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Equal Status Act 2000

EQUALITY OFFICER'S DECISION NO: DEC-S2002-119

Annie McDonagh

(represented by Galway Travellers Support Group)

V

Fiddler's Creek Bar, Sligo

(represented by McGovern Walsh & Co., Solicitors, Sligo)

File No. ES/2001/551
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Summary of Decision DEC-S2002-119

Ms. Annie McDonagh

-v-

The Fiddler's Creek Bar, Sligo

Headnotes

Equal Status Act, 2000 - Discrimination, Section 3(1)(a) - Membership of the Traveller community, Section 3(2)(i) - Disposal of goods and supply of services, Section 5(1) - Prima facie case.

Background

This dispute concerns a claim by Ms. Annie McDonagh that she was discriminated against, by the respondent, contrary to the Equal Status Act 2000, on the grounds that she is a member of the Traveller community when she was refused service on the respondent's premises on 20 July, 2001. The respondent denies that the complainant was discriminated against and states that confusion arose because the complainant was seated in a section of the bar which was reserved for groups who lunch in the premises and it was for this reason that service was not provided.

Conclusions of the Equality Officer

The Equality Officer found that the complainant had established a prima facie case of discrimination on the Traveller community ground. The onus had shifted to the respondent to show that the refusal of service was nondiscriminatory. The respondent provided inconsistent evidence which was less credible than the evidence provided by the complainant and had thus failed to rebut the inference of discrimination

Decision

The Equality Officer found that the complainant was discriminated against 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 and awarded the complainant €500 compensation for the effects of the discrimination.

Complaint under the Equal Status Act 2000
DEC-S2002-119

Ms. Annie McDonagh
v
The Fiddler's Creek Bar, Sligo

The complainant 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 case 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.

1. Dispute

1.1 This dispute concerns a claim by Ms. Annie McDonagh that she was discriminated against by the respondent contrary to the Equal Status Act, 2000, on the grounds of membership of the Traveller community in that, on 20 July, 2001, she was refused service in the respondent's premises. The respondent denies that discrimination occurred.

2 Summary of Complainant's Case.

2.1 The complainant states that she and a number of companions went to Fiddler's Creek Bar on 20 July, 2001 to get some lunch. The group were in the premises for approximately forty minutes without having been served. The complainant spoke to a member of staff and asked for service and was told that the manager had refused permission to serve the group. The complainant states that the reason service was refused was because of her membership of the Traveller community.

3. Summary of Respondent's Case

3.1 The respondent states that he has a policy of reserving a number of tables in his premises on a number of days for groups of workers from nearby offices who take lunch in the premises regularly. The policy has been ongoing for a number of years. The complainant and her companions were seated in a reserved area and the bar

person with whom the complainant had spoken had indicated to her that she would not be served while seated in that area.

4. Evidence of the Parties

4.1. Complainant's Evidence

Ms. McDonagh, complainant, stated that:-

- On 20 July, 2001 she and a number of companions were travelling to visit a relative. They stopped in Sligo between 12.30 p.m and 1.00 p.m as the group were hungry and cold and they decided to get a hot meal.
- The group went to a number of establishments but, as these only served cold meals (sandwiches etc.) they made enquiries as to where they might get a hot meal and were directed to the Fiddler's Creek pub/restaurant.
- On arriving at the entrance to Fiddler's Creek they spoke to a man who was standing outside and who was wearing a red T-shirt with the pub's logo on it. They asked him if the bar served hot lunches and he told them that it did.
- The complainant and her companions entered the pub and seated themselves on some high stools opposite the bar. They sat there for some 20 minutes, but despite the fact that staff passed them by a number of times to serve other customers they were not offered service. As the high seats proved to be uncomfortable the group moved to some other seats in a section marked "non smoking".
- After waiting approximately 20 minutes in the second area the group still had not been served. An elderly couple seated next to the group were eating a hot meal and engaged in conversation with the group. The couple said that they were visiting the area, but did not say where they were from.
- The complainant went to the bar seeking service and spoke to a man whom she considered was a senior member of staff because he was dressed in a shirt and tie. She asked him to send somebody to take the group's order as they had been waiting for some time.
- The man replied that he would have to check with the boss to see if he could serve them. The complainant thanked him and returned to her seat.
- Approximately five minutes later a member of staff approached the group and stated that he was "not allowed to serve them as the boss would not allow it".
- The complainant's sister Ms. Bridget Sweeney was so embarrassed that she ran out the door of the pub. The rest of the group followed.
- The group went to another premises close by and were served immediately. They were treated very well in the second premises.

- After the meal the group decided to go to the Garda station and formally report what had happened in Fiddler's Creek as they were still upset. They spoke with the Garda on duty and explained what had happened. The Garda rang Fiddler's Creek and spoke with a member of staff there. He asked if the member of staff recalled what had happened. They replied that they did recall same. The Garda asked for a reason for the refusal and the member of staff stated that they were not aware of any reason for refusing the group.
- The complainant has travelled to many places in Ireland and has never been treated in the manner in which she was treated in the Fiddlers Creek premises. She has been settled for a very long time and has a Galway accent. She has not therefore been recognised as being a Traveller previously.
- The complainant recalled that three members of staff in Fiddlers Creek had gathered together at one point and were staring at the complainant and her companions and chatting among themselves, but she could not hear what they were saying.
- Neither the complainant nor any of her companions was asked to move from where they were seated at any time. There was no signage indicating that any of the seating they occupied was reserved

Ms. Bridget Sweeney, witness for the complainant

Ms. Sweeney confirmed that the evidence as presented by the complainant was correct and that the experience was extremely humiliating and distressing.

The complainant's representative summarised on behalf of her client by saying that:-

- The complainant and her party were never approached by any of the respondent's staff at any time and the complainant found it necessary to request service. If the seating area in which the group was located was reserved for regular customers, why had the respondent's staff had not brought this to the attention of the group at any time.
- When the complainant had eventually gone to seek service she was told that it would be necessary to get permission to serve her, not that she or her companions could not be served because of where they were seated.
- The complainant and her companions had been waiting for approximately 40 minutes for service and were the only people who were not served while they were in the respondent's premises. Given the stated popularity of the premises for lunch, this was an extraordinary length of time for any customer to be left unattended, particularly if the seating was reserved in which case it would be reasonable to expect that somebody would have informed the complainant and her party that that was the case.
- Any preference given to "regulars" through rules and policies adopted amounts to indirect discrimination against Travellers as it is a prerequisite which would be disproportionately difficult for them to fulfil.

4.2 Respondent's Evidence

Mr. Enda Scanlon, respondent, stated that:-

- He is the owner of the Fiddlers Creek Bar/Restaurant and has been in business for 7 years approximately.
- He was not present on the day in question but it is standard practice to reserve seating in the restaurant, particularly at lunch hour, for groups of workers from nearby offices/businesses.
- Office workers regularly ring into the premises before lunch to check the menu for the day and often request that seating be held for them.
- It is standard practice to place "reserved" signs on the tables to indicate that the seating is not available. Such signage would have been placed on the tables on the day of the alleged discrimination.
- He has never operated a policy of refusing or limiting service to Travellers or any other group, and he has never instructed any member of staff to do so.
- He cannot state the precise number of places reserved on a daily basis as it varies according to demand from local office workers.
- He is unable to account for the delay in his staff approaching the group and can only assume it was because the restaurant was very busy on the day.
- He does not recognise the person that the complainant says she approached for service from the description given by the complainant as none of his staff, including the manager, has ever worn a shirt and tie. All staff wear a specific T-shirt with the name of the premises displayed on same.
- He accepts that the complainant spoke with a member of staff but could not see any situation in which any member of staff would say that they would have to get permission to serve a customer.

Mr. Jimmy Colreavy, Manager, witness for the respondent

- Mr. Colreavy confirmed what the respondent had stated in evidence but was also unable to say precisely what had occurred on the day of the alleged discrimination because he was not in the premises at the time.

The respondent's representative summed up on behalf of his client stating that:-

It was the general practice in his client's premises to reserve tables for regular customers. This practice sometimes gives rise to people taking offence in that they feel preference is being given to certain customers. However, while his client regrets this, he does feel that it is the best business practice to follow.

In a written response to the complainant's notification of her complaint to the respondent, the respondent's representative had stated that:-

- His client's recollection of events varied from the complainant's.
- A misunderstanding had occurred in that the bar person with whom the complainant spoke stated that he had indicated to the complainant that it was not possible to serve her lunch where she was sitting as the area in question had been reserved.
- That the area in question is reserved on a number of days for groups who lunch in the premises.

The respondent does not accept therefore that the complainant had been discriminated against on the basis of her membership of the Traveller community

5 Matters for consideration

5.1 The matter referred for investigation turns upon whether or not the complainant was discriminated against contrary to Section 3 (1)(a) 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 in subsection (2) (in this Act referred to as "the discriminatory grounds") which exists at present or previously existed but no longer exists or may exist in the future, or which is imputed to the person concerned, 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 ... are ...*

(i) *that one is a member of the Traveller community and the other is not* (the “Traveller community ground”)

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 "*.

In this particular case the complainant claims that she was discriminated against because she is a member of the Traveller community.

5.6 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
- (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.

6. Conclusions of the Equality Officer

6.1 In this particular case the complainant is a Traveller and states that she was refused service in the respondent’s premises. The refusal per se is not denied by the respondent, who disputes only the reason for the refusal. The complainant has, therefore satisfied (a) and (b) at 5.6 above. In relation to key element (c) at 5.6 above the complainant states that the only reason that she was refused service is because she is a Traveller. She states that neither she nor her companions witnessed any other

person on the premises being refused service on the day in question and that staff passed by the group on a number of occasions to serve other patrons, some of whom entered the premises long after the complainant and her party.

The complainant and her companions were originally seated in one part of the premises for up to twenty minutes and were not approached by any member of staff. They then went to a more comfortable part of the bar and were seated there for another twenty minutes and again were not approached by any member of staff. Neither seating area had any reserved signs displayed. The elderly couple seated near, and who engaged in conversation with, the group were not local. It was not brought to the attention of any member of the group at any time that they were seated in a reserved area.

It was necessary for the complainant to seek out a member of staff and request service. The complainant was told that the member of staff would have to get the manager's permission to serve the group. A few minutes later the complainant was informed that the manager had not given permission to serve the group. In the course of this conversation, the complainant and the witness on her behalf state that no mention was made of reserved seating. In his written response to the complainant's notification of her complaint the respondent's representative acknowledged that, while the actual words exchanged are in dispute, a bar person had spoken with the complainant.

I am satisfied that the manner in which the complainant and her companions were left unattended for a considerable amount of time constitutes treatment which differs from that afforded other customers around them on the day in question. I am satisfied that the complainant and her companions were unaware that they were seated in a reserved area and I am satisfied that this was due to a lack of signage to that effect. I am also satisfied that the staff in the respondent's premises made no attempt to approach the complainant or her companions to either alert them to the fact that they were seated in a reserved area or to serve them. I am satisfied that the complainant and her companions witnessed other customers on the premises on the day in question being served.

I am satisfied that the complainant was told that the staff member whom she approached for service responded in the manner described by the complainant i.e. that he would have to get the manager's permission to serve the group. I am satisfied that this statement was unrelated to the fact that the seating was reserved for the following reasons:-

- The complainant's party had been seated in the premises for forty minutes.
- They entered the premises at the start of the recognised lunch hour, between 12.30 and 1.00 p.m.
- By the time the forty minutes in which they were waiting for service had elapsed the party or parties who had reserved the seating in question would have arrived on the premises for lunch and would have sought to be seated in the seats reserved for that purpose. This did not happen.
- If it was the case that the seating was reserved for a later time in the day then the respondents evidence is irrelevant because the seating was not reserved for the time in which the complainant and her party were seated in the premises awaiting service.

I am satisfied that the difference in treatment afforded the complainant and her companions, i.e. no service to the point of being shunned by the respondent's staff, was less favourable treatment than that afforded other patrons, both local and non-local on the day in question. I am satisfied that the reason for the less favourable difference in treatment was because the complainant and her companions were recognised as being Travellers by the respondent's staff.

6.2 I am satisfied that the complainant has established, on the balance of probabilities, that service was refused to her because she is a member of the Traveller community. I find that the complainant has established a prima facie case of direct discrimination against the respondent. The complainant has, therefore, satisfied key element (c) at 5.6 above. In relation to the argument raised by the complainant's representative that priority service to "regulars" constitutes indirect discrimination

against members of the Traveller community, as I have found that direct discrimination occurred, I consider it unnecessary to address this argument.

6.3 The burden of proof now shifts to the respondent to demonstrate that the reasons for the refusal of service to the complainant was nondiscriminatory.

The evidence presented by the respondent shows that neither he nor the bar manager were present at the time the refusal took place. The respondent relies on the fact that it is standard practice in his premises to reserve seating for local office workers during lunch hour, a practice that is well established and ongoing. I am satisfied that such a practice exists, however I am also satisfied, for the reasons stated above at 6.1, that it was not for this reason that service was refused to the complainant on the day in question. Based on all of the evidence presented I am satisfied that the complainant and her companions were deliberately ignored by the respondent's staff for a prolonged period of time, perhaps in the hope that they would leave the premises. I find that the respondent has failed to rebut the inference of discrimination.

Decision

I find that the complainant was 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.

8 Vicarious Liability

8.1 While the action which constituted discrimination is directly attributable to the barman who refused service to the complainant, Section 42(1) of the Equal Status Act, 2000 provides that:

“Anything done by a person in the course of his or her employment shall, in any proceedings brought under this Act, be treated for the purposes of this Act as done also by that person's employer, whether or not it was done with the employer's knowledge or approval”

As the barman was clearly acting within the scope of his employment in the course of the refusal I find that the barman's employer, Mr. Enda Scanlon, trading as The Fiddler's Creek Bar, is vicariously liable for his actions in accordance with section 42(1) of the Equal Status Act.

9 Redress

9.1 Under section 25(4) of the Equal Status Act, 2000 redress shall be ordered where a finding is in favour of the complainant in accordance with section 27. Section 27(1) provides that:

“the types of redress for which a decision of the Director 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 the discrimination;

or

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

9.2 In accordance with Section 27 (1) (a) I hereby order that €500 be paid to the complainant by the respondent for the effects of the discrimination. In accordance with Section 27 (1) (b) I further order the respondent to immediately undertake or provide training for all members of staff in relation to the scope, application and requirements of the Equal Status Act 2000. In making this award and this order I have taken into consideration

(i) the embarrassment and distress caused to the complainant by the refusal of service, and

(iii) the loss of amenity to the complainant on the day on which service was refused.

Dolores Kavanagh

Equality Officer

12 November, 2002