

McGinn v Daughters of Charity of St. Vincent de Paul (DEC - E - 2002/054)

1) Reference Details

Jurisdiction: Irish Equality Tribunal

Date of Decision: 12 December 2002

Link to full case:

<http://www.equalitytribunal.ie/uploadedfiles/Decisions/DEC-E2002-054.pdf>

2) Facts

The complainant was one of two applicants for the position of Nursing Practice Development Co-ordinator with the respondent organisation. The other applicant was male. The complainant is a registered nurse for the mentally handicapped (RNMH) having qualified in 1991. She subsequently obtained a Bachelor of Science Honours Degree in Professional Social Work (relating to people with intellectual disability) and was at the time undertaking a Masters Degree in Intellectual Disabilities. According to the complainant she also has a certificate in Psychodynamic Therapy for people with learning disabilities from the Tavistock Centre in London. Following an interview the male applicant was successful. The complainant complained that she had been discriminated against because of her sex.

Having failed to achieve satisfaction from the respondent the complainant referred a claim to the Director of Equality Investigations on 3 December 2001 under the Employment Equality Act, 1998. The complaint was then delegated to an Equality Officer on 14 January 2002 for investigation, hearing and decision. A joint hearing took place on 8 August 2002.

3) Law

- Section 6(2)(a) of the Employment Equality Act, 1998 (discrimination for the purposes of the Act)
- Section 8 of the Employment Equality Act, 1998 (discrimination by employers)

4) Legal Arguments

The Applicant

The complainant alleged that the Daughters of Charity of St. Vincent de Paul discriminated against her on the basis of her gender in terms of s. 6(2)(a) of the Employment Equality Act, 1998 and contrary to the provisions of s. 8 of that Act by not appointing her to the position of Nursing Practice Development Co-ordinator. The complainant also alleged that she was victimised in terms of s. 74 of the 1998 Act when she sought to address her grievance at not being selected for the post.

The complainant contended that she was better qualified and had more experience than the male applicant and was discriminated against by the respondent on the basis of gender. She also contends that she was victimised when she sought to address her grievance at not being selected for the position by her superior who threatened her. The complainant alleged that since the occurrence of the discrimination and victimisation that she had been unable

to work due to stress. She contended that her superior qualifications and experience established a *prima facie* case as they are highly relevant to the position.

The Respondent

The respondent asserted that the successful candidate was selected on the basis of his suitability to the position in accordance with the role specification contained with the role description, the job advertisement and the interview assessment form. The respondent argued that the complainant was not discriminated against nor was she victimised by any member of the respondent organisation. The respondent submitted that it had an excellent record in the appointment of females in senior nursing management positions. It rejected the allegation by the complainant of a preference for males for senior positions and stated that this implied the existence of a discriminatory attitude to women which, in practice, could not be sustained.

5) Decision

The Officer of the Equality Tribunal found that the respondent discriminated against the complainant in terms of s. 6(2)(a) of the Employment Equality Act, 1998 as it had failed to display fairness in its selection procedures as it failed to give the complainant any recognition for meeting the essential requirement of five years post-registration experience in Mental Handicap whereas the successful male candidate did not meet this requirement.

The Equality Officer also found that there was a lack of transparency in the marking for core/special competencies. Concerning the complainant's allegation of victimisation the Equality Officer found that the evidence did not support the allegation.