

ODEI - the equality tribunal

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Equal Status Act 2000

EQUALITY OFFICER'S DECISIONS NO: DEC-S2002-105

Tom Sherlock

V

The Brewery Pub, Ennis, Co. Clare

File No. ES/2001/291

Date of Issue 19/09/2002

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Equal Status Act 2000

Summary of Decision DEC-S2002-105

Tom Sherlock
(represented by Justin Sadleir, Solicitors)

V

The Brewery Pub, Ennis, Co. Clare

Headnotes

Equal Status Act, 2000 - Direct discrimination, Section 3(1)(a) - Traveller community ground, Section 3(2)(i) - Disposal of goods and supply of services, Section 5(1) - Refusal of service in a pub - prima facie case - refused because of previous conduct.

Background

This dispute concerns a claim by the complainant that he was discriminated against by the respondent, contrary to the Equal Status Act, 2000, on the grounds that he is a member of the Traveller community when he was refused service in the respondent's premises on 7 April, 2001. The respondent denies that the complainant was discriminated against and that service was, in fact, refused only to the complainant's brother because of previous unacceptable behaviour on his part.

Conclusions of the Equality Officer

The Equality Officer found that the complainant's brother, who was the person directly refused service, had previously behaved in an unacceptable manner on the respondent premises and it was for this reason that service was refused to him. However, as he had sought service on behalf of a number of people, including the complainant, service was also therefore refused to the complainant. The Equality Officer found that the reason the complainant was refused service was due entirely to his brother's past unacceptable behaviour and for this reason the complainant had not established a prima facie case of discrimination on the Traveller community ground.

Decision

The Equality Officer found that the complainant was not discriminated against on the Traveller community ground contrary to Section 3(1)(a), and 3(2)(i) of the Equal Status Act 2000 and in terms of Section 5(1) of that Act.

Complaint under the Equal Status Act 2000
DEC-S2002-105

Tom Sherlock
(represented by Justin Sadleir, Solicitors)

V

The Brewery Pub, Ennis, Co. Clare

1. Dispute

1.1 This dispute concerns a claim by Tom Sherlock that on 7 April, 2001, he was refused service in the Brewery Pub on the grounds that he is a member of the Traveller community. The respondent denies that discrimination occurred. The complainant referred a claim to the Director of Equality Investigations under the Equal Status Act 2000. In accordance with her powers under section 75 of the Employment Equality Act 1998 and under the Equal Status Act 2000, the Director then delegated the case to me, Dolores Kavanagh, an Equality Officer, for investigation, hearing and decision and for the exercise of other relevant functions of the Director under Part III of the Equal Status Act.

2. Summary of Complainants' Case.

2.1 The complainant states that he, along with his brother and his cousin, went to the Brewery Pub between 7 and 7.30 p.m. on 7 April, 2001. The complainant's brother ordered a round of drinks and was refused service. It is the complainants' contention that they were refused service because they are Travellers.

3. Summary of Respondent's Case

3.1 The respondent states that the complainant's brother had previously behaved in an unacceptable manner in the premises and was barred as a result. It was for this reason that service was refused to the complainant's brother on 7 April, 2001.

4. Evidence of the Parties

4.1. Complainant's Evidence

Mr. Tom Sherlock, Complainant

Mr. Sherlock stated that:-

- He is a member of the Traveller community. His family were nomadic until 1977-78 at which time they settled.
- On 7 April, 2001 he had travelled to Ennis at his brother's invitation for the occasion of his nephew's confirmation. Following the confirmation service the family had gone to the house of Mr. Sherlock's brother, Mr. John Sherlock, for refreshments (tea, coffee, sandwiches). There was no alcohol provided or consumed in the home of his brother that afternoon.
- On 7 April, 2001 between 7.00-7.30 p.m he, his brother and his cousin went to the Brewery Pub, Ennis. His brother, John Sherlock, had chosen to go to the Brewery Pub for a drink. They asked for a drink and were refused service. When he asked why they were being refused service he was told that it was manager's orders.
- The complainant knew that his brother, a heavy drinker, would be refused service in 4-5 local pubs but did not know why this was the case.
- None of the group had ever been to the Brewery Pub previously. They were sober, dressed respectably and are all aged over eighteen.
- After the refusal he had asked to speak with the manager and was told that the manager was not about.
- On entering the pub all three members of the group had gone to the bar but John Sherlock, the complainant's brother, had asked for service and had been refused.
- The group left the pub and met up with some acquaintances. They decided that there was no point staying in Ennis as they would not be served in the pubs there. They went to a pub some five miles outside Ennis where they knew that Travellers would be served
- He feels that the only reason for the refusal of service in the Brewery Pub was because he and his companions had been recognised as Travellers, that this often occurred because Travellers are recognised because of their appearance, dress, accent and pronunciation.
- Nobody in the group stumbled in the pub on 7 April, 2001 as claimed by the respondent.

Mr. John Sherlock, witness for the complainant

Mr. Sherlock stated that:-

- He is the complainant's brother, and it was he who had invited the complainant to Ennis on the occasion of his (John Sherlock's) son's confirmation.

- He had gone with the complainant and a cousin of theirs to the Brewery Pub on the evening in question. He had no idea why he chose the Brewery Pub. His wife had driven them to the Square in Ennis and dropped them off there. The Brewery Pub is nearby where they were dropped off but was not the nearest pub.
- He could not remember ever being in the Brewery Pub previously.
- He did not remember being in the company of, or any incident involving the individual "X", named by the respondent as having been involved in a violent incident in the pub in late 2000/early 2001.
- His usual drink is a pint of Harp lager. His companions drink a variety of drinks. Few of them drink Harp.
- He vaguely remembers a day when he was in the Brewery Pub with "X". He, John Sherlock, was sitting at a table having a drink and the other individual, "X", seemed to be having trouble getting served as he was at the bar for a long time. He could not remember what was said by "X" or the barman and he could not remember whether he heard raised voices. He, John Sherlock, was refused a second drink on that occasion and he had no idea why he was refused.
- When his companion, "X", was at the bar shouting at the manager he did not hear what was said.
- When the barman had refused service on 7 April, 2001 he and his cousin had left the pub. His brother, the complainant, told them when he came out a bit later that he had asked to speak to the manager and that the manager was not there.
- He has no idea why he didn't make a complaint himself against the respondent.

4.2 Respondent's Evidence

Mr. Justin O'Driscoll, Respondent

Mr. O'Driscoll stated that:-

- He is the owner and the manager of the Brewery Pub, Ennis.
- He was not present when service was refused to the complainant's group on 7 April, 2001. The barman on duty on the evening in question had contacted him and informed him of what had occurred. He arrived in the bar about a half an hour later.

- It is standard practice in the Pub that where any person is not served he, Mr. O'Driscoll, is to be informed immediately
- The barman had told him that three men had come into the pub and that one of them had stumbled on the way in the door. The man who had stumbled was known to the barman, i.e. John Sherlock. The barman was aware that John Sherlock was barred from the pub at that time.
- The bar staff in the pub would never say that a patron was being refused "because of manager's orders". It was standard practice in the pub that the bar staff, when aware that someone was barred, would refer the individual to the manager.
- The reason John Sherlock was barred was because of his association with an individual, "X", who had caused trouble in the premises previously. The individual in question had had a very heated and loud argument with his girlfriend/female companion in the pub on a night circa late 2000- early 2001. When the bouncer on duty at that time had tried to intervene "X" head butted the bouncer and broke his nose. The bouncer had to be taken to hospital.
- On an afternoon (2-2.30 p.m.) some three weeks later "X", who had assaulted the bouncer, entered the pub with John Sherlock. The latter was served a drink but the other individual was refused service because of his earlier violent conduct. The individual in question had become argumentative and insulting towards Mr. O'Driscoll. John Sherlock, who was taking "X"'s part had reached over the counter and grabbed a half pint glass and poured half of his drink into the other glass and handed it to "X". The latter had threatened "to get Mr. O'Driscoll's license" and had taken out a mobile phone and stated that he was "ringing a solicitor in Gort". Mr. O'Driscoll left the two at the bar and gave instructions not to serve them. Eventually they left the pub.
- Mr. O'Driscoll recalled clearly that John Sherlock was served a pint of Harp on the afternoon in question, which was his usual drink. (This was confirmed by John Sherlock)
- Mr. Sherlock (John) had been served on the premises a number of times prior to the afternoon in question and was well known to Mr. O'Driscoll.
- John Sherlock had come into the premises on a number of occasions following the afternoon in question and had been refused service because of his and his companion's unacceptable behaviour. On each occasion he had stated to Mr. O'Driscoll that he would "get money out of him". The last such occasion had been approximately one month ago i.e. circa end July.
- None of the incidents were recorded by Mr. O'Driscoll. Only serious incidents involving injury are recorded on the premises, such as the one whereby the bouncer's nose was broken by John Sherlock's companion. Even then, the incident would be recorded by the bouncer's employer, i.e. a security firm who provided security to the pub in the evening time. Mr. O'Driscoll was not the bouncer's employer but would arrange for a copy of the report of the incident to be forwarded following the Hearing. (The report was submitted subsequently).

- The pub has never had a policy of restricting or refusing service to any group, including Travellers. A number of patrons are members of the Traveller community who are well known to the manager and bar staff. Service is only refused where patrons behave in an unacceptable manner. Individuals who behave in such a manner are barred from the premises. This is supported by the fact that John Sherlock was served on the afternoon when he entered the pub with the individual, “X”, who had behaved in a violent manner previously while the latter individual was not served.
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- **Mr. Barry Pilkington, Barman, witness for the Respondent**
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- Mr. Pilkington stated that:-
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- He is the barman who refused service to John Sherlock on the evening of 7 April, 2001. He did so because he was aware that John Sherlock was barred from the premises. Another barman, an acquaintance of Mr. Pilkington’s, had pointed out John Sherlock to him in the street one day and told him that he was barred and why. Information was often passed between bar staff in this way.
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- He never stated to any of the group that the refusal was “manager’s orders”. He had stated that they would have to speak with the manager before he could serve them. It was standard practice in the pub to state this to patrons if service was being refused, unless the bar person who was refusing service was the same person who had actually barred the individual in the first place. This avoided confusion about who was to be served, as the manager, Mr. O’Driscoll, is aware at all times of the identities of those who are barred and the reasons why they are barred.
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- On the evening of 7 April, 2001 John Sherlock had stumbled on his way into the pub. This had drawn Mr. Pilkington’s attention to John Sherlock. He knew that the latter was barred and refused service on that basis. No other member of the group had sought service, but even if they had he would have referred them to the manager before he would serve them, as they were in John Sherlock’s company.
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- The manager was not in the bar at the time. The group did not wait to speak to the manager, but instead, left the premises immediately. Mr. Pilkington rang the manager on his mobile phone and related events to him.
- The bar staff had never been instructed to restrict or refuse service to anyone except those who behaved in an unacceptable way or caused trouble on the premises. A number of customers who are well known to Mr. Pilkington are Travellers and they are served regularly on the premises.

5 Matters for consideration

5.1 The matter referred for investigation turns upon whether or not the complainant was discriminated against contrary to Section 3 (1)(a) or and 3 (2)(i) of the Equal Status Act 2000 in terms of Section 5 (1) of that Act.

5.2 Section 3 (1)(a) provides that discrimination shall be taken to occur where:
"On any of the grounds specified.....a person is treated less favourably than another person is, has been or would be treated".

5.3 Section 3 (2) provides that: *"As between any two persons , the discriminatory grounds (and the description of those grounds for the purposes of this Act) are:
..... (i) that one is a member of the Traveller community and the other is not."*

5.4 Section 5 (1) states that *"a person shall not discriminate in disposing of goods to the public generally or a section of the public or in providing a service, whether the disposal or provision is for consideration or otherwise and whether the service provided can be availed of only by a section of the public "*.

5.5 At the outset, I must first consider whether the existence of a prima facie case has been established by the complainant. There are three key elements which need to be established to show that a prima facie case exists. These are:

- (a) Membership of a discriminatory ground (e.g. the Traveller community ground)
- (b) Evidence of specific treatment of the complainant by the respondent
- (c) Evidence that the treatment received by the complainant was less favourable than the treatment someone, not covered by that ground, would have received in similar circumstances.

If and when those elements are established, the burden of proof shifts, meaning that the difference in treatment is assumed to be discriminatory on the relevant ground. In such cases the claimant does not need to prove that there is a link between the difference and the membership of the ground, instead the respondent has to prove that there is not. If they succeed in establishing prima facie evidence, the burden of proof then shifts to the respondent to rebut the inference of discrimination.

5.6 In considering what constitutes a prima facie case, I have examined definitions from a number of sources. In *Dublin Corporation v Gibney (EE5/1986)* prima facie

evidence is defined as: *"evidence which in the absence of any credible 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. "*

6. Conclusions of the Equality Officer

6.1 I am satisfied that the complainant is a member of the Traveller community in accordance with **(a)** at 5.5 above. The complainant has provided written and oral evidence of refusal of service to his brother who was seeking service on his behalf on 7 April, 2001 by the respondent, which has been confirmed by the respondent, and this fulfils **(b)** at 5.5 above.

6.2 In order to establish whether key element **(c)** at 5.5 above has been satisfied it is necessary to examine the evidence given by the complainant and the witness on his behalf.

6.3 The complainant's brother, Mr. John Sherlock gave evidence that he had never been to the Brewery Pub prior to 7 April, 2001, i.e the night on which he was refused

service, and had no idea why he was not served on that occasion. He then proceeded to state that he had been on the premises previously with “X”, a named individual who, according to the respondent, had behaved in a violent manner on the premises on an earlier occasion. Despite being in the company of this individual he recalled having a drink served to him on that occasion but stated that had no idea why a second drink was refused to him. He stated that he did not remember any conversation between the bar manager or “X” on that occasion. He then made a statement to the effect that “when “X “ (the named individual) was at the bar shouting at the manager...” He appears therefore to have been aware that “X” was arguing with the manager. He also confirmed that despite this, he personally was served.

The evidence presented by Mr. John Sherlock was completely lacking in credibility or consistency. This contrasted with the credible and sustainable account given by the respondent and his witness. The respondent was readily able to identify Mr. John Sherlock’s usual drink, and though initially denied by John Sherlock, was able to establish that John Sherlock had, in fact been in the premises with “X” on a specific occasion. It was only after the respondent brought this to his attention that Mr. Sherlock recalled his previous visit to the premises.

6.4 In light of the foregoing I am satisfied that the complainant’s brother was served in the respondent premises until such time as he was barred for unacceptable behaviour. I am also satisfied that the complainant’s brother was aware that he was barred from the premises when he elected to go there on 7 April 2001 and was aware in advance that he would be refused on that occasion.

6.5 Given the complete inconsistency and unreliability of the evidence provided by the complainant’s brother, and the credibility and consistency of the respondent’s evidence, I am satisfied that, on the balance of probabilities, in relation to key element (c) at 5.5 above service was refused to the group, via John Sherlock, including the complainant, because of previous unacceptable behaviour by the complainant’s brother and for no other reason.

6.6 I am also satisfied that any person, whether a Traveller or a non-Traveller, would, or could, be refused service in the same circumstances. As the refusal of

service was due to the unacceptable behaviour of John Sherlock alone, I find that the complainant was not discriminated against because he is a member of the Traveller community. The complainant has not therefore established a prima facie case of discrimination by the respondent.

Decision

I find that the complainants was not discriminated against on the Traveller community 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.

Dolores Kavanagh

Equality Officer

19 September, 2002