Dispute Resolution Authority

DRA 07/2013

In The Matter Of The Arbitration Act 2010

And In The Matter of An Arbitration Between Conchuir MacGabhann v CLG Uibh Fhali, Coiste Eisteachta Uibh Fhaili & Coiste Eisteachta Laighean

Draft/ Decision

1. The Claimant and Respondents are members of the Gaelic Athletic Association ("GAA") and are bound by the Dispute Resolution Code adopted by GAA Congress in 2005 and subsequently amended in 2007.

2. The Secretary of the Dispute Resolution Authority, under the terms of the Dispute Resolution Code, prior to the hearing in the above matter on September 2, 2013 at the Tullamore Court Hotel appointed Ms. Aoife Farrelly Barrister, Mr. Arran Dowling-Hussey Barrister and Mr. John Healy as an Arbitration Tribunal to hear the claim brought by Conchuir MacGabhann ("the Claimant").

3. The members of the Tribunal individually satisfied themselves that there were no reason/s in being such that it would be improper for them to sit in determination of the above Claim. No objection was raised, by any party, at the commencement, during or at the conclusion of the oral hearing to the Tribunal sitting as Arbitrators either in relation to any one of them individually or to them together as a group sitting as a constituted Tribunal under the Dispute Resolution Code. The hearing ran from in and around 7pm until 7.45pm at the said Tullamore Court Hotel, Tullamore, County Offaly. The Tribunal designated Ms. Farrelly as Chairperson of the Tribunal.

Representation

4. The Claimant appeared in person along with Mr. Finbar Spain.

5. CLG Uibh Fhali ("first named respondent") was represented by Mr. Gerry O'Brien solicitor and Mr. Padraig Boland Chairman of the said County Board.

6. The Claimant sought:

" A declaration that within the rules of C.L.G, Offaly GAA Bye Laws and natural justice that I am entitled to be a member of Birr GAA Club and can continue as a Birr Player."

7. The Other Respondents made written responses on the Dispute Resolution Authority "Form 2" which will if necessary be referred to. The First Named Respondent raised a preliminary issue which will be considered hereafter.

8. The Claimant had prior to the hearing been suspended under the rules of the GAA and as set out in a letter signed by Sean O' Leathlobhair, of C.L.G Bord Chontae Uibh Fhaili dated April 24, 2013. As that suspension has concluded it is not as such necessary (especially in light of the relief sought by the Claimant) to consider that specific issue. His suspension arose as he played for Birr GAA Club whilst under the Bye Laws of the Offaly County Board and the terms of the 2008 agreement between Birr and Crinkhill clubs he was ineligible to play for that club. Due to the operation of the "Parish Rule" in place in Birr Parish and on foot of the terms of said 2008 agreement between the clubs he was only eligible to play for the Crinkhill Club. The declaratory relief he sought therefore looked *inter alia* to find that the operation of the "Parish Rule" in Birr Parish was not lawful under the rules of the GAA and/or could be disregarded in relation to his individual position.

9. It is accepted that the Claimant who is a minor relied on the advice of adults as to his playing status. It was also not in dispute that he had played hurling for Birr for several years before his suspension. However any error by an adult advising a minor player and indeed the passage of time are not as such relevant issues before the Tribunal. Whilst the events before the Tribunal, and the hearing itself, must have been distressing for the Claimant as a minor the following decision is a decision on the applicable laws relating to the game. The Claimant struck the Tribunal as a pleasant, focused and committed young man who has spent considerable time pursuing his GAA career. If someone other than the Claimant had been before the Tribunal on September 2, 2013 and the facts at issue were the same it obviously follows that the same decision would be made. No personal criticism is levelled at the Claimant who has subsequent to his suspension turned 15 years of age.

Preliminary Issue

10. The First Named Respondent raised a preliminary issue. A preliminary issue is a question of law rather than a question of fact which may be distinct from the particular narrative details of the Claimant's application. In this instance the preliminary issue raised by the First Named Respondent contended that the matter raised was such that the Tribunal was barred from reconsidering it due to the legal doctrine of *Res Judicata* and must instead apply the terms of the previous decision.

11. When a judged matter has been determined the doctrine of *Res Judicata* states that the said matter cannot be considered again. The said approach is followed on public policy grounds in that otherwise parties would reargue matters already determined with an avoidable cost in terms of expense and time that could otherwise be focused elsewhere.

12. The First Named Respondent argued that the decision DRA 15/2009 which is available on the website of the Disputes Resolution Authority- http://www.sportsdra.ie/dradecisions.htm had already addressed the issues raised herein. It followed that if correct the Tribunal would have to stop the hearing and rule that the arbitration had concluded as the decision in DRA 15/2009 would be applicable.

13. The Claimant disputed the contention that *Res Judicata* applied.

Issues to Be Decided

14. It was firstly necessary for the Tribunal to decide if the decision in DRA 15/2009 already addressed the issues raised by the Claimant.

15. If the matters raised were not covered by the decision in DRA 15/2009 the Tribunal would then have to proceed to a full hearing of the issues raised and the Claimant's preliminary application would fail.

16. As stated if the matters raised were covered by the terms of DRA 15/2009 then as DR9/2005 notes that past decision will stand save for exceptional circumstances; the Tribunal in DR9/2005 considered in a comprehensive manner when, how and to what degree one Tribunal was bound by a prior decision of another earlier Tribunal. It noted:

"We, of course, accept that in principle it is possible that an arbitration award might be made which is patently wrong. We further appreciate that it would obviously be unsatisfactory if that award could never be set aside or corrected. In such an eventuality, consideration might have to be given as to whether or not there was any process by which a subsequent tribunal of arbitrators would be entitled to depart from the first award.

We are quite satisfied; however, that the facts of the present case do not even come close to the exceptional circumstances which would justify such a course of action. This is not a case where some newly discovered or fresh evidence came to light subsequent to the award.."

17. This award is a summation of the relevant issues raised by both parties and does not purport to be a transcript of the hearing nor to restate the totality of the written submissions made by the parties. Suffice to say that all issues raised orally and in writing have been fully considered by the Tribunal before issuing this decision notwithstanding the absence of a specific reference to a point.

18. The Claimant made what the Tribunal understood to be a technical objection (or indeed more than one technical objection) to DR15/2009. We were implicitly or explicitly invited to find that there was no valid decision in being that could now be applicable.

19. DRA 15/2009 is as stated in paragraph 11 available on the Dispute Resolution Authority website and it is neither possible nor necessary to refer to significant parts of that 17 page decision.

20. Two relevant parts of the decision should however be quoted at this juncture:

"We do not therefore think that it is appropriate in those circumstances for this Tribunal to give a general Declaration as sought. Such a remedy would be more appropriate in circumstances where a party to a dispute alleged that any such Agreement was either contrary to County Bye-laws or the Rules as contained in the Official Guide (at page15)"

And then:-

"Alternatively, as any such Declaration would have ramifications for the Association generally if this Tribunal is to deal with the matter submissions would have to be sought from the Central Council. For all of the above reasons we refuse the reliefs sought by the Claimants. In the event that the Claimants and/or the Respondents wish to proceed with the matter of the Declaration in respect if the Agreements, then we will adjourn the matter in order to obtain submissions from Central Council."

21. Thereafter a series of correspondence arose which concluded with a letter dated April 5, 2011 headed up re DRA 5/2009 (the rest of the contents of the letter make it clear that this is a typographical error and it is taken to read DR15/2009) where the Secretary of the Dispute Resolution Authority stated that:

"I am directed by the Tribunal to reply in respect of the Declaration sought as follows:-

1. **This Tribunal has previously determined that parish rule applies in the County of Offaly.**
2. **Therefore anybody born within Birr Parish is confined to playing with a hurling club within Birr Parish. The exceptions in relation to Independent teams still apply.**
3. **There are two bilateral agreements in existence determining catchment areas within Birr Parish and those bilateral agreements are binding on the parties to each agreement.**
4. **The existence of those agreements does not breach Offaly by-laws which provide for parish rule and does not breach the Teor Oifiguil."**

22. The Tribunal herein finds that DR15/2009 is a full and final Arbitration Award on the issue of the "Parish Rule" in Birr Parish.

We were invited again implicitly or explicitly to find that there was the Award was deficient in the degree to which it gave reasons for the decisions made. Section 11.2 of the Dispute Resolution Code requires that reasons be given for a decision made by an Arbitration Tribunal appointed by the Dispute Resolution Authority. In circumstances where the said past Award before the Tribunal speaks for itself and no challenge under the then applicable 1954-1998 Arbitration Acts was brought we can not and do not say that DR15/2009 is an Award that is deficient due to a paucity of reasons. Rather it is a valid comprehensive decision dealing with the operation of the "Parish Rule" in Birr Parish.

23. We were also invited to find that the operation of the said 2008 agreement in as far as it related to Claimant was unfair and was such that the instant case was *sui generis* and that DR15/2009 was not applicable. Coupled with that were submissions that at law- mistake or misrepresentation arose so that we should find that the 2008 agreement was inoperable and/or not applicable.

24. The Tribunal finds that Claimant has re-raised issues comprehensively dealt with by DR15/2009 and as a result it is then necessary as per the terms of DR9/ 2005 to consider if there are any reasons for disregarding that prior decision of 2009.

25. It is clear from DR9/2005 that the relevant test that would need to be met so as to disregard the terms of the decision in DR15/2009 is a high one. We can not find that there are any " **exceptional circumstances which would justify such a course of action. This is not a case where some newly discovered or fresh evidence came to light."** On the facts of the case before us nothing more need be said about the operation of the "Parish Rule" in Birr Parish save that it is possible to identify individual players and who they should and should not play for. In the instant case the terms of a valid agreement bar the Claimant from playing for Birr. Whilst he played for them for several years, and his suspension and ineligibility to

play for them again may be distressing that is not to say that is unlawful. It is not. DR15/2009 addresses these matters and we can not therefore re-consider the matter.

26. In light of the foregoing we grant the First Named Respondent's preliminary application.

27. One week was allowed for applications to be made after the hearing in relation to costs. No such applications arose. Therefore whilst what are sometimes called 'costs of the reference' do not need to be dealt with what is known as 'costs of the award' must be dealt with. Therefore in circumstances where the Claimant lost his application it follows that all costs and expenses of the Disputes Resolution Authority shall be discharged by the Claimant. The remaining part of deposit, if any, shall as stated be refunded to the Claimant after the discharge of the expenses of the Dispute Resolution Authority in relation to this hearing.

Dated October 10, 2013

Signed

Aoife Farrelly B.L

Arran Dowling-Hussey B.L

John Healy

Dispute Resolution Authority, Mullingar.