

ODEI - the equality tribunal

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Equal Status Act 2000

Equality Officer Decision DEC-S2002-087 - 096

**Mr. Joe McDonnell, Ms Mary McDonnell, Mr. Christopher Stokes,
Ms. Winifred Stokes, Mr. Simon Lawrence, Ms. Ellie Lawrence, Mr.
Francie Lawrence, Ms. Brigie Lawrence, Mr. Martin Lawrence, Ms.
Ann Lawrence
(Represented by The Equality Authority)**

V

**Mr. Martin Brady, The Leinster Arms.
(Represented by Mr. Barry Lysaght, Malone & Martin Solicitors)**

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Key words

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, barred , misbehaviour, prima facie case.

Dispute

The dispute concerns a claim by the above named complainants that they were discriminated against by Mr. Martin Brady, the Proprietor of the Leinster Arms on the Traveller community ground in terms of Sections 3(1)(a), 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 that Act.

Background

The complainants' case is that they entered the respondent's bar on 28 November, 2002 with the intention of getting drinks, but they were refused service by the respondent and were given no reason. They believe that the refusal of service was due to the fact that they are members of the Traveller community. The respondent rejected the complainants argument that they were discriminated against on the grounds they are Travellers and submitted that the complainants were barred as a result of three earlier incidents of misbehaviour in the pub and that he was entitled on those grounds to refuse service and consequently no discrimination occurred.

Conclusions of the Equality Officer

The Equality Officer found that the complainants did not succeed in establishing a prima facie case of discrimination. She found that the evidence of the respondent witnesses to be more credible. She held that the complainants were barred from the respondent's premises as a result of three incidents of misbehaviour which occurred on the premises, that the respondents policy is to bar people involved in unacceptable behaviour and this policy is applied equally to both the non-Traveller and Traveller community.

Decision

The Equality Officer found that the Leinster Arms did not unlawfully discriminate against the complainants in terms of Sections 3(1)(a), and 3(2)(i) of the Equal Status Act, 2000, and contrary to Section 5(1) of that Act.

Decision DEC-S2002-087 - 096

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Delegation under Equal Status Act, 2000

The complainant referred a claim to the Director of Equality Investigations on 10 January, 2001 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 Marian Duffy, 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.

1 Dispute

- 1.1** This dispute concerns a claim by the complainants named above that they were discriminated against by the Leinster Arms contrary to the Equal Status Act, 2000, on the grounds that they are members of the Traveller community. The complainants allege that the respondent discriminated against them in terms of Section 3(1)(a), and 3(2)(i) of the Equal Status Act, 2000 and contrary to Section 5(1) of that Act.

2 Background

- 2.1** The complainants allege that they were discriminated against by the respondent contrary to the Equal Status Act, 2000 in that they were refused a service in the respondent's bar on 28 November, 2000. The complainants contend this occurred because they are members of the Traveller community. The respondent rejected the complainants argument that the complainants were discriminated against on the grounds they are Travellers. He submitted that the complainants were barred as a result of three

incidents of disorderly behaviour in the pub, in November, 1999, 17 March, 2000 and 2 April, 2000. Firstly the complainants were warned but following the third incident of misbehaviour they were barred. The respondent said that he was entitled on those grounds to refuse service and consequently no discrimination occurred.

3 Summary of the Complainants' case

3.1 All the complainants, are Travellers, and are members of the one extended family (father, mother, sons, daughters, sons-in-law, daughters-in-law.) They live in settled accommodation in Maynooth. They stated the following in evidence:

- The were regulars in the respondent's pub for nearly ten years. Sometimes they went there as individual couples and on more occasions the whole group were together. The women usually sat at one table and the men at another. They said that they normally had no difficulty getting served. On a couple of occasions Mr. Brady the proprietor asked them not to come in until later because there was a large group of other Travellers in the pub and on one occasion they had to sit in the dining room because Mr. Brady did not want them to mix with a group of other Travellers. Generally however they had a good relationship with Mr. Brady.
- The complainants went into the respondents premises at about 8:30 p.m. on 28 November, 2000. All the women sat down at a table and the men went up to the bar to order drink. The barman Mr. Hegarty said that they would not be served it was the manager's orders, but they were given no reason. They believed that they were refused because they are members of the Traveller community.
- They stated that they specifically went into the bar to see if they could get service as they had been barred from the pub since March, 2000 but they didn't know the reason. They had sought advice from the Equality Authority on 28 November and later that day went to the Leinster Arms. As soon as service was refused they filled out a notification of their complaint under section 21 of the Equal Status Act, 2000 and served it on the respondent.
- The complainants denied that they ever misbehaved in the respondents premises or that they had ever been warned about their behaviour. The complainants denied they were in the Leinster Arms in November 1999 or that they were involved in any incident

in the pub during that month. They agreed they were in the pub on 17 March 2000 but they all stated that no incident of misbehaviour occurred. Ms. Mary McDonnell did say that she remembered the barmen Mr. Ralph going to the mens' table and asking them to keep the noise down. They all said that they were not present in the pub on 2 April, 2000, they said they understood that there was trouble around that time at a Traveller engagement party that night. The complainants said that they became aware sometime in April 2000 that they were barred.

4 Summary of the Respondent's case

4.1 The complainants had been customers for a number of years and they were never refused service because they are Travellers. Mr. Brady, the proprietor said that he knew the complainants well and had a good relationship with them. However, they caused trouble in the pub in November, 1999, March, 2000 and April, 2000 and as a result they were barred. The respondent submitted the following in evidence:

- The complainants were present in the pub in November 1999 and the group got involved in a heated verbal argument. The bar staff intervened and asked them to keep the noise down. But the argument developed into a shouting match and the complainants were pushing each other. They were ushered out of the pub by Mr. Brady and Mr. Ralph, the barman on duty. Mr. Brady said that he received a blow from one of the complainants. He did not make a complaint to the Gardaí. Mr. Brady understands that the row continued on the street and the Gardaí arrived on the scene. Mr. Brady said that he warned the complainants on this occasion if there was any recurrence of this behaviour they would be barred from the premises.
- On 17 March, 2000 the complainants were in the pub and some of them became involved in a loud argument. The women were not involved in the argument but some of them were screaming at their husbands. Some of the men were drunk. The bar staff intervened in the dispute, but the argument escalated into a screaming match and they were pushing and shoving each other. A table was knocked over and drinks were spilled. The complainants were escorted off the premises by the bar staff and Mr. Brady and the row continued on the street. The complainants were again warned on that occasion if there was a recurrence of this behaviour they would be barred.

- On 2 April, 2000 the complainants were in the bar and an argument took place and a fight developed. They were asked to leave and they were told that they were barred. On several occasions subsequently some of the complainants visited the pub and they were informed that they were barred.

5 Conclusions of Equality Officer

5.1 The matter referred for investigation turns upon whether or not the complainants were directly discriminated against contrary to Section 3(1)(a) and 3(2)(i) of the Equal Status Act and in terms of Section 5 (1) of that Act. In reaching my decision I have taken into account all the submissions, both oral and written, made to me by the parties in the course of my investigation into the complaint.

Section 3(1)(a) provides, inter alia, that discrimination shall be taken to occur where:

On any of the grounds specified... (in this case the Traveller community ground).... A person is treated less favourably than another person is, has been or would be treated.

Section 3(2)(i) provides that: *As between any two persons, the discriminatory grounds ... are ...*

that one is a member of the Traveller community and the other is not.

Section 5(1) of the Act provides 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.”

5.2 Prima Facie Case

A person making an allegation of discrimination under the Equal Status Act, 2000 must first demonstrate that a *prima facie* case of discrimination exists. I have identified the three key elements the complainants must show in order to establish a *prima facie* case:

- are the complainants covered by the discriminatory ground? (in this case are they members of the Traveller community?)

-in what circumstances were the complainants refused service by the respondent on 28 November, 2000.

-evidence that the treatment received by the complainants was less favourable than the treatment someone, not covered by that discriminatory ground, would have received in similar circumstances.

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

I am now going to examine the issues I have identified above and consider whether the complainants have established a *prima facie* case.

5.3 Issue of Traveller Identity

In the Equal Status Act, 2000 the Traveller community ground is defined as follows:

“means the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland”.

I am satisfied that the complainants are Travellers as defined by the Act. I am also satisfied that on the facts that the complainants’ Traveller identity was known to the respondent.

5.4 Circumstances of Refusal of Service

The next issue for decision is in what circumstances were the complainants refused service and whether the treatment afforded to them on the 28 November, 2000 was less favourable treatment than a non-Traveller would have received in similar circumstances.

It was agreed by both parties that the complainants were refused service on the 28

November, 2000. The complainants case is that they were refused service because they were barred from the respondent's premises for no good reason and they believe this occurred because they are members of the Traveller community. The respondent's case is that the complainants misbehaved in the pub on three occasions and as a result they were barred.

The complainants all denied that there were involved in any misbehaviour in the Leinster Arms on any of the occasions mentioned by the respondent. The complainants did not dispute that they were in the pub on 17 March, 2000 but submitted that no altercation occurred. One complainant could recollect Mr. Ralph asking the male complainants to keep the noise down on 17 March. The evidence of Mr. Brady and the barmen was that the complainants behaviour on 17 March was unacceptable, they were noisy and arguing, a table was knocked over and drink was spilled.

I found the complainants' evidence to be inconsistent. Their evidence was that in general they had a good relationship with Mr. Brady and had been drinking in the Leinster Arms for about 9 years. I find it difficult then to understand why Mr. Brady would make a decision to bar the complainants in April, 2000 if no difficulties had occurred, or if he had not good reason for doing so. The complainants stated that they had not been in the Leinster Arms on 2 April, 2000. However in response to a question at the hearing they confirmed that they were there on Mother's Day. Mother's Day fell on Sunday 2 April, 2000. Having examined the evidence of all the parties I found that the evidence given by Mr. Brady and his barmen was more credible than the complainants. On the balance of probabilities I find that the complainants were involved in misbehaviour, had been warned on two occasion about their behaviour and were barred by Mr. Brady following a further incident of misbehaviour on 2 April, 2000.

5.5 I am now going to examine if the complainants were treated less favourably than non Travellers who misbehave in the respondent's premises. The respondent stated that he had about 100 people barred. Mr. Brady said that about 5 Travellers are barred excluding the complainants. People are barred for a number of reasons, such as fighting,

intimidation, threatening behaviour, arguing being drunk and disorderly. He normally gives people a warning. If people reform themselves they are allowed back in again. He would bar people until further notice but would usually allow people back after 6 to 18 months depending on the misbehaviour. Customers are barred for life if they have drugs on the premises. The complainants are not barred for life.

The complainants produced no evidence to show that the respondent did not operate this policy in relation to people who misbehaved or that he operated a different policy in relation to non Traveller customers. I am satisfied that the respondents policy in relation to barring customers for misbehaviour is applied equally to both non-Travellers and members of the Traveller community. I find on the evidence that the complainants have not established a prima facie case of discrimination.

6. Decision

6.1 On the basis of the foregoing I find that 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, 2000 and in terms of Section 5(1) of that Act.

6.2 As it is now over two years ago since the complainants were barred from the Leinster Arms I would recommend that Mr. Brady reviews the barring of the complainants in line with his stated policy in relation to customers who misbehave.

I also recommend that the respondent to put his existing policy in writing. To avoid any confusion I would recommend that the written policy should be a clear and transparent code of practice and should include the rules which apply to all customers seeking service, the code of behaviour expected from customers, and the sanctions which may apply in the event of a breach of the code. All the staff and customers should be informed in an appropriate manner of the contents of the code.

Marian Duffy
Equality Officer
1 August, 2002