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Equal Status Act 2000

EQUALITY OFFICER'S DECISION NO: DEC-S2002-006

**Ms Nora Barrett
(Represented by the Equality Authority)**

V

Menlo Park Hotel

File No. ES/2001/103

Date of Issue 22/02/2002

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Equal Status Act 2000

Summary of Decision DEC-S2002-006

Nora Barrett
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Menlo Park Hotel, Galway

Key words

Equal Status Act 2000 - Direct discrimination, section 3(1)(a) - Membership of the Traveller community, section 3(2)(i) - Supply of goods and services, section 5(1) - Purchase of tickets for a hotel function - Discrimination admitted by respondents

Dispute

This dispute concerns a complaint by Ms Nora Barrett that she was discriminated against, contrary to Sections 3(1) and 3(2)(i) of the Equal Status Act 2000, by the Menlo Park Hotel, Galway on the grounds of her membership of the Traveller community.

The complainant maintains that she was discriminated against on the Traveller community ground in terms of sections 3(1) and 3(2)(i) of the Equal Status Act 2000 in that she was denied a service which is generally available to the public contrary to Section 5(1) of the Act.

Background

The complainant maintains that, when she went to purchase tickets for a New Year's Eve function in the Menlo Park Hotel, she was initially given tickets but that these were then taken back on the grounds that the function was already sold out. The respondents admitted at the Hearing that they had misrepresented the position to the complainant at the time, and in subsequent correspondence, because of their concern that a large number of Travellers were planning to attend the function.

The respondents accepted that their actions constituted discrimination under the Equal Status Act 2000 and apologised to the complainant.

Decision

The Equality Officer found that discrimination had occurred on the Traveller community ground and ordered that the respondents pay the complainant the sum of €1000 for the embarrassment, humiliation and loss of amenity suffered by her.

**Equal Status Act 2000
DEC-S2002-006**

**Nora Barrett
(Represented by the Equality Authority)**

v

Menlo Park Hotel, Galway

1. Dispute

1.1 This dispute concerns a complaint by Mrs Nora Barrett that the Menlo Park Hotel refused to sell her tickets for a New Year's Eve function on the grounds of her membership of the Traveller community.

The complainant maintains that she was discriminated against on the Traveller community ground in terms of sections 3(1) and 3(2)(i) of the Equal Status Act 2000 in not being provided with a service which is generally available to the public contrary to Section 5(1) of the Act.

2. Summary of Complainant's Case

2.1 The complainant maintains that, when she called to the Menlo Park Hotel on 27 December 2000 to purchase tickets for a New Year's Eve function, she was initially handed tickets but that these were then taken back on the grounds that the function was sold out. The complainant claims that the Hotel took this action on recognising her as a Traveller and that this constituted discrimination under the Equal Status Act 2000.

3. Summary of Respondent's Case

3.1 Six weeks after the incident, in response to correspondence from the complainant, the respondents reaffirmed their position that the function had been sold-out when Ms Barrett sought to purchase tickets. In their correspondence, the respondents denied that they had a policy of discriminating against members of the Traveller community.

4 Evidence of Parties

A Hearing of this complaint was held on 23 January 2002.

Agreed Facts

- Complainant was handed tickets on 27 December 2000 by Receptionist and these were then taken back.
- Receptionist left reception and returned with the Assistant Manager, Mr Donall Carroll.

- The Assistant Manager informed the complainant that he had taken a corporate booking that morning and, as a result, the function was now booked out.
- The Assistant Manager provided the complainant with a hand-written note stating that all tickets had been sold.
- In response to form ODEI 5 from the complainant, the Hotel Manager, Mr David Keane sent a letter to Mrs Barrett dated 6 February 2001 reaffirming Mr Carroll's statement that he had received a block booking for all remaining tickets early on 27 December 2000 and that this was the reason that the hotel took the complainants tickets back.

Complainant' Evidence

- Never in Menlo Park Hotel before.
- Learned of function from brother who had purchased 6 tickets on 26 December.

Respondents Evidence

- Menlo Park Hotel opened in 1998.
- One previous New Year's Eve party held in 1999.
- No New Years Eve party held in 2001.
- Function room holds 250.
- Tickets for 2000 function went on sale a week before Christmas.
- By 27 December 2000 only twenty four tickets had been sold.
- Hotel regularly caters for local Traveller weddings where the organiser is known to Hotel staff.
- Some local Travellers regularly drink in the hotel.
- Hotel has experienced trouble with Travellers before.
- Mr and Mrs Barrett were unknown to hotel staff prior to 27 December 2000.

4.1 At the Hearing, the respondents described an incident on 13 December 2000, where the Hotel agreed to provide its facilities free-of-charge for a special Benefit Night for a family who had had a recent bereavement. Responsibility for selling tickets rested with the family who informed the Hotel that about 80 customers were expected.

On the night in question, the respondents state that a huge crowd arrived of whom approximately 150 were Travellers, none of whom were regulars of the hotel. Fearing that a serious situation might

arise, the hotel called in a local security man who identified the Travellers as coming from 5 different families in the Galway area. While some members of the extended Barrett family were identified, the respondents accept that the complainant and her husband were not among them.

The security man recommended that extra security staff be brought in. This did not happen, however, as the family for whose benefit the function had been organised, refused to pay for the security.

4.2 The Assistant Manager described at the Hearing, how the situation gradually developed to a point where it got out of his control. He described how his staff were becoming increasingly afraid as the night progressed. He said that he considered calling the Gardai at the time but, because he was increasingly concerned, as the night went on, that some of the customers may be under-age, he decided not to call the Gardai for fear that the hotel might be prosecuted.

By the time the bar closed at midnight, the Assistant Manager stated that a few ugly scenes had developed both inside and outside the hotel. The hotel was eventually cleared by 12.30 am.

4.3 In light of that experience, Mr David Keane, Hotel Manager described how the hotel took a decision that functions would only be arranged from then on, where a responsible person or the hotel itself took full control of ticket sales for such functions.

4.4 Mr Donall Carroll described how he was on duty on both 26 December 2000 and 27 December 2000 and how, prior to the complainant calling to the Hotel, he had noticed that most of the 24 tickets sold by then for the New Year's Eve function, had been purchased by Travellers. He admitted that this fact gave him cause for concern as he feared a recurrence of the events of 13 December 2000.

When the complainant came to purchase tickets on 27 December, Mr Carroll admits that, on recognising her as a Traveller, he instinctively reacted and decided that he was not prepared to sell any more tickets to Travellers. Mr Carroll also admitted at the Hearing that, on meeting the complainant, he made-up his story about having received a corporate booking that morning.

4.5 In support of Mr Carroll's stance, Mr Keane stated that Mr Carroll acted in the way he did because he saw a trend emerging which gave rise to him fearing a repeat of the events of 13 December 2000. Mr Keane volunteered the comment that Mr Carroll "panicked in the situation" because he was conscious of his responsibility and duty of care towards both his staff and customers, which led to him concocting a story on the spot, about a block booking having been received that morning.

Mr Keane explained, that up to the time that the ODEI 5 was received from the complainant in early January 2001, the hotel had little knowledge of the Equal Status Act 2000. On receipt of the form ODEI 5, Mr Keane states that he sought legal advice on the matter but that this was of little help to him. As a result, he states that he decided to support Mr Carroll's story about a block booking in his reply to form ODEI 5 dated 6 February 2001.

4.6 Mr Keane fully accepted at the Hearing that he had made false statements in his letter of 6 February to Mrs Barrett about the events of 27 December and about the availability of tickets for the New Year's Eve function.

Mr Keane explained how, at that time, he felt that this was the best course of action to take particularly as the New Year's Eve function had to be cancelled altogether some days later because of lack of ticket sales, brought about by the bad weather.

4.7 Mr Keane states that it was only when the Vintners' Seminars took place in Summer 2001, that he obtained a good understanding of the Equal Status Act 2000. It was only at that point, he says, that he realised the seriousness of his and Mr Carroll's actions. He says that he then asked the Equality Officer for an extension of time to enable him prepare a submission. When this was agreed to, he says that he then prepared a draft submission outlining the true facts of the case. Subsequently, however, having received further legal advice in the matter, he says that he decided not to forward this submission to the Equality Officer.

Mr Keane referred to the inherent difficulties faced by the Hotel in trying to run an orderly house. He stated that the hotel did not operate a policy of discrimination against Travellers and maintained that Mr Carroll's actions on 27 December were a knee-jerk reaction to a situation which he saw emerging, whereby the majority of tickets for the New Year's Eve function were being purchased by Travellers unknown to the hotel.

4.8 In an effort to ensure that Hotel staff fully comply with the provisions of the Equal Status Act 2000 from now on, Mr Keane produced copies of the Hotel's policy documents on discrimination which have been circulated to all staff. In addition, Mr Keane referred to the fact that the Hotel was now liaising regularly with a local Traveller Representative Group in Galway to assist Hotel staff in gaining an understanding of Traveller traditions and customs.

On behalf of the Menlo Park Hotel, Mr Keane sincerely apologised at the Hearing to the complainant for the treatment afforded her by the Hotel. Mr Keane stated that the Hotel now fully accepts that its actions constituted discrimination under the Equal Status Act 2000 and sincerely regrets that the matter was not handled in a proper fashion from the start.

5 Conclusions of the Equality Officer

5.1 Section 3(1) of the Equal Status Act 2000 states that **discrimination shall be taken to occur where, on any of the grounds specified in the Act, a person is treated less favourably than another person is, has been or would be treated.**

In this particular case, the respondents have admitted that their treatment of the complainant on 27 December 2000 constituted discrimination under the Equal Status Act 2000 on the Traveller community ground and they have apologised to her for their actions.

As the outcome of the case has already been determined, all that remains is for me to consider what the most appropriate level of redress would be in this instance.

6 Decision

6.1 In this particular situation, the respondents have admitted that the complainant was identified as a Traveller when she called into the Menlo Park Hotel to purchase tickets for a New Year's Eve function. The hotel's reaction was to immediately treat her less favourably than they would normally treat a non-Traveller in a similar situation.

In their defence, the respondents stated that the reason for their actions was because they feared a recurrence of a previous incident some weeks earlier, when a large number of Travellers had unexpectedly attended a Benefit Night in the hotel, leading to serious concerns about security on the night.

6.2 **Section 15(1) of the Equal Status Act 2000 states that nothing in the Act shall be construed as requiring a person to provide service to another person in circumstances which would lead a reasonable individual to the belief that the provision of that service would produce a substantial risk of criminal or disorderly conduct.**

Section 15(1), therefore, permits a hotel to treat a customer less favourably where that particular customer poses a genuine and substantial risk of disorderly conduct, or is honestly believed to do so. This does not mean, however, that a hotel can discriminate against all Traveller clients just because a particular group of Travellers were once disorderly, any more than a hotel can discriminate against all non-Travellers because a particular group of non-Travellers were disorderly in the past.

6.3 Before a complaint of discrimination is made to the Director of Equality Investigations, section 21 of the Equal Status Act provides that the complainant must first notify the respondent of the nature of the allegation and of the complainant's intention to submit a complaint of discrimination. This notification procedure also provides the complainant with an opportunity to question the respondent about the incident concerned and provides the respondent with an opportunity to address the allegations made against them.

On 8 January 2001, the complainant sent this notification to the respondents. At that point, the respondents had the opportunity to familiarise themselves with the provisions of the Equal Status Act 2000. However, while they admit to seeking some legal advice, their response was to deny that discrimination took place and to reaffirm in writing the position that was communicated orally to Mrs Barrett on 27 December 2000.

6.4 On 11 April 2001, the Equality Officer invited observations from the respondents in the matter, which afforded them a further opportunity to comment on the allegations made. However, the respondents did not avail of this chance to put the record straight.

It was only at the Hearing of this complaint, over 12 months after the incident itself, that the respondents admitted that they had made false and misleading statements to Mrs Barrett, in an effort to conceal the fact that discrimination was the real reason she was not sold tickets on 27 December 2000.

If the respondents had been prepared at the outset to acknowledge the fact that they had illegally discriminated against Mrs Barrett, it may have been possible for the parties to reach an amicable settlement without the need for the case to proceed to an investigation by the Office of the Director of Equality Investigations.

6.5 A positive aspect of this case, from the respondents' point of view, is the fact that they have now fully acknowledged that their actions on 27 December 2000 constituted discrimination on the Traveller community ground and, in recognition of this fact, offered a genuine and sincere apology to Mrs Barrett at the Hearing on 23 January 2002.

I also have to acknowledge the fact that the incident complained of, occurred only 2 months after the Equal Status Act came into force and that it is unlikely that the respondents would have been familiar with the full provisions of the Act at that time. I am also mindful of the fact that the Hotel has now put in place procedures to ensure that all staff are now fully aware of the provisions of the Act.

6.5 Having taken all of the above points into account, particularly the fact that the hotel has now admitted to and apologised for the discrimination that occurred, I consider that €1000 is an appropriate amount of compensation in this case. I, therefore, order that the Menlo Park Hotel pay Mrs Barrett the sum of €1000 for the embarrassment and humiliation suffered by her on 27 December 2000.

Brian O' Byrne
Equality Officer
22 February 2002