

ADJ-00004390

ADJUDICATION OFFICER DECISION/RECOMMENDATION

Adjudication Reference: ADJ-00004390

Parties:

	Complainant	Respondent
Anonymised Parties	<i>Complainant</i>	<i>Various</i>
Representatives	Self	Paul Kelly & Co. Solicitors Caitriona Craddock, BL

Complaint(s):

Act	Complaint/Dispute Reference No.	Date of Receipt
Complaint seeking adjudication by the Workplace Relations Commission under Section 21 Equal Status Act, 2000	CA-00006206-001	30/07/2016

Date of Adjudication Hearing: 26/01/2017

Workplace Relations Commission Adjudication Officer: Ian Barrett

Location of Hearing: Room G.05 Lansdowne House

Procedure:

In accordance with Section 41 of the Workplace Relations Act, 2015 and 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:

This complaint concerns a claim made by an individual (hereinafter referred to as “the Complainant”) that he was discriminated against by a Shop/Bakery (hereinafter referred to as “the Respondent”) on religious grounds under Section 21 of the Equal Status Act 2000, in relation to its refusal to provide him with a cake that contained a

message on top.

Summary of Complainant's Case:

The Complainant stated that he called in to a Shop/Bakery in Co. Dublin on the 19th May 2016 and asked the Sales Assistant for a cake to be made. He stated that he was asked if he would like a message on top and he replied that he did. He stated that he related the message to the Assistant and handed over a piece of paper with the wording on it. He stated that the Assistant said she would have to check with Head Office and that someone would come back to him (and she took his contact details).

The message that the complainant wanted on the cake was:

BY THE GRACE OF THE GOOD LORD, I (name redacted), ORIGINALLY OF (address redacted) and c/o (other addresses redacted) that in my honest opinion – “GAY MARRIAGE” IS A PERVERSION OF EQUALITY and the 34th Amendment to the Irish Constitution should be REPEALED.

He stated that some days passed and he had not heard from the Respondent and so on the 23rd May 2016 he sent an email to the Respondent providing details in relation to the size of the cake and the lettering on top. He proceeded in some detail to request that the use of upper and lower case lettering and the use of different colours, tone and font style should be adhered to throughout.

On the 26th May the Complainant sent a follow up email message to the Respondent, repeating the order with the same level of detail.

The Complainant stated that on the same day he received an email in reply. In it the Respondent stated that they were extremely busy and had to close their order book for bespoke cakes. As an alternative, they were offering a “more simple version” of the order, that is, that they would bake a cake but that an edible topping be made elsewhere, with a suggestion that a search of the Internet should be successful in that regard.

The Complainant stated that he replied on the same day stating that he was prepared to wait until the Shop/Bakery was not so busy, and he asked that they accept his order, and he would pay a deposit in return for a receipt, to include the exact message specified earlier by him.

The Complainant stated that on the following day he received an email from the Respondent stating that deposits are only taken when details are confirmed and a cake can be made as ordered, and that they were unable to provide a receipt in the manner requested. It also suggested that he might try another supplier or have an edible topper made elsewhere. Failing the above, they would be in touch when they were not so busy and they had capacity for bespoke cakes.

The Complainant contends that the Respondent had no intention of making a cake with the message he wanted and this amounted to unfair treatment and discrimination on religious grounds. He said that the Respondent will claim that the correspondence

he sent, both in terms of its content and the methods he used (registered post, etc.) amounted to harassment and aggression but he doesn't accept this. He says that in legal situations (and he stated that he believed this "would develop into one"), it is important to get the right legal name and address for the business and he was ensuring that no mistakes were made.

The Complainant stated that at this stage he completed an ES.1 form, signed and dated on the 9th June 2016, notifying the Respondent of a possible legal claim under the Equal Status Acts.

The Complainant's subsequent submission to the WRC included a written reply he received from the Respondents' Managing Director. It stated that the Company did not have the expertise to make the cake he requested and that their position was a commercial decision and they had offered an alternative solution that he had chosen to ignore. The correspondence concluded by stating that the Complainant's lengthy, oppressive and aggressive communications were a burden on the Company's resources and on staff morale.

During his submission, the Complainant referred to what he considers to be the only relevant case law for his claim, that is, the Ashers Cake case in Northern Ireland. He stated that the roles were reversed in this case and his belief that "what is good for the goose; is good for the gander". He stated that he was not asking the Respondent to endorse the message, just to make the cake. In fact, he suggested that if they wished, the Respondent could have a disclaimer in their shop, or printed on the receipts or elsewhere, stating that they don't endorse the messages that appear on their cakes. He went on to say that if the Respondent had difficulty producing the design that he wanted, he was prepared to compromise and he had made this clear.

The Complainant concluded that in his opinion the Respondent would not refuse to make a cake with a message for a gay couple celebrating their wedding, but that their refusal to do so in this case amounts to discrimination because of his religious beliefs and outlook.

Summary of Respondent's Case:

The legal representative for the Respondent asked her client did she know the Complainant's religion or religious persuasion at any stage before, during and after this incident. She replied that she did not. She also asked the Complainant if he was aware of the Respondent's religion.

The Complainant was also asked if the name of the historical building (as appeared in the message) was his Company name as it had appeared several times on his correspondence and it was registered, with a reference to retail sales on the 1st February 2016.

The Complainant replied that he worked part-time selling specialised goods and that the place name included in the message was not a Company name, his or anyone else's. He added that he is a student on sabbatical from College so that he can "pursue litigation matters". He stated that in this instance he wanted to, "balance out the

Asher's bakery case", adding, "why should the law favour people of a gay orientation and not deal with me the same way"?

The Complainant added that the cake was a means of fulfilling and manifesting his religious beliefs, and he intended to upload an image of it to his social media sites. After that he would probably eat it, he said. At this stage the Respondent's legal representative stated that the complaint was frivolous and vexatious and should be dismissed.

The Representative stated that the Managing Director of the Shop/Bakery will state that the extent of the detail requested on this cake was well above the norm. The order was made in May, an extremely busy time for the Bakery with communions, etc., so that their order book for bespoke cakes was fully booked. However, they were willing to be flexible and that is why it was suggested that they make the base and that the Complainant arrange for the top (including the message) to be made elsewhere in the form of an edible topper.

The Representative asked the Managing Director if she had an issue with the message on the cake or the complexity of the order only. The Managing Director replied that she had no difficulty with the wording. She stated that the order was very complicated in terms of the different colours, tone, the use of capital letters, the font, etc. Also, there were 49 words in the message which was considerably above what would be the norm in any message. She believed that the cost (to the customer) of making this cake might be in the order of €700. She also stated that other orders were turned away at that time as their order book for bespoke cakes was full and she could provide evidence of this (in the form of emails) to the Hearing.

She stated that the normal procedure was that if everything was OK they would take an order and take a deposit. Her employee followed the correct procedures in this case, she said. She said that the staff member asked the Complainant for a date for when he wanted the cake to be made but he did not provide one. She then asked if he wanted a message on the cake and the Complainant said no. However, she stated that after agreeing the size of the cake and the ingredients the Complainant then handed her the message.

The Managing Director stated that this order would take as long to make as a wedding cake would. They had up to 140 cakes in the pipeline and at 80 cakes they decide what can and what cannot be done. She said; "It's gets to a point where you only have so much time". She concluded by stating that people who watch popular TV programmes may not realise that bespoke orders are time consuming and costly.

The legal representative for the Respondent concluded by asking the Complainant if he had the cake made elsewhere (he replied that he had not).

Further Investigation, Cross Examination and Conclusions:

I asked the Respondent (Managing Director) if they receive similar orders to this one

(in terms of its complexity) where the cost might be exorbitant, say in the order of €700. She replied very rarely, as they could not charge this amount for a cake, and even at this cost there would be practically no margin for the bakery. She continued that it would take up to 8 hours to complete this order and it would cost more than the normal person could afford. Therefore, they decided that they should offer what they can do (which is to make the base) and recommend that an edible topper be made elsewhere.

I asked if the wording of the cake was the real issue here as it would be regarded as controversial. She replied that in this case they didn't get past the ability to see if the order was viable and it wasn't, for the reasons already outlined, she said. Her Representative added that the Complainant misunderstood the situation concerning their reason for not fulfilling his order.

I asked the Complainant why he had included what appeared to be the actual address of the shop premises in his message. He replied that he used to live in the building the shop now occupies and including that address (and that of a nearby historical site) in his message was for "personal and existential reasons". I asked the Complainant if the cake was viewed by the public (on social media platforms or elsewhere), might they associate the shop and/or its' owners with the message being expressed and he replied that it was not his intention to confuse people as to whose religious beliefs were being expressed.

I asked the Complainant did he believe the message was an expression of his religious beliefs or outlook only, given that it also referred to matters that might be considered political in nature. The Complainant replied that the opening 7 words, "BY THE GRACE OF THE GOOD LORD", made it clear that he was expressing his religious beliefs.

I asked the Respondent how many letters or emails they received from the Complainant. She said several, and they had caused uncertainty amongst her staff and had affected morale. Registered post was delivered to her business and home addresses and people were wondering what was going on.

The Respondent stated that on the day that the Complainant first came into the shop he took a photograph of the Sales Assistant. She believes that this was very inappropriate and "added to the whole scenario that the Sales Assistant had had to endure". The Complainant replied that he did not intentionally take a photograph of the Sales Assistant, but a photograph would help prove he was there on the day in question, as he expected that events would develop into the case before us today.

I asked the Respondent (MD) at what point did she receive legal advice on this matter. She was uncertain so I suggested that it was after she wrote her last letter rather than before. She agreed that this was so. I asked her if she considered seeking legal advice on receipt of the detailed ES1 form. She said that she did not, as at this stage she was exasperated and frustrated by what was happening and hoped that her letter would have the desired effect; that the Complainant would desist.

The Representative for the Respondent concluded by saying that the claim was ill founded and vexatious and had caused upset to the owners and employees of a small

business and should be dismissed.

Conclusions:

The matter referred for investigation was whether the Complainant was discriminated against on the religion ground contrary to the Equal Status Acts in being deliberately refused a service, specifically, to have a cake made with a message on top.

The Complainant is required to establish, in the first instance, facts upon which he can rely in asserting that the prohibited conduct has occurred. He must establish a prima facie case of discriminatory treatment and it is only then that the burden of proof transfers to the Respondent to rebut the presumption of discrimination.

By his own admission, the Complainant placed an order for this cake both to test and “balance out” a well-publicised case from another jurisdiction; an outcome with which he clearly disagreed. He also remarked: “Why should the law favour people of a gay orientation and not deal with me the same way?” and “What’s good for the goose is good for the gander”.

The Complainant stated that he is engaged in several litigation cases and that he expected from the outset that this complaint would result in a hearing before a 3rd party and some of his actions were taken with that outcome in mind.

The Complainant must prove that he has been treated less favourably than another person because of his religious beliefs. I do not believe that prima facie evidence was heard to prove that the Complainant’s order was refused because of his religious beliefs and/or that the Respondent refused to make this cake because the Complainant is a Christian.

Decision:

Section 41 of the Workplace Relations Act 2015 requires that I make a decision in relation to the complaint(s)/dispute(s) in accordance with the relevant redress provisions under Schedule 6 of that Act.

I find that the Complainant failed to establish a prima facie case of discrimination on the ground of religion. Accordingly, the complaint fails.

Dated: 10th July 2017

Workplace Relations Commission Adjudication Officer: Ian Barrett

Source: <http://www.lrc.ie/en/Cases/2017/July/ADJ-00004390.html>