

Disputes Resolution Authority

An Córas Eadrána

DRA 07 of 2015

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

**Pilib agus Gearard O’Ceallacháin v Coiste Éisteachta Mhuineacháin (Monaghan
HC) agus Coiste Comórtas na gCluchí Mhuineacháin (Monaghan CCC)**

Hearing: Hill Grove Hotel, Monaghan at 8pm on 30 April 2015

Tribunal: Mr Damien McMahon (chair), Mr Michael Flanigan, Mr Albert Fallon

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

Verdict: Claim succeeds.

Keywords: Player transfer; 2014 and 2015 Monaghan County Bye-Laws; R 4.5 of the Official Guide (2014); Official Correspondence and Notification; R 4.6 of the Official Guide (2014); Communications; R 6.1 of the Official Guide (2014); Transfers and Declarations and Association’s Ethos; R 6.3 of the Official Guide (2014); Permanent Residence; R 6.4 of the Official Guide (2014); First Club; R 6.5 of the Official Guide (2014); Player Transfers within Counties.

Factual Background

1. This was an application for arbitration brought by Pilib and Gearóid Ó Ceallacháin, two brothers, (‘the Claimants’) against a decision of Coiste Cheannais na gComórtais Mhuineachain CLG, taken on 10ú Marta 2015 refusing an application by the Claimants to be permitted to transfer from CLG Currachín to CLG Corr Dubh, a decision upheld on appeal by the Claimants to Coiste Éisteachta Mhuineacháin CLG in a decision taken on 19ú Marta 2015.
2. The Claimants lodged their Request for Arbitration with the DRA on 1ú Aibreain 2015.
3. The Response of the Respondents was served on 7ú Aibreain 2015.

4. Mr. Conor Sally, solicitor of Logan & Corry, Solicitors, appeared for the Claimants. Mr. Charles Murtagh, solicitor of O'Sullivan & Murtagh, Solicitors appeared for the Respondents.

Preliminary Issue

5. Monaghan County Bye-laws: Whether the 2014 County Bye-Laws or the 2015 County Bye-Laws were applicable in these proceedings?
6. It was submitted on behalf of the Claimants that the transfer requests were made on 25ú Feabhra 2015 and signed by CLG Corr Dubh on 26ú Feabhra 2015, and that the 2015 County Bye-laws were not ratified by An Coiste Bainistí, as a necessary pre-requisite to their validity and implementation, until 27ú Feabhra 2015. It was submitted that the Respondents had no lawful authority to act under the 2015 County Bye-laws since the Transfer requests were submitted before the 2015 Bye-Laws took effect, even though the 2015 Bye-Laws were effective when the impugned decisions of the Respondents were taken and were relied upon by the Respondents.
7. (The essential relevance, if any, of this submission was that Rule 32 (Inter Club Transfers) contained in the 2015 Bye-Laws did not appear in the 2014 Bye-Laws. In particular, only 2015 Bye-Laws contained, in Bye-Law 32, a discretionary power in the First Respondent to take account of whether the player seeking transfer had played in official competition for his existing club in the previous 48 weeks).
8. It was submitted on behalf of the Respondents that this issue had not been raised by the Claimants until now at this hearing. However, the applications could not be dealt with by the Respondents until after the expiry of the transfer deadline on 28ú Feabhra 2015, at which time, the 2015 Bye-Laws had come into effect: the applications could not be dealt with other than pursuant to the 2015 Bye-Laws since the 2014 Bye-Laws were no longer in existence.
9. The Tribunal ruled, after a short recess to consider the preliminary matter, that the 2015 County Bye-Laws were the only Bye-laws that existed at the dates of the impugned decisions made by the Respondents and the date of signature of the transfer applications were irrelevant in that regard. The submission of the Claimants was rejected.

The Substantive Issues

Notification of Impugned Decisions

10. It was submitted on behalf of the Claimants that the impugned decisions of the Respondents had not been notified to the Claimants directly but instead notified to them through Corr Dubh CLG, a club of which they were not

members, contrary to Rial 4.5, T.O. 2014 and that, accordingly, the impugned decisions could be of no validity.

11. It was submitted on behalf of the Respondents that all communication with the Respondents came through Corr Dubh CLG. In any event, Rial 4.6(c) envisaged, by way of alternative, notification to any appropriate facsimile number notified by or on behalf of the Member to the sender or to the Council or Committee-in-Charge. It was submitted that, in the case of the Claimants this was Corr Dubh CLG.

Transfer Applications

12. It was submitted on behalf of the Claimants that the documentary evidence of the reasons for their transfer applications submitted to the meeting of the First Respondent on 10ú Marta 2015 was based on their current place of residence, Carrickmacross, and included a receipt for rent and a utility bill. It was submitted that the majority of the hearing was taken up with a discussion of the issue of residency. The Claimants brought a copy of their tenancy agreement to the appeal hearing before the Second Respondent on 18ú Marta 2015 and, again residency was the main subject of discussion.
13. The Claimants asserted that the Second Respondent made its decision based on the fact that the residence of the Claimants in Carrickmacross was not their 'Permanent Residence', a term defined in Rial 6.3, T.O. This was confirmed in the official notification of the decision of the Second Respondent.
14. It was submitted that the Claimants had been living in the stated address for one month by the date of the meeting of the First Respondent and for two months by the date of the meeting of the Second Respondent and that the Claimants had not played for CLG Curraichin since 26/08/2014.
15. However, attention was drawn to the fact that a number of transfers approved by the First Respondent at the said meeting involved players who had played for their former clubs less than 48 weeks previously, the difference being that those transfers were agreed by the two clubs in question in those cases. It was further submitted, that Bye-law 32 states that the only discretionary factor that can be taken into account is whether the player seeking transfer has played for his former club within the previous 48 weeks, there being no reference to 'primary residence'.
16. It was submitted that the decision notice sent to the Claimants by the Second Respondent stated that the transfer applications were refused, inter alia, on the basis of 'Permanent Residency'.

17. It was further submitted that simply because two clubs might agree on a transfer application did not mean that the First Respondent could ignore Riail 6.5, T.O.
18. The parties confirmed that there was no 'parish rule' in Muineachain governing transfers.
19. The Respondents submitted that Riail 6.5(e), T.O. set out how the First Respondent was to make a decision on a transfer application and that the only specific discretionary factor provided was that the player seeking transfer had not played in official competition for his existing club for 48 weeks as set out in the Bye-Law 32.
20. It was further submitted that the only question for the Second Respondent was whether the First Respondent, in reaching its decision had misapplied Rule pursuant to Riail 7.11(o).
21. In relation to Claimant Pilib O Ceallachain, it was submitted that the only relevant factor was the ethos of the Association and the concept of 'First Club' set out in Riail 6.3 and 6.4, T.O. It was specifically submitted that the submissions of Curraichin CLG; the fact that the Claimant was working in Dundalk and that his girlfriend was from Corr Dubh were not relevant factors in the decision. Further, it was submitted that the only discretionary factor permitted under the County Bye-Law was of no application in this case. It was submitted that the First Respondent did not, therefore, misapply Rule
22. Similarly, in relation to Claimant Gearoid O Ceallachain, the only relevant factor was the ethos of the Association and any issue of residence was not taken into account by the First Respondent. It was stated that, otherwise, if residence had been taken into account, there would have been misapplication of Rule. It was submitted that the decisions on the transfer applications were notified on the night of the decision and Riail 6.3 was read out. It was accepted that the decision letters of the Second Respondent were wrong. In summary, it was submitted that the Second Respondent's reason for its decision was that the First Respondent did not misapply Rule and to have granted the transfers would have been contrary to the ethos of the Association. It was accepted that if both clubs in question agreed to a transfer application transfers, the transfer would be granted.
23. It was submitted that the Respondents complied with Riail 6.5 in that a Bye-Law governing transfers within the county was in place. However, it was submitted, the only discretionary factor in Bye-Law 32 was of no relevance in the case of the Claimants and there was no unfairness visited on the Claimants.

Findings and Reasoning

Notification of Impugned Decisions

24. The transfer applications of the Claimants, while signed by them, were transmitted to the First Respondent by Corr Dubh CLG. The request to appeal the decision of the first Respondent came from Corr Dubh CLG. The fee in respect of this application before the DRA came from Corr Dubh CLG. The Respondents were perfectly entitled to notify their decisions, the impugned decisions, to the Claimants through Corr Dubh CLG, pursuant to Rial 4.5, T.O.; indeed, in all the circumstances, it would have been quite inconceivable that the Respondents should have done otherwise. The Claimants must be taken to have, at least, connived or acquiesced or consented to that method of notification: the Claimants cannot, subsequently seek to impugn the decisions of the Respondents in those circumstances. To find otherwise would be to find that the Claimants themselves had not validly requested a hearing before the First Respondent or an appeal to the Second Respondent, in which case their applications for transfer would have been ineffective.

Transfer Applications

25. The basis of the Claimants' applications for transfer from Curraichin CLG to Corr Dubh CLG was that of their new address in Carrickmacross for a period of one month by the date of the meeting of the First Respondent (two months by the date of the meeting of the Second Respondent hearing the appeal of the claimants against the decision of the First Respondent, together with certain other domestic circumstances. The Claimant, Gearoid O Ceallachain had an additional ground, having been suspended for one year by Curraichin CLG and due to his having a medical condition. Neither had played for Curraichin CLG for at least 48 weeks.
26. Both Respondents held an oral hearing at which the claimants were present. The hearings were mainly concerned with a discussion on the question of residency. This was natural in view of the nature of the Claimants' applications.
27. However, since no 'Parish Rule or 'Area of Catchment' applies in Muineachain, it was difficult to understand why the discussion at the relevant meetings of both Respondents focussed on residency or why the Claimants felt compelled to present their applications on that basis.
28. Conversely, the one discretionary factor available to the Respondents, as set out in Bye-Law 32, was, in fact, available to either of them to permit the transfers.

29. The notification of the decision of the First Respondent did not offer any reason at all for its decision. This in itself provided grounds to quash the decision of the First Respondent (albeit, the proceedings before the Second Respondent were by way of an appeal). If this were the only issue, the First Respondent could be held to be guilty of unfairness, irrationality and unreasonableness. However, the existence of an appeal, that was exercised by the Claimants, to the Second Respondent had the potential to cure any irregularities in the decision of the First Respondent.
30. The notification of the decision of the Second Respondent to the Claimants did give reasons for its decision, namely, Bye-Law 32 and the concept of 'Permanent Residence' set out in Riail 6.3, T.O. This could only mean that, firstly, the applications of the Claimants for transfer were refused despite neither player having played for Curraichin CLG for at least 48 weeks, in which case, the reference to Bye-Law 32 is somewhat incongruous (save, possibly, that Rule 32 provided a basis for the First Respondent, and, on appeal, if any, the Second Respondent, to consider applications for transfer at all). Secondly, the decision of the Second Respondent, as notified, could only mean that the applications of the Claimants for transfer were refused because the Second Respondent did not accept that the Claimants' principal private residence was as stated by them for at least the previous month and was likely to be so for at least the ensuing year. The Tribunal rejected that assertion: it concluded, unequivocally, that the former criterion was satisfied and concluded, on the balance of probabilities, on the evidence, that the latter was satisfied. 'Permanent Residence' was not otherwise defined in the Muineachain CLG Bye-Laws.
31. However, at the hearing, the Second Respondent not only conceded that the letter notifying its decision to the claimants was wrong, but advanced an entirely different reason why the transfers were refused, namely, that to grant the transfers would have been contrary to the ethos of the Association and the assertion that the First Respondent did not misapply Rule. Even if this approach were acceptable (and this was not found to be the case by the Tribunal), the latter argument was unsustainable for the reasons already stated.
32. The submission concerning the ethos of the Association was grounded on the provisions of Riail 6.1 ('Transfers and Declarations Association's Ethos') and Riail 6.3 ('First Club'). There are certainly strong reasons why the Association's ethos should be explicitly protected and that members of clubs should not be allowed to transfer on a whim or on the basis of individual preference. However, taken to its logical conclusion, it might be argued that there could never be any, or very limited, grounds to grant an inter-club transfer. T.O. does, of course, make such provision, stating that it shall be provided for in county Bye-Laws and giving a wide discretion to counties to restrict transfer eligibility. However, the Muineachain Bye-Laws governing

transfer applications of adult players, as here, merely provide that the First Respondent can take into account in making its decision on a transfer application, but only if it wishes, that the player in question has not played in official competition for his existing club for at least 48 weeks.

33. Since the Tribunal found that the deliberations of both Respondents were focussed on the issue of residence, and where no reasons for its decision was offered by the First Respondent in its notification of that decision to the Claimants and where, it was acknowledged at this hearing, that the reasons for the decision of the Second Respondent, in its notification of its decision to the Claimants, were wrong, it is impossible to conclude that the reasons now offered, only at this hearing, were the actual reasons, at the relevant time, for refusing the transfer applications. It may well be that, upon mature reflection, the reasons now offered, were sustainable and valid reasons to refuse the transfer applications, but to accept that position would have represented the visiting of unfairness on the Claimants, particularly where neither Claimant had played for Curraichin CLG for at least 48 weeks and where any argument that the 'Permanent Residency' position was not met was unsustainable.

Decision

34. The applications of the Claimants succeed.
35. The impugned decisions of the Respondents are set aside.
36. With the agreement of the parties, the Tribunal declines to remit the Claimants' applications for transfer to a freshly-constituted meeting of the Second Respondent and, instead, makes the decision on the Claimants' transfer applications itself.
37. The Claimants, and each of them, are transferred from Curraichín CLG to Corr Dubh CLG with immediate effect, that is, from 1ú Bealtaine 2015.
38. The Tribunal is satisfied that notification of the impugned decisions was lawfully sent to the claimants through Corr Dubh CLG.

Costs and Expenses

39. The Tribunal, in its discretion, makes no Order as to costs. Costs were applied for by the Claimants, the successful party. The Tribunal was satisfied that exceptional circumstances existed in these proceedings that permitted the Tribunal to make no order as to costs. The Claimants were successful on foot of a technical procedural failing on the part of the Respondents, not on the substantive merits of the application; the success of the Claimants did run counter to the ethos of the Association in many respects: the Association cannot be subject to players being permitted to transfer to other clubs within a

county on an arbitrary basis purely on a whim. While the Claimants were now residing in the town of Carrickmacross, with one working there and the other working in Dundalk (14 miles away), the Association is built upon loyalty to one's original club ('First Club') that, in this case, was within the county and in circumstances where CLG Curraichín was happy to pay the Claimants' travel expenses to training and games.

40. It was accepted by the Tribunal that CLG Curraichín, a relatively small club, would potentially suffer disproportionately from the transfer to CLG Corr Dubh of the two Claimants. Further, the Claimants sought to ambush the Respondents in making a fresh argument as to the applicability of the 2015 County Bye-laws on the night of the hearing for the first time, an assertion that had no substantive merit and by their submission that no proper notification of the impugned decisions had been given to them when, at all times, the Claimants were happy to rely on Corr Dubh CLG acting on their behalf even to the extent that the Claimants' application fee in respect of these DRA proceedings was paid by Corr Dubh CLG when neither was a member of that club and a leading member of CLG Corr Dubh took a prominent position in the course of the hearing of this application, along with the Club Runai. At all times, it appeared, the transfer applications of the Claimants to Corr Dubh CLG was being managed and promoted by that club.

41. The expenses of the DRA in relation to the hearing of this application as certified by An Rúnaí shall be met from the application fee paid on behalf of the Claimants with any remaining surplus being refunded to the Claimants in equal shares (even though the fee was paid on their behalf by Corr Dubh CLG);

Dated at Muineacháin this 30ú lá d'Aibreain 2015.

Sínithe: _____
Damien Mac Mathúna (Cathaoirleach)

Mícheál Ó Flanagáin

Albert Ó Fallain

Date of Agreed Award: 8 July 2015

Dated of Oral Hearing: 30 April 2015

Date of Agreed Award: 8 July 2015.

Signed: Albert Fallon
James McManus
Michael E Harrington.