

Civil servant claimed not shortlisting him was age and gender discrimination

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A WRC adjudicator has found that a civil servant was not discriminated against, on the grounds of gender or age, when he was not shortlisted in a promotion competition.

The complainant, Desmond Furlong, claimed that there was discrimination on the grounds of age and gender in the shortlisting of applicants in a promotion competition within the Civil Service.

The respondent, the Department of Transport, denied the claim. It said that the competition process was properly conducted, and that the shortlisting was done in accordance with the relevant code.

WRC adjudicator (AO) Kevin Baneham decided that the complainant has established a prima facie case of discrimination but that the respondent has discharged the presumption of discrimination.

The AO stated that the evidence of the respondent's witnesses demonstrated that there was no discrimination in this regard. He said that witnesses for the respondent, who were involved in the decision making, were cogent and convincing and that the panel operated in a way that was free from discrimination.

Mr Furlong began working in the Civil Service on August 15, 1983, and was promoted to Higher Executive Officer, on July 7, 1992. He obtained 16 qualifications over his career, including in French and Russian.

A 2019 staff notice gave details of the internal competition for promotion to assistant principal. It provided that one post would be filled and there would be a maximum panel of six.

In June 2019, Mr Furlong applied for promotion to the post of assistant principal officer. He was not shortlisted and received limited feedback with which he expressed dissatisfaction.

There were 38 applicants (15 male and 23 female) and 20 were called to interview (5 male and 15 female.) The complainant asserted that this was evidence of gender discrimination.

COMPETENCIES

He said he initially requested an informal review which concluded that the board had acted correctly and that he was unsuccessful relative to others. He then tried to make a formal complaint. He outlined that there was a delay in providing the information about the age of the candidates despite his union and another candidate looking for this.

In the shortlisting assessment the panel held that the complainant's application had not demonstrated sufficient evidence in the 'leadership' and 'management and delivery of results' competencies.

He was held to have demonstrated sufficient evidence in 'analysis & decision making', 'interpersonal & communication skills' and 'specialist knowledge, expertise and self-development'.

The overall comment was that he 'didn't use recent examples of experience in providing evidence of competencies as much as he could have.'

AO Baneham noted that it was not entirely clear why the same examples could be deemed acceptable in one competency ('Analysis and decision-making') while not acceptable in another ('Leadership').

The AO stated that while this is an incongruity, it is not a fact of such significance that it raises and inference of discrimination.

SHOULD HAVE BEEN SHORLISTED

Mr Furlong claimed that the panel had created a new criterion to assess applications, i.e. that the examples given must be recent. The respondent outlined that this was captured by the requirement to have examples that showed the 'breadth' of experience.

AO Baneham said: "Whether or not the panel went to far as creating a new criterion, it is fair to say that they emphasised the importance of citing recent examples of each competency."

The AO noted that the word 'recent' is not used in the staff notice of the shortlisting guidelines. The applicant was not warned that a recent example had to be cited in each competency.

AO Baneham accepted that the respondent's witnesses explained the rationale for seeking recent examples, for example that the applicant can show currency in demonstrating a competency. He concluded: "While I think the complainant should have been shortlisted, the fact that he was not was not an act of discrimination."

The Department of Transport was represented by William Maher BL, instructed by the CSSO. (ADJ-00025061, AO: Kevin Baneham)

