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Equal Status Act 2000

EQUALITY OFFICER DECISION NO: DEC - S2001-007

Mr William McDonagh
(Represented by Mr Charles Foley, Solicitor)

-v-

Ms Rachel Quinn, Licensee of The Coach House
(Represented by John Casey and Company, Solicitors)

File Ref: ES/2001/35
Date of Issue: 13/7/01

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Summary of Decision DEC-S2001-007

**Mr Willam McDonagh
(Represented by Mr Charles Foley, Solicitor)**

-v-

**Ms Rachel Quinn, Licensee of The Coach House
(Represented by John Casey and Company, Solicitors)**

Headnotes

Equal Status Act 2000 - direct discrimination - section 3(1)(a) - membership of the Traveller community - section 5(1) - alleged refusal of service in a pub - burden of proof on complainant to present a prima facie case.

Background

Ms Rachel Quinn, is the licensee of a pub called the The Coach House in Clarecastle, County Clare. Mr McDonagh claimed that on 24th December, 2000, he entered The Coach House and was refused service by Ms Quinn. He claimed that Ms Quinn discriminated against him on the basis of his membership of the Traveller community in terms of section 3(1)(a) of the Act by not providing him with a service which is available to the public generally contrary to section 5(1) of the Act. Ms Quinn denied this and maintained that she had no recollection of refusing Mr McDonagh service on that, or any other occasion.

Conclusions of Equality Officer

The Equality Officer found that there was a direct conflict between the evidence of both parties. He considered that the burden of proof to establish a prima facie case of discrimination rested with the complainant. He considered that the lack of independent witnesses was not helpful to the complainant's attempts to establish a prima facie case. Having considered fully the evidence provided by the complainant and the inferences of discrimination which could be drawn from the case, the Equality Officer found that the complainant did not succeed in establishing a prima facie case of discrimination.

Decision

The Equality Officer found that the respondent did not discriminate against the complainant.

Equality Officer Decision DEC-S2001-007

Complaint under the Equal Status Act 2000

**Mr William McDonagh
(Represented by Mr Charles Foley, Solicitor)**

-v-

**Ms Rachel Quinn, Licensee of the Coach House
(Represented by John Casey and Company, Solicitors)**

1. **DISPUTE**

This dispute concerns a claim by Mr William McDonagh, represented by Mr Charles Foley, Solicitor, that Ms Rachel Quinn, licensee of The Coach House, Clarecastle, Co. Clare, represented by John Casey and Company, Solicitors, discriminated against him on 24th December, 2001, on the basis of his membership of the Traveller community contrary to the Equal Status Act, 2000.

2. **BACKGROUND**

Ms Rachel Quinn, is the licensee of a pub called the The Coach House in Clarecastle, County Clare. Mr McDonagh claims that on 24th December, 2000, he entered The Coach House and was refused service by Ms Quinn. Ms Quinn denies this and maintains that she has no recollection of refusing Mr McDonagh service on that, or any other occasion.

Any documents received were copied to both parties and an oral hearing was held on 1st May, 2001.

3. **SUMMARY OF COMPLAINANT'S CASE**

Mr McDonagh claims that he was refused service by Mr Quinn. He claims that in refusing him service Ms Quinn discriminated against him on the basis of his membership of the Traveller community.

4. **SUMMARY OF RESPONDENT'S CASE**

Ms Quinn claims that she has no recollection of refusing to serve the complainant on 24th December, 2000. She maintains that the refusal described by Mr McDonagh did not occur on 24th December, 2000, or at any other time.

5. **EVIDENCE PROVIDED BY COMPLAINANT**

Mr McDonagh claims that he went into the bar of the pub at 7.55 p.m. on 24th December, 2000, and ordered a pint of Heineken. He claims that Ms Quinn said to him "*I'm not serving you sir*" and walked away. He claims that Ms Quinn's partner,

Mr Steve Erwin was sitting at the bar at the time. He claims that he asked Mr Erwin what the story was and that Mr Erwin replied to him “*there’s no story - she’s not serving you*”. Mr McDonagh claims that he then left the pub.

Mr McDonagh said that there were about 20 other people in the bar when he was refused and that after he was refused he went straight home. He said that this was because the enjoyment of the night had been ruined because of what happened. He had no witnesses to confirm his refusal as he went there alone that night.

- 5.1 Mr McDonagh claims that he was sure of the date and time because his wife gave birth on 23rd December, 2000, and the date also stuck in his mind because it occurred on Christmas Eve. He claims that for these reasons he has good cause to be sure about the date and time as it was his intention to celebrate the two occasions that night.
- 5.2 The complainant said that he had been served in the pub before. He said that he used to go there on special occasions and estimated that this was about 3 - 4 times a year. He said that he had been served in the pub a week before he was refused on 24th December, 2000. He said that when he was there before he mixed with both other Travellers and settled people without any trouble. He said that he knew Ms Quinn and Mr Erwin to see because his friends had pointed them out when he had been there before. He said that he did not know whether they knew him to see or by name.
- 5.3 Mr McDonagh said he has always identified himself as a member of the Traveller community although he has never led a nomadic life. He said that all of his relatives identify themselves as Travellers and his parents used to travel a small bit for a time. In response to a question he said that he didn’t know whether Ms Quinn knew he was a Traveller. However, he wondered why else would he have been refused service if she did not know he was a Traveller. He pointed out that when he was in the pub before he was always in the company of other Travellers, including a close relative and members of another Traveller family and that Ms Quinn may have identified him as a Traveller through his association with them. He said that she would have known them to be Travellers as they are regulars in the pub.
- 5.4 He said that no reason was given on the night for his refusal and asked what other reason could there have been other than one based on his membership of the Traveller community. He said that he thought he was refused because he was not a regular and a Traveller but that if he had been either a regular or a non Traveller he would have been served.

6 **EVIDENCE PROVIDED BY RESPONDENT**

Ms Quinn said that she has no recollection of refusing service to anyone on 24th December, 2000, and that she could not remember ever having refused service to the complainant. She said that she had checked with Mr Erwin and the bar staff who were on duty that day and they have no recollection of refusing service to anyone either. She said that at no time that day was she in the pub at the same time as Mr Erwin. She said that she was working there from 10.30 a.m. until 6.00 p.m. that day and that she did not start working there again until about 8.20 pm. She said that when

she was working Mr Erwin was minding their child and when he was working in the pub that day she was minding the child.

- 6.1 Mr Erwin was at the hearing and confirmed that he had no recollection of the events described by the complainant. Ms Quinn said that the only other people who were working in the pub that day were Mr Patrick Quinn and Ms Clare Forrest and she provided written statements from each of them that they did not refuse service to anyone on 24th December, 2000. Ms Quinn also said that she keeps a day book for the pub and events such as refusals of service are routinely recorded in it. She provided a copy of an extract from the book for 24th December, 2000, and there was no mention of anyone being refused that day.
- 6.2 Ms Quinn said that she serves anyone over 18 years old who is sober and who has not caused trouble in her pub or in Clarecastle previously. She said that she does not have a policy to exclude Travellers. She also said in her defence that a number of Travellers, including a close relative of Mr McDonagh's, are regulars in the pub and that when she came to the hearing she recognised the complainant through a family resemblance with his close relative. She pointed out that the complainant admitted during the hearing that he had been served there before although she stated that she had no memory of serving him before. She also stated that when someone presents at the bar for service she would not know whether the person concerned was a Traveller or not. She said that she only knows that some Travellers drink in the pub because the Travellers themselves or someone else would have told her so.

ISSUES FOR CONSIDERATION

7. The issue for consideration in this complaint is whether or not Ms Rachel Quinn, Licensee of The Coach House discriminated against Mr William McDonagh on the basis of his membership of the Traveller community in terms of section 3(1)(a) and by not providing him with a service which is available to the public generally contrary to section 5(1) of the Equal Status Act, 2000.

There is a direct conflict of evidence between the parties in this dispute. The complainant is adamant that he was refused service by the respondent and the respondent is equally as adamant that she did not refuse him service. In discrimination cases the burden of proof rests with the complainant. It is up to him to present a prima facie case of discrimination and if he can do this the burden of proof then shifts to the respondent to prove that discrimination did not occur.

PRIMA FACIE CASE

8. To establish what a prima facie case is I have examined definitions from other sources which are persuasive. In *Dublin Corporation v Gibney (EE5/1986)* prima facie evidence is defined as: "*evidence which in the absence of any convincing contradictory evidence by the employer would lead any reasonable person to conclude that discrimination had occurred.*"
- 8.1 In article 4 of the EC Burden of Proof Directive (Council Directive 97/80/EC) the following definition appears: "*when persons who consider themselves wronged..... establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination*".

- 8.2 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.* "
- 8.3 In some equality cases in the past, complainants have found it difficult to produce convincing proof that a prima facie case existed, primarily because independent corroboration was not available. The question then arose as to whether the circumstances of the case gave rise to any inference of discrimination or whether discrimination could be presumed, and whether these inferences constituted evidence of a prima facie case.
- 8.4 In *Gleeson v The Rotunda Hospital* (DEE003/2000), the Labour Court decided that a prima facie case existed only after considering all of the hard evidence and combining it with the inferences of discrimination that could be drawn from the circumstances of the case.
- 8.5 In the recent equal status case, *Mongon v The Angler's Rest* (Dec-S2001-004) the Equality Officer found that the hard evidence produced together with the inferences of discrimination to be drawn from the circumstances of the case, was not sufficient to establish a prima facie case of discrimination.

CONCLUSIONS OF EQUALITY OFFICER

9. I now have to now establish whether Mr McDonagh has produced sufficient hard evidence which, in the absence of convincing contradictory evidence, would lead a reasonable person to believe that Ms Quinn discriminated against him on the basis of his membership of the Traveller community. If he has succeeded in producing sufficient hard evidence then the burden of proof shifts to Ms Quinn to show that she did not act in a discriminatory manner. In the absence of sufficient hard evidence any inferences of discrimination which might in themselves contribute to a prima facie case also have to be considered. However, if Mr McDonagh fails to produce sufficient hard evidence or inferences of discrimination to establish a prima facie case, the burden does not shift to Ms Quinn to show that she did not act in a discriminatory manner.
- 9.1 As I mentioned earlier there is a direct conflict between the evidence of both parties in this dispute. Mr McDonagh on the one hand claims that he was refused service on 24th December, 2000, and that he was discriminated against on the basis of his membership of the Traveller community. Ms Quinn on the other hand claims that she did not refuse service to Mr McDonagh and that she did not, therefore, discriminate against him. As the Equality Officer responsible for making a decision in relation to

this complaint I have to decide who do I believe and it is up to Mr McDonagh to prove on the balance of probabilities that his version is correct.

- 9.2 I have noted that Mr McDonagh has no witnesses to back up his claim that he was refused service. His claim is almost entirely based on his own uncorroborated evidence that he was refused service by Ms Quinn. I consider that in a case like this where the dispute boils down to one person's word against another's that the lack of independent witnesses is not helpful to the complainant's attempts to establish a prima facie case of discrimination.
- 9.3 During the hearing Mr McDonagh inferred that Ms Quinn has a history of treating Travellers less favourably. He said that he could supply me with a copy of a written apology from Ms Quinn or Mr Erwin which he said was issued to another Traveller to whom they had previously refused service. However, although Mr McDonagh did subsequently supply me with a letter, the letter supplied was not an apology. It was in fact a letter from the other Traveller's solicitor to Ms Quinn alleging that the other Traveller had been discriminated against and I was not supplied with any evidence that the allegation was substantiated. I have noted that the discriminatory action alleged in this letter took place before the Equal Status Act, 2000, came into operation and I am not taking this letter into account in making my decision.
- 9.4 Mr McDonagh stated that he had been served in the pub several times before he alleges that he was refused service on 24th December, 2000, and he also stated that he was served there one week beforehand. I have also noted that both parties accept that a number of Travellers drink in the pub regularly. Both parties also agreed that a number of Travellers were served in the lounge of the pub the night the complainant alleges that he was discriminated against. I find that these facts are not helpful to the complainant's case. This is because they do not support the suggestion that the respondent has a generally discriminatory policy against Travellers.
- 9.5 I have also noted that during the hearing Mr McDonagh stated that he thought he was refused because he was not a regular and a Traveller but that if he had been either a regular or a non Traveller he would have been served. I am conscious that it could be argued that if Ms Quinn were to serve regulars only that it could be indirectly discriminatory against Travellers as per the definition of indirect discrimination in section 3(1)(c) of the Act. However, I consider that this is not the case in this complaint. This is because Mr McDonagh is a settled Traveller who lives in Ennis - which is only a few miles from the respondent's pub in Clarecastle. Therefore, if he wanted to become a regular he would not be any more disadvantaged than anyone else who lives in Ennis by a regulars only rule. In any event, Mr McDonagh did not supply any supporting evidence to back up a claim of indirect discrimination in this regard and Ms Quinn said that she serves anyone over 18 years old who is sober and who has not caused trouble in her pub or in Clarecastle previously.
- 9.6 I have noted that the respondent did not reply to the letter which the complainant's solicitor sent to her on 3rd January, 2001. This letter was the notification required

under section 21(2)(a) of the Act. I have also noted that I can draw such inferences, if any, as seem appropriate, under section 26 of the Act because of the respondents failure to reply to the notification. However, having considered fully the evidence provided by the complainant, including any inferences of discrimination which can be drawn from the circumstances of the case, I am satisfied that the complainant has not succeeded in establishing a prima facie case of discrimination.

DECISION

10. I find on the basis of the evidence presented that Ms Rachel Quinn, licensee of The Coach House, Clarecastle, Co. Clare, did not discriminate against Mr William McDonagh on 24th December, 2000, on the basis of his membership of the Traveller community.

Anthony Cummins
Equality Officer
13 July, 2001