

**Equal Status Act 2000**  
**Equality Officer Decision**

**DEC-S2002-001**

**Paddy Wall**  
**(Represented by Augustus Cullen &**  
**Son)**

**V**

**Chesterock Enterprises Ltd**  
**t/a Wicklow Cabs**

*File Ref*            *ES/2001/188*

*Date Of Issue*        *31/01/2002*

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## **Equal Status Act 2000**

### **Summary of Decision DEC-S2002-001**

**Paddy Wall**

**(Represented by Augustus Cullen & Son)**

**V**

**Chesterock Enterprises Ltd t/a Wicklow Cabs**

#### **Key words**

Equal Status Act 2000 - Direct discrimination, section 3(1) - Membership of the Traveller community, section 3(2)(i) - Supply of goods and services, section 5(1) - Provision of taxi service - Establishment of a prima facie case - - Section 15(1) of Act - Threat of disorderly conduct

#### **Dispute**

This dispute concerns a complaint by Mr Paddy Wall that he was discriminated against, contrary to Sections 3(1) and 3(2)(i) of the Equal Status Act 2000, by the staff of Wicklow Cabs on the grounds of his membership of the Traveller community. The complainant maintains that he was discriminated against in not being provided with a service which is generally available to the public, contrary to Section 5(1) of the Act.

#### **Background**

The complainant maintains that a staff member of Wicklow Cabs refused to order a taxi for him on 29 April 2001, because he was a member of the Traveller community and accused him of causing trouble in the office earlier that evening.

The respondents maintain that the sole reason for service being refused was because the staff member identified the complainant as having caused trouble on the premises earlier that same evening. The respondents claim that no discriminatory treatment was involved.

#### **Decision**

The Equality Officer formed the view that the staff member, who had witnessed an earlier violent incident in the office involving Travellers, falsely accused the complainant of having been involved in that incident, on recognising him as a Traveller. The Equality Officer found that it was on that basis that she refused to provide a taxi service to the complainant.

While finding that discrimination had occurred, the Equality Officer noted that, following the refusal of service, the complainant acted in a violent and threatening manner. While accepting that the

complainant was probably naturally frustrated, the Equality Officer found that this form of conduct could not be condoned.

Accordingly, the Equality Officer decided that 50 Euros was an appropriate amount of compensation in this case and ordered that the respondent pay the complainant that amount.

## **Equal Status Act 2000**

**DEC S2002-001**

**Mr Paddy Wall**

**v**

**Chesterock Enterprises Ltd  
t/a Wicklow Cabs**

### **1. Dispute**

1.1 This dispute concerns a complaint by Mr Paddy Wall that he was discriminated against, contrary to Sections 3(1) and 3(2)(i) of the Equal Status Act 2000, by the staff of Wicklow Cabs on the grounds of his membership of the Traveller community.

The complainant maintains that he 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 the Complainant's Case**

The complainant maintains that, on entering the premises of Wicklow Cabs to hire a cab for himself and his parents on the night of Sunday 29 April 2001, a female staff member accused him of causing trouble earlier and refused to arrange transport for him. The complainant states that the woman indicated to a driver who was present that she was leaving if he gave "those people" a lift. The complainant maintains that the woman's actions constituted discrimination against him because he was a member of the Traveller community.

### **3. Summary of Respondent's Case**

The respondents maintain that the complainant were treated no differently than any other customer would have been treated in a similar situation and that the sole reason for service being refused was because the complainant caused trouble earlier on the premises. The respondents claim that no discriminatory treatment was involved.

## **4 Preliminary Matter**

**4.1** The Hearing of this case was held on 29 November 2001. The complainant was in attendance and was represented by Augustus Cullen and Sons, Solicitors. On the respondent's side, Mr William Beale, a former driver for Wicklow Cabs and now a director of the newly-formed Wicklow Cabs Ltd, appeared as an interested party.

At the beginning of the Hearing, a preliminary matter needed to be addressed regarding the serving of the required notification under section 21 of the Equal Status Act. The complainant's solicitor explained, that following the alleged act of discrimination, a check was made to establish who owned Wicklow Cabs and, from Company Office records, it was found to be Chesterock Enterprises Ltd.

The form ODEI 5 was then sent to Chesterock Enterprises Ltd, c/o Wicklow Cabs, Church Street, Wicklow within the two months time limit specified under the Act. On failing to receive a response to the notification, the complainants lodged a complaint with the Office of the Director of Equality Investigations.

**4.2** On receipt of the complaint, the Equality Officer wrote to Chesterock Enterprises Ltd asking for their observations in the matter. Mr Paul Davitt replied stating that, while he was the company secretary of Chesterock Enterprises, he was no longer involved with Wicklow Cabs. Mr Davitt stated that Wicklow Cabs was now operating as a cooperative and he suggested that all future correspondence should be addressed to Mr William Beale.

This response from Mr Davitt raised the question as to whether the required notification had been correctly served. Subsequent enquiries by the Equality Officer revealed that the notification form and all post from the Equality Officer addressed to Chesterock Enterprises Ltd, had been passed unopened to Mr Davitt. As a result, it would appear that Mr Beale was unaware that a complaint had been lodged against Wicklow Cabs until this Office forwarded him copies of all relevant documentation on 7 September 2001. Therefore, if Mr Beale was the proper respondent, as stated by Mr Davitt, then a doubt existed as to whether the complainant, in sending the notification to Chesterock Enterprises Ltd, had properly complied with the provisions of section 21 of the Act.

**4.3** This matter, therefore, needed to be dealt with as a preliminary issue at the Hearing and the following is what emerged:

Mr Beale explained that he was currently one of three directors of Wicklow Cabs Ltd, which was only registered as a company in August 2001. Prior to that, Mr Beale stated that he was one of ten self-employed hackney drivers, who paid Wicklow Cabs a weekly "base fee" for their services. In return for this fee, Wicklow Cabs would notify the drivers whenever a customer contacted the Office to seek transport.

Before taking over the business himself, Mr Beale explained that Wicklow Cabs was used as a Trade Name by Chesterock Enterprises Ltd, whose company secretary was Mr Paul Davitt. Mr Beale explained that early in 2001, he and a few other drivers approached Mr Davitt with a view to

taking over Wicklow Cabs and running it as a cooperative. He said that agreement was reached in early 2001 on the transfer of Wicklow Cabs to Mr Beale and two others but that the deal was not finalised until August 2001. Mr Beale subsequently submitted documentation from the Companies Office showing that Wicklow Cabs Limited was only incorporated on 22 August 2001.

**4.4** Mr Beale, therefore, claims that he only assumed responsibility for Wicklow Cabs from August 2001 and that, prior to that, Mr Davitt was responsible for the company. In the circumstances, Mr Beale states that Mr Davitt should be regarded as the respondent in this case.

**4.5** On the basis of the evidence produced, I am satisfied that Chesterock Enterprises Ltd is the true respondent and that the notification procedure was properly followed in this case.

## **5 Evidence of Complainant**

- Mr Wall's parents regularly visit Wicklow Town at weekends for a drink with friends and Mr Wall, who states that he is a non-drinker, usually follows them later in the evening to meet them and arrange a taxi home.
- At the end of the evening, he states that he would usually call into the office of East County Cabs or Wicklow Cabs in the town and order a cab for himself and his parents. He stated that he has used East County Cabs more often than Wicklow Cabs over the past year.
- On the night of 29 April, he says that he got a lift from Rathnew at around 11.30 pm and spent 30 minutes with his parents and two non-Traveller friends in a local pub before the group left to get a cab.
- He says that the group then called into Wicklow Cabs where a woman was serving behind the counter. He states that he had never met this woman before in the office but recalled seeing her on a few occasions when he was passing-by the office during the day-time. On those occasions he said that he felt that she was "staring" at him in an unapproving manner.
- Mr Wall described how he felt "uncomfortable" when he saw the woman in the office on 29 April as he felt, from the manner in which she usually looked at him, that she had already developed a dislike for him and he feared that she wouldn't get him a cab.
- Mr Wall stated that when he asked her for a cab, she immediately refused him, claiming that he had been in the office earlier with two other Travellers and had started a fight with a young man who was sitting quietly in the office, waiting for a cab to take him home. Despite his protests, he said that the woman was adamant that he was the leader of the group of Travellers who had attacked the other customer and she refused to get a cab for him.
- Mr Wall said that he then referred to the video camera in the office and stated that the tape would prove that it was not him that caused the trouble. He said that the woman would not listen to his request that the video-tape be examined.

- Mr Wall said that he accused the woman of discriminating against him because he was a Traveller. He said that he also claimed that this was the sole reason she was refusing him and not because he was one of the Travellers who had caused trouble earlier.
- The complainant recalls that Mr William Beale, who was a cab driver at the time, entered the office around that time and offered to take the group home. However, at that point, Mr Wall states that the woman stated to Mr Beale "If you give those people a lift, I'm walking". Mr Wall took this to mean that she would resign her job if he gave the group a lift. Mr Wall described how his mother leaned over the counter towards the girl to make the point that Mr Wall had been with her earlier in the pub and could not have been in the office, as was claimed.
- Mr Wall stated that he felt very frustrated over the whole situation and admitted that he thumped the office wall out of frustration.
- As evidence that he had not been involved in the earlier trouble in the shop, Mr Wall referred to an incident a few nights later. He said that when he was describing the incident in Wicklow Cabs to other Traveller acquaintances, they responded by admitting that it was them and another settled person who assaulted the young man in Wicklow Cabs. Mr Wall provided a description of these two men and maintained that, under no circumstances, could anyone have mistaken him for either of them. This he said proved that the woman had refused him service because he was a Traveller and not because she recognised him from having caused trouble earlier.
- Mr Wall stated that he then asked for the Gardai to be called, and after some discussion with them, the Gardai provided his group with a lift home.

## **6 Evidence of Respondents**

- Mr Beale stated that the woman in question no longer worked in the office. He said that she gave up the job that night because of the two incidents that had occurred. Prior to that night she had worked a few nights per week, for 6 or 7 months, in Wicklow Cabs as an employee of Chesterock Enterprises Ltd. Mr Beale said that he had not tried to contact the woman with a view to her appearing as a witness as, he said, she was Chesterock Enterprises Ltd employee at the time.
- Mr Beale described how a commotion was going on when he arrived in the office on 29 April. He said that he immediately recognised the Walls but their two friends were unknown to him. He recalls the woman telling him that she had refused to provide a taxi for the group on account of the fact that Mr Wall had started a row earlier in the office. He said that the woman appeared convinced that Mr Wall was the person responsible for the earlier incident. Mr Beale stated that when he offered to take the group home, she informed him that if he did, she "was walking".
- Mr Beale recalls that Mrs Wall started arguing with the woman and tried to reach across the counter at her. He states that the complainant had to pull his mother away and then thumped the office wall four times.



- With regard to the video camera, Mr Beale stated that the camera wasn't functional and was there only as a deterrent.
- Mr Beale stated that he felt threatened by the other male member of the group who he did not recognise and decided to call the Gardai himself. When the Gardai arrived, Mr Beale says that they calmed the situation down and brought the Wall family home.
- Mr Beale stated that this incident had not affected his relationship with the Wall family and that he had carried the Walls in his cab on many occasions since 29 April 2000. Mr Wall confirmed that this was the case.

## **7 Matters for Consideration**

**7.1** 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. Section 3(2)(i) of the Act specifies the Traveller community ground as one of the grounds covered by the Act.

In this particular instance, the complainant claims that he was discriminated against on the grounds of his membership of the Traveller community contrary to Sections 3(1) and 3(2)(i) of the Equal Status Act, 2000 in being denied service by Wicklow Cabs on 29 April 2000.

**7.2** In cases such as this, the burden of proof lies with the complainant who is required to demonstrate that a prima facie case of discrimination exists. If established, the burden of proof then shifts to the respondent who, in order to successfully defend his case, must show that his actions were driven by factors which were non-discriminatory.

## **8 Conclusions of the Equality Officer**

**8.2** At the outset, I must first consider whether the existence of a prima facie case has been established by the complainant.

There are three key elements which need to be established to show that a prima facie case exists. These are:

- (a) Membership of a discriminatory ground (e.g. the Traveller community ground)
- (b) Evidence of specific treatment by the respondent
- (c) Evidence that the treatment received by the complainant was less favourable than the treatment someone, not covered by that ground, would have received in similar circumstances.

If and when those elements are established, the burden of proof shifts, meaning that the difference in treatment is assumed to be discriminatory on the relevant ground. In such cases the claimant does not need to prove that there is a link between the difference and the membership of the ground, instead the respondent has to prove that there is not.

**8.3** With regard to (a) above, the complainant has satisfied me that he is a member of the Traveller community. With regard to (b) above, there is no dispute that the complainant was refused service by Wicklow Cabs on 29 April 2001. Therefore, in order to decide whether a prima facie case has been established, I must have regard to (c) above and decide whether a non-Traveller would have been treated differently *in similar circumstances*.

**8.4** The respondents argument in this case is that the woman behind the counter, whom I shall refer to as Ms X, witnessed an unprovoked assault on a customer in the Wicklow Cabs office earlier that same evening. Mr Beale reported that Ms X had informed him that Travellers had carried out the assault. This fact was confirmed at the Hearing by the complainant who stated that he had met two of the assailants, who were Travellers, a few days later who confirmed their involvement in the incident to him.

**8.5** For a respondent to effectively defend himself against an allegation of discrimination, it is essential that he takes every opportunity afforded him to present his case. It is, therefore, in a respondent's own interests to respond to a request for observations from the Equality Officer, to avail of the opportunity to appear at the Hearing and to ensure that relevant witnesses also appear at the Hearing to give evidence. Failure to do any or all of the above, can result in the respondent's case not being fully represented to the Equality Officer.

**8.6** A significant factor in this particular case is the conspicuous lack of a key witness. In the absence of Ms X herself, I must rely on the testimony of Mr Beale and Mr Wall regarding Ms X's demeanour and conduct on the night.

Having considered the evidence of both these individuals, I have formed the impression that the earlier incident which Ms X witnessed had a very upsetting effect on her. She had witnessed a group of men, whom she recognised as Travellers, assaulting a young man in her office. The fact that she resigned from her job following the incidents that night, leads me to believe that she was probably very badly shaken by the earlier incident, which it seems was the more violent of the two.

**8.7** I have, therefore, formed the view that Ms X was probably still very upset and confused when Mr Wall and his party arrived on the premises and, on recognising them as Travellers, I believe that she mistakenly associated Mr Wall with the earlier assailants. I consider that she then immediately feared for her own and her other customers safety, and took what she believed was appropriate action in refusing service to Mr Wall.

This line of thought is borne out by Mr Wall's own testimony that Ms X, as soon as he arrived on the premises, immediately accused him of being involved in the earlier incident and, according to Mr Wall, was adamant that he had personally instigated the assault on the young man.

This view is also supported by Mr Beale who says that, when he called into the office that night and spoke with Ms X, that he was left in no doubt that Ms X was certain that Mr Wall had been involved in the earlier incident.

**8.8** For a prima facie case to be established, however, I must consider whether I believe that Ms X would have taken a similar stance with Mr Wall if she had not recognised him as a Traveller on the night.

From the evidence before me, I have reached the conclusion that the situation would have been different on the night if Mr Wall and his party had not been recognised as Travellers. Although Ms X may have been badly shaken by the earlier incident, there is no evidence to indicate that this had affected her ability to carry out her job between the earlier incident and the time Mr Wall arrived. In fact, Mr Beale's own evidence indicated that Ms X dealt with several requests in the normal fashion that evening without accusing any other customer of having been the instigator of the earlier incident. The evidence is that it was only when Mr Wall came in that she made the accusation and refused service.

**8.9** I, therefore, must consider why Ms X accused Mr Wall of having been involved in the earlier incident. Was it because he was the actual assailant or resembled the actual assailant or, alternatively, was it because he was a Traveller and Ms X had identified Travellers as having carried out the earlier assault ?

From the evidence before me, I am satisfied that Mr Wall was not involved in the earlier assault or that he resembled any of the other Traveller assailants. I also have no evidence to indicate that Mr Wall had previously been involved in any other incident of a violent nature.

I can only conclude, therefore, that Ms X recognised Mr Wall as a Traveller and, because she had also recognised the earlier assailants as Travellers, she associated Mr Wall with the others and accused him of having caused the earlier trouble. In my view, this situation would not have arisen with non-Travellers, where Ms X had identified non-Travellers as having been involved in the earlier incident.

**8.10** I, therefore find that Mr Wall was accused of the earlier incident simply because he was a Traveller, whereas non-Travellers were not subjected to the same accusations, and I consider that the subsequent refusal of service constitutes discrimination under the Equal Status Act 2000.

I, therefore, find that the complainant has established a prima facie case of discrimination and that the respondents have failed to rebut this allegation.

## **9 Decision**

**9.1** Section 15(1) of the Equal Status Act 2000 provides that nothing in the Act prohibiting discrimination, shall be construed as requiring a person to provide services to another person in circumstances which would lead a reasonable individual, having the responsibility, knowledge and experience of the person, to the belief, on grounds other than discriminatory grounds, that the provision of services to the customer **would produce a substantial risk of criminal or disorderly conduct or behaviour or damage to property** at or in the vicinity of the place in which the services are sought.

**9.2 It is my opinion, therefore, that under section 15(1) of the Equal Status Act 2000, a Taxi company or Taxi driver is perfectly entitled to refuse to carry any client if it has a reasonable belief that doing so would produce a substantial risk of violent or disorderly conduct.**

This is not, however, the situation in this case. From the evidence before me, I consider that Ms X was seriously affected by the earlier incident resulting in her not being able to carry out her duties as effectively as she would normally do. As a result, I am of the view that Ms X acted unreasonably in accusing Mr Wall of having been involved in the earlier incident.

I cannot accept, therefore, that a reasonable person in Ms X's situation, even with the experience of the earlier assault, would have confused two people who, on the evidence presented, do not look alike, in the context of a serious matter like a criminal assault, simply because both were Travellers.

**9.3** I find, therefore, that the complainant has established a prima facie case of discrimination and that the complainant was discriminated against on the Traveller community ground in terms of sections 3(1) and 3(2)(i) of the Equal Status Act 2000.

**9.4** In considering what level of redress is appropriate in this case, I am very conscious of the unusual circumstances of the case. The evidence before me suggests that this was an isolated and very specific incident. While the claimant feels that the woman may have had a generally discriminatory attitude to him on previous occasions, there is no evidence of any unlawful discrimination on other occasions and it seems clear from Mr Beale's evidence that the company did not operate any discriminatory policy and served the complainant both before and after the night of the incident.

**9.5** I am also mindful of the fact that the complainant and other members of his family have admitted to acting in a violent and threatening manner on the premises of Wicklow Cabs following the refusal.

While I accept that frustration is natural if someone experiences treatment which they consider to be unreasonable discrimination, protests of a violent or threatening nature cannot be condoned in such situations. While it is very natural to feel angry and frustrated by what may be cumulative experiences of unfair discrimination over many years, I consider that it is incumbent on the complainants to behave calmly and try and resolve the issue and, if necessary, rely on legal redress rather than to become violent and aggressive.

**9.6** I cannot, therefore, accept that a complainant, who has engaged in violent and threatening behaviour on foot of an alleged act of discrimination, is entitled to the same level of redress as a person who has acted in a dignified manner when confronted with a similar situation. To condone such activity, could be interpreted as providing potential complainants with a carte-blanche to act in an unlawful manner, on foot of an alleged act of discrimination.

I am not, therefore, prepared to condone a situation such as that which occurred on 29 April 2001, by awarding a significant level of compensation to someone who openly behaved in a violent and threatening manner on suspecting that he was being discriminated against.

**9.7** I, therefore, order that the complainant be paid the sum of 50 Euros for the discrimination suffered on 29 April 2001.

**Brian O'Byrne**  
**Equality Officer**  
**31 January 2002**