

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'S DECISION NO: DEC-S2002-129-130

Geraldine & William Stokes
(represented by Clondalkin Travellers Development Group)

V

Centra Store, Westmoreland Street, Dublin

File No. ES/2001/284 & 285
Date of Issue 26/11/2002

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Summary of Decision DEC-S2002-129-130

Geraldine & William Stokes

-v-

Centra Store, Westmoreland Street, Dublin

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 claims by Geraldine and William Stokes that they were discriminated against, by the respondent, contrary to the Equal Status Act 2000, on the grounds that they are members of the Traveller community when they were refused service in the respondent's premises on 20 February, 2001. The respondent denies that the complainants were discriminated against and states that William Stokes was refused service because of an earlier shoplifting incident in which he was involved and that Geraldine Stokes was only refused service when she became abusive to the respondent and the shop's manageress.

Conclusions of the Equality Officer

The Equality Officer found that the complainants had not established a prima facie case of discrimination on the grounds of membership of the Traveller community.

Decision

The Equality Officer found that the complainants were not 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.

Complaint under the Equal Status Act 2000
DEC-S2002-129-130

Geraldine & William Stokes
v
Centra Store, Westmoreland Street, Dublin

The complainants each 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 claims by Geraldine and William Stokes that they were discriminated against by the respondent contrary to the Equal Status Act, 2000, on the grounds of their membership of the Traveller community in that, on 20 February 2001, they were refused service in, and asked to leave, the respondent's premises. The respondent denies that discrimination occurred.

2 Summary of Complainant's Case.

2.1 The complainants state that they went to Centra, Westmoreland Street, on 20 February, 2001 to purchase refreshments. On entering the store they were approached by a member of staff and told that they would not be served as William Stokes had been involved in a shoplifting incident some months earlier. The complainants deny that William Stokes was ever involved in any such incident and claim that the only reason they were refused service is because they are members of the Traveller community.

3. Summary of Respondent's Case

3.1 The respondent states that William Stokes was refused service on 20 February 2001 because he was recognised as being one of two people who were barred from the shop because of an attempt on their part to steal a packet of biscuits from the shop

several months earlier. Geraldine Stokes was asked to leave the premises on 20 February 2001 because she was shouting abuse at the respondent and a member of staff.

4. Evidence of the Parties

4.1. Complainant's Evidence

Ms. Geraldine Stokes, Complainant

Ms. Stokes stated that:-

- At approximately 11.30 a.m. on 20 February, 2001 she went into the respondent's premises with her brother. While her brother went to one part of the shop to fetch goods, she went to the counter to pay for a bottle of minerals.
- A staff member approached Ms. Stokes and told her that she was barred from the premises because she was in her brother's company and her brother, William Stokes had been in the company of another person who had attempted to steal a packet of biscuits several months earlier.
- The shop security officer then approached Ms. Stokes and her brother, who by now had come to the counter, and asked them to leave.
- Ms. Stokes explained that she and her brother were attending at the dental hospital on an ongoing basis over a period of months and had been in the Centra in question on a number of previous occasions, following the dental visits. On every such occasion they were accompanied by their mother.
- On the day in question, 20 February, 2001, their mother was waiting for them outside the shop at a nearby bus stop. When the complainants left the shop and told their mother what they had been told by the staff member in the shop their mother went to the shop and asked for an explanation. As she was outraged at the accusation against her son she requested that the Gardaí be called.
- When a Garda arrived and was told what had happened the respondent had produced no evidence whatsoever that the complainant, William Stokes, had ever been involved in the alleged shoplifting incident.
- The only reason that service was refused on 20 February, 2001 was because Ms. Stoke and her brother had been recognised as Travellers and were refused on that basis.

William Stokes, complainant

Mr. Stokes concurred with the statements made by his sister and further stated that:-

- He had never been in the respondent's shop unless accompanied by his mother.

- He had never associated with anyone who had been caught shoplifting or attempting to shoplift.
- He had never shoplifted nor had he ever been accused of doing so.
- He is the youngest in his family and his brother is in his mid-twenties.

Ms. Margaret Stokes, Complainant's mother and witness on their behalf.

Ms. Stokes stated that

- on the 20 February, 2001 she was waiting for the complainants at a bus stop near the respondent's premises.
- Her daughter, Ms. Geraldine Stokes, on leaving the shop, came to her at the bus and told her what had occurred in the shop.
- Ms. Stokes returned to the shop to seek an explanation for the accusation against her son, William Stokes.
- She had asked that the Gardaí be called. A Garda (named) from Pearse Street Garda station arrived at the shop and took details. Ms. Stokes, who has hearing difficulties, was unable to hear the conversation with the Garda at the time and the conversation was relayed to her by her daughter, Geraldine Stokes.

The complainant's representative summed up on behalf of his clients stating that:-

- The complainants are young Travellers who feel that they have a genuine grievance with the respondent. In compliance with the requirements of the Equal Status Act 2000 they had issued formal notification of the nature and basis of their complaint to the respondent on 21 February, 2001. They had received no response from the respondent. A response from the respondent might have helped to clarify matters at the time.
- The complainants were humiliated and embarrassed by the actions of the respondent and his staff and by the unfounded allegation that William Stokes was associated with an unidentified person who was allegedly guilty of taking a packet of biscuits several months earlier.
- Ms. Geraldine Stokes was barred from the respondent's premises on the basis that she was associated with her brother, who was in turn associated with an unidentified third party. On the basis of this type of arbitrary "association" any person could be barred from the premises.
- Mrs. Stokes, mother of the two complainants, had sought an explanation for the barring of her children and had asked for the Gardaí to be called. A Garda from Pearse Street station had attended at the shop. The respondent was unable to provide any evidence whatsoever to the Garda in relation to the alleged shoplifting incident.

- If the alleged incident of shoplifting had occurred why then had it not formally been reported to the Gardaí and the identity of the alleged shoplifter would then be known.
- As Travellers, the complainants were accustomed to incidents of discrimination arising. Young Travellers are particularly vulnerable in such situations. On this occasion a service which is available to the public generally was denied to the complainants.
- The complainants were members of the Traveller community. They were born into the community which historically had its own values, traditions and language. It was a community that was an ethnic group distinguishable from others. The parents and grandparents of the complainants had Travelled.
- It appeared that the manner in which shoplifting incidents were handled by the respondent's staff were entirely discretionary to the members of staff, who did not appear to have any formal training in how to handle such situations or in equality matters.
- The complainants had not been treated in the same way as non-Travellers would have been treated in similar circumstances.

4.2 Respondent's Evidence

Mr. Seamus Griffin, respondent

Mr. Griffin stated that:-

- He was present in the Centra premises when the manageress, Ms. Paula Cedar, had approached William Stokes and asked him to leave the premises. Mr. Griffin was conversing with a representative from Musgraves Cash & Carry at the time at the back of the shop.
- Ms. Cedar had gone to speak with William Stokes and had told him that he was barred from the shop as a result of an incident some months previously in which he was in the company of another boy who had attempted to steal a packet of biscuits from the shop. Mr. Griffin had clearly heard the conversation between Ms. Cedar and William Stokes.
- Mr. Griffin had gone to assist Ms. Cedar and stood beside her for some time. Ms. Geraldine Stokes had immediately become aggressive and began swearing, stating that the reason she and her brother were being singled out was because they are Travellers.
- A number of attempts were made to calm Geraldine Stokes down and to clarify the reason her brother was being asked to leave. Ms. Stokes was told on a number of occasions that she was welcome in the shop but that her brother was barred because of the earlier incident, but she refused to listen and became very heated and aggressive.
- Ms. Stokes kept repeating that they were only being asked to leave because they were Travellers and that settled people wouldn't be treated the same way. Mr. Griffin had repeated the reason for asking William Stokes to leave and when Geraldine Stokes started to create a scene, she was then asked to leave also, and for no other reason. Geraldine

Stokes was not told that she was barred from the shop but was asked to leave on that occasion because of her behaviour.

- Mr. Griffin stated that the shop has never had a policy that discriminated against any group. In fact the shop had taken a stance against a popular newspaper, which had published an article that was deemed to be offensive to disabled people, and had refused to stock the newspaper in protest at the article.
- The shop had never refused or restricted service to Travellers and the complainants themselves had stated that they had been in the shop on a number of occasions prior to the day on which Ms. Cedar recognised William Stokes and asked him to leave the shop.
- When the mother of the complainants had come to the shop door to speak with him on the day in question, he had stated to her on several occasions that she and her daughter were welcome in the shop but that William Stokes was barred for the reason stated. He felt that neither Geraldine Stokes nor her mother were listening to him.
- Mr. Griffin stated that the shop had security cameras and a security man at the door of the shop. These were required because, occasionally, serious difficulties might arise in the shop.
- The shop staff would not be aware, on most occasions, as to whether a customer was a member of the Traveller community or not. They would treat all customers alike. Sometimes customers would openly identify themselves as Travellers. One such particular Traveller (named) had frequented the shop for over a year and was well known to the staff. This customer was always served and was liked by staff. She had been very open about her Traveller background and was always treated with the same courtesy as any other customer.
- The manageress, Ms. Paula Cedar, had worked in the shop for ten years and is very experienced. Mr. Griffin trusts Ms. Cedar implicitly and has no reason to doubt the truth of her account of the earlier shoplifting incident, or that William Stokes was one of the two boys involved.
- In the early days the shop had a policy of reporting every incident of shoplifting to the Gardaí. The Gardaí had advised Mr. Griffin to use his own discretion to deal with less serious incidents as reporting every one of them was tying up his staff's and Garda time unnecessarily. Subsequently, it was left to the discretion of the shop's managers as to whether to report such incidents.
- Ms. Cedar had exercised that discretion in relation to the attempted theft of the packet of biscuits on an earlier occasion and had chosen not to report the incident to the Gardaí. She had, instead, told the two boys involved, one of whom was William Stokes, that they were barred from the shop.
- Staff of the shop are trained in a number of areas relevant to their job, e.g. health and safety matters, food hygiene, customer service etc
- Managers in the shop are further trained in how to handle difficult situations and discretion is allowed to managers as to whether they report shoplifting or attempted shoplifting incidents to the Gardaí.

- At the time of the incident involving the complainants, the shop did not have an incident or record book to record such occurrences. An incident book has been kept since the beginning of the current year to record all incidents, including accidents, breakages etc in the shop.
- Staff in the respondent's shop are not trained in equality related matters.
- The respondent does not have a system for retaining information in relation to shoplifters or suspected shoplifters. The shop has video surveillance but does not retain recorded tapes unless specifically required for evidence. Footage of the alleged shoplifting incident was not retained as the manager, Ms. Cedar, had decided not to pursue the matter formally by reporting it to the Gardaí.
- Mr. Griffin had not replied to the complainants on receipt of their notifications of their complaints under the Equal Status Act as he deemed the notification irrelevant. He was unfamiliar with the requirements of the Equal Status Act and for that reason was unaware of the implications of a non-response on his part to the complainants and later to the Equality Officer.

Ms. Paula Cedar, manageress, witness for the respondent.

Ms. Cedar stated that:-

- She was on duty in the shop on a Sunday, some months before the incident involving the complainants. The shop was not very busy at the time. She noticed two young boys in the shop, one of whom she saw take a packet of biscuits and put them under his jacket. Ms. Cedar, who had earlier stated that William Stokes was in the company of the boy who placed the biscuits under his jacket, stated at the Hearing that she now recognised the complainant, William Stokes, as the boy who had actually placed the biscuits under his jacket.
- Ms. Cedar had watched the boys and waited to see if they paid for the biscuits. When they did not pay for them she approached the two boys and brought them to the back of the shop to speak to them. The boys had told her that they were brothers.
- Ms. Cedar questioned the boys. She took the biscuits from them and told them that they were barred from the shop.
- When she escorted the boys out of the shop a Garda happened to be passing by. She told the Garda what had happened and he ticked the boys off. No further action was taken.
- Ms. Cedar did not take a note of the incident. The video footage of the incident was not retained as she had decided not to take any further action in the matter.
- On 20 February, 2001 Ms. Cedar was out on the shop floor when the complainant, William Stokes entered the shop. Ms. Cedar recognised him as one of the two boys who were involved in the earlier attempted shoplifting of the packet of biscuits. She

approached him and told him that he was barred from the shop and why, and she asked him to leave.

- Geraldine Stokes had immediately jumped to the boys defence stating that the only reason they were being asked to leave was because they are Travellers.
- Ms. Cedar had tried to explain that she was speaking only to William Stokes and that he was barred for good reason. Geraldine Stokes had become loud and abusive and was shouting at Ms. Cedar.
- Ms. Cedar asked Ms. Stokes to calm down or she would have to leave the shop also.
- Ms. Stokes had left the shop still shouting at the top of her voice. A couple of minutes later she returned with her mother. The latter had asked why the complainants were not being served. Ms. Cedar had explained why William Stokes was not welcome in the shop. Ms. Stokes Snr. had stated that it was not her son who had attempted to take the biscuits and that the only reason he was being treated in this way was because he is a Traveller.
- Ms. Cedar stated that she clearly remembered the boys and that William Stokes was one of them.

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 complainants claim that they were discriminated against because they are members 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 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
- (b) Evidence of specific treatment of the complainants 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. If they succeed in establishing prima facie evidence, the burden of proof then shifts to the respondent to rebut the inference of discrimination.

5.7 In considering what constitutes a prima facie case, I have examined definitions from other sources. In *Dublin Corporation v Gibney (EE5/1986)* prima facie evidence is defined as: *"evidence which in the absence of any credible contradictory evidence by the employer would lead any reasonable person to conclude that discrimination had occurred."*

In article 4 of the *EC Burden of Proof Directive (Council Directive 97/80/EC)* the

following definition appears: *"when persons who consider themselves wronged..... establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination"*.

In *Teresa Mitchell v Southern Health Board*, (DEE011, 15.02.01), the Labour Court interpreted article 4 of the EC Burden of Proof Directive as follows: *" This indicates that a claimant must prove, on the balance of probabilities, the primary facts on which they rely in seeking to raise a presumption of unlawful discrimination. It is only if those primary facts are established to the satisfaction of the Court , and they are regarded by the Court as being of sufficient significance to raise a presumption of discrimination, that the onus shifts to the respondent to prove that there was no infringement of the principle of equal treatment. Applied to the present case, this approach means that the appellant must first prove as fact one or more of the assertions on which her complaint of discrimination is based. "*

While I realise that the above sources are not directly relevant to the Equal Status Act I consider that they are of persuasive value.

6. Conclusions of the Equality Officer

6.1 The complainants are members of the Traveller community and both were refused service in and asked to leave the respondent's premises on 20 February, 2001. They therefore satisfy **(a)** and **(b)** at 5.6 above.

In relation to key element **(c)** at 5.6 above it is necessary to examine the evidence provided to establish whether the treatment afforded the complainants by the respondent was such that it was less favourable treatment than would be afforded a non-Traveller in similar circumstances.

The respondent and his witness base the refusal on an alleged incident of shoplifting some months prior to the refusal of service. The only witness to the incident of alleged shoplifting was the manageress , Ms. Cedar, who states that she spoke with the two young boys at the time of the incident.

In refusing service to the complainant, William Stokes, on 20 February, 2001 and asking him to leave the premises, Ms. Cedar informed Mr. Stokes and his sister that he had been in the company of another boy on the earlier date (unspecified) when the latter had attempted to steal a packet of biscuits. Ms. Cedar had not taken a note of the incident, had not taken the boys' names and had not retained video evidence of the incident. On speaking with the Garda who had passed by on the earlier date, she had not asked the Garda to take note of the boys names, or to note a description of them.

Ms. Cedar went on to state that when William Stokes entered the shop some months later, she recognised him as the boy who was associated with the alleged shoplifter. In the course of the Hearing, some twenty months later, she clearly stated that she now recognised William Stokes as the person who had actually attempted to conceal and steal the packet of biscuits. In the circumstances I am satisfied that Ms. Cedar is uncertain as to the identity of the two boys alleged to have been shoplifting and her evidence in relation to William Stokes involvement is, at best, unreliable.

The complainants however, clearly stated in evidence that they had gone to Centra, Westmoreland Street, on a number of occasions following dental visits in town, always accompanied by their mother. They had had no difficulty on any of those occasions getting access to, or service in, the respondent's premises. If the respondent operated a discriminatory policy in relation to members of the Traveller community, and if, as the complainants claim, the refusal of service on 20 February, 2001 was because of such a policy, the complainants have failed to explain how they received service on those other occasions without difficulty.

On balance I am satisfied that the refusal of service to William Stokes was not discriminatory in nature and was, rather based on Ms. Cedar's association of William Stokes with the earlier incident of alleged shoplifting. I am satisfied that the refusal of service to Geraldine Stokes was based on her behaviour subsequent to the refusal of service to her brother. I am satisfied that the treatment of the complainants was such that the same treatment could have been afforded non-Travellers in the same or similar circumstances.

No evidence was provided which shows that the boys alleged to be involved in the earlier incident were members of the Traveller community or in any way associated with that community. There are no grounds, therefore, to find that Ms. Cedar was in any way associating the complainants with other Travellers. Even if it had been established that the boys alleged to have attempted shoplifting were Travellers or were in any way associated with the Traveller community, this would not of itself be sufficient to establish a prima facie case of discrimination on the Traveller community ground, as Ms. Cedar would not simply be associating the complainant, William Stokes, with other Travellers but rather, she would be associating him with other Travellers who were allegedly involved in the crime of shoplifting. While the actions of Ms. Cedar in refusing service to somebody on the very serious grounds of association with alleged shoplifters without retaining irrefutable proof of the alleged offence are highly questionable, they are not a matter for this forum, as association with persons alleged to have committed a crime are not grounds covered by the Equal Status Act, 2000.

I am satisfied, taking all of the evidence into consideration, that the complainants have failed to satisfy key element (c) at 5.6 above and have not therefore, established a prima facie case of unlawful discrimination on the Traveller community ground.

This is not to say that I find the allegations on Ms. Cedar's part against William Stokes are in any way well founded. While I am satisfied that she personally associated him with the earlier incident, neither she nor the respondent produced any evidence whatsoever to establish any actual connection between the complainant and the earlier alleged incident of shoplifting. I am satisfied that Ms. Cedar was witness to some incident some months prior to the date of the refusal of service to the complainants. I am not satisfied that she can identify William Stokes as being party to the earlier incident. I would recommend in the strongest possible terms that the respondent take immediate steps to ensure that where such an incident arises again that the identity of the perpetrators is established and noted and that any evidence relevant to the incident is retained in the interest of protecting the good name of any person who might potentially be wrongly associated with any such incident.

6.2 Decision

I find that the complainants were not 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.

Dolores Kavanagh

Equality Officer

26 November, 2002