

Equal Status Act 2000
Equality Officer Decision

DEC-S2001-017

**Mr. Patrick Wall
Mrs. Margaret Wall
Mr. John O'Brien
& Mrs. Carmel O'Brien**

V

The Green Isle Hotel

File Ref *ES/2001/57-60*

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OFFICE OF THE DIRECTOR OF EQUALITY INVESTIGATIONS

3 Clonmel Street
Dublin 2.

Phone: 353 -1- 4774100
Fax: 353-1- 4774150

E-mail: info@odei.ie
Website: www.odei.ie

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Summary of Decision DEC - S2001 - 017

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(represented by the Equality Authority)
v Green Isle Hotel
(represented by Vincent & Beatty, Solicitors)

Keywords

Equal Status Act 2000 - Direct discrimination, section 3(1) - Membership of the Traveller community, section 3(2)(i) - supply of goods and services, section 3(1)(a) - service in public bars - Action taken in good faith, section 15(2) - Establishment of prima facie case - rebuttal of prima facie case.

Background

On 6th January 2001, having had a meal at the hotel restaurant, the complainants went to the bar of the Green Isle Hotel and ordered drinks for four people. The senior barman served the drinks but the Head Barman approached the complainants and asked them to leave. The complainants claim that this was due to their membership of the Traveller Community.

The Respondent agrees that service was declined but say that this was because of an incident involving some of the complainants on 1st January, 2001. The respondent deny that refusal was based on the complainant's membership of the Traveller Community and claims that they were treated the same as non-Travellers would be treated in the same circumstances.

Conclusions of Equality Officer

The Equality Officer found that Mrs. Margaret Wall, Mr. John O'Brien and Mrs Carmel O'Brien had been involved in a previous incident at the hotel. She found that this was the basis for the refusal of service and was in accordance with the general hotel policy to decline service where disorderly conduct had occurred. She also found that Mr. Patrick Wall had made a prima facie case of discrimination but that this was rebutted by the respondent having regard to section 15(2) of the Equal Status Act, 2000.

Decision

The Equality Officer found that Mr. John O'Brien, Mrs. Carmel O'Brien, Mr. Patrick Wall and Mrs. Margaret Wall were not discriminated against by the Green Isle Hotel on 6th January 2001 and that while a prima facie case of discrimination was made as regards Mr. Patrick Wall, the respondent had rebutted the inference of discrimination in relation to him.

As the complaint had not been upheld the Equality Officer had no power to make an order for redress. However, she recommended that the Green Isle Hotel draw up a written code of practice on refusals of service, inform all relevant staff and emphasise the need for sensitivity and courtesy in all such situations

Equality Officer Decision DEC-S2001-017
Complaint under the Equal Status Act, 2000

Mr. Patrick Wall, Mrs. Margaret Wall, Mr. John O'Brien and Mrs. Carmel O'Brien
(represented by the Equality Authority)
v Green Isle Hotel
(represented by Vincent & Beatty, Solicitors)

1. DISPUTE

This dispute concerns a claim by Mr. Patrick Wall, Mrs. Margaret Wall, Mr. John O'Brien and Mrs. Carmel O'Brien represented by The Equality Authority, that The Green Isle Hotel, represented by Vincent & Beatty, Solicitors, discriminated against them in January, 2001 on the basis of their membership of the Traveller Community.

2. BACKGROUND

On 6th January 2001, having had a meal at the hotel restaurant, the complainants went to the bar of the Green Isle Hotel and ordered drinks for four people. The barman served the drinks but the Head Barman approached the complainants and asked them to leave. The complainants claim that this was due to their membership of the Traveller Community.

The Respondent agrees that service was declined but say that this was because of an incident involving some of the complainants on 1st January, 2001. The respondent deny that refusal was based on the complainant's membership of the Traveller Community and claims that they were treated the same as non-Travellers would be treated in the same circumstances.

Any documents received were copied to both parties. The first oral hearing was held on Monday 21 May, 2001 but the claimants did not appear. The matter was then re-scheduled for 1 June, 2001 to allow the complainants an opportunity to explain their previous non-attendance. Again the complainants did not appear, nor was there any appearance by their representatives who came on record on 1st June, 2001. This was explained as an administrative oversight on the part of the representatives. The Equality Officer put the case before the Director for a decision under section 22 of the Equal Status Act, 2000. The Director was not of the opinion that a section 22 dismissal was appropriate and the investigation continued. The matter came on for hearing on 22nd November, 2001. All parties, apart from Mrs. Margaret Wall, were present at the hearing.

3. COMPLAINANTS' EVIDENCE

- The complainant's state that they live at a registered Traveller halting site though they have never travelled in the nomadic sense.

They claim that:

- On 6/1/01, having had a meal at the restaurant of the Green Isle Hotel, Naas Road, Dublin 22, they went to the hotel bar. Mrs. Wall and Mrs O'Brien sat down while Mr. Wall and Mr. O'Brien went to the bar counter. Mr Wall ordered two pints and two glasses. The senior barman pulled a pint and set it on the counter.
- The Bar Manager came from behind the complainants and said "I am not serving you lot. We had trouble with you lot before."
- Mr. Wall asked to see the Manager. The Bar Manager went to the Hotel Manager's office. Mr Wall & Mr. O'Brien followed. Mrs. Wall and Mrs. O'Brien saw the men leaving the bar area and followed then to the hotel manager's office.

- The Hotel Manager said that he was not the manager over that part of the hotel. Mr. Wall asked him if he had ever seen him before. The Hotel Manager said that it had nothing to do with him. This discussion did not include an invitation to Mr. Wall to stay if his companions left. All four complainants then left the hotel.
- Mr. Wall had never been in the hotel before.
- Mr. and Mrs O'Brien had been in the hotel before but not on 1/1/01.
- On 1/01/01 Mr. and Mrs O'Brien went to Mass. They then went to Carlow to visit the grave of a relative. They arrived back to Dublin in the evening between 5.00 p.m. and 6.00 p.m. and could not get a baby sitter so they stayed in.
- Mr. & Mrs O'Brien had also been in the hotel on 26/12/00 and 31/12/00.
- Mrs. O'Brien was in the hotel since January, 2001 and was served in the bar area.
- Mr. O'Brien's brother was also in the hotel on 6/1/01 and saw what happened. He came over to the complainants and offered to phone the Gardaí but was not a member of the party.
- In declining service to the complainants the respondents gave less favourable treatment to the complainants. The Bar Manager was rude and aggressive and clearly identified them as Travellers.
- Mr. Wall, a businessman, was highly embarrassed in front of a person who was in the hotel and who sub-contracts construction work to him.
- In relation to section s.15(1) of the Equal Status Act, 2000 the claimants deny that they posed any substantial risk. The claimants have never been in trouble and deny being in the hotel on 1/1/01.
- Section 15(2) of the Equal Status Act, 2000 provides that the action must be taken in good faith. This action was taken as the hotel saw one group of Travellers as the same as another group who were disorderly and on this basis they were denied service.

The complainants also submitted to the Equality Officer a detailed receipt for their hotel meal of 6/1/01, a letter from their solicitor dated 27th August, 2001 to respondents solicitors requesting further information and the respondents solicitor's reply to same dated 31st August, 2001. Mrs. Wall was not present at any of the hearings and was represented at the full hearing by her solicitor.

4. RESPONDENT'S EVIDENCE

The respondents claim that:

- On 6/1/01, four people were in the bar three of whom had been involved in an incident on 1/1/01. The senior barman recognised the Mrs. Wall, Mrs O'Brien and Mr. O'Brien as having been involved in that incident.
- The senior barman, who had been on duty during the previous incident, called over the Bar Manager and brought this to his attention.
- The Bar Manager went to the end of the bar and told the group that he was sorry that he would have to decline to serve them as some of the party had been involved in a previous incident. The claimants questioned this and the Bar Manager said that he was sorry, that he did not have all the facts but some of the party had been recognised. A fifth gentleman joined the party, took out his mobile phone and said that he was calling the Gardaí. The claimants asked to see the manager.
- The Bar Manager went to the Hotel Manager's office and explained what happened. The complainants followed and asked why they had not been served as there had been no problem in the Restaurant. The Bar Manager said that the problem was in the bar where the senior barman had recognised some of the group as having been involved in an incident.
- The respondent accepts that Mr Wall identified himself as a businessman who had never been in the hotel before. On the evening of 6/1/01, it was agreed that he had not been involved in the previous incident and he was invited to stay on condition that the rest of the party left. After some discussion the fifth gentleman re-joined the party and said something to the group. They all left and said that they would contact their solicitor.
- On the evening of 1/1/01 two men and two women, including Mr. & Mrs O'Brien, were sitting in the bar. The loungeperson served Mr. & Mrs O'Brien soup and sandwiches and they refused to pay. The

loungeperson gave the receipt to Mr. O'Brien and he swore at her. The group complained that the soup and sandwiches were too expensive, became loudly abusive and swore obscenities. The loungeperson told the barman who informed the Duty Manager who approached the group. The group complained that they had not been served drinks as ordered. The Duty Manager said that they were not being served as they had already consumed enough. Both women became abusive and began shouting.

Mrs. O'Brien walked over to the coffee area and was visibly drunk and staggered. She bumped into the Duty Manager and demanded to know his name. He gave his name and said that they had had enough alcohol and were causing a disturbance. Mrs. O'Brien returned to the group. The Duty Manager said that he wanted the group to leave the hotel immediately. One of the ladies woke Mr. O'Brien. More obscenities were spoken. Mrs O'Brien said that they were only being refused service as they were Travellers. The group left the bar. The Duty Manager instructed the staff that if the group returned they were not to be served and recorded the incident in the handover book, a copy of which was produced in evidence.

- The Hotel does not have a policy in relation to Travellers or non-Travellers. They have a duty to provide a safe environment for all staff or customers. In the event of a disturbance service is denied on re-entry to the hotel. Depending on the seriousness of the incident they may never be allowed re-entry. Where a person wishes to speak to the Manager about resumption of service they are free to do so.
- Travellers are regularly served in the hotel and the hotel would be aware that certain people are Travellers.
- The Bar Manager refused to serve the group not individually. He dealt with the group in the same way as he dealt with another situation where he had to call two young people who had been involved in an incident aside, explained hotel policy and asked them to leave. They refused so he went to the group with the two young people and said that he was declining service to the whole group until the two left. It is hotel policy to refuse the party when part of them has been involved in an incident.
- The action of the hotel was taken in good faith in accordance with section 15(2) of the Equal Status Act, 2000.

The respondent handed in a copy of an extract from the hotel incident book for 1/1/01 and 6/1/01 .

5. ISSUE FOR CONSIDERATION

The issue for consideration is whether the respondent discriminated against the complainants on the basis of their membership of the Traveller community in terms of section 3(1)(a) and contrary to section 5(1) of the Equal Status Act, 2000. In reaching my decision I have taken into account of the evidence adduced in addition to the written and oral information provided to me in the course of this investigation.

6. ISSUE OF TRAVELLER IDENTITY

One of the discriminatory grounds set out in the Equal Status Act, 2000 Act is the Traveller community ground. Section 2 of the Act includes a definition of the Traveller community ground:

"Traveller community means the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland."

I am satisfied that the complainants are members of the Traveller community within the meaning defined in the Act.

7. PRIMA FACIE CASE

It is useful at this point to consider caselaw on the prima facie case. In *Teresa Mitchell v Southern Health Board*, (DEE011, 15.02.01), the Labour Court interpreted *article 4 of the EC Burden of Proof Directive* as follows:

" This indicates that a claimant must prove, on the balance of probabilities, the primary facts on which they rely in seeking to raise a presumption of unlawful discrimination. It is only if those primary facts are established to the satisfaction of the Court , and they are regarded by the Court as being of sufficient significance to raise a presumption of discrimination, that the onus shifts to the respondent to prove that there was no infringement of the principle of equal treatment. Applied to the present case, this approach means that the appellant must first prove as fact one or more of the assertions on which her complaint of discrimination is based. "

While I am aware that the burden of proof directive is not binding in Equal Status cases, I find the above caselaw of persuasive value.

Section 3(1) of the Equal Status Act, 2000 provides that

"For the purposes of this Act, discrimination shall be taken to occur where -
(a) on any of the grounds specified in subsection (2 (in this Act referred to as "the discriminatory grounds")) which exists at present or previously existed but no longer exists or may exist in the future, or which is imputed to the person concerned, a person is treated less favourably than another person is , has been or would be treated".

Therefore, the elements critical to the establishment of a prima facie equal status case are:

- ◆ that the claimants are covered by one of the discriminatory grounds outlined in the Equal Status Act, 2000.
- ◆ that specific instances of treatment occurred, and
- ◆ that this involved the claimants being treated differently and less favourably than a non-Traveller was treated or would be treated in similar circumstances.

While I am satisfied that the Complainants are members of the Traveller community and that the refusal to serve is agreed, I must examine the evidence to determine if the treatment they received was less favourable than a non-Traveller would be treated in similar circumstances.

In the instant case, the following matters are relevant to the examination of a prima facie case:

- The complainants' case is that they were refused service because of their Traveller status.
- They claim that they had had not been involved in a previous incident at the hotel.
- The respondent's case is that that they are obliged to act to ensure the safety of employees and patrons and they refused service because of the involvement of some of the group in an incident at the hotel on 1/1/01 and that they dealt with the complainants in the same way as they deal with all such incidents viz., declining service.
- The respondents also claim that it is hotel policy that in the event of a disturbance, service is denied on re-entry to the hotel and that depending on the seriousness of the incident they may never be allowed re-entry.

While there is no contest that all four complainants were in the hotel bar on 6/1/01 and were refused service, there is a conflict of evidence in relation to the happenings of 1/1/01. Mr. & Mrs. O'Brien claim they returned from Carlow after 5.00 p.m. and stayed at home that night. The respondent's evidence is that Mr. & Mrs. O'Brien were directly involved in the incident on 1/1/01. This evidence varies however from two ladies and Mr. O'Brien being involved to Mr. & Mrs O'Brien being involved. However, the particularly strong and credible evidence was given by the loungeperson who clearly identified Mr. & Mrs O'Brien. On the balance of

probabilities I am satisfied that Mr. and Mrs O'Brien were in the hotel bar on 1/1/01 and were involved in the refusal to pay for refreshments and in disorderly behaviour.

In my view the following evidence is relevant to Mrs Wall's case:

- It is common case that the only female members of the complainant's party on 6/1/01 were Mrs. O'Brien and Mrs. Wall.
- Mrs. Wall's presence in the hotel bar on 6/1/01 is undisputed.
- The respondent's evidence as to the number of people actually involved in the incident of 1/1/01 is not completely consistent:
 - The senior barman gave evidence of recognising on 6/1/01 the two women and Mr. O'Brien as being involved in the incident of 1/1/01.
 - The Duty Manager said two women were involved on 1/1/01, one of whom he identified at the hearing as Mrs. O'Brien.
 - The hotel incident book completed by the Duty Manager records one woman being abusive and shouting.
 - The loungeperson said that Mr. & Mrs O'Brien were involved and did not mention a second woman.

It may be that the respondent may have been in a better position to deal with this aspect of the case if Mrs Wall had been present at the hearing. It was clear to me that the loungeperson recognised Mr. & Mrs. O'Brien while she was giving her evidence of the troublesome incident. Nevertheless, taking into account all the evidence provided on this matter, on the balance of probabilities, I am of the view that Mrs. Wall was present and took part in the incident of 1/1/01.

The respondent had had unsatisfactory experience with Mr. & Mrs. O'Brien and Mrs. Wall five days prior to the date of the incident complained of herein. I am satisfied based on this evidence that the hotel did not treat Mr. & Mrs O'Brien and Mrs. Wall unfavourably in that they dealt with them in the same way as they deal with any person who has been involved in an incident at the hotel and refused service. I find that Mr. & Mrs. O'Brien and Mrs Wall have not established prima facie evidence of discrimination.

It is accepted that Mr. Wall had not been in the hotel previously and had not been involved in any previous incidents. Nevertheless he was refused service and in refusing him service the hotel may treated him unfavourably. I have examined the evidence as to how companions of those being refused are treated by the hotel. The Bar Manager provided the example of where he had to call two young people who had been involved in an incident aside from their companions, explain hotel policy and ask them to leave. They refused so he went to the group with the two young people and said that he was declining service to the whole group until the two left. It is clear that this is not identical to the method employed in the complainants' case. Mr. Wall's companions were not called aside and spoken to separately affording Mr. Wall the opportunity to remain in the bar. It was only after Mr. Wall persisted in asserting his rights and pointed out to the manager that he had never been in the hotel previously that he was invited to stay on condition that the rest of the party left.

I find therefore that a slim prima facie case has been made in relation to Mr. Patrick Wall and that the burden of proof now shifts to the respondent to rebut the inference of discrimination.

8. REBUTTAL OF PRIMA FACIE CASE

The respondent claims that the action taken on 6/1/01 was taken in good faith in accordance with section 15(2) of the Act which provides:

"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 Act, 1833 to 1999, shall not constitute discrimination. "

There is no evidence that Mr. Wall posed any threat to the proper running of the hotel bar. The evidence is that having been refused service in a situation which he says embarrassed him greatly in front of an important work contact he asked to see the manager and discussed the matter for approximately 25 minutes and was eventually invited to remain. The respondent's case is that if an error was made it was made in good faith. Obviously service providers are as liable to make errors as the rest of the population but while I am very much of the view that the bar incident in relation to Mr. Wall was carried out in a discourteous manner, it appears to me that the moment of refusal of service is difficult for service providers and for the public alike. Mr. Wall had the right to be served but his three companions had been disorderly in the hotel five days previously and in order to comply with licensing obligations, the hotel is obliged to ensure the peaceable and orderly conduct of the premises.

I have had regard to the seriousness of the previous incident and to the proximity of that incident to the request for service in this complaint. In the light of their obligations under the Licensing Acts, I find it reasonable to accept that the hotel acted in good faith in order to comply with the provisions of the Licensing Acts, and that therefore that the inference of discrimination has been rebutted as regards Mr. Wall.

9. DECISION

9.1 On the basis of the evidence before me I find that Mr. John O'Brien, Mrs. Carmel O'Brien, Mr. Patrick Wall and Mrs. Margaret Wall were not discriminated against by the Green Isle Hotel on 6th January 2001. While a prima facie case of discrimination was made as regards Mr. Patrick Wall, the respondent has rebutted the inference of discrimination in relation to him.

9.2 As the decision has not been in favour of any of the complainants I have no power to make an order for redress. However, I recommend that the Green Isle Hotel draw up a written code of practice on refusals of service, inform all relevant staff and emphasise the need for sensitivity and courtesy in all such situations.

Éimear Fisher
Equality Officer
12 December, 2001