Neutral Citation Number: [2008] IEHC 57

THE HIGH COURT

2001 No. 4672P

BETWEEN

DAVID ADAMS

PLAINTIFF

AND

THE COUNTY COUNCIL OF THE COUNTY OF GALWAY

DEFENDANT

Judgment of Mr Justice Michael Peart delivered on the 12th February 2008

1. For eighteen years prior to 23rd April 2000, being the date on which the plaintiff states that he received an injury for which he seeks damages in these proceedings, he was, amongst other things, employed by the defendants as a part-time fireman. At that date he was forty nine years of age. The evidence suggests that the plaintiff is an experienced fireman, including in relation to dealing with bog fires at night. Over his eighteen years it would appear that the records indicate that he has been called out on about forty nine occasions to deal with a night-time bog fire.

2. In addition to serving the community as a fireman, he was a teacher of arts and crafts to traveller families, and also to young offenders. In addition to those activities, he had about two weeks' employment per year with Lydons Catering during Galway Races week.

3. The plaintiff has given evidence of receiving basic training after he joined the fire service, and that there has been ongoing training from time to time thereafter. But he says that none of this training was related specifically to dealing with fires on a bog.

4. However, in the evening of 23rd April 2000, a '999' call was received by the Galway fire service, because a bog-fire had been reported as burning in the area of Glenamaddy in Co. Galway. The local fire service to which the plaintiff was attached at Mountbellew was alerted, and the plaintiff and three others attached to that station responded to the call and attended for duty at the fire station. They were the Station Officer, Michael Hughes, Eamonn Colleavy who was the driver of the fire appliance, Pat Keating, who was a sub-officer, and the plaintiff, who was a fireman. The plaintiff says that he was alerted by bleeper at about 8.40pm.

5. Having loaded up the appliance at the station with what equipment was required they set off to the fire, arriving at the bog at about 9pm. It was not yet dark at that stage, but clearly must have been getting dark.

6. While each of these men had many years' experience of bog fires, they do not appear to have been out on this particular bog before. They arrived and parked the appliance at a point where the public road ended, and where a small lane leading around the bog commenced. A local man met them where they parked, and offered to bring them and their equipment in his car along that lane, and appears to have suggested to them that he would bring them to a convenient point so that they could commence tackling the fire from the back of the fire from that position. The size and weight of the appliance meant that it could not have safely travelled along this particular lane.

7. The plaintiff's evidence was that he laid three large torches on the ground, as well as some beaters and a bucket. According to the plaintiff he assembled the equipment on the ground prior to the party setting off into the bog to extinguish the fire. He say that he himself picked up a beater and the lamp, but that the officer in charge, Michael Hughes directed him to bring the bucket, and that upon being told to do so he handed over his lamp to Mr Hughes and proceeded with a beater and the bucket. The presumption from the plaintiff's evidence at this stage is that the others each took up a torch and a beater, but it appears from Mr Hughes's evidence later that only one large torch was taken into the bog, and that was carried by Mr Hughes. It would appear that the other men carried only a beater.

8. In addition to this equipment each man had his own personal small torch. I am satisfied that this personal torch is intended to enable a fireman to illuminate instruments such as a gauge on a breathing apparatus or to read a map. It is part of standard equipment, and while it has the capacity to provide some light for these purposes, it was clearly never designed or intended to provide sufficient light to illuminate a path along a bog, as the single larger torch which was brought onto the bog. This personal torch fitted into a small pocket on the foreman's uniform. I will for convenience refer to the larger torch as a lamp in order not to confuse it with the smaller personal torch.

9. This night was described by the plaintiff as being a "mucky night". It was not raining at the time but he described the bog as being very wet. In fact he described this bog as being the wettest that he had ever been in over his eighteen years' experience, and he found the terrain difficult to negotiate.

10. According to the plaintiff they all set out in the local man's car and at a convenient point they alighted and made their way to the fire across the bog. He thinks that it took about fifteen minutes to reach the fire. Mr Hughes led the team across the bog, and the plaintiff was at the rear of the party of four. He recounted that he fell onto his knees at one stage on the way across to the fire and into about three inches of water. He sustained no injury as a result of this fall, which I shall refer to as 'the first fall', because it is as a result of a second fall into a ditch or drain that the plaintiff sustained the injuries complained of herein, and for which he seeks to recover damages.

11. I should refer to the fact that there has been some dispute arising from the history of the incident as taken from the plaintiff his expert fire engineer, Mr Williamson, as to whether the first and second fall occurred on the return rather than that the first being on the way to the fire and the second on the way back. I do not find it necessary to dwell on that aspect of the disputed evidence. In my view nothing turns on that question.

12. The plaintiff stated that they walked about a quarter of a mile to the fire, which was burning on the top of the heather on the bog at this time. The plaintiff stated that there was no house in the immediate vicinity of the fire, although he saw some people at a grassy area at the edge of the fire, and these people appear to have been beating the fire at that position with some bushes. The fire appears to have been progressing in the direction of that grassed area.

13. He says that on the way to the fire itself they had to cross a number of ditches, and, as I have said, he fell on one occasion as the party made their way to the back of the fire. The party extinguished the fire in due course, and then commenced the journey back to the fire appliance. The journey back did not retrace the route taken to the fire along the laneway in the local man's car, but rather took a route directly across to where the fire appliance had pulled up at the end of the road.

14. Even though the plaintiff's evidence was that he had put three lamps on the ground at the appliance before they set off across the bog to the fire, his evidence was that as they travelled across the bog and on the return journey, Mr Hughes held a lamp, that Mr Colleavy and Mr Keating each held a beater and a lamp, and that he himself was carrying the bucket and a beater. Each man also had the personal torch in their uniform pocket. As I have said none of these men had been on this particular bog before and were therefore unfamiliar with it, and of course by the time they had extinguished the fire a couple of hours had passed and it was dark. Since the fire was extinguished they no longer had the benefit of the light from the fire.

15. The journey back to the appliance was therefore in complete darkness, save for any light available from the lamp being carried by Mr Hughes. I have stated that the plaintiff has assumed in his evidence that all these men apart from himself carried a lamp. But in fact I am satisfied from the evidence of Mr Hughes the officer in charge of the party that in fact only one lamp was brought onto the bog and that this was held at all relevant times by him. He said that it was normal practice to carry one lamp into a situation like this. If the plaintiff is correct that he placed three lamps on the ground before they set out in the car, two must have been left behind. That is improbable, and I conclude that the plaintiff's evidence is the less reliable in that respect. In fact, as it turns out, it is in ease of the plaintiff that I so conclude as will become apparent.

16. As the party made its way back across the bog to the fire appliance parked on the road, they were in single file, with the plaintiff at the rear. The leader was Mr Hughes, and there is no doubt from the evidence that the distance between Mr Hughes at the front and the plaintiff at the rear was about twenty to thirty feet. The plaintiff states that the journey back across the bog to the fire appliance involved negotiating various ditches or drains in the bog. He described these as being two to three feet wide and filled with water, but that he had no knowledge about this in advance. He was asked if there was any plan discussed in relation to negotiating this terrain, and he stated in reply that no plan was discussed, and that it was a matter simply of following the leader i.e. Mr Hughes. The plaintiff was at the rear of this party as they went back. There has been some evidence from the plaintiff that at this time he was not fully fit, though not in the sense of having any injury. He described himself as being a little overweight, and not as fit as in earlier years. He stated in his evidence in this regard that he did not feel 'right' going into the bog and that he felt tired and overweight, and had difficulty keeping up with the others. He accepted in cross-examination that he had not mentioned to anybody that night that he did not feel 'right' or that he was tired.

17. Nonetheless the undisputed evidence is that a distance of only twenty or so feet separated him at the rear from Mr Hughes at the front as they made their way back across this bog to the fire appliance.

The second fall

18. In spite of the fact that Mr Hughes was only about twenty feet ahead of the plaintiff, he states that he was unable to see him at the head of the party due to the lack of light. The plaintiff stated that he could see the other two men ahead of him as they had what he says were lamps and stated at one point that while they were shining these from time to time behind them, these lamps were dazzling him somewhat. That evidence is also not reliable given the evidence of Mr Hughes that he alone carried a lamp. Mr Hughes's view is that Mr Colleavy and Mr Keating must have been using their personal torches, and in fact he used this fact in order to suggest that these personal torches were strong enough to light the way a bit if they had the capacity to dazzle the plaintiff. The plaintiff certainly did not use his personal torch at all.

19. At any rate the plaintiff has described that he came to a ditch which he said was about four feet wide and that before he jumped across it he threw his beater and his bucket across to the other side and then made to jump across himself. He says that as he commenced the jump across, the edge of the ditch gave way beneath his foot, that his chest hit the top of the bank on the other side, and that as a result he fell back and down into the water in the ditch. The plaintiff claims that it was the lack of light which caused him to fall into this ditch, and that if he had been provided with a lamp he would have been able to see that the bank of the ditch was unstable, and that he was prevented from knowing the state of the bank and from making a decision to perhaps go around the ditch rather than jump across it in the way he did. Eileen Lydon SC for the defendant put it to the plaintiff that it was the bank giving way which caused him to fall, and not the lack of light, but the plaintiff is insistent that it was the lack of light since, if he had had a lamp he would have been able to be aware of the condition of the bank from which he was jumping.

20. He demonstrated with his hand that the water came up to his chest, and states that he called out and that he panicked. It was suggested in cross-examination that the water had come only up to his knees but he insisted that it had reached his chest.

21. Upon hearing his call, Mr Colleavy came back to him, as did Mr Keating, and that they pulled him up out of the water. He said that his Wellington boots were full of water and that his clothing was soaked with water. He also described that at this stage he was in great pain, and that he sat down for about five minutes, and that Mr Colleavy and Mr Keating remained with him there. He could not recall having seen Mr Hughes getting over this particular ditch.

22. The pain which he felt was in the area of his groin and stomach. It was a sharp and powerful pain which radiated up his legs to the middle of his stomach, and he described breaking out in a sweat after it. He had never had this type of pain before this incident. Having rested for about five minutes with Mr Colleavy and Mr Keating, he states that they assisted him back across the bog to the appliance, but not to the extent of having to carry him.

23. After they returned to the appliance they stopped at a food outlet to get something to eat. The evidence is that at that stage, the plaintiff did not at first get out of the appliance with the others, but remained in it, because he was till in great pain. However he says that he was told to go in and join the others which he did. He says that there was some joking from the others about his being injured. I take this to have been some form of good-humoured banter, as one can imagine might happen among men who have known each other and fought fires together over so long a time.

24. The plaintiff has stated that Mr Colleavy asked him if he needed a doctor, but the plaintiff said that he did not, and he was driven home. He had made his way on his bicycle to the station after he received the call to go to the fire station. When he got home he went to bed, but did not sleep because of the pain which he still felt. He believed at the time that he had pulled something, and took some painkillers. He in fact lay down for a while on the hall floor, as others in the house were in bed by the time he got home. He was well enough to attend a routine fire drill the following day and he turned up for that in the evening. But it appears that during the course of that fire practice/ drill he felt great pain when he attempted to lift a hose. He went back to the station and then immediately went back home.

25. The plaintiff never reported this injury in any official way. He agreed that he had never told Mr Hughes that he had been injured in the fall, but he stated that Mr Hughes was aware by the following day that he had been injured because he asked the plaintiff how he was feeling. In fact he states that he was not aware that there was a book at the station in which accidents or injuries were supposed to be entered. There is some dispute in the evidence which has been given by Mr Hughes as to whether the plaintiff knew that there was such a book, because there is in fact an entry from 1996 where a minor injury to the plaintiff is noted. However, I do

not find it necessary to determine that particular matter.

26. In his evidence the plaintiff stated that he went to see his doctor the following day, a Tuesday. However, I am satisfied that his recollection of this is incorrect, and that it was, as his doctor's evidence has been, some five days after the date of the injury that he first went to see his doctor. He was prescribed some painkillers. But he has never returned to fire duties since this accident. Some nine months later he was retired from the fire service on health grounds. It appears also that some months after this accident the plaintiff was diagnosed as suffering from Type 2 Diabetes, and it is suggested that it is possible that because the plaintiff has put on weight due to inactivity following his injury, that this at least contributed to the onset of diabetes. I will come to that in due course.

27. This injury has had some impact on the other teaching jobs which I have referred to, particularly since one of them involved an amount of driving which he finds difficult and uncomfortable as a result of his current back complaints. I will also deal with this aspect of the case later.

28. Mr Colleavy gave evidence for the defendant. He has also been a member of the fire station for eighteen years, and eleven for eleven of those years he has known the plaintiff. He has dealt with abut a hundred bog fires over this time, and described them as a common occurrence in the area. In response to the evidence given by Mr Williamson and by an engineer called by the plaintiff, Mr O'Tuairisg that this fire ought to have been left to burn until daylight and then be attended in daylight since there was no immediate threat to life or property, Mr Colleavy stated that in his experience an emergency '999' callout was never ignored in that way. He also said that it was not unusual for a party of four men to attend to a bog fire. That evidence was in response to Mr Williamson's evidence that certain fire regulations referred to state that such fires should be dealt with by a minimum of six fire personnel.

29. Mr Colleavy stated that the fire extended for about three quarters of a mile to a mile in length. He said that there was a house and some forestry in the general area of the fire, and although it was heading in the general direction of the house, it was not near the house at the time.

30. His evidence was that on such occasions he would never carry a lamp as such, since it would be troublesome when using a beater which its weight required the use of both hands. Although the bog was soft he had had no difficulty getting across the bog to the fire, and that any ditches has been negotiated easily with the aid of the beater, which he stated could be used as an aid to cross soft ground and ditches. He agreed that they had made their way to and from the fire in a single line with the plaintiff bringing up the rear. He believes that from time to time he would have assisted the plaintiff crossing ditches if he needed or had asked for any help, but he could not recall any particular difficulties in this regard.

31. He thinks that they took about one and a half to two hours to extinguish the fire with the beaters. The direction from which they fought the fire took them back in the general direction of where they had left the appliance on the road before they were driven in the car to the back of the fire. It appears also that when they had put out the fire they were advised by an elderly man, perhaps the occupant of the house which has been referred to, that the easiest route back to the appliance was not to retrace their steps the way they had arrived, but a direct route across to the road from where they had finished extinguishing the fire. Mr Hughes's evidence was to the same effect. He agreed also that Mr Hughes was at the front and that he had directed them to follow him out of the bog, and that Mr Hughes had the lamp and guided them along the way. He stated also that the plaintiff was the last in the line of four men.

32. He could not recall actually negotiating the ditch into which the plaintiff had fallen but assumed that he must have since they were all in a line. He said that he had encountered no particular difficulties on this route. He recalled that the plaintiff had called for help after he fell into the ditch, but believes that the water was up to the plaintiff's knees, and that he had stretched his beater back to the plaintiff and that the plaintiff had got out of the ditch by grabbing the beater and hauling himself up the bank and out of the ditch. He did not regard the plaintiff's fall as unusual in a bog, and recalled that they had had a laugh about it when the plaintiff had got out. He recalled that they had rested for a few minutes and then made their way back to the appliance. He had not had to lift the plaintiff. He recalled the plaintiff complaining of pain in his side, and that he had asked the plaintiff if he wanted to be brought to a doctor, but that the plaintiff had declined that offer.

33. He stated that Mr Hughes had carried the lamp, but that if he had needed light himself he would have used his personal torch. He accepted that the personal torch provided less light than the lamp, but that it was better than no light at all. He did not recall that the plaintiff was complaining of pain on the following day when they had all attended a routine fire drill.

34. Ronald Robins Sc cross-examined Mr Colleavy in relation to his evidence. He accepted that this fire was never out of control, and that there had been no question having to station a man near the house referred to since it was never in danger from the fire, and that no evacuation had been necessary. He accepted also that he would not consider crossing that bog with no lamp whatsoever.

35. Mr Robins referred Mr Colleavy to a written statement which he had made shortly after this incident, and in which he had stated that the plaintiff was finding the journey on the bog difficult. This contrasted with his evidence in court that no particular difficulty was encountered by the plaintiff on this occasion. He agreed that the statement made at the time was different to his recollection of events now in evidence. Mr Robins referred also to the fact that in his statement he had referred to the plaintiff's fall being on the way to the fire and not on the way out, and that there was no mention of a fall on the way out. He agreed that this account was different to his evidence in court. It was put to him that his recollection of this night therefore was not now reliable, and, in fairness to Mr Colleavy, he accepted, when pressed, that this was the case.

36. Michael Hughes, the Senior Officer, also gave evidence. He retired from the service in 2004, but had spent the previous thirty years in the fire service on a part-time basis. I should perhaps add that all these men were part-time members of the service. In his experience bog fires are a common occurrence, and that attending such a fire with four men was usual, and that it was very much a matter of what personnel were available when a call came to the station to go to a fire. There are apparently eight men attached to the station in question, but not all would at all times be available for duty. In any event, he stated that if it became necessary to do so, he could always call for additional resources, but that on this occasion no back-up had been necessary.

37. He stated that training for bog fires was part of in-service training, rather than being taught in a classroom setting as part of a training programme. He had worked with the plaintiff since the plaintiff joined the service in 1982, and he regarded the plaintiff as an experienced fireman, including in relation to bog fires.

38. He recalled this particular evening when the emergency call was received to go to this bog. He understood at the time that it was a gorse fire and that some forestry was under threat. He said that when they arrived at the bog they could see the fire clearly, and that it was not a small fire but extended for perhaps a mile in length. He stated that upon arrival at the location he directed that three beaters, a bucket and the lamp be brought to the fire, and that while the light was diminished, there was no difficulty making

their way to the fire.

39. As to whether he ought to have made a decision to leave this fire until the following morning, rather than go over the bog in darkness, he stated that in his thirty years' experience he had never done that, and that on all occasions he had extinguished a fire once called out to deal with it. He said that there had been no difficulties getting to the fire, and that he had been aware of a house in the area, and had been aware of some people who were at the fire. He had apparently heard them before actually seeing them. He then saw that they were beating the fire with some bushes.

40. He regarded the suggestion that on this occasion there was no risk to life and property and that accordingly he should have left the fire until the morning as "nonsense". He stated that as far as he was concerned their job was to fight fires, taking all reasonable safety precautions, and he did not consider that there was any reason not to do so on this evening. He believes that there was a risk to people and to property given that there were people actually trying to beta the fire with bushes and that there was the house referred to. He also stated that there is a danger that the smoke from the fire can cause a hazard to traffic on the road, and that it was correct to fight the fire that night, taking into account the safety to his men at all times. He believes that with all fires on a bog there is some element of risk, but that this is part of the job involved. He felt that this fire was not particularly difficult to extinguish since the vegetation was not too dry.

41. As far as the terrain was concerned, there were cuttings and trenches, drains and mounds of various kinds to be negotiated, but nothing unusual for a bog.

42. He stated that when the fire was extinguished, he had a conversation with an elderly local man as to the best route to take out of the bog and back to the appliance. That man suggested a route directly over to the appliance rather than to go back the way they had come, and he told them to watch out for a river that was close.

43. He stated that he was the one holding the lamp and that he led the others out of the bog with the use of that lamp. He stated in his evidence that it was normal to bring only one lamp because more than one lamp poses difficulties if the men are using their beaters. He led them out carefully, urging them to take care, and he stated also that he could not recall jumping any ditch on his way, and that if he came to any particular difficulty he would call back to the others to watch out for it. He said that there would have been a couple of yards between each man, and that in any event each man had his personal torch.

44. He had been aware that the plaintiff had fallen into a ditch, but did not regard such an occurrence as particularly unusual on this sort of terrain, and had not actually seen it happen. It was a common enough occurrence in his experience. Once out of the bog, all the equipment was put away and they made their way back in the appliance, stopping off on the way for something to eat. He stated that all the men were exhausted by this time, and that the plaintiff was very tired and sore. Again, he did not regard this as being an unusual complaint after dealing with a bog fire for a couple of hours. He did not recall that the plaintiff's clothing was particularly wet either.

45. He recalled the plaintiff attending the fire drill on the following day. He said that he would not have been surprised of the plaintiff had not turned up for the drill as the plaintiff had in fact arrived a little bit late. He recalled that he had asked the plaintiff if he was feeling better, and that the plaintiff had pointed out some pain, without being specific about the pain, and that he had made some friendly remark about that. He says that if the plaintiff had asked to complete an accident report he would have facilitated that, but that he did not do so.

46. In relation to Mr O'Tuairisg's evidence that Mr Hughes ought to have considered leaving this fire till morning, Mr Hughes stated that his view was that it was better to get on with fighting the fire when it was small rather than run the risk of it becoming much more extensive before putting it out. He said that there was no point in watching it and considering leaving it till morning, and that that had never been his practice and he would never do that. He was shown a number of photographs taken at this bog and which show quite large ditches and drains. He stated that he had not come across ditches and drains of the size shown in these photographs when they were on the bog that night.

47. Mr Robins cross-examined Mr Hughes. In the course of this cross-examination Mr Hughes was prepared to say that some bogs can be extremely dangerous, but was sure that this particular bog was not dangerous as far as he was concerned on this night. He accepted that it was not possible for someone to gauge the depth of water that may be in a ditch that needed to be crossed, such as that which the plaintiff says that he attempted to cross on this occasion, and he accepted also that the edges of ditches could become disguised by overgrowth, and also that one function of a beater is to assist in crossing difficult patches of bog. He accepted also that the level of danger on a bog can be increased if on it at night, and that more caution is required at night. He accepted that at night it was more dangerous than in daylight.

48. He was asked also why he had seen fit to inquire of the plaintiff the next day at the fire drill how he was if his state of knowledge about the plaintiff was simply that he had been very tired after they had returned from the fire. Mr Hughes stated simply that the plaintiff had looked much better and fresher than the night before, and he simply asked how he was feeling. He was adamant that he had no knowledge that the plaintiff had suffered any injury as such, although he stated that he had heard Mr Colleavy ask the plaintiff if he wanted to see a doctor, and that this had been declined by the plaintiff.

49. As to whether he had read the regulations and guidelines to which Mr Williamson had referred, Mr Hughes stated that he felt sure that he had read them at some stage, but could not recall specifically if he read the passages in question about fighting bog fires. He reiterated that he was of the view that one lamp was sufficient to bring onto the bog that night, and that the lamp had provided sufficient light for the task undertaken that night.

50. He also stated that he had never been on that bog before and neither had he been on it since that night. He did not consider it necessary to revisit the bog before giving his evidence in court, and he accepted that his evidence was based solely on his recollection of events eight years ago. He regards that night as being not unusual in any way and that it was completely routine.

51. He accepted that on the way to the fire they had encountered some difficulties with the terrain but nothing out of the ordinary, and that he had taken the advice of the man referred to earlier as to the most convenient route to exit the bog after the fire had been extinguished in order to return directly to the fire appliance parked at the road. It was a journey of about 300-400 yards as far as he could recollect now.

52. He accepted also that the small personal torch which each man carried as part of his standard equipment was a torch specially designed to enable instruments to be read in a fire situation. It is a sealed torch which will contain within the spark which lights the torch, so that no explosion will be caused when it is lit in potentially explosive situations, but he added that nonetheless it was

capable of providing some light on a bog, even if it is not designed for that purpose. He accepted also that he would not choose to cross a bog at night without a torch.

Evidence of John Williamson, Fire Consultant
53. Mr Williamson's report contains a CV which clearly indicates that he is a man of great experience stretching back some thirty seven years during which time he advanced up the ranks of the British Fire & Rescue Service in Lancashire, Grampian and Strathclyde from being a fire fighter, through to being Assistant Chief Fire Officer, Divisional Fire Commander, and Senior Fire safety Officer. There is no need to elaborate further on his qualifications and experience. He has an impressive CV, and a very extensive on the ground experience of fighting fires and commanding fire teams. This experience extends to fire-fighting on bog fires in the United Kingdom. Indeed his qualifications are not disputed by the defendant.

54. Mr Williamson came over to inspect the bog in this case on the 19th January 2005, and he took photographs of relevant parts of the bog, based on what he was told by the plaintiff who accompanied him.

55. He stated that bogs by their very nature are dangerous places to be at night, and that it is advisable when called out to a bog fire to assess the situation and decide if it was justifiable to bring firemen onto the bog at night in order to deal with the fire. He stated that in his view unless there was a risk to life or to property resulting from the fire, he would not allow men to go onto the bog to fight it. It should be avoided if at all possible.

56. In this particular case, and based on what he had been told by the plaintiff, he is of the view that the house referred to was not in danger, and that there was not the sort of risk apparent which would have justified going onto the bog at night to put out the fire. While the house may have been in view it presented no danger, particularly since the bog was wet, and the fire was travelling on the top of the bog. He does not believe that the fire would have spread easily given the conditions.

57. He had been instructed that the route taken by this party to exit the bog was considerably longer than the route taken to reach the fire. On that basis he described it as "folly" to exit the bog by a longer route in order to get back to the appliance. However, I am satisfied from the evidence which I have heard and the markings on the map which was handed in, that in fact there is no significant difference in the length of the route out of the bog from the route taken into the fire. His instructions in this regard may not have been correct.

58. From his own experience he was able to say that walking across a bog can be very tiring especially given the heavy uniform clothing, heavy boots, fire helmet and equipment being worn and carried.

59. By reference to the photographs taken of ditches pointed out to him by the plaintiff as being typical of what was encountered on this night, Mr Williamson stated that these were part of the reason why it was unsafe to go into the bog at night.

60. He regarded it as "absolute folly" for four men to go into the bog at night with only one lamp between them, and does not understand why that was done in this case. He described the smaller personal torches as "virtually useless" for lighting purposes on the bog. He stated that even when he visited the bog in daylight he fell while crossing the bog, and that at night the danger was much worse.

61. He was asked to express a view on the wisdom of just four men going onto the bog to extinguish the fire at night, and he stated that this was not in accordance with standing orders, and that it constituted what he described as a "serious error", particularly where there was no danger to life present. He went as far as describing this error as being potentially a disciplinary offence. It appears that standing orders are that not less than six personnel should attend such a fire, and he stated in this regard that if there are six persons involved, it means that one can remain with the fire appliance so that radio communication to the station can be maintained, and one other person could have the sole responsibility for providing light to the others, though even that may not be sufficiently effective. Mr Williamson was at a loss to understand why the plaintiff and the others besides Mr Hughes were not provided with a lamp each.

62. In his report and in his evidence he stated that this team should not have gone to the fire with just four personnel, and that to do so was in breach of the Galway County Fire and Emergency Operations Plan which states a minimum of six persons, and that the Department of the Environment and Local Government Review of Fire safety and Fire Services in Ireland, Final report dated January 2002 recognises a minimum number of crew as five. The former document states at paragraph 4.5 thereof:

> *"Galway City retained personnel operate a rostered duty system on call every second week. Retained personnel in County stations must be available for duty at all times except with the permission of the Station Officer which shall be given only in the circumstances which will permit manning levels to be maintained at a minimum acceptable level, currently six personnel available for turnout."*

63. I should perhaps refer again to Mr Hughes's evidence that at his station there are nine or perhaps eight men attached to the station, and that not all may be available at the same time. But he does not see this recommendation as meaning that for all fires there must be six men attending the fire. It is more that there must be no less than six available if required. In the present case he stated that when the call went out to the men, four turned up at the station and he goes with whoever turns up, in this case those four. Mr Hughes did not consider it an option that because he had only four he should not go out and attend at the fire.

64. However, Mr Williamson stated also that since this was what he called 'a low risk fire' it was not justifiable to attend it with just four men, and that this was potentially dangerous. He believes that this number resulted in the plaintiff being injured in the way that he states he was. He has made a number of complaints in his report about the manner in which this incident was dealt with. It is not necessary to set these out in full detail. He believes that the Senior Officer should have assessed the situation and that unless there was an apparent risk to life or property the fire should have been left until daylight, and that to go in at night increases the risk to the fire-fighters.

65. Mr Williamson referred also to a Manual of Firemanship, and to certain passages therein which deal with bog fires. I will not set out each passage to which he referred, but one in particular is relevant to the question of lighting. It refers to the existence of trenches in bogs, and states in this regard:

> *"These trenches are a danger at night, for it is extremely difficult for a person who has fallen into one of them to get out unaided. Plenty of light should, therefore, always be used to mark routes across the peat beds."*

66. Another passage with relevance reads:

"Men working on peat fires rapidly become fatigued owing to the fact that at every step taken the feet sink into the ground. When the fire is in the peat moss itself and not in the hogs, it is advisable to tread carefully, for the top layer may have burnt away and will crumble when weight is put upon it; there is then a danger of falling into holes where the peat is burning."

67. There is also a reference in this Manual to beating a fire being "*a very exhausting operation….*"

68. Mr O'Tuairisg, Consulting Engineer gave evidence for the plaintiff also, and without going into his report and evidence in detail, it suffices to say that he is of the opinion that the manner in which the plaintiff was required to attend this fire at night on a bog breached statutory provisions regarding safety and welfare at work, and safety guidelines in relation to the numbers of men, the provision of adequate lighting, failure to carry out an adequate risk assessment on the night before entering the bog, and the failure of Mr Hughes who had a lamp to stay close enough to the plaintiff to ensure that his way was adequately lit. He is also critical about the level of training given to the plaintiff in relation to fighting fires on a bog. He is of the view that the plaintiff was not responsible for what happened to him when he fell into the ditch, and that he was following orders given by Mr Hughes and using what equipment was provided to him. In these circumstances, Mr O'Tuairisg considers that the plaintiff was not the author of his own misfortune as the defendant has pleaded.

69. On the defendant's behalf, Mr Tony Gillick, Fire Consultant gave evidence. He is of the view that Mr Hughes's decision to go into the bog to deal with the fire was a correct decision even with four men, since in his view there was a risk to the house described as well as to the people who were seen there trying to quench the fire with bushes. He also considered that there was the risk that the fire might spread if left unattended. He also considered that it was adequate to have one lamp only, since each person had his own personal torch in his pocket if required. He stated that it was normal practice for one lamp to be used by the officer in charge of the operation. In cross-examination, Mr Gillick accepted that he had never visited this particular bog before he prepared his report or after doing so. Mr Robins suggested to him that in such circumstances he was in no position to criticise the evidence of Mr Williamson and Mr O'Tuairisg who had visited the bog and were therefore able to form a view as to its dangers. He also accepted that some of the information which forms the basis of his report was gleaned from Mr Colleavy, and Mr Robins pointed to the fact that even Mr Colleavy had conceded at the end of his evidence that his recollection of this night was unreliable. Mr Gillick accepted that he would not go onto a bog without a torch, and he also accepted that if a man was carrying a beater, he could still manage to hold a lamp to light his way.

Conclusions on liability

70. First of all I am satisfied that the plaintiff injured himself when he fell into the ditch on the occasion referred to as the second fall. While I have formed the view that in the time which has passed since this incident the plaintiff has developed a recollection of the size of the ditch and the depth of water into which he fell which is greater than what actually occurred, that does not alter the fact that a fall occurred which resulted in his injury. By that I mean that it is improbable in my view that this ditch was four feet wide. It is improbable also that the depth of water was as far as his chest area. I cannot see how, if all these men were proceeding in a straight line and if the distance from the lead man, Mr Hughes, back to the plaintiff was in the order of twenty/thirty feet, the other men would not remember clearly having had to negotiate an obstacle of such width. Indeed, if the ditch was so wide, the plaintiff would be expected to have hesitated before jumping it and to have called for assistance and/ or more light before attempting to jump across it.

71. I am of the view that it was much less than the four feet which he has described, and that the plaintiff formed the opinion that he could cross it successfully, as the others had done ahead of him.

72. The plaintiff has stated clearly that his allegation against the defendant is not simply that the ground beneath him gave way, but rather that because he had no lamp or other adequate means of light from the others, he could not see the ground beneath him or the exact width of the ditch, and that it was the lack of a lamp which caused him to misjudge the jump and fall into the ditch and the water therein. This lack of light also in m y view deprived him of an adequate opportunity to see that the edge of the bank from which he was to jump across was unstable or at least posed some risk.

73. Many allegations of negligence against the defendant are pleaded in the Statement of Claim, many of which in my view are not made out by the evidence which I have heard. For example, I am not satisfied that the failure to have more than four crew on the bog contributed to any significant extent to the plaintiff's fall. Similarly, I am not satisfied that any lack of training on bogs was causative. Neither am I satisfied that proper Wellington boots were not provided. Those used were standard issue, and had been in use by the plaintiff and the others over many years and without causing any problem while out on a bog. I am equally satisfied that there was no requirement that high-beamed lights be provided in order to light up the area. In fact Mr Robins conceded that he was not suggesting that 'arc lights' or similar should have been available for this fire. Similarly I am not satisfied that the defendant ought to have ensured that the party was accompanied by a person who was familiar with the bog since none of these men had ever been on this particular bog before that night. It is pleaded also that that the defendant was negligent by failing to recruit younger people for the job so that the plaintiff, then aged forty eight, would not be required to attend such a fire. The plaintiff never made any complaint or made it known that he was not able to perform such a duty.

74. However, I am satisfied by the evidence, and in my view it seems somewhat obvious, that the lighting of the route back to the appliance across the bog at night was inadequate to ensure the reasonable safety of the plaintiff. In that matter, the defendant was negligent by failing to provide the plaintiff with a lamp, and that the defendant did thereby expose the plaintiff to a foreseeable danger, given the darkness and the terrain having to be negotiated. The fact that Mr Hughes had a lamp and, as far as he was concerned at least, was conscious of the men behind him, was insufficient to ensure the reasonable safety of the plaintiff, given that he was at the back of the line.

75. The fact that Mr Hughes conducted himself on this bog in the way that always occurred as a matter of regular practice is not sufficient to discharge the responsibility he had for the safety of those men under his command on that night. The fact that this was the first occasion on which any mishap leading to injury of personnel had occurred by the use of one lamp in such circumstances can be seen as good fortune rather than as an approbation for, or vindication of, the methodology adopted. I accept that Mr Hughes was a man of great experience on bogs at night, and that this is the way things were normally done, but different considerations apply from a legal perspective when an injury actually occurs. It is only on such occasions that the shortcomings of a normal practice become apparent.

76. Reference has been made to the standing orders applicable and the guidelines adopted by the defendant for dealing with fires on bogs, which are a common occurrence in this area, according to the evidence in this case. I accept that for someone in the position of Mr Hughes, such regulations and guidelines would have been read by him at some stage, but I am left, having heard him give his evidence, that he is of the view to a large extent, that these standing orders and guidelines are theory based and bear little reality to

the actual job of fire-fighting. I appreciate that the fire service concerned is a part-time service, and I accept that as a matter of practicality, the Senior Officer in charge deals with the call on the basis of what resources are available at the time, and relies on practical experience over many years. To do so, without any apparent regard for what the rules state, and on the basis of what is normally done in such circumstances, is to ignore the ultimate purpose of regulations of any kind, namely to set down a benchmark for safety standards for persons at work. In ninety nine cases out of a hundred the time-honoured method of carrying out a job will prove successful whereby the job is done without any harm to personnel. Unfortunately, in the one case out of a hundred when an injury does occur, it is easy to point to ways in which safety has been compromised by a failure to adhere to the rules and guidelines. In my view there was a failure to have regard to the very sensible recommendation that when fighting a fire on a bog at night personnel must be provided with adequate lighting for the terrain involved. At a minimum, in m y view, each person ought to have had a lamp available to him which would assist in providing adequate light in darkness. One lamp between four does not seem to me to serve that important purpose, albeit that each man had as part of standard equipment a smaller torch not intended for that purpose.

Contributory negligence
77. In its Defence the defendant has pleaded that the plaintiff failed to discharge the duty of care that he owes to himself. It pleads that he failed to use his personal torch; failed to rely on his own skill and experience as a fireman, including on bogs; failed to follow the footsteps of the other members of the crew; failed to concentrate on what he was doing; failed to remain adequately fit for his job; failed to have due regard for his own safety; was the author of his own misfortune; and failed to walk with a proper and adequate stride. It is pleaded also that he failed to comply with relevant legislation.

78. In my view none of these pleas are established by the evidence save that which states that he failed to have due regard for his own safety. The evidence clearly establishes that the plaintiff is a mature, and experienced fireman, well used to attending on a bog in order to deal with fires there. He has been doing it for eighteen years. He must be regarded as someone who is fully aware of the hazards which are normally encountered on a bog, especially at night. It is unreasonable that he should expect the leader of the party, in this case Mr Hughes, to nurse-maid him back across the bog to the fire appliance. In my view it was reasonable for Mr Hughes to expect that the plaintiff would speak up and alert him or some of the others to any particular difficulty encountered and for which he needed assistance whether by way of the provision of light from the lamp, or otherwise. There is no evidence that the plaintiff did so on this night. He appears to have encountered what he says was a four foot wide ditch containing water of an unknown depth within it, and his evidence has been that this was mucky night in which conditions were wet and unfavourable. Nevertheless he took a decision for whatever reason simply to jump the ditch having thrown his equipment across ahead of him. In my view he must be held to some extent responsible for the fact that he failed to take notice of the extent of the jump required of him, especially when he acknowledges himself in his evidence that on this night he was not feeling 'right' on the bog, and he knew that he was fatigued and not as fit as maybe he was in former years.

79. In my view it is appropriate to attribute 20% blame to the plaintiff.

The injuries and damages
80. As already stated the plaintiff attended his General Practitioner five days following the accident. He reported that he had fallen into a bog-hole and that he had felt a sudden pain in the perineal region. He was given an anti-flammatory injection, and prescribed anti-flammatory medication. He was reviewed again about a week later and was referred for X-ray of his lumbar spine and pelvis because of continuing complaint of pain in the low back area. By the 19th May 2000 (4 weeks post accident) he was considered unfit for work.

81. The x-ray taken revealed that the plaintiff had moderate degenerative disc space narrowing at the thoraco lumbar junction, T12 through L13, with degenerative osteophyte formation throughout. The lower lumbar disc spaces were well preserved, but it was noted that there was "marked osteophyte formation involving both superior acetabule…". There was minimal narrowing of the medial joint space bilaterally, and both sacro-iliac points were normal.

82. On examination on the 21st June 2000 (two months post accident) the plaintiff complained of getting a stabbing-type pain in his lower back, relating that it was worse in the mornings. He also complained of pain on lifting weights, constipation and weight loss.

83. Dr Moore states in his report at this time that straight leg raising on the right was restricted to 30 degrees and 60 degrees on the left, his reflexes were normal, and that he had decreased movement at his right hip due to pain. Dr Moore's conclusion at that time was that the plaintiff had previous degenerative disease in his lumbar spine, and that x-rays of his pelvis showed early arthritic changes in both hip joints. He states that it is likely that the accident herein aggravated a pre-existing arthritic condition which was present in his back and hips.

84. The plaintiff was referred to Orthopaedic Consultant, Dr Mangan, who examined the plaintiff in August 2000 and again in September 2000. He opines that the plaintiff suffered a soft tissue injury to his lumbar spine and hips, and that since there were chronic degenerative changes in both areas, it is likely that he will suffer pain in these areas into the future, but that the intensity will vary from time to time, and that the plaintiff will have to be careful about his back.

85. Physiotherapy was recommended but the plaintiff attended only one session, stating to Dr Moore in August 2001 that he felt worse after it rather than better.

86. By August 2005, Dr Mangan reports that x-rays taken at that date showed little change from those taken in 2000. He stated that from the plaintiff's account of his symptoms at that stage, most of the pain seems to be emanating from his hip joints. The question of considering hip replacement is mentioned in this report and a later one in 2006, but Mr Robins has confirmed that the plaintiff is not seeking to recover damages to cover that eventuality should it arise.

87. Dr Mangan's opinion is that the accident on the bog in this case made the plaintiff symptomatic in his lumbar spine and hip joints, whereas he had previously been asymptomatic. He states that the accident accelerated the process of degeneration.

Diabetes
88. I have already referred to the fact that in the months following this accident the plaintiff was diagnosed with diabetes. It is suggested that because of inactivity resulting from this injury he had put on weight and that this may have caused the onset of diabetes. The reference by Dr Mangan in his August 2000 report to the plaintiff having put on weight by August 2000 is strange given that in a report dated June 2000 Dr Moore stated that the plaintiff complained of *weight loss*. However, one way or the other I am not satisfied that the case is made out that as a matter of probability whatever weight the plaintiff may have gained following the accident (in evidence Dr Moore stated that he had at some stage put on about one and a half stones) caused the onset of Type 2 Diabetes. It is possible according to some of the reports that this may have contributed to the diabetes, but as a matter of probability the case is not established on the evidence before me.

89. The defendant has also sought to argue that because the plaintiff developed diabetes by the summer of 2000, he would have been required to resign as a fireman on the basis that diabetes is one of the conditions which disqualifies a person from acting as a fireman. Again, I do not believe this has been established as a matter of evidence. It may well be that in a relatively short time after 2000 the plaintiff's physical condition and fitness may have deteriorated further, both as a result of diabetes and the ongoing degenerative changes in his hip joints and spine, and I am taking that factor into account in any event in relation to the latter, and no further account need be taken of it related to diabetes.

General Damages
90. I have no doubt that as a matter of probability on the evidence before the court the injury which the plaintiff sustained that night on the bog rendered the degenerative changes in his spine and hip joints symptomatic and that it has caused an acceleration of the degeneration process. Nevertheless, it is clear that at some relatively early stage this plaintiff would have become symptomatic. There is little room for doubt about that given the extent of the degeneration described. While the plaintiff is therefore entitled to be compensated for the acceleration of these changes, and the fact that he suddenly became symptomatic, the measure of those damages must take into account the fact that even without this incident, he would have in the reasonably short-term have begun to suffer pain and discomfort, leading to his having to resign from his fire duties with the defendant.

91. The plaintiff has not tried to make too much of his injury. He has been very open and honest in that regard. He can still go about much of his previous activities, but cannot work as a fireman, and driving any significant distances causes him great discomfort. The plaintiff is now aged fifty seven years. I have taken the view that given the extent of the pre-existing degenerative changes shown on the x-rays taken, it is probable that by eight years post accident he would have begun to be symptomatic. It seems to follow therefore that he is not entitled to be compensated for any pain and suffering into the future from the present date, since he would unfortunately have suffered in that regard in any event.

92. As far as general damages from the date of accident to date are concerned, I assess a sum of *€55,000*. This sum represents damages for the actual pain and discomfort experienced during the almost eight years since the accident happened. I cannot award damages in relation to the onset of diabetes for the reasons stated.

Special Damages
93. The figures for special damages are agreed subject to liability for them being established by the plaintiff. The only area of possible controversy relates to whether the plaintiff is at a loss of salary in relation to work he did for his employment with the National Association of Training Centres for Travellers. He had fifteen hours work per week with that organisation but gave it up because there was too much driving involved and he was unable to continue it. However, by way of mitigation of his losses, he seems to have picked up other work in his town which involves cleaning statues in the town and such like, and he is paid about €325 per week. In my view this offsets any claim for the fifteen hours work which he gave up, and this heading of loss should be discounted as a result.

94. I intend to calculate the plaintiff's losses on the basis that he would have had to retire as a fireman at age 55 on account of his significant degenerative changes. It is heavy work, and it is reasonable to conclude that he would not have been able to do that type of work beyond that age.

95. Accordingly, and by reference to the figures agreed I calculate his special damages as follows:

1. Loss of earnings as a fireman - €41274

2. Loss of value of Retirement Gratuity - €16632

3. Medical expenses - € 2417

4. Pharmacy expenses - € 1326

5. Travel expenses - € 788

6. Guttering Contractor - € 800

Total Special Damages: € *63237*

96. The total of general damages and special damages amounts to the sum of *€118237*, from which must be deducted 20% for contributory negligence. That means that judgment will be entered for the plaintiff in the sum of *€94589.60.*