

Prison service directors lose pay discrimination cases

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In three individual complaints at the WRC, directors at the Irish Prison Service had claimed that they were discriminated against when they were paid less than a comparator.

Don Culliton, Trevor Jordan, and Donna Creaven claimed that they have been and continue to be discriminated against on the grounds of age because they are paid less than a comparator Fergal Black, the Director of Care and Rehabilitation, even though they are doing work of equal value.

Additionally, Ms Creaven, claimed that she has been discriminated against on the grounds of her gender because she is paid a lower salary than Mr Black.

As the cases made by Mr Culliton and Mr Jordan were virtually identical, both complaints were heard during the same hearing.

WRC adjudicator (AO) Breiffni O'Neill determined that in all three cases, the respondent had successfully rebutted the presumption of discrimination and as such the complainants were not discriminated against.

'LACKS TRANSPARENCY'

The respondent, the Department Of Justice Irish Prison Service, is headed at functional level by a Director General at Deputy Secretary level within the civil service grading structure.

The second tier of management in the respondent consists of five Directors. The posts are paid within the civil service grading structure at Director level.

Mr Culliton is employed as Director of Custody, Security and Operations and Mr Jordan is employed as Director of Human Resources. Ms Creaven is employed as Director of ICT Governance and Corporate Services.

Mr Culliton stated that Mr Black, the Director of Care and Rehabilitation, is on an individual rate of pay outside of the normal civil service grading structure. He asserted that it was unclear how this individual rate was sanctioned and as such the setting of this pay rate lacks transparency.

Ms Creavan submitted that her and Mr Black's roles are like-work and accordingly should be remunerated the same.

COMPARATOR ROLE

The comparator's post was sanctioned and advertised in 2007. Mr Black applied for and was successful in the competition having the requisite experience.

On 2 July 2018, Y began his employment as Clinical Lead relating to healthcare and Mr Black was divested from all clinical decisions on the healthcare side.

Therefore, at this point, Mr Black's role became more equivalent to that of the other directors, including the complainant's role.

As a result, the respondent outlined that Mr Black's role was red circled in terms of his terms and conditions of employment and when he retires, the role will be advertised at the same rate as all of the other Directors of the Respondent organisation.

PRIMA FACIE CASE

Given that the respondent accepted that the complainants perform work of equal value and are paid a lower salary than Mr Black, who is older, AO O'Neill found that a prima facie case of discrimination had been established.

The former Director General of the respondent provided a detailed account of the historical context surrounding the package of the former Director of Medical Services.

In particular, the AO noted a 1991 review body recommendation, which led to a substantial increase in the basic salary for consultant psychiatrists.

He recognised that this recommendation understandably prompted concerns within the respondent that the then Director of Medical Services, X, who was a consultant psychiatrist, might consider leaving their employment due to the significant disparity between his then salary and that recommended by the review body.

To address their concerns in this regard, the respondent, implemented a series of salary adjustments. Notably, X received an initial salary increase, effective from 1 January 1993.

STAFFING CHALLENGE

In 2007 the respondent encountered a new staffing challenge when X declined to relocate to the new headquarters in Longford, following a government decision to decentralise operations there.

Recognising the potential difficulty in attracting a candidate of comparable calibre to replace X, Mr. Purcell, in his capacity as Director General, made the decision to maintain the new Director of Healthcare's salary at the level previously earned by X.

He justified this decision by highlighting the extensive turnover within the respondent's headquarters, with 85% of the staff having to be replaced due to a refusal to move to Longford. He also emphasized that the relocation to Longford had already resulted in decreased interest in job competitions.

The AO accepted the justification presented by Mr Purcell. In addition to preserving the salary, the respondent also modified the job requirements of the role, which involved removing the necessity for applicants to possess a medical qualification.

The AO accepted that the rationale behind this change was "to further broaden the pool of potential candidates".

He also determined that that the job advertisement for the position of Director of Healthcare was not discriminatory on the age grounds because it required seven years of managerial experience; as it also stipulated that no mandatory minimum experience was stipulated, if an applicant possessed a third level/professional qualification in the healthcare field.

'LEGALLY IMPERMISSIBLE'

AO O'Neill noted that the role currently held by Mr Black, differs from the Director of Healthcare position that he was recruited for because he was divested of responsibility for any clinical decisions in 2018, as well as having additional responsibilities allocated to him.

As the decision to divest him of clinical decision making was made eleven years after his recruitment, it could not reasonably have been foreseen by the respondent.

Despite the evolution and change in Mr Black's responsibilities, the AO accepted that the respondent is bound by the contractual terms agreed upon at the outset of his employment in 2007, notwithstanding the change in his role.

Any attempt to amend Mr Black's terms and conditions of employment to align with those of the complainants would be legally impermissible, he added.

Overall, AO O'Neill determined that all three of complainants successfully established a prima facie case of discrimination.

However, the respondent has successfully rebutted this presumption by demonstrating that the decision to remunerate the Director of Care and Rehabilitation at a higher level was objectively justified and that the difference in compensation between the positions is attributable to factors other than age.

Ms Creaven was represented by Rosemary Mallon BL, instructed by McInnes Dunne Murphy LLP. The respondent was represented by MP Guinness BL instructed by Chief State Solicitor's Office. (ADJ-00045252, ADJ-00045309, ADJ-00041133, AO: Breiffni O'Neill)