LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

LANDS TRIBUNAL RULES (NORTHERN IRELAND) 1976

IN THE MATTER OF A REFERENCE

R/22/2014

BETWEEN

EAMON McCORMACK - APPLICANT

AND

NORTHERN IRELAND ELECTRICITY – RESPONDENT

Re: 57 Tulnacross Road, Cookstown

Lands Tribunal - Henry M Spence MRICS Dip.Rating IRRV (Hons)

Background

1. On the 18th September 2014 Mr McCormack ("the applicant") submitted a Notice of Reference under the General Rules of the Lands Tribunal, claiming compensation from Northern Ireland Electricity ("the respondent") for alleged damage caused by them to his lands at Tulnacross Road in Cookstown. There then followed a series of mentions of the reference during which the respondent supplied the applicant with additional information. The applicant had previously supplied the respondent with estimates to repair the damage which he alleged had been caused by them.

2. At a subsequent mention on 27th January 2015 the Tribunal issued the following directions:

> "**Respondent's Comments** to be with the Tribunal by Tuesday 10 February 2015
> **Applicant's Response** to be with the Tribunal by Tuesday 24 February 2015"

3. The respondent's comments on the applicant's claim were submitted to the Tribunal on the due date of 10th February 2015. These were immediately forwarded to the applicant. There was no response from the applicant and on 25th February 2015 a reminder was sent to him asking for his submission which had been due on 24th February 2015. The applicant then telephoned the Registrar of the Tribunal to request one more week for submission, up to the 4th March 2015.

4. The applicant failed to provide his submission by 4th March and on 6th March the Registrar wrote seeking an update. No response was received and on 4th April 2015 the Registrar wrote to the application advising him:

> "If I do not hear from you within the next three weeks I will assume you no longer wish to proceed with your claim and will close the file accordingly."

5. On 20th April the applicant rang the Registrar to advise that he would "get his report in this week". No report was received and on 19th May 2015 the Registrar wrote to the applicant enquiring as to the current position. The Registrar did not receive a response and on 4th June 2015 he wrote to the applicant requesting a response to his letter of 14th May. On 2nd July 2015 another reminder was sent.

6. The applicant failed to respond to any of these communications and on 7th August 2015 the Registrar wrote to him advising:

> "If I do not receive your written submission within the next two weeks the Tribunal may consider striking out your application."

No response was received and on 26th August the Registrar wrote to the applicant advising him that the reference had been struck out.

7. On 28th September 2015, some 4 weeks after the case had been struck out the applicant wrote to the Tribunal seeking additional information from the respondent. The respondent refused to provide any additional information and objected to the reference being re-opened after it had been struck out. The applicant is now seeking to have the reference re-opened.

Procedural Matters

8. The Tribunal requested written submissions from each of the parties re the striking out of the reference. Mr Gareth Prior, an assistant solicitor from Northern Ireland Electricity, provided a submission on behalf of the respondent. Mr McCormack, the applicant, provided a submission on his own behalf.

Position of the Parties

9. The applicant did not make any legal submissions in relation to the striking out of the reference. Rather he referred to his telephone calls to the Registrar and advised the

Tribunal that he was disillusioned with the way the respondent had treated the entire process. He considered that these were sufficient grounds to re-open the reference.

10. Mr Prior asked the Tribunal to note that the applicant had not provided an explanation as to why he failed to respond to any of the Tribunal's directions and correspondence. It was his view that the Tribunal's letter of 7th August 2015 was a letter of last resort and akin to an "unless order" which made it clear to the applicant the timeframe within which the Tribunal required a response and the sanction which would be imposed should no such response be forthcoming. Mr Prior considered that, as the applicant had failed to provide any such response, the Tribunal was correct in imposing the sanction of which it had previously warned. In the absence therefore of any evidence to suggest that something beyond the control of the applicant was responsible for his persistent failure to provide a response to the Tribunal, Mr Prior submitted that to re-open the file would be contrary to the interests of the administration of justice. In support of his position, he referred the Tribunal to the guidelines provided by the Court of Appeal in Hytec Information Systems Limited v Coventry City Council [1997] 1 WLR 666 and the subsequent application of these guidelines in this jurisdiction by Master McCorry in Smyth v Nixon Neutral Citation No [2013] NI Master 14.

The Legislation

11. Paragraph 39 of the Lands Tribunal Rules (Northern Ireland) 1976 deals with "Delay in proceedings":

> "39.-(1) Where upon the application of a party it appears to the registrar that there has been undue delay in bringing proceedings to a hearing before the Tribunal or default in complying with any provisions of these rules the registrar may request any party to the proceedings to submit proposals for the completion of any procedural steps in the matter.
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> (2) The registrar may list any proceedings to be mentioned before the President or the Tribunal to enable one or other or more than one of the parties to apply for such order as may appear to be necessary to fix the place, date and time for hearing of the matter in dispute, or to have the proceedings stayed or struck out.
>
> (3) In any proceedings to which paragraphs (1) or (2) apply the President or the Tribunal may make an order putting one or other or more than one of

the parties on terms for the further conduct of the proceedings (including terms as to costs) or may order the proceedings to be stayed or struck out, upon such terms as may seem fit."

Authorities

12. The Tribunal was referred to Hytec Information Systems Limited v Coventry City Council. In its decision the Court of Appeal held that each case had to be considered on its own facts but the underlying approach to "unless orders" might be encapsulated by the following:

> "(1) An unless order was an order of last resort, not made unless there was a history of failure to comply with other orders. It was the party's last chance to put its case in order.
>
> (2) Because it was a last chance, a failure to comply would ordinarily result in the sanction being imposed.
>
> (3) The sanction was a necessary forensic weapon which the broader interests of the administration of justice required to be deployed unless the most compelling arguments were advanced to exonerate the failure.
>
> (4) It seemed axiomatic that if a party intentionally flouted the order he could expect no mercy.
>
> (5) A sufficient exoneration would almost invariably require that he satisfied the court that something beyond his control had caused the failure.
>
> (6) The judge would exercise his judicial discretion whether to excuse the failure in the circumstances of each case on its own merits, at the core of which was service to justice.
>
> (7) The interests of justice required that justice should be shown to the injured party for procedural inefficiencies causing the twin scourges of delay and wasted costs. The public interest in the administration of justice to contain those two blights upon it also weigh very heavily. Any injustice to the defaulting party, though never to be ignored came a long way behind the other two."

Conclusion

13. Applying the guidelines as set out by the Court of Appeal in Hytec the Tribunal is satisfied that the Registrar's letter of 7th August 2015 to the applicant was akin to an "unless order" which was an order of last resort issued after a history of the applicant's failure to comply with other orders of the Tribunal made between February 2015 and August 2015. It was the applicant's last chance to "put his case in order" and he failed to do so. Because it was a last chance the failure to comply resulted in the sanction being imposed, that is the application was struck out.

14. The applicant has not advanced any "compelling arguments" to exonerate his failure to comply and the Tribunal is satisfied that the application should remain struck out.

ORDERS ACCORDINGLY

3rd December 2015

Mr Henry M Spence MRICS Dip.Rating IRRV (Hons)
LANDS TRIBUNAL FOR NORTHERN IRELAND