

DISPUTES RESOLUTION AUTHORITY

RECORD NO. DRA/19/2007

IN THE MATTER OF THE ARBITRATION ACTS 1954 TO 1980

AND

IN THE MATTER OF AN ARBITRATION

PAURIC O CIANAIN (mar Ionadai ar son CLG Cumann Carraige Mhachire Rois)

APPLICANT:

And

**AILIS NIC AN tSAOI (mar Ionadai ar son Coiste Cheannais na gComortaisi,
Chontae Mhuineachain)**

RESPONDENT:

Tribunal Members:

*Adrian Colton QC (Chairman)
Fionnuala McGrady
Jarlath Burns*

Appearances:

Feargal Logan

*Logan & Corry, Solicitors, appeared
on behalf of the Applicant*

Colm Owens

*O'Hare Solicitors, appeared on behalf
of the Respondent*

Mr Liam Keane, Solicitor

Acted as Secretary for the Tribunal

The Tribunal's Decision

The Tribunal would like to thank the parties for their attendance at the hearing of this matter and for the way in which they have conducted the proceedings. The Tribunal was particularly impressed by the fact that a number of parents of members of the Carrickmacross Under 12 Teams had attended the hearing which is indicative of a commitment to and support for the teams in question.

The Tribunal would also like to put on record its appreciation to the legal representatives who appeared in the case for the helpful and concise manner in which they marshalled and presented their respective arguments.

In summary this case relates to a decision by the Competitions Control Committee (the 'CCC') of the Monaghan County Board to award two matches to the opponents of Carrickmacross in the Under 12 Division I and Division III finals which had been scheduled for the 28 July 2007.

In accordance with Rules 61, 135 and 136 of the Official Guide 2007, the CCC was responsible for the arrangements and control of the Leagues which are the subject matter of the dispute. The Applicant has set out a Statement of Facts upon which the claim is made from which it is clear that the Carrickmacross Club decided to enter two teams in the Under 12 Leagues for 2007 with one team competing in Division I (15-a-side) and another team competing in Division III (13-a-side). When the fixture list was settled for the competition, Members of the Club became concerned that if they reached the finals which were set for 28 July 2007, this would cause severe difficulties for the Under 12 teams because approximately 20 players in the Under 12 panels would be in Belgium with the National Scout Organisation between 24 July and 2 August 2007. Thus, at a meeting in April, a request was made at the Monaghan County Board to delay the semi-finals and finals until September but this request was rejected at the meeting and the fixture booklet was confirmed for the year at that stage.

Unfortunately the fears of the Club were realised in that both teams ultimately qualified for the Under 12 finals with the Division III team winning its semi-final on 19 July and the Division I team winning its semi-final on the 21 July.

After the 21 July efforts were made by the Club to rearrange the date for the finals. We quote from the Statement of Facts:-

July 21st

At approximately 6.00 pm our Club Secretary contacted Pdraig Sherry (County Board CCC Youth Officer) and requested that the final be rescheduled. He was told that the County Board would not enforce the Seven Day Notification Rule but the match had to be played within 7 days of the original date (28 July).

Our Secretary contacted Division I team manager who informed him that August 4th would be a suitable date as the Scouts would be back from their camp on August 2nd.

Our Secretary contacted the Emyvale Youth Officer who informed him that they could not play on August 4th as they had players on holidays on that date. The Club decided to meet the following evening (July 22nd) to discuss the issue.

July 22nd

Division I team manager contacted Emyvale Club and told them of the predicament we were in. The Emyvale representative said he would contact their team managers and call back. He never did.

On 23rd July the Club wrote to the CCC. The parties agreed that this letter was central to the dispute before this Tribunal and we therefore set out this letter in full.

A Chara

Cumann Carraig Mhachaire Rois will not be in a position to field either of the Under 12 teams for their respective finals this coming Saturday 28 July. Unfortunately there are 10 players from each panel currently in Belgium with the National Scout Organisation. We can not determine to parents where or when they send their children so we have no control of this particular situation except to say that they will not return to this country until later next week. To be fair to the other two finalists we could not give them a worthwhile game so we have decided to concede both games.

We forewarned this likely situation at a County Committee meeting earlier in the year but to no avail, hence the efforts of our players and coaches during the year have been in vain. This has caused considerable annoyance to the voluntary personnel who give their valuable time to our youngsters, hopefully we can sustain their interest for the future.

The big losers are the youngsters themselves, we have plenty of competition for their talents. It is unfortunate that we can not facilitate within our own fixture system a programme of games, taking into consideration school summer holidays.

To conclude we want to put on record that we have tried to avoid the situation but it seems that we have no choice or control in the matter'.

The letter is signed by the Secretary of the Club although evidence was given at the Tribunal that in fact the letter was drafted by a Mr John Scully who was Chairman of the Applicant Club and who also is Monaghan County Secretary.

There is some dispute and lack of clarity about what took place after this letter but it is clear that Mr Sherry, on behalf of the CCC consulted with the Secretary of the CCC and the Chairman, Mr Gerry Freeman, and informed the other Clubs involved in the final, namely, Emyvale GFC and Inniskeen GFC that the matches would not be proceeding on the 28 July. At a subsequent meeting of the CCC on 2 August 2007, it was formally decided that the matches would be awarded to Emyvale and Inniskeen respectively in accordance with Rule 136 of the Official Guide 2007. The Minutes of the meeting record that:-

'Correspondence received from Carrickmacross Club advising the Club had decided to concede the Under 12 Division I in three finals. Based on this official notice and taking into consideration Rule 136 TO 2007 the Committee awarded the Division I game to Emyvale and the Division III to Inniskeen.'

This decision was then appealed by the Carrickmacross Club to the Ulster Council and at a hearing on 13 August 2007 the relevant Committee dismissed the appeal. The record of the hearing states as follows:-

'Appearances:

CLG Carraige Mhacare; Pauric Keenan (Runai), Paul Madden (leas - Cathaoirleach)

Coiste Chonta, Mhuinechin; Gerry Freeman, Cormac Connolly (CCC)

Evidence Produced:

Newspaper Fixture List – Carraige Mhacare

Carraige Mhacare letter of 23 July – Carraige Mhacare and CCC

CCC letter of 23 August – Carraige Mhacare and CCC

CCC Minutes of 2 August – CCC

e-mail from Pauric Keenan CCC

Pauric Keenan said that the Club was scheduled to play in two Under 12 Finals on 28 July but were unable to field as 22 players were away with the Scouts. We had tried unsuccessfully to have the games rescheduled and had written to the CCC on 23 July explaining the case. On 26 July a Fixture List appeared in the paper with a note that the games had been awarded to their opponents. The CCC had not met to make that decision and the decision had been made by one or two members. There was no meeting of the CCC until 2 August. We had a letter from the CCC dated 13 August and no date of the meeting at which the decision had been made had yet been received. He added that a member of the CCC had told him that the decision had not been made by a CCC meeting.

Paul Madden added that this problem had been raised at the County Board meeting in April and also at Youth Forums.

Gerry Freeman said that the Fixture List had been adopted at the April meeting of the County Board. The CCC had received a phone call from P Sherry and their e-mail that they would be conceding the games. The decision was noted in the Minutes of the CCC meeting of 2 August as being taken in accordance with Rule 136 TO. Carrickmacross never contacted either of the opponents and the first contact was on the 23 July. In Monaghan there is a standard closed period from 30 July to 12 August. The League Regulations had been adopted.

Cormac Connolly said that the matter had been raised at Youth Forums but there had never been any communication received. The CCC was not responsible for any notes in the newspaper and they were not aware of who had given this to the newspaper.

In response to a question, Pauric Keenan said that they had put 'concede' in the letter to stop the other teams turning (sic) and the games being awarded. He added that they had made contact with the other Clubs three weeks prior to the game to tell them the problems. Pdraig Sherry had been advised of this. Paul Madden had also told Pdraig Sherry that they (Carraige Mhacare) could not field. He said that there had been no meeting of the CCC held between the 23 and 26 July. Pauric Keenan said that one of the cups had been presented.

Both parties withdrew from the meeting.

Having considered the case an Coiste Eisteachta agreed that in their communication of 23 July, Carraige Mhacare had advised the CCC that the games in question were being conceded and that the subsequent action taken by the CCC Chonta Mhuinechin was in accordance with this declaration. Being duly proposed and seconded the appeal was declared lost'

The Tribunal's Findings:

On reading the papers in this hearing it was the immediate and unanimous view of the Panel that it was highly regrettable that the Under 12 Finals were not played. This view was strengthened when we heard the case and we earnestly hope that such a situation will not arise in the future and that lessons will be learned by both Clubs and those involved in the organisation of Under 12 competitions.

The Tribunal accepts that the CCC is charged with the onerous task of arranging fixtures and scheduling matches for a large number of Clubs in a wide variety of competitions. It is desirable and indeed essential for the proper administration of the game and in the interests of all Clubs and players that fixtures are scheduled at an early date in the year and that when settled are adhered to so that Clubs can plan accordingly and players know that they have a schedule of games for the year ahead and know when they will be playing. A scheme which provides for the organised schedule of fixtures in advance and ensures that fixtures are fulfilled is clearly in the interests of the development and promotion of under age games and this is something which should be encouraged and supported. If Fixture Lists are not adhered to, particularly in under age games, this only undermines the efforts of Clubs and those who volunteer to assist under age teams in an effort to provide games for young people.

Having said that the Tribunal recognise that there must be a degree of flexibility to allow for the rearrangement or postponement of games in certain circumstances. The Tribunal was referred to By-Law 22 of the Monaghan County Board and also to the 'Seven Day Rule' which does provide such flexibility. By-Law 22 states:-

'Clubs must fulfil all fixtures made by the Executives of CCC on the date and at the time specified on the official Notice of Fixture except in the following circumstances:-

- (i) competing teams may, by mutual consent, subject to the prior approval of CCC make alternative arrangements for fixture at least 7 days before the fixture is scheduled to take place on the official Fixture List, subject to a maximum of 5 alterations permitted per Club in any one year over all grades of football administered by CCC. The fixture must then be played within 7 days of the original fixture. Penalties in breach of Regulation; loss of match.*
- (ii) fixtures may be postponed in the event of the death of a playing member or a parent, grandparent, brother or sister of a playing member of either team involved in the fixture, occurring within 2 days prior to the date of the fixture. Again to be played within 7 days'*

Thus at the end of the day, the CCC has to balance the competing interests of ensuring an orderly fixture list and facilitating Clubs who have genuine difficulties in fulfilling fixtures. In this regard, it must also be remembered that the CCC has an obligation to all the other Clubs in a competition as well as a Club which has a particular difficulty. They must take into account their entitlements when considering issues arising from the listing of fixtures.

Thus it is clear that the Monaghan County Board and the CCC does have in place a mechanism for the rearrangement of games and indeed this was availed of by Carrickmacross in that the Division III Semi-final was moved from the 21 July to the 19 July so that there was no clash between the Division I and Division III Semi-finals.

Unfortunately no such arrangement was presented to the CCC in relation to either of the finals. We have referred above to the contact that was made with Emyvale prior to the letter of the 23 July. As indicated the letter of 23 July 2007 is crucial to the determination of this claim. It is significant that this is the only written or formal correspondence or notice between the Club and the CCC in respect of the issue which is in dispute in this action and as such must be given very significant weight in considering the matter. In our view the letter could not be clearer. The letter sets out the dilemma faced by the Carrickmacross Club but unequivocally informs the CCC of its **decision** to **concede** both games. It has been forcefully suggested by Mr Logan on behalf of the Applicant, supported by Mr Scully who gave evidence on this point, that this letter *'was not meant to be the end of discussions, it was meant to evoke a response which would facilitate the rescheduling of the two finals'*. With respect, we can not agree with this submission. As set out above, it is our view that the letter was unequivocal. The letter does not ask for a postponement or rearrangement of the game. It does not put forward any alternative date or dates for rearranging either of the games. It does not ask for a meeting of the CCC to discuss the issue. Undoubtedly the intent of the letter was to ensure that the Emyvale and Inniskeen Clubs did not turn up unnecessarily on a Saturday to play a game which could not be fulfilled and Mr Scully and the Club are to be commended for ensuring that this did not happen, but we can not see how either Mr Sherry or Ms Nic an tSaoi can be criticised for their subsequent actions in terms of their interpretation of this letter. Indeed, Mr Scully conceded (as he had to) when questioned by Mr Burns that from the perspective of the recipient of the letter it was reasonable for them to conclude that the matches were being conceded by the Carrickmacross Club and that under Rule 136 the natural consequence was that the games would be forfeited to the opponents.

We have referred above to the fact that there is some dispute and lack of clarity about what took place in the immediate aftermath of the letter. The Club contend that a decision was made on receipt of the letter to formally award the matches to the opponent Clubs. In particular, we have been referred to an entry in a local paper on 26 July 2007 which refers to Youth Fixtures and in respect of the relevant games state that the *'games had been awarded to Emyvale/Inniskeen due to Carrickmacross not being able to field'*. They also contend that Emyvale acquired the cup on the Saturday and that therefore a formal decision had already been made.

The Tribunal heard evidence from Mr Pdraig Sherry and we were impressed by his evidence and accepted his evidence. Mr Sherry was quite precise in what he says he told the opponent Clubs and we accept his evidence. We also accept his assertion that he had absolutely nothing to do with any entry in the newspaper. However, at the end of the day this issue is largely academic. We say so for two reasons: firstly, in our view it is clear that having regard to the contents of the letter of the 23 July 2007, Carrickmacross had conceded these games and the subsequent decision of 2 August was inevitable. On receipt of the letter, after consultation between the officers of the CCC the other Clubs were quite properly

informed of the concession and the games were cancelled. There was a full meeting of the CCC on 2 August 2007 (a matter of days after the scheduled final) at which the formal decision was made to award the games to the Inniskeen and Emyvale Clubs. There is no suggestion of any contrary argument or submission at that time. We do not see how either individual members of the CCC or the CCC itself can be criticised in these circumstances. Secondly, even if some alternative course should have been adopted (which we do not accept) we do not believe that it could be argued in any way that their conduct or decision was unreasonable or outside the Rules of the Association.

Having considered the papers in this matter, having heard the evidence presented by the parties and having considered the submissions made by the legal representatives on either side, we have unanimously decided that this Application should be dismissed and the decision of the CCC should be upheld. We do not consider that the Respondent has been in breach of any of its Rules and on the contrary, we find that the Rules have been properly applied in relation to this matter. Furthermore, we do not consider that there has been any breach of natural justice and the decision taken by or on behalf of the Respondent was reasonable and lawful.

Costs:

At the end of the oral hearing when our decision was communicated to the parties, Mr Owens, on behalf of the Respondent, asked that costs be awarded in his favour against the Applicant. The question of costs is dealt with under Rule 11 (2) of the Disputes Resolution Authority Code which states:-

'Save in exceptional circumstances to be set out in writing by the Tribunal the party deemed by the Tribunal to have been successful in the disputes resolution proceedings shall, on application, be entitled to its reasonable costs. If requested by either party, the Tribunal shall measure costs'

Mr Logan contended that there were 'exceptional circumstances' in this case. He argued firstly that Inniskeen Club had indicated by letter of 2 October 2007 that it was still willing to play the final of the Division III competition notwithstanding the inability of the Clubs to agree a date within the 7-day Rule when the difficulty initially arose. He also argued that it would be inappropriate to award costs having regard to the background of this case and the fact that the Tribunal was dealing with young persons and in particular Under 12s competitions. We have to confess that this issue has caused considerable difficulty for the Tribunal. We acknowledge that under the Rules the Respondents, who have been successful in this case, are 'entitled' to their reasonable costs. The clear emphasis of the Rule is that the Tribunal should only depart from this in 'exceptional circumstances' and clearly the Rule is designed to discourage unmeritorious claims and to make it clear to intending Claimants that they are exposing themselves to the risk of an adverse costs award in the event of an unsuccessful application. On balance we have decided that there are 'exceptional circumstances' in this case. We have come to this view for the following reasons:-

1. As is clear from our Judgment it was the unanimous view of the Tribunal that it would have been desirable that the disputed matches had been played.

2. The mentors of the Applicant Club were sufficiently diligent to bring the potential problem to the County Board at the earliest opportunity in April 2007 but were refused relief.
3. We are particularly influenced by the fact that Inniskeen (who have not received the trophy in question) remain willing to play this fixture against Carrickmacross. We therefore have the perhaps unique situation where a party which has benefited directly from the decision in dispute is willing and apparently in favour of having the effect of the decision set aside. (We should point out that this is entirely different from a situation as frequently occurs, where a player involved in a disciplinary matter seeks the support of the alleged victim).
4. We are conscious of the fact that the matters which we are dealing with affect players who are Under 12. If this was the only factor in relation to costs, it would not be determinative because clearly at the end of the day the application was backed by the Club but we do consider it relevant when we are dealing with persons who are so young and taken together with the matters set out above it has influenced our decision not to award costs.

Finally the Tribunal would like to place on record our thanks to Mr Liam Keane and his staff for all his work in the preparation and conduct of this hearing.

Signed:

Adrian Colton

Fionnuala McGrady

Jarlath Burns

Dated at Monaghan this 1st day of November 2007