

THE HIGH COURT

COMMERCIAL

[2011 No. 365 P]

[2011 No. 13 COM]

BETWEEN

NATIONAL ROADS AUTHORITY

PLAINTIFF

AND

CELTIC ROADS GROUP (DUNDALK) LIMITED

DEFENDANT

JUDGMENT of Mr. Justice Kelly delivered on the 11th day of March, 2011

Introduction

This action arises out of a dispute between the plaintiff (NRA) and the defendant (Celtic) as to the correct interpretation of the Toll Bye-Laws for the M1 Motorway (Gormanston to Monasterboice) (the bye-laws). The dispute is in respect of the calculation of tolls payable by users of that part of the M1 Motorway covered by the bye-laws in the current calendar year.

Background

NRA is an independent statutory body established under the Roads Acts 1993 – 2007 (the Act). One of the duties imposed on it under the Act is that of securing the provision of a safe and efficient network of national roads. It is given overall responsibility for the planning and supervision of works for the construction and maintenance of national roads.

To assist in procuring an additional source of finance for the construction of the national road network, NRA selected a number of schemes to be tendered for under the Public Private Partnership Roads Programme. It has entered into a number of Public Private Partnership (P.P.P.) contracts in relation to such schemes, one of which is the M1 Toll Road. In essence, these contracts provide for the financing, designing and building of a road. The operation of the road is granted to a concessionaire for a long period of time. The concessionaire recoups the construction and ongoing operation costs by the collection of tolls.

Part V of the Act deals with national roads that are tolled. Section 56 defines "road authority" as meaning the NRA for the purpose of a national road that is tolled. Section 57 provides that the authority may prepare a scheme for the establishment of a system of tolls in respect of the use of a national road.

Section 59 confers the power to charge tolls.

Section 61 of the Act confers the power to make toll bye-laws. It was under this section that the bye-laws were made by the NRA. The bye-laws came into force on 4th June, 2003.

The bye-laws antedate by many months the P.P.P. contract which the NRA entered into with Celtic in respect of that section of the M1 Motorway with which this case is concerned.

The Bye-Laws

The bye-laws, *inter alia*, contain a series of regulations dealing with the calculation, charging and collection of tolls. It is Regulation 14 of the bye-laws which is in issue here.

Regulation 14

Regulation 14 is headed "Amount of Tolls". It reads as follows:-

"14.1 The tolls set out in the First Schedule hereto are the Base Tolls calculated as of August 2000 at which date the Consumer Price Index as published by the Central Statistics Office was equal to 111.7 on a November 1996 base of 100 (hereinafter referred to as the 'Opening Index').

14.2 The Maximum Tolls for each Toll Year shall be the aggregate of:

(a) the Base Tolls multiplied by the Consumer Price Index for August in the previous year, on a November 1996 base year of 100, divided by the Opening Index, and

(b) VAT at the prevailing rate on the amount derived pursuant to subparagraph (a)

and the resulting amount shall be rounded to the nearest 10 cent.

14.3 The Appropriate Tolls are the tolls chargeable by the Toll Company as agreed with the NRA (inclusive of indexation, VAT and rounding) provided that such Appropriate Tolls shall not exceed the Maximum Tolls determined in the manner

indicated in Regulation 14.2.

14.4 In the event of the Consumer Price Index for August in any year (in this Bye-Law referred to as the Base Year) not being published before the 1st of December in that year, the Maximum Tolls for the following year shall be the Maximum Tolls for the Base Year multiplied by the General Wholesale Price Index for August in the Base Year as published by the Central Statistics Office divided by the General Wholesale Price Index for August in the year before the Base Year. In the event of neither the said Consumer Price Index nor the said General Wholesale Price Index being published in any year before the end of December, the index to be used shall be the index used for the calculation of the tolls fixed in respect of the Base Year increased by the annual rate of inflation as specified in the most recent published edition of such index.

14.5 In the event of the current Consumer Price Index (or the General Wholesale Price Index, if the former is not published) in use remaining static or showing a decrease on the previous year's figures in any year, the Appropriate Tolls shall be fixed by the Toll Company but shall not exceed the Maximum Tolls fixed in the previous year.

14.6 Such revised Maximum Tolls shall become effective as and from the 1st day of January following the August for which the relevant Consumer Price Index (or the General Wholesale Price Index, if the former is not published) is derived.

14.7 A list of the Maximum Tolls for each year so calculated shall be published in a national daily newspaper before the 1st day of January of the relevant year, with the exception of the year of commencement of tolling when a list of the Maximum Tolls applicable at commencement and for the duration of such Toll Year shall be published in a national daily newspaper no later than 14 days prior to the commencement of tolling."

In order to try and understand Regulation 14, it is necessary to look to the definitions which are given to certain of the terms used in it. They are to be found in the definition section of Part I of the bye-laws. The relevant ones are as follows.

"Appropriate Tolls" is defined as meaning:-

"the tolls chargeable by the Toll Company in accordance with the terms of Regulation 14.3 in respect of each class of Vehicle specified in the First Schedule."

The term "the Base Tolls" means "the tolls set out in the First Schedule hereto".

The term 'Toll Company' is defined as meaning "at any time, such person as is party to an agreement with the NRA at such time in relation to, among other things, the collection of tolls on the Toll Road and the application of the proceeds of such tolls".

"Toll Road" is defined as meaning:-

"the section of the M1 national road extending from its grade-separated junction at Gormanston in County Meath to its grade separated interchange at Monasterboice in County Louth and linking with the local and existing road network through grade separated junctions at Duleek Road (R152), Donore Road and north of the River Boyne and having a length of 21 kilometres approximately, as more particularly shown on the map attached to the Toll Scheme adopted by the NRA on the 14th May 2002."

The term "Toll Scheme" is defined as meaning "the Toll Scheme for the M1 Motorway (Gormanston to Monasterboice) as adopted by the NRA on the 14th May 2002."

The term "Toll Year" is defined as meaning:-

"in respect of the first Toll Year, the period commencing on the date these Bye-Laws take effect and ending on the 31 December next following, and in respect of each subsequent Toll Year, the period of 12 months commencing on the expiry of the preceding Toll Year."

In drafting the bye-laws simplicity of computation appears not to have counted for much in the NRA's thinking.

The Consumer Price Index (C.P.I.)

The C.P.I. figures prominently in Regulation 14 of the bye-laws.

For in excess of 50 years, the C.P.I. has shown a year on year increase. One has to go back to 1959 in order to find a decrease in the C.P.I. But all this changed with the publication of the C.P.I. figures in August 2009.

Between August 2002 and August 2008, the C.P.I. increased from 122 to 150.9. But in August 2009, it dropped to 141.9.

In August 2010, the C.P.I. demonstrated a slight increase rising to 142.2.

Operation of Regulation 14

It is common case that throughout the period when the C.P.I. was increasing, the tolls which were charged on the motorway were computed pursuant to the provisions of Regulation 14.2 and 14.3.

Thus, taking the example of a motorcar, the position in 2007 was as follows. The Base Toll which was fixed on August 2000 prices was €1.15. The August 2006 C.P.I. reading was 138.1. The August 2000 or opening C.P.I. reading was 111.7. Utilising the mechanism prescribed in Regulation 14.2 that gave rise to a toll of €1.42 to which had to be added VAT giving a maximum allowable toll of €1.70 and an actual toll of €1.70.

In 2008, the Base Toll remained the same (€1.15), the C.P.I. increased to 144.5. Applying the provisions of Regulation 14.2 that gave rise to a toll of 1.49 to which had to be added VAT at 21% thus giving a maximum allowable toll of €1.80 and an actual toll charge of the same amount.

In 2009, the C.P.I. had increased to 150.9. Applying Regulation 14.2 that gave rise to a toll of 1.55 to which VAT at 21.5% was added giving a maximum toll of €1.90 and an actual toll charge of €1.90.

In 2010, the toll was calculated by reference to Regulation 14.5. That was because the C.P.I. for August 2009 showed a decline on the previous years figure. Thus, although the Base Toll remained at 115, the exercise prescribed in Regulation 14.5 was carried out giving rise to a toll of 1.46 which when VAT was added to it permitted a maximum toll charge of €1.80 but an actual toll charge of €1.90. The actual toll was greater than the maximum toll because of the use of Regulation 14.5 – the so called "*cushion*" effect.

In 2011, when a slight increase in the C.P.I. (from 141.9 to 142.2) was recorded in the August 2010 figures, Regulation 14.2 and 14.3 were used and a toll of 1.46 was computed which when VAT at 21% was added provided for a maximum charge of €1.80 but the actual toll being charged by Celtic is €1.90.

This charge of €1.90 being made in the current year is regarded by the NRA as a breach of the bye-laws hence these proceedings. The charge ought to be €1.80, it is argued.

Regulation 14.2 and 14.3

Regulation 14.2 provides for the calculation each year for the following toll year of the "*maximum tolls*". The maximum tolls set the maximum sum that can be charged by Celtic.

Regulation 14.3 deals with the "*appropriate tolls*". They are the tolls that Celtic agrees with the NRA provided that they are not to exceed the maximum tolls calculated pursuant to Regulation 14.2.

The way in which Regulation 14.2 operates can best be understood by reference to an illustration. The maximum toll for a motorcar in 2008 was calculated as follows:-

"Base Toll (as set out in the First Schedule to the Bye-Laws) €1.15

Opening Index (as defined in Regulation 14.1) 111.7

August 2007 C.P.I. Index 144.5"

The calculation is then undertaken as follows:-

"Total excluding VAT = €1.15 x (144.5/111.7) = €1.478690

Total including VAT at 21% = €1.800104

Rounded total = €1.80."

As the maximum toll means the maximum allowable toll i.e. the toll which may not be exceeded by Celtic, that was the figure which was charged that year.

Regulation 14.5

The draftsman of the bye-laws anticipated that the C.P.I. might not continue to increase *saecula saeculorum*. It might remain static or decrease. In such a case, Regulation 14.5 was to apply and the appropriate tolls would be fixed in accordance with Regulation 14.3 but would not exceed the maximum tolls fixed in the previous year.

Events

When in August 2009, the first decrease in the C.P.I. since 1959 was recorded, Regulation 14.5 was applied.

In August 2010, the small increase in the C.P.I. occurred. It is accepted by Celtic that there was such an increase. NRA says that in such circumstances, Regulation 14.5 cannot apply. Rather, calculation of the maximum toll reverts to being computed by reference to Regulations 14.2 and 14.3. The result of this is that the maximum tolls chargeable for 2011 are less than the tolls that were charged by Celtic in 2010. So, at a time when there is a small increase in the C.P.I., the tolls which are properly chargeable by Celtic are reduced.

It is in these circumstances that Celtic argues that Regulation 14.5 should continue to be applied notwithstanding that its applicability appears on its face to be confined to a year in which the C.P.I. is either static or has decreased.

Celtic's argument is sought to be made by reference to the construction which it wishes to give to these Regulations. But reliance was also placed upon two other lines of argument namely estoppel and legitimate expectation. In fact, they were conflated into one, it being said in the course of Celtic's written submission "*as a public authority, any estoppel against the plaintiff is perhaps best considered by reference to the doctrine of legitimate expectation*".

On the second day of the hearing, counsel on behalf of Celtic accepted that in terms of the issue that falls to be decided by this Court any arguments concerning estoppel or legitimate expectation have no direct bearing on it. Accordingly, for the purposes of this litigation reliance on those concepts was effectively abandoned.

It follows that arguments which were made based upon representations allegedly made by, *inter alia*, the then Minister for Transport, the head of Public Private Partnerships with NRA or on the NRA's website giving the impression that the bye-laws provide only for an increase upwards have no relevance to the case before me.

The reason for that is clear. What I am asked to do is to construe the bye-laws. The bye-laws are a statutory instrument and, as will be clear later, fall to be construed as any other piece of legislation. The true construction of any piece of legislation is a matter for the court.

Representations made as to what a piece of legislation means or does not mean, even if made by persons holding office such as those as I have described counts for nothing when it comes to the construction to be placed upon such legislation or its enforcement by a public authority. Neither does the behaviour of that public authority itself affect the issue.

In *In Re Greendale Building Company* [1977] I.R. 256, it was contended that a local authority was estopped from relying on the invalidity of a notice to treat that it had served because it had implicitly represented that it had been validly served and the company had relied on that representation to its detriment. The Supreme Court held that it would entirely destroy the doctrine of *ultra vires* if the donee of a statutory power could extend his power by creating an estoppel. As was said by Henchy J.:-

"If the Courts were to allow subsequent conduct to outweigh the requirements of the sub-section, they would (in effect) be amending the sub-section, which is something beyond the constitutional competence of the Courts."

Earlier in the judgment, he indicated that the reason for this was that such an approach would be "incompatible with parliamentary democracy for the Courts, under the guise of estoppel or waiver or any other doctrine, to set aside the will of Parliament as constitutionally embodied in a statute". Here, of course, one is dealing with a piece of secondary legislation but the same principle applies.

This approach has been manifested in other cases (Dublin Corporation v. McGrath [1978] ILRM 208, Re Parke Davis & Co. Trademark Application [1976] FSR 195).

These cases demonstrate that Celtic was correct to abandon, for the purposes of this case, the arguments which it sought to make by way of estoppel or legitimate expectation. If anything turns on such matters, it is for another day and in other litigation. It has nothing to do with the true construction of the bye-laws or their implementation.

I now turn to the real issue which is before the court namely the true construction to be given to the bye-laws.

Statutory Construction

As I said in *Ní Eilí v. Environmental Protection Agency* [1997] 2 ILRM 458:-

"All statutory construction has as its object the discernment of the intention of the legislature..."

In carrying out that task, certain norms apply.

The bye-laws in suit constitute secondary legislation. Like any other statutory instrument they have the force of law. They fall to be interpreted in precisely the same way as primary legislation.

In *Dodd* on "*Statutory Interpretation in Ireland*", the following statement is found:-

"Subject to some exceptions and additional rules, the same general principles of interpretation that apply to primary legislation apply to secondary legislation. In general, the courts approach the interpretation of secondary legislation in much the same way as they would approach the interpretation of an Act. The Law Reform Commission has noted: 'with few exceptions, the same principles of interpretation and drafting apply to delegated as to principal legislation'. The Commission also noted that this proposition has not been doubted, and it quoted from Bennion, who states that 'allowing for the difference in the juridical nature and provenance, delegated legislation is to be construed in the same way as an Act'. The Interpretation Act 2005 contains many provisions directed at 'enactments', enactment being defined as an Act or a statutory instrument or any portion of an Act or statutory instrument. This approach is consistent with secondary legislation being construed in much the same way as Acts. Certain interpretative criteria applicable to Acts and instruments may apply with particular force to delegated legislation given its limited purpose."

Thus, I undertake the interpretation of the bye-laws in precisely the same way as I would interpret any piece of primary or secondary legislation.

The first rule of statutory interpretation at common law is known as the literal rule. In *Howard v. Commissioners of Public Works* [1994] 1 I.R. 101, Blayney J. approved of the following passage from *Craies on Statute Law*

*"The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the lawgiver. 'The tribunal that has to construe an Act of a legislature, or indeed any other document, has to determine the intention as expressed by the words used. And in order to understand these words it is natural to enquire what is the subject matter with respect to which they are used and the object in view.' [per Lord Blackburn in *Direct United States Cable Co. v. Anglo-American Telegraph Co.* (1877) 2 App. Cas. 394]."*

In a concurring judgment, Denham J. said at p. 162:-

"Statutes should be construed according to the intention expressed in the legislation. The words used in the statute best declare the intent of the Act. Where the language of the statute is clear we must give effect to it, applying the basic meaning of the words. There is well established case law on this aspect of statutory construction."

More recently, the same judge in *D.B. v. Minister for Health and Children* [2003] 3 I.R. 12, followed precisely the same approach. She said:-

*"In construing statutes, words should be given their natural and ordinary meaning. The approach taken by the courts to the construction of statutes was described by Blayney J. in *Howard v. Commissioners of Public Works* [1994] 1 I.R. 101. He emphasised that the cardinal rule for the construction of statutes was that they be construed according to the intention expressed in the Acts themselves. If the words of the statute are precise and unambiguous then no more is necessary than to give them their ordinary sense. When the words are clear and unambiguous they declare best the intention of the legislature. If the meaning of the statute is not plain, then a court may move on to apply other rules of construction; it is not the role of the court to speculate as to the intention of the legislature. In that case I held also that statutes should be construed according to the intention expressed in the legislation and that the words used in the statute declare best the intent of the Act."*

This literal rule of construction which is a rule of common law has survived the passage of the Interpretation Act 2005 and in particular s. 5 thereof.

Section 5 of the Act provides as follows:-

"(1) In construing a provision of any Act (other than a provision that relates to the imposition of a penal or other sanction) -

(a) that is obscure or ambiguous, or

(b) that on a literal interpretation would be absurd or would fail to reflect the plain intention of –

(i) in the case of an Act to which paragraph (a) of the definition of “Act” in section 2 (1) relates, the Oireachtas, or

(ii) in the case of an Act to which paragraph (b) of that definition relates, the parliament concerned,

the provision shall be given a construction that reflects the plain intention of the Oireachtas or parliament concerned, as the case may be, where that intention can be ascertained from the Act as a whole.

(2) In construing a provision of a statutory instrument (other than a provision that relates to the imposition of a penal or other sanction) –

(a) that is obscure or ambiguous, or

(b) that on a literal interpretation would be absurd or would fail to reflect the plain intention of the instrument as a whole in the context of the enactment (including the Act) under which it was made,

the provision shall be given a construction that reflects the plain intention of the maker of the instrument where that intention can be ascertained from the instrument as a whole in the context of that enactment.”

This section was considered by Edwards J. in *Monahan v. Legal Aid Board* [2009] 3 I.R. 458. That judge had this to say:-

“Section 5 implicitly recognises the literal rule as the primary rule of statutory interpretation and authorises the courts to depart from the literal rule and adopt a purposive approach only in clearly defined circumstances. The language of the Bill (sic) is close to that set out in the recommendations of the Law Reform Commission Report on Statutory Drafting and Interpretation.”

The judge points out that that report was largely derived from the judgment of Keane J. in *Mulcahy v. Minister for the Marine* (Unreported, 4th November, 1994), where that judge stated as follows:-

“While the court is not, in the absence of a constitutional challenge, entitled to do violence to the plain language of an enactment in order to avoid an unjust or anomalous consequence, that does not preclude the court from departing from the literal construction of an enactment and adopting in its place a teleological or purposive approach, if that would more faithfully reflect the true legislative intention gathered from the Act as a whole.”

Edwards J. continued:-

“As such, s. 5 largely reflects the approach adopted by the courts prior to its enactment in any event. The main departure from the common law position occasioned by s. 5 is the creation of an exception to the general rule where a literal interpretation would defeat the intention of the Oireachtas. This exception to the literal rule of interpretation now applies, together with the traditional common law ambiguity and absurdity exceptions.

It is important to note that there is an important limitation built into the language of s.5; the purposive rule provided for in s. 5 may only be applied where the intention of the Oireachtas ‘can be ascertained from the Act as a whole’. Thus, the wording of s. 5 limits the possibility of reliance on external materials to ascertain the legislative intent behind a particular provision. Interpretation in light of the intention of the enacting body is permissible only ‘where that intention can be ascertained from the Act as a whole’.”

This judgment confirms the view which I have expressed to the effect that the literal rule remains the primary rule of statutory interpretation notwithstanding the passage of the Interpretation Act 2005.

Literal Meaning of Regulation 14.5

Whatever criticism can be made of the NRA with respect to the complicated method of computation which it chose in drafting the bye-laws, no criticism can be made concerning the plain meaning of Regulation 14.5. It is, in my view, clear that recourse to that Regulation as the method for fixing the toll to be payable by a user of the motorway is triggered in any year in which the C.P.I. has either remained static or has shown a decrease on the previous years figures but in no other circumstances. Applying the literal construction therefore, the NRA is correct in its assertion that once the C.P.I. increased even by the small margin which it did in August 2010, Regulation 14.5 became inapplicable as a method for computing the tolls payable during the current year.

Celtic’s Contentions

The arguments made by Celtic which suggest that the NRA is incorrect are rooted in the concept that the bye-laws envisage and permit only of tolls increasing. The language of s. 5 of the Interpretation Act 2005 is utilised to frame arguments in support of this notion. In descending order of Celtic’s choice, it contends that the interpretation relied upon by the NRA does not reflect the intention of the enactment. Secondly, it contends that such interpretation gives rise to an absurd outcome. Thirdly, it is said that Regulation 14 is obscure.

Intention of the Enactment

It appears to me that the intention of the NRA in framing Regulation 14 was to provide for the amount of tolls to be charged on the relevant part of the motorway. These were to be reviewed annually. The review was to be by reference to movements in the C.P.I. measured in August of each year. Does the Regulation achieve this purpose? In my view it does.

Regulation 14.1 sets the Base Toll.

Regulation 14.2 provides for the calculation of the maximum toll for each toll year.

Regulation 14.3 deals with the appropriate tolls and how they are to be brought about. I wondered at one stage what the purpose of having an "Appropriate Toll" was since such tolls can never exceed the maximum tolls. But there might be occasions where Celtic might not wish to charge the maximum toll. For example, if there was a reduction in traffic using the motorway it might wish to charge less than the Maximum Tolls to encourage greater use. In such a case the "Appropriate Tolls" would be charged.

Regulation 14.4 anticipates a possibility of the C.P.I. not being published before 1st December in any one year. It prescribes what is to happen in such a case. It calls into play the General Wholesale Price Index which is to be used in such an eventuality. Indeed it even anticipates the possibility of the General Wholesale Price Index not being published in any year and prescribes what is to be done.

Regulation 14.5 prescribes what is to happen if the C.P.I. remains static or shows a decrease.

Regulation 14.6 provides the effective date for revised maximum tolls and Regulation 14.7 provides for the publication of the maximum tolls for each year.

I am unable to find anything within the wording of the Regulation which suggests that it is intended to provide for upwards only indexation with the result that tolls can only ever be increased and not decreased. Whilst it was probably the expectation of the NRA and indeed most other people that the C.P.I. would increase on an annual basis given what it has been doing from 1959 until recently, Regulation 14.5 specifically contemplates and makes provision for circumstances where such does not occur.

Furthermore, I am quite satisfied that if it was the intention of the NRA that the tolls could only be revised upwards then that could easily have been stated in the bye-laws but it was not.

I am, therefore, unable to accede to the argument of Celtic that the construction of Regulation 14 urged by the NRA does not reflect the intention of the enactment. The intention was for an annual review based on the C.P.I. whether it increased or decreased or remained static. The bye-laws achieve this purpose.

Absurdity

The next point which is made is absurdity of outcome. Celtic argue that it is absurd that in a year in which the C.P.I. increases by a small amount, the toll to be charged decreases. This outcome, it is argued, makes Regulation 14 fall foul of s. 5(2)(a) of the Interpretation Act 2005 and so the Regulation should not be given a literal construction but rather a construction which "*reflects the plain intention of the maker of the instrument*" because the former would be absurd. So, instead of calculating the 2011 tolls by means of Regulation 14.2 and 14.3, Regulation 14.5 should be utilised, say Celtic. This is so although it, in accordance with its terms, has no application since the C.P.I. was neither static nor did it decline.

I am not persuaded that this is correct.

First, the literal meaning of Regulation 14.5 is clear. Despite that Celtic argue that it ought to apply in the current year even though the circumstances identified in it i.e. the C.P.I. falling or being static, do not exist. To give the construction which Celtic asks, would not be to construe Regulation 14 but to rewrite it. That, in my view, is beyond what is permissible.

In any event, I do not accept that the tolls charged this year in accordance with Regulation 14.2 and 14.3 give rise to an absurd result. True it is that for this year, a small increase in the C.P.I. has led to a decrease in the tolls which may be charged. But that is a peculiarity for this year. One has to bear in mind that in respect of the year 2010 because of the working of Regulation 14.5, Celtic were permitted to charge €1.90 *per* car rather than the maximum allowable toll of €1.80 because of the operation of Regulation 14.5. That provided them in effect with what was described by counsel for the NRA as a "*cushion*". The situation for the current year is no more peculiar than that. In these circumstances, I am not convinced that Celtic has demonstrated that the literal interpretation of the bye-laws gives rise to an absurdity.

Obscurity

The framing of bye-laws to give rise to an annual review of tolls by reference to movements in the C.P.I. could undoubtedly have been achieved by a less complex form of computation than that which is provided in the bye-laws. On the other hand, it is clear that they have sought to provide for every eventuality dealing with both increases and decreases in the C.P.I. together with instances where it might remain static or not be published at all. In so doing, the bye-laws seek to be comprehensive.

They do undoubtedly require careful reading but so do many statutory enactments. That does not mean that they are obscure. In fact in specifying the circumstances in which they are to apply, they are crystal clear. Regulation 14.5 is only to apply in circumstances where the C.P.I. decreases or is static. When it increases recourse may not be had to Regulation 14.5 but rather to Regulations 14.2 and 14.3. The NRA properly applied Regulation 14.2 and 14.3.

Conclusion

In my view, the NRA is correct in its complaint that Celtic is unlawfully charging tolls in excess of what it is authorised to charge. Thus, the plaintiff succeeds and I therefore grant a declaration that the maximum tolls for the toll year 2011 are to be determined in accordance with Regulations 14.2 and 14.3 of the bye-laws.

The Maximum Tolls permissible are as follows:-

- (1) motorcycles €0.90;
- (2) motorcars €1.80;
- (3) buses or coaches €3.20;
- (4) goods vehicles with a design gross vehicle weight not exceeding 3,500kg €3.20;
- (5) goods vehicles with a design gross vehicle weight exceeding 3,500kg and having two or three axles €4.50; and
- (6) goods vehicles with a design gross vehicle weight exceeding 3,500kg and having four or more axles €5.70.

I will also grant a declaration that Celtic is charging tolls in respect of the M1 Motorway (Gormanston to Monasterboice) toll road for the toll year 2011 which exceed the Maximum Tolls determined in the manner indicated in Regulation 14.2 of the bye-laws and in

contravention of the said bye-laws.

In the absence of an appropriate undertaking, I will grant an injunction against Celtic to bring an end to the overcharging.