

Civil Servant awarded €40,000 for not being shortlisted for promotion

ANDY PRENDERGAST

The Department of Health has been ordered to compensate an employee €40,000 for indirect discrimination during a shortlisting process for an internal promotion competition in 2019.

Ms Nicola Matthews claimed against the Department after she was not shortlisted for interview for an internal promotion to an assistant principal position. She claimed the shortlisting process, conducted by a board of three trained individuals, lacked a fair and objective scoring system.

In ruling in her favour, WRC adjudicator (AO) Brian Dalton cited a lack of transparency in the shortlisting process that raised an inference of discrimination, which the Department failed to rebut.

When Ms Matthews sought an explanation as to why she was not shortlisted for interviews for the position she was given a one sentence answer: “you did not illustrate evidence of experience relevant to the competencies required for the Assistant Principal position, specifically in the area of leadership/drive.”

The Department rejected her claim of discrimination, telling the AO that the shortlisting process was “carefully and appropriately managed.” It said emphasis was placed on choosing candidates based on appropriateness of their experiences and not their age.

A majority of 47 applicants in the internal promotion were shortlisted, across all age groups except for the 50-65 age category, where 6 of the 13 applicants were shortlisted.

Ms Matthews used a probability analysis, extracted from the 2003 *Gillen v Department of Health* decision of the then Equality Tribunal. According to this formula, she maintained that 28% of shortlisted applicants could be expected to be in the 50-65 age category, when in fact 20% of the shortlisted applicants were actually shortlisted.

By contrast, her calculation was that 30% of shortlisted applicants could be expected to be from the 35-44 age group, when in fact 37% were actually shortlisted.

The Department called the complainant’s probability analysis “arbitrary” and that it failed to take account of the individual’s application.

NO FORMAL EVALUATION

The employer also pointed to the unconscious bias training its 3-person shortlisting board had (one member of which was in the same age category, 50-65, as the complainant).

However, as the AO noted, this was in relation to conducting interviews, not the shortlisting process.

Mr Dalton considered the Department did not show evidence that the shortlisting procedure used an objective evaluation process and framework that would rebut the presumption of discrimination.

There was no formal marking system or formal evaluation framework, and the feedback given to Ms Matthews, as to why she was not shortlisted, was “terse.”

The AO said the complainant showed that older candidates had a “significantly lower chance of being shortlisted.”

He concluded Ms Matthews was discriminated against on the ground of age arising from unintended indirect discrimination.

He also ordered the Department to adopt the recommendations set out in the Commission for Public Appointments Case Book 2017 relating to best practices in shortlisting, concerning meaningful feedback and also adopt the use of a marking scheme when shortlisting candidates.

The complainant was represented by Sean Carabini, Forsa; the respondent was represented by William Maher BL. (ADJ-00025554, AO: *Brian Dalton*)