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ADJ-00026693

ADJUDICATION OFFICER DECISION

Adjudication Reference: ADJ-00026693



Parties:

	Complainant	Respondent
Parties	Caroline Maughan	Poundland Limited Dealz



	Complainant	Respondent
Anonymised Parties	{text}	{text}

Representatives	Rachel Butler O'Hanrahan Lally Solicitors	Michael Heslin Miley & Miley LLP Solicitors
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Complaint(s):

Act	Complaint/Dispute Reference No.	Date of Receipt
Complaint seeking adjudication by the Workplace Relations Commission under Section 21 Equal Status Act, 2000	CA-00034010-001	27/01/2020

Date of Adjudication Hearing: 01/12/2021

Workplace Relations Commission Adjudication Officer: Roger McGrath

Procedure:

In accordance with Section 25 of the Equal Status Act, 2000, following the referral of the complaint to me by the Director General, I inquired into the complaint and gave the parties an opportunity to be heard by me and to present to me any evidence relevant to the complaint.

Background:

The Complainant was a customer in the Respondent’s shop on 25 December 2019 when an incident took place. The Complainant submitted a Complaint Form to the WRC which was received on 27 January 2020. A in person hearing took place on 1 December 2021.

Summary of Complainant’s Case:



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The Complainant provided a detailed written submission.

In the written submission the Complainant submits that she was discriminated against by the Respondent, its servants or agents, on the grounds of her membership of the Traveller community on 25 November 2019, contrary to s.3 of the Equal Status Acts 2000-2015 ("the Acts") the Complainant claims that the Respondent, in disposing of goods and providing services, has failed to meet its obligations under the Acts.

The Complainant submits that she entered the Respondent's premises on Thomas Street, Dublin on 25 December 2021, with her husband. While shopping the Complainant looked for and received assistance from a staff member, Staff Member A. When she had completed her shopping, the Complainant gathered the items she wished to buy into a basket and brought them to the self-scan check-out.

When the Complainant attempted to scan certain items, she encountered problems with the check-out. The Complainant called to a member of the staff (Staff Member B) for assistance. This member of staff also encountered problems scanning the items and replaced one of the items for the Complainant.

The Complainant then continued scanning her remaining items. The Complainant had six identical items and for convenience instead of scanning each item she attempted to scan one of the items six times. While she was doing this Staff Member A approached her and expressed his discontent with the situation. He then took the Complainant's basket to a standard till and asked the Complainant to come to the till for him to serve her. The Complainant expressed her discontent with this and explained that she was happy to scan her own items. She also explained that she had previously called Staff Member B for assistance.

Staff Member B then approached and attempted to explain the matter to Staff Member A. Staff Member A then told the Complainant to leave the premise. The Complainant asked Staff Member A why he was asking her to leave the premises; Staff Member A told the Complainant that he had the right to refuse entry to anyone. The Complainant asked Staff Member A if he was discriminating against her on the basis that she was a member of the Traveller Community, to which he replied that he had the right to refuse entry to anyone and told the Complainant that he was going to call the Gardai.

The Complainant submits that she was discriminated against by the Respondent, its servants or agents, in the Respondent's refusal to allow the Complainant to purchase items from its store. The Complainant submits that it is clear that this refusal was on the grounds of her membership of the Traveller Community in circumstances where Staff Member A was clearly aware of this due to the Complainant's appearance and speaking voice, having held a conversation with her when she was shopping.

The Complainant submits that the Respondent's refusal to serve her is plainly explicitly or necessarily linked to the discriminatory grounds of her membership of the Traveller Community. The Complainant puts forward that there was no other reason for her to be asked to leave the premises, and the Respondent's servants or agents were clearly aware of her membership of the Traveller Community. The only reason provided by the Staff Member B to the Complainant was that he had the right to refuse anyone. This basis for refusal is, according to the Complainant, unreasonable and untenable and cannot rebut the Complainant's establishment of a prima facie case of discrimination.

In direct evidence at the hearing, the Complainant explained what had happened on the day in question. She had been out Christmas shopping and had picked up some items in the Respondent's shop. While scanning these items at the self-service till she encountered some problems. The Store Manager, Staff Member B referred to above, came over and said, "that stuff is not paid". The Complainant stated that he was "cold-hearted" in his attitude to her and he started going through her items, it made her feel like a nobody. The Complainant stated that Staff Member B raised his voice.

The Complainant stated that Staff Member B then lifted her items off the self-service check out and brought them over to another till. The Complainant stated that Staff Member A intervened, saying that the Complainant had done nothing. The Complainant said to Staff Member B that she had done nothing wrong.

The Complainant then stated that Staff Member B threatened calling the Gardai and told her to get out of the shop. The Complainant's husband told Staff Member B that he had money to pay for the goods, but they decided it was best to leave the shop at that point.

The Complainant stated that the way she had been treated was "not fair" and that she walked out with embarrassment and had cried after the event. She said she felt like a nobody and that she did not want her children growing up like this.

The Complainant stated that this had been a distressing incident. The Complainant feels she has been treated differently than someone who is not a member of the Traveller Community would have been treated; it would not be normal for a shop manager, Staff Member B, to interrupt in the way he did in this case.

In response to questions the Complainant stated that staff member B was Irish. She also stated that he had not said anything to her about being a member of the Traveller Community when they spoke.

In conclusion, the Complainant stated that she is a member of the Traveller Community, she was forced to leave the Respondent's premises and was not permitted to purchase items from the Respondent, as all other customers were. Plainly, the Complainant was treated less favourably than the other customers on the grounds of her membership of the Traveller Community. The Complainant submits that she has established a prima facie case of discrimination on the grounds of her membership of the Traveller Community by the Respondent, its servants or agents. Accordingly, The Respondent must bear the onus of proving that it did not discriminate against the Complainant.



Summary of Respondent’s Case:

The Respondent provided a detailed written submission.

The Respondent did not provide any witnesses at the hearing and the submission outlined below is based on the written submission only.

The Respondent provided CCTV footage of the area around the self-service checkout during the Complainant’s interaction with Staff Member B.

The Respondent denies the claim made by the Complainant that she was discriminated against by the Respondent, its servants or agents.

The Complainant is a discount chain store and retailer of goods from its premises at, *inter-alia*, “Dealz”, on Thomas Street, Dublin.

The Respondent agrees that on 25 November 2015 the Complainant entered the premises with her partner. The Respondent accepts that the Complainant went to the self-service checkout area with her basket which contained several items. And started to scan her items until she experienced problems while scanning her items.

The Respondent submits that as is normal with any transaction that has trouble going through the scanner a light will flash at the self-service checkout to notify a member of staff that a customer requires assistance with the self-service till.

In this instance the Respondent submits that Staff Member A approached the Complainant to assist her with her transactions. The Respondent denies that Staff Member B came to the assistance of the Complainant as she claimed in her written submission.

The Respondent submits that when Staff Member A was trying to assist the Complainant, she became very aggressive towards him, raising her voice and cursing at him. It was at this stage that Staff Member A asked the Complainant to leave the shop as she was because she was being offensive towards him and his colleague. The Respondent submits that the Complainant refused to leave the shop leaving him with no alternative other than to call the Gardai. The Complainant was told of this and she left the shop shortly after.

The Respondent submits that at no point during interaction between the Complainant and the Respondent’s staff did they make reference to the fact that she was a member of the Traveller Community and submits that the staff were unaware that she was. The Complainant was asked to leave the premises because of her aggressive behaviour and abusive language towards the Respondent’s employees and for no other reason.

In response to questions put to her in cross examination the Complainant did not disagree when it was put to her that in normal circumstances if a customer has problems at a self-service till, they must go to a manned till. However, the Complainant stated that it was the attitude of Staff Member B that was the problem when the problem arose. The Complainant agreed she had got annoyed and that she has a loud voice. She agreed the exchange had gotten heated and that she could have used profanities or bad language and that she was “really annoyed”. The Complainant stated that she left the premises when Staff Member B said he was going to call the Gardai.

In response to questioning the Respondent’s representative could not say why there had been no response to the Complainant’s ES 1 Form; there was nothing on file.

In conclusion, the Respondent submits that at no point was the Complainant “forced” to leave the shop as alleged and denies she was not allowed purchase goods. The Respondent submits that it has established clear grounds that at no point was the Complainant discriminated against on the grounds of her membership of the Traveller Community while present in their store. It is a matter of fact, according to the Respondent, that the same thing would have happened to anyone who reacted the way the Complainant did, it was nothing to do with her membership of the Traveller Community.



Findings and Conclusions:

The matter for decision is whether the Respondent discriminated against the Complainant in the disposal of goods and provision of services, because she is a member of the Traveller Community.

I must first consider whether the existence of a prima facie case has been established by the Complainant. Section 38A of the Equal Status Acts (the Act), sets out the burden of proof which applies in a claim of discrimination:

38A. — (1) Where in any proceeding's facts are established by or on behalf of a person from which it may be presumed that prohibited conduct has occurred in relation to him or her, it is for the respondent to prove the contrary.

(2) This section is without prejudice to any other enactment or rule of law in relation to the burden of proof in any proceedings which may be more favourable to the person.

(3) Where, in any proceedings arising from a reference of a matter by the Authority to the Director of the Workplace Relations Commission under section 23(1), facts are established by or on behalf of the Authority from which it may be presumed that prohibited conduct or a contravention mentioned in that provision has occurred, it is for the respondent to prove the contrary.

It requires the Complainant to establish, in the first instance, facts upon which she can rely in asserting that prohibited conduct has occurred in relation to her. It is only where such a prima facie case has been established that the onus shifts to the Respondent to rebut the inference of discrimination raised.

Discrimination under the protected ground of membership of the Traveller Community is provided for at section 3 of the Act:

Section 3(1)(b) of the Acts provides, inter alia, that discrimination shall be taken to occur where:

"(1) For the purposes of this Act discrimination shall be taken to occur –

(a) where a person is treated less favourably than another person is, has been or would be treated in a comparable situation on any of the grounds specified in subsection (2) or, if appropriate, subsection (3B), in this Act referred to as the 'discriminatory grounds' ... "

Section 3(2) of the Acts provides that:

"(2) 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 (the "Traveller community ground".

The Respondent accepts that an interaction took place on 25 November 2019, between one of their employees, Staff Member B and the Complainant, in their store in Thomas Street. In her evidence the Complainant stated that she had been dealt with in an aggressive manner by the employee, in a way that a customer who was not a member of the Traveller Community would have been treated. She suggested that it was obvious that she was a member of the Traveller Community due to her accent and attire.

As Staff Member B is Irish, I believe he must have been aware of the Complainant's background. The Complainant was a credible witness and I find that the Complainant was subjected to an approach adopted by the Respondent, which on the balance of probabilities, would not have been afforded to a person who was not a member of Traveller Community.

Based on her uncontradicted evidence I find that the Complainant has established a *prima facie* case upon which discrimination can be inferred based on her membership of the Traveller Community, therefore the burden shifts to the Respondent to rebut the inference of discrimination inferred.

The Respondent had no witnesses to rebut the evidence put forward by the Complainant. Therefore, I find the Complainant was discriminated against on the specified ground. The provision of silent CCTV footage as provided by the Respondent, without any accompanying testimony, does not amount to meaningful evidence. The failure of the Respondent to respond to the ES 1 Form is telling.

I find that the complaint is well founded.

This was a distressing situation for the Complainant and I find compensation is warranted. In deciding the level of compensation to award I take into consideration the fact that the interaction between the Complainant and Staff Member B took place in a public area, causing embarrassment to the Complainant. I also take into account the fact that the Complainant admitted to using abusive language when interacting with Staff Member B and getting "mad" when he said he was calling the Gardai. It is probable that such a reaction only served to exacerbate an already tense situation.

In accordance with Section 27 of the Equal Status Act, I order the Respondent to pay the Complainant €4,000 in compensation in respect of the finding of discrimination on the ground of membership of the Traveller Community.



Decision:

Section 25 of the Equal Status Acts, 2000 – 2015 requires that I make a decision in relation to the complaint in accordance with the relevant redress provisions under section 27 of that Act.

I find that the complaint is well founded. I order the Respondent to pay the Complainant €4,000 in compensation in respect of the finding of discrimination on the ground of membership of the Traveller Community.

Dated: 17th February 2022

Workplace Relations Commission Adjudication Officer: Roger McGrath



Key Words:

Discrimination, Traveller Community



The Labour Court