THE HIGH COURT

[2021] IEHC 512

[2020/1086 SS]

BETWEEN

KENNETH PAYNE

PLAINTIFF

AND

THE ELECTRICITY SUPPLY BOARD

DEFENDANT

JUDGMENT of Mr. Justice Brian O'Moore delivered on the 16th day of July, 2016.

A. Background

1. Kenneth Payne is a farmer who lives at Cappaghboggan, Kinnegad, County Westmeath. On the 3rd of June 2014, the ESB served a wayleave notice on Mr. Payne in respect of his lands in Kinnegad. That wayleave notice stated that the ESB, pursuant to statutory powers which I will later describe intended to place an electric line above ground across Mr. Payne's lands.

2. On the 3rd of June 2014 Atkins Consulting Engineers, who stated they were acting on behalf of EirGrid, wrote to Mr. Payne informing him that he was entitled to *"flexibility of access payments"* and set out what they would be. The meaning of this letter is of central importance to the issue I have to decide, and I will return to it in some greater detail later in this judgment.

3. A total of €66,000 was paid to Mr. Payne between the 11th of March 2015 and the 25th of August 2017. These payments were made by EirGrid. The ESB maintains that the payments were made on its behalf.

4. Section 53 of the Electricity (Supply) Act 1927 (as amended) provides as follows:-

> "53 (1) The Board and also an authorised undertaker may, subject to the provisions of this section, and of the regulations made by the Board under this Act place any electric line above or below ground across any land not being a street, road, railway or tramway.
>
> (2) The Board and also unauthorised undertaker may attach to any wall, house, other building any bracket or other fixture required for the carrying or support of any electric line or any electrical apparatus.
>
> (3) Before placing an electric line across any land or attaching any fixture to any building under this section the Board or the authorised undertaker (as the case may be) shall serve on the owner and on the occupiers of such land or building a notice in writing stating its or his intention so to place the line or attach the fixture (as the case may be) and giving a description of the nature of the line or fixture and of the position and manner in which it is intended to be placed or attached.
>
> (4) If within 7 days after the service of such notice the owner and the occupier of such land or building give their consent to the placing of such line or the attaching of such fixture (as the case may be) in accordance with such notice either

unconditionally of with conditions acceptable to the Board, or to the authorised undertaker and approved by the Board (as the case may require), the Board or the authorised undertaker may proceed to place such line across such land or to attach such fixture to such building in the position and manner stated in such notice.

(5) If the owner or occupier of such land or building fails within the 7 days aforesaid to give his consent in accordance with the foregoing section, the Board or the authorised undertaker with the consent of the Board but not otherwise may place such line across such land or attach such fixture to such building in the position and manner stated in the said notice, subject to the entitlement of such owner or occupier to be paid compensation in respect of the exercise by the Board or authorised undertaker of the powers conferred by this subsection, and of the powers conferred by subsection (9) of this section, such compensation to be assessed in default of agreement under the provisions of the Acquisition of Land (Assessment of Compensation) Act 1919, the Board for this purpose being deemed to be a public authority"

5. The balance of the section is not material to the issue I have to decide.

6. Mr. Payne sought compensation pursuant to the provisions of Section 53 (5) of the 1927 Act. On his behalf, Land and Utility Compensation Consultants Limited submitted a claim for compensation. The subtotal of his claim for compensation amounted to €640,500, and the claim for compensation also sought the payment of professional and other costs and expenses.

7. The subtotal is made up of the following items:-

(a) Interest in land acquired.

(i) Loss of four sites at 1 acre €280,000.
(ii) Wayleave for ESB line 560 metres at €100 per metre €56,000.
(iii) Wayleave Fibre Optic cable 560 metres at €100 per metre €56,000.
(iv) Reduction in value of lands within Wayleave Corridor €30,000.

(b) Injurious affection.

(i) To house & yard €90,000.
(ii) To retained lands €116,000.

(c) Disturbance and any other matters.

(i) Owners time €7,500.
(ii) Nuisance €5,000.

8. Desmond Boyle was nominated to act as Property Arbitration in respect of Mr. Payne's claim. Mr. Boyle was to operate under the provisions of the Acquisition of Land (Assessment of Compensation) Act 1919.

9. In a Statement of Claim dated the 21st of September 2017, Mr. Payne claimed his professional costs and expenses, described as his pre-reference costs. In terms of the compensation claimed, Mr. Payne now sought a total of €400,660, made up of the following sums:-

(a) Value of land taken.

(i) The value of the land taken reflects the value of the rights acquired under the wayleave notice.
(ii) Acquisition of rights in respect of a 46 metre inner corridor including Fibre Optic cable €69,390.
(iii) Acquisition of rights on the outer corridor and retained lands €166.770.
(iv) Loss of two sites … €100,000.
(v) 50% of valuation of two sites … €50,000.

(b) Disturbance and any other matters.

(i) Owners time €7,500.
(ii) Remediation works and farm losses €7,000.

10. In its Reply, dated the 21st of December 2017 the ESB pleaded:-

"13. The Claimant has already been paid a sum of money, in the amount of €66,000, in connection with the placement of the electric line on his lands."

11. Interestingly, but not decisively, the ESB did not describe this payment as compensation (or partial compensation) in respect of the exercise by the ESB of its statutory powers under Section 53 of the 1927 Act.

12. On the 22nd of January 2018, there was a hearing before the Property Arbitrator. The special case stated by Mr. Boyle to this Court describes the hearing and its consequences in the following terms:-

"13. At the hearing, Counsel for the Claimant described the payments as being an ex gratia payment made to the Claimant by another entity and falling outside the statutory compensation scheme, requested certain information on what grounds a payment was made to the Claimant.

14. I adjourned the hearing on the application of the Claimant without reaching any conclusion on the grounds on which the alleged payment was made, the legislative basis on which it was made, or the terms on which it was made."

13. This issue was then taken up in correspondence between the parties. By letter of the 31st of January 2018 (and in response to queries raised by the solicitors for Mr. Payne) the ESB describe the legislative basis upon which the payment was made in the following way:-

"Section 53 (5) of the [1927 Act] provides for an entitlement to compensation for the placing of a line. ESB chooses to make these upfront payments to landowners who facilitate access and who would be entitled to receive compensation if they chose to pursue a reference. Up until recently most landowners have been satisfied with this level of compensation provided by the standard scale of payment and have not pursued a reference to have statutory compensation assessed. The acceptance of such payments does not prevent a landowner from seeking to have the statutory compensation assessed by the Arbitrator. It is not an accord and satisfaction of that claim if made but the fact that these payments have been received cannot be ignored (and must be taken into account) in the subsequent statutory process of determining the award to be made.

We note that Counsel for Mr. Payne stated on 22 January 2018 that the FOA payments fall outside the statutory compensation scheme. That cannot be correct. ESB is a statutory corporation. It operates under its governing statute, the aforementioned 1927 Act. As such, FOA payments which are paid in connection with the placing of a line, fall to be considered under section 53(5) of the 1927 Act, which provides for the payment of compensation for the placing of a line.

It is a landowner's prerogative to pursue further compensation under Section 53 (5) and the entitlement to do so was referred to in the Wayleave Notice which was served on the Claimant. However, if he/she does so, he/she cannot reasonably expect the significant FOA payments to be disregarded.

In summary, in the assessment of any compensation, regard must be had to the money already paid to the landowner, which he/she would not have received but for the placing of the line of the land. Otherwise, the landowner would be doubly compensated at the expense of the public purse."

14. Under a further heading in the same letter ("the terms on which the payment was made") and having quoted from the letter of the 3rd of June 2014, the ESB's solicitors go on to say:-

"The Wayleave Notice that was enclosed with the letter referred to the right to compensation under Section 53 (5) of the 1927 Act. The letter did not state that the FOA payments were in addition to any such compensation nor did the letter state that the FOA payments would not be deductible if a claim was pursued under section 53 (5)."

15. This last point is accurate, as far as it goes. However, it is important, in my view, that the critical letter did not say that the FOA payments were part of the statutory compensation to which Mr. Payne was legally entitled, nor did the letter say that the FOA payments *would* be deductible if such a claim for compensation were pursued.

16. Following correspondence persisting over a period of months, in which the ESB and Mr. Payne disagreed about issues of substance and issues of procedure, on the 30th of

October 2018 the ESB wrote to Mr. Boyle requesting that he state a case to this Court pursuant to the provisions of Section 6 of the 1919 Act. On the 5th of November 2018, Mr. Boyle wrote to the parties indicating, among other things, that his preliminary view was that it was inappropriate to state a case to this Court. On the 4th of December 2018 Mr. Boyle heard submissions from the ESB and Mr. Payne, and decided not to state a case to the High Court pursuant to Section 6 of the 1919 Act. I do not need to go into the reasons for this decision, as that determination by the Property Arbitrator was ultimately overtaken by events.

17. The ESB applied to this Court for Orders of *certiorari, mandamus* and a declaration. Broadly speaking, the ESB sought an Order quashing the decision made by Mr. Boyle refusing to state a case under Section 6 of the 1919 Act and declaring that a special case be stated to this Court. These proceedings were not resisted by Mr. Boyle or by Mr. Payne. Indeed, neither the Property Arbitrator nor the Claimant played any part in the judicial review proceedings. The furthest level of involvement on the part of Mr. Payne appears to be set out in paragraph 14 of the judgment of Twomey J. on the ESB's application, where he notes that:-

> "In correspondence, Mr. Payne did suggest that judicial review was not the appropriate procedure to use to have a case stated by a property arbitrator."

18. This position was rejected by Twomey J. in his judgment, the neutral citation for which is [2019] IEHC 475.

19. Twomey J., by Order dated the 28th of June 2019, directed Mr. Boyle to state the following special case for the opinion of this Court:-

> "Having regard to the fact that €66,000 has been paid by or on behalf of the Respondent to the Claimant by reason of the placement of the electricity line on his land, which line is now the subject of the claim for compensation to be determined by me, ought I (a) take into account the said payment or (b) disregard the fact of the said payment, in assessing the compensation to be awarded to the Claimant against the Respondent?"

20. Despite the fact that Twomey J. referred to the payment of €66,000 having been made *"by reason of the placement of the electricity line on [Mr. Payne's] land […]"*. It has (quite correctly) not been submitted to me that I am in any way circumscribed by the use of that phrase in deciding the precise nature of that payment and, in particular, whether it is a payment of "*compensation"* within the meaning of both the 1927 Act (as amended) and the 1919 Act.

B. The Issues

21. The central issue, in my view, is whether or not the payment made on foot of the letter of the 3rd of June 2014 is, in fact, a payment of compensation.

22. While there was a degree of skirmishing about this before the hearing, ultimately both sides accepted that the payment by the ESB of any amount of money against an award of

a property arbitrator must be taken into account by that arbitrator. Counsel for Mr. Payne put the matter in this way, on the second day of the hearing (at page 15 of the transcript):-

> "[…] I have no difficulty with the following situation. ESB come to my client and say we realise the placing of this line is going to cause you inconvenience and difficulties and it is going to be a while before the claim for compensation comes before the property arbitrator, we are offering you €50,000 upfront on terms that it is to be taken into account by the property arbitrator and you consent to that. And absolutely. And I am bound by that and I say that, Judge, if I sign a letter to that effect and take the money it's presented to the property arbitrator and then, as in *Lynch*, there is a clear agreement that he can have regard to and take this into account and deduct it from me and I have no complaint whatsoever, none."

23. As I describe at paragraph 47, I think the reference to the judgment of Murray J. in *Lynch* [2021] IECA 4 is misplaced. I also think that the level of formality outlined by Counsel is probably unnecessary. However, none of this can or should obstruct the fact that it is inevitably accepted by Mr. Payne's Counsel that a payment at any time against an award of compensation must be taken into account by the Property Arbitrator in making his award.

24. Before considering the letter of June 2014, it is convenient at this stage to deal with another issue raised on behalf of Mr. Payne. It is submitted that I should not answer the question posed at all, as the case stated "*is posed in a factual vacuum"* (page 5 of the transcript of day 2).

25. I do not accept this submission. This was a point more properly raised before Twomey J. when he was deciding whether or not Mr. Boyle should be ordered to state the case which I am currently considering. Mr. Payne consciously chose not to play any part in those proceedings, the result of which was a Court Order which neither Mr. Boyle (nor I) can ignore.

26. The position taken by the ESB is that there is *"more than sufficient factual substratum to allow the Court to determine the issue of law which has been posed for answer by way of questions as part of the case stated …"* (page 112 of the transcript for day 2). Counsel for the ESB, in its reply, went on to confirm that I had all the relevant facts to allow me to determine whether or not the relevant payments *"constitute compensation so as to be set against the award of the Arbitrator […]".*

27. Counsel for Mr. Payne has referred to one specific factual issue which may, eventually, have to be decided depending on the view I take about the facts currently before me. That issue is whether or not the payment by EirGrid of the €66,000 to Mr. Payne was done on behalf of the ESB. However, this factual issue is not one which should prevent me from deciding the main question before me. If necessary, the status of EirGrid is something that could be determined by the Property Arbitrator during the course of the resumed hearing which will inevitably follow this judgment.

28. On this narrow point, I agree with the ESB submission that, where it can, this Court should provide assistance to a body stating a case to it.

29. As I have observed, the ESB do not suggest that there is any other fact that I need to have available to me to decide if these payments constitute compensation. If the payments do not constitute compensation I do not think that they should be taken into account by the Property Arbitrator in making his award.

30. The wayleave notice of the 3rd of June 2014 states, expressly, that Mr. Payne "*will be entitled to have compensation assessed by agreement or in accordance with the [1927] Act"*. I mention this for two reasons. Firstly, the submission was made on behalf of Mr. Payne that the ESB was in some way not alerting landowners of the right to claim statutory compensation. That submission is inconsistent with the plain words used in the wayleave notice. The second reason why I emphasise this portion of the wayleave notice is that, despite referring in an open and fair way to the right to statutory compensation, neither the ESB (in the wayleave notice) nor Atkins (in the EirGrid letter) associate or link in any way the FOA payments with the compensation to which the landowner has a legal entitlement. It would be natural for that to be done, as the two letters are sent to the same landowner, in respect of the same wayleave, on the same day. The absence of this connection is the first small indicator that the statutory compensation and the FOA payments are distinct and unrelated. In that regard, the reference in the Atkins letter to an additional entitlement to be fully compensated *"for any reinstatement works"* constitutes only the most ethereal hint that the FOA payments are in some way to be set against the statutory compensation payable to the landowner.

31. The Atkins/EirGrid letter is well known to the parties.

32. This letter clearly sets out to Mr. Payne that a series of payments will be made to him not in compensation for any loss he will suffer as a result of the works by the ESB, but rather in recognition of his cooperation with the construction of the line. Before considering what the letter says, it is interesting to note what it does not say. I have set out in full a section from the ESB's letter of the 31st of January 2018, sent in the context of the Property Arbitration. That section includes the following points:-

    (i) These are "*upfront payments*" made to landowners "*entitled to receive compensation if they choose to pursue a reference".*

    (ii) Until recently, most landowners have been satisfied with the level of compensation provided by this scale of payments.

    (iii) The fact that these payments have been received "must be taken into account" in the statutory compensation process.

    (iv) The landowner has the "*prerogative"* of seeking "*further compensation […]"* as referred to in the wayleave notice. If this is done, the FOA payments cannot be *"disregarded".*

(v) Regard must be had to the FOA payments in assessing compensation, otherwise the landowner will be doubly compensated.

33. None of these points are to be found in any form in the Atkins/EirGrid letter. Had they all been incorporated in the letter, it would have taken on a very different significance and meaning. In making this finding I am not subscribing to the view of Mr. Payne that there is some sleight of hand on the part of ESB in this correspondence. On the contrary, I take it that the reason why these points, which are now suggested by the ESB to be fundamental to the proposed payments, were not included in the Aitkins/EirGrid letter is simply because these were not intended to be aspects of the proposal made to Mr. Payne.

34. To put it another way, if it was intended that the FOA payments would be set against the compensation due to the landowner, it would be quite regrettable that the points made by ESB in the letter of the 31st of January 2018 were not made clearly and forcefully by Aitkins/EirGrid in their letter of the 3rd of June 2014. It will be remembered that the 3rd of June 2014 correspondence was, according to the ESB at the hearing before me, sent on behalf of the ESB.

35. I will now consider what appears in the critical letter, as opposed to what its authors have seen fit not to include.

36. I would identify the following aspects of the letter that as being particularly relevant:-

(i) The payment is described as a "*flexibility of access payment".* The name itself suggests that the payment is not linked to the loss suffered by the landowner as a result of the exercise by the ESB of its statutory rights.

(ii) The payment is made *"in recognition of the cooperation with the overhead line construction […]".* Again, the stated reason for the payment is to ensure cooperation with the construction of the line as opposed to compensate the landowner in any way.

(iii) This cooperation will *"create greater efficiency in the overall management of the project"*. This rationale explains why the payment will be made. It is, of course, the case as Counsel for the ESB submitted that the landowner is under an obligation to comply with the law. That includes an obligation to respect the exercise by the ESB of statutory power. However, is trite to observe that Irish history (including recent Irish history) is littered with instances in which persons have not complied with laws which they feel to be unjust. This phenomenon runs from the activities of the Land League through to the protest against the imposition of water charges. It would not be surprising if farmers were unhappy with the compulsory placing of pylons on their land, and sought to resist this. Avoiding any obstruction (whether lawful or unlawful) to the building of the overhead line clearly creates greater efficiency (and possibly much greater efficiency) as is described by Atkins in their letter. Put simply, paying landowners for cooperation makes sense,

even if payment is not also applied in a reduction of compensation payable to the landowners involved.

(iv) The payments are based on the type of structure (and the quantity of structure) that are to be erected. Far from indicating that the payments should therefore be considered as an early compensation amount, the calculation of the amount to be paid to an individual landowner could be seen as reflecting the importance to the overall project of the cooperation of the particular landowner.

(v) Having set out the nature of the payments, the letter goes on to say the payments will be made to landowners "*who cooperate with a construction programme on their lands […]*". Again, the emphasis is on cooperation. Again, the rationale for the payment (which is that cooperation facilitates the orderly completion of each section) is given by reference to the value of the cooperation provided.

(vi) Landowners whose lands are "*only crossed by the conductor wires […]"* are given a payment "*in return for the cooperation with the build […]".* For those landowners, payment is made at the time of access to the land, thereby copper fastening the connection between the cooperation of the landowner (in permitting the lines to cross the land) and the payment.

(vii) The first payment is made at the time the works begin, thereby guaranteeing cooperation of the landowner at that critical time. The second payment is made when the works on the land are completed and all conductor wires are fully strung. That is expressly stated to be contingent on the landowner agreeing to facilitate access on the commencement date and cooperation with all the works. If this was simply an advance payment of compensation, there is no reason why it would not have been made at the start of the process. Instead, the payments are made on the drip in order to ensure the continuing cooperation of the landowner which, after all, is what the payments are designed to secure. Equally, the final payment is made as soon as the line is fully constructed and ready to be energised and (like the second payment) is contingent on the *"reasonable*" cooperation of the landowner. It is also a payment made, not in compensation or part compensation or advance compensation, but rather *"in recognition of the cooperation of the landowner […]".*

(viii) These provisions are underscored and, to some extent, repeated in the highlighted section on page 2 of the letter, reading:-

"Payments 2 and 3 will not be made where access is denied or unreasonably delayed or where access is facilitated only after the serving by ESB of a date & time notice. No exceptions will be made to this approach".

(ix) Again, the linkage between cooperation and the payment is absolutely clear. Interestingly, the payment will be lost even if the ESB simply has to go to the trouble of serving a "*date and time notice*". If anything, this emphasises that the

purpose of the payments has been to secure cooperation, avoid resistance (either lawful of unlawful) to the works, and cut down on the paperwork which would otherwise be required in the course of construction of the line.

37. For these reasons, I believe that the letter of the 3rd of June 2014 (properly construed) offered to make payments to Mr. Payne in order to ensure that he cooperated with the overhead line construction of the Kinnegad – Mullingar 110 Kv reinforcement project. It is not an advance payment of compensation for any loss he might suffer as a result of the exercise by the ESB of their statutory powers under the 1927 Act.

38. In construing the key letter, I have taken into account not only the letter itself, but all of the context provided to me in the course of the case stated. As I have said, the ESB expressly and properly accepted that all of the facts I needed (in its view) to decide the true nature of this letter were available to me.

39. I have, of course, also taken into account the legal submissions made to me by the ESB and by Mr. Payne. I have already described my decision on certain of those issues earlier in this judgment. I shall now deal briefly with the other legal submissions made.

40. Counsel for the ESB submitted powerfully that, in deciding the question posed to me, I must take into account the principle of equivalence. I have carefully considered this submission for the purpose of deciding the question posed by Mr. Boyle. The principle, which was not in dispute between the parties, is summarised (at paragraph 46 of the ESB's written submissions) in the speech of Lord Nicholls in *Director of Buildings and Lands v. Shun Fung Ironworks Limited* [1995] 2 AC 11 (1) as follows:-

> "No allowance is to be made because the resumption or acquisition was compulsory; and land is to be valued at the price it might be expected to realise if sold by a willing seller, not an unwilling seller. But subject to these qualifications, a claimant is entitled to be compensated fairly and fully for his loss. Conversely, and built into the concept of fair compensation, is the corollary that a claimant is not entitled to receive more than fair compensation: a person is entitled to compensation for losses fairly attributable to the taking of his land, but not to any greater amount. It is ultimately by this touchstone, with its two facets, that all claims for compensation succeed or fail."

41. The consequence of my decision is that Mr. Payne will receive both the compensation assessed by the Property Arbitrator and the sum of €66,000 paid to him by EirGrid. In the view of the ESB, that is a very generous payment. The ESB may well be right on this point. However, the payment made by EirGrid is one made to secure the cooperation of Mr. Payne. The ESB may have paid a lot for that cooperation, but the ESB has chosen to make these payments and on these terms.

42. In their written submissions, Counsel for the ESB describe *"these upfront payments of substantial sums of compensation […]"* as having advantages for the landowner as well as for the ESB (paragraph 50 of the written submissions). Had the payments been so

described in the relevant letter my decision may have been different. If this was an early payment of compensation it would indeed be advantageous to the landowner. However, that is not how it was so described.

43. It would certainly have been open to the ESB to write (either directly or through any agent) to a landowner such as Mr. Payne offering payments of the same sort as were actually offered to him, but making it clear that these payments would be set against any compensation to which he was entitled. The letter could have pointed out the significant advantage to Mr. Payne of receiving these early payments, even if they were subsequently set against an award of compensation. Indeed, the ESB could have sweetened the offer to Mr. Payne by saying that, even if he pursued a claim for compensation and was awarded a smaller amount, the ESB will not look for a repayment of the difference between the money paid on the sum awarded. All of this could have been done. None of it was.

44. I therefore find that the principle of equivalence is not violated by my decision. If the ESB chooses to make a payment to a landowner other than a payment in respect of compensation, then it cannot complain if that amount is not taken into account in assessing the compensation to be awarded to the landowner.

45. It is certainly the case that the payment to Mr. Payne was made in the context of the exercise by the ESB of its statutory power. For the reasons I have given, and specifically the nature of the payment as described by the ESB (or its agents), this context is not enough to allow it to be deducted from compensation ordered by the Property Arbitrator.

46. There are a number of associated submissions made on behalf of the ESB. Firstly, it is stressed that the FOA sums paid are public funds, that ESB has already paid €1,917,000 in FOA payments on the Kinnegad / Mullingar 110 Kv line alone, and that ultimately these payments will impact on the cost of electricity. All of this is true. These considerations would have made it all the more important for the ESB, Atkins or EirGrid in offering these payments to ensure that they could properly have been set against any compensation payable. This was not done. If it was the intention of the ESB that these sums be considered as advance payment of compensation, the failure to set out in the relevant letter that this was so is inexplicable. If it was not intended that the sums be seen as advance payment of compensation, which I believe is the case, then it is not open to the ESB now to complain that these payments will have an impact on public funds, will affect the price paid by consumers, or may be difficult to reconcile with the ESB statutory powers.

47. I can deal more briefly with submissions made on behalf of Mr. Payne. Reliance is placed in the submissions on the judgment of this Court (Allen J.) and the Court of Appeal (Murray J.) in *Cork County Council v. Lynch* [2021] IECA 4 to sustain the proposition that an arbitrator cannot determine matters of private law. I think this reliance is misplaced. In both Courts, the analysis by the respective Judges of the jurisdiction of the Property Arbitrator was by reference to the issue which that Arbitrator was actually directed to decide. The arbitrator could not decide an issue other than the issue actually referred to

him. The judgment of Murray J. leaves no room for doubt about the proposition that a Property Arbitrator can decide what he described at paragraph 51 as:-

> "[A]ncillary issues that will arise in the course of the proceedings before him which may necessitate evidence or determination in order to rule on compensation."

Indeed, one of these ancillary issues is the one presented in these very proceedings. Murray J. appears to me to accept that "*as a necessary adjunct to the power to assess compensation*" it is within the jurisdiction of the Property Arbitrator to decide *"whether or not to take account of other payments made to the landowner by the relevant authority"; (ibid)* at paragraph 60.

48. As I have already mentioned, Counsel for Mr. Payne accepted in principle that a sufficiently clear payment in respect of compensation could be taken into account by the property arbitrator in making his award. Life is not always so simple. I see no reason in principle why, even in more complex cases, the Property Arbitrator cannot decide whether or not money paid by the acquiring authority to a landowner involves a payment in respect of compensation. If the payment is of this quality, then it must be taken into account by the Property Arbitrator in making his award.

C. Decision

49. I have decided, therefore, to answer the question of law posed by Mr. Boyle in the following way:-

> The sum of €66,000 paid to Mr. Payne is not to be taken into account by the Property Arbitrator in assessing the compensation to be awarded to him against the ESB.

50. I will list the matter for mention on the 27th of July 2021 at 10:30am to hear the parties on any issues that arise from this judgment, including the question of costs.