

DISPUTES RESOLUTION AUTHORITY

No. DRA/02/2014

IN THE MATTER OF THE ARBITRATION ACT, 2010

Between:

PADDY O'BOYLE

Claimant

-and-

LOUTH HEARINGS COMMITTEE

Respondent

AWARD, DIRECTIONS AND STATEMENT OF REASONS

Background Facts

1. On 12 December 2013, the Claimant made application for a transfer from his own club, St. Nicholas CLG, to O Raghallaigh GFC. Both clubs are located in County Louth.
2. By virtue of Rule 6.5(a) of the Official Guide, a county must have a Bye-Law governing the transfer of members from one club to another within the County. Louth County Committee has such a Bye-Law and we will outline certain parts of it below. In all cases, applications must be decided in the first instance by the relevant Competitions Control Committee (“CCC”).
3. By virtue of Rule 6.5(d) of the Official Guide, the club of the member seeking a transfer is required to be notified of the application and its observations are required to be considered if received within the time directed by the CCC, which has authority (under Rule 6.5(c)) to determine transfer applications in the first instance. It appears that notice was given to St. Nicholas CLG of the hearing, but it was not present or represented at the hearing.
4. Under Rule 6.5(e), the CCC is required to make its decision:

“In accordance with the Rule and the County’s Transfer Bye-Law and any discretion available to it shall be exercised having regard to the submissions of the transfer applicant and his existing Club, such other discretionary factors as may be provided in Bye-Law and ethos of the Association”.

5. Louth CCC determined the matter on 3 February 2014 and decided to grant the transfer application; the minutes of that meeting do not record any particular deliberations.
6. There followed an appeal against this decision by St. Nicholas CLG on 4 February 2014. The procedural requirements for an appeal against a decision of a CCC on a transfers provided for under Rule 6.5(f) which states:

“An appeal against a decision of a Transfer may be made in writing by an aggrieved party to the County Hearings Committee, within three days of the receipt of notification of decision. The other formalities (e.g. provision of duplicate copy: fee) on submission of an Appeal, outlined in Rule 7.11(e) to (h), are not applicable in this case.”

7. Rule 6.5(f) does not give any further express guidance on the format of the appeal, who is to be notified of it, the scope of the Hearings Committee’s interrogation of the merits of the decision or otherwise. However, one can readily infer that – to the extent that they fit – the provisions of Rule 7.11 would apply generally to such appeals also.
8. In the present case, we have been supplied with minutes of the Hearings Committee dated 12 February 2014 on which the decision was made. It is apparent that, while the CCC was represented, and St. Nicholas CLG was also represented, there was no representative on behalf of the Claimant. The minutes state as follows:

“Paul Shields made the appeal on behalf of St Nicholas CLG indicating the affect on the club on the loss of this player and also noted that they had lost 3 players to Senior Clubs in last few years. He stated that Paddy was one of their strongest players and cannot afford to let player and have to try and hold onto all players until the4 gap is bridged with Juvenile players. They think that they may not be able to field a team if they loose [sic] their strong players.

CCC made their presentation to the meeting re this transfer and advised that no personnel were present from the ST Nicholas CLG but that they had written objection to the transfer. When asked what rule they made the decision on they confirmed that their decision was based upon the strength of

the players case and the lack of the St Nicholas CLG not being present at the meeting. Bryan Moroney asked what affect had the fact that St Nicholas CLG had not attended the Transfer Hearing on the final decision. It was stated that this had a major affect on the transfer decision.”

9. The minutes go on to state that the Hearings Committee assessed all information presented and ruled by unanimous decision to uphold the appeal on the following basis:

“Coiste Eisteachtha Co Lu based its decision on the appeal as per Rule 6.5(e) and Rule 6.1. considering as required by the decision, the Rules on Appeals Rule 7.11 especially (i) (j)(m) (n) (o) and (p) T.O. 2012., Rule 3.21(ii) CCC Functions, Rule 7.10 as it applies to a CCC hearing procedure and associated rules on hearings, rule 7.3 procedures for disciplinary and related proceedings T.O. 2012 and County Louth Bye law 6(a) 2013.”

10. In the present case, notice of the upholding of the appeal having been issued to, one assumes, the Claimant, on 13 February 2014, a request appears to have been sent by email on 18 February 2014 seeking reasons for the decision and the Hearings Committee reverted on the same date as stated the reason to be as follows:

“Cumann Lutchleas Geal Coiste Eisteachta Lu considered that the CCC did not give enough weight to the Ethos of the Association as laid out in Rule 6.1., i.e. a player is considered to owe allegiance and loyalty to his First Club and County, as defined in these Rules.”

11. The claim issued on 18 February 2014, and it makes two arguments in support of the reliefs it seeks. First, it is claimed that the Appellant jurisdiction is limited by (Rule 7.1.1(n) of the Official Guide) and that in deciding the appeal by reference to the weight attached to the ethos of the Association as made out in Rule 6.1, the Hearings Committee exceeded its appellant remit. Secondly, a complaint is made that the Claimant was denied an opportunity to appeal or review the decision which was made in his absence.
12. The principal relief sought is the remittal of the decision to a newly constituted Hearings Committee for reprocessing as soon as possible.

Agreed resolution

13. The arbitration coming on for hearing on the evening of 11 March 2014, the parties very sensibly and constructively came to an agreement that the decision of the Hearings Committee the subject matter of this arbitration should be remitted to the Hearings Committee for reconsideration subject to directions on a number of issues. In light of the decision of the DRA in Case No. DRA/4/2013 2013 (*Griffin v Kildare Hearings Committee*), we consider that remittal is the appropriate step to have agreed, and that remittal now grounds the parties submission in relation to directions for the conduct of the rehearing. In this regard, the directions have already been given orally, but we indicated that we would set these out in writing and give reasons for them in the interest of clarity.
14. Eight issues came for consideration and submissions were heard from both sides in relation to them. In the final analysis, we have given directions in relation to some of them, but we have only expressed opinions in relation to others, which we feel constitute issues that would not have fallen for decision had the matter proceeded before us. In this regard, we were conscious to ensure that the DRA does not become a source of legal advice on issues that were not in fact in dispute. That is not, however, to suggest that the parties have been anything but *bona fide* in their handling of the matters before us in this arbitration.

The directions sought

15. The first direction sought pertains to the timing of the rehearing, and our attention is drawn to Rule 7.11(m) which provides for hearings to be held as soon as reasonably convenient. The parties were *ad idem* that the rehearing should be heard as soon as possible and we therefore direct:
 - (1) ***that the rehearing be held as soon as possible but in any event within 10 days of 11 March 2014.***
16. The second direction sought was that the Claimant be afforded the right to appear and make submissions at the rehearing. Although there is no specific rule addressing this issue explicitly (i.e. in the context of appeals against Transfer decisions), the submission was made that an overall obligation to afford fair procedures dictated that a party who was successful in a decision at first instance should be entitled (where an

oral hearing is held on the appeal) to defend that decision, and our attention was drawn to the decision of the DRA in case DRA/3/2010 (*Fennell v Dublin County Board*) in which it was held that, notwithstanding the absence of any express right to appear in Rule, the underlying obligation to afford due process to parties to an application process meant that, the claimant in that case ought to have been afforded a right to appear. Although the transfer rules have changed since that decision was made, the underlying principle applies and we concur with the view of the Claimant that this is so. To be fair to the Respondent, the reason it did not afford a hearing was that it was endeavouring to comply strictly with the rules expressed, and found no express authority for notice to be given to the Claimant of the appeal (attention was drawn to Rule 7.11(i) of the Official Guide which only provides for notice to be given the successful party in the first instance decision in the case of Objections). While that is a valid concern to entertain, it is evident from a review of the rules that the procedure for dealing appeals on transfer decisions falls into a category similar to Objections and we consider that some “inspiration” can be taken from the procedures relating to Objections (without blindly applying them, since the rule does not expressly require it) in determining what is fair in a case like this. Accordingly, we direct

(2) that notice of the rehearing be given to the Claimant and to the two clubs concerned and that all be entitled in the manner prescribed by Rule for hearings generally to make submissions at the hearing.

17. The third issue was somewhat more controversial. The direction sought on behalf of the Claimant was that the full rigour of Rule 7.11(n) of the Official Guide be applied to the Hearings Committee in the context of the rehearing. This provides:

“An Appeal shall be limited to the matters raised in the Appellant’s Appeal as originally lodged and shall be upheld only where (i) there has been a clear infringement or misapplication of Rule by the Decision-Maker or (ii) the Appellant’s right to a fair hearing has otherwise been compromised to such extent that a clear injustice has occurred. No determination of fact by the Decision-Maker shall be set aside unless shown to be manifestly incorrect.”

18. The Respondent pointed out that, while this rule worked perfectly well in the case of disciplinary matters or indeed Objections, where there was a strict requirement that the grounds of appeal be set out in the Notice of Appeal, Rule 6.5(f) of the Official Guide (set out above at Paragraph 6) expressly excludes the operation of *inter alia* Rule 7.11(f) (i.e. the obligation to state the grounds of appeal in the Notice of Appeal). In

essence, therefore, a strict application of Rule 7.11(n) could result in an appellant being wrong-footed by the Rules, in the sense that he could be punished for not having complied with an obligation that explicitly does not apply to him. We consider that there is merit to this point. For that reason, we direct:

(3) *that the Hearings Committee is not limited in its deliberations to matters raised in the Notice of Appeal submitted by St. Nicholas CLG.*

Nevertheless, we emphasise that the remaining requirements of Rule 7.11(n) continue to apply and that the appeal hearing is not a *de novo* reassessment of the merits of the case. This principle had been established in case DRA/4/2013 (*Griffin v Kildare Hearings Committee*). Moreover, the entitlement of an appellant to go outside the terms of its Notice of Appeal does not allow for an ambush: the requirement for fair procedures dictates that the other party or parties are given a fair opportunity to meet the complaints being raised on an appeal, so in some cases at least, and perhaps this one, the appellant should be invited to provide notice of its arguments or grounds of complaint in advance of the appeal hearing.

19. The question also arose under this heading whether – as submitted on behalf of the Claimant that Rule 6.1 is incapable of being breached, given its aspirational terms. We agree that an appellant committee cannot simply substitute its own view of the merits of the decision (or more precisely, the weight to be applied to Rule 6.1: the “*Ethos of the Association*” rule); however, that is not the same as saying that Rule 6.1 has no role to play at all. It is certainly required to be *considered*, and if it is not considered, there has been a breach. Moreover, the decision of the CCC must be reasonable (in the sense of not being irrational) and, although it will be a very rare case in which a decision might be overturned on its merits by reference to Rule 6.1, there is a very small sector of cases in which a failure to give *any* weight to the ethos of the Association might be seen to render the decision of a CCC irrational. We do not propose to give examples in a vacuum of a case in which this might arise, and we are certainly not saying that the CCC’s decision *here* falls into that category (we simply have not considered that question). Nevertheless, by way of guidance, we consider that it would realistically need to be shown that the committee involved had as good as disregarded entirely the Ethos of the Association as stated in Rule 6.1, in coming to its decision.
20. The fourth direction sought was that the Hearings Committee would give reasons for its decision. Our attention was drawn to a passage from the decision of the DRA in Case

No. DRA/09/2012 (*Clonmore Harps v Leinster*) in which it was observed (at paragraph 18(d)):

“...we would suggest that – as a matter of practice – rather than simply stating the rule of which a breach was alleged, it is better to state the manner in which it was alleged that the rule was breached (i.e. in this case a statement that the player concerned was a member of and competing for Ballinbrackey when ineligible so to do)...”

21. Although there are some cases in which reasons simply cannot be given (say a decision put to a vote at a convention or County Committee meeting), we would concur with the view that a Committee hearing an appeal such as this should give reasons referring not just to rules but also explaining *briefly* how or why those rules applied in the particular case. This is a recommendation rather than a direction, because, in terms, it is too vague to properly form the subject matter of a direction. The rationale for such an obligation is principally to enable a disappointed party to any such decision-making process to analyse whether the deliberations had been in compliance with the applicable Rules and Bye-Laws. We *recommend*, therefore:

(4) that the Respondent, when notifying the parties of its decision, give brief reasons for the decision, by reference not only to the Rules and/or Bye-Laws applied but also to the facts found or conclusions drawn.

22. The fifth direction sought was that the Respondent Hearings Committee be reconstituted for the purpose of the rehearing. We were advised that seven of the nine members of the Hearings Committee were present, so reconstituting the committee would require the nomination of further members. Moreover, the benefit to be achieved by keeping on the committee those members who were present at the DRA hearing would be lost in the event that the Committee were reconstituted. The Claimant submitted that, in its submissions to the DRA, the Hearings Committee had exhibited strong views on the matter. Having heard the parties, however, we came to the conclusion that the overriding concern of the Hearings Committee in this matter was to properly apply the rules, and that a number of the difficulties were caused as a result of *lacunae* in the rules relating to transfer applications and appeals. It is easy for a lawyer to say that the parties should be in a position to know what fair procedures dictate in a given case; however, the Association is an amateur organisation administered by laymen and it is not difficult to see how appeals which are so closely regulated on other areas can give rise to confusion in the particular case of transfers, in

which specific concerns arise that are not necessarily the same as in other areas. We accept the submission of the Hearings Committee that it is not wedded to the outcome of this particular application and that they saw the case as a test case providing guidance for the future. In all, therefore, we think that there is no requirement here for a reconstituted Hearings Committee.

(5) *As such, we decline to give a direction on this issue.*

23. The sixth direction sought was requested by the Hearings Committee and it pertained to the role of the CCC. As such, it is not strictly a matter in respect of which a direction is appropriate. However, we understand that whether or not an oral hearing was appropriate at the CCC level is something that is or is potentially a very live issue in the rehearing, so we feel it appropriate to express our view. While there is no express provision in Rule providing for oral hearings on transfer applications, there is likewise no prohibition on it. And, while Hearings Committees are generally the forum for disputed matters of fact and Rule and they are well- equipped to deal with such cases, that is not a universal practice: for example, Objections are dealt with in the first instance before the CCC and an oral hearing his not prohibited in those cases. We do not go as far as to say that an oral hearing is *obligatory* in all transfer applications. While it was pointed out that the application form in the present case does not allow for written reasons in favour of the transfer to be marked, that is an accident of circumstance rather than an expression of rule, and if provided for in Bye-Law, a County could indeed dictate that procedure before the CCC in the first instance involved written submissions only. We say this as an aside because there is no case in front of us wherein that argument was fully made. As such, without giving a direction *per se*:

(6) *We express the view that a CCC is not precluded from conducting an oral hearing on an application for a transfer.*

24. The seventh direction sought is, again, one in which we feel a direction is not appropriate, as it relates to the operations of the CCC in these cases. The question is what procedural rules should apply to the conduct of an oral hearing by the CCC. It is true that Rule 6.5 does not prescribe a specific procedure. As indicated above, a Bye-Law could dictate a procedure, so long as it was not inconsistent with the Rule, and the Bye-Law here is not entirely silent on the procedural mechanisms. Ultimately, in the absence of specific rules, the general obligation is to provide fair procedures, and in

particular an opportunity for all affected members or units to be heard, and that must be the guiding principle. It was suggested on behalf of the Respondent that the Rules pertaining to Objections could be applied, and there is considerable practical merit in this suggestion: unlike, say, disciplinary hearings, the task on a contested transfer application is in some ways the adjudication of a bipartite or tripartite dispute by the relevant CCC, which is akin to the Objection process. However, Rule does not *dictate* that the Objections procedure apply, so, as indicated previously, while *inspiration* might be taken from Rule 7.10 as how best to meet the overriding obligation of providing fair procedures, slavish adherence to the procedures in Rule 7.10 is not necessary and sometimes not appropriate, and merely not complying with the procedures available under Rule 7.10 is not a valid ground for appeal against a decision of CCC, unless, of course there was procedural unfairness on one or other of the parties. As such, while we make the above observations with a view to giving some assistance to the parties, this should not be seen as a direction.

(7) We decline to make any direction under this heading.

25. The eighth direction sought related to the powers of the Hearings Committee in a situation where the appeal is upheld. In this case, the Hearings Committee considers that it could not remit the matter to the CCC with directions as there was no provision in the rules for a hearing, let alone a rehearing. For the reasons explained above, an oral hearing is indeed permissible; it follows that a re-hearing by the CCC may be conducted orally. As regards directions, it is not advisable that a Hearings Committee dealing with an appeal would be over-prescriptive about how a CCC's rehearing is to be conducted: directions should only relate to the specific issues on which the appeal was upheld, if such a case arises. However, by finding and not direction, we would express the view that:

(8) On an appeal from a decision of a CCC on a transfer application, the relevant Hearings Committee has all the remedies under Rule 7.11(o) available to it.

However, we hasten to advise that a Hearings Committee must be careful as to which of the three approaches it takes, and in particular the options *other than* remittal to the CCC should be chosen only where the Hearings Committee is satisfied that all relevant parties are before it and that they have had an adequate opportunity to address the substance of the matter. In essence, substituting one's one decision or simply upholding the appeal involves a reassessment of the merits of the decision of the CCC,

and where an appeal is run (as it typically is) by reference to alleged procedural errors, it would often if not always be necessary for the Appellant Committee (the Hearings Committee in this case) having upheld the appeal, to then hear *further* evidence from the parties on the substance of the matter in order that it could substitute its own decision.

26. The parties have agreed that each would bear its own costs. It is also directed, by consent of the parties as approved by the Tribunal, that the Claimant will have his deposit refunded in full.
27. Finally, we wish to commend both parties both on the excellent written and oral submissions and on their constructive approach to the resolution of this dispute.
28. This is a final award.

Dated: 13 March 2014

Signed:

Terence McNaughton

Aoife Farrelly

Micheál O'Connell