

IN THE HIGH COURT OF NEW ZEALAND  
(ADMINISTRATIVE DIVISION)  
TIMARU REGISTRY

GR 112/83

1016

IN THE MATTER of a claim for  
compensation under  
the Public Works Act  
1981

BETWEEN BRAEMAR STATION  
LIMITED

Claimant

A N D THE MINISTER OF WORKS  
AND DEVELOPMENT

Respondent

Hearing: 23 July 1984

Counsel: R.J. De Goldi for Claimant  
C.J. McGuire for Respondent

Judgment: 14 AUG 1984

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JUDGMENT OF ROPER J.

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The claimant has applied for an order that its claim for compensation under the Public Works Act 1981 be heard and determined by this Court instead of by the Land Valuation Tribunal, which has refused an application to have it transferred to this Court; and for an order fixing the "specified date" at which the compensation is to be assessed. As only questions of law were involved the application was heard in the absence of Mr R.J. Maclachlan, who has been appointed additional member for the case.

Mr McGuire consented to the transfer of the proceedings to this Court and there will be an order accordingly.

As for the "specified date" the facts are that in 1974 the Ministry of Works was given permission to enter Braemar

Station, then a property of almost 7000 acres bordering Lake Pukaki, for the purpose of constructing a new public road to replace the existing road which would be inundated when the Lake level was raised for hydro electric purposes. At about the same time Ministry of Works staff began shifting or rebuilding Braemar station farm buildings above what would be the new lake level. This latter participation by the Ministry was in the nature of providing compensation in kind.

On the 5th October 1979 the Ministry took by proclamation just over 400 hectares of the Claimant's land for the purposes of the generation of electricity. Through what Mr McGuire referred to as "a bureaucratic oversight" the Claimant's land over which the new road had been formed (18.2149 hectares) was not taken by proclamation, although in all the informal negotiations to settle the compensation which have taken place to date it has been taken into account.

The question is whether compensation should be assessed as at 1974, when there was the first entry by the Ministry onto the Claimant's land for road construction, or the 5th October 1979 when it was taken by proclamation. Mr de Goldi argued for the proclamation date for the very good reason that the period 1974 to 1979 was one of high inflation. If it is appropriate in assessing compensation to add an inflation factor it may not be material which date is fixed as the "specified date" so far as the Claimant is concerned, but the compensation for inflation issue is not so well settled that the Claimant is prepared to take the risk. Mr McGuire supported assessment as at 1974.

Section 62(1)(b) of the Act provides in short that in the assessment of compensation for land taken its value shall be the amount which it might be expected to realise if sold in the open market by a willing seller to a willing buyer on the "specified date".

Section 62(2), so far as is relevant, reads:-

"(2) In this section, the term 'specified date' means -

- (a) In the case of any claim in respect of land of the claimant which has been taken pursuant to section 26 of this Act, the date on which the land became vested in the Crown or in the local authority, as the case may be:"
- (c) In the case of any other claim in respect of land of the claimant which has been or is proposed to be taken for any work, the date on which the land became by Proclamation or declaration vested in the Crown or in the local authority, as the case may be, or the date on which the land was first entered upon for the purpose of the construction or the carrying out of the work, whichever is the earliest:"

Mr de Goldi submitted that as the present case clearly involved a taking of land pursuant to s.26 then s.62(2)(a) applied, with the specified date being the proclamation date.

The scheme of the 1981 Act, unlike the earlier Act, is to provide for the acquisition of land for public works either by agreement or by compulsory taking, and the specified date can only be determined pursuant to s.62(2)(a) where the land has been taken compulsorily. Sections 22 to 26 provide a code for the compulsory taking of land. Only land for essential works may be compulsorily taken (s.22). (A taking for the production or distribution of energy comes within that category.) Section 23 provides for public notice to be given in the Gazette specifying the land to be taken, the use to which it will be put, the reasons why its taking is considered essential, and specifying the period within which objections to its taking may be lodged. Section 23 also requires that a notice of intention to take be served on the owner of the land. Sections 24 and 25 provide for objections to be heard either by the Planning Tribunal or the Chairman of the Tribunal sitting alone. Section 26 provides for the issue of the Proclamation where no objections have been made within the time

allowed, or, if made, have been reported upon by the Tribunal.

I accept Mr McGuire's submission that the present taking did not proceed in accordance with the compulsory provisions.

This was clearly a case of acquisition by agreement pursuant to ss.17 and 18 of the Act. The agreement, which is dated the 30th September 1975, provides for the taking of the Claimant's land by proclamation, and contains detailed provisions concerning the payment of compensation, while reserving to the Claimant its right to have compensation determined by the Land Valuation Tribunal under the provisions of the Act as provided in s.17(7).

It follows that the "specified date" cannot be fixed in terms of s.62(2)(a) as the land was not taken pursuant to s.26. That means that s.62(2)(c) applies, and that calls for a consideration of alternative dates, namely the date of the proclamation, or the date on which the land was first entered upon for the purpose of the construction or the carrying out of the work, the "specified date" being the earliest in time.

On this issue Mr McGuire relied on the date of entry for road construction and the entry for the purpose of removing or rebuilding threatened premises but I am not prepared to take the road building activities into account. The claim presently before the Court does not relate to the land used for the new road. That will presumably be taken by proclamation for road purposes some time in the future, and when it is, the ascertainment of the "specified date" will present no problems. It was entered upon in 1974 for the purpose of road construction. As for the entry for the removal and rebuilding of farm buildings that would otherwise be inundated I am not satisfied that such activity could be described as an entry "for the purpose of the construction or the carrying out of the work". Its sole purpose was to minimise the compensation

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ultimately payable. When the sole reason for taking land is that it will be permanently submerged because of hydro development it is difficult to see how the alternative in s.62(2)(c) could be applied. There would be no entry at any stage for the purpose of construction or the carrying out of the work, except perhaps when the waters rose.

I therefore hold that the "specified date" for the purposes of the claim for the land already taken by proclamation is the 5th October 1979.

This claim has been on foot for a long time. Any application for an exigency fixture would have my support.

A handwritten signature in cursive script, appearing to read 'H. J. [unclear]', located on the right side of the page.

Solicitors:

Henderson, MacGeorge, Wood & Blaikie, Waimate, for Claimant  
Crown Law Office, Wellington, for Respondent