

FAIR EMPLOYMENT TRIBUNAL

CASE REFS: 6/06 FET
7/06 FET

CLAIMANTS: Beatrice Debast
Caroline Sara Flynn

RESPONDENTS: 1. Dr M J Malcolmson
2. Laurelhill Community College Board of Governors
3. South Eastern Education and Library Board

DECISION ON A PRE-HEARING REVIEW

The decision of the Tribunal is that the Tribunal does not have jurisdiction to consider the claims of unlawful discrimination on the grounds of religious belief in view of Article 71(1)(b) and 1(A) of the Fair Employment and Treatment (Northern Ireland) Order 1998, accordingly they are dismissed.

Constitution of Tribunal:

Chairman (Sitting alone): Ms Crooke

Appearances:

The claimants were represented by Ms S Bradley, Barrister-at-Law, instructed by The Equality Commission.

The respondents were represented by Ms A Finegan, Barrister-at-Law, instructed by Education & Library Board Solicitors.

1. The preliminary issue before the Tribunal was:-

“Whether the Tribunal has jurisdiction to consider the claims of unlawful discrimination on the grounds of religious belief in view of Article 71(1)(b) and 1(A) of the Fair Employment and Treatment (Northern Ireland) Order 1998.”
(Hereinafter referred to as the ‘Order.’)

2. Ms Bradley argued that historically Article 71 of the Order exempted the teaching profession in Northern Ireland from the protection of the Order. She contended that the effect of the Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003 which inserted the new Clause 1A into Article 71 as follows:-

“for the purposes of Paragraph 1(b) ‘recruitment’ means any step in the process of engagement of a person for employment up to the commencement of the employment”;

operated to take the claimants in this case into the protection of the Order as the exemption was reduced to refer only to the recruitment of teachers rather than their employment.
3. Ms Finegan argued that these teachers applied for a post of Head of Department under an internal trawl. The post of Head of Modern Languages in a school is a teaching post. She contended that the legislature could not have intended to create a situation where internal candidates applying for promotion in a school were protected by the Order but external candidates were not.
4. Having considered the submissions of both counsel, the Tribunal concludes that these claimants are not able to bring themselves within the protection of the Order as a result of the amendment to Article 71 of the Order. The Tribunal did not consider that a distinction could be drawn between posts of ‘responsibility’ and ‘recruitment’ posts. As it is plain that Part 7 of the Order does not apply to the teaching profession, the Tribunal does not accept that the definition of promotee contained in the Fair Employment (Monitoring) (Amendment) Regulations (Northern Ireland) 2000 is of any assistance in explaining the difference between promotion and recruitment. This was a recruitment exercise. There was a job description, a job specification, essential and desirable criteria, application forms and interviews. Additionally, the fact that the Equality Commission expresses a view in its report that promotion is now protected while recruitment is not, while of interest does not assist the Tribunal in the way that a finding of fact in case law would have assisted the Tribunal.
5. The Tribunal is unable to accept that the term ‘recruitment’ does not cover a situation where a post is advertised which happens to be a promotion and is internally trawled with the procedures set out above.
6. At the outset of the hearing, Ms Finegan argued that the Tribunal should order the claimants to identify appropriate comparators. The Tribunal declined to make such order considering that it was essential and logical to deal with the issue of whether or not the Tribunal had jurisdiction to entertain the case at all, rather than using a concept from a later part of discrimination procedure to be decisive in a case in which the Tribunal might not even have jurisdiction.

Chairman: *W. H. Bradley*

Date and place of hearing: 31 May 2006, Belfast

Date decision recorded in register and issued to parties: