

Summary of Decision DEC-S2001-00

Mr. Martin Collins
(represented by Northside Traveller Support Group)

-v-

Mr. Jerry Kyle, Kyle's Pub
(represented by Michael J Kennedy Solicitor)

Headnotes

Equal Status Act, 2001 - 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 - Barred because of conduct.

Background

The dispute concerns a claim by Mr. Martin Collins that he was discriminated against by Mr. Jerry Kyle, Kyle's Pub contrary to the Equal Status Act, 2001, on the grounds that he is a member of the Traveller Community. The complainant alleges that he was discriminated against on the Traveller community ground by the respondent when he was refused service in the pub on 9 December, 2001. The respondent case is that he is entitled to refuse him on the basis he is barred from the pub because of his previous conduct.

Conclusions of the Equality Officer

The Equality Officer found that the complainant had not established a prima facie case of discrimination. The respondent maintained he was entitled to refuse service because the complainant was barred from his premises because of his behaviour some 13 years previously. The Equality Officer found that the complainant was barred because of unacceptable behaviour, that the respondent's policy is to bar people for life for violent conduct and that this policy is applied equally to both the settled and Traveller community. The Equality Officer further found that there was no evidence to support the complainant's contention that the respondent operates a discriminatory policy against Travellers.

Decision

The Equality Officer decided that the complainant was not discriminated against on the Traveller ground contrary to Section 3(1) and 3(2)(i) of the Equal Status Act and in terms of Section 5(1) of that Act.

1. Dispute

- 1.1** The dispute concerns a claim by Mr. Martin Collins that he was discriminated against by Mr. Jerry Kyle, Kyle's Pub contrary to the Equal Status Act, 2001, on the grounds that he is a member of the Traveller Community.

2 Background

- 2.1** The complainant's case is that he entered the pub on 9 December 2000 at or about 5pm and joined a friend Mr. A, who is also a Traveller, and they had two drinks each. The complainant then ordered 2 more pints and was refused. The barman, Mr. Gerry Kyle, told him he had been barred about 2 years before, a contention that the complainant rejects. He stated he could not have been barred, as he had not been in the pub for the last 13/14 years. The respondent submitted that the complainant was not discriminated against because he was unaware he was a Traveller until he got notification of the complaint, and the only reason service was refused was because he was barred from the premises.

3 Summary of Complainant's Case.

- 3.1** The complainant submitted that he went to Kyle's Pub in Coolock on 9 December, 2000 to meet his friend, Mr. A who had entered the pub a few minutes earlier. They consumed 2 rounds of drink purchased by Mr. A. The complainant asked the barman Mr. Kyle for two more pints. The barman then told him he couldn't serve him as he was barred 2 years ago. The complainant asked Mr. Kyle to call the Gardaí as they would not leave until the Gardaí arrived, as they wanted the Gardaí to help to sort out the matter.
- 3.2** It was the complainant's belief that he was not served because he is a Traveller. It is the complainant's case that on the arrival of the Gardaí, the complainant asked when he was barred, Mr. Kyle told him 2 years ago, then changed it to 3 years ago and on further challenge said he didn't know. The complainant states that the Gardaí asked him to leave the premises and explained to him that they had no authority to insist that he be provided with service in the pub and that he could take the matter up under civil legislation.

- 3.3** It was submitted on behalf of the complainant that he was not now a regular customer in the pub but had been there once about 13 / 14 years ago. On that occasion there had been a slight disturbance outside the pub, which did not involve either staff or customers of the pub. The claimant was not in the pub again until 9 December 2000 and Mr. Kyle therefore could not have informed him he was barred. The complainant rejects the respondent's claim that during the course of the discussion on 9 December the complainant acknowledged that he was barred from the premises. He further submitted that he would not have insisted on calling the Gardaí if he had been barred from the pub in the past, or if he had anything to hide.
- 3.4** In response to the respondent's submission, that he was unaware that the complainant and Mr. A are members of the Traveller community, the complainant contended that Mr. Kyle would have been aware of his identity as there is a very large Traveller community in Coolock, and by the nature of his appearance and accent it is obvious he is a Traveller. On behalf of the complainant it was submitted that he never caused any trouble in Kyle's Pub, he was never barred from the premises and it was submitted that the reason Mr. Kyle is not able to recall what happened is because it never happened.
- 3.5** It was further submitted on behalf of the complainant that the Traveller community is recognised as being different and these differences are recognised by the settled community by the Travellers appearance, voice, accents and pronunciations. It was also stated that there is institutional bias against Travellers. It was submitted that the fact that the complainant is a Traveller was a factor in the decision to bar him from the premises and to refuse him service and the fact that Mr. A who is also a Traveller was asked to leave supports this contention.

4 Summary of Respondent's Case

- 4.1** The respondent submitted that he knew the complainant prior to the alleged incident. The complainant was a customer of the public house some years before. The respondent contends that an incident had occurred in the public house in which the complainant was involved. It caused the staff and customers to be fearful of the complainants conduct and he was barred from the premises as a result at that time.

- 4.2** After barring the complainant Mr. Kyle said that he did not see him again until 9 December 2000 except on one particular occasion 2 or 3 years ago when he called to the pub and requested service but he was informed he was barred and he left. On 9 December 2000 Mr. A, who is not known to the respondent or staff, came into the pub and ordered 2 pints. The complainant then arrived. In the opinion of the respondent he had delayed his entry, as he was aware of the fact he was barred. He then proceeded to consume two rounds of drink ordered by his friend. The barman took no action at the time because he did not recognise the complainant or know he was barred. When Mr. Kyle noticed the complainant he was consuming his pint so he decided not to take immediate action.
- 4.3** The complainant then approached the bar to order a further pint. At this stage he was informed he was barred and was requested to leave the premises. In the course of a discussion with the complainant Mr. Kyle stated that the complainant acknowledged he was barred from the premises but said if he was given one drink he would not cause any trouble. The complainant disputes this contention. Mr. Kyle is not sure how long ago it was since he barred the complainant, but the complainant came into the pub a few years ago and it was at that stage he was informed he was barred for the earlier incident. The Gardaí had been called to the premises at the request of the complainant. When Mr. Kyle informed the Gardaí that the complainant had been barred the Gardaí asked the complainant and Mr. A to leave the premises.
- 4.4** The respondent denies that the complainant and his friend were not served another round of drinks because they were Travellers. In fact he was unaware they were Travellers until he received the notification of the complaint dated 13 December 2001. It was submitted on the respondent's behalf that the claimant had been barred following an incident 13/14 years ago. He was told he was barred a few years ago when he visited the pub and he is still barred.

5 Conclusions of the Equality Officer

- 5.1** 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.

- 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.*

The complainant claims that he was discriminated against on the Traveller community ground when he was refused service by the respondent and was asked to leave the premises. The respondent's case is that the complainant was not entitled to service as he was barred from the premises because of his behaviour. I have identified the two key issues for decision as follows:

-in what circumstances was the claimant refused service by the respondent on 9 December, 2000

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

In reaching my decision I have examined whether the treatment of the claimant constituted discrimination under the Act or whether the respondent was entitled to refuse the complainant on the basis that he had been barred as a result of an incident.

- 5.3** At the hearing of the case it was accepted by both parties that an incident, involving about 8 customers including the complainant, occurred on or near the respondent's premises over 13 years ago. The complainant confirmed he was arrested and charged in connection with the incident and appeared in court where he was fined. There is a conflict as to where the incident started but it was accepted that the complainant was outside the pub when the Gardaí arrived. There is also conflict as to whether the complainant was barred from the pub as a direct result of the incident. The complainant submitted that the incident occurred when he was in his early twenties and it happened outside the pub. The respondent submitted the incident started inside

the premises and one of the bar staff suffered minor injuries. During the incident staff managed to get the customers involved out of the premises, and the Gardaí were called. The respondent said that he didn't see the complainant again until the complainant visited the pub 2 or 3 years ago. He then told the complainant on that occasion that he was barred. The complainant said he was not in the pub again until the 9 December 2000.

5.4 In response to a question at the hearing the complainant said that he never went back into the pub after the incident because he knew he wouldn't be served. He also said that once Travellers have arguments they are not allowed back into pubs. It seems to me that the complainant knew that the incident was serious and that as a result he might not be served. This was the reason he had not gone back until the 9th December.

5.5 The respondent said the reason the complainant and Mr. A had succeeded in obtaining 2 rounds of drink on the 9 December was that the barman did not know the complainant was barred. The respondent came on duty at about 6pm and it was at that time the complainant was refused service. The respondent stated that he did not know how many customers he had barred. He is working in the pub for over 40 years and can remember most of the people he has barred. His brother also works there, and he also knows who is barred. Customers are barred for various reasons but anyone barred for violent behaviour or drugs is barred for life. In other cases, such as a customer making a nuisance of themselves when drunk would usually be given a second chance, and he uses his discretion in such cases.

5.6 The complainant accepts that he was convicted for the incident, which occurred outside the premises 13/14 years ago. In his evidence he said he knew he might not be served in the pub as a result of his behaviour, this seems to be his reason for not returning to the pub until 9 December 2000. I am satisfied therefore that the reason the complainant was asked to leave the pub on 9 December was because he was barred on the basis of his former conduct.

5.7 The second issue for decision is whether the complainant was treated less favourably because he is a Traveller than a person who is not a Traveller would have been treated in the same circumstances. It has already been established that the complainant was refused service because he had been involved in an incident at or outside the respondent's premises some 13/14 years previously. The question is whether a person who is not a member of the Traveller community would have been treated more favourably in similar circumstances. The respondent stated that the policy of refusing service to customers in similar circumstances applies to both settled people and Travellers equally, and a settled person with the same record would have been treated in exactly the same manner. The complainant disputes this but no corroboratory evidence was produced by either the complainant or the respondent of whether the respondent actually bars settled people for life in response to this type of an incident. The complainant argues that the respondent is generally prejudiced against Travellers and would have identified him as a Traveller. The respondent stated during the course of the hearing that he regularly serves Travellers and about 8 or 10 drink in the pub twice per week. He has got to know them as Travellers and on occasions he would change cheques for them. The complainant said that he was not aware if Travellers were allowed into the respondent's premises as none of his friends drink there. However on 9 December, 2000 the complainant accepts he was drinking in the pub along with another Traveller friend for about an hour before he was asked to leave. The respondent said that he knew that some of the group involved in the previous incident were Travellers but he did not know the complainant was a Traveller until he received notification of the complaint.

5.8 The complainant said that the respondent could identify him as a Traveller by looking at him as Travellers can be identified by their looks, voice and dress. I am of the view that if the respondent operates a discriminatory policy in relation to serving Travellers, and if Travellers can be identified as the complainant states, then the barman would not have served the complainant and a Traveller friend on the night in question. The complainant has provided no evidence to contradict the respondent's evidence that he regularly serves Travellers or to support his contention that the

respondent operated discriminatory practices against Travellers. It has been submitted on behalf of the complainant that because Mr. A, who is a Traveller, was also asked to leave even though there was no question of him being barred that this amounts to discrimination. However, the complainant stated at the hearing that Mr A was served on 2 occasions and he (the complainant) was the person who was refused and also that it was the Gardaí and not the respondent who asked both of them to leave the premises. Taking into account the fact that the complainant and Mr A were served 2 drinks in the respondent's premises, and the respondents evidence that he serves Travellers regularly, I am satisfied therefore that there is no evidence to show that the respondent operates a generally discriminatory policy against Travellers. On balance I find that the respondent applies same rules and procedures to Travellers as those which apply to settled people.

The respondent said that his policy is to bar people for life for violent behaviour and further stated that he has far more settled people barred for this reason than Travellers. The complainant produced no evidence to show that the respondent did not operate this policy or that he operated a different policy in relation to settled people. I am satisfied therefore that the respondents policy to bar customers for life for unacceptable behaviour is applied equally to both the settled and Traveller community.

6 Decision

- 6.1** On the basis of the foregoing I find that the complainant was not discriminated against on the Traveller ground contrary to Section 3(1) and 3(2)(i) of the Equal Status Act and in terms of Section 5(1) of that Act.

Marian Duffy
Equality Officer

2nd July, 2001