

ODEI-equality tribunal

OFFICE OF THE DIRECTOR OF EQUALITY INVESTIGATIONS

3 Clonmel Street
Dublin 2.

Phone: 353 -1- 4774100
Fax: 353-1- 4774150

E-mail: info@odei.ie
Website: www.odei.ie

Equal Status Act 2000

Equality Officer Decision DEC-S2002-113

Mr. Michael Ward

V

The Dolphin Inn
(represented by Mr. Tom Enright Solicitor)

Table of Contents

	Section	Page
1.	Summary	1 -2
2	Dispute	3
3	Background	3
4	Summary of Complainants' Case	3 - 4
5	Summary of Respondent's Case	4 - 5
6	Conclusions of Equality Officer	5 - 11
7	Decision	11

Summary of Decision DEC-S2002-113

Mr. Michael Ward

V

The Dolphin Inn

(represented by Mr. Tom Enright Solicitor)

Key words

Equal Status Act, 2000 - Direct discrimination, Section 3(1) - Traveller community, Section 3(2)(i) - supply of goods and services, Section 5(1) - service in a pub - prima facie case - failure to reply to notification, Section 26 - obstruction of an Equality Officer, Section 37

Dispute

The dispute concerns a claim by Mr. Michael Ward that he was discriminated against by

The Dolphin Inn, in terms of Sections 3(1) and 3(2)(i) of the Equal Status Act, 2000 and contrary to Section 5 of that Act, when he was not provided with a service which is generally available to the public.

2 Background

2.1 The complainant's case is that he was refused service in the respondent's pub at about 2

p.m. on 7 November 2000. He believes that the refusal of service was due to the fact that he is a member of the Traveller community.

The respondent rejected this argument and said that the complainant was not discriminated against on the grounds that he is a Traveller, but was refused service because the bar was closed for business at the time he attempted to get a drink. The proprietor, Ms. Hilda Dolphin, stated that the premises is closed for business until 6

pm from September to May every year, due to the lack of business in the town during the winter months.

3 Conclusions of the Equality Officer

- 3.1** The Equality Officer concluded that the respondent's premises was not open for business at the time the complainant sought service. She was satisfied that the pub did not open for business from September to May until 6 pm. She was also satisfied that the pub was inadvertently left unlocked by the respondent and that no customers were drinking on the premises at the time the complainant sought service. She concluded that the complainant was not discriminated against.

4 Decision

- 4.1** The Equality Officer found that the complainant had not succeeded in establishing a prima facie case of discrimination. She found that the complainant was 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.
- 4.2** She recommended, in order to avoid, confusion that the respondent should put a notice in a prominent position on the outside of her premises stating the hours the pub is open for business.

Decision DEC-S2002- 113

Mr. Michael Ward

V

The Dolphin Inn
(represented by Mr. Tom Enright Solicitor)

1. Dispute

- 1.1** The dispute concerns a claim by Mr. Michael Ward that he was discriminated against by the Dolphin Inn on the grounds that he is a member of the Traveller Community. The complainant alleges that the respondent discriminated against him in terms of Sections 3(1)(a), and 3(2)(i) of the Equal Status Act, 2000, contrary to Section 5(1) of that Act.

2 Background

- 2.1** The complainant's case is that he was refused service in the respondent's pub at about 2 p.m. on 7 November 2000. He believes that the refusal of service was due to the fact that he is a member of the Traveller community. The respondent submitted that the complainant was not discriminated against on the grounds that he is a Traveller, but was refused service because the bar was closed for business at the time he attempted to get a drink

3 Summary of the Complainant's Case

- 3.1** The complainant stated the following
- That he is a member of the Traveller community and was living in Birr during 2000. At about 2pm on 7 November, 2000 he went to the respondent's premises to get a drink.
 - There were two customers in the bar having a drink and a man serving behind the counter. He went to the counter and ordered a pint of Guinness from the barman and was refused service. He asked for the reason and was told that only regular customers were served in the premises.

- The complainant said that he asked for a better reason and the barman told him that they were having a private party upstairs. The complainant told the barman he could see no party in progress and asked again for the reason that he would not be served. The barman told him the party was on in the upstairs lounge.
- The complainant then asked if there was any other reason for not serving him and the barman told him that it was bosses orders not to serve “ye people”. He understood this to mean that he would not be served because he is a Traveller. He informed the barman about the Equal Status Act and told him he was going to his solicitor.
- The complainant submitted that this was the third time he had been refused service in the pub. He said that none of his Traveller friends are served there and he believes that the pub operates a policy of not serving Travellers. He said that he rarely goes drinking, but with the exception of one pub, he finds it difficult to get service in any of the other pubs.
- In response to the respondent’s case, that the pub is closed until 6 pm during the winter months, the complainant said that he was not aware if the respondent’s pub was normally closed during the day.
- The complainant said that he left the premises and reported the matter to the Gardaí.

4 Summary of the Respondent’s Case

4.1 The respondent, Ms. Hilary Dolphin, submitted that the complainant was not discriminated against on the Traveller community ground and submitted the following evidence:

- During the winter months, usually from September to May, the proprietor Ms. Dolphin does not open the pub until 6p.m., as there would be very little custom. She said that during the Summer months the town is much busier and she opens the pub all day.
- Ms. Dolphin said that the main part of the pub is downstairs and she has a lounge upstairs which is mainly used for parties.
- The complainant came into the bar at 2p.m. on 7 November and the pub was closed and there were no customers on the premises.
- The manager of the bar had recently resigned and as Ms. Dolphin did not serve in the bar herself she had got temporary help from a friend. She was having a private party in the upstairs part of the pub on the night of 7 November, 2000. She asked a friend

(Mr. A) who was on holidays from New York to help her to prepare the upstairs bar. She also had a friend of her father's (Mr. B) doing some work for her in the yard.

- Ms Dolphin said that she unlocked the bar and entered it sometime before the complainant entered. She said that she forgot to lock it behind her. She offered Mr. B a drink when he was finished the work he was doing. Mr. A was upstairs tapping the bar for the party.
- Ms. Dolphin said that the complainant entered the pub and asked for a pint. She was surprised to see him in the bar as she thought she had locked the door. Mr. A, who had just arrived behind the bar, told him that the bar was closed. The complainant queried why the bar was closed and Mr. A explained that they were preparing the bar for a party upstairs that night.
- Ms. Dolphin stated that the complainant raised his voice and said that there was new discrimination laws and he was going to his solicitor to complain about discrimination and left the bar.
- Ms. Dolphin locked the door as soon as the complainant left and the bar was not opened again until 6p.m that evening. She said that as she was about to lock the door two customers were entering the bar and she explained to them that the bar was closed.
- Ms. Dolphin said that she had never seen the complainant before and she did not recognise him as a Traveller. Ms Dolphin said that Travellers are regularly served in the pub.
- Ms Ann Marie Deery gave evidence on behalf of Ms. Dolphin and said that she has a book shop adjacent to the respondent's pub. She confirmed that the pub is not open until evening time in the winter months. She said that she regularly lunched in the pub and then she noticed it was closed at lunch time. Ms. Deary said that she met Ms. Dolphin and asked her why the pub was closed and Ms. Dolphin told her that she was not opening until 6p.m. because of the lack of trade during the day in the winter months.

5. Conclusions of the Equality Officer

- 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 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.*

5.2 A person making an allegation of discrimination under the Equal Status Act, 2000 must first demonstrate that a *prima facie* case of discrimination exists. Prima facie evidence has been described by an Equality Officer as:

*“Evidence which in the absence of any convincing contradicting evidence by the employer would lead any reasonable person to conclude that discrimination had probably occurred.”*¹

Once a prima facie case of discrimination has been established by the complainant, the burden of proof then shifts to the respondent to rebut the presumption of discrimination.

In more recent employment discrimination cases the Labour Court has applied the test and stated:

“The first question the Court has to decide is whether the claimant has established a prima facie case of discrimination”.²

And in another case stated:

*“...the claimant must first prove as a fact one or more of the assertions on which her complaint of discrimination is based. A prima facie case of discrimination can only arise if the claimant succeeds in discharging that evidential burden. If she does, the respondent must prove that she was not discriminated against on grounds of her sex. If she does not, her case cannot succeed.”*³

¹ Dublin Corporation v. Gibney EE5/1986

² The Rotunda Hospital v. Noreen Gleeson DEE003/2000

³ Dr. Teresa Mitchell v. Southern Health Board (Cork University Hospital) DEE011

- 5.3** I have identified the key issues for decision as follows:
- is the complainant covered by the discriminatory ground? (in this case is he a member of the Traveller community?)**
 - in what circumstances was the complainant refused service by the respondent on 7 November, 2000.**
 - evidence that the treatment received by the complainant was less favourable than the treatment someone, not covered by the discriminatory ground, would have received in similar circumstances.**

- 5.4** I am now going to examine issues I have identified above and consider whether the complainant has established a *prima facie* case. 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 complainant 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 he succeed in establishing *prima facie* evidence, the burden of proof then shifts to the respondent to rebut the inference of discrimination.

5.5 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 complainant is a Traveller as defined by the Act. .

- 5.6** It was accepted by both the complainant and the respondent that service was refused but

the reason for the refusal is in dispute. The complainant case is that he was refused service for no good reason and he believe this occurred because she is a member of the Traveller community. He believed that the respondent’s bar was open, as there were two customers, a man and a woman, having a drink, and the barman was behind the counter wiping a glass. He contended that he was refused service by the

respondent, because he is a Traveller, on two other occasions prior to the Equal Status Act coming into operation.

The respondents case is that the bar was closed at the time the complainant attempted to get service and the complainant was informed. Ms. Dolphin stated that she does not open the bar until 6p.m. from September to May, as the level of business in the town would not justify opening it. She said that several other publicans in the town operated restricted opening hours during the winter months. Ms Ann Marie Deery said that she has a book shop adjacent to the respondent's pub and she confirmed that the pub is not open until evening time in the winter months.

While it might have seemed to the complainant that the bar was open for business as he had no difficulty in gaining entry, I am satisfied that Ms. Dolphin inadvertently left the bar door unlocked. I am also satisfied that there were no customers in the bar, and that the people the complainant saw were there at the invitation of Ms Dolphin to carry out work for her. I find that Ms. Deery gave very credible evidence in relation to the opening hours operated by the respondent. The complainants produced no evidence to show that the respondent did not operate a policy of not opening the bar until 6pm during the winter months.

- 5.7** I am now going to examine the third key element identified above and to see if the complainant was treated less favourably than a non Traveller customer would have been treated in similar circumstances. I note from the evidence that Ms. Dolphin refused other potential customers on that day as the bar was closed. I am satisfied therefore that the complainant was not treated less favourably than non-Traveller customers would have been treated in similar circumstances. I find on the facts, that the respondent's bar was closed for business at the time the complainant was refused service, and that the refusal of service was not connected to his membership of the Traveller community.

I find on the evidence that the complainant has not succeeded in establishing a prima facie case of discrimination.

6 Issues Concerning the Investigation

- 6.1** The complainant notified the respondent of the complaint in accordance with Section 21 of the Equal Status Act in November, 2000, but received no response.

I invited the respondent to respond to the complaint of alleged discrimination on four occasions and again I received no response. I also invited Ms. Dolphin, during a number of telephone calls, to respond in writing to the complaint but she did not do so.

The complainant only received an explanation why he was refused service at the hearing as neither Ms. Dolphin or Mr. A explained to the complainant on the 7 November, 2000 that the pub was not open during the day from September to May.

- 6.2** Ms. Dolphin said that the reason she did not respond to the complaint was that she believed the complaint was against a different pub in the town. On the notification form the complainant had inserted the name of another pub, and then crossed it out and put in the name of the respondent's pub, the Dolphin Inn on the form. Ms Dolphin said that she spoke to the other publican, whose name was crossed out on the form, and he told Ms. Dolphin that he also had got a notification of a complaint from the complainant. Mr Ward said that he was confused about the name of the pub and sent the notification to the wrong pub, but he corrected this error immediately and sent a notification to Ms. Dolphin.

- 6.3** I am satisfied that the complainant named the correct respondent on the notification and that Ms. Dolphin received this notification. If the respondent was confused about the notification, I am not satisfied that Ms. Dolphin could have continued to be so confused once she was notified by this Office about the complaint. It seems to me that Ms. Dolphin ignored the complaint until a date was set for the hearing.

I am satisfied that it was not the respondent's intention to deliberately obstruct me in the investigation of this complaint. Nevertheless it should be noted that it is a statutory offence under Section 37 of the Act not to comply with a requirement of an

Equality Officer or to obstruct her in the exercise quasi-judicial powers. The penalties provided by the Act are as follows:

- on summary conviction, a fine of up to £1,500 or imprisonment for up to one year or both,
- on conviction on indictment, a fine up to £25,000 or imprisonment for up to 2 years or both

Where the offence continues after conviction, a further fine up to £250 per day on summary conviction and up to £1,500 per day on conviction on indictment.

6.4 The complainant only received a proper explanation of the reason service was refused at

the hearing of the complaint. As I have mentioned above the respondent did not reply to the notification of the complaint sent to her by the complainant in accordance with Section 21(2)(a) of the Equal Status Act, 2000. It should be noted that Section 26 of the Act provides:

“If in the course of an investigation under Section 25, it appears to the Director-
(a) that the respondent did not reply to a notification under section 21(2)(a) or
to any question asked by a complainant under section 21(2)(b),
(b) that the information supplied by the respondent in response to the
notification or any such question was false or misleading, or
(c) that the information supplied in response to any such question was not such
as would assist the complainant in deciding whether to refer the case to the
Director,

The Director may draw such inferences, if any, as seem appropriate from the
failure to reply or, as the case may be, the supply of information as mentioned in
paragraph (b) or (c).”

As I have found above the complainant has failed to establish a prima facie case of discrimination. Therefore in the circumstance, I cannot draw an inference from the fact the respondent failed to respond to the notification of the complaint to her by the complainant. Nevertheless I would like to draw the attention of the respondent to the provisions of the Act in this regard. It is quite probable, had the complainant been given a full and reasonable explanation at the time of the incident, or even on receipt

of the notification, that this claim would not have been progressed, thus avoiding the inconvenience and financial costs for the respondent.

7. Decision

7.1 On the basis of the foregoing I find that the complainant was 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.

7.2 To avoid confusion I would recommend that the respondent put a notice immediately in a

prominent position on the outside of her premises stating the hours the pub is open for business.

Marian Duffy
Equality Officer
2 October, 2002