Appeal No. VA88/0/142

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Shannon International Airport Hotel Limited **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Hotel premises and school situated Townland of Rineanna South, E.D. Clenagh, Co. Clare

B E F O R E

Hugh J O'Flaherty	**S.C. Chairman**
Mary Devins	**Solicitor**
Brian O'Farrell	**Valuer**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 14TH DAY OF DECEMBER, 1989

By notice of appeal dated 22nd day of August 1988, Donal O'Buachalla & Co Ltd, on behalf of the appellants and Aer Rianta Cpt. appealed against the revised rateable valuation of £1,070 of the above described hereditaments on the following grounds:-

(1) That the R.V. £1,070 is bad in law inasmuch as that the hereditament is not in the occupation of Shannon International Airport Hotel Ltd., whose sole related function is as Manager for Aer Rianta cpt., the Agent for the State (Department of Tourism and Transport), in which all beneficial and rateable occupation subsists, in consequence of which the hereditament should be distinguished in the valuation lists as exempt State property.

(2) That no regard has been had to the material diminution in beneficial occupation due to circumstances beyond the control of the occupier.

(3) That the R.V. £1,070 is excessive in amount and inequitable.

In the course of a written submission Mr O'Buachalla said that the subject hereditament is a licensed hotel, (1987 I.T.B. Grade A : 118 G.B. - open from 1st April to 31st October each year), situated in the Central Service Area at Shannon Airport.

It was first valued at R.V. £900 in 1965, increased to R.V. £1,600 in 1966, and reduced to R.V. £1,050 in 1973, and increased to R.V. £1,070 in 1987.

In 1965 and 1966 the rated occupier was McDonagh Construction Co., with the immediate lessor being "The State".

In 1973, the rated occupier was changed to Shannon International Airport Hotel Ltd., and the immediate lessor Aer Rianta Teo.

In 1982, Aer Rianta acquired the property as mortgagees in possession.

By a Supplemental Indenture of the 18th December, 1986 between Marmac Corporation and Aer Rianta it appears that Aer Rianta became owners of the hotel and the hotel school. Copies of the documents of title are attached as Appendix "A" to this judgment. Mr John Burke in evidence which has already been dealt with fully in the judgment just given in the appeal that was heard concurrently with this appeal, viz Appeal No. 88/141 - Tedcastles Aviation Fuels Ltd. v. Commissioner of Valuation dealt with the background history to Aer Rianta. Reference is made to that evidence which it is unnecessary to repeat.

His essential point is that the hotel is an integral part of the Shannon Airport operation. When long range jet aircraft were introduced in the 1960s allowing Shannon to be by-passed, new measures had to be introduced to ensure that both terminal and transit traffic were attracted to the airport.

Mr Thomas D. Branigan of the Valuation Office said that he was a valuer with 12 years experience in the Valuation Office and had particular experience of rating appeals in County Clare. The respondent appointed him as appeal valuer for the rural district of Ennis on receipt of appeals lodged against revised rateable valuations fixed during 1987. Mr Branigan set forth that he inspected the Shannon International Airport Hotel in February 1988 and found it to consist of a Grade A Hotel with the following accommodation, reception, bar, diningroom, kitchen, 120 double bedrooms, stores, staff rooms, ancillary wc's, offices and main services. The hotel is adjacent to the airport and has good access. Parking facilities were good.

He set forth that the hotel was constructed in 1964 by the "McDonough Construction Company" at a cost of £239,000. It was built with a view to attracting passengers either arriving from America or departing to America. So "bed and breakfast" business was the mainstay of the operation. Accommodation for crews whether training or scheduled made up the balance of the business.

Following the purchase of the hotel by Aer Rianta Teo they requested that the hereditament should be distinguished on the ground of State occupation. The respondent investigated the request in 1983 and refused the request.

It would appear that on purchase of the hotel Aer Rianta set up a subsidiary company to run the affairs of the hotel, viz the present appellants. On that occasion the respondent ruled that the hotel was not "occupied for the public service or public purposes".

Oral hearing

The oral hearing took place on the 4th December, 1989, when Mr R N Cooke (instructed by Byrne, Collins, Moran, Solicitors) appeared on behalf of the appellants and Mr Andrias O'Caoimh (instructed by the Chief State Solicitor) appeared on behalf of the respondent. Mr Eamonn Kelly of Clare County Council also attended to give assistance to the Tribunal.

Much of the debate at the hearing concerned the possible rateable valuation of the hereditament, should it be decided that it was properly rateable but, in the course of the hearing, agreement was reached between the parties that the rateable valuation (if the hereditament fell to be rated) should be £525.

There was discussion of the type of business done by the hotel and it should be noted, too, of course that the hotel is part of the internationally-renowned hotel school. The Tribunal does not need to elaborate on points that were made on the commercial basis of the hotel, its ambience and so forth because these are matters touching quantum not the essential question which was left in the case.

Therefore the debate then centered on whether the hotel was in public ownership and the Tribunal will not repeat the arguments, citation of authority and so forth because it has already done that in the case that was heard concurrently with this case and which judgment has just been delivered, viz Appeal No. 88/141 -Tedcastles Aviation Fuels Ltd v. Commissioner of Valuation.

Determination

It appears that on the 10th December 1982 the Department of Transport & Power wrote a letter to Aer Rianta as follows:-

"Having taken account of all the relevant aspects of the matter and in particular, an assurance given by the Minister at a meeting with representatives of the Irish Hotels Federation held on 7 October 1982, that the Shannon International Hotel would be operated by Aer Rianta on a commercial basis and without subsidy, this Department cannot support your Company's application for exemption of the hotel from rates.

..... it is the view of this Department that it is inappropriate for Aer Rianta to seek an exemption of the Hotel from rates".

It appears that the Minister afterwards repented of this attitude and his stance now, as put forward by Mr Seamus Glynn (Assistant Principal, Department of Tourism & Transport) is that the hotel should be regarded as in public ownership.

The Tribunal accepts the description of Aer Rianta given by Mr Burke and set forth in the previous judgment by Mr Burke and although the Tribunal would look askance at the idea that members, say, of the Hotel Federation might be told one thing while the Minister might put a different submission before the Tribunal, nonetheless the Tribunal would not regard the Minister as being estopped from putting forward that case if such was justified by the circumstances.

However, the Tribunal must view the matter objectively and although it is anomalous that Aer Rianta should "occupy" any hereditament except as the pure servant or agent of the Minister and though Aer Rianta may not have intended that result to come about, nonetheless, the Tribunal is

in no doubt that Aer Rianta is in rateable occupation of this hereditament and the present appellant is the means used to actually manage the place. The Tribunal finds that there is no question of this hotel being in State ownership in the sense adumbrated in the cases referred to in the concurrent judgment but, on the contrary, that Aer Rianta is in occupation of these premises although it is required by virtue of its constitution to account for every last penny to the Minister. Aer Rianta may unintentionally have got itself into an invidious position in this regard but, nonetheless, the Tribunal is of opinion that it is its juristic situation.

The Tribunal would re-echo what Mr Justice Henchy said in the course of his judgment in Carroll v. Mayo Co Council [1967] I.R. 364 at 366:-

> "..... where more than one person claim, or are entitled to, or exercise, rights over a hereditament, the question becomes one of fact as to who is in paramount occupation, and it is immaterial whether the title to occupy is attributable to a lease, a licence or an easement. For example, in the Westminster Case [1936] A.C. 511 Lord Russell of Killowen said at p. 533 of the report:- 'In my opinion the crucial question must always be what in fact is the occupation in respect of which someone is alleged to be rateable, and it is immaterial whether the title to occupy is attributable to a lease, a licence, or an easement.' Later (at p. 537) he said that 'rateability does not depend on title to occupy, but on the fact of occupation.' Lord Wright said (at p. 562) that 'what is material is not necessarily the terms of the grant, but the de facto occupation which may be greater or less that the terms convey.'"

In the course of his submissions Mr O'Caoimh made the point that he was not contending at all that Aer Rianta was not entitled to claim exemption in respect of the airports which it managed on behalf of the Minister. However, he said that a commercial enterprise such as a hotel was a different thing and that Aer Rianta should be expected to compete "on a level pitch" with other commercial hotels. Reason and justice would seem to point to the correctness of this argument and the Tribunal has no hesitation in accepting it as being correct in law, too.

Mr O'Caoimh also contended that there could be a possible breach of articles 92 and 93 of the Treaty of Rome but since the Tribunal has reached a conclusion in the respondent's favour on the

domestic grounds put forward the Tribunal does not find it necessary to express any view that there has been a breach of either of these articles.

Accordingly, subject to what the parties may wish to submit, the Tribunal would propose making a determination that the appellants are in rateable occupation and the correct rateable valuation is (as agreed between the parties) £525.

Because the Tribunal has found for the respondent in one appeal and against him in the other the Tribunal would propose not to make any order as to costs.