

THE HIGH COURT

1994 7021 P

BETWEEN

WILLIAM KING AND OTHERS

PLAINTIFFS

AND

AER LINGUS PLC

DEFENDANT

THE HIGH COURT

2000 7354 P

BETWEEN

GERARD BYRNE AND OTHERS

PLAINTIFFS

AND

AER LINGUS PLC

DEFENDANT

THE HIGH COURT

2006 3155 P

BETWEEN

RICHARD BARBER AND OTHERS

PLAINTIFFS

AND

AER LINGUS PLC

DEFENDANT

Judgment of Miss Justice Laffoy delivered on the 14th day of February, 2011.

The issue

The issue with which the Court is concerned in this judgment arises from a settlement agreement dated the 7th July, 2008 (the settlement agreement) made between the parties in the three sets of proceedings mentioned in the title, to which I will refer respectively as the King proceedings, the Byrne proceedings and the Barber proceedings.

Clause 16.2 of the settlement agreement provided as follows:

“The High Court shall decide all questions of costs that may arise in each of the above sets of proceedings.”

In fact, what the Court is concerned with are the costs of the proceedings incurred between the making of an order of 22nd March, 2006 by the Supreme Court in the King proceedings and the conclusion of the settlement agreement and also the costs in relation to this issue, but not costs which may have arisen subsequently in relation to claims which remained to be determined, which are referred to in clauses 6.2 and 14.2 of the settlement agreement.

Background

In broad terms, the King proceedings and the Byrne proceedings concerned claims by the plaintiffs therein, who were employees of the defendant, and who had been seconded to a subsidiary company of the defendant known as TEAM Aer Lingus in the early 1990s,

arising out of their transfer back to the defendant on the sale of TEAM Aer Lingus at the end of 1998.

The King proceedings came on for hearing in the High Court in March 2002 at a time when there were over fifty plaintiffs in those proceedings. Following hearings over fourteen days in March 2002, July 2002, and April 2003 the Court adjudicated on the claims of five of the plaintiffs, whose cases had been chosen as sample or test cases and whom I will call the "test" plaintiffs. The order of the High Court (Kearns J.), which was perfected on 4th June, 2003, contained a declaration that –

"... the Plaintiffs are entitled as employees of Aer Lingus upon the end of their secondment to Team Aer Lingus to be treated as though Team had never existed and were to be paid the same levels of remuneration as mechanical engineers employed by Aer Lingus who had not been seconded, to have their seniority fully recognised and to be placed on the appropriate incremental scale as though they had never left Aer Lingus, such entitlement to be limited to a period of four years following the end of their secondment with Team Aer Lingus."

Following certain further declarations, it was ordered that each of the five "test" plaintiffs do recover against the defendant certain sums which were set out in sub-paragraphs i, ii, iii, iv and v thereafter.

The plaintiffs appealed the decision in the King proceedings to the Supreme Court, primarily seeking to have the limitation in the order of the High Court on the entitlements of the plaintiffs to a period of four years following their return from secondment deleted. The plaintiffs were successful. The judgment of the Supreme Court was delivered by McCracken J. on 20th December, 2005. After further submissions by counsel on both sides, the order of the Supreme Court was made and perfected on 22nd March, 2006. The order of the Supreme Court provided that the words "such entitlement to be limited to a period of four years following the end of their secondment with Team Aer Lingus" in the declaration which I have quoted above be set aside. It further ordered that the determination of the High Court as to the amounts which each of the five "test" plaintiffs was entitled to recover (paragraphs i to v) be set aside. Apart from those variations the order of the High Court was affirmed. The Supreme Court further ordered that "the matter be remitted to the High Court for the assessment of the monies owing to the plaintiffs".

The Byrne proceedings, which had been initiated in 2000, related to claims and pursued issues similar to the issues which arose in the King proceedings. While there were differences, both as regards pleading and the prayer for relief, between the statement of claim in the King proceedings in its final amended form delivered on 4th March, 2002 and the statement of claim in the Byrne proceedings delivered on 12th February, 2001, in my view, the differences are not material for present purposes. What is material is that, although the Byrne proceedings never got to the stage where they were set down for hearing and, indeed, did not get to the stage of the plaintiffs replying to the defendant's notice for particulars or the delivery of a defence, the parties in the Byrne proceedings, who had the same legal representation as the parties in the King proceedings, took the pragmatic view that the resolution of the issues in the King proceedings would facilitate a resolution of the issues in the Byrne proceedings. In that sense, the Byrne proceedings "travelled with" the King proceedings.

The genesis of the Barber proceedings is to be found in events which commenced between the delivery of the judgment of the Supreme Court and the making of perfection of the order of the Supreme Court in the King proceedings. On 26th February, 2006 the defendant wrote directly to one of the plaintiffs in the King proceedings, Patrick Gleeson, who was, as it was put, "turning sixty-five" the following month, informing him that he was not compelled to retire on that date but could remain in his position until the anniversary of his joining the Aer Lingus pension scheme, which was 1st August that year. The statement in the letter which set off the chain of events which led to the Barber proceedings was a statement that it was expected that the Supreme Court order would be perfected by 1st August "thereby bringing more clarity to the issue of your grade and status". In a letter to the defendant's solicitors dated 8th March, 2006, referring to the letter of 28th February, 2006 to Mr. Gleeson, the solicitors for the plaintiffs in the King proceedings pointed out that the defendant should be fully aware as to what the order of the Supreme Court was going to say, having regard to the judgment which had been delivered. The response of the defendant's solicitors was that it was by no means certain what order would be made by the Supreme Court. After the order of the Supreme Court was perfected, the plaintiffs' solicitors wrote to the defendant's solicitors on 3rd May, 2006 and it was the allegations in that letter which formed the basis of the Barber proceedings.

In the letter of 3rd May, 2006 the plaintiffs' solicitors asserted that it was the issue of the "assessment of the arrears of money payable to the plaintiffs" which was remitted to the High Court, but an immediate issue arose in relation to the then current entitlements of the plaintiffs arising from the judgment and order of the Supreme Court, quoting the declaration made by the High Court as varied by the order of the Supreme Court. The plaintiffs' solicitors made the point that, while the declaration was in favour of the five "test" plaintiffs, it had been the intention and agreement of the parties that the issues of liability in relation to the remaining plaintiffs would be decided by reference to the outcome of the claim of those five plaintiffs. The complaint in the letter of 3rd May, 2006 was that, following the order of the Supreme Court, the defendant had failed to honour the contractual entitlements of any of the plaintiffs as regards their then current remuneration. The defendant was called upon to give immediate and full effect to the declaratory order in relation to the then current remuneration entitlements of all of the plaintiffs. Proceedings were threatened in the event of default by the defendant.

The defendant's solicitors replied on 29th May, 2006 stating that the assessment of the plaintiffs' entitlements had been referred back by the Supreme Court to the High Court. The point was made that the Court would have to adjudicate on the implications of two redeployments of the plaintiffs, in 1998 and 2002, on the plaintiffs' entitlements. It was suggested that the plaintiffs' solicitors should expedite the bringing of the King proceedings back to the High Court. That response effectively triggered the initiation of the Barber proceedings.

The pleadings in the Barber proceedings and their progress to a hearing

The Barber proceedings were initiated by a plenary summons issued on 12th July, 2006. Of the thirty two plaintiffs named in the Barber proceedings, twenty five were plaintiffs in the King proceedings and seven were plaintiffs in the Byrne proceedings. The case pleaded by the plaintiffs in the Barber proceedings in their statement of claim delivered on 14th July, 2006, which was subsequently amended on 20th November, 2006, was that what the Supreme Court had ordered in the King proceedings was that the issue of assessment of monies owing to the plaintiffs from the end of secondment in 1998 to the making of final orders be remitted to the High Court, which aspect of the King proceedings was in train. However, despite being called upon to do so, the defendant had refused to place the plaintiffs on their correct remunerative scales as and from the making of the Supreme Court order on 22nd March, 2006. Having quoted most of the letter of 3rd May, 2006, it was pleaded that the defendant had refused, and was continuing to refuse, to honour and comply with the declarations of the High Court and the Supreme Court and had failed to acknowledge and to give effect to the rights of the plaintiffs thereunder. The bases of claims for damages and aggravated, exemplary or punitive damages were then pleaded. In the Barber proceedings the plaintiffs claimed various declaratory and injunctive reliefs as well as damages, including

aggravated, exemplary and/or punitive damages. The essence of the plaintiffs' claim is reflected in the first relief sought, which was a declaration that the defendant had failed to comply with and give effect to the order of the Supreme Court in the King proceedings insofar as it related to the employment of the plaintiffs from the date of the order.

The defendant adopted a consistent line in relation to the Barber proceedings as the following matters illustrate:

(a) The plaintiffs brought a motion, which was first returnable for 6th September, 2006, seeking, *inter alia*, an early hearing of the Barber proceedings. One of the reasons put forward on behalf of the plaintiffs for the urgency was the retirement of Mr. Gleeson and another of the plaintiffs and the fact that the retirement package of each had been based on a salary inferior to that to which, it was claimed, each was entitled in accordance with the order of the Supreme Court. The response of the defendant's solicitors was that the Barber proceedings were wholly unnecessary and that the dispute between the parties could, and ought to, be resolved in the context of the King proceedings. The outcome of that motion was an order made by the Court (Clarke J.) on 20th November, 2006 by consent ordering, *inter alia*, that the Barber proceedings be listed for hearing on the same day and tried by the same Judge as the King proceedings and that the King proceedings be given priority in the next Chancery list to fix dates.

(b) The defendant had brought a motion on 3rd October, 2006 for an order striking out the plaintiffs' claim as being frivolous and/or vexatious. In the consent order of 20th November, 2006 it was ordered that both the plaintiffs' motion and the defendant's motion be listed with the King proceedings. The order of 20th November, 2006 did not address the costs of either motion.

(c) The defendant delivered its defence on 27th October, 2006 wherein it was pleaded, on a without prejudice basis, that the Barber proceedings were frivolous and vexatious and an abuse of process and should be struck out as such and that they did not disclose any cause of action. The plaintiffs' interpretation of the order of the Supreme Court was disputed and it was pleaded that the defendant was under no obligation to make any adjustment to the plaintiffs' rates of pay or remuneration scales or to make any payments to the plaintiffs prior to the assessment by the High Court as ordered by the Supreme Court.

However, without prejudice to that last contention, the defendant's understanding of their obligation and of the plaintiffs' entitlements in relation to remuneration post 1998 in accordance with the order of the Supreme Court was pleaded in the defence. The kernel of the defendant's position was that, as the plaintiffs had been redeployed to non-craft positions on their return to the defendant in November 1998 and subsequently to other non-craft positions in December 2002, the remuneration to which each was entitled was determinable by reference to the entitlement of an employee in the same non-craft grade and with equivalent service. It was specifically pleaded that the redeployment of the plaintiffs in November 1998 and December 2002 was in full conformity with the determination of the Supreme Court in the King proceedings "wherein it was held that the plaintiffs were subject to the ordinary instances of an employment contract". It was also specifically pleaded that the plaintiffs were "subject to redeployment and to payment of the appropriate wages or salary to the position to which they were redeployed".

It is convenient at this juncture to explain the reference in the defence to what had been held by the Supreme Court. At the end of his judgment, McCracken J. stated:

"I would add that the Appellants are, as already explained, subject to any ordinary incidents of an employment contract, in particular, termination on notice, in accordance with the terms of the contract, dismissal on reasonable grounds and redundancy."

Earlier, McCracken J. had recorded that counsel for the plaintiffs had accepted that they could be in no better position than any of the defendant's maintenance and engineering employees who were not seconded but remained working for the defendant and he continued:

"In particular, they accept that they are on just as much a risk as they ever were in relation to the vicissitudes of the airline industry. They accept that should there be a need for redundancies or redeployment they would be on the same risk as if they had always remained working in the Respondent."

Hearing of King proceedings and Barber proceedings in March 2007

The King proceedings and the Barber proceedings came before this Court on 6th March, 2007 for hearing. The matters were opened by counsel for the plaintiffs on the basis that what was before the Court in the King proceedings was, in effect, an assessment and the Barber proceedings related to what had happened since the making of the order of the Supreme Court on 22nd March, 2006. In his opening, counsel for the plaintiffs submitted that on the face of the Supreme Court order there could be no dispute about what the order meant. In the Barber proceedings he was seeking a declaration as to the rights of the plaintiffs pursuant to the Supreme Court order as of 6th March, 2007 and an injunction restraining the defendant from paying them on the basis of any lesser terms. The assessment in the King proceedings would deal with the amounts owing to the plaintiffs from their redeployment to the defendant in 1998 to 6th March, 2007.

In order to determine the issue with which I am concerned, it has been necessary to review the transcripts of the hearing on 6th and 7th March, 2007. Having opened the case, counsel for the plaintiffs called two of the five "test" plaintiffs whose claims had been determined and quantified in the order of the High Court dated 4th June, 2003. They were cross-examined on the basis that the Court could determine their remuneration entitlements by reference to the terms and conditions applicable to the non-craft grade to which they had been deployed, in one case as a loader and in the other a clerical grade. It was proposed to call a third "test" plaintiff. However, the Court raised with counsel for the defendant the dilemma with which the Court was faced, in that the order of the High Court, as varied by the Supreme Court, expressly provided that the plaintiffs were entitled to the same levels of remuneration as mechanical engineers employed by the defendant who had not been seconded and to have their seniority fully recognised and to be placed on the appropriate incremental scale as though they had never left the defendant. Counsel for the defendant submitted that within the four walls of the King proceedings the Court should construe the meaning of the judgments delivered in the High Court and in the Supreme Court and, in line with what was pleaded in the defence, it was submitted that there was a finding of the Supreme Court that the plaintiffs were liable to be redeployed in the same manner as any other employee of the defendant, they had in fact been redeployed and were only entitled to be remunerated by reference to the grades to which they were redeployed. The Court made it clear that it considered that that position did not accord with the order of the High Court, as varied by the Supreme Court, by which the Court was bound.

Having considered what the Court had put forward as a dilemma for it, counsel for the plaintiffs requested that the matter be adjourned for two weeks to enable the defendant to consider its position and to explore whether the issue which arose on the remittal of the King proceedings could be resolved. However, counsel for the defendant maintained that the Barber proceedings were unnecessary. Counsel for the plaintiffs resisted the adjournment of the Barber proceedings and submitted that the Court should proceed with the hearing of those proceedings and that the plaintiffs in those proceedings were entitled to the relief they sought, including aggravated damages. In the event, the Court adjourned both the King proceedings and the Barber proceedings with a view to avoiding unnecessary costs.

During the two days of the hearing on 6th and 7th March, 2007 it became obvious that, apart from the point of principle as to the basis on which the plaintiffs were entitled to be remunerated from 1998 onwards, which was raised by the defendant, there was a plethora of issues of detail, for example, how the first of the "test" plaintiffs who testified was to be remunerated for shift work, in dispute between the parties, which would require to be determined by the Court if agreement could not be reached between the parties on them.

Post March 2007 hearings

Just over a month after the adjournment of the King proceedings and the Barber proceedings, the defendant put the plaintiffs on what the plaintiffs contended were their correct salary scales. Spreadsheets were provided by the solicitors for the defendant containing the calculations of what was due to each of the plaintiffs to the plaintiffs' solicitors for review as early as 13th April, 2007. While the defendant resiled from the position which had been adopted as to the plaintiffs' entitlement to basic pay in the defence in the Barber proceedings and in cross-examination of witnesses and submissions at the March 2007 hearings, there still remained some issues between the parties in relation to certain aspects of the plaintiffs' claims. The review of the calculations and the outstanding issues were the subject of ongoing discussions between the parties. Eventually on 16th November, 2007 the defendant's solicitors furnished in relation to each plaintiff a spreadsheet detailing the defendant's calculations of each plaintiff's entitlement pursuant to the order of the High Court, as varied by the order of the Supreme Court, and a cheque in respect of the amount payable to the plaintiff. For instance, in the case of the first plaintiff in the King proceedings, William King, the amount due was calculated at €71,766.45, which was slightly in excess of the sum which appeared on the spreadsheet which accompanied the letter of 13th April, 2007. It was made clear in the letter dated 16th November, 2007 that acceptance of the payment would not preclude Mr. King, or any other plaintiff, from raising further issues in the proceedings when the matter was next before the Court.

The King proceedings, with the Byrne proceedings in tow, and the Barber proceedings were adjourned by the Court from time to time and eventually they were listed for hearing on 12th February, 2008 to deal with the outstanding issues.

Hearings in February 2008

A review of the transcripts discloses that when the hearing resumed on 12th February, 2008, there was no agreement between the parties as to the outstanding issues on which the Court would have to adjudicate. That day was taken up with legal submissions and the evidence of two plaintiffs in the Byrne proceedings who were claiming that they were entitled to special payments on the basis that they held what were called "Type Licences" and a witness, who was not a plaintiff but was called for comparative purposes.

On the following day, 13th February, 2008, one of the plaintiffs in the King proceedings, whose claim encompassed a claim for payment in respect of holding Type Licences testified. Apart from legal submissions and evidence in relation to the Type Licence claims, the principal issue which was dealt with on 13th February, 2008 was what were called NDT claims and roughly half of the day was spent hearing the evidence of two of the plaintiffs who were pursuing NDT claims, who were plaintiffs in the King proceedings.

On the next day, 14th February, 2008, the Court allowed the parties to spend the whole day in settlement talks. The talks continued for most of the following day, 15th February, 2008. The hearing resumed at 3.20pm on 15th February, 2008. Apart from the claim of one plaintiff, which was to be separately dealt with, with the exception of two issues which the Court was being asked to decide, all of the issues between the parties were compromised and the agreement was ultimately formalised in the settlement agreement dated 7th July, 2008 to which I have referred at the outset. The two issues to be decided by the Court were the NDT claims and whether claims for personal injuries being pursued by seven of the plaintiffs in the King proceedings were maintainable, having regard to the decision of Kearns J., as he then was, in the King proceedings. On 15th February, 2008 the Court heard the evidence of a witness called by the defendant to deal with the NDT claims. The matter was then adjourned to 20th February, 2008 when the Court heard submissions from the parties in relation to the two outstanding issues.

Having reserved judgment on the two issues, the Court gave judgment on 3rd March, 2008. The Court held that the plaintiffs who made NDT claims had been paid the appropriate level of remuneration in accordance with the judgment of Kearns J., so their claims for additional payments failed. As regards whether the claims for personal injuries were maintainable by seven of the plaintiffs, the Court held that those plaintiffs were not precluded by the decision of Kearns J. from prosecuting those claims, so the plaintiffs succeeded on that point.

The costs dispute – the respective positions of the parties

The position of the plaintiffs is that they are entitled to the costs of the King proceedings, the Byrne proceedings and the Barber proceedings. The position of the defendant is that the plaintiffs are entitled to their full costs of the hearings in March 2007 and February 2008. Indeed, it was indicated that the defendant does not seek any concession in respect of the fact that the plaintiffs failed on one issue, namely, the NTD claims issue. It is the defendant's position that the Court should make an order which makes full provision not only for all costs incurred by the plaintiffs in respect of those hearings but also other costs incurred subsequent to the order of the Supreme Court to the conclusion of the agreement of 7th July, 2008, to include what, in shorthand, were referred to as paperwork costs, but, in reality, are the costs of all the interaction of the parties' legal advisers in resolving what were very complex issues. However, the position of the defendant is that there should only be one order for costs made in one of the sets of proceedings and that, as regards the other two sets of proceedings, only costs of pleadings and outlay should be awarded because, while there was a multiplicity of proceedings, there was always only one set of issues arising from the same set of facts and there had been a necessity to have two hearings subsequent to the Supreme Court order to achieve resolution of those issues.

The nub of the costs dispute from the defendant's perspective, as it was plainly put by counsel for the defendant, is that, by seeking an order for costs in each of the proceedings, the plaintiffs' solicitors are seeking three instruction fees and the plaintiffs' counsel are seeking three brief fees, as well as the other costs and the defendant disputes the entitlement to three instruction fees and three

brief fees but nothing else. Counsel for the defendant, while maintaining the position that the Barber proceedings were entirely unnecessary, suggested that it might be appropriate that the costs order be made in the Barber proceedings, because all of the plaintiffs in the King proceedings and most of the plaintiffs in the Byrne proceedings were also plaintiffs in the Barber proceedings. It was submitted on behalf of the defendant that, while there was a claim for exemplary damages in the Barber proceedings, fundamentally, the issues which required to be resolved either by a determination of the Court or by agreement, following the order of the Supreme Court, were the same in the King proceedings as in the Barber proceedings, that is to say, the question of the nature of the entitlements of each of the plaintiffs under each of the headings under which they were claiming compensation. The concern of the defendant was that it should not end up paying costs on a multiple basis, on the double or even on the treble.

In response to the submissions made by counsel for the defendant, counsel for the plaintiffs, without making any concession, acknowledged that the issues which arose in relation to the claims in the Byrne proceedings were capable of being dealt with on the remittal of the King proceedings to this Court. However, it was submitted that the Barber proceedings were necessitated by the attitude adopted by the defendant after the making of the order of the Supreme Court on 22nd March, 2006 when the defendant brought a new issue into the case in its solicitor's letter of 29th May, 2006, when it raised the issue of the implications of the past redeployments of the plaintiffs for their contractual entitlements, future as well as past and continuing.

Conclusions

I am satisfied that the stance adopted by the defendant after the making of the order of the Supreme Court necessitated the bringing of the Barber proceedings in order to protect the plaintiffs. The effect of the order of the High Court, as varied by the order of the Supreme Court, was that the plaintiffs were entitled from November 1998 to be remunerated as aircraft engineers. The stance adopted by the defendant after the Supreme Court order, when, in my view, the manner in which post-1998 the plaintiffs were to be remunerated by the defendant was *res judicata*, was that it was entitled to continue to remunerate them on the basis of the remuneration appropriate to grades to which they had been redeployed after their secondment had terminated, for example, clerical grades and baggage handler grades. In my view, that stance flew in the face of the plain meaning of the order of the High Court as varied. It had serious implications for the plaintiffs not only during their employment, but following retirement.

In the Barber proceedings the relief sought by the plaintiffs concerned their current and future entitlement to remuneration, and by extension pension rights having regard to the decision of the Supreme Court. It was appropriate that those of the remaining plaintiffs in the King proceedings and the Byrne proceedings who were still in the employment of the defendant should institute fresh proceedings to obtain the reliefs which would ensure that their right to remuneration on the basis which had been finally determined would be enforced in the future and reflected in their pension entitlements. They achieved that objective by agreement with the defendant without having to prosecute the Barber proceedings to conclusion. Although, as part of the compromise embodied in the settlement agreement of 7th July, 2008, the plaintiffs in the Barber proceedings withdrew all of their claims for damages, it was appropriate for them to pursue such claims and they could only do so in fresh proceedings. Those claims could not have been pursued in the King proceedings. All that remained to be determined in the King proceedings after remittal from the Supreme Court was the assessment of the monies which had already accrued due and owing by the defendant to the plaintiffs on the basis of the order of the High Court of 4th June, 2003 as varied by the order of the Supreme Court dated 22nd March, 2006 up to the date of assessment.

Accordingly, as I consider the Barber proceedings were necessary, I propose making an order that the plaintiffs are entitled to the costs of the Barber proceedings, such costs to be taxed in default of agreement. In addition, there will be an order that the plaintiffs are entitled to the costs of the determination of the assessment of the monies owing by the defendant to the plaintiffs in the King proceedings pursuant to the order of the Supreme Court. For the avoidance of doubt, although this is not in issue, those costs include the costs incurred by the plaintiffs in endeavouring to reach agreement with the defendant to narrow the issues to be determined by the Court and to compromise the claims of the plaintiffs in the King proceedings. The costs order in the King proceedings will also provide for the costs of the determination of the assessment of monies owing to the plaintiffs in the Byrne proceedings on the same basis together with the costs of the prosecution of the Byrne proceedings until they were stalled, for example, the costs of pleadings and outlay. Those provisions, in my view, will meet the justice of the case in relation to the resolution of the Byrne proceedings in line with the agreement of the parties. I see no basis whatsoever for awarding costs of the Byrne proceedings as if they had been separately set down for, and gone to, trial to the plaintiffs in those proceedings.

Obviously, the plaintiffs should not get costs on the double for the same work, as counsel for the defendant submitted. The plaintiffs should have the costs of all of the hearings in this Court in relation to the three sets of proceedings since 22nd March, 2006, including the hearing in relation to the application for costs. I would suggest that it would be convenient, in order to avoid duplication, if the costs of the hearings were treated as costs in the Barber proceedings.

Finally, in the Barber proceedings the plaintiffs are entitled to the costs of the two motions in respect of which the order of 20th November, 2006 was made, the costs to be taxed in default of agreement.

Summary of orders

The following orders will be made:

- (a) an order that the defendant pay the plaintiffs' costs of the Barber proceedings, including the motions to which the order of 20th November, 2006 related, the costs to be taxed in default of agreement;
- (b) an order that the defendant pay the plaintiffs' costs of the remittal of the King proceedings to the High Court, including all costs of the resolution of the assessment of the claims of the plaintiffs in the King proceedings pursuant to the order of the Supreme Court dated 22nd March, 2006, but excluding the hearings in this Court in 2007 and 2008 insofar as they are covered by the order at (a); and
- (c) the order at (b) shall cover all of the costs of the resolution of the assessment of the claims of the plaintiffs in the Byrne proceedings on the same basis as the costs of the plaintiffs in the King proceedings and also the prosecution of the Byrne proceedings as far as they were prosecuted, that is to say to and including the delivery of the statement of claim.