

Equal Status Act 2000

**Equality Officer Decision
DEC-S2001-001**

Mr John Ward & Mr Michael Ward

V

**Mr Patrick Quigley, The Boathouse Pub, Portumna
(Represented by James J. Kearns & Sons, Solicitors)**

**File Refs: ES-2000-01 and ES-2000-02
Date of Issue 16 March 2001**

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Summary of Decision DEC-S2001-001

Mr John Ward and Mr Michael Ward

v

Mr Patrick Quigley, The Boathouse Pub, Portumna
(Represented by James J. Kearns & Sons, 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) - Service in pubs - Risk of criminal and disorderly conduct, section 15(1) - Discrimination by association, section 3(1)(b)

Background

This dispute concerns complaints by Mr John Ward and Mr Michael Ward that they were discriminated against by Mr Pat Quigley, owner of the Boathouse Pub, Portumna on the grounds that they were members of the Traveller Community. The case revolves around an incident in the Boathouse Pub, Portumna on 26 October 2000 when the complainants were only offered one drink by the publican.

The complainants maintain that they were discriminated against on the Traveller community ground in terms of sections 3(1)(a), 3(1)(b) 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 the Act.

Conclusions of the Equality Officer

The Equality Officer found that the complainants had established a prima facie case. The respondent maintained that he restricted service to the first complainant because he believed that a threat of disorderly conduct existed on the night in question. The Equality Officer found that there was insufficient evidence to substantiate this claim and concluded that the publican's actions constituted discrimination on the grounds of membership of the Traveller community. The second complainant was unknown to the respondent but was also restricted service. The Equality Officer concluded that this action constituted discrimination by association with a member of the Traveller community.

The Equality Officer found, however, that there was no evidence that the respondent operated a universal policy of discrimination against Travellers.

Decision

The Equality Officer found that the complainants had been discriminated against on the Traveller community ground in terms of sections 3(1)(a), 3(1)(b) 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 the Act,.

He found in favour of the complainants and ordered that the respondent pay each the sum of £300 for the humiliation and embarrassment suffered by them.

Equality Officer Decision DEC-S2001-001

Complaints under the Equal Status Act 2000

Mr John Ward and Mr Michael Ward

v

Mr Patrick Quigley, The Boathouse Pub, Portumna

1. Dispute

This dispute concerns complaints by Mr John Ward and Mr Michael Ward that they were discriminated against by Mr Pat Quigley, owner of the Boathouse Pub, Portumna on the grounds that they were members of the Traveller Community. While two separate complaints were received, the cases are being dealt with together as they both revolve around one incident in the Boathouse Pub, Portumna on 26 October 2000.

The complainants maintain that they were discriminated against on the Traveller community ground in terms of sections 3(1), 3(1)(b) 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 the Act,.

2. Background

On Thursday 26 October 2000, John and Michael Ward entered the Boathouse Pub, St Brendan Street, Portumna around 8 pm. When the brothers called for service, they say that they were told by the owner, Mr Patrick Quigley, that he would only serve them one drink each and that they would then have to leave. The complainants contend that Mr Quigley took this action because they were members of the Traveller community. Mr Quigley refutes the allegation.

3. Summary of the Complainant's Case

Mr John Ward claims that he and his brother Michael entered the Boathouse Pub, St Brendan Street, Portumna around 8 pm on Thursday 26 October 2000. John Ward states that he called for two pints but that they were left waiting at the bar for 5 minutes before Mr Quigley, who was involved in a game of cards, approached them. The complainants state that Mr Quigley told them that he would only serve them one pint each and that they would then have to leave. They state that when asked for an explanation, Mr Quigley informed them that it was because their brother X had caused trouble in the pub some months earlier and had been barred.

The complainants state that they refused to accept Mr Quigley's offer of one pint and accused him of racism. They say that they then left the premises and phoned Portumna Garda Station and spoke to Detective Dick Quinlivan. They say that when they asked the detective to come to the pub and explain the new equality legislation to Mr Quigley, he refused saying that it was a civil matter and that they should contact their solicitor.

John Ward stated that 26 October 2000 was only the second time that he had been in the Boathouse Pub since Mr Quigley took it over a year beforehand. Michael Ward states that he was never in the Boathouse Pub before.

The complainants contend that the action of Mr Quigley on the night of 26 October 2000 constituted discriminatory treatment under the Equal Status Act on the grounds of their membership of the Traveller community.

4. Summary of Respondent's Case

Patrick Quigley took over the lease of the Boathouse Pub in December 1999. Mr Quigley himself is a native of Portumna. Since taking over the pub, Mr Quigley's daughter Deirdre managed it until early 2001. Mr Quigley stated that his normal clientele would be in the 20/30 age bracket. He says that he had up to 8 Travellers who regularly drank in the pub. They were mainly from Killimer and Loughrea. He also says that on occasion groups of Travellers had arrived in the pub and had been served with no questions asked. Deirdre Quigley insisted that the Boathouse does not discriminate against Travellers. Mr Quigley states that he does not have an anti-Traveller policy in his pub.

Mr Quigley says that on the night in question, he remembers that he was playing cards when John and Michael Ward entered the premises. He denies, however, that they were left for five minutes before he spoke to them. Mr Quigley admits that he told them he would only serve them one drink each. He states, however, that this was because he believed that the brothers had drink taken and he was nervous of trouble because the complainants' brother X had been barred for causing trouble. Mr Quigley denies that he took the stance he did because the Ward brothers were Travellers.

5. Conclusions of the Equality Officer

5.1 Section 3(1) of the Equal Status Act 2000 provides 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) identifies the Traveller community ground as one of the grounds covered by the Act.

In this particular instance, the complainants claim that they were discriminated against on the Traveller community ground in only being offered one drink in the Boathouse Pub on the night of 26 October 2000 contrary to Section 5(1) of the Act.

In order to establish whether discrimination occurred, I believe that it is necessary to explore in depth the circumstances surrounding Mr Quigley's decision to only offer the complainants one drink on 26 October 2000. To ensure that a just and equitable decision is reached, I believe that all matters surrounding this incident need to be examined before a final decision is made.

5.2 At the Hearing of this case on 22 February 2001, it was established that in October 2000, Michael Ward was living in the Birr area while John Ward lived in Manchester. The incident in the Boathouse Pub occurred when John had been visiting his parents in Portumna last October and had arranged to meet his brother, Michael, for a drink.

John Ward states that on the night in question, Michael travelled from Birr by car to meet him in Portumna at 8pm. On Michael's arrival they went into the Boathouse Pub for a drink. John Ward

stated that he had last drunk in the Boathouse Pub some months earlier while Michael Ward stated that he had never frequented the Boathouse before. On entering the pub, John Ward states that Mr Quigley was playing cards with some customers when he called for a drink. The Wards state that they were left waiting for 5 minutes before Mr Quigley came up to them and said they could have 1 pint and then had to leave.

Mr Quigley states that he remembers getting the impression that both of the Wards had drink on them when they entered the pub. He denies leaving them a full 5 minutes but recalls saying that they "could have one drink each". He states that he did not add that they would then have to leave. John Ward is adamant that he only had one pint taken before entering the Boathouse that evening (in Curleys, Portumna while waiting for his brother). Michael, for his part, states that he was completely sober (he had just driven over from Birr).

On only being offered one drink, John Ward says that he refused the offer and accused Mr Quigley of racism. The brothers say that they then left and phoned the local Garda Station from a telephone box. They say they spoke to Detective Dick Quinlivan and requested that he come to the Boathouse to take the matter up with Mr Quigley. They say that Detective Quinlivan advised them that it was a civil matter and that they should contact their solicitor. They then went across the road to Connolly's where Michael had one drink and John had three before they went home.

At the Hearing, Deirdre Quigley explained that she herself had been on duty in the Boathouse that day and had gone home for a break around 7.30 pm for an hour. Her father was only standing in for her as he did not normally work behind the bar. She then explained that it was policy not to serve anyone who appeared drunk or to offer them one drink if there was a doubt. This rule applied to all customers and it was down to the barperson on duty to make a judgement as to the person's condition. At the time of the Hearing, she said that nine former customers were barred, the majority of whom were not Travellers. Ms Quigley emphasised that the complainants had not been barred that night and were welcome on the premises anytime. In response, John Ward stated that he would not consider frequenting the Boathouse again because of the treatment he had received.

5.3 At the Hearing of the case on 22 February 2001, Mr Quigley stated that the primary reason he only offered the complainants one drink, was that, in his opinion, they appeared to have drink taken. Having made the judgement, Mr Quigley maintains that he adopted the same stance with the complainants as he would have adopted with any other customer who had drink taken. For this reason, Mr Quigley maintains that no discrimination occurred under the Equal Status Act on the Traveller community ground.

I have to decide firstly whether the complainants in this case were treated less favourably than another person is, has been or would be treated in the same circumstances.

In considering this matter, a decision has to be made as to the demeanour of the complainants when they entered the Boathouse. If the complainants were under the influence of alcohol and the respondents treated them in the same manner as they would another person in the same condition, this would not constitute discriminatory treatment.

From the evidence presented, however, I find it difficult to accept Mr Quigley's assertion that the complainants appeared to be under the influence of alcohol on the night in question. This incident happened early (8pm) on a Thursday evening. From the information available to me, I am satisfied

with the complainants assertion that Michael drove 15 miles from Birr to meet his brother, that he had no drink taken before he entered the Boathouse and that he only had one pint afterwards before driving home again. A second factor is that I have no evidence that Mr Quigley actually accused the complainants of having drink taken. If this was the real reason for only offering them one drink, one would have expected the complainants to be told of it. Finally, a third factor which I believe to be relevant is that the brothers felt so aggrieved after the incident that they contacted the local Garda Station to report the incident. I do not believe that they would have tried to summon the Gardai if they were obviously under the influence of drink, as their demeanour would have been obvious to the Gardai and would have given credibility to Mr Quigley's version of events.

Having considered all of the above, I cannot accept Mr Quigley's statement that the primary reason the complainants were only offered one pint was because they appeared to have drink taken. I am, therefore, of the opinion that discrimination did occur in the Boathouse Pub on 26 October 2000.

5.4 The question now arises as to whether this discrimination related to the complainants' membership of the Traveller community or whether other factors played a part. The complainants argue that Mr Quigley's reason for only offering them one drink was that he recognised them as Travellers and was reluctant to serve them as he had had trouble before with other Travellers (including the complainants' brother). I have to consider, therefore, whether the offer of one drink was an act of discrimination against the complainants simply because they were Travellers.

In considering the above, I note that at the Hearing, Michael Ward asked Mr Quigley how he came to the conclusion that they were drunk on 26 October 2000. Mr Quigley replied "that's what I thought". He then admitted that he had not seen John Ward under the influence of drink before. However, he said that he was concerned that there may be trouble "because of what went before". This was a reference to problems Mr Quigley and his daughter say they had previously with X, the complainants brother who was now barred from the Boathouse. Mr Quigley admitted at the Hearing that what happened before with X "came into it" when he was considering serving the complainants on 26 October 2000.

According to Deirdre Quigley, X was a regular when the Quigleys took over the Boathouse in December 1999. However, within a few months customers were complaining that he was constantly harassing them. While no violence was reported, she says that X would annoy people by imposing himself on them, interrupting their conversations and being rude to them. Pat Quigley recalled a particular night when X was part of a group of 8 Travellers (4 men and 4 women) who were gathered around the pool table while playing a game. When the Travellers game was finished, other clients complained to Mr Quigley that they would not move away from the table to give them room to play. When Mr Quigley approached the Travellers, he said that X became abusive to him. However, as it was closing time, he did not pursue the matter further.

In Spring 2000, following further incidents, Deirdre Quigley took a decision not to serve X anymore. As a result, Ms Quigley states that X started following and threatening her. She reported this to Garda Ger Hogan but no action followed. She recalled that X would often accost her when she was opening the bar at 5pm each evening asking why he wasn't been served. This frightened her. At that point, her father had recommended that she press charges against X. She decided not to, however, as she feared her new pub would get a bad reputation. She also recalled an incident one night while she was socialising in O'Meara's Pub when she says X deliberately bumped into her a few times commenting that it was "great to be served". This activity made her afraid of him, she

said. She also described how the Quigleys live close to X and mentioned an incident late one night in August/Sept 2000 when she returned home. She said she became frightened when she heard rustling in the bushes in her garden. Soon afterwards X emerged whistling from the bushes and left.

In response to Ms Quigley, the complainants made the point they were now suffering because of the Quigleys' reluctance to press charges against their brother. Both complainants declared that they have very little dealings with their brother as neither of them live in Portumna and they very rarely see him. Their brother was not their responsibility but they have now been tarred with the same brush by the Quigleys because of their brother's activities.

5.5 In an attempt to get a clear picture of the relationships between the complainants and Mr Quigley, who dealt with them on 26 October 2000, I explored their background at the Hearing. Both the complainants stated that they knew Mr Quigley from seeing him around Portumna. Mr Quigley stated that he recognised John Ward as X's brother but that Michael Ward was unknown to him before 26 October 2000. The complainants agreed that this would have been the case, as Michael Ward said that he had never been in the Boathouse before. Deirdre Quigley, however, challenged him on that point as she seemed to recall serving him a soft drink early in 2000. Michael Ward insisted that she was wrong and suggested that it was probably another of their brothers who looked like him and was a non-drinker.

When questioned as to who had responsibility for barring people, Deirdre Quigley said that this was her function as manager. She said that nine people had already been barred including X. Patrick Quigley stated that he knew X was barred but admitted that he was unsure of who else had been barred by his daughter. However, he remarked that he was conscious of the fact that his daughter had warned him that if he served anyone whom she had barred, "she would not work there again". In their defence, the respondents solicitor again reiterated that the Quigleys did not have an anti-Traveller policy. He stated that most of those barred were local settled people and only a minority were Travellers.

It is worthwhile at this point to consider Section 15(1) of the Equal Status Act 2000. This section provides that nothing in the Act prohibiting discrimination, shall be construed as requiring a person to provide services to another person in circumstances which would lead a reasonable individual, having the responsibility, knowledge and experience of the person, to the belief, on grounds other than discriminatory grounds, that the provision of services 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.

In John Ward's case, it has been argued by the respondents that Mr Quigley's actions were prompted by the fact that he recognised John Ward as a brother of X and that he feared trouble from him. By all accounts, it would appear that X had been barred from the Boathouse Pub for "making a nuisance of himself" and annoying other customers. It could be argued that X's conduct constituted disorderly behaviour in terms of Section 15(1) of the Equal Status Act 2000. However, this is not a matter for me to decide as X is not a complainant in this case.

With regard to John Ward himself, no evidence whatsoever has been produced to suggest that he had ever engaged in any form of violent or disorderly conduct before. Indeed, Mr Quigley knew that John Ward had been in the pub previously and had behaved himself. Similarly, no evidence has been provided to indicate that the provision of service to John Ward would have produced a

substantial risk of trouble from anyone else. For the above reasons, I consider that Section 15(1) does not apply in John Ward's case as Mr Quigley had no justifiable reason to believe that John Ward was personally likely to be the cause of trouble. I cannot, therefore accept that fear of disorderly behaviour was the reason that John Ward was only offered one pint on October 26.

Having considered the evidence before me, I am of the opinion that, on 26 October 2000, Patrick Quigley recognised John Ward as a Traveller and as a brother of X. He knew X and several other Travellers had been barred by his daughter previously and, because he was unsure whether John Ward was one of those Travellers, I believe that this was the main reason he decided to restrict him service.

This to me constitutes discrimination on the grounds of membership of the Traveller community. If John Ward had not been a Traveller, I consider that, on the balance of probability, he would have been treated more favourably by Mr Quigley when he entered the Boathouse Pub on the night in question. I, therefore, believe that the most probable explanation for Mr Quigley's actions was that it was based on the complainant's membership of the Traveller community.

Having fully considered the foregoing, I am satisfied that Mr Quigley's actions on the night of 26 October 2000 constituted unlawful discrimination against John Ward within the meaning of Section 3 of the Equal Status Act 2000, on the grounds that he was a member of the Traveller community.

5.6 Let us now consider Michael Ward's case. While John and Michael Ward were brothers, there is little family resemblance between them. On his own admission, Patrick Quigley had never seen Michael Ward before the night of 26 October 2000. Yet when Michael Ward and his brother entered the Boathouse Pub on October 26, Patrick Quigley decided, before conversing with them, that he was only going to serve them one drink.

Patrick Quigley did not know who Michael Ward was. He did not know whether he was related to John Ward or even whether he was a Traveller. Mr Quigley is, therefore, entitled to argue that Michael Ward was not discriminated against on the grounds that he was a Traveller as Mr Quigley did not know he was a Traveller.

Michael Ward, was, however, treated similarly to John Ward, who I have already found to have been discriminated against. It is my view that Michael Ward was treated in this fashion not because he himself was a Traveller but because of his association with a Traveller, his brother John Ward.

Section 3(1)(b) of the Equal Status Act 2000 states that discrimination shall be taken to occur where

"a person who is associated with another person is treated, by virtue of that association, less favourably than a person who is not so associated is ... treated, and similar treatment of that other person on any of the discriminatory grounds would ...constitute discrimination"

I consider that Michael Ward was only offered one drink because he entered the Boathouse Pub in the company of John Ward, a recognised Traveller. As outlined above, I have already found that John Ward was discriminated against on the grounds of being a member of the Traveller community. Consequently, I find that Michael Ward, through his association with

John Ward, was also discriminated against under the Equal Status Act 2000 on the Traveller community ground.

5.7 There is no previous legal experience in this jurisdiction of anti- discrimination cases based on the Traveller ground. While the provisions of the Equal Status Act seem clear in the present case, it is of interest to look at the experience in other jurisdictions of anti-discrimination cases taken by groups similar to Traveller - making, of course, the necessary allowances for differences of legal context. An example is the caselaw of the Australian Human Rights and Equal Opportunities Commission, interpreting the provisions of the federal Australian Racial Discrimination Act 1975 which makes it unlawful to refuse service to a person by reason of their race, colour or national or ethnic origin.. The effect of the relevant legal provisions of that Act, as concerns refusal to supply drinks to members of the Aboriginal community in Australia, is somewhat similar to the provisions of this Act in this case, although there is of course no equivalent to our section 15.1 in the Australian Act.

While accepting that these cases cannot be regarded as true precedent cases in this jurisdiction, it is noteworthy that a number of the Commission's decisions deal with situations similar to that pertaining to this case. The full text of these decisions can be found in the Human Rights and Equal Opportunities Commission database on website www.austlii.edu.au .

Many of the Commission's decisions relate to incidents where Aborigines were refused service in hotels and bars. In the case of **Scott and Woods v Venturo Investments (HREOCA 10 -1991)**, two female aborigines had 2 drinks in a hotel at lunchtime, after which they were refused further service on the grounds that they were adversely affected by alcohol. The Commission found that this could not have been the case and found in favour of the complainants on the basis that the dominant reason for the refusal was race.

In the case of **Mungaloon & Ors v Stemrom Pty Ltd (HREOCA 14 - 1990)** the Commission found that 3 Aborigines were refused service in a hotel solely because other Aborigines had caused damage in the hotel previously. The Commission found that the owner's policy after the incident of excluding people on the basis of race was unlawful and commented that "it involved the common error of blaming all of those falling into a group for the misdeeds of others".

While the above cases have some persuasive value, it must be stressed that this particular case was judged strictly on my interpretation of the Equal Status Act 2000 and I consider that I would have reached the same conclusions irrespective of the Australian cases.

6. Decision

6.1 Having fully considered all aspects of this case, I am satisfied that Mr Patrick Quigley does not operate a universal policy of discrimination against Travellers in the Boathouse Pub and that, in general, the same rules and procedures that apply to settled people also apply to Travellers.

This situation arose, because an uncertainty existed as to who was or wasn't barred from the Boathouse Pub. In the interests of good bar practices, I would, therefore, recommend that, where possible, publicans should keep their staff clearly informed of those individuals who are currently barred from their premises.

In relation to the events of 26 October 2000, I am satisfied, however, that both complainants suffered unlawful discrimination at the hands of Mr Quigley within the meaning of the Equal Status Act 2000. John Ward was discriminated against on the grounds of membership of the Traveller community contrary to sections 3(1) and 3(2)(i) of the Act and Michael Ward was discriminated against on the grounds of association with a member of the Traveller community contrary to section 3(1)(b) of the Act.

I, therefore, find in favour of both the complainants and order that Mr Quigley pay each the sum of £300 for the humiliation and embarrassment suffered by them.

Brian O' Byrne
Equality Officer
16 March 2001