

Neutral Citation No. [2004] NICA 8

Ref: **KERC4116**

Judgment: approved by the Court for handing down
(subject to editorial corrections)

Delivered: **02/03/2004**

IN HER MAJESTY'S COURT OF APPEAL FOR NORTHERN IRELAND

**APPEAL BY WAY OF CASE STATED FROM A DECISION OF THE FAIR
EMPLOYMENT TRIBUNAL**

ROBERT BEACOM

Applicant/Respondent

and

ACTION MENTAL HEALTH

Respondent/Appellant

Before Kerr LCJ, McCollum LJ and Campbell LJ

KERR LCJ

Introduction

[1] This is an appeal by way of case stated from a decision of a Fair Employment Tribunal whereby it held that the appellant, Action Mental Health, had provided services to the applicant, Robert Beacom, which came within article 24 (1) of the Fair Employment and Treatment (Northern Ireland) Order 1998.

Background

[2] Action Mental Health (AMH) is an organisation that provides facilities for individuals with mental health problems who are referred to it by various health and personal social service trusts throughout Northern Ireland. These services are supplied on foot of agreements made between AMH with the trusts. The relevant agreement in this case was that entered into with Sperrin

Lakeland Health and Social Care Trust for the period from 1 April 1999 to 31 March 2002. The agreement provided that AMH would supply “structured training and work therapy” in accordance with the conditions of the contract in return for which the trust agreed to pay AMH for 45 places per day for five days per week.

[3] Mr Beacom was referred to AMH in June 1994 and an induction programme was commenced on 13 June 1994. It lasted 34 days. After this course Mr Beacom was transferred to vocational training because he had improved rapidly in areas of communication, social skills and interpersonal relationships. He attended AMH fairly regularly from 1994 until 2000, usually for four hours a day, three or four days a week. He was not paid for any work that he undertook but he received a daily allowance.

[4] In April 1995 Mr Beacom moved to the crafts department of AMH where he came under the supervision of Nigel Glover and he was trained in the use of all hand tools in the department and the radial arm saw in the woodwork area. He began a NVQ course in assembled furniture production and finished various elements of this course but did not complete it.

[5] An induction booklet is provided by AMH in which it describes the opportunities available to those who are referred to it as follows: -

“Through practical work experience trainees are given the opportunity to advance through a range of work programmes and training related where appropriate to National Vocational Qualification standards. This includes personal development programmes which should help to rebuild confidence and self esteem thus enhancing prospects of employment.”

[6] Mr Beacom presented a number of complaints against AMH to the Fair Employment Tribunal during 2000 and 2001. These included claims for disability discrimination, discrimination on the grounds of religious belief and victimisation. A hearing for directions was held and with the agreement of the parties it was ordered that a preliminary hearing take place to determine a number of issues, principally whether Mr Beacom was in employment with AMH and whether the services provided by AMH fell within article 24 of the 1998 Order. After conducting the preliminary hearing, the tribunal decided that he was not in employment with AMH but that it had supplied services to him that fell within the provision.

[7] The tribunal made the following findings of fact about the contact between Mr Beacom and Mr Glover, and the work that Mr Beacom did: -

“The tribunal accepted as fact that on some days the respondent [Mr Beacom] was not able to perform much work because of his mental health problems and Mr Glover talked to him about these. He stated that the respondent would spend three to four days making garden furniture. He also made fishing bait for his own use. Mr Glover accepted in cross-examination that he trained the respondent to make furniture. The respondent was supervised by Mr Glover, there were health and safety issues for all the trainees and they were all involved in making some product or other during the day most of which were sold. The tribunal accepted that the respondent had started in the packing department and had received training which enabled him to move out of that and into the garden furniture department. The tribunal also accepted evidence from Mrs Caroline Ferguson, who had been the manager of the unit since 1991. She acknowledged that there were various departments in which training was given by supervisors who were craftspeople. She stated that ‘the key purpose is to help the trainees and the use of the work is a means to help them. The training is in a work setting with a range of opportunities and, if it is appropriate, to move into employment.’ She acknowledged that they have training departments which also make items such as picture frames, leaded glass and glass engraving and that there was a continuation process from a newly referred trainee to a person leaving to go to work although only one person had found employment outside.”

[8] In his written statement to the tribunal Mr Beacom had said that he did not understand why he had been called a trainee after 1996. AMH referred to this statement in its closing submission to the tribunal, observing that its use of the term ‘trainee’ may have been, in the circumstances of Mr Beacom’s case, inappropriate. It suggested that Mr Beacom had only received “some limited craft training, primarily between 1994 and 1996 and with the primary purpose of therapy as opposed to him becoming skilled to work for AMH ...”. It was therefore asserted in AMH’s closing submissions that during the period in respect of which Mr Beacom made his complaints he was not receiving any training and therefore that he did not come within article 24 of the 1998 Order at the material time.

[9] Notwithstanding his own view as to his status, Mr Beacom's counsel in his closing submission rehearsed the contrary argument that AMH had referred to him throughout as a trainee and that the work undertaken by him was regarded by AMH as vocational training. It was therefore submitted that Mr Beacom "was undergoing training throughout his tenure".

Article 24

[10] In so far as is material article 24 provides: -

"Discrimination by persons providing training services

24. - (1) It is unlawful for a person who provides services in connection with the training of persons for employment in any capacity, or for a particular employment or occupation, in Northern Ireland to discriminate against another person -

(a) where that other person is seeking to obtain those services or they are sought to be obtained on his behalf -

- (i) by refusing or deliberately omitting to provide those services; or
- (ii) in the terms on which the person offers to provide those services; or

(b) where that other person is receiving those services -

- (i) in the way the person provides those services; or
- (ii) in the way he affords him access to benefits connected with the services or by refusing or deliberately omitting to afford him access to them; or
- (iii) by withdrawing those services from him or varying the terms on which they are provided; or
- (iv) by subjecting him to any other detriment."

The arguments

[11] For AMH Mr O'Hara QC submitted that no factual foundation existed for the finding that the services provided were in connection with the training of Mr Beacom for employment. He accepted that during the initial part of Mr Beacom's time in the crafts department he had received training that would have brought him within article 24. At the material time, however, argued Mr O'Hara, he had ceased to be trained and he was retained by AMH for therapeutic reasons only. The tribunal had not made a specific finding that Mr Beacom continued to be trained after 1996. Such a finding was prerequisite to the operation of article 24.

[12] For the applicant Mr Morgan QC argued that there was ample material on which the tribunal could properly infer that Mr Beacom was still undergoing training within the meaning of article 24 during the time that the complaints arose. In particular he focused on the evidence of Mr Glover that he trained the applicant to make furniture and the statement of Mrs Ferguson that there was "a continuation process from a newly referred trainee to a person leaving to go to work."

Conclusions

[13] The setting for the operation of article 24 contains three conjunctive conditions. First, there must be a supply of services. Secondly, the services must have an element of training and finally, the training must be for employment. It seems clear to us that the provision of training need not be the exclusive purpose of the services supplied. This much is plain from the use of the expression, "in connection with". Thus services supplied partly for training and partly for therapeutic reasons may be included. It is also, we believe, clear that the goal of employment (while it must be present) need not be the unique function of the training provided.

[14] One must therefore examine the evidence available to the tribunal and the facts that were found to see whether the three necessary elements are present in Mr Beacom's case. There is no dispute that he was the recipient of services supplied by AMH. The issue relating to training is more difficult. Unfortunately this question was not addressed as directly as it might have been in the proceedings before the tribunal. This is understandable since the principal focus of those proceedings was Mr Beacom's possible status as an employee. On the subject of the applicant's training Mr Glover gave evidence that he continued to instruct Mr Beacom about the work that he undertook, but he does not appear to have said that he continued to train him. As against this, however, no evidence was given that Mr Beacom's training had ceased and Mrs Ferguson's statement that there was a "continuation process" appears to have been made in the context of training.

[15] Both Mr Morgan and Mr O'Hara agreed that the principle to be applied to the review of the tribunal's findings was that enunciated in *Edwards v Bairstow* [1956] A.C. 14. The issue therefore is whether the tribunal reached its conclusion that AMH had supplied services to Mr Beacom that fell within article 24 "without any evidence or upon a view of the facts which could not reasonably be entertained"¹.

[16] In our judgment there was evidence from which the tribunal could infer that Mr Beacom continued to receive training during the period that he claims his complaints arose. In the hearing before the tribunal it was not suggested by any witness that the training which he undoubtedly had at the beginning of his placement with AMH had been later discontinued. It is true that frequently he was left to his own devices and he was not required to undertake work if he was disinclined to do it but it is equally clear that he did work from time to time and that when he did so he remained under the supervision and direction of Mr Glover. These circumstances, when taken together with the structure of the services provided by AMH and as described by Mrs Ferguson, persuade us that there was sufficient material available to the tribunal to allow it to conclude that the applicant was undergoing training.

[17] We reach that conclusion notwithstanding Mr Beacom's own view that he should not have been described as a trainee from 1996 onwards. The purpose of the arrangements put in place by AMH was to provide training from the time of the referral until the trainee left to undertake employment. It is of course true that in only one instance in twelve years has a trainee obtained outside employment but this does not detract from the essential object of the scheme. Since, therefore, the underlying purpose of the referral was to provide training and since no evidence was given that the training had ceased, we consider that it was open to the tribunal to hold that Mr Beacom continued to receive training throughout his time with AMH.

[18] There remains the issue of the object of the training. Was it, in part at least, for the purpose of employment? It was submitted for AMH that there is no current prospect of Mr Beacom obtaining employment because of the state of his mental health and that this has been the position for some time. Article 24 does not require, however, that employment of the person under training be in prospect. It merely requires that the purpose of the training be for employment. Training can have that objective even if the chances of realising the aspiration are slim. It is clear from Mrs Ferguson's evidence that, although only one person who had undertaken the training had obtained employment, the purpose (or, at least one purpose) of the training that AMH continued to provide was for the employment of those who undertook it. There is nothing in the material that was presented to the tribunal that

¹ *Edwards v Bairstow* [1956] AC 14, 29 per Viscount Simonds

suggests any departure by AMH from its intention to train Mr Beacom for employment.

[19] We have concluded therefore that there was evidence on which the tribunal could correctly decide that at the material time AMH was providing services in connection with the training of Mr Beacom for employment. We answer the question posed in the Case Stated in the affirmative and dismiss the appeal.