



**Tribunal of Inquiry  
Into Certain Planning Matters and Payments**

Appointed by Instrument of The Minister for the Environment  
and Local Government dated the 4<sup>th</sup> day of November 1997  
as amended by Instrument dated the 15<sup>th</sup> day of July 1998

**RULING IN RELATION TO THE EVIDENCE  
OF GABRIEL GREHAN**

**OF**

**THE SOLE MEMBER**  
**Mr. JUSTICE FEARGUS M. FLOOD**

**Wednesday 12<sup>th</sup> May 1999**

1. At the public hearing of the Tribunal on Wednesday 12<sup>th</sup> May, 1999 Counsel for the Tribunal, John Gallagher S.C., called Gabriel Grehan to give evidence. Before Mr. Grehan was sworn as a Witness Mr. Cooney S.C. for J.M.S.E. Limited and Others objected to Mr. Grehan's evidence on the basis that it was based on "rumour and hearsay".

Mr. Cooney pointed out that an outline of the evidence of Gabriel Grehan dated 11<sup>th</sup> January, 1999 had been circulated by the Tribunal to all relevant parties shortly after that date and that in his outline of evidence Mr. Grehan said that his understanding of events in the J.M.S.E. Company was based on "*on rumour and hearsay*". Mr. Cooney submitted:-

- (a) that testimony which Mr. Grehan was about to adduce can not have any evidential value since its foundation is rumour and hearsay.
- (b) That all of what Mr. Grehan says in that statement which affects Mr. Cooney's clients is based not on any direct knowledge which he had nor of matters which he witnessed or saw or heard but rather on what he (Mr. Grehan) himself in his chosen words describes as "*rumour and hearsay*".
- (c) That it would be unfair that a party's reputation should be put in potential jeopardy on the basis of evidence based on such a slender foundation.
- (d) That the Report of the Tribunal may contain findings of fact which would be damaging to its clients' reputation and fortunes and that such sanction should never be based on evidence of such slender foundation as the evidence of Mr. Grehan.

- (e) That it would be fundamentally unfair that anybody's reputation should be put in jeopardy on the basis of rumour and hearsay.
  - (f) That for those reasons I should not accept or hear this evidence in its present form.
2. Mr. Cooney also asked Counsel for the Tribunal, Mr. Gallagher, to indicate whether or not it was the intention of Counsel for the Tribunal to pursue the path which was indicated in a letter of the 10<sup>th</sup> May, 1999 from the Tribunal to all parties.
  3. In response, Mr. Gallagher pointed out that the witness in question, Mr. Grehan, is a former Contracts Manager and a former Director of J.M.S.E. – that he was a Director and cheque signatory of that Company from 1989 to 1997 and is in a position to give evidence of matters within his own knowledge and matters that occurred in the Company in 1989 and subsequently. He submitted that Mr. Grehan's evidence is relevant and admissible but that its probative value is entirely a matter for the Tribunal.
  4. Mr. Gallagher further submitted that Mr. Grehan is a person who is in a unique position to give evidence of conversations he has had with others in J.M.S.E. in relation to what happened or did not happen over the relevant period. Mr. Gallagher said that he was not then in a position to know exactly what Mr. Grehan was going to say in his evidence but that if Mr. Grehan gives evidence that is inconsistent with an earlier version then he (Counsel) would be under a duty to put to him that his evidence is inconsistent with something he said on an earlier occasion.
  5. I have considered all the relevant documents (including correspondence) already circulated to all affected parties, from which the following information emerges:-
    - (i) On the 30<sup>th</sup> November 1998 Mr. Grehan, in the company of his wife was interviewed on my behalf by

Mr. Hanratty S.C. and Mr. O'Neill S.C., as part of the Tribunal's confidential inquiries in private. In the course of what appears to have been a wide ranging interview it seems that Mr. Grehan confirmed that he was a Director of J.M.S.E. Limited and a signatory on the company's bank accounts from 1989. He spoke of conversations he alleged he had with John Maher who appears at that time to have been a Financial Controller and/or Secretary of J.M.S.E. Limited. He also told of his understanding of events in 1989 surrounding the alleged collection by a fellow Director of J.M.S.E., Frank Reynolds and another of the monies which were, it is alleged, subsequently handed over to Ray Burke. Mr. Cooney represents all such persons named by Mr. Grehan.

- (ii) Following the interview a "Draft Statement of Gabriel Grehan" was prepared by Mr. Hanratty based on his understanding and recollection of what he and Mr. O'Neill had been told by Mr. Grehan and on contemporaneous memoranda made by himself and by Mr. O'Neill. That document was delivered to Mr. Grehan by Mr. Hanratty on the 21<sup>st</sup> December, 1998 when Mr. Hanratty went through the Draft Statement with Mr. Grehan who again was accompanied by his wife. On that occasion it appears that Mr. Grehan did not raise any issue about the accuracy or otherwise of the material contained in the "Draft Statement of Gabriel Grehan" save one query in relation to his understanding of who was or was not present at a particular meeting. He asked for time to consider that matter and the following day indicated that he was consulting his Solicitor, Peter O'Boyle.
- (iii) On the 11<sup>th</sup> January, 1999 Mr. O'Boyle furnished to the Tribunal an "Outline of the evidence of Gabriel Grehan" dated 11<sup>th</sup> January, 1999 which appears to have been signed by Mr. Grehan but which differed in a number of material respects from the information

- Mr. Grehan had earlier given to Counsel to the Tribunal.
- (iv) On the 15<sup>th</sup> January, 1999 the Tribunal wrote to Mr. Grehan's Solicitor and pointed out the "significant differences/omissions in the written outline compared with what Mr. Grehan told Counsel at that meeting (and at a subsequent meeting in December)". The major differences were set out in the letter and Mr. O'Boyle was asked to bring them to his Client's attention for his observations. No further written statement or clarification appears to have been furnished to the Tribunal.
- (v) In those circumstances and because Mr. Grehan appeared to give two different versions of events in the period 1989 to 1997 inclusive I considered that it was necessary for the purpose of my functions and in the interests of fair procedures that all parties should be circulated with the "Draft Statement of Gabriel Grehan" prepared by Counsel to the Tribunal in December 1998.
- (vi) At the request of Mr. Grehan's legal representatives, correspondence which had passed between the Tribunal and Mr. O'Boyle was also circulated at that time and all concerned were informed that the Draft Statement would "*be put in due course to Mr. Grehan when he gives evidence to the Tribunal*". It was also made clear that Mr. Grehan would be asked questions in relation to his involvement with J.M.S.E. in and about 1989 "*including questions relating to and arising from the attached documents, most, if not all of which, had been already circulated to interested parties*".

It is against this background that I must consider the application made by Mr. Cooney.

On Tuesday 12<sup>th</sup> January, 1999 in my Opening Statement I said at page 4 as follows:-

*"Lest there should be any doubt it should be clearly understood that this Tribunal is the sole authority in relation to what evidence is heard by the Tribunal and as to the weight, if any, to be attributed to any evidence so heard.*

*The Tribunal does not intend to be limited in its inquiry by an inflexible adherence to the traditional adversarial rules of evidence. In the course of this inquiry it may be necessary (on occasion) for the Tribunal to relax the rules of evidence in regard to some particular witness or an aspect of their evidence. The Supreme Court has anticipated and approved of this approach in its decision in **Goodman International & Another v. Mr. Justice Hamilton & Another** reported at (1992) 2 I.R. 542.*

*In relation to this aspect of evidence, which may be heard by the Tribunal, Lord Diplock in the decision of **R. v. Deputy Industrial Injuries Commissioner, ex parte Moore** reported at (1965) 1 All E.R. 81 helpfully states at page 94 of that report:*

*"The requirement that a person exercising quasi-judicial functions must base his decision on evidence means no more than that it must be based on material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined ..... he must not spin a coin or consult an astrologer; but he may take into account any material which, as a matter of reason, has some probative value ..... If it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue."*

*This does not mean, and should not be taken to mean, that in the words of Mr. Justice Henchy in **Kiely v. Minister for Social Welfare (No.2)** (1977) I.R. 276 at page 281 the Tribunal can "... act in such a way as to imperil a fair hearing or a fair result."*

*The correct approach to this matter can be found in the decision of Mr. Justice Hamilton, when as sole member of the **Tribunal of Inquiry into the Beef Processing Industry** (Pn. 1007), he indicated that that tribunal having "... sifted through rumour and hearsay..." relied "... only on evidence, properly admitted, for its findings." (See: page 9, paragraph (34) of the Report). This approach was specifically approved by the Supreme Court in the **Goodman International** case already referred to.*

*This Tribunal, at all times, must respect the constitutional rights of all persons whose interests may be affected by the course of this inquiry. Those constitutional rights include the right to fair procedures and the right to constitutional justice as interpreted by the Supreme Court in a series of recent decisions, including **Haughey & Others v. Mr. Justice Moriarty & Others** and **Bailey & Others v. Mr. Justice Flood & Another** both delivered on the 28<sup>th</sup> July, 1998 and **Redmond v. Mr. Justice Flood** delivered on the 6<sup>th</sup> January, 1999.*

In the written outline of evidence furnished to the Tribunal by Mr. Grehan's Solicitor Mr. Grehan states:

*"Any information I have about the alleged transaction and those events is based on general conversations I have had with others in JMSE and is based on rumour and hearsay"*

With due respect to Mr. Grehan I cannot accept his conclusion as being conclusive on this legal issue. The definition of what constitutes hearsay evidence and the circumstances in which such evidence is admissible as being an exception to the hearsay rule is a complex matter upon which I could not accept a lay mans interpretation as final. Suffice it to say that the mere fact that Mr. Grehan is giving evidence of the contents of conversations he had with others does not of itself necessarily mean that there is a breach of the hearsay rule which would exclude such evidence being admissible in a court of law. It may well be the case that certain of Mr. Grehan's evidence will fall within the legal

definition of hearsay evidence. However until such time as Mr. Grehan has given evidence identifying these sources of his information so as to allow the means of knowledge of his informants to be ascertained and to establish the status of his informants it is not possible to state precisely which matters fall within the legal definition of hearsay evidence. I am particularly mindful of the fact that JMSE is an incorporated body that can only act and speak through its directors.

I am prepared to accept for the purposes of Mr. Cooney SC's submissions that certain of Mr. Grehan's evidence may indeed constitute hearsay evidence and that there may be no exception to the hearsay rule which would permit its inclusion in evidence in a court of law. This however does not mean that such evidence must be excluded from my consideration as the Sole Member of this Tribunal of Inquiry. As stated in my opening statement I will consider matters of hearsay and rumour in the course of my inquiries where appropriate to do so. It is in my sole discretion as to whether I should do so subject only to my obligation to act fairly to all parties. The inclusion of hearsay evidence in the course of an inquiry is not of itself unfair nor is a breach of natural justice. In *Maher -V- Irish Permanent Plc* (unreported decision of the High Court delivered the 7<sup>th</sup> of October 1997) the then President of the High Court Mr. Justice Costello refused to grant an injunction to an employee seeking to restrain his employer from carrying out a disciplinary inquiry into his conduct. The plaintiffs claim, inter alia, was based on a contention that those conducting the inquiry should not be permitted to adduce hearsay evidence before the inquiry. Costello P. stated;

*"The disciplinary procedure of the defendant have, of course, to be carried out in accordance with the rules of natural justice. It seems to me that the law in this matter is perfectly clear. It has been clarified in the case of *Mooney -v- An Post* (Supreme Court 20<sup>th</sup> of March 1997) and has been stated by Henchy J. in *Kylie -v- Minister for Social Welfare* (1997 IR 267 at 281) as follows*



*'Tribunal's exercising quasi-judicial functions are frequently allowed to act informally, to receive unsworn evidence, to act on hearsay, to depart from rules of evidence, to ignore court room procedures and the like but they may not act in such a way as to imperil a fair hearing or a fair result'*

*As to the issue raised at sub paragraph B I am asked to hold that in no circumstances can hearsay evidence be heard at tomorrows hearing ... I cannot make such a finding I cannot hold that hearsay evidence should not be accepted under any circumstances at tomorrow's hearing... I cannot assume that the person holding the hearing will act unfairly. His duty is to hold a fair hearing and to produce a fair result. It may well be that it would be wrong to accept hearsay evidence in certain circumstances and that hearsay evidence should be accepted in other circumstances. It has been made perfectly clear in the course of the correspondence that that is what he is going to do".*

The information presently before me discloses the following facts;

1. Mr. Grehan was at all material times a director of JMSE.
2. Such conclusions as were reached by him were reached on the basis of his communications with others in JMSE both at director level and below.
3. The subject matter of these communications if true could fairly be described as sensational from the companies point of view.
4. As a director of the company Mr. Grehan was a person vested with statutory duties in relation to the company.

I believe that given the status of the witness, the subject matter of his evidence and its connection with the matters under investigation by me that it is appropriate that I admit his evidence on these issues. I will ultimately determine the weight, if any, to be attached to his evidence but for the present I believe it to be material. In admitting the evidence I am mindful of the fact that his outline of evidence and ancillary documents have been circulated to all possibly affected parties, all parties named in his outline of evidence

have legal representation before this Tribunal and are in a position both to cross-examine Mr. Grehan and to adduce evidence in rebuttal through the Tribunal if they wish to do so.

It is clear from the documents circulated to all parties that the evidence of the witness may not be limited to the account of events contained in his outline of evidence. It has been indicated that a draft statement of evidence which is at variance with the outline of evidence will be put to the witness. It seems to me that this is the appropriate procedure to be adopted in the event of the apparent inconsistency. Until such time as the matters in dispute have been established upon examination of the witness it would be inappropriate of me to make any ruling as to the procedural steps which should follow in the event of such dispute.

I now intend to proceed to hear the evidence of Gabriel Grehan.