

Equal Status Act 2000

Equality Officer Decision

DEC-S2001-023

Mr. Dan Griffin

(Represented by Augustus Cullen & Sons
Solicitors)

V

Mary B. Public House

(Represented by Sherry Solicitors)

File Ref

ES-2001-16

Date Of Issue

20/12/2001

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v.

Mary B. Public House .
(represented by Sherry Solicitors)

Headnotes

Equal Status Act, 2000 - Date of discrimination - Direct discrimination, section 3(1) - Membership of the Traveller community, section 3(2)(i) - Victimisation ground, section 3(2)(j) - Supply of goods and services, section 5(1) - Service in pubs - Risk of criminal and disorderly conduct, section 15(1) - Action taken in good faith, section 15(2)

Background

This dispute concerns a claim by Mr. Dan Griffin that he was discriminated against by the Mary B. Public House contrary to the Equal Status Act, 2000, on the grounds that he is a member of the Traveller Community. The complainant alleges that the respondent discriminated against him in terms of Section 3(1)(a), and 3(2)(i) in that he was not provided with a service which is generally available to the public, contrary to Section 5(1) of the Act. He also alleges that he was discriminated against contrary to Section 3(2)(j) of the Equal Status Act, 2000, in that he was victimised for taking a complaint under the Act.

The respondent submitted firstly that the incident of alleged discrimination took place before the Act came into operation on 25 October, 2000. Secondly he denied that the complainant was discriminated against and submitted that he was entitled to bar him as he associated with another group of Travellers, which made it impossible for him to run an orderly house, and which was in breach of the rules of the pub.

Conclusions of the Equality Officer

The Equality Officer found that the complainant established a prima facie case of discrimination. The Equality Officer also found that there was no evidence, to substantiate the claim by the respondent, that by serving the complainant there was a substantial risk of criminal or disorderly conduct or behaviour, and concluded that the respondent's actions by imposing an indefinite bar on the complainant from service in the pub constituted discrimination on the grounds of membership of the Traveller community. The Equality Officer also found that the complainant was victimised by the respondent for making a complaint of discrimination under the Act

Decision

The Equality Officer concluded that the respondent discriminated against the complainant on the grounds of his membership of the Traveller community and awarded him £2,000 (2,539 Euro) compensation and victimised him for applying for a determination under the Act and awarded him £1,500 (1905 Euro)

1 Dispute

1.1 This dispute concerns a claim by Mr. Dan Griffin that he was discriminated against by the Mary B. Public House contrary to the Equal Status Act, 2000, on the grounds that he is a member of the Traveller Community. The complainant alleges that the respondent discriminated against him in terms of Section 3(1)(a), and 3(2)(i) and 3(2)(j) of the Equal Status Act, 2000,

2 Background

2.1 The complainant, Mr. Dan Griffin alleges that he was discriminated against by the Mary B. contrary to the Equal Status Act, 2000 when he was refused service and barred by the respondent. He contends this occurred because he is a member of the Traveller community

2.2 The respondent submitted firstly that the incident of alleged discrimination took place before the Act came into operation on 25 October, 2000. Secondly he denied that the complainant was discriminated against and submitted that he was entitled to bar him as he associated with another group of Travellers, which made it impossible for him to run an orderly house, and which was in breach of the rules of the pub.

4 Summary of the complainant's Case

The complainant case is that he is a member of the Traveller community living in Wicklow and was a regular customer (about 2 nights per week) in the respondent's pub in Arklow from May/June 2000 until November, 2000.

The complainant gave the following evidence:

- In late October/early November, 2000 he went into the pub in the company of Mr. Michael O'Connor, his brother-in-law, and his wife's two uncles and was refused service.

- He spoke to the proprietor, Mr. McGuinness outside the door to find out the reason for the refusal and was told there were too many Travellers in the pub.
- Mr. McGuinness then changed his mind and told him he was welcome to come back into the pub, but if any more Travellers arrived he would refuse to serve them and they would have to leave.
- The complainant and his friends went back into the pub and were served.
- About an hour and a half later more Travellers came in. Mr. McGuinness then approached the complainant and his companions and said that he would have to stop serving them because more Travellers came into the pub.
- The complainant protested that the other Travellers were not in his company and he only knew one of them.
- He contended that they were hassled about 2 or 3 times by Mr. McGuinness and told they would have to keep the rules of the pub,
- he left before closing time because of the hassle.
- He said as far as he could see he was not breaking any rules if other Travellers came in it had nothing to do with him. As far as he knew there were 4 or 5 other Travellers in the pub but his group did not join them.
- He said that they were many groups of about 6 to 7 people who were non Travellers served without any hassle.
- The complainant visited the pub on his own the following day and he was refused service by the barman. The barman told him that it was the boss's orders to refuse him service.
- The complainant said that he couldn't understand why he was refused as he had never been drunk or disorderly on the premises.
- In November, 2000 he visited Mr McGuinness in the off license and asked him why he would no longer serve him in the bar. He said that Mr McGuinness told him that there were too many Travellers in the bar, it was fine to serve him if there were only 2 to 3 Travellers, but 6 or 7 was too many in the pub.
- The complainant sent a notification in writing of his complaint of discrimination to the respondent on 24 November, 2000 and the respondent replied in writing stating

that because of the complaint the complainant would be no longer welcome in the premises.

5 Summary of the Respondent's case

5.1 The respondent submitted that he disputes that the complainant was discriminated against and in any event any acts of discrimination alleged by the complainant occurred before the 25 October, 2000 and the date the Equal Status Act, 2000 came into operation.

He stated the following to support his case:

- the complainant was a regular in the pub from June, 2000 until the end of October, 2000.
- He caused no problem on the premises and that he always found Mr. Griffin to be a gentleman. However on several occasions he told him he didn't want large groups of Travellers congregating in the pub. He warned him to abide by the rules or if he didn't it would be "the straw which broke the camel's back."
- He said that he could not recall the night in late October early November, 2000 referred to by the complainant in his evidence. He said that he was on holidays from 22 October until 3 November and was not on duty on 4 November.
- He said that he can recollect a specific night sometime in early October 2000, when a large group of about 10 to 12 people gathered in the pub, some played pool and did not pay for it, another got sick and some were aggressive. The respondent said that the group were Travellers
- He was unsure if the complainant was with this group on the night in early October, 2000, or if he was in the pub.
- He said that the complainant associates with group. He was very anxious while the group were in the pub but they all left peacefully.
- He decided he would not serve that group in the future after that night. He didn't tell them on the night as he would never do that as a matter of form.
- He thought that the incident on the night in late October early November, 2000, referred to by the complainant in his evidence, occurred around June, 2000, the time he first met the

complainant. The complainant entered the pub with 2 uncles. Mr. McGuinness refused to serve them because he considered they had drink taken. He said that he knew they were Travellers. They left the pub disgruntled and he followed them out and after speaking to them he considered they had not much drink taken and he invited them back in. He told them that they were welcome in the pub provided they stayed in a small group. He stated he didn't say this to them because they were Travellers but because he does not like large groups on the premises.

- After Mr. McGuinness's holidays in early November 2000, the complainant came into the off licence. He asked why he had not been served in the pub, he complained about discrimination because he is a Traveller and said he was going to take it further. Mr. McGuinness said that he told the complainant he would not be served in future in the pub because he was part of that large group of Travellers who had caused trouble in October.
 - The respondent stated that the Travellers tended to come into the pub in groups of 3 to 4 people and they would then all associate together. He said that he still serves Travellers in the pub but he will not serve large groups. He makes exceptions on occasions and had a Traveller wedding in the pub in the recent past.
 - The pub was associated with a football club and he stopped sponsoring them because he was not happy with the members behaviour in the pub. He said that horseplay occurs with large groups. He does not allow stag or hen parties. The football group have not been barred and continue to drink in the pub in smaller groups. He will serve these customers individually but not as part of a large group.
 - He would not serve the Traveller group again as they have been barred individually including the complainant because of their behaviour.
 - Mr. McGuinness agreed that there was usually a large group of people in the pub on a Saturday night as it is busy. He said that if he knows the groups he is dealing with there is unlikely to be a breach of security.
 - In all the respondent said that he has about 200 people barred from his pub, but he has not got a greater percentage of Travellers barred than settled people. He usually bars people who misbehave. When he bars someone they are barred for

life. He has made exceptions to this rule and allowed people back in including one Traveller.

- Mr. McGuinness said that he was angry and upset over being accused of discrimination. In response to the complainant's notification to him of the complaint he responded by letter telling him he was refused service because he was in a party of 12 people which made it impossible for him to run an orderly house and this was the reason he was refused service subsequently. He also informed him that in view of the outrageous allegations he would no longer be welcome on the premises.

6 Rebuttal by the complainant of the respondent's case

- 6.1** The complainant, in relation to the date of discrimination, said that the alleged discriminatory acts occurred in late October, 2000 or early November as a result of which he was refused service. He said that he went to Tipperary on 23 October, 2000 and returned about 9 days later and on the Friday or Saturday following his return he went to the pub with his brother-in-law Mr. Michael O'Connor and his wife's 2 uncles. It was either 3 or 4 November and he alleges it was on this occasion he was at first refused service by Mr. McGuinness, then allowed service on condition that no more Travellers came into the pub. Mr. O'Connor gave evidence that this incident of alleged discrimination occurred around Halloween.

The complainant said that he went into the bar on the Sunday morning following the above incident in late October or early November and was refused service. The barman told him that said he had orders not to serve him and he got his orders from the boss.

The complainant denied that he drinks in large groups. He said that normally he was with his brother-in-law Mr. Michael O'Connor or in a small group of 3 to 4 people. He knew only one other Traveller in the pub on the night in October or early November. He lives in Wicklow and does not know many Travellers in Arklow

where the respondent's pub is situated. He said that when other Travellers came into the pub Mr McGuinness did not like it and he tended to hassle him.

7 Conclusions of the Equality Officer

- 7.1** The date that the alleged act of discrimination is in dispute between the parties. Therefore the first matter for decision is the date on which the alleged discrimination occurred. The Equal Status Act, 2000 came into operation on the 25 October, 2000 and only applies to alleged discriminatory treatment occurring on or after that date.

There was conflicting evidence in relation to the dates, but I find that the complainants

recollection of the precise dates of the acts of alleged discrimination in October/early November, 2000 to be unreliable. On the complainants own recollection the incident to which he referred in his evidence at the end of October or early November could not have taken place on the last Friday or Saturday in October, 2000 as the complainant was in Carrick-on-Suir and the respondent was on holidays. Neither could it have taken place on either the 3rd or 4th of November as the respondent was on holidays and the respondent was present in the pub when a group of 10 to 12 Travellers misbehaved. I find on the facts that all the incidents of alleged discriminatory treatment occurred before the Act came into operation on 25 October, 2000 except for the following two incidents:

(i) the conversation between the complainant and the respondent in the off-licence in November, and

(ii) the undated letter, subsequent to 24 November, 2000, by the respondent

to

the complainant in response to his notification of the complaint of discrimination.

I find therefore that I have jurisdiction to hear the case.

- 7.2** I would like to point out that any acts of alleged discriminatory treatment occurring

before 25 October, 2000 were not unlawful. However I can examine incidents which occurred before that date in the context of deciding whether the treatment of the complainant after the Act came into operation amounted to unlawful discrimination prohibited by the Equal Status Act, 2000.

7.3 The matter referred for investigation turns upon whether or not the complainant was directly discriminated against contrary to Section 3(1)(a), 3(2)(i) and 3(2)(j) of the Equal Status Act and in terms of Section 5 (1) of that Act. In reaching my decision I have taken into account all the submissions, both oral and written, made to me by the parties in the course of my investigation into the complaint.

Section 3(1)(a) provides, inter alia, that discrimination shall be taken to occur where:

On any of the grounds specified... (in this case the Traveller community ground).... A person is treated less favourably than another person is, has been or would be treated. Section 3(2)(i) provides that: As between any two persons, the discriminatory grounds ... are ...

that one is a member of the Traveller community and the other is not.

I am satisfied that the complainant is a Traveller as defined by the Act and that the respondent knew the complainant as a Traveller

7.4 A person making an allegation of discrimination under the Equal Status Act, 2000 must first demonstrate that a *prima facie* case of discrimination exists. Prima facie evidence has been described by an Equality Officer as:

“Evidence which in the absence of any convincing contradicting evidence by the employer would lead any reasonable person to conclude that discrimination had probably occurred.”¹

Once a prima facie case of discrimination has been established by the complainant, the burden of proof then shifts to the respondent to rebut the presumption of discrimination.

The Northern Ireland Court of Appeal, in an employment discrimination case, stated that:

¹ Dublin Corporation v. Gibney EE5/1986

“Once the evidential burden has shifted, the question then is whether there is any evidence to justify the conclusion that the evidential burden has been discharged by the respondent.”²

In more recent employment discrimination cases the Labour Court has applied the test and stated:

“The first question the Court has to decide is whether the claimant has established a prima facie case of discrimination”³

And in another case stated:

“...the claimant must first prove as a fact one or more of the assertions on which her complaint of discrimination is based. A prima facie case of discrimination can only arise if the claimant succeeds in discharging that evidential burden. If she does, the respondent must prove that she was not discriminated against on grounds of her sex. If she does not, her case cannot succeed.”⁴

7.5 The complainant claims that he was discriminated against on the Traveller community ground when he was refused service and barred by the respondent. The respondent’s case is that the complainant was not entitled to service because he was part of a large group of Travellers who misbehaved on the premises. I have identified the three key issues for decision as follows:

-in what circumstances was the complainant refused service by the respondent in November, 2000

-whether this amounted to being treated, because he is a Traveller, less favourably than a person who is not a Traveller would have been treated in the same circumstances.

- was the complainant penalised for making a complaint under the Equal Status Act, 2000?

7.6 I am now going to examine the first two issues I have identified above and consider whether the complainant has established a *prima facie* case. I have dealt with the third issue identified at **No. 8** below. The first question I am going to consider is why Mr. McGuinness told the complainant in circa mid November, 2000 he was no longer going to serve him in his public house. The respondents case is that he was entitled to refuse to serve him as he was barred because he was part of a large group of Travellers who misbehaved on his

² Wallace v. South Eastern Education and Library Board (NI Court of Appeal) 1980 IRLR 193

³ The Rotunda Hospital v. Noreen Gleeson DEE003/2000

⁴ Dr. Teresa Mitchell v. Southern Health Board (Cork University Hospital) DEE011

premises in early October, 2000. The complainant denied he was part of a large group of Travellers in the pub on the night referred to by the respondent in early October. He agreed he was in the pub and said he only knew one other Traveller in the pub on that occasion apart from the three Travellers in his company. Mr Michael O'Connor who was with the complainant supported the complainant's version of the events. I note that during the course of the hearing Mr. McGuinness said that he was unsure if the complainant was with the group or even if he was in the bar on that particular night in early October, 2000, following which he took the decision to bar all the group including the complainant. He said that the complainant tends to congregate with groups and that he had warned him on a number of occasions he was breaking the rules of the pub.

I note that the respondent did not produce any evidence he warned other groups of non Traveller customers that they were breaking the rules of the pub by associating with other non Travellers. The respondent said that he barred a group of non Traveller customers collectively because they were boisterous but he did not barred them individually and they continue to drink in the pub. I note that the respondent has not submitted anything other than a satisfactory report in relation to the complainant's behaviour in the pub and that he has not produced any evidence to support his contention that it was reasonable for him to bar the complainant because he associated with other Travellers in the pub. I find that the complainant was barred from the premises because the respondent believed he associated with a group of other Travellers who came into the pub. The fact that the complainant was barred from the pub for associating with a group of Travellers, in circumstances where the respondent was unsure whether he was present or not, whereas non Traveller customers in similar circumstances were not barred, in my opinion raises a strong inference of discrimination. For the foregoing reasons I find therefore, that the complainant has established a prima facie case of discrimination. As I have stated above once a prima facie has been established the burden of proof falls to the respondent to rebut the presumption of discrimination.

7.7 In deciding whether the respondent was justified in making the decision to refuse service to the complainant in November, 2000 I have looked at the relationship between the complainant and respondent prior to 25 October, 2000. The respondent's evidence is that

he never had any trouble with the complainant and that he always behaved himself when he was on the premises and he regarded him as a gentleman. However, he said that he had to warn him on a number of occasions about breaking the rules i.e. associating with other Travellers who came into the premises. The complainant said that he had a good relationship with Mr. McGuinness but when other Travellers came in Mr. McGuinness hassled him, but he had no control over whether other Travellers came into the premises.

It was accepted that the complainant was barred from the pub and the respondent evidence was that he took the decision following an incident in October 2000. I am going to examine this incident to see if the respondent was justified in barring him. The respondent stated that a large group of Travellers 10 - 12 people congregated on his premises and that they misbehaved. He said that he bars people who misbehave as he is obliged to run an orderly pub. He also said that he was unsure if the complainant was with the group on the night in question but he associates him with that group. He barred this group individually and collectively and because the complainant associated with this group he was also barred. The complainant accepted that he was in the pub together with three other Traveller relations. He denies he was in the company of a large Traveller group or that he associated with the group who misbehaved. The respondent has given no other reason for barring the complaint apart from saying he associates with other Travellers and by doing so he has broken the rules of the pub. The respondent has provided no evidence that he bars non Travellers customers in similar circumstances. He did say he barred a non Traveller football group collectively because they were boisterous but they continue to drink in the pub individually. During the hearing the respondent stated that if he knows the group he is dealing with he knows that it is not likely that there will be a breach of security. The respondent knew the complainant for a number of months and he has provided no evidence that he was responsible for, or likely to be involved in any breach of security. To me the respondents treatment of the complainant in the off-licence in November, 2000 and his decision to bar him indefinitely from his pub constituted discriminatory treatment and demonstrates that held a prejudicial attitude towards Travellers. I find that the respondent has not discharged the burden of proof to rebut the inference of discrimination raised by the complainant. I find on the balance of probabilities that the respondent treated the

complainant less favourably on the Traveller community ground than non Travellers in November, 2000 when he told him he would be no longer served and that he did unlawfully discriminate against him on that occasion.

7.8 It was submitted on the respondents behalf that it was reasonable for the respondent to take into account the complainants behaviour in accordance with Section 15(1) of the Equal Status Act, 2000. He submitted that Section 15(1) was an objective measure of the decision taken by the respondent. The respondent discourages large groups irrespective of who they are. He submitted that the respondent applied a fair and reasonable criteria, but the complainant by associating with other Traveller groups in the pub was in contravention of that rule, there was a risk of disorderly conduct or damage to property and the respondent was entitled to take the complainant's conduct into account under Section 15(1) of the Equal Status Act 2000. It was further submitted that the decision to bar the complainant was an act taken in *good faith* by the respondent in accordance with Section 15 (2) of the Act. The respondent representative further stated that as long as the respondent is acting reasonably or believes he is acting reasonably he is entitled to take the decision he took and that no discrimination could have occurred because he was acting in good faith. The respondent agreed that the complainant never caused any difficulty on the premises nor had he been involved in any rows there.

7.9 Section 15(1) of the Equal Status Act, 2000 Act, provides that: "*nothing in this Act prohibiting discrimination shall be construed as requiring a person to provide services in circumstances which would lead a reasonable individual having the responsibility, knowledge and experience of the person to the belief, on grounds other than the discriminatory grounds, that the provision of the 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.*"

To invoke this Section the respondent must show that there was a substantial risk of criminal or disorderly conduct or behaviour if the complainant was served. This is quite a heavy test and I am of the view that the respondent has not established that it was reasonable for him to hold such a view. This is because the complainant was well known to him, he was a

regular in the pub for a number of months and he has provided no evidence of any criminal or disorderly conduct engaged in by the complainant, in fact he has stated the complainant was of exemplary behaviour. In relation to the misbehaviour in the pub of a group of Travellers in October, as a result of which he was barred, the respondents evidence was that he was unable to say if the complainant was present. I find therefore that the respondent has not provided any evidence to justify his contention that by continuing to serve the complainant there was *a substantial risk of criminal or disorderly conduct or behaviour* or that he was entitled to refuse service to the complainant under Section 15(1) of the Equal Status Act.

7.10 The licensing laws requires publicans to keep an orderly house and Section 15 (2) provides that:

“Action taken in good faith by or on behalf of the holder of a licence or other authorisation which permits the sale of intoxicating liquor, for the sole purpose of ensuring compliance with the provisions of the Licensing Acts, 1833 to 1999, shall not constitute discrimination.”

This doesn't require a substantial degree of risk so the test under this Section is less severe but I am of the view that the respondent has not passed it in this case for a number of reasons. I have found above the complainant was barred from the respondent's pub because he is a Traveller. I cannot hold therefore that his action to refuse the complainant was taken in good faith. In order to take an action in good faith it has to be free from any discriminatory motivation and in this case, I am of the view that the fact the complainant was a member of the Traveller community had a major influence on the respondents decision to refuse refuse him service in the bar. In view of the respondents knowledge of the complainant and his personal experience of dealing with him and given that he had never caused any trouble on his premises, I am not satisfied therefore that the decision of the respondent to refuse service was taken in good faith.

8 Victimization

8.1 Following the notification to the complainant of the respondents decision to bar him

the complainant notified the respondent under Section 21 (2) (a) and (b) of the Equal Status Act, 2000 of his complaint of alleged discrimination. He used form ODEI 5 (a form prepared by this Office) to notify the respondent of his complaint. In response to this form to the complainant's solicitor the respondent stated:

“ In view of your outrages allegation that you have been the subject of an action of discrimination on my part you are hereby advised that you will no longer be welcome on my premises and you will not henceforth be served on my premises.”

The solicitor for the complainant submitted that the complainant was subject to victimisation when he was endeavouring to address discrimination. The respondent's representative submitted that the letter was intemperate and written in haste. The respondent stated that he was upset and angry to have been accused of discrimination. He said that he is an ex member of Amnesty and he abhors discrimination of any kind. He said that the letter was written in anger.

Section 3(1)(a) provides, inter alia, that discrimination shall be taken to occur where:

“On any of the grounds specified... (in this case victimisation ground)... A person is treated less favourably than another person is, has been or would be treated. Section 3(2)(j) provides that: that one

(i) has in good faith applied for any determination or redress provided for in Part 11 or 111,”

The complainant has clearly provided written evidence of the respondent's intention to penalise him for making a complaint in good faith under the Equal Status Act, 2000. The respondent said that the letter was written in anger but he made no attempt to withdraw it at any time to date.

I have considered the respondent's defence under Section 15(1) and 15(2) in the context of the victimisation complaint. For the reasons stated above at **7.8** and **7.9** I am not satisfied that Section 15(1) or 15(2) provides a defence to the victimisation claim. I find that the complainant has established a case of victimisation which the respondent has failed to rebut.

I also find that the application by the complainant for a determination and redress under the Act was made in *good faith*.

9 Decision

9.1 On the basis of the foregoing, I am satisfied that the respondent has failed to rebut the complainant's claims of discrimination and victimisation. I find on the balance of probability that the complainant was unlawfully discriminated against contrary to the provisions of Section 3(1) and 3(2)(i) and 3(2)(j)(i) of the Equal Status Act and in terms of section 5(1) of that Act.

9.2 Under section 27(1) of the Equal Status Act, 2000 redress may be ordered where a finding is in favour of the complainant. Section 27(1) provides that:

“the types of redress for which a decision of the Director under section 25 may provide are either or both of the following as may be appropriate in the circumstances:

(a) an order for compensation for the effects of the discrimination;

or

(b) an order that a person or persons specified in the order take a course of action which is so specified.”

Under the above Section the maximum amount of compensation I can award is £5,000 (6,349 euro). I order Mr. Brendan McGuinness, Mary B Public House, to pay to the complainant, Mr. Dan Griffin, the sum of £2,000 (2,539 euro) to compensate him for the effects of the discriminatory treatment under Section 3(2)(i) and the sum of £1,500 (1,905 Euro) for penalising him for applying for a determination for redress under Section 3(2)(j)(i) of the Act.

I also order Mr McGuinness to put in place a clear and transparent code of practice which should apply to all customers. The code should include the rules which apply to all customers seeking service, the code of behaviour expected from customers and the redress

which may apply in the event of a breach. All the staff and customers should be informed in an appropriate manner of the contents of the code.

Marian Duffy

Equality Officer

December, 2001