

LANDS TRIBUNAL FOR NORTHERN IRELAND
LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982
ROADS (NORTHERN IRELAND) ORDER 1993

R/70/2006

BETWEEN

CHRISTOPHER THRONE - CLAIMANT

AND

DEPARTMENT FOR REGIONAL DEVELOPMENT - RESPONDENT

Land at Grangefoyle Road, Bready, Strabane

COSTS - PART 2

Lands Tribunal - Mr Michael R Curry FRICS MCI.Arb Hon.Dip.Rating

1. Mr Throne ("the claimant") had claimed compensation for the effect of a road improvement scheme affecting his land adjoining the A5 main road between Londonderry and Dublin. The claim was settled including agreement that the Department for Regional Development ("the Department") would meet the claimant's reasonable costs. These could not be agreed and were determined by this Tribunal (see Part 1 Decision R/70/2006 dated 25th January 2011). The issue now is a claim for costs ("costs on costs") incurred by the claimant in his application for the costs awarded in the Part 1 Decision ("the award on costs").
2. The Tribunal received written representations from:
 - Mr Alistair McNeill of the Departmental Solicitor's Office;
 - Mr Nathan Hawthorne of A D McClay & Co, solicitors;
 - Mr Matthew McAlister, Chartered Surveyor;and oral representations from:
 - Mr Donal Lunney BL, instructed by the Departmental Solicitor's Office; and
 - Mr Hawthorne.

Positions of the Parties

3. The claimant sought solicitor's costs of £1,170.40 + VAT and Mr McAlister's costs of £3,250.00. The Department suggested that in all the circumstances the Tribunal should make no award or, in the alternative, the claim was excessive.

Discussion

4. The elements of the costs claimed were:

A D McClay & Co

Consultations/preparations etc 6 hrs 42 mins at £133 per hr	£891.10 +VAT
Correspondence – 12 items at £13.30	£159.60 +VAT
Telephone calls – 9 at £13.30	<u>£119.70</u> +VAT
Total	£1,170.40 +VAT

Mr McAlister

Preparation of detailed account of dates and times – 11 hrs	
Replying to submission by Mr Bradley on costs – 15 hrs	
Total – 26 hrs @ £125 per hour	£3,250.00

5. The Tribunal was referred to:

Purfleet Farms Ltd v Secretary of State for Transport, Local Government and the Regions
[2002] EWCA Civ 1430; and
Ross & Anr v Johnston (Part 2) R/35/1998 [2003].

6. The Tribunal also considered:

McCann v Department for Social Development R/67/2004 [2008]

7. Costs generally should be pursued with the greatest economy. The Tribunal accepts that the context is relevant, but some of the submissions related more to issues that were relevant to the awarded costs than to this application for cost on costs.
8. Mr Hawthorne suggested that the substantive dispute was of general importance as it had been concerned with the appropriate method of valuation of trees in circumstances in which there was no universally accepted approach. The Tribunal prefers the suggestion of Mr Lunney BL that much of the time taken to deal with the case was apparently because of the contractual issue; as soon as that issue had been abandoned by the claimant it did not take long to achieve a settlement at a tiny fraction of the amount sought at the claim's height.
9. The Tribunal has a power to make an award on an application for costs on costs but agrees with Mr Lunney BL that such applications are and should be exceptional. He stressed the need for proceedings to have finality. Mr Hawthorne accepted the risk of costs on costs proceedings ad infinitum and in the circumstances gave an undertaking that his client would make no further application on costs.

10. In this case there was a substantial disparity between the costs claimed in regard to the settled proceedings and the Department's offer on costs and in the award on costs the Tribunal found largely in favour of the claimant. In principle therefore, the claimant is entitled to recover costs on costs.
11. Mr Lunney BL suggested that not unreasonably the Department had challenged some costs and, in regard to proportionality, he referred to the amount of costs already awarded (which were much the same as the compensation settled).
12. The Tribunal accepts that Mr Hawthorne had been involved in a significant amount of work in countering the Department's arguments on costs but had sought to keep his costs to a minimum.
13. The Tribunal has reservations about the approach adopted both now and in the Part 1 case, where each of the professionals made separate submissions in regard to their own fees. It seems to the Tribunal that Mr McAlister's submission for the Part 1 case went too far beyond what was necessary to deal with his own role only. Mr McAlister's claim for preparing his submission on costs amounts to more than a third of his costs in the substantive dispute and is disproportionate. From the start he should have maintained a simple but careful record of his time and outlay on the case. As a professional person experienced in claiming compensation for compulsory purchase, he also would have known that his fees might reasonably be expected to be paid from the public purse and consequently liable to be subject to closer scrutiny. In such circumstances a higher standard of recording might perhaps be expected. Ordinarily the conversion of that data into a bill for a client (and eventually for the Department) is not something for which he should expect to charge – it is something that would be expected to be reflected as part of the general overheads making up the hourly rate. The Tribunal therefore does not accept his claim for "preparation of detailed account of dates and times". However, bearing in mind the need to respond to the challenges made on behalf of the Department, but also the need for economy and proportionality, the Tribunal concludes that an allowance of 6 hours in total is appropriate. Mr McAlister's rate for acting as an advocate on costs should not be as high as that for the field in which he is expert (see e.g. McCann v Department for Social Development (2008)). The Tribunal concludes that a lower rate of £100 per hour would be more appropriate.

14. The Tribunal awards:

A D McClay & Co

Total as claimed

£1,170.40 +VAT

Mr McAlister

Total – 6 hrs @ £100 per hour

£600.00

ORDERS ACCORDINGLY

12th May 2011

Mr M R Curry FRICS MCI.Arb Hon.Dip.Rating

LANDS TRIBUNAL FOR NORTHERN IRELAND