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Equal Status Act 2000

EQUALITY OFFICER DECISION NO: DEC - S2001-004

Kathleen Mongon
(Represented by Charles Foley, Solicitor)

AND

Michael & Barbara Hogan, The Angler's Rest
(Represented by Mary Cashin, Solicitor)

File No. ES/2001/25
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Summary of Decision DEC-S2001-004

Kathleen Mongon
(Represented by Charles Foley, Solicitor)

and

Michael & Barbara Hogan, The Angler's Rest , Corofin
(Represented by Mary Cashin, Solicitor)

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) - Service in pubs .

Background

This dispute concerns a complaint by Mrs Kathleen Mongon that she was discriminated against by Michael and Barbara Hogan, owners of the Angler's Rest Pub, Corofin, Co Clare. The complainant maintains that she was discriminated against on the Traveller community ground in terms of sections 3(1) and 3(2)(i) of the Equal Status Act 2000 in that she was not provided with a service which is generally available to the public contrary to Section 5(1) of the Act.

Mrs Mongon states that, on 28 December 2000, the landlady of the Angler's Rest first refused to serve her an alcoholic drink and then only agreed to do so on condition that herself and her husband leave after having one drink. The respondents in the case maintain that this alleged incident did not occur and that they did not restrict service to the complainant.

Conclusions of the Equality Officer

The Equality Officer found that, while he had been provided with much hearsay evidence, there was a conspicuous lack of hard evidence available to him on which to base his decision. While there was evidence that some level of discussion occurred, the parties dispute the date of this discussion.. The complainant referred to 28 December 2000 while the respondents insisted that it was 30 December 2000.

Also, while the complaint revolved around a conversation which allegedly occurred when drinks were being ordered, the respondent totally rejected that the alleged conversation took place and neither party produced independent witnesses to substantiate what had actually happened. Overall, the Equality Officer found that insufficient evidence had been produced to show that a prima facie case of discrimination existed.

Decision

The Equality Officer found in favour of the respondents on the basis that the complainant has not established a prima facie case of discrimination on the Traveller community ground in terms of sections 3(1) and 3(2)(i) of the Equal Status Act 2000 .

Equality Officer Decision DEC-S2001-004

Complaint under the Equal Status Act 2000

**Kathleen Mongon
(Represented by Charles Foley, Solicitor)**

v

**Michael & Barbara Hogan, The Angler's Rest Pub
(Represented by Mary Cashin, Solicitor)**

1. Dispute

1.1 This dispute concerns a complaint by Mrs Kathleen Mongon that she was discriminated against, contrary to the Equal Status Act 2000, by Michael and Barbara Hogan, owners of the Angler's Rest Pub, Corofin, Co Clare.

The complainant maintains that she was discriminated against on the Traveller community ground in terms of sections 3(1) and 3(2)(i) of the Equal Status Act 2000 in that she was not provided with a service which is generally available to the public contrary to Section 5(1) of the Act.

2. Background

2.1 Mrs Mongon states that, on 28 December 2000, the landlady of the Angler's Rest only agreed to serve herself and her husband one alcoholic drink on condition that they left after finishing their drink. The respondents in the case maintain that this alleged incident did not occur and that their staff at no time restricted the complainant service or those in her company.

3. Summary of the Complainant's Case

3.1 The complainant states that she arrived at the Angler's Rest, Corofin with her husband and another married couple at around 7.30pm on Thursday 28 December 2000 to meet a group of friends from the Traveller community. The complainant states that, initially, the ladies were only offered soft drinks. However, she states that the landlady then agreed to serve them alcohol on condition that they left after having one drink. She says that, while no

reason was given to them for the landlady's action, she believes that it was because she and her relatives were members of the Traveller community.

4. Summary of Respondent's Case

4.1 The respondents deny that the alleged incident occurred on 28 December 2000. The respondents state, however, that they recall an incident on Saturday 30 December 2000 involving the complainant but they insist that no discrimination occurred on that occasion.

5. Matters for Consideration

5.1 Section 3(1) of the Equal Status Act 2000 states that discrimination shall be taken to occur where, on any of the grounds specified in the Act, a person is treated less favourably than another person is, has been or would be treated. Section 3(2)(i) of the Act specifies the Traveller community ground as one of the grounds covered by the Act.

In this particular instance, the complainant claims that she was discriminated against on the grounds of her membership of the Traveller community contrary to Sections 3(1) and 3(2)(i) of the Equal Status Act, 2000 in not being served alcohol in the Angler's Rest on the night of 28 December 2000. The burden of proof lies with the complainant who is required to demonstrate that a prima facie case of discrimination exists. If established, the burden of proof then shifts to the respondent.

6 Evidence Provided by the Parties

6.1 The respondents state that they bought the Angler's Rest in May 2000 having just returned from America where they had been running a bar for some time. They described how their clientele consisted of people of all ages and said that tourists as well as locals often visited their pub. They said that they also have the capacity to hold functions at the rear of the pub.

The respondents say that they do not discriminate against Travellers and state that they have never refused anyone a drink. They also claim that the only person ever barred was a settled person who had threatened Mrs Hogan with a barstool in the pub.

6.2 At the Hearing on 3 May 2001, Mrs Mongon stated that relatives of her husband, a married couple from Cork, were staying with them at their home in Ennis over the Christmas period. On the morning of Thursday 28 December 2000, the complainant states that she met Mr X in the street. She says that he told her that his son and wife were home from England for Christmas and suggested that they all meet for a drink that night in the Angler's Rest in Corofin at 7.30 pm. The complainant described Mr X as a well-to-do local Traveller with many business interests in the Ennis area. She said that that he would be well-known to the settled community with whom he conducted a lot of business.

Mrs Mongon states that, that evening, her husband Patrick drove herself and the married couple to Corofin. They arrived at about 7.15 pm and found Mr X sitting at the bar with the rest of his family playing pool at the rear of the bar. Ms Mongon states that all were drinking alcohol including the daughter-in-law who was sitting near the pool table.

6.3 At that point, she says that the two ladies went to sit with the daughter-in-law while the men went to talk to Mr X who was sitting at the bar. The complainant's husband, Patrick Mongon, gave evidence that Mr X ordered a round of drinks for those who had arrived but that the landlady, Mrs Hogan, said that she would only serve the women soft drinks. Mr Mongon states that he could not understand this attitude as other women in the bar, including Mr X's daughter-in-law, were drinking alcohol at the time. Mr Mongon says that, following some discussion with Mr X, Mrs Hogan eventually agreed to serve the women one alcoholic drink each on condition that they all leave immediately afterwards.

Mr Mongon then described how he brought the drinks over to his wife and described to her what had happened. He says that he then suggested to her that, as they were not going to be served any further, that they should leave immediately. The complainant states that she agreed with her husband and, having only taken one or two sips from their drinks, they and the other married couple got up to leave.

6.4 On her way out, Mrs Mongon says that she approached Mrs Hogan and asked her why she would not serve her. She says that the reason she approached Mrs Hogan was that she was a Traveller Liaison Officer for the area and that she believed that Mrs Hogan's actions constituted discrimination under the new Equal Status legislation.

When Mrs Hogan refused to respond, the complainant says that she and her friends left peacefully. A few minutes later, the complainant states that Mr X and his family came out of the pub and they all decided to go to the Coach House in Clarecastle where they had no problem getting a drink.

6.5 At the Hearing, the respondents emphatically denied that the complainants visited their premises on Thursday 28 December 2000. They say that they are sure of this because they recall that this was the day that there was a problem with their sewers and they had to close the pub for a few hours that evening to get it fixed. They say that they only reopened for business that night at 8 pm.

The respondents state, however, that they do recall the complainant and the people she describes, being in the Angler's Rest on Saturday 30 December 2000. Mrs Hogan states that she knows Mr X who is a regular customer of hers. She states that she recalls that Mr X arrived in at 7pm on 30 December, wished her a Merry Christmas, and announced that he was only staying "for a few" and that he would then be off. She states that this was common practice for Mr X who she says seems to regularly frequent a number of pubs on a night out.

Mrs Hogan states that she remembers Mrs Mongon's group arriving and Mr X ordering a round of drinks for them which, she maintains, was served promptly and without hesitation. She says that she was approached shortly afterwards by the complainant who seemed very upset. She says the complainant asked her "Why did you not serve me?" . Mrs Hogan says that she was surprised at this remark and responded that she did serve her, at which time she says the complainant became very abusive and threatened that "she would get her". Mrs Hogan states that she was shocked by this remark and that she turned away as she does not like confrontation of any sort.

6.6 Mr Hogan then gave evidence that he had been in the room behind the bar when he heard someone complaining to his wife. He says that he came into the bar and saw the complainant who he said had by then become very abusive. He said that he could see that his wife was getting upset so he led her away from the complainant, who then left the pub.

At the Hearing, Mrs Hogan described how she had been brought up in America. She said that she came from a Jewish background and, as such, had suffered much discrimination herself while in America. She said that she was aware of the new anti-discrimination legislation. However, she made the point that, as an American who had only recently come to Ireland, she would have no understanding of the Traveller culture nor would she be able to distinguish between a Traveller and a settled person. As evidence of this, she said that it was only recently that it had been brought to her attention that Mr X himself was a Traveller. She argued, therefore, that she could not discriminate against someone on the Traveller community ground if she did not know that they were Travellers.

6.7 When questioned by the complainants as to whether she had a policy with regard to serving women differently to men, Mrs Hogan was adamant that she treated everybody the same.

In support of her claim that she does not operate a discriminatory policy against anyone, Mrs Hogan stated at the Hearing that since the night in question, Mr X has visited her pub on numerous occasions, most recently on the Saturday prior to the Hearing. She also claimed that Mr X never once raised the events of 30 December with her on his subsequent visits to the pub.

In their defence, the respondents pointed to the fact that the onus was on the complainants to prove that a prima facie case existed. In this regard, the respondents stated that the complainants had failed to call any independent witnesses to justify their complaint. Consequently, the respondents argued that they had no case to answer.

6.8 When asked by the respondents whether they had since discussed the night in question with Mr X, the complainant replied in the negative. She did say, however, that she had informed one of Mr X's sons about her intention to bring a case against the Angler's Rest.

When asked why the complainant had not considered calling Mr X as a witness, Ms Mongon stated that she was reluctant to do so as she felt that it might prejudice his business interests. She explained that Mr X had many business dealings with local settled people and she was unsure as to whether Mr X would have agreed to such a request from her in the circumstances.

7 Establishment of a Prima Facie case

7.1 As stated earlier, in a case such as this, the burden of proof lies with the complainant who is required to demonstrate that a prima facie case of discrimination exists. If established, the burden of proof then shifts to the respondent.

7.2 In considering what constitutes a prima facie case, I have examined definitions from other sources. 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."

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".

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. "

7.3 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.

In the recent employment equality case, *Martinez v Network Catering (DEC-E2001-004)*, 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.

In *Gleeson v The Rotunda (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 Conclusions of the Equality Officer

8.1 In this case I must, therefore, decide whether sufficient evidence has been produced which, in the absence of any convincing contradictory evidence from the respondents, would lead any reasonable person to conclude that discrimination occurred. In the absence of any conclusive hard evidence, the question would then arise as to whether the circumstances of the complaint give rise to any inferences of discrimination, which might in themselves contribute to a prima facie case.

8.2 In this particular case I have been provided with much hearsay evidence but I find that there is a conspicuous lack of hard evidence available to me on which to base my decision. As stated earlier, where similar situations have arisen in the past, it has been

possible to draw inferences from a particular sequence of events that occurred. However, in this case, the evidence is so conflicting in nearly every respect, that it is extremely difficult to draw any definite inferences from the evidence submitted.

8.3 Firstly, there is a dispute as to when this alleged incident actually occurred. I have listened closely to both parties but neither has convinced me that the date they refer to was the date on which the alleged incident might have happened. Despite hearing from the respondents that their pub was shut for several hours on 28 December 2000, the complainant still insisted that the incident happened on that date.

8.4 Secondly, the complainant's case is based almost entirely on her husband's account of a conversation which allegedly occurred at the bar between Mrs Hogan and Mr X over who could be served what type of drink. Mrs Hogan totally contradicted Mr Mongon's evidence and has denied that this conversation ever took place. Mrs Hogan insists that Mr X was served the drinks he asked for on the night in question.

8.5 Thirdly, neither party has produced any independent witnesses to substantiate any of the evidence submitted regarding the date of the incident or regarding the content of the conversation that allegedly occurred between Mr X and Mrs Hogan at the bar on the night in question.

8.6 Having, considered the above three points, I find that insufficient hard evidence has been produced which would lead a reasonable person to conclude that discrimination occurred. I also find that the inferences of discrimination to be drawn from the circumstances of the case, do not in themselves, or in combination with the hard evidence, constitute sufficient evidence to show that a prima facie case exists.

9 Decision

9.1 I find that the complainant has not produced sufficient evidence to substantiate her claim that the respondents discriminated against her on the grounds of her membership of the Traveller community.

9.2 I, therefore, find in favour of the respondents on the basis that the complainant has not established a prima facie case of discrimination on the Traveller community ground in terms of sections 3(1) and 3(2)(i) of the Equal Status Act 2000 .

Brian O'Byrne
Equality Officer
2 July 2001