



The Labour Court

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ADJ-00039073

ADJUDICATION OFFICER DECISION



Adjudication Reference: ADJ-00039073

Parties:

	Complainant	Respondent
Parties	Priscilla Mudehwe	Matheson Support Services

Representatives	Self Represented	Greta Siskauskaite Fieldfisher LLP
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Complaint(s):

Act	Complaint/Dispute Reference No.	Date of Receipt
Complaint seeking adjudication by the Workplace Relations Commission under Section 16 of the Protection of Employees (Part-Time Work) Act, 2001	CA-00050528-001	09/05/2022
Complaint seeking adjudication by the Workplace Relations Commission under section 7 of the Terms of Employment (Information) Act, 1994	CA-00050528-002	09/05/2022
Complaint seeking adjudication by the Workplace Relations Commission under section 77 of the Employment Equality Act, 1998	CA-00050528-003	09/05/2022

Date of Adjudication Hearing: 14/03/2023

Workplace Relations Commission Adjudication Officer: Conor Stokes

Procedure:

In accordance with Section 41 of the Workplace Relations Act, 2015 and/or Section 79 of the Employment Equality Acts, 1998 - 2015, following the referral of the complaints to me by the Director General, I inquired into the complaints and gave the parties an opportunity to be heard by me and to present to me any evidence relevant to the complaints.

Background:

This matter was heard by way of remote hearing pursuant to the Civil Law and Criminal Law (Miscellaneous Provisions) Act, 2020 and S.I. No. 359/2020 which designates the WRC as a body empowered to hold remote hearings.

The complainant gave her evidence under oath, two witnesses for the respondent gave evidence under affirmation. All witnesses were cross examined.



Summary of Complainant's Case:

CA-00050528-001 Part time work

The complainant submitted that she, as a part-time employee, was treated less favourably than comparable full-time employees. She submitted that she was the sole team member excluded from a hybrid working model and team agreement rota. She requested to work a maximum four weeks remotely for the month of May 2022, but this was not approved. She also submitted a request to work one day per week remotely, but this was also denied. She submitted that no opportunity or consideration was given to discussing an effective solution or even trial for any adjustments. She submitted that her working pattern of four days per week was already considered to be somewhat hybrid in nature.

The complainant submitted that the respondent did not implement a return to work on a transitional hybrid basis as suggested in the occupational health recommendations. She submitted that there was a dismissal of her workload concerns when HR commented that she shouldn't have any work stress given the number of days she works. She noted that the response from the respondent was that if she was feeling unwell and overwhelmed then she was free to leave, and this was after a 5-year period of working together.

The complainant submitted that she was not afforded equal access to benefits, training and promotion opportunities when other colleagues have been afforded progression opportunities.

CA-00050528-002 Terms of Employment

The complainant submitted that she was not notified in writing of a change to her terms of employment. She submitted that there were ongoing changes to aspects of her work whereby duties were restricted or removed. These unilateral changes were made without discussion or notice despite having made it clear to her line managers that she objected to the changes and would be working under protest.

CA-00050528-003 Employment Equality

The complainant submitted that she was discriminated against by reason of her race when she was not promoted or not provided with training. She submitted that in the six months up to May of 2022 a series of unfair events left her questioning why she was being discriminated against and treated in such a manner. She submitted that there was a HR disciplinary meeting on the first day of returning to work after certified sick leave wherein the HR professional commented that she needed to improve her attendance, or she would face disciplinary action if she took additional sick absence. She found these comments intimidating and lacked sympathy for the duty of care post-recovery while she was still under GP care and monitoring.

The complainant submitted that an e-mail to her line managers seeking reasons and clarifications regarding unfair events were deemed a "line of questioning" and not responded to.

The complainant submitted that she had spoken to multiple colleagues who expressed how the hybrid arrangement was beneficial to their mental health and how much they valued the flexibility afforded to them in managing their workload and schedules. She submitted that some of her colleagues have expressed their surprise that she's the only one singled out in the hybrid working arrangement. She also noted that her colleagues received continuous training opportunities, but she is not included in these. The complainant submitted that she was returned to the office with only a few days' notice and without adherence to the government's return to work protocol. She was told that the return-to-work decision was final and that there would be no further discussion. She submitted that she had previously raised a grievance and that the outcome was unsatisfactory. She noted that this follows a pattern where her previous bullying grievance was raised but was not formally resolved.

Complainant Testimony:

The complainant gave evidence that she was treated differently to everybody else and that she was the only person of colour employed and she felt discriminated against. She stated that she was not given any progression opportunity within the firm as outlined in the firm's equal opportunity policy. She stated that the grievance procedure and appeal was unfair, there was no effective resolution to it, she felt isolated and singled out, was not even given a hello, and this made her feel that she was being discriminated against.

The complainant first named one comparator who is carrying out similar duties to her providing company secretarial services to the respondent and then indicated another comparator. She said that this individual was working under the hybrid scheme. The complainant stated that she was the sole team member to be excluded from the hybrid model, that she was not included in discussions on the hybrid scheme and stated when she sent an e-mail it was not responded to. She stated that she was informed that the role does not qualify for the hybrid scheme. She noted that she had a virtual meeting in November 2021 which was a catch-up meeting regarding the process of returning to work. She said there was no welfare check and that it was simply to discuss the return to work and her duties. She stated that her line managers were present and that she tried to raise her concerns regarding her well-being but was informed that her concerns would be deferred to HR. She stated that she was told at that meeting that there would be no further discussion on the return to work and there was never any further discussion in person. HR said there would be follow up calls regarding a return to the office and she followed up with a request to work from home at the end of March.

The complainant stated that she was removed from some administrative functions and that the duties within her role increased as it now incorporated corporate secretarial work. She stated that duties started to be removed from her, she noted that she had been doing secretarial work for 20 to 30 companies. She stated that there was a series of unfair events leading to her questioning the reasoning for those events. She noted that her well-being concern was not taken into account and that there was an ongoing lack of discussion in the office regarding her workload concerns and the issue with backlogs. She felt she was being treated unfairly. She submitted a request for overtime to cover the backlog with post and although some of her emails were responded to, no appropriate action was taken to deal with it. She made mention that she was overwhelmed. She received training for covering the backlog in 2018 but her concerns were still there afterwards. She stated that there was insufficient cover for the backlog and that no measures were given to support her, and that there was no support forthcoming from HR.

Under cross examination it was put to her that her named comparator had a qualification and that she occupied a completely different role. It was noted that when she started out they were both handling similar duties, but once the named comparator had obtained that qualification she was moved to different duties and accordingly this person was not a valid comparator.

In terms of the second named comparator, it was put to the complainant that this individual was a qualified company secretary and did not undertake identical duties. It was put to her that there were three different roles the first being administrator, the second being junior company secretary, and the third being company secretary but that each role carried out different duties and accordingly they were not valid comparators.

It was put to the complainant that when she stated that there was no answer to her e-mail regarding a discussion of the hybrid scheme, that she received a response the same day setting up a call to discuss the matter the next day. This was accepted by the complainant.

It was put to the complainant that she worked as an administrative assistant, which she agreed. It was noted that her duties included international business group post and general ad hoc duties and that when her hours were increased some corporate secretarial duties were included. It was noted that this is a normal part of the administrative assistant duties. It was put to her that when her duties were increased there was discussion, but when they were decreased there was no discussion.

It was put to the complainant that when there was an issue with the backlog of the post an additional employee was recruited to assist with postal work. It was pointed out that this individual was hired to assist with the backlog and did so onsite, not remotely. The complainant responded that she didn't say there was no assistance, as there was.

As regards grievances it was put to the complainant that her grievance of the 4th of January, which was raised on the 17 January was the only grievance she raised and this related to the requirement to work onsite. It was noted that she never raised a grievance regarding hybrid working and that she did not apply for any roles or promotion within the organisation. She noted that she didn't see any of the roles advertised and it was put to her that they were available on the intranet system available to all staff and that this was how her colleagues became aware of roles and promotions within the organisation.




Summary of Respondent's Case:

The respondent submitted that the complainant worked 20 hours a week at the start of her employment, but this increased 24 hours per week with effect from April 2018. She resigned from her employment in May 2022.

The respondent denies it treated the complainant in a less favourable manner to a comparable full-time employee and noted that no full-time comparator has been identified by the complainant. It submitted that the onus was on the complainant to elect a suitable comparator and prove that the comparator is engaged in like work. Under the complainant's contract her place of work was at the respondent's premises. During the COVID-19 pandemic the respondent worked from home and postal documents were couriered out to her home several times a week for sorting and collecting. It is submitted that this was an exceptional measure in the context of the pandemic and was not sustainable in the medium to long term.

The respondent submitted that following the easing of restrictions, all staff could safely return to physical offices on a hybrid basis, save for those whose role could not be performed remotely and who were required to return to work on a full-time basis. From July 2021 to January 2022 the respondent communicated with its staff notifying them over return to the physical office from February 2022. It put in place extensive safety protocols following the Government recommendations in place at that time.

The complainant was initially asked to return to the office from December 2021, however this was delayed due to a referral regarding the complainant's sick leave absence. The rationale for the referral regarding her sick leave absence was that other business services staff members with similar duties had returned to the office several months previously or, in the case of new entrants, had been onsite from their date of joining. The complainant was a member of the business services staff, and the nature of her role required her to be in the physical office. 

The respondent denies that the complainant was excluded from the hybrid model. Her role and those of similarly engaged staff could not be conducted on a hybrid basis but needed to be performed on site. She was treated no differently from employees and similar roles that required onsite attendance.

The respondent noted that it engaged with the complainant on many occasions and facilitated her requests as much as possible having regard to the operational requirements of the role. She was also afforded additional days working from home before returning to the office following a period of sick leave. Upon her return a taxi was arranged to collect her and to bring her on site as she had highlighted that some hard copy documents needed to be brought with her. Her desk was relocated to facilitate her return arising from comments she had previously shared about her former desk location. This was a unique arrangement provided to the complainant and no other staff.

As regards the remote working policy the respondent noted in its policy, *"is a privilege, not a universal benefit or employee entitlement"*.

The respondent noted that it held a number of meetings and conversations and engaged in extensive e-mail correspondence with the complainant in relation to her hybrid or remote working requests. On each occasion her requests were fully, fairly and objectively considered. This was clearly explained and communicated to the complainant in a series of meetings, phone calls and e-mail correspondence from November onwards. The respondent submitted that fundamentally the complainant's role was very specific and inherently not suitable for hybrid or remote working. She was a valuable member of the business services staff, and her ability and skills were required in the physical office for the running of the business.

The respondent noted that in the complaint form, the complainant submitted that remote working was given to everybody in the firm, and it was submitted that this was incorrect. There were various employees within the business both part-time and full-time who were required to attend the physical office every single day of their working week due to the nature of their roles.

The respondent notes that the complainant suggests that she was excluded from the team agreement rota, however the agreements were in place to discuss and explore hybrid working and to invite employees who would be working in a hybrid fashion to discuss key enablers for hybrid success, to establish boundaries, to foster a learning environment, and to uphold the respondent's values when adapting to the changes. These were completed towards the end of January and the complainant was not eligible to avail of hybrid working. Accordingly she was not part of these discussions. It should be noted that there was no rota, but that it was simply a team agreement.

The respondent submitted that the complainant's work life balance was never compromised in that she was never provided with an excessive or unreasonable workload. Permission to work overtime was usually by prior approval and although the respondent accepted that the complainant worked overtime on some occasions, she was allowed time off in lieu. However, it was confirmed to her that she should not work any overtime without prior permission or approval.

The respondent submitted that the complainant was never overworked and in fact she sought additional work as she claimed not to have sufficient work. This work was basic administrative support for the company secretarial team, and it should not be categorised as standard capacity management. The complainant subsequently complained about her workload and when the respondent attempted to remove certain tasks or duties, the complainant claimed that it was making unilateral changes to her role.

The respondent rejected the assertion that the complainant was excluded from any arrangement or policy and noted that it is relevant that at least twice she decided to work from home without prior notice or approval. It noted that this practise would not be the norm and was never accepted by the respondent. The complainant noted that she worked from home to enable her to attend physio appointment and in

response it offered to review her working days/hours to facilitate attendance at medical appointments. The complainant did not avail of this offer. The respondent submitted that its absence policy states that appointments must be made outside of working hours in the employee's own time. However, it went on to state that the policy states if this is not possible then requests should be made in advance to the Partner\Manager providing as much notice as possible.

The respondent confirmed that the complainant was referred for an occupational health assessment but rejects the assertion that it did not implement or adhere to the occupational health recommendation. The respondent submitted that it was evident that there was some apparent confusion on the complainant's part as to what was discussed between her and the occupational health physician during the assessment. Confirmation of this misunderstanding was obtained from the occupational health company and shared with the complainant. The respondent submitted that on multiple occasions employee assistance programmes and counselling service details were shared with the complainant.

The respondent rejected the assertion that there was no provision of sufficient cover for annual leave or medical leave but accepts that the team may have been under more pressure on some occasions in the event of rare or unforeseen staff absences. It submitted that this would not be unusual in any business.

The respondent rejects the complainant's assertion that there was no provision for further advancement as it was open to her to apply for any open job opportunity within the company, but noted that she never did so. The respondent further rejected that it refused to provide HR policies to the complainant when requested, these were provided to her and/or were available on the intranet service.

The respondent acknowledged that the complainant raised a number of issues with a colleague prior to her resignation. The issues were raised on 7 April 2022. On 11 April 2022 the staff member acknowledged the issues and an offer was made to the parties to engage in mediation facilitated by an independent mediator. The respondent submitted that this was a reasonable offer to make to the complainant in the circumstances. The offer was refused by the complainant. The complainant resigned on 23 May 2022.

The respondent noted the case of *Conley v Ryan's Solicitors* (ADJ-00032704) which was to do with working from home where a part-time employee claimed that she was treated less favourably than a full-time comparator. The adjudicator in that case noted that the complainant had not established any facts which link the respondent's position regarding their refusal to facilitate working from home to the part-time status of her employment. No discrimination was found to have occurred in relation to her status as a part-time worker. This decision was appealed to the Labour Court which upheld the original decision.

The Labour Court held:

"The Complainant alleges that she was treated less favourably as a part-time employee than her full-time colleague as the Respondent permitted the latter to work from home throughout the lockdown period but required the Complainant to attend at its offices and refused to accede to her request to work from home.

Both Mr Matthew Ryan and Mr Patrick Ryan (Partners of in Firm) gave a very cogent explanation as to why the firm took the decision that the partners and solicitor, along with the two experienced part-time legal secretaries, were required to attend at the offices. They also gave clear and convincing evidence in relation to the very significant differences between the Complainant's role and that of the full-time receptionist/legal secretary and the difference in their respective levels of competence and experience.

The Court finds that the foregoing issues fully explain the different decisions implemented by the Respondent vis-a-vis the Complainant and her named comparator. It follows that the evidence of the Respondent's witnesses establishes that the apparent difference in treatment of the Complainant that gives rise to the within proceedings did not arise from the Complainant's part-time status.

The appeal, therefore, fails and the decision of the Adjudication Officer is upheld."

The respondent submitted that the complainant's claim in this case must also fail.

The respondent submitted that the complainant has not provided any detail whatsoever in relation to her suggestion that there were ongoing unilateral changes to aspects of her work without discussion or notice. The respondent assumed that this related to correspondence of 21 April 2022 from the complainant querying why she was no longer handling the relevant admin requests. In this regard it is accepted that the complainant had been asked on occasion to assist with administrative tasks to support the company secretarial team. This support was requested on an ad hoc basis and as such did not form part of the complainant's core duties and or her job role.

The respondent robustly denied that there was any instance of race discrimination whatsoever in relation to the complainant. It submitted that the complainant has not identified any single incident of race related discrimination in her claim form. The respondent submitted that there is significant overlap between the part-time work claim and the employment equality claim. Given the lack of detail they respondent suggested that, as detail became available, it may be the case that such a complaint was lodged outside of the time frame envisaged by the Act.

The respondent cited Section 85A of the Act in relation to the burden of proof and noted that the complainant has not established a prima facie case of discrimination. The respondent submitted that the onus is on the complainant to establish a prima facie case of discrimination and submitted a number of authorities in respect of this contention. It suggested that this complaint may fall within the scope of *Melbury Developments Ltd v Valpeters* [2010] ELR 64 wherein the court stated that "*mere speculation or assertions, unsupported by evidence, cannot be elevated to a factual basis upon which an inference of discrimination can be drawn.*"

The human resource manager gave evidence to the hearing. She confirmed that the complainant was hired in 2017 on a 20-hour contract to manage post. She noted that this was primarily in relation to international business clients and was a part-time basis. She noted that this was dealt with onsite prior to the COVID-19 pandemic. She also noted that the majority of staff worked offsite during the pandemic apart from 23 critical roles that remained in situ. She noted that from September 2021 onwards the regulations relaxed somewhat and there was an increase in numbers attending with 50 employees on site on a full-time basis and 92 on a part-time basis. She stated that from 7 February 2022 the majority of staff returned to the office most working on a hybrid basis with a minimum of two days in the office.

That witness stated that the post and Courier hub was onsite for the duration of the pandemic and was supported by both full-time and part-time staff. She noted that one staff member who dealt with post was hired on a full-time basis and was onsite for the duration. This employee provided cover for the complainant's duties when she was not able to carry them out.

The witness stated that the post was being couriered out to the complainant from April to October at an address outside Dublin and thereafter at a Dublin address. The Courier brought post out and back on a Monday and Thursday.

She noted that upon the return to the office there was a dedicated COVID-19 training course and limited access to the office for staff. There was also an approvals process regarding covid symptoms. There were welcome packs and team reviews for people returning to the office as well.

The witness noted that the complainant had a pretty unique role managing the post for the international group and her entire role was dealing with postal communication. The other employee who was recruited to deal with postal communication was full-time and was based onsite. It was not open to her to avail of remote working. This individual was hired in June 2021 and was solely dealing with postal communication.

The witness noted that he had a call with the complainant regarding her return to the office in December 2021 and noted that medical conditions had to be factored in. There was a referral to the occupational health specialist. She noted that the payroll took place the following day and review payments were based on performance. She noted that the complainant received her bonus on the 8 December 2022.

The witness noted that the occupational health report recommended a return to work, she noted that employee assistance supports or outlined to the complainant by phone and stated that the medical report was not withheld from her but was sent to her on 4 February 2022 and resent to her on 28 March.

As regards her attitude to part-time employment, she noted that a whole range of employees were employed on a part-time basis and that they were treated no differently to anybody else. She noted that there was no difference when it came to an onsite requirement some of the employees required to work on site were part-time, some worked full-time. As regards the company's attitude to race discrimination the witness noted that the company was recognised for their achievements. She also noted that the respondent received the gold standard award from the Centre for Diversity and that complainant had never raised any grievance regarding discrimination. She said that it appeared that some confusion arose regarding the call prior to the return to work onsite, it was not a disciplinary call but a return to work meeting and on that basis concerns were raised regarding the complainant's number of absences.

Under cross examination the witness noted that there were 23 critical roles on site. The postal role and courier hub were regarded as critical, nonetheless they continued couriating out letters to the complainant until February 2022. She confirmed that the international business group role needed to be carried out onsite and noted that throughout the pandemic firm wide updates were communicated to all employees.

She noted that the additional staff member was hired on the basis of covering post. She also noted that the complainant returned to work in late February, two weeks after the general return in early February. The complainant asked the witness why she was excluded from a transitional return to the office and she responded that following the return to work call there was a follow up with the occupational health professionals and this had an impact on the transitional return to work phase that was brought in for everybody.

In response to a question regarding progression within the company the witness noted that there are firmwide initiatives such as a learning hub and remote learning and everyone was invited to be involved. Vacant roles are advertised and applied for and learning and development projects are circulated through an open advertisement through its intranet website and LinkedIn. Training notices are also issued on a firmwide basis. However, she noted that some roles were only open to appropriately qualified staff members. At this point the complainant noted that she did receive some firmwide emails.

The second witness for the respondent was a partner in the company dealing with corporate debt and the international business group. He noted that there were 35 to 40 people in the group and that there was a large volume of post that needed to be dealt with efficiently. He said he was impressed by the complainant from the start: she was self-sufficient and good at her job and there were no issues. As regards the pandemic he noted that they were providing essential services to clients and the issues arising were changing every week or every month. In June 2021 they hired somebody to work onsite in order to assist the complainant with the volume of post. However they were running out of leeway with clients as time moved on. He acknowledged that perhaps they should have considered her as an essential service. They had tried to hire cover for the backlog that the complainant couldn't get to.

In November 2021 employees had to prepare for coming back into the office and meetings and reviews were organised trying to get everybody back into the office in an efficient manner. He said at this point there were indications that workplaces were opening although in fact this didn't happen until February

2022. Although the complainant was due to return to the office in early February, she ended up coming back at the end of February. He noted that when he received the e-mail from the complainant on 17 February, he called her the very next day to arrange for her return.

The witness noted that the complainant sought to work remotely on Mondays for a regular medical appointment. He confirmed that she was asked to rearrange this regularly occurring medical appointment for a day when she wasn't working given that she was only working four days a week.

The witness noted that the arrangement whereby post was couriered out to the complainant's house and returned on a twice weekly basis was not sustainable going forward. He confirmed that the complainant was able to work efficiently from home but noted that the respondent had been granted a certain amount of leeway from clients who were all dealing with the pandemic but that this goodwill was running out. He noted that the respondent wanted the complainant back into the office to do the work she was good at. He noted that her position was excluded from working remotely by the nature of the job, and that in order to facilitate the complainant working at home they would have had to hire somebody else to be in the office to do her work. She was only asked to come back to the workplace in line with everybody else.

The witness noted that when the complainant raised issues mediation was suggested but no matter what was suggested it was viewed negatively and she simply said that she would let the WRC deal with this. He noted that the complainant suggested that she was overworked but admitted that it was hard to see it when you're not onsite, however that was the reason that they recruited the additional employee to give the complainant help out with the workload. This additional employee had moved on elsewhere and the help that the complainant was giving with the returns was no longer needed as the team she was assisting on an ad hoc basis had returned to its full complement.

As regards the complainant suggestion that there was no provision for advancement the witness noted that there was something on the intranet every day. He noted that company secretary jobs are advertised and it's open to all to apply for advertised jobs if they have the relevant qualification. He noted that some of her peers had gone off and pursued qualifications but also noted that the complainant had never applied for any of the positions within the company.

The witness noted that at the time of the complainant's resignation he was abroad and was disappointed when he heard she had left. He noted that the attitude to part-time workers was that the company was very alive to it. He said that, post-covid, part-time work is here to stay and he didn't think that the complainant was treated any less favourably because of being a part-time worker. He confirmed that he had no sense of her being a part-timer. He also confirmed that the company has zero tolerance for race discrimination, and he was shocked to receive the complaint based on race, shocked and surprised. As regards the named comparators, he noted that both comparators had taken exams and had gained additional qualifications and that they were not just doing administration work.

The complainant opened her cross examination of the witness by thanking him for his kind words. It was put to the witness that there were no issues prior to November with the work being carried out off site. He confirmed that this was the case but that the company was trying to figure out what the road ahead looked like from a business continuity perspective.

The witness outlined the rota system being operated and noted that it wasn't a rota system, but rather it was one of anchor days where people were anchored in the office on certain days rather than exchanging all the time. Staff were asked for their preference, if they were in a hybrid role. However, the complainant's role was not a hybrid role, and the additional staff member recruited worked full-time in situ. It was noted that on an ongoing basis they needed a physical presence in the office when dealing with post and he confirmed that in his opinion work was not going to get done on a long-term basis if the system of couriering out correspondence to be processed continued. He noted that even if the client was to have worked from home on an ongoing basis, they would have needed cover in the office every day. He noted that there were delays, by definition, the post was not going to the complainant every day. He noted that from his perspective, client service is the key to their business model, and they had to meet client expectations.

He also confirmed that there were workload concerns from January to May and what was done previously to deal with the backlog is that an additional employee was hired. This employee provided cover as post could not be sent out to the complainant when she was sick or had COVID. It was noted that the complainant's treatment was no different to anybody else, doctors' appointments were expected to be taken on your own time. On a final note, he commented that the international business group post management was an onsite role. He noted that if there was any additional or residual work at the end of the day, there was always someone on hand in the office to assist.

Findings and Conclusions:

There is no complaint before the WRC connected with the complainant's resignation.

CA-00050528-001 Part-time work

The complainant named two comparators in her testimony however neither co-worker appeared to be a valid comparison in that both had additional qualifications prior to progressing in their careers. The complainant did not name the other person who undertook the same duties as she did, namely the postal duties who was engaged on a full-time basis. The two witnesses for the respondent made mention of this colleague. They also gave clear and convincing evidence in relation to the very significant differences between the complainant's role and that of the comparators engaged in Company Secretary and Junior Company Secretary roles and the difference in their respective levels of competence and experience.

The named full-time employee who was engaged exclusively in postal duties was treated in the same fashion as the complainant and accordingly I do not consider that the complainant has established a well-founded case of being treated differently on the basis of her part-time status.

CA-00050528-002 Terms of Employment

As regards the terms of her employment, it became obvious over the course of the evidence given by the complainant that she sought additional work to keep her occupied and that she provided a certain amount of backup to other groups in terms of doing some administrative tasks. These additional duties were ad-hoc in nature and fall within the terms of the contract of employment presented to the complainant at the start of her employment. I am not satisfied that they constitute additional duties on an ongoing basis to serve as a change in the terms of her employment. Although on occasion the complainant dealt with other duties on an ad-hoc basis, it is obvious from her own evidence that she was primarily dealing with post and couriering of documentation.

Having regard to all the written and oral evidence given by the complainant I am not satisfied that the complainant has established that her role varied such as to warrant notification of a change in her contract of employment. I find that the complainant has not established a well-founded case.

CA-00050528-003 Employment Equality

When it comes to the complaint of discrimination on the basis of her race, the complainant outlined a case whereby she appeared to be the only person who was not progressing in her career. She also noted that she was treated differently on the basis of her skin colour.

Section 85A(1) of the Act states that:

Where in any proceedings facts are established by or on behalf of a complainant from which it may be presumed that there has been discrimination in relation to him or her, it is for the respondent to prove the contrary.

The complainant stated that she did not progress in her career. This was not disputed by the respondent. She also noted that she had different skin colour to the majority of employees. On this basis, the complainant has established facts from which discrimination may be inferred. It now falls on the respondent to prove the contrary.

The respondent outlined how the complainant commenced employment and that the individuals she named were peers at the outset. However, the respondent noted that the peers named went on to obtain qualifications and to apply for open vacancy roles. The complainant did not obtain any additional qualifications and did not apply for any open vacancy roles.

Giving her evidence the complainant gave a very nuanced version of events. She appeared to have difficulty remembering details regarding her workplace and the operation of the workplace systems. She seemed to have no awareness of the intranet system in place in her office. The respondent noted that it had 800 employees. The evidence of the respondent witnesses was that the intranet was available to all staff and the complainant confirmed that she had received some vacancy notices. I note that the respondent indicated that certain vacancies were only circulated to those who had qualifications matching the necessary requirements of the position. I find it difficult to accept that the complainant would have been singled out in a company of 800 employees and not have been provided with details over the Intranet system of vacancies and training opportunities open to staff. The complainant appeared singularly unaware of the history of her colleagues wherein they pursued training opportunities and qualifications externally prior to pursuing career progression.

Section 6(1) & (2) of the Employment Equality Act state as follows:

For the purposes of this Act and without prejudice to its provisions relating to discrimination occurring in particular circumstances discrimination shall be taken to occur where—

(a) a person is treated less favourably than another person is, has been or would be treated in a comparable situation on any of the grounds specified in subsection (2) (in this Act referred to as the "discriminatory grounds") which—

(i) exists,

(ii) existed but no longer exists,

(iii) may exist in the future, or

(iv) is imputed to the person concerned,

(2) As between any 2 persons, the discriminatory grounds (and the descriptions of those grounds for the purposes of this Act) are—

...

(h) that they are of different race, colour, nationality or ethnic or national origins (in this Act referred to as "the ground of race"),

...

However, the complainant put forward no facts supported by evidence to support her contention of having been treated less favourably than any other colleague under the race ground. The respondent has put forward reasons, unrelated to race, as to why the complainant's colleagues progressed in their careers. While it may be difficult to ground a case of discrimination on the race ground upon concrete facts, I find that the suggestions put forward by the complainant amount to mere speculation or assertions which can be explained away in an independent, factual basis.

I am not satisfied that the difference in treatment that the complainant alleges is based upon her race or skin colour and I find that she was not discriminated against.



Decision:

Section 41 of the Workplace Relations Act 2015 requires that I make a decision in relation to the complaints in accordance with the relevant redress provisions under Schedule 6 of that Act.

Section 79 of the Employment Equality Acts, 1998 – 2015 requires that I make a decision in relation to the complaint in accordance with the relevant redress provisions under section 82 of the Act.

CA-00050528-001 Part time work

Having considered all the written and oral evidence presented in relation to this complaint, my decision is that the complaint is not well founded.

CA-00050528-002 Terms of Employment

Having considered all the written and oral evidence presented in relation to this complaint, my decision is that the complaint is not well founded.

CA-00050528-003 Employment Equality

Having considered all the written and oral evidence presented in relation to this complaint, my decision is that the complainant was not discriminated against.

Dated: 29th November 2023

Workplace Relations Commission Adjudication Officer: Conor Stokes

Key Words:

Part time work – not well founded – Terms of employment – not well founded – Employment Equality – Race ground – shift in burden of proof – independent explanation – complainant not discriminated against



The Labour Court

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