

ODEI - the equality tribunal

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Equal Status Act 2000

EQUALITY OFFICER'S DECISION NO: DEC-S2002- 128

Augustine Sweeney

V

John Biggins, The Corner Bar, Ballinrobe
(represented by T Mullan & Co, Solicitors)

File No. ES/2001/731

Date of Issue 29/11/2002

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Equal Status Act 2000

Summary of Decision DEC-S2002-128

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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) - Refusal of admission to a pub - Risk of violent or disorderly behaviour, section 15(1) - Onus on publican to prevent harassment, section 11.

Dispute

This dispute concerns a complaint by Augustine Sweeney that he was discriminated against, contrary to the Equal Status Act 2000, by Mr John Biggins, The Corner Bar, Ballinrobe. The complainant maintains that he was discriminated against on the Traveller community ground in terms of sections 3(1)(a) 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.

Summary of Complaint

The complainant states that he was barred from the Corner Bar following a disagreement with another customer from the settled community. The complainant states that the other customer was not barred and claims that this constituted discrimination on the grounds of his membership of the Traveller community. The respondents totally rejected that they operate a discriminatory policy against Travellers. They maintain that the complainant had a history of violent behaviour and was refused service because of the likelihood of further violence if both gentlemen were on the premises at the same time

Decision

The Equality Officer found that the complainant has established a prima facie case of discrimination on the Traveller community ground in not being provided with a service which is generally available to the public contrary to Section 5(1) of the Act, resulting in the burden of proof shifting to the respondents. Having considered all the evidence before him, the Equality Officer found that the respondents had successfully discharged the burden of proof in this case. Accordingly, he found in favour of the respondents in the matter.

The Equality Officer noted that this case also raised the issue of a publican's responsibility under Section 11 of the Equal Status Act 2000 for ensuring that customers did not suffer harassment while on his premises and said that "there is an onus on publicans to take such steps as are reasonably practicable to prevent the harassment on a discriminatory ground, by staff or customers, of any person who has a right to be present on their premises".

Equal Status Act 2000
Decision DEC-2002-128

Augustine Sweeney

V

John Biggins, The Corner Bar, Ballinrobe
(represented by T Mullan & Co, Solicitors)

1. Dispute

This dispute concerns a complaint by Augustine Sweeney that he was discriminated against, contrary to the Equal Status Act 2000, by Mr John Biggins, The Corner Bar, Ballinrobe. The complainant maintains that he was discriminated against on the Traveller community ground in terms of sections 3(1)(a) 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 complainant states that he was barred following a disagreement with another customer from the settled community. The complainant states that the other customer was not barred and claims that this constituted discrimination on the grounds of his membership of the Traveller community.

3.. Summary of Respondent's Case

3.1 The respondents totally reject that they operated a discriminatory policy against Travellers. They maintain that the complainant had a history of violent behaviour and was refused service because of the likelihood of further violence if both gentlemen were on the premises at the same time

4 Delegation under the Equal Status Act, 2000

4.1 This complaint was 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 this complaint 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 Evidence of Complainant

- Mr Sweeney is very pro-active in promoting Traveller customs and traditions
- For the past 20 years, Mr Sweeney has been heavily involved in actively defending Travellers' rights and has had many letters printed in the newspapers on this subject
- Mr Sweeney has undertaken personal development courses and other educational courses in an effort to advance himself
- Mr Sweeney has frequented the Corner Bar for the past 20 years and has been asked to leave on 3 occasions
- In late 1999, over a matter of months, an issue arose between another customer, Mr A, a non-Traveller, and the complainant over Mr A's snide remarks in the Corner Bar about Mr Sweeney's Traveller identity

- Mr Sweeney felt “needled” by these remarks and complained to Mr Biggins about Mr A’s behaviour. Mr Biggins did nothing to defuse the situation.
- One night in late 1999, Mr Sweeney and Mr A encountered each other in a local chip shop where a row broke out over Mr A’s remarks and some punches were exchanged. Although the Gardai were called, no statements were given to them nor did any prosecutions follow.
- Some days after the incident Mr Biggins told Mr Sweeney that he would no longer be served because of the incident with Mr A in the chip shop.
- Mr Sweeney did not seek to be served again in the Corner Bar for another 21 months.
- On 29 August 2001 he entered the Corner Bar and was told by Mr Biggins that he was not serving him because of the incident in 1999 with Mr A.
- Mr Sweeney acknowledged that he had been in court on a number of occasions but maintained that the appearances had all arisen from incidents where the question of his Traveller identity had been an issue. In most cases, he said that circumstances surrounding the court appearances had prohibited him from making a proper defence of his case.
- In the absence of equal status legislation prior to 2000, Mr Sweeney stated that he was often left with no other option but to argue his cause personally on occasions where his Traveller identity was an issue. With the Equal Status Act in place, he says that he can now make his case more easily.
- At the Hearing, Mr Sweeney accepted the authenticity of the Garda print-out (see below) produced by the respondents.
- In relation to the publican Mr B’s evidence (see below), Mr Sweeney said that he recalls a “scuffle” with Mr B in his pub but cannot recall Mr B being injured.
- Mr Sweeney said that he had since “made-up” with Mr A and that they were now on good terms

5.2 Mr Sweeney maintained at the Hearing that Mr Biggins decision to bar him constituted discrimination on the Traveller community ground for the following two reasons:

- Despite the fact that no charges arose from the incident with Mr A, Mr Biggins has admitted to listening to Mr A’s story about the incident in the chip shop and not being interested in hearing Mr Sweeney’s version of events.
- Mr Biggins chose only to bar Mr Sweeney and not Mr A on account of the incident in the chip shop based on Mr A’s account of what happened.

In both instances, Mr Sweeney claims that Mr A was treated more favourably than him and that this was because Mr A was not a Traveller.

5.3 Evidence of Respondents

- The Biggins family have run the Corner Bar since 1954
- The pub has a capacity of 100, most of whom are regulars
- The pub has a regular Traveller customer base of 20/30 people
- Mr John Biggins has managed the pub since 1988
- Approximately 6 Travellers and 15 non-Travellers are currently barred from the pub
- Mr Biggins and Mr Sweeney know each other well having grown up together and having played on the same teams.
- Mr Sweeney was served regularly in the Corner Bar for 20 years up until the end of 1999.
- Mr Biggins recalls that a certain amount of “slagging” used to go on between Mr Sweeney and Mr A but considered that Mr Sweeney was “giving as good as he got” and that the situation did not merit any intervention from him. Mr Biggins has no recollection of Mr Sweeney complaining to him directly about the remarks made by Mr A.
- In late 1999, he heard from a number of sources that Mr Sweeney and Mr A had been involved in a row in a local chip shop and that Mr A had been hospitalised as a result.
- Mr Biggins met Mr A some days later and was “shocked” by the extent of his injuries. Mr A told him how Mr Sweeney had attacked him while he was sitting in the chip shop. In evidence, Mr Biggins offered to produce photos of Mr A, taken immediately after the incident.
- At that time in 1999, Mr Biggins was already aware that Mr Sweeney had made a number of court appearances in connection with violent incidents involving other publicans. He was also aware that Mr Sweeney had been barred from many other pubs in Ballinrobe at the time. For this reason, he had no difficulty in accepting the validity of the reports he had heard about the incident with Mr A, and saw no reason to seek Mr Sweeney’s version of events
- As Mr Biggins was not aware of any violent incidents involving Mr A, and Mr A had never before been asked to leave the Corner Bar, Mr Biggins decided that the logical thing to do, to ensure the future safety of his staff and customers, was to bar Mr Sweeney from the Corner Bar and to allow Mr A to remain as a customer.
- At the Hearing on 5 November 2002, the respondents produced newspaper articles and a computer print-out from Garda records showing that Mr Sweeney had made several court appearances and had several convictions for common assault over the years.
- Mr Biggins also stated that, prior to the Hearing, he had contacted other publicans in Ballinrobe and had established that Mr Sweeney was currently barred from 14 of the 19 pubs in the town

- Another publican, Mr B, also appeared as a witness and gave evidence that Mr Sweeney had assaulted him on his premises in 1994 or 1995. Mr B stated, however, that he decided not to press charges as he “did not want the hassle”.
- Mr Biggin’s wife and mother also gave evidence at the Hearing. Both said that they aware of Mr Sweeney’s reputation and would be fearful of trouble if he came into the pub, particularly if Mr A or any of his family were present.

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 complainant claims that he was discriminated against on the grounds of his membership of the Traveller community, contrary to Sections 3(1), 3(2)(i) and 5(1) of the Equal Status Act, 2000 in being refused service in the Corner Bar on 29 August 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 complainants.

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 complainants 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 complainant has satisfied me that he is a member of the Traveller community. In relation to (b), the respondents accept that the complainant was refused service on 29 August 2001. To determine whether a prima facie case exists, I must, therefore, consider whether the treatment afforded the complainant on 29 August 2001 was less favourable than the treatment a non-Traveller would have received, in similar circumstances.

In this regard, Mr Sweeney has claimed that he was less favourably treated than Mr A, a non-Traveller, in that:

- Mr Biggins was prepared to listen to Mr A’s story about the incident in the chip shop but was not interested in hearing Mr Sweeney’s version of events, despite the fact that no charges arose from the incident itself.
- Mr Sweeney, a member of the Traveller community, was barred from the pub based on reports of the incident in the chip shop while Mr A, a non-Traveller, was allowed remain as a customer.

Based on the above points, I consider that Mr Sweeney has established a prima facie case of discrimination and that the burden of proof has shifted to the respondents in the matter.

7.4 Section 15(1) of the Equal Status Act 2000 provides that nothing in the Act prohibiting discrimination, shall be construed as requiring a person to provide services to another person in circumstances which would lead a reasonable individual, having the responsibility, knowledge and experience of the person, to the belief, on grounds other than discriminatory grounds, that the provision of services to the customer **would produce a substantial risk of criminal or disorderly conduct or behaviour or damage to property** at or in the vicinity of the place in which the services are sought.

7.5 In this particular case, Mr Biggins has claimed that Mr Sweeney was barred, not because of his Traveller identity, but because of the incident with Mr A and also because he had a history of convictions in the courts relating to incidents of a violent nature involving other publicans.

In evidence, the respondents have produced witnesses and documentary evidence to support this claim. In addition, in claiming that discrimination did not occur, the respondents point to the fact that Mr Sweeney had been served for upwards of 20 years in the Corner Bar prior to 1999.

Having considered all of the evidence before me, I consider that the respondents have shown that the refusal of service was not discriminatory or based on the complainant's membership of the Traveller community, and that they were acting in accordance with Section 15(1) of the Equal Status Act 2000, in refusing service to the complainant when he entered the premises on 29 August 2001.

7.6 This complaint is also relevant to the provisions of Section 11 of the Equal Status Act 2000 where a publican could be found to be in breach of the provisions of the Act for not taking reasonable steps to prevent the harassment of a customer by another customer, while on his premises.

Section 11(2) of the Act states that "A person who is responsible for the operation of any place ... at which goods, services or accommodation facilities are offered to the public, shall not permit another person who has a right to be present ... to suffer sexual harassment or harassment at that place"

Section 11(5) defines harassment as "any unwelcome act, request or conduct, including spoken words, pictures or other material, which in respect of the victim is based on any discriminatory ground and which reasonably could be regarded as offensive, humiliating or intimidating to him or her".

7.7 In this particular case, the publican has admitted that he was present when the complainant was subjected to remarks by another customer regarding his Traveller identity. However, the publican states that, in his opinion, Mr Sweeney "was giving as good as he got". While Mr Sweeney states that he complained to Mr Biggins directly about this treatment, Mr Biggins says that he does not recall any specific complaint being made.

On considering this matter, I note that the incident referred to occurred in 1999 and, therefore, falls outside the scope of the Equal Status Act 2000. Accordingly, I do not propose to make a finding in the matter.

7.8 Publicans should note, however, that since the Equal Status Act 2000 came into force, the type of situation outlined above could result in a publican being held liable for harassment under the Act. A similar complaint has already been the subject of a case under the Employment Equality Act 1998 (**Maguire v North Eastern Health Board DEC-E2002-039**). Publicans and service providers should note, therefore, that there is an onus on them under the Equal Status Act 2000 to take "such steps as are reasonably practicable" to prevent the harassment on a discriminatory ground, by staff or customers, of any person who has a right to be present on their premises.

8 Decision

8.1 I find that the complainant has established a prima facie case of discrimination 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, resulting in the burden of proof shifting to the respondents.

8.2 Having considered all the evidence before me, I find that the respondents have successfully discharged the burden of proof in this case. Accordingly, I find in favour of the respondents in the matter.

Brian O'Byrne
Equality Officer
29 November 2002