

Court Attendance

Matter: RTS Substation Action Group and EAAI v An Bord Pleanala and Eirgrid

I attended at Court 11 on the morning of the 28th January 2015, with Dermot Sheehan, B.L. Unfortunately Ken Fogarty, S.C. was not in a position to attend as he was obliged to attend a Jury trial in Kilkenny. Ken explained that Bar Council rules obliged him to attend at Kilkenny.

Unfortunately, we were not in a position to seek an adjournment as Judge Haughton had made it clear on the 21st January 2015 that he would not adjourn the matter again.

At 10:28 a.m. while standing outside Court 11 discussing the case with Dermot, Alan Doyle, a partner with Barry Doyle & Co. Solicitors approached me and asked could he have a word with me. I agreed to have a word with Mr. Doyle. Mr. Doyle stated that his client would not seek their costs in the event that we did not seek our certificate of appeal.

I made it clear to Mr. Doyle that I thought that his proposal was inappropriate in circumstances where Ms. Butler had indicated on the day we received the judgment that ABP would not be seeking their costs. Mr. Doyle indicated that ABP were in a position not to keep to this agreement.

I told Mr. Doyle that I would need to seek instructions from my clients. We asked the Judge's assistant for extra time, and he allowed this. I immediately telephoned Noel Graham and explained the situation. As we were not in a position to say categorically that section 50b applied, the RTS ground and EAAI were potentially exposed to costs.

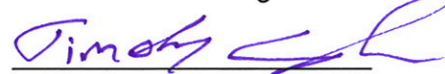
Noel said he would seek instructions. I then went into the Court where the legal representatives of ABP and Eirgrid were sitting. I asked whether they would consent to an adjournment on account of the difficulty of contacting my clients. They indicated that they would not oppose an adjournment, but both they and Dermot expressed the view that they did not believe that the Judge would grant such an adjournment in light of his comments last week.

I then received a call back from Noel, who informed me not to seek the certificate. On receiving this email, I telephoned David Malone and explained the situation to him. In circumstances David also instructed us not to seek a certificate.

Noel asked me to ascertain whether it would be possible to recover any costs from ABP and sought the view of Mr. Doyle. Mr. Doyle and Ms. Butler made clear that it would not be possible for them to give costs on account of their position as a State Agency.

In light of the above, Dermot informed the Court that our client would not be seeking a certificate, and Counsel for ABP and Eirgrid stated that they would not be seeking their costs.

As a result the Judge dismissed the Action with no order as to costs.


Timothy Smyth 29.01.2015