

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964
WATER & SEWERAGE SERVICES (NORTHERN IRELAND) ORDER 1973

IN THE MATTER OF A REFERENCE

R/27/2005

BETWEEN

FORTWILLIAM GOLF CLUB – CLAIMANT

AND

DEPARTMENT FOR REGIONAL DEVELOPMENT

(WATER SERVICE EASTERN DIVISION) - RESPONDENT

COSTS

Lands Tribunal - Mr M R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAVI

Background

1. The Department of Regional Development - Water Service Agency ('the Department') carried out a scheme to replace the Woodburn Conduit under the Water & Sewerage Services (NI) Order 1973. There was a dispute as to the amount of compensation to which Fortwilliam Golf Club ('Fortwilliam') was entitled as a result of entry onto their land and execution of the works.
2. To begin with Fortwilliam had instructed Lisneys, Chartered Surveyors, to negotiate compensation. Later, Mr J Allen took over as negotiator. Mr Lester of Land and Property Services negotiated on behalf of the Department. Both are experienced Chartered Surveyors.
3. In March 2005 the Department made an offer of £22,650. The matter was referred to the Lands Tribunal on 13th April 2005. In November 2005 Fortwilliam made a claim for £140,068.05. The case was settled at £30,000.
4. The issue for the Tribunal is the amount of costs to be paid by the Department to Fortwilliam.

Position of the parties

5. Fortwilliam won compensation and is entitled to costs. The question is whether there are reasons why Fortwilliam should not recover some or all of its costs in respect of Mr Allen's fees.

6. The disputed fees may conveniently be considered in two phases - prior to the reference to the Lands Tribunal; and after the reference.
7. Fortwilliam's position in regard to the first phase changed in the course of this claim. Fortwilliam now seek to recover Mr Allen's fees of £1,650 + VAT from the Department. The Department proposed a total fee to cover the work of both valuers (Lisneys and Mr Allen) based on Ryde's scale i.e £1,625 + VAT.
8. For the period after the reference Fortwilliam sought Mr Allen's fees of £10,175.00. The Department criticised the amount but did not put forward a specific counter proposal.

Procedure

9. The Tribunal received written submissions from the parties. Ms Jennifer M Hill of Skelton & Co made submissions on behalf of Fortwilliam. Mr Alistair McNeill of the Departmental Solicitor's Office made submissions on behalf of the Department. These submissions incorporated material provided by Mr Allen and Mr Lester.

Discussion

Before the Application

10. In the course of the period prior to the referral Fortwilliam changed its valuers. Fortwilliam did not suggest that the work done by the two valuers did not overlap. The inevitable duplication of some costs as a consequence of the conduct of Fortwilliam in changing valuers is not something reasonably recoverable from the Department. The Tribunal agrees that the Department should not pay twice. In these circumstances the appropriate amount for Lisney's work probably is a matter for Fortwilliam and not a matter for the Department. It is perhaps unfortunate that the Department has already paid an account from Lisneys.
11. The issue of whether the total fee should be based on Ryde's scale is of no significance as the amount claimed roughly equates to that under Ryde's scale.

After the Application

12. The principle criticisms made by the Department were:
 - The application to the Lands Tribunal was premature;
 - Mr Allen did not confine himself to his proper role as an expert witness; and
 - Mr Allen's records were inadequate.

13. Mr Allen may have anticipated his formal instructions and lodged the reference a little early. The Tribunal does not accept that is a matter on which a measurable reduction in recoverable costs should be made.
14. In March 2005 the Department made an offer based on material submitted by Fortwilliam at that time. Substantial items of claim were added by Fortwilliam after the reference and so, prior to that, the Department was not in a position to properly consider their position and respond appropriately to the claim. That conduct justifies a reduction in recoverable costs.
15. When the claim for compensation was referred to the Tribunal, it was informed by the Department an issue raised by Fortwilliam was a legal issue. The Tribunal refused permission for Mr Allen to appear for Fortwilliam.
16. Fortwilliam suggests that the level of fee is substantially as a result of the Department's position that there was such a legal issue. The Tribunal accepts there was a legal issue. This was as a result of the assertion by Fortwilliam that the entry onto their land and execution of the works by the Department amounted to a further easement. That could have consequences for both the nature and amount of compensation. Accordingly, Fortwilliam employed solicitors who instructed counsel. The legal issue was not pursued at the Hearing but, having made those appointments, Fortwilliam continued to rely on them as their representatives in the proceedings. Mr Allen then became an expert witness rather than Fortwilliam's negotiator or advocate.
17. Many legal issues within the field of compulsory purchase are within the expertise of Mr Allen but, in the view of the Tribunal the difficulty that arose was this. An advocate may properly seek guidance from an expert witness in the form of an opinion as to the helpfulness to an independent tribunal of some of the material on which it would base its decision. The weight to be attached to that opinion is a matter for the advocate. In this claim there was a difference of opinion between the advocate and the expert and that generated protracted discussions. Whoever was right, it is clear that Mr Allen's refusal to limit himself to his role as an expert witness, contributed significantly to some 58 hours of discussion and correspondence between himself and the legal representatives. It is not possible to identify which amounts of time were properly spent but a large proportion of the associated costs should not be paid by the Department.
18. The Department questioned the amount of time which Mr Allen claimed for preparing his report and criticised Mr Allen because he kept no diary or time sheets for the 30 hours he claimed. Fortwilliam sought access to Mr Lester's time records for comparison. Access was refused. Mr

Allen accepted the criticism but suggested the time was reasonable. The Tribunal accepts that the time spent was excessive. That is probably because the report dealt with a number of matters outside the role of an expert report. The conduct of Mr Allen in spending time on matters which were for others is not something for which the Department should be accountable. But in light of his extensive knowledge and experience, the Tribunal assumes that the amount of his time was not great.

Conclusions

19. In regard to the period before the referral, the Tribunal allows Fortwilliam total valuers' fees of £1,650 + VAT.

20. In regard to the period after the referral, the Tribunal allows Fortwilliam total valuer's fees of £5750 + VAT.

ORDERS ACCORDINGLY

26th February 2010

Michael R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAVI

LANDS TRIBUNAL FOR NORTHERN IRELAND

Appearances:

Claimant: Ms Jennifer M Hill of Skelton & Co

Respondent: Mr Alistair McNeill of the Departmental Solicitor's Office