

Martin McDonagh and Patrick Stokes v Event 22 Ltd (Case Refs: 71/04, 72/04)

1) Reference Details

Jurisdiction: Northern Ireland Industrial Tribunal

Date of Decision: 18 October 2006

Case Status: Concluded by the Industrial Tribunal for Northern Ireland

Link to full case:

[http://www.equalityni.org/sections/default.asp?cms=The%20Law Case%20decisions&cmsid=4_284&id=284&secid=5](http://www.equalityni.org/sections/default.asp?cms=The%20Law%20Case%20decisions&cmsid=4_284&id=284&secid=5)

2) Facts

The claimants in this case were Martin McDonagh, aged 18 at the time of the incident and Patrick Stokes, who was aged 19. Both individuals were cousins and members of the Irish Traveller community. They were recruited through an employment agency to work for the respondent at the Odyssey Arena (the Odyssey) in Belfast.

Both claimants were contracted to work on repairs to the inside of the Odyssey to restore its original condition. The Odyssey manager Mr Mason had approached the two employees whilst working and had commented on their accents. Specifically, they were asked whether they were both from Dublin. Mr Mason then walked away without comment after he was informed that they were not from Dublin.

Both claimants were expected to resume work on Sunday 24 August 2003. On route to work they met a colleague, who had been described as a 'settled person' meaning someone not from the Irish Traveller community. On arrival, Mr Mason informed Mr McDonagh and Mr Stokes that they had no work to complete, contrary to their understanding as well as that of the recruitment agency.

The settled person was not impeded by Mr Mason and had continued into the Odyssey. Both claimants had assumed that their refusal to be allowed to work was solely to do with their distinctive accent and its association with the Irish Traveller community.

3) Law

- The Race Relations (Northern Ireland) Order 1997, articles' 3(1), (3) and (5)
- Race Relations Order (Amendment Regulations) (Northern Ireland) 2003

4) Legal Arguments

The Claimants

The claimants allege that they were victims of direct racial discrimination contrary to article 3(1)(a) of the Race Relations (Northern Ireland) Order 1997, which requires a comparison to be used in the respondent's treatment of the two claimants with the treatment of other workers. They argued that the treatment and response of Mr Mason in not offering a reason as to his decision to impede the claimants on arrival at the Odyssey and in not offering any assistance to them by way of returning home, is another supportive factor in the racial discrimination claim.

5) Decision

The tribunal assessed whether Mr Mason had directly discriminated against both claimants by looking at the provisions of article 3(1)(a) of the Race Relations (Northern Ireland) Order 1997, which provides for a comparison test to be employed. The comparator employed by the Tribunal compared the treatment of Mr McDonagh and Stokes with that of any other worker.

In their assessment the Tribunal was satisfied that the two claimants could compare themselves with that of a 'settled person' who had been allowed to return to work. Furthermore, the Tribunal was satisfied that the two individuals were seen by Mr Mason as belonging to a different racial group to other workers when they were asked of their origins, which was totally irrelevant to the employed position.

With regards to awarding a claim for damages, the tribunal opined that the award in this case merits inclusion of an award of aggravated damages, relying on the dicta of *McConnell v Police Authority for Northern Ireland* [1997] IRLR 635 which provided support for the view that aggravated damages may be awarded where the employer has behaved in a "high-handed, malicious, insulting or oppressive" manner. The tribunal reached this conclusion as the respondent persisted in its assertion that the claimants were thieves, a stance it adopted from the outset, yet one which it made no apparent attempt to seek or provide even the slightest evidence in support of the allegation.