Rathgar**

**Dates: Between March, 1996 (Easter Holidays)  
Tues + Thurs April + May  
Other days after course"**

This was the only information which the College received regarding the claimant's work placement. From the College's perspective the cover sheet contained two inaccuracies as follows:

- On the cover sheet the claimant said that the Easter vacation was in March, 1996 whereas, that year, it took place in April.

***At the hearing the claimant said that she mistakenly crossed out April and wrote in March.***

- On the cover sheet the claimant said that she undertook work placement on Tuesdays and Thursdays in April and May, 1996.

***The College's record of attendance show the claimant as having attended class on all of the Tuesdays in April and May that classes were in progress.***

The claimant also said that she proposed to complete the work placement after the end of the course. In her defence the claimant said that she wrote this cover sheet earlier and had forgotten to change it.

**5.15** On the basis of the inaccuracies contained in the cover sheet which was presented by the claimant to the College, I consider that the College would have been justified in refusing to accept the claimant's work placement assignment and, by implication, her work placement attendance. In the course of this investigation the claimant submitted to the Equality Officer a detailed work placement attendance record and

reference from the Norton Nursing Home. According to the cover sheet the claimant carried out her work placement on Tuesdays during April and May, 1996. However on the record of attendance which she submitted she attended work placement on Wednesday during April and in May up to the time that the classes finished. The claimant gave no explanation for the difference between the cover sheet and the record of attendance. Furthermore from the record of attendance it was obvious that Easter was in April, 1996 and not in March. I consider that the conflicting evidence presented by the claimant raises a serious question over the work placement programme completed by her.

**5.16** As regards attendance at work placement the College said that there was a requirement on all students to attend for 220 hours. Attendance at block placement for 30 days over a six weeks period fulfilled this requirement. However the minimum acceptable work placement attendance was 180 hours. The College stressed that the work placement component of the course was the most important aspect of the course and satisfactory attendance was imperative. The College said that one of the students in the claimant's class did not meet the minimum required work placement attendance and was obliged to undertake the further work placement attendance outside the block placement programme. Had she not done this she would not have been awarded the Diploma.

**5.17** The College said that there was another issue of concern for it in relation to the claimant's work placement which it did not mention to the claimant at the time. It was the fact that work placements should have been undertaken in different settings and the claimant had already undertaken her first year work placement in the Norton Nursing Home. While this may have been desirable

I do not consider that it was imperative as the Course Co-Ordinator said that, had the claimant followed the procedures regarding work placement (i.e. sought approval, signed a contract, obtained the portfolio, etc.), her work placement in the Norton Nursing Home would have been approved.

**5.18** One of the statements in the student's handbook<sup>4</sup> states that:

*"In situations of absence due to prolonged illness or other genuine, confirmed reasons, personal tutor's will give every possible support to assist students to meet the programme requirements."*

I consider that the claimant had a genuine reason for her absence from the course. I note that the Course Co-Ordinator advised the claimant, on her return from maternity leave at the end of February, 1996, to stop the course and return to College the following year to complete it. While the Course Co-Ordinator may have, in good faith, considered that the claimant had an onerous task in meeting all the requirements of the course, I do not consider that this attitude conforms with the College's stated policy above.

**5.19** In making my recommendation in this case I have considered the judgements of the European Court of Justice in the case of pregnancy discrimination. In the case of *Webb v. EMO Air Cargo (UK) Ltd*<sup>5</sup> the European Court held that *"there can be no question of comparing the situation of a woman who finds herself incapable, by reason of pregnancy .... of performing the task .... with that of a man similarly incapable for medical or other reasons"*. I note that the College has said that

---

<sup>4</sup> 'Attendance requirements' Page 11.

<sup>5</sup> (No.2) [1995] IRLR 645

there are minimum attendance requirements which are applied to all students and where any student (male or female) fails to meet these requirements they are obliged to successfully complete penalty assignments in order to be awarded the Diploma. In this case and in accordance with the European Court ruling I am satisfied that the claimant's absence due to pregnancy cannot be equated with an absence by a male student on health or other grounds.

**5.20** While bearing in mind the European Court of Justice ruling I note that the College presented students with two options for completing their work placement i.e. by block placement over six weeks or at a time more convenient to the student and spread over a longer period of time. I am satisfied that, because of her pregnancy, the claimant was unable to fulfil her work placement requirement by block placement. She was, however, in a position to undertake the work placement outside of the block placement programme which is what she is alleged to have done. However, the claimant presented conflicting evidence in relation to her work placement attendance records (paragraphs 5.14 and 5.15 refers). Because of this conflict I cannot accept the validity of these records. On this basis I find that the College did not discriminate against her when it refused to award her the Diploma in Caring Services in terms of Section 2(a), Section 2(b), Section 2(c) and Section 6 of the Employment Equality Act, 1977.

## **6. RECOMMENDATION**

**6.1** In view of my conclusions above, I find that Inchicore Vocational College did not discriminate against Ms. Caoimhe McCarthy contrary to the provisions of the Employment Equality Act, 1977.

---

Gerardine Coyle  
Equality Officer

25th November, 1997

**APPENDIX A**

Copy of Statement  
made by the  
Course Co-ordinator

**APPENDIX B**

Copy of letter  
from the Course Co-ordinator  
to the Claimant  
dated 25th June, 1996

**APPENDIX C**

Copy of the Claimant's  
work placement attendance record  
and reference from the  
Norton Nursing Home

**APPENDIX D**

Copy of the Cover Sheet  
on the Claimant's  
Work Placement Assignment