

Appendix 2

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ADJ-00016879

ADJUDICATION OFFICER DECISION

Adjudication Reference: ADJ-00016879

Parties:

Complainant Respondent

Parties John Hamill Dundalk IT

Representatives In person Ibec

Complaint:

Act	Complaint/Dispute Reference No.	Date of Receipt
Complaint seeking adjudication by the Workplace Relations Commission under Section 21 Equal Status Act, 2000	CA-00021903-001	17/09/2018

Date of Adjudication Hearing: 25/06/2019

Workplace Relations Commission Adjudication Officer: Andrew Heavey

Procedure:

In accordance with Section 25 of the Equal Status Act, 2000, following the referral of the complaint to me by the Director General, I inquired into the complaint and gave the parties an opportunity to be heard by me and to present to me any evidence relevant to the complaint.

Background:

The complainant, in his complaint to the Workplace Relations Commission contends that he was discriminated against by the respondent on the religious ground. The complaint was submitted to the Workplace Relations Commission on 17th September 2018.

Naming of the parties

The parties to this decision are named as is the practice of the Workplace Relations Commission.

Summary of Complainant's Case:

The complainant stated that he wrote to the respondent on 24th February 2018 seeking to hold a Pastafarian ceremony in the Prayer Room of the Institute. The complainant confirmed that following further correspondence he received a response stating that the facilities at the Institute were for students and staff only. The complainant also stated that the respondent contends that outside bodies are not permitted to use the facilities for the purpose of recruiting new members. The complainant further contends that the respondent breached its own policy when it failed to arrange a non-religious ceremony when requested to do so by a student.

The complainant stated that the respondent's contention that outside bodies are not permitted to use the facilities in order to recruit new members is untrue as the Institute hosted an event entitled "Discover Islam" which is clearly contradictory to its stated position in relation to the use of the facilities by outside bodies for the purpose of recruitment.

The complainant also stated that there were other events organised by outside bodies such as a visit to the Institute by a Holocaust survivor to discuss his experiences. The complainant also contends that a newly enrolled student requested such services as provided by the respondent, yet he was told that such services could not be provided to non-registered students who attend part-time courses.

The complainant contends that the "policies" referred to by the Institute do not in fact exist and are referred to as a means of preventing non-traditional and newly established groups from using the Institute's facilities. The complainant stated that he is not permitted to use the Institute's facilities because the Chaplain objects to his beliefs which he contends is discriminatory.

Summary of Respondent's Case:

The respondent contends that the complainant has not discharged the burden of proof in relation to his assertions that he has been discriminated against by the respondent on the religious ground. The respondent cited the cases of *Southern Health Board v Mitchell*, DEE011, [2011] ELR 201 and *Margetts v Graham Anthony and Respondent Limited*, EDA038 in support of its contention in that regard.

Notwithstanding its position in relation to the complainant failing to discharge the burden of proof, the respondent denies that it has discriminated against the complainant on the religious ground or at all. The respondent stated that the Chaplaincy Service provides pastoral support to students and facilitates Catholic Mass and Non-Catholic ceremonies when requested by students. The respondent stated that contact details of all groups are maintained by the Chaplaincy service and are provided to students on request. The respondent confirmed that the complainant has not submitted the required details of his Church.

The respondent stated that the Institute provides a Quiet Room to all students and staff of all faiths and none for personal prayer and reflection but that no requests have been received by students or staff in relation to the services allegedly provided by the complainant. The respondent argued that the complainant has not been treated any differently to any other group but in circumstances where no details have been provided by him, the contact details of his Church are unknown to the respondent and are therefore unavailable to be provided should a request be received.

In conclusion, the respondent contends that the complaint is without merit and should be dismissed.

Findings and Conclusions:

The complainant submitted the required documentation to the respondent in relation to his complaint as follows:

ES 1 Form

An ES1 form was submitted to the respondent in compliance with the requirements of the Equal Status Acts, 2000-2015. The complainant outlined that his requests to the Chaplain at the Institute seeking the Chaplain's support in the provision of religious ceremonies outside of the mainstream were ignored. The complainant stated that this was discriminatory on the basis that the Chaplaincy service claims to be in place "for people

of all faiths and none". The complainant confirmed his suspicion that this constitutes less favourable treatment of non-Catholics which he believes to be discrimination in contravention of the legislation.

ES 2 Form Response

The respondent outlined in its response to the complainant that it would make all information relating to the various religious bodies available to any student or staff member who requested same. The respondent state that there were no further details received from the complainant on this issue.

The respondent confirmed that the current holder of the Chaplaincy tender is Roman Catholic and when the Chaplain is present, Roman Catholic mass is held when possible or when requested. The respondent stated that students and/or teachers of all faiths and none are facilitated with the use of the prayer room for private prayer/reflection. The respondent also clarified that it did provide non-religious ceremonies when requested by students or teachers but due to resource restrictions cannot take requests from outside bodies in relation to the provision of its services and confirmed that it does not facilitate outside bodies in using its facilities for the purpose of recruiting new members.

Workplace Relations Commission Complaint form

As the complainant was dissatisfied with the response from the respondent, he submitted a complaint to the WRC on 17th September 2018. The complainant confirmed that he was a Minister within the Congregationalist Church of the Flying Spaghetti Monster and that he has been treated less favourably than others by the respondent because of his differing religious beliefs. The complainant, along with members of the Pagan Federation of Ireland and the Celtic Druids Temple wrote to the Chaplain at the Institute seeking that religious ceremonies outside of the mainstream be arranged. To this end the complainant and others sought a full moon ceremony involving the Ard Druí of the Celtic Druid Temple. The complainant outlined that the Chaplain failed to respond to his repeated correspondence and continued to discriminate against non-mainstream religions by conducting only Roman Catholic Mass at the Institute. The complainant contends that the Chaplain's actions amount to discrimination on the religious ground contrary to the Irish constitution, the Equal Status legislation, the recommendations of the HEA for third level institutions and also contravene the Institutes own policy in relation to the provisions of chaplaincy services.

The Applicable Law

Discrimination

Section 3(1)(a) of the Equal Status Act 2000 provides, inter alia, that discrimination shall be taken to occur where:

(a) where a person is treated less favourably than another person is, has been or would be treated in a comparable situation on any of the grounds specified in subsection (2) (in this Act referred to as the "discriminatory grounds")

Section 3 (2)(e) refers to the religion ground:

(e) "where one has a different religious belief from the other, or that one has a religious belief and the other has not."

According to section 2, 'religious belief' includes 'religious background or outlook'.

Burden of proof

Section 38A of the Equal Status Acts, 2000-2015 provides as follows in relation to the Burden of Proof:

1. Where in any proceeding's facts are established by or on behalf of a person from which it may be presumed that prohibited conduct has occurred in relation to him or her, it is for the respondent to prove the contrary.

The Burden of Proof in cases of discrimination rests initially with the complainant. If the Complainant raises facts from which an inference of discrimination can be drawn, the burden of proof then shifts to the Respondent.

The Burden of Proof is dealt with by the Labour Court in the decision of *Southern Health Board v Mitchell* [2001] ELR 201 where it determined that:

“The first requirement is that the claimant must establish facts from which it may be presumed that the principle of equal treatment has not been applied to them. 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 is no infringement of the principle of equal treatment”

Adjudication Hearing

At the adjudication hearing the complainant outlined that he was seeking the use of “the prayer room” at the Institute in order to meet with his group which currently has approximately three members. The complainant stated that he should have the freedom to advertise the meeting with a view to facilitating the attendance of other interested parties who may not be aware of the existence of the group.

In my view the approach taken by the complainant at the adjudication hearing that he was discriminated against because he has no religious beliefs is inconsistent with the ES1 form and the WRC complaint form where he claims to have been discriminated on the grounds of his non-mainstream religious beliefs. In his correspondence to the WRC and to the respondent the complainant speaks of his request to conduct “religious ceremonies” which are outside of the mainstream yet at the adjudication hearing the complainant spoke of his request to simply use the facilities to arrange a meeting of his group (currently three people) who have no religious beliefs/faith, for the purpose of holding discussions and allowing other interested parties to attend. The respondent, for its part, confirmed that if it received a request from the complainant for the use of a room for this purpose it would provide a room to him. In that regard, the process for seeking to use a room in the Institute is the same for the complainant as it is for all other groups. The respondent confirmed that the use of the Prayer Room itself is a matter for the Chaplaincy Service to allocate.

I also note the complainant’s assertions that non-Catholics were discriminated against as the complainant himself was not permitted to use the Prayer Room, however the complainant also outlined that other non-Catholics were permitted to use the Prayer Room as outlined. On that basis I am not satisfied that the complainant has established facts which infer a discriminatory disposition on the part of the respondent towards non- Catholics.

Decision:

Section 25 of the Equal Status Acts, 2000 – 2015 requires that I make a decision in relation to the complaint in accordance with the relevant redress provisions under section 27 of that Act.

Having considered the submissions of both parties and for the reasons stated, I find that the complainant has not established facts from which an inference of discrimination can be drawn. Accordingly, I find that the complaint is not well founded.

Dated: 12-12-2019

Workplace Relations Commission Adjudication Officer: Andrew Heavey

Key Words:

Discrimination, Religious Beliefs.

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