

1 THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 26TH FEBRUARY

2 1999 AT 10:00AM:

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4 CHAIRMAN: Good morning everyone.

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6 MR. COONEY: Mr. Chairman, I am grateful to you for your

7 permission conveyed to me by counsel for the Tribunal to

8 make a short statement in relation to the issue which arose

9 and which led to your making an order that I am may no

10 longer represent my clients before this Tribunal.

11 .

12 I accept without reservation that your motivation and

13 objective in this, as in all other matters with which you

14 have had to deal in this Tribunal, was the efficient and

15 just discharge of the onerous task imposed upon you by both

16 Houses of the Oireachtas and to preserve the dignity of

17 this Tribunal.

18 .

19 I have never suggested nor inferred that you, the sole

20 member of the Tribunal, have been biased in carrying out

21 your functions and it is a matter of regret to me that you

22 thought to the contrary.

23 .

24 For my part, Mr. Chairman, my only motivation and objective

25 in anything I have said was and is to discharge the

26 paramount duty of representing my clients to the best of my

27 ability and experience.

28 .

29 It is indeed regrettable that these separate objectives

30 should have clashed so directly and in so doing caused you

31 personal offence. That was not my intention and I wish to

32 reiterate the fact of the high respect in which I have held

1 you and which I will continue to hold you both as a former  
2 colleague at the bar and latterly as distinguished judge of  
3 the High Court. That respect remains undiminished. In  
4 these circumstances, Mr. Chairman, I respectfully ask that  
5 you graciously put this incident behind us and allow me to  
6 continue to represent my clients' interests.

7 .

8 CHAIRMAN: Thank you, Mr. Cooney. I should like to say  
9 at the outset that the Tribunal is grateful to Mr. Cooney  
10 for the honourable and professional manner in which he has  
11 clarified his position to the Tribunal.

12 .

13 I should secondly make clear that I do accept that at all  
14 times, the motivation behind Mr. Cooney's conduct in this  
15 Tribunal has been to represent his clients' interests  
16 properly and with integrity. I can understand and  
17 appreciate that my ruling that you could no longer  
18 represent the interests of your clients was interpreted as  
19 being an adverse reflection on your professional reputation  
20 and I regret that.

21 .

22 The statement made by Mr. Cooney has been of very  
23 considerable assistance to the Tribunal in understanding  
24 its position. I regret that this situation arose and I do  
25 not want to attribute blame to any person. The nature of  
26 the inquiry work being undertaken is very onerous on us  
27 all.

28 .

29 In conclusion, it has come to my attention that statements  
30 have been made outside this Tribunal to the effect that Mr.  
31 Cooney's submissions to me were an attempt to collapse this  
32 Tribunal. I am satisfied that these statements were

1 entirely without foundation and I want to emphasise that.

2 Thank you very much, Mr. Cooney.

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4 MR. COONEY: I am very grateful to you, Mr. Chairman,

5 thank you.

6 .

7 MR. CALLANAN: Mr. Chairman, if I could just indicate the

8 position of Mr. Gogarty this morning, if this is the

9 appropriate time to do it. The position is that Mr. Gerry

10 Sheedy, my solicitor, received a phone call from Mr. Eamon

11 Gogarty late last night to explain that his father was

12 exhausted, unwell and would be unable to attend to give

13 evidence this morning.

14 .

15 Now, obviously I regret the situation to which that gives

16 rise but the position is that Mr. Gogarty, on account of

17 his medical situation, isn't present this morning. He

18 will not be in a position to give evidence today and I have

19 to outline that to the Tribunal.

20 .

21 Obviously, one can't be certain quite when he will be fit

22 but one has no reason to anticipate that it's going to be

23 of any protracted duration but certainly as for today, Mr.

24 Gogarty won't be in a position to give evidence and I have

25 to explain that to the Tribunal and invite you in the

26 circumstances, Mr. Chairman, to put the matter back. Mr.

27 Eamon Gogarty, I should say, is present if you want to hear

28 him but I would have thought there was no real need for

29 that but he is here as a courtesy to the Tribunal on his

30 father's behalf. Thank you.

31 .

32 CHAIRMAN: Mr. Gallagher.

1 .  
2 MR. GALLAGHER: In those circumstances, I have had a brief  
3 word with Mr. Callanan and because there's some little  
4 uncertainty in the matter, I would suggest you might  
5 consider adjourning until Tuesday rather than Monday.

6 .  
7 CHAIRMAN: Needless to say, I am very anxious to progress  
8 this matter but I note with regret and indeed have every  
9 sympathy that this man is not well and I hope that he will  
10 recover at a very early date. I accept that a period of  
11 time must be given for him to get back to reasonable health  
12 before he comes back in here. I am also aware from local  
13 knowledge that he has a medical attendant has just retired  
14 from practice for health reasons and I appreciate the  
15 problems that creates in producing a medical certificate.  
16 I am fully aware of that, as I say, from local knowledge.  
17 But I do want to make it clear that I want to progress this  
18 Tribunal with all reasonable speed. As a matter of fact,  
19 it was my intention actually on Monday to say that when Mr.  
20 Gogarty ceases to be a witness in the witness-box, we will  
21 be going on to (a) a five day week and (b) a much longer  
22 hearing day. The hearing day at the moment is basically  
23 adjusted to Mr. Gogarty and -- we have been here something  
24 like over thirty weeks but, in fact, we have been going  
25 something like four weeks. The amount of hearing time we  
26 have actually had has been quite small and I realise the  
27 public expense that's involved and all that's involved but  
28 I have to take into account the circumstances.

29 .  
30 That being so, I will adjourn this matter until 10 o'clock  
31 on Tuesday morning. I would appreciate it as a courtesy  
32 to the Tribunal if Mr. Gogarty's family and through their

1 solicitor, would be kind enough to communicate the  
2 up-to-date position as of Monday morning so that we can  
3 plan ahead.

4 .

5 Now, I am also aware that Mr. Gogarty has other medical  
6 advisors and I would, of course, be quite happy to accept  
7 even if it was at one remove, as it were, their assurance  
8 that he should or should not give evidence as the case may  
9 be.

10 .

11 Thank you very much for the moment and that's as far as I  
12 can go at this stage. Is there any other business of any  
13 kind? In those circumstances... yes, Mr. Cooney?

14 .

15 MR. COONEY: Chairman, perhaps it's unsaid but I take it  
16 that I may appear on Tuesday.

17 .

18 CHAIRMAN: Of course you may, of course you may. After  
19 such a fulsome response you made, it couldn't be  
20 otherwise.

21 .

22 MR. COONEY: I am deeply grateful to you.

23 .

24 CHAIRMAN: Not at all, the matter is now totally and  
25 finally at an end. Thank you very much ladies and  
26 gentlemen.

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28 THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY, 2ND MARCH, 1999  
29 AT 10AM.

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