

Equal Status Act 2000
Equality Officer Decision
DEC-S2001-015

**Martina Collins, Fiona Muldoon, Helen Muldoon, Rosey
Maughan, Philomena Collins, Caroline Maughan,
Caroline Maughan-Muldoon, Bernadette Conroy,
(represented by John Gordon & Son, Solicitors)**

-v-

**Bartra House Hotel
(represented by Denis M. Molloy Solicitors)**

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Summary of Decision DEC-S2001-015

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Headnotes

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) - Refusal of service in a pub, prima facie case, vicarious liability - Section 42(1).

Background

This dispute concerns a claim by 8 complainants that they were discriminated against by Bartra House Hotel contrary to the Equal Status Act, 2000, on the grounds that they are members of the Traveller Community. The complainants alleges that the respondent discriminated against them in terms of Sections 3 (1)(a), and 3(2)(i) of the Equal Status Act, 2000, in that they were not provided with a service which is generally available to the public contrary to Section 5 (1) of that Act.

The complainants case is that following a meal in the respondent's hotel they were refused a drink in the bar because the respondent alleged that the bar was closed and they were served water instead. The complainants submitted that there were other people drinking in the bar and that the only reason they were refused service was because they are members of the Traveller Community.

The respondent submitted that there was no intention to discriminate against the complainants. The bar was closing early due to a staff party and the complainants were not informed due to a breakdown in communications.

Conclusions of the Equality Officer

The Equality Officer found that the complainants established a prima facie case of discrimination on the Traveller community ground. The Equality Officer also found that the respondent failed to rebut the inference of discrimination raised by the complainants.

Decision.

The Equality Officer concluded that the respondent unlawfully discriminated against the complainants on the grounds that they are members of the Traveller community contrary to the terms of the Act. She awarded each complainant the sum of £600 (762 euro) compensation for the distress and embarrassment suffered by them as a result of the discriminatory treatment

1 Dispute

1.1 This dispute concerns a claim by 8 complainants that they were discriminated against by Bartra House Hotel contrary to the Equal Status Act, 2000, on the grounds that they are members of the Traveller Community.

2. Background

2.1 The complainants case is that they were refused service by the respondent on Monday 11 December, 2000. They had a meal in the dining room of the hotel and then moved to the hotel bar and ordered drinks, but were refused service. They were advised that a staff party was taking place that night and the bar was closed early. The complainants submitted that there were other people drinking in the bar and that the only reason they were refused service was because they are members of the Traveller Community.

2.2 The respondent submitted that there was no intention to discriminate against the complainants. The bar was closing early due to a staff party and the complainants were not informed due to a breakdown in communications.

3 Summary of Complainants Case

3.1 The complainants are members of a Traveller women's group called Travellin' Light and one of the members, Ms Rosie Muldoon, organised a night out for the group of 13 in Bartra House Hotel. The booking was made by the secretary of the Parkside CDP,

which provides administration for the Traveller Group. The complainants submitted that on their arrival at the hotel at about 7.45pm they went straight to the dining room where they had a very enjoyable meal. At about 9.15 they decided to go to the bar for a drink. They stated that the waitress in the dining room also suggested to them to have a drink in the bar. When they went into the bar they stated that there were 5 people sitting down having drinks. The complainants submitted that straight away they felt that they were not wanted in the bar.

3.2 They submitted that one of the group Ms Rosie Muldoon went to the counter and ordered 2

glasses of Guinness and was refused by the bar person, Ms Clodagh Brennan. On enquiring why she would not be served Ms Muldoon was told that there was a staff party that night. The complainants said that they then asked why they were not told at the time of booking and Ms. Brennan told them there was nothing she could do about it. The complainants said that if they had been told when the booking was made they would have booked another night. The complainants contended that they watched Ms. Brennan serve a drink to a male customer and on enquiring why he was served they were told that he was Ms. Brennan's boyfriend. They said that they then asked Ms. Brennan for one drink each and they promised they would leave immediately but she again refused to serve them. The complainants then asked for water and were served a glass each, 13 in all. They said that Ms Brennan was hostile towards them and banged the glasses on the counter when she served the water. They said that they left the premises around 9.45pm and the other customers were still in the bar.

3.3 The complainants submitted that they were very humiliated by their experience as other

customers in the bar were listening to the discussion and knew they were refused a drink. They also submitted that their night out together was spoiled. They were looking forward to it and had made considerable efforts to get dressed up for the occasion and hired a bus to deliver and collect them from the hotel, but said that they were ashamed to telephone for the bus to collect them and they walked home. They submitted that they were treated by the respondent in a discriminatory manner and

that the only reason they were refused service was because they are members of the Traveller community.

4.1 Summary of the respondent's case

4.2 The respondent submitted that the complainants were not discriminated against and it is not

the policy of management to discriminate against Travellers. If it was the hotel's policy to discriminate against Travellers the booking would not have been accepted. The complainants could also have had their meal in the bar because they were having 'bar bites', but they opted instead to go to the dining room. It was also submitted that the complainants could have had drinks from the bar during their meal, if they so wished.

4.3 Mr Paul Regan, Manager of the Hotel said that a staff Christmas party had been booked in

The Bard since the previous week and it was decided to close the hotel at 10pm and to stop serving drink to customers in the bar at 9:30 pm. The hotel was closed and locked by Mr Regan at 10pm and the residents who went elsewhere for a drink were provided with keys. The complainants were not served because it was after 9:30pm when they arrived in the bar. The receptionist who took the booking for the meal should have made them aware that the bar was closing early but didn't do so and this was an error. Other guests of the hotel were made aware at the time they booked in, but due to a breakdown in communications the complainants were not advised of the early closure of the bar.

4.4 Mr Regan said that he saw the group in the hotel dining room that night and he knew the

group were Travellers, he was aware they were Travellers since the booking was made earlier that day. Ms Brennan who was on duty in the bar denied that she had a hostile attitude towards the complainants or that she banged the glasses of water on the counter. She explained to them that she could not serve them as there was a staff party and her instructions from Mr Regan was to stop serving drink at 9:30pm as the

bar was closing at 10:00pm. She said that it was 9:35pm when the complainants entered the bar and she could not serve them. Ms Brennan said that she remembered the time as she had been joking with other customers about the last orders just before the complainants arrived. She was courteous to them and apologised to them as they should have been told of the early closure of the bar. The complainants then looked for the manager but he had already gone home to get ready for the party. She said that the other customers in the bar including her boyfriend had all been served drink before the 9:30pm deadline and before the complainants came into the bar. The complainants requested water and she served a glass each. She said that they left the hotel after about 20 minutes. She informed Mr. Regan on his return.

4.5 Mr Regan said that Ms Rosie Muldoon contacted him the following day and he apologised

to her about the error, but she was not happy with the apology and indicated she was going to pursue the issue. It was submitted by the respondents representative during the hearing that the complainants are welcome to come in and have a drink in the hotel as it is not the policy of the respondent to discriminate against Travellers.

5 Conclusions of the Equality Officer

5.1 The matter referred for investigation is whether or not the complainants were directly discriminated against contrary to Section 3(1) and 3(2)(i) 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.

5.2 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.”*

Discrimination normally involves a difference in treatment. The European Court of Justice, in an employment discrimination case, has stated:

*“It is well settled that discrimination involves the application of different rules to comparable situation, or the application of the same rules to different situations.”*¹

5.3 In this case the complainants claim that they were discriminated against on the Traveller

community ground when they were refused service in the respondent’s bar. The respondent’s case is that the bar was closed due to a staff party. I have identified the two key issues for decision as follows:

-in what circumstances were the complainants refused service by the respondent on 11 December, 2000

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

5.4 A person making an allegation of discrimination under the Equal Status Act, 2001 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.”*²

Once a prima facie case of discrimination has been established by the complainants, 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 Gillespie & Others v. Northern Health and Social Services Board & Others [1996] ECJ C342/93

² 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.”*³

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”.⁴

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.”*⁵

5.5 I am now going to examine the first issue I have identified above and consider whether the

complainants have established a *prima facie* case. It was accepted that the complainants were refused service but the respondents state it was due to the early closing of the bar because of a staff party and the complainants believe they were refused because they are members of the Traveller community. I am going to look at how the complainants were treated on the night compared with other non Traveller customers of the bar. Unlike the other patrons of the hotel the complainants were not informed of the staff party, either the time of booking the meal earlier that day, at the time of their arrival at the hotel, during their meal, or when they indicated they wished to stay after their meal for a drink, that the bar was closing early. Neither were they informed that the bar was about to take last orders for drinks before it closed.

In an answer to questions at the hearing the respondent said that all the other hotel guests

³ Wallace v. South Eastern Education and Library Board (NI Court of Appeal) 1980 IRLR 193

⁴ The Rotunda Hospital v. Noreen Gleeson DEE003/2000

⁵ Dr. Teresa Mitchell v. Southern Health Board (Cork University Hospital) DEE011

including casual customers were informed on arrival or at the time they booked in. The respondent, who was aware the complainants were Travellers, saw the complainants in the dining room and the waitress in the dining room actually advised them to go into the bar, where they were refused service, but it seems nobody thought to advise them about the early closure of the bar. It is clear therefore the complainants were treated less favourably by the respondent in relation to the service they received in comparison to other customers of the hotel who were not Travellers. For the foregoing reasons I find therefore, that the complainants have 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.

5.6 I am now going to examine the circumstance in which the complainants were refused service in the bar. The respondent's reason for refusing the complainants was because the bar was closing early due to a staff party and the complainants contended that the bar was still open when they arrived. The complainants submitted that they left the dining room between 9:15 and 9:20 and went to the bar. On arrival in the bar they requested drinks from Ms Brennan but she told them the bar was closed due to a staff party. They saw about 5 customers in the bar with drinks and some with food. They also contended that they saw a male customer served drink and when they asked why he was served, they said they were told by Ms Brennan that he was her boyfriend. Ms Brennan contended that her boyfriend arrived at 9:20 and he had already been served before the complainants came into the bar. While there is a conflict on the exact time the complainants arrived at the bar, I am of the view they arrived before the bar closed and before Ms Brennan served her boyfriend. I base this belief on the fact that there were other people in the bar and if the complainants did not see Ms. Brennan's boyfriend being served it is unlikely a discussion would have arisen about serving him, or that the complainants would have known the customer was Ms. Brennan's boyfriend, if he had been served before they arrived. I find therefore on the balance of probabilities that the complainants were treated less favourably than this particular customer.

5.7 On being refused alcohol, the complainants requested water which was served. In response

to a question at the hearing it was stated by the respondent that the reason they were served water was because they asked for it. The complainants had already asked for drink from the bar but they were refused because the bar was closed. If the bar was closed, as stated by the respondent, why were they served water? It seems to me that the bar was still open but a decision seems to have been taken not to serve the complainants alcohol. It would appear to suggest that it was acceptable to serve the complainants water but not drinks from the bar

5.8 I accept that there was a staff party on the night and it was the intention of management to

close the hotel early to facilitate the staff in getting to the party. However it seems to me that the bar was not closed when the complainants ordered their drink, as I have already established above one male customer was served his choice of drink but the complainants were not served their choice and were instead served water. The complainants said during the hearing, after they were told that the bar was closed, that they promised if they were served one drink each they would leave immediately and this offer was rejected by Ms. Brennan. Ms Brennan said that the complainants were about 20 minutes in the bar before they left. It seems to me that if Ms Brennan considered the complainants had enough time to drink water, together with the fact that they were about 20 minutes in the bar, they would have had enough time to have a drink before the bar closed. It puzzles me why they were served water and not a drink as requested particularly given that it would have probably taken the same length of time to have either water or a drink. I can only conclude that the reason this occurred was due to discriminatory treatment connected with the fact that the complainants are members of the Traveller community.

5.9 The complainants submitted that Ms. Brennan was hostile towards them when they came

into the bar and banged the glasses on the counter. Ms Brennan said that she treated them with courtesy and said the counter was marble and the glasses could have made

a noise. I am making not making a finding in relation to this particular issue as I don't have enough evidence to decide whether the allegation is sustainable.

5.10 I have already established above that the complainants were treated by the respondent less

favourably than a non Travellers customer. The respondent submitted that if it was his intention to discriminate against Travellers the complainants would not have been served their meal in the hotel. The complainants submitted that the respondent is known for refusing service to Travellers. I note that the only evidence provided to support this allegation is hearsay. I find therefore, that there is insufficient evidence provided by the complainants to establish that the respondent generally discriminates against Travellers.

I accept that the policy of the hotel is to serve Travellers. However the respondent has not only to show he serves Travellers, but he also has to show that there are no discriminatory policies in operating in relation to the level of service provided to Travellers.

I find that on this occasion the complainants clearly got a less favourable level of service in comparison to non Travellers.

5.12 In considering whether intention is required in order to establish discriminatory treatment I

have looked at Section 3(1)(a) of the Equal Status Act, 2000 (see 5.2 above) and no intention to discriminate is required under this provision of the Act. I have also looked at a definition of direct discrimination in Deirdre Curtin's book on Irish Employment Equality.⁶ In discussing Section 2(a) and 2(b) of the Employment Equality Act, 1977, (an Act which prohibits discrimination in the employment area) Ms Curtin states "no intention to discriminate is required". Section 3(1) (a) of the Equal Status Act, 2000 (at 5.2 above) is similar to the provisions contained in the above sections of the Employment Equality Act, 1977 and as I have stated above no intention to discriminate is contained in this provision in the Equal Status Act. Similarly in a case under the Sex Discrimination Act, 1975 in the UK, the House of Lords held that "*the intention or motive of the defendant to discriminate,is not a necessary*

⁶ Deirdre Curtin Irish Employment Law, Round Hall page 219

*condition to liability it is perfectly possible to envisage cases where the defendant had no such motive, and yet did in fact discriminate on the grounds of Sex.”*⁷ While this particular case is not binding on Irish case law I do find it is of persuasive value in this case. In applying the above test to this case I find therefore that even if the respondent just forgot to tell the complainants the bar was closing early he may still be liable for discriminating against them.

5.13 The respondent sought to justify the reason for the refusal of service to the complainants by

stating that the bar was closed but provided no explanation why the complainants were refused alcohol and served water while at the same time a non Traveller customer was served from the bar without difficulty. The only inference I can draw from this is the fact that the complainants are Travellers influenced the respondents decision to treat them less favourably to non Travellers. Direct evidence of discrimination will not always be available to the complainants and in these circumstances, as stated by the Northern Ireland Court of Appeal in an employment discrimination case, *“one is more often left to infer discrimination from the circumstances. If this could not be done, the object of the legislation would be largely Defeated.....”*⁸ I find that the respondent has failed to discharge the burden of proof to rebut the prima facie case of discrimination established by the complainants. In the circumstances and on the balance of probabilities I find that the complainants were treated less favourably and unlawfully discriminated against because they are Travellers, when they were refused service on 11 December, 2000 in the respondents premises.

5.14 The responsibility for the discriminatory treatment appears to be directly attributable to the

staff of the hotel. In considering whether the respondent is vicariously liable for the discrimination I have taken into account Section 42(1) of the Equal Status Act, 2000 which provides that:

⁷ James v. Eastleigh Borough Council, House of Lords [1990]

⁸ Wallace v. South Eastern Education and Library Board (NI Court of Appeal) 1980 IRLR 193

“Anything done by a person in the course of his or her employment shall, in any proceedings brought under this Act, be treated for the purposes of this Act as done also by that person’s employer, whether or not it was done with the employer’s knowledge or approval”

As the bar staff were clearly acting within the course of their employment, I find therefore that the respondent is vicariously liable for the actions of his employees in accordance with Section 42(1) of the Act.

6 Decision

6.1 On the basis of the foregoing I find that the complainants have established that they were

unlawfully discriminated against contrary to Section 3(1) and 3(2)(i) of the Equal Status Act and in terms of section 5(1) of that Act.

6.2 Under section 27(1) of the Equal Status Act redress may be ordered where a finding is in

favour of the complainant. I therefore order Bartra House Hotel to pay to each of the complainants, the sum of £600 (762 euro) compensation for the distress and embarrassment suffered by them as a result of the discriminatory treatment.

Marian Duffy
Equality Officer

November, 2001