

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
ELECTRICITY (NORTHERN IRELAND) ORDER 1992

IN THE MATTER OF A REFERENCE

R/19/2018

BETWEEN

WILLIAM ALAN CLARKE – APPLICANT

AND

NORTHERN IRELAND ELECTRICITY NETWORKS LIMITED – 1ST RESPONDENT

GRID TEAM SERVICES LIMITED – 2ND RESPONDENT

FOX BUILDING AND ENGINEERING LIMITED – 3RD REPENDENT

OWENS CONTRACTS LIMITED – 4TH RESPONDENT

Re: Lands at Curr Road, Beragh, County Tyrone

Part 1

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

Background

1. Mr William Alan Clarke (“the applicant”) is the owner of lands at Curr Road, Beragh, County Tyrone (“the reference lands”). On 30th March 2016 the applicant entered into a Voluntary Wayleave Agreement (“the Wayleave”) with Northern Ireland Electricity Networks Limited (“the 1st respondent”) which granted the 1st respondent permission to install a pylon, wooden poles and electricity lines on and over the reference lands.

2. The 1st respondent employed Grid Team Services Limited (“the 2nd respondent”) to carry out the installation works. The 2nd respondent then subcontracted out the works to Fox Building and Engineering Limited (“the 3rd respondent”) and Owens Contracts Limited (“the 4th respondent”).

3. The applicant has alleged that in carrying out the works the respondents caused damage to the drainage system on the reference lands and subsequently, on 13th November 2018, the applicant made a reference to the Lands Tribunal seeking compensation.
4. The 1st respondent contends that the Tribunal does not have jurisdiction to adjudicate on the applicant's reference and submits that the reference must instead be pursued before the courts in the ordinary way. The jurisdiction or otherwise of the Tribunal to adjudicate on the applicants claim for damages/compensation is therefore the issue to be decided.

Procedural Matters

5. Mr Martin McDonnell BL instructed by McGale Kelly & Company solicitors represented the applicant. The 1st respondent was represented by Mr Douglas Stevenson BL instructed by Carson McDowell solicitors. Mr Gerry Ward of McIlldowies solicitors gave oral evidence on behalf of the 3rd respondent at hearing. The 2nd and 4th respondents were not represented.

Statute

6. Article 6 of the Lands Tribunal and Compensation Act (Northern Ireland) 1964 ("the Act") provides:
 - "6(1) ...
 - (2) ...
 - (3) ...
 - (4) ...
 - (5) ...
 - (6) The Lands Tribunal may also act as arbitrator under a reference by consent relating to any matter affecting the value or the use or development of any land ...".

Authorities

7. The applicant referred the Tribunal to the following texts:

- Halsbury's Laws of England, Volume 47, 2014, paragraph 317
- Halsbury's Laws of England, Estoppel, Volume 47, 2014 332

8. The 1st respondent referred the Tribunal to the following authorities:

- Brickkiln Waste v NIE Networks R/41/2009
- Stynes v Western Power [2013] UK UT 214

Discussion

9. As the Wayleave was a voluntary arrangement it was not made pursuant to the provisions of the Electricity (Northern Ireland) Order 1992 ("the Order"), rather it was a contractual agreement between the applicant and the 1st respondent. It enabled the 1st respondent, together with its "contractors" to enter and carry out work under, on or over the reference lands. Mr McDonnell BL referred the Tribunal to the following sections from the Wayleave agreement:

"6. The grantee shall throughout the continuance of this Agreement be liable for all just and fair claims for damage or loss sustained by the grantor, his tenants, agents or servants in respect of their livestock, crops or other property by the erection of the electric line or through any defect in or breakage thereof, provided always that:

- (a) Such damage or loss is not caused by the wilful conduct, default or neglect of the grantor or his tenants, agents or servants; and
- (b) A statement in writing of the claim is received by the grantee.

7. Save as otherwise provided herein, the grantee shall indemnify the grantor from and against all actions, claims, costs and expenses incurred by reason of the erection of the electric line.

8. The grantee and its contractors and its and their respective agents and servants and workmen or any person authorised by the grantee shall, for the purpose of the erection

of the electric line, be at liberty either with or without vehicles to enter onto the lands of the grantor

15. If any dispute or difference shall arise between the parties concerning the interpretation of this agreement, it shall be referred to a single arbitrator being a practising barrister of at least six years standing to be appointed jointly by the parties hereto or failing agreement to be appointed on the application of either party by the Chairman for the time being of the Bar Council of Northern Ireland and in any case of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force shall apply to the reference and any other dispute or difference shall be referred to and determined by the Lands Tribunal for Northern Ireland.

16. Nothing herein contained shall be deemed to take away, diminish or abridge the rights and powers conferred upon the grantee by the Electricity (Northern Ireland) Order 1992 or any statutory modification or re-enactment thereof for the time being in force.”

10. Mr McDonnell BL made particular reference to clause 15 which stated that “any other dispute or difference shall be referred to and determined by the Lands Tribunal”. Mr Stevenson BL submitted that clause 15 could not confer jurisdiction on the Lands Tribunal if it did not have the statutory authority to act. The Tribunal agrees with Mr Stevenson BL, the Lands Tribunal was created by statute and it must have statutory authority in order to act in any dispute.

11. Mr McDonnell BL submitted that Article 6(6) of the Act conferred jurisdiction on the Lands Tribunal:

“6.(6) The Lands Tribunal may also act as an arbitrator under a reference by consent relating to any matter affecting ... the use ... of any land ...”.

He considered that the Voluntary Wayleave was all about the 1st respondent’s use of the reference lands, as confirmed by the quoted clauses of the Wayleave agreement.

12. Mr Stevenson BL suggested that what the applicant was contending was that the Lands Tribunal had the statutory authority to deal with any matter relating to land. He considered

this to be simply wrong and gave an example of someone injured on land seeking compensation, which would not be a case for the Lands Tribunal. He respectfully pointed out that the Lands Tribunal was an expert Tribunal with an expert valuer as the Member, set up to deal with all matters within its expertise, but not otherwise.

13. Article 6(6) states that “the Lands Tribunal may deal with ...”. The use of the word “may” gives the Tribunal a discretion and the Tribunal agrees with Mr Stevenson BL that it should only exercise that discretion to arbitrate on matters within its expertise.
14. Mr McDonnell BL advised the Tribunal that loss adjustors had been appointed by the applicant and the 1st respondent but they had failed to reach agreement on the amount of damages to be paid. He considered, therefore, that the only issue was for the Tribunal to assess the correct amount of damages.
15. Mr Stevenson BL submitted that the applicant was contending that the respondents had not done the work properly and had caused the applicant to suffer a loss. He considered therefore, that the issues to be decided were complicated and included matters such as breach of contract, liability, negligence and apportionment of damages between the four respondents. He did not consider these to be matters within the expertise of the Lands Tribunal, rather they were issues for the commercial court. He likened the subject reference to that of a “building case” in which the court would have to hear evidence in relation to negligence and whatever flowed from that. He suggested that these were obviously not issues for the Lands Tribunal.
16. Mr Stevenson BL also pointed out that if the Tribunal decided that it did not have jurisdiction it would not deprive the applicant of his rights, as he could refer the matter to another court.
17. On behalf of the 3rd respondent, Mr Ward, solicitor, advised the Tribunal that he fully supported the 1st respondents position.

18. Mr McDonnell BL asked the Tribunal to note that clause 6 of the Wayleave did not mention “negligence”. The damages flowed from the 1st respondent’s works on the reference lands and he did not consider this to be a matter of “negligence”.
19. The Wayleave was a voluntary contract between the applicant and the 1st respondent, together with its “contractors” and “agents”, that is the 2nd, 3rd and 4th respondents. It was not created by or bound by the terms of the Order and the Tribunal, therefore, had no statutory authority to act, conferred by the Order. The Tribunal agrees with Mr Stevenson BL, the subject reference involves issues over and above the amount of damages/compensation, including negligence, breach of contract, liability and apportionment of damages. These were not issues within the expertise of the Tribunal.
20. In addition, Article 6(6) permits the Lands Tribunal to act as an arbitrator but only “by consent”. The 2nd, 3rd and 4th respondents had written to the Tribunal to confirm that they would not give consent. Mr Stevenson BL advised the Tribunal that the 1st respondent would give consent, but only if the Tribunal decided that it had jurisdiction.
21. Mr McDonnell BL considered that the consent of the 2nd, 3rd and 4th respondents was not required as they were merely agents of the 1st respondent with which they had separate contractual arrangements. The Tribunal does not agree. The applicant had named the 2nd, 3rd and 4th respondents as parties to the applicant’s claim for damages before the Tribunal and as such their consent was required.
22. The Tribunal declines to act as arbitrator in the subject reference because:
 - (i) The reference involves issues outside the expertise of the Tribunal.
 - (ii) Three of the named respondents in the reference have not given their consent for the Tribunal to act as an arbitrator, as required under Article 6(6) of the Act. The Tribunal therefore does not have statutory authority to act.

16th May 2019

Mr Henry M Spence MRICS Dip.Rating IRRV (Hons)
Lands Tribunal for Northern Ireland

Appearances:

Applicant: Mr Martin McDonnell BL instructed by McGale Kelly & Co, solicitors.

1st Respondent: Mr Douglas Stevenson BL instructed by Carson McDowell LLP, solicitors.

3rd Respondent: Mr Gerry Ward, McIldowies, solicitors.