ADJ-00046038

ADJUDICATION OFFICER DECISION

Adjudication Reference: ADJ-00046038

Parties:

	Complainant	Respondent
Parties	Jim Connors (on behalf of two Minors)	Wayside Celtic Football Club

	Complainant	Respondent
Representatives	Anna Birbeck of Exchange House Ireland, National Travellers Service	Chairman and Senior Committee members.

Complaint:

Act	Complaint/Dispute Reference No.	Date of Receipt
Complaint seeking adjudication by the Workplace Relations Commission under Section 21 Equal Status Act, 2000	CA-00056700-001	16/05/2023

Date of Adjudication Hearing: 24th October 2023 and 24th April 2024

Workplace Relations Commission Adjudication Officer: Michael McEntee

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.

In deference to the Supreme Court ruling, Zalewski v Ireland and the WRC [2021] IESC 24 on the 6th of April 2021 the Parties were informed in advance that the Hearing would normally be in Public, Testimony under Oath or Affirmation would be required and full cross examination of all witnesses would be provided for.

The required Oath or Affirmation was administered to all witnesses present. The legal perils of committing Perjury was explained to all parties.

No issue regarding confidentiality arose.

Linked case

This case is linked to Adj-00045896, a duplicate, which was withdrawn at the Hearing

Background:

The issues in contention concern an application by two minors, small boys, to join a Soccer Club. It was alleged that their Representative from Exchange House, Ms. B, was told that because the Season was ending, the player panels were full and they could not be facilitated. In addition, it was stated by the Club Official, the Junior Officer, that members of "their Group" had caused physical damage to the Club premises and grounds. For this reason, as well, they would not be accepted. Ms. B stated to the Junior Official that this response was clearly Discriminatory. Attempts a Mediation were not successful, Forms ES1 and 2 were exchanged without success and the matter was referred to the WRC.

1: Summary of Complainant's Case:

The Complainant (the Father of the two Minors) was represented by Ms Birbeck of Exchange House, the Traveller support Agency. She gave an oral testimony supported by a Written Submission. Two Hearings took place.

Mr Birbeck of Exchange House had telephoned Mr MD, the Juvenile Club Chairman on or about the 14th March 2023 to enquire regarding getting two Boys, J and M, into the junior end of the Soccer Club. It was alleged that Mr MD had replied that it was not possible as "*this group of people"* had caused a lot of trouble for the Club with alleged breaking of fences and driving scramblers on Pitches. Mr MD then stated that, in any event it was too late in the season and the teams were already full.

There was no doubt that Mr MD knew that Exchange House was a Traveller Agency as he had dealt with Ms Birbeck's predecessor, Mr O'C, previously. The refusal to allow the two boys (Aged 8 & 9 years) join the Club was an act of direct discrimination due to their Traveller background and Traveller extended family *"their Group of People*"

O the 3rd April 2023 Mr M, Club Chairperson, contacted Ms Birbeck with his response. He suggested a face-to-face meeting with the Boys family/Parents to resolve matters. This was unsatisfactory to the Complainants. ES1 and ES2 forms are then sent to the Club. ES2 Form signed by a Mr MI was returned on the 21st April. It was unsatisfactory and the issue was referred to the WRC.

Ms Birbeck argued strongly that the acts of Discrimination, (Refusal to join the Club) had a very negative effect on the two young boys. They were very keen on football and their school classmates were very likely involved with Club. Their self-esteem and self-confidence were damaged with long term effects by being negatively treated because they were part of the Traveller community.

The correspondence from the Club was unsatisfactory and failed to address a very serious issue of Discrimination.

The Complainant's Mother gave Oral Testimony. She came across as a very able Witness who was very committed to the welfare of her Children and all Children in her Community.

2: Summary of Respondent's Case:

The Club was represented by the Chairman Mr M, supported by the Secretary, the Junior Officer and a Committee member. The Chairman gave an oral testimony supported by a Written Submission and a copy of the Replying ES 2 form. The Chairman agreed that the Junior Office had been caught "*on a bad day",* in his car mobile, on his way to a work meeting. It was very clear that he could very possibly have handled the call better. No one is a "*Saint"* and if it was a Discriminatory response, it was at the very minor end of Discrimination. The Junior Officer had a very long and very honourable track record in developing the Club. The Club had gone from a Rural Club to a Suburban Club now surrounded by a rapidly expanding population with many young persons applying to join.

The Junior Officer Mr MD gave Oral testimony. He had taken the call on his mobile on a bad day and he regretted what he had said but felt that it was being completely exaggerated and taken out of context. The

Club was always under pressure as regards Junior Teams – the demand was almost insatiable, and it was coming to the end of the Season with all teams fully subscribed. No person would have been taken at that time, irrespective of what their background was.

However, and this was emphasised very strongly the track record of the Club in relation to the Traveller Community was beyond reproach. The Club had a long record of engagement with Ms Birbeck's predecessor and cited a number of positive initiatives that members of the Committee had taken in the past to facilitate Traveller children.

The Club shared a boundary and entrance Road with the Traveller Housing Estate. The local cooperation was always very good. The Club had begun as a small rural Club in 1948 but the expansion of South Dublin sub urban housing had completely surrounded the Club. They were now dealing with unprecedented numbers of children wishing to join. It was a voluntary Club, and all Officials were giving of their free time - unpaid. The Junior Official had been in the job for a considerable period and had done trojan work to keep the Club functioning well at Junior Level. Discrimination was not in his nature.

The Club was completely open to meeting with the Complainants to work out a solution to the problems raised. They were not in any way a Discriminatory organisation and had a wide range of players from all sections of modern Irish Society. The Officials had all taken FAI Anti-Discrimination courses and completely subscribed to a non-discriminatory code of ethics.

The Club shared a physical boundary with the Traveller Estate, and they did their best to be good neighbours. He referred to numerous efforts to meet the Complainant's family, but this had been to no avail. The Club wanted to sort the complaint out amicably in the best interest of all involved.

3: Findings and Conclusions:

3:1 Background Comments – Facts on the Ground

The Soccer Club and the Traveller Housing Estate are very close neighbours on a South Dublin site. It is inevitable that some frictions will arise from time to time. To use an Irish expression "*Saints are thin*

on the ground" and the old expression that "*Good Fences make Good Neighbours*" probably might have some merit. However, in a situation where there a lot of young people involved "*fences"* are generally not really a solution. Reinforcing a physical barrier would clearly in this context make matters worse in the long term and promote , possibly inadvertently, a non-inclusion ethos.

A Working co-operative day to day Relationship between the Parties is the only answer.

This complaint has to be seen in this context.

3:2 Legal issues of Discrimination.

Section 3 of the Equal Status Act, 2000-2018 identifies Discrimination

Discrimination (general).

3.—*(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') which—

(i) exists,

(ii) existed but no longer exists,

(iii) may exist in the future, or

(iv) is imputed to the person concerned,

(b) where a person who is associated with another person—

(i) is treated, by virtue of that association, less favourably than a person who is not so associated is, has been or would be treated in a comparable situation, and

(ii) similar treatment of that other person on any of the discriminatory grounds would, by virtue of paragraph (a), constitute discrimination,

or

(c) where an apparently neutral provision would put a person referred to in any paragraph of section 3(2) at a particular disadvantage compared with other persons, unless the provision is objectively justified

by a legitimate aim and the means of achieving that aim are appropriate and necessary.

(2) As between any two persons, the discriminatory grounds (and the descriptions 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"),

Redress is covered by Section 27 of the Act.

Redress which may be ordered.

27.—*(1) Subject to this section, the types of redress for which a decision of the Director of the Workplace Relations Commission under* section 25 *may provide are either or both of the following as may be appropriate in the circumstances:*

(a) an order for compensation for the effects of or

(b) an order that a person or persons specified in the order take a course of action which is so specified.

(2) The maximum amount which may be ordered by the Director of the Workplace Relations Commission by way of compensation under subsection (1)(a) shall be the maximum amount that could be awarded by the District Court in civil cases in contract.

3:3 Adjudication Conclusions.

Listening to the Oral testimony from the Parties it was clear that a technical case of Discrimination had taken place in the phone call of the 14th March 2023.

However, the Club pointed to the fact that it was one phone call to a car mobile, the Club Official was at his work and was under pressure. He had complained about some damage to the Club facilities from, he believed some members of the "Group" . He had agreed that neither of the two young boys (The Complainants) had had anything to do with it. The other aspect is that the Season was drawing to a close and all teams were full.

The Club Chairman ,under oath, pointed to the very good track record of the Club in dealing with Traveller children in the past.

None the less some Redress is warranted.

The nature of the Redress requires careful consideration. The comments from the Senior Exchange House Official, in Oral testimony, were worth noting. In his view what is required is a strengthening of a positive relationship between the Club and the Traveller Housing Community.

The Adjudication view is that a punitive financial award against the Club might well be an exemplary headline setting for all Sports Clubs generally. Ms Birbeck tended to this view. However, keeping the focus on the Parties directly, it would do little for the local relationship "*across the fence"* so to speak in South Dublin.

The positive development of the relationship between the Parties is what is important for the future. This was agreed both by the Club Chairman and Mr O'B, the Senior Exchange House person, who gave an Oral Testimony in support of Ms Birkbeck.

Any Redress has to be focused on "*Inclusiveness"* not "*penalisation"* of one Party ,especially a Voluntary Club, leaving a possible legacy of anti -Traveller bitterness.

4: Decision:

Section 41 of the Workplace Relations Act 2015 requires that I make a decision in relation to the complaint in accordance with the relevant redress provisions under Schedule 6 of that

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.

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Discrimination took place, albeit of a minor and unintentional nature.

Under Section 27(1) (b) – "a specified course of action" of the Equal Status Act ,2000 I direct Redress as follows

1. "*to err is Human but to forgive is divine*" should be the motto of all Parties in this case.

2. The Club interview for and appoint a voluntary Community Liaison Officer - a major part of whose brief will be the Traveller Community next door. Mr O'Brien or Ms Birkbeck of Exchange House could possibly offer some positive ideas on the selection process and possible induction for a successful candidate.

3. It is recognised that this is a Voluntary Club, and no fees are paid to Volunteer Officials. However, an application for some form of stipend for the expenses attached to this position should be made to the relevant Section of the Local Authority, probably Dun Laoghaire Rathdown Co Council or to Central Social Protection Funds. The assistance of Exchange House will be of great help here.

4. The Club set aside some funding (€1,000) for a Kids Soccer Funday to which all local children are invited especially those from the Traveller housing. The Complainant's very able and articulate Mother could well have an input here.

5. The two juniors (Jim and Michael) each be granted a Smyths Toy Stores voucher, each, to the value of €50 to spend as they please.

6. The Club recognise the incredible voluntary contribution of the former Junior Official, Mark D, over many years. He informed the Hearing that he was “Stepping down” after many years’ service. A brief “bad day” phone call should not take from this.

Dated: 11/06/2024

Workplace Relations Commission Adjudication Officer: Michael McEntee

Key Words:

Traveller, Discrimination, Recommended course of action.