

EMPLOYMENT EQUALITY ACT,1977
EQUALITY OFFICER'S RECOMMENDATION NO: EE 4/1999

PARTIES

Ms Mary Helen Davis
(Represented by IMPACT)

AND

Dublin Institute of Technology
(Represented by Arthur Cox, Solicitors)

File No: EE2/1998

1. DISPUTE

- 1.1 The dispute concerns a claim by Ms Mary Helen Davis that on 27th June, 1997 Dublin Institute of Technology discriminated against her within the meaning of Section 2(a) of the Employment Equality Act, 1977 and in contravention of Section 3 of that Act as a result of its selection procedure for appointment to the post of Head of Library Services at the Institute.

2. BACKGROUND

- 2.1 The Dublin Institute of Technology came into being in January 1993 following the amalgamation of a number of third level colleges in the Dublin area. Up until 1996 each college maintained its own separate library function. In 1996 the Institute decided to move to a University based Faculty structure which would consist of a Central Library Unit and six Faculty Libraries. Following discussions with the Department of Education and IMPACT (the union representing library staff grades) a new grading structure and the manner in which vacancies would be filled was agreed in January, 1997.
- 2.2 According to the respondent's submission, the role of the Head of Library Services would be to take overall responsibility for Library Services in the new structure with an emphasis on strategic planning and organisation. The Head of Library Services would have responsibility for the six Faculty Libraries, the Central Library Unit, a staffing of 52 and an operating budget of up to £1 million per annum. The new appointee must be

capable of accepting the challenges arising from advanced computer/communication technology and equipping the Library Service and its staff to meet those challenges. The Head of Library Services post was to be filled by open competition.

2.3 The Institute advertised the position of Head of Library Services nationally in March, 1997. A copy of the advertisement is given in Appendix 1. The salary scale for the new post was £36,214 to £44,556. The claimant applied for the position, was interviewed and was subsequently advised that she was unsuccessful in her application. A male candidate was appointed to the position. At the time of the competition the claimant was serving as a Senior Librarian Grade 6 at the Institute's Kevin Street College library.

2.4 The claimant, represented by IMPACT, referred a claim to the Labour Court on 23 December, 1997. The claim was subsequently referred by the Labour Court to an Equality Officer for investigation and recommendation. Submissions were received by the Equality Officer from both parties to the claim and a joint hearing was held on 7th January, 1999. Additional information in relation to the appointee and to two other interviewed candidates was requested from the respondents subsequent to the hearing and this request gave rise to further correspondence with the parties.

3. SUMMARY OF THE UNION'S CASE

3.1 IMPACT alleges that the Institute discriminated against the claimant in terms of Section

2(a) of the Employment Equality Act, 1977.

Section 2(a) states that discrimination shall be taken to occur where

‘where by reason of his sex a person is treated less favourably than a person of the other sex,’

- 3.2 It is claimed by IMPACT that the claimant was at the time of the competition better qualified than the successful male candidate both academically and in terms of relevant experience and that the only reason why the successful candidate was appointed was that he was a man and she was a woman.

- 3.3 The claimant has provided details of her qualifications and experience as follows:

Qualifications of Claimant

The claimant holds a BSc(2nd Class Hons) in Sociology, a Diploma in Library Studies, a Diploma in Legal Studies and a Masters Degree (2nd Class Hons) in Library and Information Studies. She is a member of the Library Association of Ireland and had at the time of the interview an application pending for the Institute of Information Scientists.

Experience of Claimant

The claimant had three months experience at Assistant Librarian level and almost 6 years at Librarian Grade V level in a Public Library followed by 13 years at Senior

Librarian Grade VI level in the Institute's library at Kevin Street College of Technology.

The claimant lists in her CV the main developments in which she was involved in this last position including the supervision of a move to new Library premises, the selection and introduction of an automated library system, the introduction of electronic information services, the introduction of library information via the Internet and the expansion of other software based user services. The claimant states that she was budget holder at the Kevin Street College library with sole responsibility for an annual non-pay budget of £300,000 and reported directly to a Director. She also lists a number of relevant in-house committees of which she is a member.

- 3.4 The claimant refers to areas of her qualifications and experience which she claims are superior to those of the successful candidate. The claimant states that unlike the appointee, she holds two third level qualifications in Library Studies i.e. a Diploma and a Masters Degree. She also states that her 13 years experience at Senior Librarian level at the Institute better qualify her for the position of Head of Library Services than the appointee's 19 years experience in the library services of a university of which the last six years were at Sub Librarian level.

- 3.5 The claimant also states that after she was informed of the results of the competition she telephoned the Institute's Personnel Officer to ascertain why she was unsuccessful given that she believed that she was better qualified for the position than the successful candidate. She claims to have been told that the interview board would have to take

into account such matters as personal attributes. She states that she was never informed by the Institute or any other employer of any personal attributes which would negatively affect her suitability for promotion.

3.6 The claimant believes that there is a prejudice in relation to the promotion of women to senior positions within the Institute stating that of 89 senior posts within the Institute 28 are women.

3.7 The claimant alleges therefore that an inference of discrimination can be drawn from the circumstances surrounding the appointment..

4. SUMMARY OF THE INSTITUTE'S CASE

4.1 The Institute rejects the claimant's allegation that she was discriminated against in terms of the 1977 Act. The Institute states that a newspaper advertisement for the post of Head of Library Services was placed by the Institute in March 1997. A total of 17 candidates applied for the position, 8 male and 9 female. Four candidates (2 male and 2 female) were selected for interview and a male was successful in being appointed.

4.2 The Institute states that the competition was conducted in accordance with selection procedures laid down by the Minister for Education under the Dublin Institute of Technology Act, 1992 and that the composition of the selection interview board was in line with sanction received from the Department of Education. The selection

procedures are given in Appendix 2 and the Departmental sanction is given in Appendix 3.

4.3 The Institute states that each of the four candidates interviewed had the necessary minimum qualifications and experience for the position. Those applicants who did not have the necessary minimum requirements were not called for interview. The purpose of the interview board was to establish which of the four candidates was the most suitable for the position. The Institute states that relevant experience and track record were of particular importance and that the interview board was to look for the ability to manage and to provide leadership within the new library service. In this context the board considered that the successful candidate was considered to have the most relevant experience.

4.4 The Institute states that at the time of his appointment the appointee had 6 years experience in the position of Sub Librarian in a major Irish university, the second most senior management grade within the library services of the particular university. He was responsible for the management of 16 staff and an annual acquisition budget of £750,000. He had a total of 19 years experience at various grades within the university.

4.5 The Institute states that at the time of her application the claimant had 13 years experience at Senior Librarian (Grade VI) level in the Institute's library at Kevin Street

College of Technology where she had responsibility for that Library in terms of its permanent staff of 4 and 1 or 2 occasional temporary staff. The Institute states that the claimant's previous 6 years experience at Assistant Librarian (3 months) and Librarian Grade V in the Public Library system was not considered to be particularly relevant to the position of Head of Library Services in a major third level academic institution. The Institute states that the interview board considered that the successful candidate was by reason of his experience a more suitable candidate for the position of Head of Library Services than the claimant and the two other interviewees.

- 4.6 The Institute denies that there is a preference in relation to the promotion of women to senior positions within the Institute and rejects the claimant's contention that an inference of discrimination can be drawn from the fact that a higher proportion of males than females occupy senior grades within DIT.
- 4.7 The Institute confirms that the claimant spoke to the Personnel Officer by telephone on a number of occasions after the competition. The Institute states that the Personnel Officer spoke in general terms to the claimant about the criteria used by selection boards but that he was not a member of the particular interview board and had no knowledge of what transpired at the interview board. The Institute states that the proceedings of the interview board are confidential and were not made known to the Institute's Personnel Officer.

5. CONCLUSIONS OF THE EQUALITY OFFICER

- 5.1 The matter for consideration is whether or not the Institute discriminated directly against the claimant on the basis of her sex in terms of Section 2(a) of the Employment Equality Act, 1977 and contrary to the provisions of Section 3 of that Act. In making my recommendation in this case I have taken into account all of the evidence, both written and oral, made to me by the parties to the case.
- 5.2 From the evidence provided in the submissions of both parties and at the joint hearing held between the parties, it is clear that the central issue is whether or not the selection interview board conducted its proceedings in a manner which was fair and objective and free from any form of gender based bias. The claimant states that she was better qualified than the successful male candidate in terms of academic qualifications and experience and that when she was turned down for the position she was discriminated against because of her gender. If the evidence supports the contention that the claimant was better qualified in terms of qualifications and experience than the successful candidate then a prima facie case in favour of the claimant exists and the burden of proof shifts to the respondents to show that there were grounds other than gender for the particular selection.
- 5.3 The respondents have stated that all of those interviewed for the position met the minimum requirements as regards qualifications and experience set out in the newspaper advertisement. It is necessary therefore to compare the relevant qualifications and experience of the claimant with those of the appointee. Following the joint hearing I

requested from the respondents copies of the CV's and application forms of the appointee and of the other two interviewed candidates. The respondents stated that this information could only be provided to the Equality Officer on a confidential basis and could not be copied to the claimant or her representatives. I could not accept the information on that basis. My conclusions must therefore be based on the limited information given in the respondent's submission and at the joint hearing. The following information in relation to the appointee was made available:

Qualifications of Appointee

The appointee holds a BA(2nd Class Hons) and a Diploma in Librarianship.

Experience of Appointee

The appointee had 6 years experience in the position of Sub Librarian in a major Irish university. He was responsible for the management of 16 staff and an annual acquisition budget of £750,000. He had a total of 19 years experience at various grades within the library services of the university.

- 5.4 The claimant drew attention to the fact that (a) she holds a Masters Degree in Library and Information Studies and that her thesis was particularly relevant to the job requirements as set out in the advertisement, (b) that she was a Senior Librarian for thirteen years compared to the appointee's six years experience as a Sub Librarian (c) that she had sole responsibility for the library's acquisition budget and reported directly to a Director without any other supervision. The respondents did not contest the issue of the claimant's qualifications but focused on the interview board's role to determine

the most suitable candidate for the position. The respondents emphasised the appointee's experience at Sub Librarian level stating that this grade was the second most senior grade within the library services of the particular university. He had sole responsibility for an annual budget of £750,000, a considerably higher level of responsibility than that of the claimant who states that she was responsible for an annual acquisition budget of £300,000. The appointee also had responsibility for a staff of 16, again significantly higher than that of the claimant. In the absence of any other supporting evidence from the interview board, this was the main grounds for the respondent's case that the appointee was the most suitable candidate. I considered that the respondent's arguments in relation to the previous level of responsibility of the appointee was supported by the fact that the appointee's salary as Sub-Librarian was some 50% higher than the claimant's salary. Having considered the above, I found that the claim that the claimant was better qualified for the position than the appointee was not supported by the evidence available to me. I do not find therefore that a prima facie case of discrimination exists.

- 5.5 I questioned the claimant about her interview and in particular I asked her if there were areas of her knowledge and skills which she felt were not adequately explored by the interview board. The claimant said that the interview board did not explore the thesis which she completed as part of her Masters of Library and Information Studies and which she felt was particularly relevant to the position of Head of Library Services. The claimant also states that she did not have an opportunity to elaborate on the fact

that she was chosen by the Institute to present a seminar to post-graduate students on library and information studies and adds that the interview board did not explore how she kept abreast of national and international developments in her field. The claimant stated that only one interviewer questioned her in relation to library matters. The board member who dealt with Information Technology, an area in which she felt that she had valuable experience, posed a narrow technical knowledge question which she felt was more appropriate to a student. While she answered the question correctly she felt that this style of questioning was inappropriate for such a senior position, did nothing to explore her experience in the field and changed the tone of the interview.

5.6 I asked the claimant if she was given an opportunity at the end of the interview to add to any of the information which she had provided or to ask questions of the interview board. She said that she was given such an opportunity but that she was so upset at the conduct of the interview that she wished to end the experience as soon as possible and did not avail of the opportunity to elaborate or to ask questions.

5.7 The claimant drew attention to the fact that there was only one female member on the five member interview board. The female board member, who was external to the Institute, was an audit manager in a firm of accountants. The Institute has stated that the constitution of the interview board was in accordance with the Institute's 'Policy on Equality of Opportunity in Employment' where it states that selection boards shall not be made up of one gender only and was furthermore in line with sanction received from

the Department of Education. I asked the claimant did the female interview board member play an active part in the interview. She replied that the female board member played a minor role and dealt with areas which had already been covered by other board members.

- 5.8 The Institute, in the course of the hearing, accepted that the claimant had the necessary qualifications and experience for the position as outlined in her CV. The Institute held that if the interview board did not appear to explore an area of the claimant's qualifications or experience to the claimant's satisfaction it was because the board accepted as fact the information furnished by the claimant in her application. The Institute stated that the interview board did not keep any notes of the four interviews and the Institute's representative was not aware of any particular line of questioning adopted by the interview board. The only documentation available from the interview board was its report containing the name of the successful candidate. The interview board did not recommend any of the other candidates to be placed on a panel and the Institute stated that if the successful candidate had turned down the position it would have been re-advertised. I found it particularly unhelpful on the part of the respondents that they could provide no information in relation to the actual interviews other than the names of the board members, the names of the candidates and the outcome. The Institute stated that the interview board was a professional board and that their role was to determine which candidate was the most suitable for the position. The Institute held that if the interview board chose to adopt a particular approach to questioning that was

their prerogative. As far as the Institute was concerned the claimant had offered no evidence of the alleged discrimination on gender grounds.

5.9 I noted that of the 17 original applicants for the post 8 were male and 9 were female. Two male candidates and two female candidates were interviewed. Clearly 7 male candidates and 9 female candidates were unsuccessful in the competition. I consider that this fact weighs heavily against the claimant's argument that she was discriminated against because of her gender.

5.10 I considered also the claimant's concerns about the telephone conversations she had with the Personnel Officer after the interview and in particular his comments in relation to the need for the interview board to take into account 'personal attributes'. The Personnel Officer stated at the joint hearing that any such reference was a reference to the personal requirements for the post as set out in the advertisement. The Institute have also stated that the Personnel Officer was not on the interview board and had no influence on its proceedings. I found no evidence in the Personnel Officer's remarks to support the claim that the claimant was discriminated against on grounds of her gender.

5.11 I considered also the issue raised by the claimant in her submission that of 89 senior posts within the Institute 28 are occupied by women. The Institute rejected any suggestion that a prejudice existed in relation to the promotion of women to senior positions and no evidence was presented to me to support this claim. To sustain an

allegation that there was discrimination on the part of the Institute in relation to the promotion of women it would be necessary to examine how each vacancy was filled as it arose in relation to the number, gender, qualifications and experience of eligible officers for each position.

6. RECOMMENDATION

- 6.1 On the basis of the foregoing, I find that Dublin Institute of Technology did not discriminate against Ms Mary Helen Davis on the basis of her sex in terms of Section 2(a) and in contravention of the provisions of Section 3 of the Employment Equality Act, 1977.

Raymund Walsh

Equality Officer

25 February, 1999