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NEWS REPORT

Country: Ireland
Title: Sheehy-Skeffington v. National University of Ireland Galway
Date: 4 July 2015
Expert: Frances Meenan

Context

Issue at stake: Gender discrimination in access to promotion
Ground of discrimination: Sex
Source: Decision of the Equality Tribunal no. DEC-E2014-078
Field: Employment law
Applicable law: Directive 2006/54 EU; Employment Equality Acts 1998-2011

Content

Case law: The claimant in this case was a well-qualified lecturer in the school of botany at the National University of Ireland in Galway (NUIG). She contended that she was discriminated against on the ground of gender in access to promotion to the position of senior lecturer, contrary to Section 8(1)(d) of the Employment Equality Acts 1998–2011 (“the Acts”).

The claimant submitted that the application process to senior lecturer in NUIG is weighted against women. She became eligible to apply for promotion to senior lecturer when she reached the top point of the college lecturer scale. The claimant made numerous applications over the previous years, but she was either not shortlisted or she was shortlisted but failed to reach the panel. She submitted that she felt compelled to complain about the 2008/2009 selection process when only one woman was promoted. The claimant stated that this confirmed her suspicion that there was a gender bias regarding promotions in NUIG.

Promotions are assessed on three criteria: research and scholarly standing; teaching and examining; and contribution to the school, university, and community. The claimant was interviewed by seven interviewers, only one of whom was a woman, who according to the claimant remained passive and silent throughout the interview. The claimant stated that it was a ‘bizarre affair’. The external reviewer gave evidence that some of the interviewers only arrived a minute before the interview and that there was no discussion of the claimant’s application prior to the interview, or about what questions should be asked. The external reviewer also requested marking schemes and guidelines prior to interview, which is standard practice, but he received no such information. When he tried to argue in the post interview discussion that the claimant was one of the leading plant ecologists in Ireland, he said that the other members talked over him. The Interviewing Committee also challenged his assessment mark, and reduced significantly the collective mark. The external reviewer also stated that he has sat on many interview panels and this one fell far short of best practice. He felt an injustice was done in the claimant not being placed on the panel for promotion. The claimant appealed the

decision and the appeal was heard by the Registrar. Her appeal failed.

Decision of the Equality Tribunal: The Tribunal noted that there was no obligatory training for interviewers (in the Employment Equality Acts or otherwise); and there was no pre-meeting to discuss each candidate, nor were questions agreed beforehand. Furthermore, the notes from the interview were only retained by the rapporteur.

The Tribunal noted that there was one male candidate who was promoted, even though he was not eligible for the promotion; yet all female applicants shortlisted met the service requirements. The Tribunal also noted that the Registrar was on the claimant's interview board and yet also involved in hearing her appeal. Obviously it would have been preferable if somebody independent of the interview process heard the appeal. The Tribunal was also critical of the respondent's statistical evidence. The Tribunal pointed out that despite men being in the minority in the college lecturer grade, this statistic is almost inverted when it comes to the next promotional grade. Male applicants had a one in two chance of being promoted to senior lecturer, while women applicants have less than a one in three chance of the same promotion. The Tribunal was satisfied that the claimant had established a *prima facie* case of direct discrimination, and the respondent had failed to rebut it.

The Tribunal decided that the claimant was also indirectly discriminated against due to the existence of an apparently neutral requirement on the application form that puts women at a particular disadvantage. The application form for the position of senior lecturer required applicants to specify what dates they were on maternity leave or other unpaid leave, so that it could be discounted. Male applicants left this blank. The claimant referred to caring responsibilities for her mother in the 1990s, and other female candidates had also taken leave. The Tribunal could not escape the conclusion that in drawing attention to their caring responsibilities outside the workplace, the majority of female applicants became disadvantaged against male applicants. Therefore, the means chosen was neither appropriate nor necessary, and so could not be objectively justified.

The Tribunal found that the respondent discriminated against the claimant on the grounds of gender regarding the claimant's access to promotion. In considering redress, the Equality Officer of the Tribunal said she was guided by Article 25 of the Recast Directive (2006/54); which states that penalties must be effective, proportionate, and dissuasive. The Equality Officer ordered the respondent to:

- (a) Promote the claimant to senior lecturer from 1 July 2009 and that she be paid in full the necessary adjustment in salary and any other benefits applying to the post accruing with effect from that date. This may represent income for tax purposes;
- (b) Award the claimant EUR 70 000, which represents approximately a year of her current salary. This is redress for the infringement of the claimant's statutory rights and therefore not subject to income tax;
- (c) Conduct a review of its policies and procedures in relation to promotion to senior lecturer to ensure that they comply with the legislation, with particular reference to the ground of gender. Unless the decision is overturned on appeal,¹ a report on progress of this review must be submitted to the Irish Human Rights and Equality Commission within one year of the date of the decision. If this is not done, the Irish Human Rights and Equality Commission may (with the consent of the claimant) apply to the Circuit Court for enforcement of this Order under the legislation.

Key points of analysis: This is a significant case as it highlighted the lack of promotion of women in the third level education sector. The Higher Education Authority has initiated a gender equality review as a means of enhancing women's representation in

¹ The respondent confirmed that it would not be appealing the decision.

the third level sector.² The decision is also significant in respect of the apparently neutral requirement on the application form that requested details of unpaid leave so that such leave could be discounted, which put women at a significant disadvantage. There is to be a review of the policies and procedures in the respondent university and a report on progress is to be sent to the Irish Human Rights and Equality Commission.

Internet link sources:

<http://www.workplacerelations.ie/en/Cases/2014/November/DEC-E2014-078.html>.

Accessed 4 July 2015.

<http://www.irishtimes.com/life-and-style/people/micheline-sheehy-skeffington-i-m-from-a-family-of-feminists-i-took-this-case-to-honour-them-1.2027451>. Accessed 4 July 2015.

² Reported in the Irish Examiner 9 June 2015. <http://www.irishexaminer.com/ireland/hea-begins-third-level-gender-equality-review-333482>. Accessed 10 July 2015.