

ODEI - the equality tribunal

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Equal Status Act 2000

EQUALITY OFFICER'S DECISION NOs: DEC-S2002- 125/126

**Margaret and Bridget Ward
V
Supermacs, Loughrea
(represented by Maeve Carroll, Solicitor)**

File Ref ES/2001/645-646

Date of Issue 29/11/2002

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Equal Status Act 2000

Summary of Decisions DEC-S2002-125/126

Margaret and Bridget Ward

V

Supermacs, Loughrea
(represented by Maeve Carroll, Solicitor)

Key words

Equal Status Act 2000 - Direct discrimination, section 3(1)(a) - Membership of the Traveller community, section 3(2)(i) - Supply of goods and services, section 5(1) - Provision of service in a restaurant - Removal of complainant from toilets - Refusal by restaurant to entertain complaint about food purchased

Dispute

This dispute concerns a complaint by Margaret and Bridget Ward that they were discriminated against, contrary to the Equal Status Act 2000, by the management of Supermacs, Loughrea.

The complainants state that one of them was removed from the toilets on 6 May 2001, when they went to Supermacs to purchase food, and that they were later refused a refund in respect of food they had purchased and had to return. They claim that they were treated in this manner because of their membership of the Traveller community.

The respondents totally reject that they operate a discriminatory policy against Travellers. They maintain that the complainants were asked to leave the toilets because they were causing a disturbance and never sought a refund for the food purchased.

Decision

The Equality Officer found that a prima facie case of discrimination had been made by the complainants in establishing that they were discriminated against on the Traveller community ground in terms of sections 3(1) and 3(2)(i) of the Equal Status Act 2000 in not being provided with a service which is generally available to the public contrary to Section 5(1) of the Act.

In considering the level of redress which is most appropriate in this case, the Equality Officer found that a financial payment would not be appropriate in this situation. Instead, as the complainants were regular customers, he ordered that Supermacs provide the family with €20 worth of meals free per day for a full month, on each day during that month that one or both complainants called to Supermacs to order food. In the event of neither complainant calling to Supermacs on a particular day, the free meals for that day are to be forfeited.

Equal Status Act 2000
Decision DEC-2002-125/126

Margaret and Bridget Ward

V

Supermacs, Loughrea
(represented by Maeve Carroll, Solicitor)

1. Dispute

1.1 This dispute concerns a complaint by Margaret and Bridget Ward that they were discriminated against, contrary to the Equal Status Act 2000, by the management of Supermacs, Loughrea.

The complainants maintain that they were discriminated against on the Traveller community ground in terms of sections 3(1) and 3(2)(i) of the Equal Status Act 2000 in not being provided with a service which is generally available to the public contrary to Section 5(1) of the Act.

2. Summary of the Complainant's Case

2.1 The complainants state that they were asked to leave the Ladies toilets on 6 May 2001, when they called to Supermacs to purchase food, and were later refused a refund for food they had to return. They claim that this occurred because of their membership of the Traveller community.

3.. Summary of Respondent's Case

3.1 The respondents totally reject that they operate a discriminatory policy against Travellers. They maintain that the complainants were asked to leave the toilets for causing a disturbance and that they never sought a refund for food purchased.

4 Delegation under the Equal Status Act, 2000

4.1 These complaints were referred 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 has delegated these complaints to myself, Brian O'Byrne, 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.

5.1 Complainants' Evidence

- The complainants have been buying food in Supermacs almost every evening for the past five years
- The complainants continued to purchase food regularly from Supermacs since the incident on 6 May 2001. Approximately €10 is spent every day
- The complainants have never been involved in trouble in Supermacs

- The complainants would not normally be in Supermacs during the day unless Margaret Ward was attending a training course in the town.
- On occasion, Margaret Ward has gone in to Supermacs without buying anything but only to speak to friends who were already inside having a meal.
- The complainants have not noticed other Travellers in Supermacs at night but have seen some in the shop during the daytime.
- The complainants live outside Loughrea and their brother drives them to Supermacs each evening.
- Margaret is Bridget's older sister. Bridget was thirteen years old at the time of the incident.
- The complainants visited Supermacs at 9pm on Sunday 6 May 2001 to buy a burger meal for their mother. Their brother drove them in to Loughrea and waited outside for them.
- They ordered and paid for their meal from a girl at the counter and went upstairs to the toilet as Bridget needed to go
- They entered the Ladies at the same time as an older woman. There was no one else in the toilet at the time.
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- The older woman went into one of the two cubicles while Margaret entered the other.
- While Bridget was waiting against the wall for one of the cubicles to become free, Mr Treacy, the manager, came into the Ladies and told her to "Get out".
- Bridget left immediately and went downstairs
- Margaret heard a man's voice saying "Get out" while she was in the cubicle. She came out as soon as she could and left the Ladies to find her sister.
- Mr Treacy was on the landing outside. As she did not know whether he was the man she had heard, she said nothing to him.
- Her main concern was her sister's whereabouts. As Bridget was not to be seen upstairs, she rushed downstairs.
- Margaret found Bridget standing by a telephone. She was upset and could not explain why the man had told her to get out.
- When Mr Treacy came down, Margaret approached him to determine why he had acted as he did.
- Mr Treacy stated that Bridget had been messing. When Margaret questioned him further, he "roared" at her and said that he did not have to explain himself that he would bar her if she continued to question him.

- The complainants felt very humiliated at that point as Mr Treacy could be clearly heard by other customers
- The complainants felt deeply upset as they believed that Mr Treacy's attitude towards them was down to their membership of the Traveller community and that Mr Treacy would not have treated non-Travellers in a similar manner.
- When their food was ready, they returned home with their brother.
- While eating her burger, the complainants' mother discovered a hair in the meat, which led to her getting sick outside the caravan.
- The complainants' father gave evidence of the above incident and said that it was he who suggested that the hair should be brought to Supermacs attention.
- Of the numerous meals that the family had purchased from Supermacs over the years, they had only had problems with their food on 2 or 3 occasions previously. On those occasions they had decided not to return to the shop because of the travel involved.
- Margaret Ward returned to Supermacs with another sister, Helen, at 9.30 pm with the remains of the meal.
- Margaret said at the Hearing that Helen raised the question of the hair in the burger with Mr Treacy and also the earlier incident involving her two sisters.. Mr Treacy paid no heed to her and refused to offer a refund or a replacement meal.
- The sisters left the returned food on the counter and went home.
- In being served by Mr Treacy on occasions prior to May 2001, Margaret Ward said that Mr Treacy had never shown her the same courtesy and politeness that she had seen him show to non-Travellers he was serving.
- Margaret Ward had always got a "feeling" from Mr Treacy that he looked down on her because she was a Traveller.
- The complainants were so convinced that Mr Treacy had discriminated against them, that they engaged solicitors to act on their behalf a few days after the incident. The solicitors, who instigated proceedings on their behalf, were no longer on record for the complainants at the time of the Hearing.
- The complainants did not visit Supermacs for two weeks thereafter. After that, they avoided ordering food from Mr Treacy.
- Since Mr Treacy left Supermacs, they have got on very well with the new manager.

5.2 Respondents' Evidence

- Supermacs has operated in Loughrea since the late 1980's

- Its customer base is very diverse and includes many Travellers
- An Incident Report Book is maintained to record disturbances, complaints, spillages etc
- Supermacs does not operate a policy of discrimination against anyone.
- Supermacs has developed an Employees' Handbook over the years which is regularly revised in line with new developments and legislation. The Handbook specifically outlaws any form of discrimination of staff or customers. The latest edition (May 2001) makes specific reference to the nine grounds covered by new equality legislation.
- Mr Alan Treacy was employed by Supermacs for five years in Galway before moving to Loughrea to manage the Loughrea Supermacs Restaurant, 18 months prior to the incident in May 2001.
- Mr Treacy is no longer employed by Supermacs.
- Mr Treacy said that he had not met with any trouble previously from Travellers in Supermacs Loughrea
- At the Hearing, Mr Treacy said that he recognised the Ward sisters from having served them previously. He said that they were good customers and visited the restaurant for food twice a day, on average.
- He had not had any trouble with them prior to 6 May 2001 and said that he was not aware that they were Travellers.
- Around 9 pm on Sunday 6 May 2001, a female customer came to him at the counter and informed him that there was noise from the Ladies toilet upstairs.
- Mr Treacy, as Manager, took it upon himself to investigate. He went upstairs and waited outside the Ladies for about 2 minutes but heard nothing.
- Another female customer then came up the stairs and when she went to open the door to the Ladies, the door was pushed back in her face.
- Mr Treacy then decided to enter the Ladies himself and was followed inside by the female customer. Inside, he found Bridget Ward standing outside the cubicles. The two cubicles were occupied and there was no one else in the Ladies.
- He informed Bridget Ward that no messing was allowed and asked her to leave the Ladies. She immediately left and went downstairs.
- Mr Treacy then left the Ladies and waited in the hallway outside for a short while before returning downstairs. In this period, Margaret Ward came out of the Ladies and went downstairs
- Margaret Ward approached him at the counter downstairs asking why he had asked her sister to leave the Ladies. He informed her that it was because there was messing going on.

- Later that evening, Mr Treacy recalls Helen Ward approaching him and asking him about the earlier incident. He told her that Bridget had been messing in the Ladies and that was the reason he had asked her to leave.
- Mr Treacy remembers Helen Ward having a bag with some chips in it with her and leaving it on the counter saying that “they don’t want this”. He does not remember her complaining about the meal nor asking for a replacement or refund.

5.3 At the Hearing a copy of the Incident Report prepared by Mr Treacy on 6 May 2001 was produced (Appendix A). The report referred to the incident involving Bridget and Margaret Ward but did not refer to Helen Ward’s involvement later that evening. Mr Treacy said at the Hearing that he was surprised that he had not included a reference to his conversation with Helen Ward in the report.

6 Matters for Consideration

6.1 Section 3(1) of the Equal Status Act 2000 states that discrimination shall be taken to occur where, on any of the grounds specified in the Act, a person is treated less favourably than another person is, has been or would be treated. Section 3(2)(i) of the Act specifies the Traveller community ground as one of the grounds covered by the Act. Under Section 5(1) of the Act it is unlawful to discriminate against an individual in the provision of a service which is generally available to the public.

In this particular instance, the complainants claim that they were discriminated against on the grounds of their membership of the Traveller community contrary to Sections 3(1), 3(2)(i) and 5(1) of the Equal Status Act, 2000 in the manner in which Bridget was dealt with in the Ladies by Mr Treacy and the manner in which Mr Treacy dealt with Margaret subsequently on 6 May 2001.

6.2 In cases such as this, the burden of proof lies with the complainant who is required to demonstrate that a prima facie case of discrimination exists. If established, the burden of proof then shifts to the respondent who, in order to successfully defend his case, must show that his actions were driven by factors which were non-discriminatory.

6.3 In considering the approach to be taken with regard to the shifting of the burden of proof, I have been guided by the manner in which this issue has been dealt with previously at High Court and Supreme Court level and I can see no obvious reason why the principle of shifting the burden of proof should be limited to employment discrimination or to the gender ground (see references in **Collins, Dinnegan & McDonagh V Drogheda Lodge Pub DEC-S2002-097/100**)

7 Conclusions of the Equality Officer

7.1 Prima facie case

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 (e.g. the Traveller community ground)
- (b) Evidence of specific treatment 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.

7.2 What constitutes “prima facie evidence” and how a “prima facie case” is established has been documented and considered in previous cases such as **Sweeney v Equinox Nightclub DEC-S2002-031**.

7.3 With regard to (a) above, the complainants have satisfied me that they are members of the Traveller community. In relation to (b), the respondents accept that Bridget Ward was asked to leave the Ladies toilet on 6 May 2001 and that a discussion about this incident took place afterwards between Mr Treacy and Margaret Ward. To determine whether a prima facie case exists, I must, therefore, consider whether the treatment afforded the complainants on 6 May 2001 was less favourable than the treatment non-Travellers would have received, in similar circumstances.

Key Points and Factors

7.4 In this particular case, I have two totally conflicting versions of what happened on the night:

1 The complainants state that, having ordered a meal, they went upstairs to the Ladies toilet. They and another female customer simultaneously entered the Ladies, which was empty at the time. They also state that no other customers entered the Ladies between the time the two sisters entered and left the toilets (this would seem to contradict Mr Treacy’s assertion that a customer had complained about noise from the toilets).

When Margaret Ward complained to Mr Treacy about the treatment afforded Bridget, she says that he “roared” at her, drawing attention to her in front of other customers.

When Helen Ward spoke to Mr Treacy later, it is maintained that he refused to deal with the complaint about the food and made no offer of a refund or replacement meal.

2 Mr Treacy states that, on foot of a customer’s complaint, he went upstairs. He says he saw the door to the Ladies being pushed back into another customer’s face. He found Bridget standing alone in the Ladies and, assuming that she had been responsible, asked her to leave the Ladies.

He says he explained the situation in a courteous manner to Margaet Ward afterwards and again later on to her sister Helen.

He says that no specific complaint was made to him about the food which was brought back by the sisters and that no request for a refund or replacement meal was made.

7.5 In deliberating on the case before me, I find that I have insufficient evidence to enable me to reach a firm conclusion as to the circumstances surrounding Bridget Ward's removal from the toilets.

However, in considering whether discrimination occurred subsequently, I do consider the following factors to be very important and persuasive:

- The complainants say that they specifically returned to Supermacs to complain about the food yet Mr Treacy states that no complaint was made. He does, however, acknowledge that the complainants had food with them and left it on the premises behind them.

This occurrence seems peculiar to me, as I would expect the Manager of any restaurant, on seeing a customer returning with food, to enquire about the situation in a prompt and polite manner, especially when the Manager is dealing with someone known personally to him as a "good customer". This did not, however, happen in this case. Instead it appears that only a discussion about the earlier incident took place.

On considering the evidence before me, I have formed the opinion that, in all probability, a complaint was made about the food but that Mr Treacy chose to ignore it because of the earlier incident and because of the impression he had formed of the complainants.

- Another factor which I consider particularly relevant is that, at the Hearing on 30 October 2002, Mr Treacy described the Ward sisters as "good customers" who called to the shop for food "on average twice a day". Yet in his Incident Report of 6 May 2001 (Appendix A), he stated "The 2 girls in question, I recognised straight away, as they tend to loiter around the shop a lot without buying anything".

This latter point would seem to indicate that Mr Treacy's attitude towards the complainants prior to and on 6 May 2001 was different to how he now describes it. I, therefore, have a difficulty in accepting Mr Treacy's testimony at the Hearing at face value, and have concluded that, despite the fact that they were "good customers", Mr Treacy still had a difficulty with the complainants being on the premises in May 2001.

As Mr Treacy has stated that the complainants had never caused trouble before, I consider that Mr Treacy's attitude towards the Ward sisters was down to the fact that he recognised them as members of the Traveller community, resulting in him looking upon them in a less-favourable light than non-Travellers.

7.6 Consequently, on the basis of the above points, I consider that, on the balance of probabilities, Mr Treacy did not afford Margaret Ward the courtesy one would expect a customer to receive on enquiring as to why her sister had been removed from the toilets. Nor do I consider that he afforded Margaret Ward and her sister, Helen, the courtesy one would expect a customer to receive on returning to the shop to complain about food purchased earlier.

I, therefore, consider that Mr Treacy's treatment of Margaret Ward, in particular, on 6 May 2001 was less favourable than the treatment Mr Treacy would have afforded non-Traveller customers in a similar situation and that his actions constituted discrimination under the Equal Status Act 2000.

8 Decision

8.1 I find that a prima facie case of discrimination has been made by the complainants in establishing that they were discriminated against on the Traveller community ground in terms of sections 3(1) and 3(2)(i) of the Equal Status Act 2000 in not being provided with a service which is generally available to the public contrary to Section 5(1) of the Act.

I also find that the respondents have failed to rebut the allegation.

8.2 In considering the level of redress which is most appropriate in this case, I have borne in mind the fact that:

- Evidence is available to show that the respondents actively discourage any form of discrimination on their premises. To this end, an Employee Handbook has been produced by the respondents, which is updated regularly to take on board new developments in equality legislation.
- The complainants continue to frequent Supermacs on a regular basis and have stated that no other incidents which could be construed as being of a discriminatory nature have occurred.
- Mr Treacy is no longer employed by Supermacs and the complainants have stated that the new manager is very courteous and respectful towards them.

8.3 In light of the above, I find that a financial payment would not be appropriate in this situation. Instead, I order that, during the course of a calendar month to be agreed between the parties, the respondents provide the Ward family with €20 worth of free meals (or €20 off their overall bill if greater than €20) on each day during that month that one or both complainants call to Supermacs to order food. In the event of neither complainant calling to Supermacs on a particular day, the free meals for that day are forfeited.

Brian O'Byrne
Equality Officer
29 November 2002

