

ODEI - the equality tribunal

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Equal Status Act 2000

EQUALITY OFFICER'S DECISION NO: DEC-S2002-127

Nora Barrett

V

O'Learys Pub, Salthill

File Ref ES/2001/306
Date of Issue 29/11/2002

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Equal Status Act 2000

Summary of Decision DEC-S2002-127

Nora Barrett

V

O’Learys Pub, Salthill

Key words

Equal Status Act 2000 - Direct discrimination, section 3(1)(a) - Membership of the Traveller community, section 3(2)(i) - Supply of goods and services, section 5(1) - Refusal of service in pub

Dispute

This dispute concerns a complaint by Mrs Nora Barrett that she was discriminated against, contrary to the Equal Status Act 2000, by the management of O'Learys Pub, Salthill.

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 not being provided with a service which is generally available to the public contrary to Section 5(1) of the Act.

Summary of Complaint

The complainant states that at 4.30 pm on Sunday 28 January 2001, she and some relatives were served a drink in O'Learys Pub and then asked to leave, as the pub was closing at 6pm. A week later the complainant states that she was refused service on entering the pub by the manager. The complainant believes that she was refused service on the grounds of her membership of the Traveller community.

The respondents totally reject that they operate a discriminatory policy against Travellers. They maintain that the pub was closed on 28 January 2001 as insufficient staff were available to deal with the unexpected large crowd that arrived in the pub that afternoon. They also claim that Mrs Barrett abused a member of staff later that night which resulted in her being refused admission a week later

Decision

The Equality Officer found that a prima facie case of discrimination had not been made by the complainant in establishing 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 not being provided with a service which is generally available to the public contrary to Section 5(1) of the Act.

Accordingly, he found in favour of the respondents in the matter.

**Equal Status Act 2000
Decision DEC-2002-127**

Nora Barrett

O'Learys Pub, Salthill

1. Dispute

1.1 This dispute concerns a complaint by Mrs Nora Barrett that she was discriminated against, contrary to the Equal Status Act 2000, by the management of O'Learys Pub, Salthill.

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 not being provided with a service which is generally available to the public contrary to Section 5(1) of the Act.

2. Summary of the Complainant's Case

2.1 The complainant states that at 4.30 pm on Sunday 28 January 2002, she and some relatives were served a drink in O'Learys Pub and then asked to leave, as the pub was closing at 6pm. A week later the complainant states that she was refused service on entering the pub by the manager. The complainant believes that she was refused service on the grounds of her membership of the Traveller community.

3.. Summary of Respondent's Case

3.1 The respondents totally reject that they operate a discriminatory policy against Travellers. They maintain that the pub was closed on 28 January 2001 as insufficient staff were available to deal with the large crowd in the pub and also run the off-licence at the same time.

4 Delegation under the Equal Status Act, 2000

4.1 The complaint was referred 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 has delegated the complaint to myself, Brian O'Byrne, 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, 2000.

5.1 Evidence of Complainant

- Ms Barrett frequented O'Learys pub for the first time on Saturday 27 January 2001 with her husband and two relatives who were over from England on holiday. Her group stayed in the pub from 7pm to 12 midnight and were treated very well.
- On Sunday 28 January 2001, the same group decided to visit O'Learys that afternoon. Mrs Barrett herself drove the group into Salthill from her home.
- On arrival in O'Learys, they noticed that the same barwoman as the night before, Ms Susan Collins, was on duty.

- The two men went to the bar and ordered four drinks, including an orange for Mrs Barrett who was driving.
- On arrival, they noticed that a group of other Travellers were already in the pub. Mrs Barrett estimates that there were about 15 Travellers in total in the group including children. There were also 3 or 4 other customers present
- Mrs Barrett knew some of the Traveller group to see but she was not well acquainted with them.
- The two women sat at a table by themselves while the two men remained at the bar talking to two other male Traveller friends who were there.
- Mrs Barrett learned that afternoon that the group had come to O'Learys to celebrate a Christening. She was not aware beforehand that they would be in O'Learys.
- At 5.15 pm approx. Mrs Barrett's husband, Martin Barrett, asked for another round of drinks and was told by a lady, Mrs Myra O'Leary, that the pub was closing for tea-hour from 6pm to 7pm but that she "might give you one more".
- Mr Barrett told Nora Barrett what had been said and she then approached the lady at the bar.
- Nora Barrett questioned Mrs O'Leary as to why she was closing and suggested that her actions could be construed as discrimination.
- Mrs Barrett asked Mrs O'Leary to put her reasons for closing in writing but this was refused.
- Mrs Barrett's group left the pub before 6pm with members of the other group. Following a discussion it was decided that they should visit another local pub where they remained for most of the night.
- Around 10.30pm, Mrs Barrett and her husband returned to O'Learys to purchase a few cans of Guinness to take home to her father.
- The doors to the pub were closed and Ms Susan Collins was working in the off-licence
- Ms Collins made a sarcastic remark to the complainant about not having come back at 7pm
- Mrs Barrett asked for a few cans of Guinness which were put on the counter by Ms Collins.
- Mrs Barrett referred to the earlier incident and asked Ms Collins whether she was aware of the provisions of the Equal Status Act which had come into force. Mrs Collins did not address this issue but instead threatened to call the Gardai if Mrs Barrett did not take her cans and leave.

- Following further discussion with Ms Collins, Mrs Barrett decided that she no longer wanted the Guinness and left the off-licence.
- On Saturday 3 February 2001, Mrs Barrett, her husband, her brother, Peter McDonagh, and his wife went into O'Learys at 7.45 pm to celebrate the christening that day of one of Mr McDonaghs children..
- As soon as they entered the pub, they saw Ms Collins step from the bar where she was serving. A man, Mr Francis O'Leary, then approached them, pointed his finger and said "Out".
- Mrs Barrett referred to the Equal Status Act to which Mr O'Leary replied "I know the law". Mr O'Leary would not give a reason for them being refused. Mrs Barrett also recalls Mr O'Leary making the remark "You think you must have won the Lotto". The group then left the pub.
- Mr McDonagh, who appeared as a witness, confirmed these events. He also said that he himself had drank in O'Learys previously without any trouble but had only been served in the off-licence since the incident in February 2001.
- Another relative, Ms Margaret McDonagh, gave evidence that she had entered O'Learys to meet Mrs Barretts group at 8.30 pm that same evening but that she was also told to get out by Mr O'Leary and not given any reason
- At the Hearing, the complainant produced a newspaper clipping from late 2000 which reported on a group of Travellers' unsuccessful application against the renewal of O'Leary's drinks licence. Mrs Barrett confirmed that one of the objectors was a brother of hers and that she was aware in January 2001 that this case had gone to court..

Respondent's Evidence

- The pub has been run by the O'Leary family since 1954
- It consists of an off-licence and pub, which are connected behind the bar
- Staff who are on duty are required to cover both pub and off-licence
- Two staff are normally on duty in the evenings while one staff member is present in the afternoons
- If the pub becomes unexpectedly busy any afternoon, arrangements are in place to call in a second staff member
- Sunday afternoons in Winter are usually quiet. At best, the pub might have 10/15 customers but only when a football match was on the TV
- All staff have been informed verbally of the provisions of the Equal Status Act by the manager, Mr Francis O'Leary.

- The pub does not discriminate against anyone
- The only people who are refused are those who are drunk, appear under age or have caused trouble before
- A mixture of settled people and Travellers are currently barred
- Mr O'Leary has had a few problems with different Traveller groups in the past five years
- Susan Collins recalls Nora Barrett and some friends being in the pub on Saturday 27 January 2001
- Ms Collins was on her own running the pub and off-licence on Sunday 28 January 2001.
- Shortly after 3pm several people arrived. Ms Collins recognised them as Travellers
- Two men stood at the bar and bought drink for those who had arrived.
- Gradually more and more people came in and drink was ordered for them by the men at the bar
- At that stage, Ms Collins estimates that up to 40 adults and a few children had arrived
- By 3.45pm Ms Collins could not cope with the crowd so she phoned the manager's mother, Mrs Myra O'Leary for assistance
- Mrs O'Leary arrived shortly after 4 pm
- Mrs O'Leary stated that the pub and off-licence were extremely busy when she arrived
- By 5 pm, Mrs O'Leary states that Ms Collins and herself could no longer cope with both the bar and the off-licence as more people (including the complainant's group) kept on arriving.
- There was a queue in the off-licence and they could not keep up with the demand for drink at the bar. Another problem was that they had run out of change by that point,
- At that stage, Mrs O'Leary, as owner of the pub, decided that she would have to close either the bar or the off-licence
- By 5pm, Mrs O'Leary had learned from the group that they were celebrating a christening . As such parties are normally booked in advance and this one had not been, she decided to close the pub rather than the off-licence.
- She then informed customers that she was no longer serving and that the doors would be closed at 6pm

- Mrs O'Leary recalls Mrs Barrett approaching the bar soon after, accusing her of discrimination. However, she cannot remember much of the conversation as she was very stressed out at the time.
- Susan Collins remembers Mrs Barrett talking to Mrs O'Leary and referring to discrimination and asking her to "put it on paper"
- Both members of staff say that the afternoon had a very unsettling effect on them
- The women managed to clear the bar of all customers by 6 pm.
- Some of the regular customers who also had to leave, told Mrs O'Leary subsequently that they appreciated the pressure she was under on the day and that they felt she was right in her decision to close the bar.
- Ms Collins was working in the off-licence for the rest of the evening
- At 11.15 pm , Mrs Barrett and her husband came in and Mrs Barrett said "Will you serve me now" to Ms Collins. Mrs Barrett then brought a number of cans of Guinness from the cooler to the counter.
- Ms Collins swiped the cans and Mrs Barrett gave her money for them
- At that point, Ms Collins says that Mrs Barrett became very abusive and started referring to the afternoon's events and making further comments about discrimination.
- Ms Collins told her she "was not discussing it" and said she would call the Gardai if she did not take her drink and leave.
- Mrs Barrett continued to abuse Ms Collins and then said she no longer wanted the cans. Ms Collins gave her her money back and Mr and Mrs Barrett left.
- The event that night had a very unsettling effect on Mrs Collins.
- The next morning Ms Collins reported the days events to Mr O'Leary (who had been away on the Sunday). She told him that Mrs Barrett had complained of discrimination and had been very abusive in the process and had "upset her quite a bit". Mr O'Leary told her to inform him if the woman ever entered the premises again.
- On 3 February 2001, Ms Collins recalls Nora Barrett coming back to the pub around 8 pm. She immediately called Mr O'Leary who was in the off-licence and identified Mrs Barrett to him.
- Mr O'Leary says that he immediately told the group to leave the premises. He did this because of the abusive manner in which Mrs Barrett had treated both Ms Collins and his mother the previous week and not for any discriminatory reason.
- Mr O'Leary recalls Mrs Barrett referring to discrimination and the fact that he had been "up in court before for this".

- Mr O'Leary understood Mrs Barrett to be referring to the objection to their licence, three months previously, and reminded her that "he had won that case". He made no reference to "winning the Lotto" and believes that Mrs Barrett must have misheard him

6 Matters for Consideration

6.1 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. Under Section 5(1) of the Act it is unlawful to discriminate against an individual in the provision of a service which is generally available to the public.

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), 3(2)(i) and 5(1) of the Equal Status Act, 2000 in being asked to leave O'Leary's pub on 28 January 2001 and in being refused service in the pub on 3 February 2001.

6.2 In cases 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 who, in order to successfully defend his case, must show that his actions were driven by factors which were non-discriminatory.

6.3 In considering the approach to be taken with regard to the shifting of the burden of proof, I have been guided by the manner in which this issue has been dealt with previously at High Court and Supreme Court level and I can see no obvious reason why the principle of shifting the burden of proof should be limited to employment discrimination or to the gender ground (see references in **Collins, Dinneen & McDonagh V Drogheda Lodge Pub DEC-S2002-097/100**)

7 Conclusions of the Equality Officer

7.1 Prima facie case

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 by the respondent
- (c) Evidence that the treatment received by the complainants 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.

7.2 What constitutes “prima facie evidence” and how a “prima facie case” is established has been documented and considered in previous cases such as **Sweeney v Equinox Nightclub DEC-S2002-031**.

7.3 With regard to (a) above, the complainant has satisfied me that she is a member of the Traveller community. In relation to (b), the respondents accept that the complainant was asked to leave the pub on 28 January 2001 and refused service on 3 February 2001. To determine whether a prima facie case exists, I must, therefore, consider whether the treatment afforded the complainant on those occasions was less favourable than the treatment non-Travellers received or would have received, in similar circumstances.

7.4 To me, the most relevant and persuasive factors in this case are as follows:

- Mrs Barrett and her friends were served and “treated well” by the staff of O’Learys on Saturday 27 January 2001.
- Mrs Barrett and her group were served a drink without any problem on their arrival in O’Learys at 4.30 pm on Sunday 28 January 2001
- All customers, both Travellers and non-Travellers, were asked to leave the pub by 6pm on 28 January 2001 and Mr Barrett has confirmed that he was offered a last drink if he wanted one.
- Mrs Barrett was not refused service in the off-licence on 28 January 2001 but decided herself not to purchase the cans which she had intended buying.
- Mr O’Leary states that Mrs Barrett was refused service on Saturday 3 February 2001 because of her abusive behaviour towards staff the previous week and not because of her membership of the Traveller community

7.5 Having taken the above points into consideration, together with the other evidence provided, I consider that:

- Mrs Barrett was not treated less-favourably than non-Travellers were treated on Sunday afternoon 28 January 2001, in that all customers, both Travellers and non-Travellers, were asked to leave the pub by 6pm.

- Mrs Barrett was not treated less-favourably than non-Travellers were treated on Sunday night, 28 January 2001, as there is agreement that Mrs Barrett was being served in the off-licence before she decided herself to leave without a purchase. This fact indicates to me that discrimination was not a factor on that occasion.

- Mrs Barrett was not treated less-favourably than non-Travellers would have been treated on Saturday 3 February 2001, as Mr O’Leary states that Mrs Barrett was refused because of her abusive behaviour towards staff the previous week. Based on the evidence before me, I have formed the opinion that Ms Collins was subjected to abuse from Mrs Barrett on 28 January 2001 and that Mr O’Leary took a decision not to serve her on 3 February solely on account of that abuse. In so doing, I consider that Mr O’Leary acted in a non-discriminatory manner, in that he treated Mrs Barrett in the same manner as he would have treated anyone else who had behaved in a similar fashion towards his staff previously.

I, therefore, find that, in relation to all three incidents complained of, Mrs Barrett has not established a prima facie case of discrimination in respect of any of them.

8 Decision

8.1 I find 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 in not being provided with a service which is generally available to the public contrary to Section 5(1) of the Act.

8.2 Accordingly, I find in favour of the respondents in the matter.

Brian O'Byrne
Equality Officer
29 November 2002