Appeal No: VA19/5/0658

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

NA hACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015

IARNRÓD ÉIREANN-IRISH RAIL **APPELLANT**

AND

COMMISSIONER OF VALUATION **RESPONDENT**

In relation to the valuation of Property No. 2009480
3/1AB Ballygillane Little Rosslare Harbour County Wexford

B E F O R E

Carol O'Farrell – BL	**Chairperson**
Sarah Reid – BL	**Member**
Killian O'Higgins - FRICS FSCSI	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF JULY 2023

1. This Appeal proceeded by way of an oral hearing before the Valuation Tribunal sitting at Holbrook House, Holles Street, Dublin 2 on the 24th of May 2022. Mr Peter Cunningham, MSCSI MRICS, attended to give evidence on behalf of the Appellant. Mr. David Dodd BL instructed by the Chief State Solicitor represented the Respondent and Ms Carol Spain, Head of Appeals in the Valuation Division of Tailte Eireann attended to give evidence on behalf of the Respondent.

2. In accordance with the Valuation Tribunal (Appeals) Rules 2019, the parties' valuers exchanged their respective précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal.

3. The parties were informed orally on the hearing date that the appeal would be disallowed and that the reasons for that decision would be set out in writing by the Tribunal. The reasons are now set out.

4. The Appellant appealed against the determination that Rosslare Europort has a net annual value (NAV) of €2,163,000 on the ground that the *"per ton value of the assessment'* is incorrect because it does not accord with that which is required to be achieved by section 19 (5) of the Valuation Act 2001 as amended ('the Act'). In the Notice of Appeal, the Appellant contended for a valuation of €1,236,961.66, stated to be the equivalent of €571.08 per 1,000 tonnes. This figure was revised at the hearing

to €1,664,275. The second and third grounds of appeal contended that the property ought to have been excluded from the valuation list and valued within Irish Rail's global valuation and that third party properties were included within the valuation were formally abandoned at the hearing

5. Mr Cunningham, who presented the appeal, is employed within the Property Department of Córas Impair Éireann (CIÉ) and is a Chartered Surveyor with over 25 years' experience in surveying practice particularly within the rail and bus transport industry in Ireland. His précis of evidence was very short. No accounts were appended and it did not describe the appeal property or the Appellant's operations or set any facts to support the ground of appeal. He said the Appellant is a designated activity company which was incorporated in 1987 as a limited company subsidiary of CIÉ to provide rail transport activities and is also responsible for the maintenance and operation of Rosslare Europort where the Appellant provides passenger transport and freight by sea services.

6. Mr Cunningham accepted that the appeal property fell to be valued by the R & E method of valuation. He stated in his précis "*The calculations utilised to establish the NAV provided by the Commissioner of Valuation are accepted by CIÉ/IÉ"* but a point of difference arose in respect of the apportionment of the divisible balance as to a tenant's share of 35%. Mr Cunningham contended that this apportionment did not reflect the level of risk carried by the Appellant in operating Rosslare Port and that the Appellant considered that the divisible balance should be apportioned on a 50:50 percentage basis. It was pointed out that a tenant's share of 50% was consistently applied in the global valuations of the general Iarnród Éireann enterprise in 2005, 2010, 2015 and 2020. He stated that the level of risk applicable to the operation at Rosslare Port is proportionate to the Appellant's other operations to justify a tenant's share of 50%. On that basis he contended for a reduced NAV of €1,664,275.

7. When asked by the Tribunal why he had not complied with the requirements of rules 35 and 36 of the Valuation Tribunal (Appeals) Rules 2019 Mr Cunningham explained that he thought it unnecessary to do so as it was an accounts-based valuation. He said that he was unable to explain to the Appellant how the tenant's share of the divisible balance was assessed at 35% as there had been no dialogue with the Respondent's valuer. Based on his past experience in dealing with global valuations, Mr Cunningham had an expectation of some form of dialogue with the Respondent's valuer that might possibly have resolved the appeal and that the reason this appeal was before the Tribunal was because he felt '*disadvantaged*' in not receiving an explanation as to why the tenant's share was assessed at is 35% instead of 50%. He stated that Brexit was a significant concern at the valuation date given its uncertain impact on port operations. He said that in 2017 80% of freight operations were to the UK whereas now it is 40%.

8. Ms Spain in her précis of evidence noted that the appeal had been netted down to a single ground, which she contended was not included in the Notice of Appeal. She made the additional point that the Appellant's précis did not comply with the Valuation Tribunal (Appeals) Rules 2019 and as there was nothing in that précis that required a response from the Respondent. The tenant's share of the divisible balance is based

upon a consideration of several factors and the Tribunal had held in previous decisions that the tenant's share must be considered in the context of the particular type of business carried out at the Property and the respective capital investments of the hypothetical landlord and tenant in the that business. She pointed out that a seaport is not the same type of business as a national rail network operation.

9. Counsel for the Respondent submitted that the appeal had to fail in the absence of any facts to support the ground of appeal and, in any event, the Tribunal had no jurisdiction to determine the appeal as the ground sought to be advanced by the Appellant was not stated in the Notice of Appeal. The Notice of Appeal contended that the "*per tonne value assessment of the Valuation Office is excessive*" whereas the valuation was carried out by the R & E method of valuation and not on a "per tonne" basis.

10. Prior to considering the jurisdictional point, Mr Cunningham, in response to questions from the Tribunal, explained that he filled out the Notice of Appeal (which he thought had been signed by Mr Costello, the Appellant's Solicitor, but, in fact, was signed by him) and that in setting out the grounds of appeal he had used the words "*per tonne value assessment"* because the bottom of the document received from the Respondent setting out the R & E calculation concluded with a NAV per tonne figure. Mr Dodd explained that the tonnage figure of 2,166 is the amount of freight that passes through Rosslare Port as calculated by the Central Statistics Office and that the valuer had expressed the net annual value on a per tonne basis at the end of the R & E calculation in the event there was a future revision of the property.

11. The Tribunal rejected the argument that it had no jurisdiction in respect of the sole ground of appeal merely because the Appellant had appealed the "*per tonne value assessment*" for being excessive. The Appellant clearly challenged the net annual value figure as €2,163,557 (prior to rounding down) divided by the tonnage (2166) equates to a nav per tonne of €998.87. So, while the valuation method may have been mischaracterised and the Appellant referenced a '*per tonne*' metric, it was clear that the appeal was taken against the NAV €2,163,000 on the ground that it was excessive.

12. In reaching our conclusion that the appeal must fail, the Tribunal was struck by the failure of the Appellant to refer to any facts or information that would be required to support the ground appeal. An appellant must put forward, in support of its appeal, facts which are sufficiently specific and detailed for the Tribunal to regard them, at the very least, as credible and to enable the Respondent to contest them in an effective manner and, if appropriate, to submit evidence in rebuttal.

13. The sole challenge to the valuation of the property was the apportionment of the divisible balance as to a landlord's share of 65% and a tenant's share of 35%, all other figures in the R & E valuation having been agreed between the parties. The Appellant's précis said little if anything in support of the apportionment of the divisible balance on a %0:50 percentage basis. In response to question from the Tribunal, Mr Cunningham said a tenant's share of 35% was not reflective of the risk assumed by a tenant in running operation at the property and ought to be adjusted to 50%. In his

précis he referred to the application of a tenant's share of 50% in the global valuations of the railway network.

14. The Tribunal engaged in a line of inquiry to form a view as to the likely prospect of a successful appeal if the Appellant were to be given an opportunity to file a supplementary précis of evidence. Mr Cunningham correctly acknowledged that the apportionment of the divisible balance is a question of fact to be decided having regard to the circumstances of the property. He informed the Tribunal that at the valuation date the sole concern in terms of operating the Appellant's business was Brexit.

15. The tenant's share has to be sufficient to induce the tenant to take the tenancy, to provide a proper reward so as to allow for profit, and to provide an allowance for risk and return on tenant's capital. At the hearing, the Tribunal was furnished with a document setting out the R & E calculation that supports the list valuation of the property and having regard to the amount of the divisible balance €3,328,550 the Tribunal considered the Appellant had no prospect of successfully arguing for a tenant's share in excess of 35%.

16. In the circumstances, the Tribunal dismissed the appeal.

RIGHT OF APPEAL:
In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.