

ODEI - the equality tribunal

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Equal Status Act 2000

EQUALITY OFFICER'S DECISION NO: DEC-S2002-112

Patrick O'Donnell
(represented by Regan, McEntee & Partners, Solicitors)

v

Kells Hire Ltd
(represented by Nathaniel Lacy & Partners, Solicitors)

File No. ES/2001/730

Date of Issue 9/10/2002

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Equal Status Act 2000**Summary of Decision DEC-S2002-112**

Patrick O'Donnell
(represented by Regan, McEntee & Partners, Solicitors)
v
Kells Hire Ltd
(represented by Nathaniel Lacy & Partners, Solicitors)

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 to hire equipment - Establishment of a prima facie case

Dispute

This dispute concerns a complaint by Patrick O'Donnell that he was discriminated against, contrary to the Equal Status Act 2000, by the management of Kells Hire Ltd. The complainant maintains that he was 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.

Complaint

The complainant states that when he sought to hire equipment from Kells Hire on 21 June 2001, he was informed that equipment could not be hired out to him. Mr O'Donnell maintains that this was on the grounds of his membership of the Traveller community.

The respondents totally reject that they operate a discriminatory policy against Travellers. They maintain that they operate a booking system in summertime and that the equipment sought by Mr O'Donnell had already been booked by other people on the day in question.

Decision

The Equality Officer found that a prima facie case of discrimination has not been made by the complainant in establishing that he was discriminated against on the Traveller community ground and found in favour of the respondents in the matter.

Patrick O'Donnell
(represented by Regan, McEntee & Partners, Solicitors)
 v
Kells Hire Ltd
(represented by Nathaniel Lacy & Partners, Solicitors)

1. Dispute

1.1 This dispute concerns a complaint by Patrick O'Donnell that he was discriminated against, contrary to the Equal Status Act 2000, by the management of Kells Hire Ltd.

The complainant maintains that he was 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 complainant states that when he sought to hire equipment from Kells Hire on 21 June 2001, he was informed that equipment could not be hired out to him. Mr O'Donnell maintains that this was on the grounds of his 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 they operate a booking system and that the equipment sought by Mr O'Donnell had already been booked by other people on the day in question.

4 Delegation under the Equal Status Act, 2000

4.1 This complaint 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 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

- The complainant called to Kells Hire at lunchtime on 21 June 2001 to hire a powerwasher. He was told that all powerwashers had been pre-booked and that none were available.
- Believing that he was being discriminated against, he then asked for a jackhammer, on seeing one lying on the floor of the shop. He was told “Sorry Mate, I cannot serve you”. The complainant did not draw attention to the jackhammer on the floor nor ask about its availability.
- The complainant had previously rented ladders from Kells Hire in 1999 with no difficulty.
- On a different occasion in 2000, the complainant was told that no ladders were available for hire despite some ladders being on display in the premises.
- Patrick O’Donnell had previously had no difficulty in hiring equipment from Navan Hire.
- On no occasion was any reference made to Mr O’ Donnell’s Traveller identity.

Evidence of Complainant’s Witness

- The complainants brother, John O’Donnell appeared as a witness
- John O’Donnell hired a powerwasher himself from Kells Hire in early Summer 2001 with no difficulty
- He recalls Pat Donegan showing him how to operate it
- In July 2001, he again sought a powerwasher but was told by Mr Daly that none were available.
- Believing that he was being discriminated against, he persuaded a settled friend to call to the shop within the hour to ask for a powerwasher. The friend was supplied with a powerwasher without any trouble. Mr O’Donnell used the equipment and returned it to the shop himself some days later.
- John O’Donnell called to the shop in August 2002 to hire a powerwasher and was told by Mr Daly that he would have to talk to his boss first. As Mr Donegan was not contactable, Mr Daly asked Mr O’Donnell to call back the next day, saying that he would reserve a powerwasher for him, once he had cleared things with his boss.

5.3 Evidence of Respondents

- Kells Hire has been run by Mr Pat Donegan for 15 years.
- The business has suffered in the past on occasions where equipment was not returned. As a result staff are always wary of non-regular customers
- New customers are required to produce ID, show that they live locally and provide a contact phone number. A deposit (€100 normally) is sought on equipment.

- The shop does not discriminate against anyone and is happy to hire equipment to anyone meeting the above criteria.
- Navan Hire, a sister shop to Kells Hire, is run by Mr Donegan's brother.
- Demand for equipment increases substantially in the summer time, resulting in the shop having to operate a pre-booking system for pieces of equipment. A diary is kept for this purpose.
- Dockets are completed in respect of all items of equipment hired out. These dockets and diary could be made available if required.
- Mr Derek Daly recalls Mr Patrick O'Donnell looking for a powerwasher and a jackhammer in June 2001. He recalls that there were two powerwashers on the premises that day but that, on checking the diary, he found that both had been pre-booked.
- When Mr O'Donnell asked for a jackhammer, Mr Daly says that he checked inside the stores and saw that there were none in their usual place against the wall. He told the complainant that there were none available.
- Mr Daly recalls Patrick O'Donnell producing ID but says that it was immaterial as he had no equipment to hire to him.
- On that occasion, Mr O'Donnell made no reference to the jackhammer on the floor, which would not have been visible to Mr Daly. If a jackhammer was there, it is possible that it had just been returned or had been left in for repair.
- Mr Daly remembered Mr Patrick O'Donnell from getting ladders before and would have had no problem in hiring him equipment as he was a past customer.
- With regard to the incident involving John O'Donnell in July 2001, the respondents state that equipment comes in and out of the shop all the time and it quite possible that a powerwasher had been returned in the time taken for John O'Donnell's friend to return to the shop.
- When John O'Donnell called to the shop in August 2002, Mr Daly knew that he had something to do with a court case (this particular complaint of discrimination) and said that he would have to talk to his boss. As Mr Donegan was not contactable, Mr Daly asked Mr O'Donnell to call back the next day and that he would reserve a powerwasher for him in the meantime, pending the outcome of his discussion with his boss. Mr O'Donnell failed to return the next day.

5.4 During the Hearing, the respondents stated that they had no difficulty in making their diary and relevant dockets available to the investigation and contacted their office staff, during the course of the Hearing, with a view to having the documentation brought to the Hearing Room. On contacting their staff they were told that the documentation in question was no longer held locally following the company's recent move to new premises.

The complainants acknowledged that the production of the Kells Hire diary and relevant dockets would be helpful but, as they were not readily available, indicated that they were prepared to permit the investigation to proceed without sight of these items.

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 Kells Hire on 21 June 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, Dinneegan & 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 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 21 June 2001. To determine whether a prima facie case exists, I must, therefore, consider whether the treatment afforded the complainant on 21 June 2001 was less favourable than the treatment a non-Traveller would have received, in similar circumstances.

7.4 In deliberating on the case before me, I consider the following pieces of evidence to be the most important and persuasive:

- The complainant, Patrick O'Donnell, was previously supplied with equipment by Kells Hire prior to the incident under consideration.
- The complainant's witness, his brother John, was also previously supplied with equipment by Kells Hire prior to the incident under consideration.
- No independent evidence has been produced to substantiate John O'Donnell's claim that Kells Hire hired equipment to a settled friend of his in July 2001, having refused him less than an hour beforehand. Even if this claim was supported by witness testimony, it could still be explained by the respondents' assertion that equipment could have been returned in the interim period.
- The question of the complainant's Traveller identity does not appear to have been alluded to on the date of the alleged act of discrimination.

7.5 As stated earlier, in order for a prima facie case to be established, evidence is required to show 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.

In this particular case, the complainant had been recognised as a former customer. I can, therefore, see no reason why Kells Hire would have refused to hire him equipment, unless the equipment sought was not in stock or that staff honestly believed that this was the case. I, therefore, consider that on 21 June 2001, Mr O'Donnell was treated in the same manner as anyone else would have been treated on seeking to hire equipment that was not available.

7.6 I, therefore, find that the complainant was not treated less favourably on 21 June 2001 than a non-Traveller would have been treated in similar circumstances. Accordingly, I find that the complainant has failed to establish a prima facie case of discrimination on the Traveller community ground.

8 Decision

8.1 I find that a prima facie case of discrimination has not been made by the complainant in establishing that he was 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.

Accordingly, I find in favour of the respondents in the matter.

Brian O'Byrne
Equality Officer
9 October 2002