

Disputes Resolution Authority

An Córas Eadrána

DRA 12 of 2015

**In the matter of the an arbitration under the Disputes Resolution Code
and the
Arbitration Act 2010**

**Seán agus Pádraig O'hAmond v Coiste Éisteachta (Nua Bunaithe) Ceatharlach
(Carlow HC*) agus Coisde Cheannais na gComórtaisí Ceatharlach (Carlow CCC)**

DRA 12/2015

Hearing: Seven Oaks Hotel, Carlow at 8pm on 10 July 2015

Tribunal: David Nohilly, Catriona Byrne and Eugene McKenna

Secretary to the DRA, Jack Anderson, was also in attendance

Verdict: *Claim partially succeeds*

Keywords:

Player transfer; R 6.1 of the Official Guide (2014); Transfers and Declarations and Association's Ethos; R 6.3 of the Official Guide (2014); Definition of First Club; R 6.4 of the Official Guide (2014); Attachment to First Club; R 6.5(e) of the Official Guide (2014); Player Transfers within Counties; R 3.19 (n) and R 6.7(2) of the Official Guide (2015); Independent Team; Carlow County Bye-Law 5 (c).

List of Attendees:

Claimant:

John Amond
Pat Amond (father)

Respondent

Carlow GAA: Ger Lennon, Secretary, Carlow GAA
Carlow HC*: Brian Allen, (Chairperson), Tommy Corcoran, (Secretary)
Carlow CCC: Michael Whelan, (Secretary), Eddie Byrne

Factual Background

1. On 5 March 2015, Carlow CCC rejected a player transfer application by John Amond from Ballinabranna GAA to Old Leighlin GAA, following an initial application for an inter-club transfer on the 17 February to the Carlow County Baord. John Amond appealed the decision to Carlow HC on two grounds. First, on the ground of various breaches of fair procedure by Carlow CCC and principally that the Chairperson of the CCC did not inform the meeting that he was a former Ballinabranna player – it being the case that Ballinabranna objected to the proposed transfer. The second ground of appeal was on the substantive ground that the CCC's decision to refuse the transfer was based on a misapplication of Rule 6.1 of the Official Guide (2014) and principally relating to John Amond's "First Club", as properly defined in Rule 6.3 and 6.4 of the Official Guide (2014).
2. The first and procedural ground of appeal was upheld by Carlow HC at a meeting held on 15 April 2015 and pursuant to Rule 7.11 (p) (ii) of the Official Guide (2015) the matter was remitted to Carlow CCC under a different chairperson. That CCC hearing took place on 27 April 2015 and again the transfer application was refused. Again, the claimants raised a number of issues relating to fair procedure and lodged an appeal on this ground to the Leinster GAA Hearings Committee. In a decision dated 27 May 2015, Leinster Hearings upheld the appeal and decided that fair procedure had not been adhered to as per Rule 7.11(O) (i) and (ii) of the Official Guide (2015) and remitted the matter to a newly constituted Carlow HC*.
3. At a hearing held on 4 June 2015, and communicated to the parties on 10 June 2015, that newly constituted Carlow HC* refused to grant the transfer, stating that their decision "was made pursuant to Rules 6.1 and 7.11(p) of the Official Guide..." A request for arbitration to the DRA was then served on 17 June 2015 with a reply by the stated respondents within 7 days.

Preliminary Matters

4. No preliminary matters were raised by either party.

Claimant's Case

5. The claimant's case rested principally on an interpretation of the phrase "First Club" pursuant to Rule 6.1 of the Official Guide (2014) and the definition and application of that phrase in Rules 6.3 and 6.4 of the Official Guide (2014). To better understand the case, four points need to be made: the above Rules are outlined; a brief outline of the various purported "first" clubs of the claimant is given; the claimant's specific player history is recounted; and the player's current "playing" status is examined.

First Club: The Rules

6. Rule 6.1 of the Official Guide (2014): Transfers and declarations-Association's Ethos -

"As the Gaelic Athletic Association is community centred, based on the allegiance of its members to their local Clubs and Counties, the Transfer and Declaration Rules in this Official Guide and in County Bye-Laws reflect that ethos. A player is considered to owe allegiance and loyalty to his First Club and County, as defined in these Rules."

7. Rule 6.3 of the Official Guide (2014): Definitions (extract, second project) -

"First Club: the Club (or Club within an Independent Team) with which a player first legally (i.e. in accordance with Rule and Bye-Law) participated in Club competition at Under 12 Grade or over (including Go-Games), organised by the County Committee or one of its Sub-Committees in the County of his permanent residence, subject to that participation being at an age not more than two years younger than the designated age level of the competition."

8. Rule 6.4 of the Official Guide (2014): Attachment to First Club -

- (a) A person first becomes a member of the Association by joining a Club of the Association within the County of his permanent residence;
- (b) Counties shall prescribe by means of Bye-Law the extent (if any) to which a person first becoming a member of the Association may have a choice as to what Club he joins within the County
- (c) Bye-Laws may allow a person seeking to become a member of the Association an unfettered choice of Clubs or a limited choice of Clubs (e.g. where choice is limited by permanent residence in or other relevant connection to a Catchment Area and there is more than one Club in a particular Catchment Area), or no choice at all (e.g. where choice is limited by permanent residence in or relevant connection to a Catchment Area and there is just one Club within that Catchment Area).
- (d) When a player participates in Club competition at Under 12 Grade or over (including Go-Games), organised by the County Committee or one of its Sub Committees (subject to that participation being at an age not more than two years younger than the designated age level of the competition), that club become his First Club.
- (e) Where the Club or all of the Clubs which an intending member is entitled to apply to join refuse to accept him as a member, the County Committee may authorise him to apply for membership of such other Club(s) as it deems appropriate having regard to the spirit of the Rules and Bye-Laws applicable.

First Club: The Possibilities

9. Ballinabranna GAA club is located near Milford, Co. Carlow. Old Leighlin GAA is located in Old Leighlin in Co Carlow. Along with Leighlinbridge, the three clubs form a geographical triangle with Old Leighlin to the West; Leighlinbridge to the East and Ballinabranna due North of Leighlinbridge. The M9 runs down the middle of this triangle. The base of the triangle in a straight line between Old Leighlin and Leighlinbridge. Milford is about 5kms North of Leighlinbridge. In Leighlinbridge there are three GAA clubs, Naomh Bríd, Leighlinbridge and Micheal Davitts. Naomh Bríd are a hurling club who compete in both the Carlow Senior Hurling Championship and the Carlow Intermediate Hurling Championship and all underage hurling competitions. Leighlinbridge are a football club who compete in the Carlow (adult) Football Championships. Micheal Davitts are a football club who compete at underage level in Carlow. Players from neighbouring villages Old Leighlin and Ballinabranna combine with Leighlinbridge to play for Michael Davitts.

Player's history

10. The claimant played underage hurling with Naomh Bríd and underage football with Michael Davitts. It was the claimant's contention that, consistent with Rule 6.3 and 6.4(d) of the Official Guide (2014), Naomh Bríd and not Ballinabranna, was his First Club. Accordingly, the claimant argued that the refusal to grant his transfer pursuant to an application of Rule 6.1 of the Official Guide (2014), was based on the erroneous and inaccurate premise that his "allegiance and loyalty ought to be owed " first" to Ballinabranna.
11. The claimant also outlined that he did play senior football with Ballinabranna from 2003/4 until 2011. From 2011 to 2013 he transferred from Ballinabranna to Naomh Galls in Antrim and played there while in college in Belfast for two years. In 2013, he transferred back to Ballinabranna and played with them in 2013. His transfer back to Ballinabranna was consistent with the 96-week rule outlined in Rule 6.6(i) of the Official Guide (2014):

"A player who transfers from one County to another County, and within 96 weeks thereafter transfers back to the former County, shall re-join the Club of which he was a member prior to the initial transfer.

Player's current status

12. The claimant made in clear that, for various reasons, his playing relationship with Ballinabranna club was now irreconcilable and had been for quite some time In 2014, the claimant did not play football with anyone and overall the claimant noted that since 2011 he had played no more than 6 months (March to September 2013) with Ballinabranna.

13. Further, the claimant cited Carlow County Bye Law 5 (c):

“A player may play with a club within his parish boundary within the county or a club within a six kilometre radius of his residence. The six kilometre radius is measured in a straight line from the centre of his residence to the centre of the club house/dressing rooms.”

The claimant stated that his current address was with 6kms from Old Leighlin but over 10kms from Ballinbranna and thus consistent with Carlow County Bye-law 5 (c), he should be permitted to play with Old Leighlin with whom his brother plays.

Respondents' case

14. The respondents' case was that the claimant's claim that his "First Club" was Naomh Bríd was true only in so far as it applied for hurling purposes only, given that Naomh Bríd is exclusively a hurling club. The respondents then argued that for football purposes - which is what the transfer to the exclusively football club Old Leighlin GFC is about - the investigation into the claimant's First Club must begin with Michael Davitts.

15. The respondents argued that Michael Davitts is an "Independent Team" as per Rule 3.19 (n) and Rule 6.7(2) of the Official Guide (2015). As Davitts is an independent team, and consistent with the definition in the third paragraph of Rule 6.3, the respondents' view was that the claimant's First Club within that Independent Team was Ballinabranna and that the claimant's allegiance and loyalty was owed thereto, as consistent with the Association's ethos on player transfers outlined in Rule 6.1. The respondents supported their case with reference to clarification sought from Croke Park in mid-April 2015. The letters of request and clarification were supplied to the Tribunal. They also noted that the player's transfer to and from St Galls in Belfast were from and back to Ballinabranna and thus consistent with the fact that Ballinabranna was the player's First Club.

Reasoned Decision

16. This claim derives ultimately from a decision made by a newly constituted Carlow HC* outlined in paragraph 3 above. This Tribunal notes that that Panel was conducted in an exemplary, procedurally sound manner as led by its Chair, Brian Allen. Moreover, this Tribunal unanimously agrees that Carlow HC* were right to find that the claimant's First Club is Ballinabranna. Nevertheless, the Tribunal finds that Rule 6.5(e) of the Official Guide (2014) should have been taken into account. That Rule is as follow [in bold our emphasis]:

“The Competitions Control Committee shall make its decision in accordance with Rule and the County’s Transfers 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 for in Bye-Law and the ethos of the Association.”

17. Whilst this Rules has been modified more recently to remove such discretion, the Tribunal holds that the 2014 version of Rules 6.5(e) applies to the circumstances at hand. The definition of that “discretion” has been set out in previous DRA decisions and notably DRA 04/2013 and DRA 06/2015. The tests to be applied are often called the “unreasonableness” or “irrationality” tests and include general legal principles such as “proportionality”.
18. Further, in determining the reasonableness of an administrative/sports decision which affects or concerns constitutional/playing rights, the standard applied in DRA decisions is analogous to that stated in law by Henchy J, in *The State (Keegan) v. Stardust Victims’ Compensation Tribunal* [1986] IR 642 at 658:

“I would myself consider that the test of unreasonableness or irrationality in judicial review lies in considering whether the impugned decision plainly and unambiguously flies in the face of fundamental reason and common sense. If it does, then the decision-maker should be held to have acted ultra vires, for the necessarily implied constitutional limitation of jurisdiction in all decision-making which affects rights or duties require, inter alia, that the decision-maker must not flagrantly reject or disregard fundamental reason or common sense in reaching his decision.

This test includes the implied constitutional limitation of jurisdiction of all decision-making which affects rights and duties. Inter alia, the decision-maker should not disregard fundamental reason or common sense in reaching his or her decision. The constitutional limitation of jurisdiction arises inter alia from the duty of the courts to protect constitutional rights. When a decision-maker makes a decision which affects rights then, on reviewing the reasonableness of the decision: (a) the means must be rationally connected to the objective of the legislation and not arbitrary, unfair or based on irrational considerations; (b) the rights of the person must be impaired as little as possible; and (c) the effect on rights should be proportional to the objective.”

19. Applying the above principles to the circumstances at hand, and taking into account factors such as those outlined in paragraph 12 and 13 above, this

Tribunal finds unanimously that the decision of Carlow HC* dated 10 June 2015 should be set aside.

Award

20. The Tribunal, in final and binding determination of this dispute, and pursuant to its powers under Section 11.3 of the Disputes Resolution Code, grants the requested transfer of John Amond with immediate effect; that is, from 10 July 2015.

Costs

21. Taking into account that the claimant's case succeeded in part only (failing on the Rule 6.1 point relating to First Club but succeeding on Rule 6.5(e) of the Official Guide (2014)), the Tribunal makes no order as to costs and directs that all parties bear their own legal costs and expenses and that the claimant's deposit be returned less the balance of the costs associated with the arbitral hearing, as calculated by the Secretary of the DRA.

Dated of Oral Hearing: 10 July 2015

Date of Agreed Award: 6 August 2015

Signed: agreement by email

David Nohilly (chair)

Catriona Byrne

Eugene McKenna