

ODEI - the equality tribunal

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Equal Status Act 2000

EQUALITY OFFICER'S DECISIONS NO: DEC-S2002-122-123

Tom & Ellen Reilly
(represented by Ms. Eleanor Edmond, Solicitor
Free Legal Advice Centres)

V

The Abbey Lodge, Celbridge
(represented by Ms. Treasa Kelly, B.L., acting on instructions
from Arthur E. McMahon, Solicitors)

File No. ES/2001/749 & 757

Date of Issue 21/11/2002

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Summary of Decision DEC-S2002-122-123

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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 claims by each of the complainants that they were discriminated against on the grounds that they are members of the Traveller community when they were refused service in the respondent's premises on 26 August, 2001. The respondent denies that the complainants were discriminated against and states that service was only refused because of previous unacceptable behaviour on the complainants part.

Conclusions of the Equality Officer

The Equality Officer found that one of the complainants had previously behaved in an unacceptable manner on the respondent's premises and it was for this reason that service was refused to them. The Equality Officer found that the complainants had not, therefore, established a prima facie case of discrimination on the Traveller community ground.

Decision

The Equality Officer found that the complainants were 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-S2002-122-123

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1. Dispute

1.1 This dispute concerns claims by Tom & Ellen Reilly that on 26 August, 2001, they were discriminated against when they were refused service in the Abbey Lodge on the grounds that they are members of the Traveller community. The respondent denies that discrimination occurred. The complainants each 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 cases 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 complainants state that they, along with two companions, went to the Abbey Lodge on 26 August, 2001. Mr. Reilly and a male companion went to the bar and ordered a round of drinks and were 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 complainants and their companions had been refused service on the evening of 25 August, 2001 as they appeared to have excess alcohol consumed on that occasion. Mr. Reilly and a male companion had subsequently behaved in an unacceptable manner and were asked to leave the

premises as a result. It was for this reason that service was refused to the complainants and their companions when they returned to the pub on 26 August, 2001

4. Evidence of the Parties

4.1. Complainant's Evidence

Mr. Tom Reilly, Complainant

Mr. Reilly stated that:-

- He and his wife, Ellen Reilly and two companions went to the Thatch Pub for a drink at approximately 4.05 p.m. on the evening of 25 August, 2001. They were served without difficulty but decided later in the evening, circa 8.30-9 p.m. that they would prefer to go somewhere more lively.
- The group took a taxi to Celbridge and entered the Abbey Lodge. The two women in the group took a seat while the two men went to the bar to get a round of drinks.
- The barman ignored them initially and when they asked for a drink he informed them that in his opinion they had consumed too much drink and that he would not serve them any more.
- The barman stated that he would not serve them on that occasion but they should come back another evening.
- The group did not challenge the barman on this occasion as, while they did not accept that they had excess drink taken, they had had four drinks each in the previous premises. The group, who were offended and humiliated by the inference that they had excess alcohol consumed, left the Abbey Lodge.
- On 26 August, 2001 the group met up in a shopping centre close to where they reside and took a taxi to the Abbey Lodge early in the evening. They entered the premises and the women took a seat while the men went to the bar to order a round of drinks.
- The barman would not serve them and would not give a reason for the refusal of service.
- When pressed the barman stated that they had done nothing wrong but that he still would not serve them.
- The men informed the barman that they were forming a non-violent protest by remaining on the premises.
- The barman called the Gardaí saying to the two men “will you do it or will I do it?”. After approximately 15 minutes the group left the premises. They went to a premises in Ballyfermot where they were served without any difficulty.
- The group has no difficulty getting served on an ongoing basis in various premises in Ballyfermot.

- The group took a taxi to the Abbey Lodge on 26 August 2001 because it is 4-5 miles from where they live. All pubs which they frequent are equidistant from where they live and would require travelling by taxi or public transport.
- Mr. Reilly and his wife do not consider distance any problem and have often driven to Galway to have an evening out with their grandparents. On such occasions they stay overnight in Galway and drive back home the following day.
- Mr. Reilly is a member of the Traveller community. He Travelled when he was young but has ceased to do so and he and his wife now reside on a halting site. His parents and grandparents travelled. Members of the community have distinctive accents that are recognised by non-Travellers. For this reason Mr. Reilly feels that the reason he was refused service by the respondent was because his Traveller identity was recognised and service was refused for that reason.

Ms. Ellen Reilly, complainant

Ms. Reilly stated that:-

- The facts related by her husband in relation to events on 25 August were correct. The party had gone to the Abbey Lodge in Celbridge from the Thatch Bar. They had had 4 drinks each in the Thatch Bar.
- Ms. Reilly did not hear or witness the conversation on 25 August between the barman and the two male members of the group. Her husband had informed her of the details when he returned to the table and told them that they were not being served.
- Ms. Reilly did not hear the conversation between her husband, his male companion and the barman on the evening of 26 August, 2001 but they were at the bar for approximately 10-15 minutes.
- When she heard the barman say “will you do it or will I do it lads” she became nervous that trouble might ensue and she got up and asked her companions to leave, which they did.
- Ms. Reilly is a member of the Traveller community for the reasons as described by her husband.

4.2 Respondent's Evidence

• **Mr. Peter McNamee, manager, witness for the Respondent**

- Mr. McNamee, son of Mr. John McNamee, respondent, stated that:-
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- He is the Manager of the Abbey Lodge and was on duty on the evening of 25 August, 2001 when the complainants and another couple entered the premises.
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- Mr. McNamee was behind the bar serving at the time. He judged by the gait and demeanour of the group that they had excess alcohol taken already. When the two men from the group approached the bar he spoke with them and noticed that their speech was slurred. He told them he would not serve them any more alcohol because they had had sufficient already.
-
- The men ignored him and tried to get other members of staff to serve them. Mr. McNamee told them that he had already informed them that they would not be served. The two men proceeded to verbally abuse Mr. McNamee and directed foul and profane language at him.
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- Mr. McNamee has been running the bar since 1990 and is very experienced in doing so.
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- His refusal to serve the complainants on 25 August, 2001 was in accordance with normal procedure in the premises, which is applied by staff across the board.
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- Mr. McNamee felt that it would have been irresponsible of him to serve alcohol to any person who clearly had had too much to drink already.
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- Mr. McNamee is familiar with the Equal Status Act and does not regard the refusal of the complainants on the evening of 26 August (i.e. the evening after the first refusal by him) as discriminatory as it was a direct consequence of the unruly and unacceptable behaviour of the two men on the previous evening.
-
- Mr. McNamee had not, at any time, told the group to come back another evening. He had asked them to leave the premises. The policy of the Abbey Lodge is to bar any person who is abusive, loud or aggressive, or who cannot handle their drink and behaves badly or uses foul language.
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- The issue of barring people from the premises arises fairly regularly but not excessively, averaging at most one or two incidents a week.
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- Mr. McNamee would not know whether he has regular Traveller clients, or Traveller clients from time to time as he would not be in a position to distinguish them from other patrons.
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- **Mr. Joseph Casey, witness for the Respondent**

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- Mr. Casey stated that:-
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- He witnessed the refusal of service to the complainant, Mr. Reilly and his male companion on the evening of 25 August, 2001. He was on door duty on the evening in question.
- He saw the group of four people, including the two complainants, enter the premises and, from the manner in which they were behaving, deemed that they had had excess alcohol to drink.

- As he was watching both entrances to the premises, he did not stop the group entering the premises and it was not possible for him to get to them before they proceeded to approach the bar.
- He alerted Mr. McNamee as to his views on the group having consumed excess alcohol and Mr. McNamee agreed with Mr. Casey that the group appeared to be drunk.
- He saw from where he was positioned that the two men from the group who had gone to the bar seemed to be very agitated and appeared to be arguing with Mr. McNamee, but he could not hear what was being said precisely. Eventually the group left the premises.
- Later, after the group had left Mr. McNamee told Mr. Casey that there had been difficulties with the men in question.
- The following afternoon, 26 August, the same group entered the premises. Mr. Casey was on duty behind the bar but Mr. McNamee was not.
- The two males in the group approached the bar and ordered a round of drinks for four.
- Mr. Casey refused to serve them because of their behaviour the previous evening. He declined to give them a reason as he did not wish to engage in an argument with them.
- Mr. Casey's refusal was based on the behaviour of the men the previous evening.
- Mr. Reilly's male companion took a mobile phone out of his pocket and began to dial a number.
- Mr. Casey felt threatened and intimidated by the production of the phone as he had no idea who the man was calling and feared that he could be phoning for "reinforcements". He asked the men whether he should make the call or would they, ("will ye make the call or will I") meaning that he would ring the Gardaí if they didn't.
- Mr. Casey did not ask the man in question who he was calling on the telephone.
- Mr. Casey rang the Gardaí and told them that there were certain people on the premises who were refusing to leave.
- The men asked Mr. Casey if he had rung the Gardaí and when he confirmed that he had the group left the premises.
- When the group left the premises Mr. Casey called the Gardaí and told them there was no longer any need for them to come to the premises.
- Mr. Casey had never been told to restrict or refuse service to any group or individual save in circumstances where they had been barred for misbehaviour. He has in fact been told to serve all persons equally as customers.
- Mr. Casey recorded the incident in the incident book which is kept on the premises (since approximately August, 2000).

5 Matters for consideration

5.1 The matter referred for investigation turns upon whether or not the complainants were 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 complainants are members of the Traveller community in accordance with (a) at 5.5 above. The complainants have provided written and oral evidence of refusal of service to them on 26 August, 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 parties to the complaints to establish whether the treatment afforded the complainants was such that it was less

favourable than treatment which was, or would be, afforded non-Travellers in the same or similar circumstances.

6.3 The complainants stated that they had been in another premises prior to arriving at the Abbey Lodge on the evening of 25 August. They had been in that other premises for somewhere in the region of four to five hours. In that time they accept that they consumed alcohol. They stated that they had a total of four drinks each in that time.

6.4 The respondent's manager and barman both stated that they independently concluded, on seeing the group enter the premises on 25 August, 2001, that they had consumed excess alcohol and service was refused for that reason. The complainants state that, while they found the experience humiliating, they chose not to dispute this at that time.

6.5 Mr. Peter McNamee stated that he had been verbally abused by the two men in the complainants party on the evening of 25 August. Mr. Casey, barman, witnessed what he regarded as a dispute between Mr. McNamee and the men in question, one of whom was the complainant, Mr. Reilly. Based on what he witnessed and was told on 25 August Mr. Casey withheld service from the group on the afternoon of 26 August.

6.6 The complainants deny that any confrontation occurred on the evening of 25 August. Ms. Reilly is not in a position to deny this as she herself stated in evidence that she did not hear or witness the conversation between the members of her party and Mr. McNamee on the evening of 25 August. Her husband, Mr. Reilly informed her of what was said when he returned from the bar. The other two members of the group did not give evidence at the Hearing of these cases. Therefore Mr. Reilly was the only one of the complainants present in the course of the discussion with Mr. McNamee on 25 August, and Mr. Casey on 26 August, who gave evidence at the Hearing.

6.7 Mr. Reilly denies that any abusive or foul language was used in the course of his conversation with Mr. McNamee on 25 August, 2001. Mr. McNamee is adamant that Mr. Reilly and his male companion did use such language. Mr. McNamee is also adamant that he did not invite the group to return on another evening. On balance I

find the evidence presented by the manager of the Abbey Lodge and Mr. Casey, the barman, more compelling than that provided by the complainants.

6.8 On the following evening the complainant's group met in a local shopping centre with the specific intention of returning to the respondent's premises. In circumstances where they stated at the Hearing of these complaints that they were offended and humiliated by the actions of Mr. McNamee the previous evening, the prearranged meeting to return to the offending premises, appears to say the least, inconsistent with the group's sentiments. The complainants claim that they were anxious to see if they were indeed welcome in the premises on another evening as they claim was stated by Mr. McNamee.

6.9 I am satisfied that this was not the case. In the circumstances, taking all of the evidence into consideration, I am satisfied that the complainant Mr. Reilly and his male companion behaved in an unacceptable manner on the evening of 25 August, 2001. I am satisfied that they and their companions were aware that they would not be welcome back on the respondent's premises and that they arranged to meet early in the evening of 26 August to ensure that they would not have any alcohol consumed on this occasion when they returned to the respondent's premises, and could not, therefore, be refused on that basis.

6.10 I am satisfied that they anticipated that they would be refused service again, based on the conduct of Mr. Reilly and his male companion the previous evening, and I am satisfied that their second visit to the respondent's premises was a cynical exercise on their part designed to deliberately provoke a refusal of service, following which they would lodge a claim against the respondent.

I am satisfied that the refusal of service to the complainants on 26 August, 2001 was based on the unacceptable behaviour of Mr. Reilly and his male companion the previous evening and that service providers are entitled to refuse service on that basis to any potential customer, whether they are a member of the Traveller community or not.

I find in the circumstances that the complainants have not established a prima facie case of discrimination on the Traveller community ground as they have not satisfied the requirements of key element **(c)** at 5.5 above.

Decision

The complainants were 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****21 November, 2002**