

**ODEI - THE EQUALITY TRIBUNAL**

**EMPLOYMENT EQUALITY ACT, 1998**

**EQUALITY OFFICER'S DECISION DEC-E2002-037**

**PARTIES**

**A Complainant**

**AND**

**National Training and Development Institute  
(Represented by IBEC)**

File reference: EE/2001/099  
Date of issue: 21 August 2002

## TABLE OF CONTENTS

<b>Section</b>	1. Dispute	2. Summary of complainant's case	3. Summary of respondent's case	4. Investigation and conclusions of Equality Officer	5. Decision	<b>Page</b>	2	2	4	8	11
----------------	------------	----------------------------------	---------------------------------	--	-------------	-------------	---	---	---	---	----

### 1. DISPUTE

**1.1** This dispute concerns a claim by a complainant that he was discriminated against by the National Training and Development Institute (NTDI) on the ground of disability contrary to the provisions of the Employment Equality Act, 1998 when he was refused permission to complete a course of vocational training in Roslyn Park College. As the investigation involved evidence of confidential medical and personal details relating to the complainant, his identity has been withheld in this decision.

**1.2** The complainant referred a claim to the Director of Equality Investigations on 3 May 2001 under the Employment Equality Act, 1998. In accordance with her powers under section 75 of that Act, the Director then delegated the case to Anne-Marie Lynch, an Equality Officer, for investigation, hearing and decision and for the exercise of other relevant functions of the Director under Part VII of the Act. Submissions were sought from both parties and a joint hearing was held in March 2002.

### 2. SUMMARY OF THE COMPLAINANT'S CASE

**2.1** The complainant was employed as a teacher of building construction. In 1992 he suffered a brain haemorrhage. Two years later he unsuccessfully underwent surgery for an embolectomy (surgical removal of a clot to clear an obstruction in an artery). He was diagnosed with diplopia (double vision) and it was determined he could no longer safely continue to work as a teacher, as he was required to use machinery. He subsequently retired on ill health pension.

**2.2** In 1994, the complainant made contact with the National Rehabilitation Board (NRB) and was assigned the assistance of a Vocational Officer. The Vocational Officer arranged for the complainant to undergo educational and psychological testing and it was decided that a course in Architectural Drafting and

Computer Aided Design (CAD) at Roslyn Park College may be of benefit to him. This course began in September 1995.

**2.3** The complainant said that within a short period he became dissatisfied with the course. He felt it was not as advertised, that it was not relevant to his needs and that it would not help in the rehabilitation that he required. He wrote to the College Director in January 1996 asking that he be transferred to a City & Guilds course in CAD, and says he did not receive a reply.

**2.4** The complainant underwent a series of further assessments which indicated certain inherent difficulties. The complainant said that at this stage he felt his Vocational Officer had "apparently abandoned " him, and he wrote to express his dissatisfaction with the course. A meeting took place on 19 September 1996 to discuss the complainant's difficulties. Present were the complainant, his Vocational Officer, the College Director, the Head of Assessment at the College, the course instructor and the head instructor.

**2.5** The complainant said that at this meeting he effectively had five professionals telling him he had brain damage and that nothing could be done for him. He said he was bullied into signing a release form and agreeing to leave to undertake a further assessment by a clinical psychologist. This assessment indicated that, while his language skills were largely unimpaired and some were above average, he had difficulties with performance tasks involving perceptual problems and constructional tasks. He also appeared to have impaired psychomotor speed. The assessment concluded that the complainant should not attempt to pursue a career in architectural drafting as the skills required for the course were precisely those in which he was most impaired.

**2.6** The complainant received a letter from the Head of Assessment of the College, summarising the assessment and expressing regret that the difficulties he was having were not surmountable. The complainant said this letter effectively said he was unemployable, and he asserted that these difficulties had not been apparent in his earlier assessments. He said it appeared he had regressed during a period of what was supposed to be rehabilitation.

**2.7** The complainant said he went through a period of severe depression following the end of the course. During 2000, the NTDI advertised extensively for people who had lost their jobs through disability to apply for vocational training. In January 2001, the complainant wrote to the current Director of the College asking to be included in the next available course so that he could complete his course of training, hopefully obtain employment and cease to be a burden on the State. The College Director's reply in February 2001 referred to earlier letters of the complainant where he had stated that his experience in the college led him to believe that to continue with the course would "lead to a further deterioration of his health and erosion of his confidence".

**2.8** The complainant said that at the time he wrote this he was suffering from depression. He said that the College Director was using concern for his health as a metaphor for disability and that he was therefore discriminated against on the ground of his disability in being refused permission to complete his course of vocational training.

### **3. SUMMARY OF THE RESPONDENT'S CASE**

**3.1** The respondent said that Roslyn Park College is part of the National Training and Development Institute, which in turn is part of the Rehab Group. The Rehab Group is a not-for-profit, non-governmental organisation, which (as the Rehabilitation Institute) has been providing services for people with learning, physical and psychiatric disabilities for fifty years. Roslyn Park College provides vocational rehabilitation across a wide range of courses to approximately 200 people with disabilities. These courses are externally certified by bodies such as CERT, NCVA and City & Guilds. The services provided by the college are funded and monitored by FÁS and the college is accredited by the National Accreditation Committee, the State body responsible for vocational rehabilitation standards in Ireland.

**3.2** It was the respondent's position that this matter related to the complainant's discharge from Roslyn Park college in January 1997, preceding the enactment of the Employment Equality Act, 1998 on 18 October 1999. Subsequent correspondence with the complainant, and in particular in January 2001, merely reiterated the decisions reached in 1997. Therefore the respondent believed the complainant could not have a legitimate claim against NTDI under the 1998 Act.

**3.3** Notwithstanding this preliminary point, the respondent asserted that in accordance with section 16 (1) (b) of the 1998 Act the complainant was not discriminated against in any way, and it outlined the events leading to the decision taken in 1997 to effect his discharge from the college. This decision led the college to reasonably believe in February 2001 that it would not be in a position to offer the complainant a place on the Architectural Drafting and Computer Aided Design Course.

**3.4** The complainant was offered a place on the course in September 1994 following standard college entry processes. By December 1994 he had begun to express dissatisfaction with the course, feeling it did not meet his needs. He was also critical of the college, the instructors and the way in which the course was delivered. In January 1996 he informed the college psychologists that he should never have been referred to the course by the NRB. He repeated this in a letter to the College Director when he asked to transfer to a City & Guilds course.

**3.5** His dissatisfaction continued during January and March 1996. In January 1996 it was agreed with the complainant that he should attend counselling to address

difficulties he acknowledged having in adjusting to the changes in his life and in coming to terms with being a student again. This referral for counselling was identified as a psychosocial need by the rehabilitation team. The complainant was part of the development of this plan and agreed to its inclusion in his Individual Programme Plan (IPP).

**3.6** The IPP is described as the way in which the college co-ordinates the rehabilitation team's activities. Each trainee has an individual programme that tries to deal with the areas of rehabilitation and training appropriate for each individual. This allows a holistic approach to be taken and enables needs including vocational, psychosocial, cognitive, educational, environmental and medical to be addressed.

**3.7** The College counsellor suggested the complainant see an external counsellor, and he had four sessions with a cognitive behavioural therapist which he stated at the time to be excellent. The report from the therapist indicated uncertainty about the success of the treatment, suggesting improvements may be short term.

**3.8** Following ongoing difficulties the complainant was having with some parts of the course, in particular CAD, it was agreed with him that a further assessment should be carried out. This assessment, carried out by the College assessment unit, showed the complainant's form perception to be "uncharacteristically low". Form perception is described as the ability to perceive pertinent detail in objects or in pictorial or graphical material, and to make visual comparison and discriminations and see slight differences, shapes and shadings of figures and widths and lengths of lines. At this stage, it was agreed with the complainant and the Head of Assessment that a more in-depth external assessment should be carried out. The complainant signed letters of consent for medical records relating to his brain haemorrhage and surgery to be accessed by the Head of Assessment.

**3.9** A meeting to review the situation was held in September 1996. The meeting was attended by the complainant, his Vocational Officer, the College Director, the Head of Assessment, the head of the Technical Department and the complainant's instructor. The Vocational Officer's note of the meeting indicates that the "decision to have a discharge from Roslyn Park was taken jointly by the College, [the complainant] and NRB, pending the result of the medical review". The purpose of the mechanism of discharge was to temporarily suspend the complainant's funding, which was time limited. If the assessment were positive, he could resume and complete the course. The discharge became effective on 25 September 1996.

**3.10** The medical review was carried out externally and independently by a senior clinical psychologist between December 1996 and January 1997. The conclusions were unambiguous. The report, dated 20 January 1997, stated "Overall on the basis of his profile I certainly not recommend that he attempt to pursue a career in architectural drafting as the demands of the course are precisely those that he seems to be so impaired in." The Head of Assessment wrote to the complainant concluding that the findings were consistent with her own, and saying she was sorry

that the college had been unable to meet the complainant's vocational training needs.

**3.11** In response to this letter, the complainant welcomed the report and indicated agreement with its overall conclusions. He acknowledged, albeit for different reasons, that the course had not met his needs. He wrote "I am of the opinion that [the clinical psychologist's] conclusions confirm the points that I continually made to the College Authorities. That the course...was irrelevant to my needs, it sought neither to enable or empower me and was not conducive to confidence building."

**3.12** The complainant wrote to the Head of Assessment again in August in relation to a different matter, and in the course of the letter said "My learning difficulties that were diagnosed by your psychologist...and confirmed by an independent psychologist...established that I was not suitable material for rehabilitation and by implication unemployable. My difficulties with form and spatial perception would preclude me from ever teaching Technical Graphics or Building Technology again and the impairment to my psychomotor speed would be an impediment to me pursuing my craft as a woodworker."

**3.13** The respondent said that, despite these earlier assertions of agreement, the complainant became more dissatisfied as time progressed. In May 1999, he sought and was granted access to his files. In October 1999, he attempted to seek redress against the College under the Unfair Dismissals Acts 1977-1993, but the claim failed on the ground that he was not an employee of the College.

**3.14** In January 2001, the complainant wrote to the current Director of the College disputing the earlier assessments of his condition and seeking to complete the course from which he was discharged in September 1996. In responding to the complainant, the College Director detailed the chronology of the case, referred to the various assessments leading to the complainant's discharge and concluded "...it is clear to me that you feel the service we offer does not nor did not meet your needs. While this is regrettable, the resources and the service we provide, is the service we provide despite any limitations you may perceive it having. I would therefore see no benefit in repeating what was not a good experience from your perspective as I could not agree to something that you believed could cause 'a deterioration in your health or an erosion of your confidence'".

**3.15** The respondent concluded that it behaved towards the complainant in a fair and reasonable manner at all times. It said that the decision to discharge him from the course was taken only after rigorous internal and external assessments were completed, and the complainant was involved in and initially in agreement with this decision. It contended that the letter of February 2001 from the College Director was merely stating the position as it had existed since 1996/1997, based on the expert reports and the complainant's clear dissatisfaction.

#### **4. CONCLUSIONS OF THE EQUALITY OFFICER**

**4.1** In reaching my conclusions in this case I have taken into account all of the submissions, both oral and written, made to me by the parties.

**4.2** The complainant alleged that the respondent discriminated against him on the ground of disability contrary to the provisions of the Employment Equality Act, 1998. Section 6 of the Act provides that discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated, on one of the discriminatory grounds, including disability. Section 12 of the Act provides

*(1) ...any person, including an educational or training body, who offers a course of vocational training shall not, in respect of any such course offered to persons over the maximum age at which those persons are statutorily obliged to attend school, discriminate against a person (whether at the request of an employer, a trade union or a group of employers or trade unions or otherwise)-*

*(a) in the terms on which any such course or related facility is offered,*  
*(b) by refusing or omitting to afford access to any such course or facility, or*  
*(c) in the manner in which any such course or facility is provided.*

*(2) In this section "vocational training" means any system of instruction which enables a person being instructed to acquire, maintain, bring up to date or perfect the knowledge or technical capacity required for the carrying on of an occupational activity and which may be considered as exclusively concerned with training for such activity.*

From the provisions quoted, it is clear that the services provided by the respondent constitute vocational training for the purposes of the Act.

### **The date of the alleged discrimination**

**4.3** However, the first matter to be dealt with in this case, before any consideration of the substantive issue, is the date of the alleged discriminatory incident. Incidents occurring prior to the commencement date of 18 October 1999 are outside the scope of the 1998 Act.

**4.4** The complainant asserted that NTDI advertised extensively during 2000, offering employment opportunities and vocational training at Roslyn Park College to people who had lost their jobs due to illness or disability. He wrote to the College Director in response to these advertisements in January 2001, seeking to resume the course from which he had been discharged in September 1996. The complainant stated that the letter in response from the College Director, dated 9 February 2001, constituted a refusal to permit him complete the course on the grounds of health, which he said was "a metaphor for disability". His contention is that this is the date

of the alleged discriminatory incident.

**4.5** The respondent, on the other hand, asserted that the decisions relating to the complainant's discharge from the course were taken in September 1996, or alternatively January 1997. The letter of February 2001 is stated to be a reiteration of the earlier decision. The respondent claims it cannot be taken as an incident which would bring the complainant's case under the scope of the 1998 Act.

**4.6** It might be useful to list the incidents which are not in contention between the parties. It is agreed that the complainant commenced his course in September 1995, following the College's standard assessment procedure which indicated that he may be suitable for the Architectural Drafting and CAD course. He began to express dissatisfaction with the course by December 1995, and in January 1996 he requested a transfer to a City & Guilds course. During 1996 the complainant underwent several assessments within the College, which indicated greater perception problems than had been revealed by the standard assessment.

**4.7** In September 1996, a meeting was held which involved the complainant, his Vocational Officer, the then College Director and other College personnel. The complainant asserted that he was under severe pressure at this meeting, and had five people effectively telling him he had brain damage. The College's position was that it was agreed that more detailed, external assessments were needed to diagnose precisely the nature of the complainant's problems and possibly identify a means of assisting him. In any case, the result was that he concluded the course with effect from 27 September 1996. A formal discharge was necessary to prevent time running out on his funding. The College stated that had the assessment been positive, he would have re-joined the course and re-activated his funding.

**4.8** The results of the external assessment, by a clinical psychologist, became available in January 1997, and indicated unequivocally that the complainant had continuing difficulties with form perception and psychomotor speed. The report stated that his language and articulation skills were largely intact, but concluded that the demands of the course were precisely in the areas in which he appeared to have most impairment.

**4.9** It is clear that the initial decision to discharge the complainant from the training course was taken in September 1996. This was a provisional discharge, pending the results of the external assessment to be undertaken by the clinical psychologist. The report from the psychologist resulted in the Head of Assessment writing to the complainant in January 1997, summarising the analysis and expressing regret that the College had been unable to assist him

**4.10** I am satisfied that when the College Director received a letter from the complainant in January 2001, he had to review the file in order to frame a response. I am further satisfied that the documents he had regard to were those on file relating to the assessments of the complainant's condition in 1996 and 1997, as well as various



items of correspondence from the complainant. No new information was available to him, or taken into account by him.

**4.11** I find, therefore, that the decision that the complainant should not complete his course was taken provisionally in September 1996 and confirmed in January 1997. The letter of February 2001 was a reiteration of the original decision and did not constitute a new decision. Since this is the case, the incident complained of occurred prior to the 18 October 1999 commencement of the Employment Equality Act, 1998

## **5. DECISION**

**5.1** Based on the foregoing, I find that this complaint is outside of the scope of the Employment Equality Act, 1998, and I have no jurisdiction to investigate the claim.

---

Anne-Marie Lynch  
Equality Officer

21 August 2002