

Equal Status Act 2000
Equality Officer Decision
DEC-S2001-014

Mr. Tom Conroy
(Represented by Michael Mc Darby & Co. Solicitors)

V

Mr. Martin Costello
Costello's Bar
(Represented by Mr. Diarmuid Connolly B.L. Instructed
by Coleman & Co., Solicitors)

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Mr. Tom Conroy
(represented by Michael McDarby & Co., Solicitors

-v-

Mr. Martin Costello, Costello's Bar
(represented by Mr. Diarmuid Connolly B.L.
instructed by Coleman & Co., Solicitors)

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 - Risk of criminal and disorderly conduct, Section 15(1) - Decision made in good faith, Section 15(2).

Background

This dispute concerns a claim by Mr. Tom Conroy that he was discriminated against by Mr. Martin Costello of Costello's Bar on the grounds that he is a member of the Traveller community. The complainant alleges that the respondent discriminated against him in terms of Sections 3 (1)(a), and 3(2)(i) of the Equal Status Act, 2000, in that he was not provided with a service which is generally available to the public contrary to Section 5 (1) of that Act.

The complainant said that he was refused a drink by the respondent on the 30 October, 2000 and he believes the reason for the refusal was because he is a member of the Traveller community. The respondent case is that the complainant was refuse service because he had too much to drink and in making that decision he took into consideration his reputation for being involved in trouble and rows. He submitted that he is obliged under the Licensing Acts to run an orderly house.

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 insufficient 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 on the night constituted discrimination on the grounds of membership of the Traveller community.

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 £300 (381 Euro) compensation.

1.1 This dispute concerns a claim by Mr. Tom Conroy that he was discriminated against by the respondent, Mr. Martin Costello of Costello's Bar on the grounds that he is a member of the Traveller community. The complainant alleges that the respondent discriminated against him in terms of Sections 3 (1)(a), and 3(2)(i) of the Equal Status Act, 2000, contrary to Section 5 (1) of that Act.

2 Background

2.1 On 30 October, 2000 the complainant entered the respondents premises and asked for a drink. He stated that he was refused service and was told by Mr. Martin Costello he had enough already. The complainant denies that he had any drink taken and he believes the reason he was refused service was on the grounds that he is a member of the Traveller community.

2.2 The respondent case is that the complainant was refused service because he had too much to drink and in making that decision he took into consideration his reputation for being involved in trouble and rows in the town.

3 Summary of the Complainant's Case

3.1 The complainant entered Costello's Bar at around 11 pm on Monday 30 October, 2000 alone and requested a drink. Mr. Martin Costello refused to serve him telling him he had enough already. The complainant stated he had no drink taken and he said so to Mr. Costello. The respondent shook his head and said that he would give him no drink. The complainant submitted that he had no drink taken because he had already been refused service in another bar in the town.

3.2 It is the complainant's belief that he was refused service because he is a member of the Traveller community. He said as far as he is aware only one Traveller family drinks in the respondent premises. He said that none of his brothers or Traveller friends are served drink on the premises. He said that he has always lived in Ballinrobe and the

respondent's premises is his local bar. He knows the respondent's family and was at school with one of Mr. Costello's brothers. This brother would serve him occasionally but he was never served by Mr. Martin Costello. He is not aware of the reason Mr. Martin Costello will not serve him, but believes that the reason is connected to the fact that he is a member of the Traveller community.

3.3 It was submitted on the complainants behalf that the complainant went into the bar on the night in question to see if he could get service as he had been refused by the respondent in the past. He was aware that the Equal Status Act, 2000 had come into operation a number of days previously, he wanted to test it out at this premises and to see if he could get service as he had been refused service by Mr. Martin Costello in the past. It was further submitted that, in the circumstances, the complainant was not going to put himself in a position where he was going to be refused service for having too much alcohol consumed, he was well dressed and had no alcohol taken.

3.4 In support of his case the complainant produced a number of character references including one from his employer and a local Garda Sergeant. All the references indicated that the complainant was a person of integrity and good character. The reference from the member of the Garda Síochána stated that the complainant was a respectable person who had not come to the notice of the Gardaí.

4 Summary of respondent's Case

4.1 The respondent, Mr. Martin Costello submitted that members of the Traveller Community are regularly served in his premises and rejects the suggestion that the complainant was refused service on the grounds he is a Traveller. He stated that on the night the complainant was refused service he formed the opinion as the complainant approached the bar that he had enough alcohol consumed already. In such circumstances he said that he is entitled and obliged to refuse further service.

4.2 The respondent also contended he is entitled to take into account the complainant's reputation. He submitted that the complainant is widely known around the town for being involved in trouble and rows. He stated it would be highly inappropriate to serve him particularly as he had drink taken. The respondent said that he was

concerned for the safety of his staff, customers and family. He submitted his wife works on the premises and his young family lives on the premises and he was concerned for their safety. He said that he knows the complainant for about 15 years and he knows the complainant's sisters well as they worked for his mother. He said that the complainant was served on his premises on at least 6 occasions, he never had any difficulty with him and he had never been involved in any rows on his premises. He also serves other Travellers families and members of other minorities. He will serve Travellers if they come into his pub but not many Travellers tend to frequent his premises.

4.3 Mr. Costello said that the pub is small with a shop attached to it and the complainant and his family are regularly served in the shop. He submitted in evidence that he saw the complainant coming in the door of the pub on 30 October, it was very busy as it was a Bank Holiday and he was on his own there. He stated that he formed the view that he had enough drink taken by his general walk, he thought he was staggering. He didn't smell drink off him, but he genuinely believed that he had more than enough taken. His general demeanour on the night was sufficient to justify the decision not to serve him.

4.4 Mr. Costello stated that in making his decision not to serve the complainant on 30 October, 2000 he took into account the complainant's reputation for being involved in violence in the town. His knowledge of the complainant's reputation was based on 2 incidents related to him by those involved. He said that Mr. A, a friend and customer, came into the bar one evening with two black eyes, he enquired of him what had happened and Mr. A said that he was in the Chinese Takeaway the night before and was assaulted by the complainant. Mr. Costello said that he is quite friendly with Mr. A as both are members of the rugby club, Mr A drinks in his pub and he had no reason not to believe his story. He was not aware if the complainant was injured and he did not ask him for his version of the incident. He was aware that Mr. A did not take the matter further but he doesn't know the reason. He also said that the complainant accosted a fellow publican (Mr. B) on the public highway and threatened to have him closed down. He said that he was told by (Mr. B) that the complainant had threatened to close him down for no good reason.

4.4 The respondent said that customers who are involved in rows on his premises are asked to leave and are not served again. He said that he has very few people barred, he has no Travellers barred and he said that the complainant is not barred. He does not serve customers who have enough alcohol taken but they are not barred. Mr Costello stated that the events in relation to the complaints behaviour influenced his decision to refuse service to him on the night in question.

5 Rebuttal by the complainant of the respondent's case

5.1 The complainant in response to Mr. Costello's allegation that he assaulted (Mr. A) the complainant denied that he was responsible for starting the row. He said that he was assaulted by Mr. A and as a result he received a black eye. It was submitted on behalf of the complainant that no proceedings were taken in relation to the incident with Mr. A. The Gardaí were called but did not take statements from either party. It was also submitted that there was an onus on the respondent in the interest of natural justice to hear both sides, Mr. Costello accepted Mr. A.'s version of the story without question, and that the incident played on Mr. Costello's mind when he made the decision to refuse service. Furthermore Mr. A who is not a Traveller continues to be served in the pub.

5.2 The complainant denied that he threatened another publican (Mr. B). He said that he knew Mr. B as he went to school with him. Mr. B opened a new pub and when the complainant went in he was refused service. He met Mr. B subsequently and ask why he was not served. He said that he was told that if he served him he would have to serve all the people down the bog road, Travellers live on this road. The complainant said that he told him he could not pick and choose who he served and that he intended to object to the renewal of his license. He didn't object.

5.3 The complainant denied that he had a reputation for being involved in rows in the town. He said that he has no criminal record. He further stated that the respondent was well known for refusing Travellers. Despite the fact that there is a large population of Travellers in Ballinrobe very few Travellers are served by the respondent.

6 Conclusions of the Equality Officer

6.1 The matter referred for investigation turns upon whether or not the complainant was 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.

6.2 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 equal treatment case concerning employment, 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

6.3 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 stated, in an employment discrimination case, that:

¹ C 279/93 Finanzamt Koln-Alstadt v Schumacker [1995] ECR

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

- 6.4** The complainant claims that he was discriminated against on the Traveller community ground when he was refused service by the respondent. The respondent’s case is that the complainant was not entitled to service on the grounds that the complainant had too much alcohol consumed on the night together with his reputation for violent behaviour. I have identified the three key issues for decision as follows:
- in what circumstances was the claimant refused service by the respondent on 30 October, 2000,**
 - whether this treatment 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 respondent entitled to avail himself of the protection of Sections 15 (1) and 15 (2) of the Act.**

- 6.5** The first question I am going to examine is the reason for the refusal of service. At the

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

hearing of the case it was accepted by both parties that the complainant was refused service when he entered the respondent premises at about 11:00pm on 30 October, 2000. The complainant stated that as soon as he went to the premises he was told by Mr. Martin Costello that he had enough drink already and he would not serve him. The complainant said that he told Mr. Costello he had no alcohol taken. He submitted at the hearing that he could not have alcohol taken as he had already been refused service in another pub in the town that night.

6.6 Neither the respondent or complainant produced any evidence to support their version of events on the night of 30 October. In considering the reasons for the refusal of service I have taken into account what both parties told me about the night. The respondent said that the complainant was refused because he had too much to drink. In making that decision he took into account the his reputation for violent behaviour based on what Mr. A told him about the incident in the Chinese Takeaway and what Mr. B told him about being threatened with closure by the complainant. The respondent said that he saw the complainant coming into the pub. In response to a question at the hearing concerning the reason for refusing service Mr. Costello stated the complainant was involved in the incident with Mr. A and he made the decision to refuse to serve him because of his reputation. Even though the respondent said that it was a busy Bank holiday night and he was the only person on duty he was able to immediately form the view the complainant was drunk. The complainant said he couldn't be drunk because he was refused service in another bar, and furthermore he wanted to check out if he would be served, given he was refused service in the past and the Equal Status Act, 2000 had now come into operation. Both parties agreed that the complainant left the pub immediately after the refusal of service without any difficulty. It seems to me that the conversation between the parties was civilised and brief. It is difficult to see why the complainant would go into the pub with a lot of drink consumed if he was testing out how the new Act was operating in the premises. Furthermore given the brief and uncontentious nature of the conversation between the parties, the fact that the respondent agreed that the complainant left without any difficulty leads me to believe he was not drunk and the other reasons appear to have played a major part in the respondent's decision making. It seems to me that as soon as the respondent saw the complainant he had made up his mind not to serve him

regardless of his state of sobriety. He didn't smell drink off the complainant but based his decision on his sobriety on his general demeanour and walk. I find therefore, on the balance of probabilities, that the complainant was not drunk and the reason he was refused service was solely based on the respondent's belief that the complainant had a violent reputation. The respondent didn't argue specifically that he would refuse service to a non Traveller in similar circumstances but he did say he refuses service to customers who are involved in rows on the premises. There is no question of the complainant being involved in any such behaviour in the respondents premises.. I find therefore the complainant has established a prima facie case of discrimination. The burden of proof therefore, falls to the respondent to rebut the presumption of discrimination.

6.7 I am now going to look if the respondent was entitled to believe that the complainant had a violent reputation. In response to questions at the hearing it was clear that Mr. Costello based his belief that the complainant had a violent reputation on the two incidents only, as out lined above. There were other matters raised at the hearing in relation a court appearance by the complainant, (see 7.1 below) but it was clear that Mr. Costello had no knowledge of the complainant's court appearance and it did not form part of Mr. Costello's reasons for refusing service to the complainant on the 30 October, 2000.

6.8 In relation to the incident in the Chinese Takeaway, Mr Costello appears to have fully accepted what he was told by Mr. A. He did not seek to corroborate Mr. A's version of the incident but came to the conclusion that the complainant was fully to blame because Mr. A was well known to him he did not doubt his story. He said at the hearing he saw the evidence of the complainants behaviour as Mr. A had injuries to his face. However no statements were taken from either party or charges made by the Gardaí in relation to the incident.. The information on which the respondent based his belief that the complainant was responsible for the incident with Mr. A was one sided. He made no effort to independently verify the information he had despite the fact that he said he knew the complainant and his family for a long number of years. While it is not my job to determine who was at responsible for the incident, I consider that Mr. Costello assumed that the complainant was the culprit without hearing the

complainant's version and therefore concluded he had a violent reputation. Mr. Costello knew the complainant for over 15 years and he said that he served him on a number of occasions in his pub without encountering any difficulty regarding his behaviour. The character references from the Garda Sergeant produced in evidence by the complainant indicated that the Sergeant knew the complainant for a number of years and that he had not come to the notice of the Gardaí. Regarding this particular incident I find on the balance of probabilities it was not reasonable for the respondent to hold the view that the complainant had a violent reputation.

6.9 In relation to the incident with Mr. B, Mr. Costello accepted that Mr. B was threatened with closure by the complainant while the complainant denies he made this statement but accepted he met Mr. B and told him he was going to object to his license. Neither party produced evidence to support their version of the story. I am going to look therefore at the circumstances in which the alleged statement was made. The complainant said that he was refused service in Mr. B's premises on a number of occasions despite knowing him from his school days. It was during the course of a conversation about why he was not being served that he told Mr. B he intended to object to his license. Mr Costello understood that the complainant threatened to close down Mr B. Looking at both statements I am of the view that they could be construed as saying the same thing. If the complainant objected to the renewal of the license in the District Court and if that application was successful the pub would could not operate without a license. I am of the view therefore that the respondent in not obtaining the view of complainant and taking the word of Mr. B concluded the incident was a violent threat. On balance I find that it was not reasonable for Mr Costello to hold this belief, a belief that contributed to the respondent's view that the complainant had a violent reputation.

6.10 I am now going to look at how the complainant was treated by the respondent compared to a non Traveller. On 30 October the complainant was refused service and he believes he was refused because he is a member of the Traveller community. The onus is on the complainant to establish that he was treated less favourably than a person who is not a member of the Traveller community. I have found above that the reasons given by the respondent for the refusal of service were not justified. I have

looked at how a comparator who is not a member of the Traveller community was treated in similar circumstances. It was accepted by the respondent that Mr. A continued to be served in the pub despite the fact he was also involved in the incident. It seems to me that the respondent placed an onus on the complainant to disprove his contention he was a trouble maker, an onus which he did not place on a non Traveller. I have come to the conclusion that the respondent believed that because the complainant is a Traveller he was more likely to cause trouble than a member of the settled community and hence the reason for refusing service. I find therefore the only reason he was refused service was because he is a Traveller, the respondent applied different rules to the complainant as those which apply to settled people and the only reason this occurred was because the complainant is a Traveller. In the circumstances and on the balance of probability, I find that the complainant was treated less favourably than a non Traveller in relation to service in the respondent's pub and that the respondent did unlawfully discriminate against the complainant on the Traveller community ground.

6.11 It was submitted on the respondents behalf that there was a risk of disorderly conduct or damage to property and the respondent was entitled to take the complainants conduct into account under Section 15(1) of the Equal Status Act 2000. It was further submitted that the decision not to serve 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 he runs a tight ship and complies with the licensing laws and he ensures his house is run in an orderly fashion as he has a duty of care to all his customers. The respondent agreed that the complainant never caused any difficulty on the premises nor had he been involved in any rows there. In support of the argument under Section 15(1) and Section 15(2) the respondent's representative cited an extract from the Irish Current Law Statutes⁶ which I have attached as Appendix 1.

6.12 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*

⁶ Pages 8-29 and 8-30 Irish Current Law Statutes Annotated 2000, Round Hall Sweet and Maxwell

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 to hold such a belief. Having found above that it was not reasonable for the respondent to hold the view that the complainant had a violent reputation I find that the respondent has not provided sufficient evidence to justify his contention that by serving the complainant on 30 October, 2000 that 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.

6.13 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 not drunk as alleged, secondly it was not reasonable for the respondent to hold the view that he had a violent reputation, 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 not to serve him. In view of Mr Martin Costello's knowledge of the complainant and his personal experience of dealing with him and his family and given that he had never caused any trouble on his premises, it was not reasonable for him to believe the rumours that the complainant was a trouble maker. It was the

respondents case that the complainant had been served in the shop attaching to the pub but the respondent made no effort to check out the allegations with him on any of these occasions. I am not satisfied therefore that the decision of the respondent to refuse service was taken in good faith.

7 Credibility of the Complainant

7.1 During the course of the hearing the complainant's credibility became an issue when it was raised by the respondent's representative. At the hearing the complainant he stated that he had never been in court nor had any criminal record. The representative for the respondent challenged this and submitted that the complainant's credibility could not be relied on.. He submitted that he had information to the contrary and that he wished to call a member of the Garda Síochána to verify his information. In response to a question, the complainant said that there was another Tom Conroy in Ballinrobe and he may have been mixed up with him. It was agreed by the representatives for both parties that I would write to the Garda Síochána to seek any relevant information. In a response letter from Sergeant A. Lavery I was informed that Mr Tom Conroy was summoned to appear before Ballinrobe District Court on 7 March, 2000. He was charged with intoxication under section 4 of the Criminal Justice (Public Order) Act, 1994 and he received the benefit of the Probation of Offenders Act on condition he paid £150 to the Lifeboat which was later reduced to £75. Another charge of threatening behaviour was withdrawn. I copied this information to both parties representatives and the complainant did not respond. I am therefore accepting that it was the complainant these charges related to and that it puts a question mark over the credibility of the complainant. However it was clear that this matter was not known to the respondent on the 30 October when he refused service to the complainant and therefore does not change my findings above.

8 Decision

8.1 On the basis of the foregoing, I am satisfied that the respondent has failed to rebut the complainant's claim of discrimination. 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) of the Equal Status Act and in terms of section 5(1) of that Act.

8.2 Under section 27(1) of the Equal Status Act redress may be ordered where a finding is in favour of the complainant. I find that the most appropriate form of redress in this case is compensation. The maximum amount of compensation I can award is £5000 but I find that this amount would not be appropriate in this case, as I have taken into account the credibility of the complainant and the fact that the Equal Status Act, 2000 had only come into operation a few days when the discriminatory act occurred. I therefore order Mr Martin Costello, Costelloe's Bar to pay to the complainant, Mr Tom Conroy, the sum of £300 (381 euro) to compensate him for the effects of the discrimination.

Marian Duffy

Equality Officer

November, 2001