

**AN CORAS EADRANA  
DISPUTES RESOLUTION AUTHORITY**

**IN THE MATTER OF THE ARBITRATION ACT 2010 AND IN THE MATTER OF  
THE DISPUTES RESOLUTION CODE**

**CLG Turloch Mor**

**CLAIMANT**

**Choiste Cheannais Na gComortaisi na Gaillimhe &  
Cosite Eisteachta Chonnacht**

**RESPONDENT**

**DECISION**

**BACKGROUND**

The Claimant is a hurling club located in Turloghmore, County Galway that participates in the Galway Senior Hurling Championship. It is a unit member of the GAA and is subject to the jurisdiction of the Association's Rules, Bye-laws and Regulations. The first named Respondent is a sub-committee of the County Committee more commonly known as the Galway Competitions Control Committee (hereinafter referred to as 'CCC'). The second named Respondent is the Connacht Hearings Committee (hereinafter referred to 'CHC').

On the 14<sup>th</sup> September 2014 the claimant played CLG Beagh in the Galway Senior Hurling Championship and won that game. This was the final Group game. As a result, the Claimant progressed to the SHC quarter finals. The quarter final against CLG Ardrahan was played on the 27<sup>th</sup> September 2014 (and ended in a draw).

On the 29<sup>th</sup> September 2014 the secretary of CLG Beagh wrote by email to the secretary of the first named respondent requesting that the '*CCC investigate the validity of the Turloghmore Team that lined out against Beagh on the 14<sup>th</sup> September in Kenny Park*'. The

Secretary Mr. Hynes responded on the same day saying that in accordance with Rule 7.10 and Rule 7.11 TO 2013 *'you need to provide us with a valid reason as to why an investigation should be conducted!'*. Ms. Loughnane, Secretary of CLG Beagh responded *'Matthew Keating was granted full inter county transfer on the 3<sup>rd</sup> July to Long Island Gaels and full transfer back to Turloghmore on the 7<sup>th</sup> September, this is shown on transfer files for 2014. So he would have played in New York and Galway within the same championship year. Could you please confirm if this is legal?'* A response the next day from Mr. Hynes (by email) stated *'I can confirm that a player cannot play Championship games for two Clubs, within a County, or in different Counties, in the same year. (Ref. Rule 6.7).'* Clarification was then sought on whether the transfer was a full inter county transfer or an official sanction. Mr. Hynes then enquired if CLG Beagh were requesting a formal investigation.

On the 30<sup>th</sup> September 2014 Ms. Mary Loughnane Secretary of CLG Beagh stated *'CLG Beagh are requesting a formal investigation into the playing of Matthew Keating for Turloghmore against Beagh on the 14<sup>th</sup> September 2014 in Senior Championship. We know that such player has contravened rule 6.7 by playing for both Long Island Gaels and CLG Turloghmore in respective championships in one calendar year.'* We deem this latter email of the 30<sup>th</sup> September 2014 to be the formal request for an investigation (under Rule 7.4).

In tandem, there was also an objection raised by the Secretary of CLG Beagh on the 1<sup>st</sup> October 2014 pursuant to Rule 7.10 but this was ruled quite properly as out of order pursuant to Rule 7.10(c) on the basis that it had not been lodged in time.

The CCC investigated the matter at a meeting on the 2<sup>nd</sup> October 2014 at the Maldron Hotel. In attendance was Seosamh O'Beirne, Seamus O Grada, Michael O'Coisdealbha, Michael O'Niadh and Sean O'hEidhin and Antain O'Donnabhain (who arrived late and did not participate in the investigation).

From the minutes of that meeting as submitted, the Claimants were requested on two occasions (by email) to confirm or otherwise, that CLG Turloghmore accepted that Matthew Keating played championship for Long Island Gaels in August 2014 and that he also played championship for CLG Turloghmore on the 14<sup>th</sup> September 2014. The reply from the Claimants was to the effect that they could not confirm or deny this and ultimately this was a matter for Long Island Gaels. Reference was made to a report published on the CLG

Turloghmore website on the 22<sup>nd</sup> August 2014 where it was stated that Mr. Keating was involved in the final of the New York Hurling Championship in Gaelic Park, New York.

The investigation minutes report that the key evidence considered by the CCC was the Official Inter-County Transfer form completed and signed by Mr. Keating and the claimant where it stated that the player in question played his last Senior Hurling Championship game for Long Island Gaels, NY on the 17<sup>th</sup> August 2014. The minutes further state that this was a full Inter-County transfer as opposed to an Official Sanction (under Rule 6.11 TO 2013).

The minutes conclude by stating that having reviewed *'this key and compelling evidence'* the CCC determined that this was sufficient to make a decision on the matter.

The result of the investigation concluded:-

*"The result of the CCC Investigation established that Matthew Keating had played Championship for Long Island Gaels in New York in August 2014; that in September 2014 the same player transferred to Turloghmore, on a full Inter-County Transfer; that the same Matthew Keating played for Turloghmore in the Galway Senior Hurling Championship Group C game v Beagh on the 14<sup>th</sup> September 2014 and that this was in breach on Rule 6.7(a) TO 2014."*

The CCC then proceeded in accordance with Rule 7.4(b) TO 2013 to impose a penalty and in that regard it made the following decision:-

“

- A. Turloghmore forfeit the game in question, played on the 14<sup>th</sup> September, without Award of Game to Beagh (Ref. Rule 7.4 (b) TO 2014)....*
- B. As Beagh therefore qualified as the 2<sup>nd</sup> placed Team in Group C, Beagh shall now replace Turloghmore and shall play Ardrahan in the Quarter final, as per the open draw (2<sup>nd</sup> placed Team in Group C V 2<sup>nd</sup> placed Team in Group D). This game shall be played on Sunday 12<sup>th</sup> October 2014.*
- C. The drawn Quarter –Final game between Turloghmore and Adrahan, played on the 27<sup>th</sup> September 2014, is declared null and void.*
- D. The CCC shall commence such Disciplinary Action as is appropriate in the circumstances. (Rule 7.4 (b) TO 2013).*

*These decisions were unanimously approved by the relevant members of the CCC in attendance.”*

The Claimants subsequently appealed to the second named respondent on the 5<sup>th</sup> October 2014 pursuant to Rule 7.11 (TO 2013). The Appeal was heard on the 8<sup>th</sup> October 2014. The result of the Connacht Hearings Committee was to rule that the ‘Appeal is Lost’ and that this decision was taken pursuant to Rule 7.11 (o)(i) TO 2014.

The Claimants subsequently referred the matter to this Tribunal on the 9<sup>th</sup> October 2014 and a hearing of the matter took place at the Mullingar Park Hotel, Mullingar, County Westmeath on Saturday morning the 11<sup>th</sup> October 2014.

### **PRELIMINARY ISSUE**

The Claimants were represented by Mr. Shane MacSweeney Solicitor of MacSweeney & Company Solicitors. On the morning of the hearing a submission booklet was handed in to the Tribunal and it was agreed that the Respondents would be afforded a period of time to consider its contents. With the agreement of all parties, the Tribunal adjourned for an hour for this to take place.

### **CLAIMANT’S SUBMISSIONS**

The Claimant’s submissions revolve primarily around four main points:-

1. *Breach of the Right to Fair Procedures*

The Claimant’s Solicitor, Mr. MacSweeney citing previous decisions of the DRA, Case Law and academic commentary submitted that his client’s right to fair procedures were breached in many ways including :-

- (a) The Claimants only knowledge of the investigation and decision making process was as a result of two emails received from the CCC on the 30<sup>th</sup> September 2014 and 1<sup>st</sup> October 2014 asking if the player played for another team in the championship. There

was a failure to advise the Claimants that a process was being conducted and no opportunity was being afforded to the Claimant to prepare a defence or make submissions. The Claimants were simply asked to admit the offence.

- (b) The Claimants were not given details of the evidence against them or given an opportunity to test that evidence
- (c) The Claimants were not invited to make representations to the CCC during its decision making process – in fact it was specifically denied.
- (d) The Claimants were not afforded any right to respond
- (e) The Claimants were not afforded any right to scrutinise and question the evidence against it
- (f) The Claimants were not afforded the opportunity to present evidence in support of its position that it had not breached any rules
- (g) The Claimant were not invited to make representations prior to the penalty imposed or make suggestions as to the appropriate penalty

## 2. *Appeal Process Prejudiced by Media Interviews*

It was alleged that the appeal process was prejudiced by radio interviews on the 3<sup>rd</sup> October and 6<sup>th</sup> October 2014 by members of the CCC with local radio. That in one of these radio interviews reference was made by a CCC official to the ‘*legality*’ of a player who was the subject matter of the appeal. That it was stated that the ‘*rule book was not complied with*’ and that in one further interview, it was specifically stated that it was ‘*one hundred per cent*’ the case that the Rules had been breached. That in the interview it was suggested that the claimants should give up their appeal. It is the claimant’s submission that these interviews were carefully orchestrated to sway public opinion against the Claimants.

## 3. *The Appeal Hearing before Connacht Hearings Committee*

The claimants submit that the appeal before CHC on the 8<sup>th</sup> October 2014 was a further breach of its right to fair procedures. They submit that the notice inviting the claimants to the Appeal hearing was confusing and misleading as it referred to a ‘disciplinary hearing’ and therefore denied the claimants of an opportunity to prepare properly for that hearing and make appropriate submissions.

It was further submitted that the Claimants were not given an opportunity to review documentation from the investigation by the CCC despite it only having received same early on the morning of the hearing (2<sup>nd</sup> October). It was submitted that the appeals body failed to consider the issue of other penalties that could have been imposed *vis a vis* a fine as opposed to forfeiture of a game.

Finally, an allegation was made of bias (or more particularly, a perception of bias) due to representatives of the CCC remaining in the same room as the CHC hearings committee following the conclusion of the appeal hearing on the 8<sup>th</sup> October 2014.

#### 4. *Misinterpretation of Rule 7.4 (b) TO 2013*

It was submitted that both the CCC and CHC misinterpreted Rule 7.4 (b) and failed to consider what penalty ‘*applies*’ for a breach of this nature and the alternative penalties that could have imposed (that is, no consideration was given to the imposition of a fine or any other sanction that may have applied).

Finally, the Claimants in their submission sought a direction that the decision of the CCC made on the 2<sup>nd</sup> October was contrary to the principles of natural and constitutional justice. They also sought an order that the decision of the CCC made on that date be quashed. They submitted that the Claimants right of appeal was prejudiced by media interviews conducted by two representatives of the CCC on the 3<sup>rd</sup> October 2014 and 6<sup>th</sup> October 2014. In addition, they sought a direction that the decision of the Connacht Hearings Committee made on the 8<sup>th</sup> October 2014 was defective and contrary to the principles of natural and constitutional justice and an order that the decision be quashed.

### **FIRST NAMED RESPONDENT’S SUBMISSIONS**

Mr. Noel Treacy, Chairman and Mr. John Hynes, Secretary appeared for the first named respondent.

It was denied that the CCC decision was contrary to the principles of natural and constitutional justice. It was emphatically denied that the CCC breached any fair procedures in the decision making process or that there was any misapplication of Rule 7.4(b) TO 2013 in the penalty imposed. It was emphatically denied that the CCC did not consider alternative

sanctions. It was submitted that following indepth examination they determined that a sanction other than that prescribed in Rule 7.4 (i.e. forfeiture of game) could create a 'flood gate' situation and a dangerous precedent for all units of the Association.

It was submitted that the CCC found that the constitution of the CLG Turloghmore team taking part in the game against CLG Beagh on the 14<sup>th</sup> September 2014 was invalid. They stated that their investigations established that a named player had played championship for Long Island Gaels in NY in August 2014 and CLG Turloghmore on the 14<sup>th</sup> September 2014 and again on the 27<sup>th</sup> September 2014. That this player transferred to CLG Turloghmore on a full approved Inter-County Transfer. That this was a clear violation of Rule 6.7(a).

It was submitted that the principle matter of the case was the constitution of the claimant's team that played in the SHC game verses CLG Beagh as found to be invalid and that this was not disputed by the Claimants.

Mr. Treacy stated that whilst invoking an investigation under Rule 7.4 TO 2013 was rare, the totality of their work was in line with the wording contained in Rule 7.4. Mr. Treacy submitted that to act in any other manner would leave them open to an allegation of acting '*ultra vires*' by other units or members of the Association. That put simply, their hands were tied due not least in part to the wording of Rule 7.4 TO 2013 which they followed strictly and to each letter. Reference was made to the *Keady Affair* (1989) which it was submitted was followed and was not too dissimilar.

Mr. Hynes stated and agreed that forfeiture was the most serious sanction to impose on any team. Despite this, it was their submission that forfeiture was the most appropriate penalty. It was their view that it was beyond doubt but there had been a breach of the Rules.

Mr. Treacy concluded that every consideration was given to be as fair as possible. Whilst accepting this was the first time they invoked this Rule where forfeiture was the sanction he submitted that fair procedures and processes were followed. Rules were violated and in their role as officers of the County Board they had to implement those Rules in the best interests of the Association.

Finally, it was emphatically denied and refuted that there was an alleged bias or perception of bias at the Appeal Hearing before CHC by the CCC on the 8<sup>th</sup> October 2014. This statement was described as outrageous and preposterous.

## **SECOND NAMED RESPONDENT'S SUBMISSIONS**

Mr. John Prenty appeared on behalf of the second named Respondent. He read out his handwritten minutes of the Appeal hearing. It was accepted that the notice inviting the Claimants to the appeal hearing was confusing. Mr. Prenty stated that the appeal hearing was conducted under Rule 7.11(a). That at that hearing Mr. Holland was present on behalf of the Claimants who did most of the talking. That Mr. Holland acknowledged a mistake was made but it was made in good faith and they were pleading for leniency and to request consideration of any other sanction possible but not forfeiture.

Mr. Prenty emphatically denied that there was any alleged bias or perception of bias relating to the allegation of CCC members remaining on in the room following the departure of the claimants. It was stated that the matter was not discussed at all with the members of the CCC alone.

Finally, according to Mr. Prenty, the Appeal body having considered all matters and having heard from the Claimants decided to dismiss their appeal. The body found no misapplication of Rule 7.4 by the CCC.

## **DECISION & AWARD**

The Claimants submitted that it had a right to fair procedures in the investigation and decision making process undertaken by the CCC. They referred to DRA Decision 3/2010 where it was stated by the Tribunal that they *“have little hesitation in accepting the general principle that a member of a sporting organisation whose position in relation to a serious matter is being adjudicated on is entitled to a fair and impartial hearing.”*

The decision of McMahon J in *Barry and Rogers v Ginnity and Others* was quoted where it was stated that *“the more serious the consequences the higher the standard that will be required”*. The obligations imposed on sport disciplinary panels which were alluded to



include an obligation to give the party charged with wrongdoing fair notice and opportunity to respond (per *summary of Cox and Schuster, Sport and the Law Dublin 2004*).

It was submitted that units of the Association are therefore bound by the principles of natural and constitutional justice. The maxim *audi alteram partem* or 'hear the other side' was a fundamental part of their submission.

The decision of the *DRA 15/2009* was analysed from the view point of what was meant by a right to fair procedures and what that process should entail. It was suggested in the Claimant's submission that the essentials for a valid hearing are that the parties:-

- (a) be furnished with copies of all relevant evidence/material relevant to the matters at issue;
- (b) have the opportunity to cross examine, particularly in respect of disciplinary hearings;
- (c) have the opportunity to rebut and the right to address any relevant bodies."

It was submitted that any initial defects at the first decision making stage cannot have been cured by any subsequent fair hearing (*Administrative Law in Ireland 3<sup>rd</sup> Ed Hogan and Morgan at pg. 566*). Similarly, the appeal hearing is not a de novo reassessment of the merits of a case (per *DRA 4/2013*)

These previous decisions, both by the DRA and the Courts reaffirm the position that the principles of natural and constitutional justice and in particular the right to fair procedures applies to all members and units of the Association. The Tribunal accepts in full what is stated above. When a sanction is being imposed on any member or unit of the Association it is incumbent on the unit imposing the sanction (particularly a very serious sanction such as forfeiture) to ensure the principles of fair procedures apply.

The requirement to hear both sides of a case is reflected throughout the Rule Book TO 2014. In this case, the Claimants may or may not have grounds to suggest that the player in question was playing legally with them but what is clear is that they are entitled to put their case to the CCC before any decision is reached both in respect of the legality of the composition of the team and the penalty to be imposed.

Rule 7.4 TO 2013 states:

## “Validity of Team Constitution

(a) Without prejudice to the general disciplinary jurisdiction of the Council or Committee-in-Charge or the Rules concerning Objections, the Competitions Control Committee of a Council or Committee-in-Charge may, of its own volition, or shall on receipt of a request from a Unit involved in the Game, investigate in such manner as it deems fit the validity of the constitution of a Team taking part in any Game.

(b) Where on foot of such investigation, and not an Objection, the constitution of a Team taking part in a Game is found to be invalid, the Competitions Control Committee shall impose such penalty in respect of the result of the Game as applies (including Forfeiture, where appropriate, but without Award of Game to the Opposing Team). The Competitions Control Committee may also commence such Disciplinary Action as is appropriate in the circumstances.” [our emphasis]

Whilst the Tribunal would have sympathy for the CCC due not least in part to Rule 7.4 rarely being utilised and/or invoked and its unsatisfactory wording, the fact remains that in any situation where a draconian sanction is being imposed, it is imperative that the unit or member who is being burdened with the sanction should be given an opportunity to assess the evidence against them, reply and put forward their defence (if any). This is regardless of the wording in Rule 7.4 (a) ‘*in such manner as it deems fit*’ and in (b) ‘*impose such penalty*’ which cannot over ride a persons right to fair procedures and due process.

The fact that this is the first occasion Rule 7.4 has been invoked where forfeiture is a possible sanction is a more compelling reason that the CCC should follow strictly the principles of natural and constitutional justice and in particular, the right to fair procedures.

The Tribunal however accepts the difficulties posed by this Rule whereby the ‘investigator’ is also required to be the ‘decision maker’ and the lack of directions as to due process/fair procedures and the appropriate range of penalties to be ‘imposed’. The Tribunal hopes that this decision will assist matters not alone in this case but also in future processes under this rule.

What should have transpired is a two stage process. The first stage is the investigation and in that regard, the initial correspondence from the CCC to the unit or member under investigation should advise (1) a request for an investigation had been received and (2) a copy of those allegations furnished to party under investigation.

In this case, the Claimants should have been advised that an investigation was being instigated and the results of that investigation would be put to them at a hearing of the matter on a date agreed between the parties. The Claimants should have been entitled to make any submissions if they so wish. To simply ask a leading question in isolation without any knowledge that an investigation was in train and which was designed to self-incriminate is not satisfactory.

The second stage of the process is the decision making process (preferably at a hearing given the seriousness of the sanction for breach). The parties should be invited to attend and defend the allegations against them. All relevant documentation from the investigation should be disclosed prior to the hearing.

In this case, the Claimants should have been entitled to a copy of all documentation prepared by the CCC throughout the investigation. The Claimants should have been given ample opportunity and time (at least 48 hours) to consider their position and prepare a defence.

The CCC or other relevant body are then entitled to make their decision on the balance of probabilities and impose the appropriate penalty (if that is the case). The appropriate penalty '*as applies*' should be imposed.

If a finding is made against a unit or member of the Association, they should be permitted to make representations in mitigation as to the proposed penalty. This is commonly referred to as the plea for leniency. Given the draconian nature of the penalty it is important that the decision makers know the effect their decision will have on that unit or member.

It is therefore the unanimous decision of the Tribunal to quash the decision of the first named Respondent (Galway CCC) on the 2<sup>nd</sup> October 2014 and remit the matter back for reprocessing with a new and independent process under Rule 7.4(a) and (b). As a consequence, the decision of the CHC on the 8<sup>th</sup> October 2014 is also quashed. It is also noted that the proposed match scheduled for Sunday 12<sup>th</sup> October 2014 will need to be postponed pending the determination of this matter.

We are not specifically requiring the CCC be newly reconstituted, this is a matter solely for the CCC but we would recommend that Beale CLG is included in that new process. We

would recommend that the reprocessing of the matter is conducted in accordance with Part VII entitled 'Rehearing and Reprocessing of Cases' *GAA Disciplinary Handbook* 4<sup>th</sup> Ed. 2011 at pg. 24.

The Tribunal makes no further finding in relation to the other submissions of the Claimants *vis a vis* prejudicial media interviews and the allegation of bias as this is unnecessary and now superfluous to the determination of the matter.

The Tribunal is reserving its position in relation to the costs of either party and the costs and expenses of the DRA pending written submissions from all parties within 5 days from the date hereof.

Dated this *11th day of October 2014* at Mullingar Park Hotel, Mullingar.

Signed:

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Willie Penrose B.L.

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Paddy Collins

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David Nohilly, Chairman