

Disputes Resolution Authority

An Córas Eadrána

DRA 08 of 2015

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

**Cumann Iománaíocht Thuama (CIT) v Coiste Éisteachta Chonnacht (CEC) agus
Coiste Éisteachta Coiste Chontae na Gaillimhe (CEG)
DRA 08/2015**

Hearing: Maldorn Hotel, Oranmore, Galway at 8pm on 15 May 2015

Tribunal: Richella Carpenter (chair); Donal Fitzgibbon and Michael Needham

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

Verdict: Claim dismissed

Keywords: *Permission to play; catchment area; Rs 14 and 16 of the Galway County Bye-Laws (2013); R 7.11 of the Official Guide (2014); appeals; fair procedures*

List of Attendees:

Claimant, CIT:

Micheal Ó hAichir, Cisteoir/Bainisteoir Faoi14
Micheal Breatnach, Cathaoirleach
Risteard Mac Liaim, Runaí
Patricia Quinn, Registrar

Respondent 1, CEC

Not present

Respondent 2, CEG

Mattie Potter, Chairman
Michael Monaghan, Secretary
Seán Mac Manamon, Pádarig O'Callaghan, Douglas Whelan (members)

Noel Treacy, Chairman, CLG na Gaillimhe
John Hynes, Secretary, CLG na Gaillimhe

Interested Party (1); Sylane
Noel Tyrrell, Chairman
Philip Ryan, club solicitor, MacSweeney & Co solicitors, Galway

Interested Party (2): Dunmore McHales
David Cronin (Secretary),
Aine Mitchell, Mairéad Keeley, and Denis Naughton (parents)

Factual Background

1. In late February and early March 2015, Galway CCC issued its decisions relating to Transfers and Permissions to Play for 2015 and including a number of Permissions to Play requests by four juveniles from Dunmore McHales to Sylane. The four requested Permissions to Play were not sanctioned by Galway CCC and Sylane requested a hearing on the matter at CEG. On 18 March 2015, CEG held a meeting on the matter with officers from Sylane, Dunmore McHales and CIT and including three parents from Dunmore McHales. CEG overturned the decision of Galway CCC and granted the Permissions to Play.
2. CIT subsequently attempted to appeal the matter to CEC but received notification on 31 March 2015 that CEC had declined to consider the matter, later clarifying that they had done so because they did not have jurisdiction, pursuant to Rule 7.11 of the Official Guide (2014), to hear the matter. A request for arbitration to the DRA was then served on 6 April 2015.

Preliminary Matters

3. Three preliminary issues arose. First, and generally, there was a discussion with the Tribunal as to whether it was necessary for all named parties on the list of attendees to be present in the room. Ultimately, all named parties were permitted to sit through the hearing. Second, and specifically, Sylane's legal representative wished to make a written submission as an interested party. The claimants objected to the written submission (principally on the grounds of its lateness) and that was upheld by the Tribunal. Nevertheless, at the conclusion of the substantive part of the hearing, Sylane's representative was permitted to make a brief oral submission. That submission related to CIT's standing to challenge the Permissions to Play at CEG and thereafter. The Tribunal acknowledged that submission but stated that at that point in the hearing it had heard sufficient evidence to assist itself in reaching a verdict. Thirdly, the nature of the hearing, as directed by chair and pursuant to her discretion under section 7.1 of the Disputes Resolutions Code, was such that it impliedly became de novo in nature and both principal parties appeared

content to proceed on that basis with their oral submissions on the night of the hearing.

Claimant's Case

4. The claimant's case was presented by Mr Hehir and a summary follows herein. First, the claimant's argued that Sylane's request for a hearing at CEG was a breach of Rule 7.11(a) (1) of the Official Guide 2014. Second, CIT were, they submitted, not furnished with a copy of that request for a hearing and this was a breach of Rule 7.11(j) of the Official Guide 2014 and also a breach of Lámhleabhar Smachta 2014. Third, neither Sylane nor CEG notified CIT that three witnesses (parents) would be at the CEG hearing, which was then held on 18 March 2015. Fourth, at that 18th of March hearing, it was CIT's case that the officers from the three clubs left the room and CEG then heard in camera from the three parents from Dunmore McHales; an action which, CIT claimed, was in breach of Rule 7.3 (aa) (3) of the Official Guide (2014) which states: "No evidence shall be given or submissions made in the absence of any party to the Disciplinary Action unless they fail to attend at the Hearing without reasonable explanation." This lack of fair procedure (and including a breach of Rule 7.11(o) of the Official Guide (2014)) on the night of 18 March was, CIT claimed, further aggravated by the fact that Galway CCC, the primary decision maker, was not present to defend its decision of 5 March 2015, which had been to refuse the permissions to play.
5. The fifth point of argument by CIT was that they contested the CEG's interpretation of Bye Law 14.3 of the Galway County Byelaws (2013). The stated Bye-Law was central to the arguments in this case and it is noted in full below.

"14. PLAYING ELIGIBILITY

14.1 As the GAA is community centred and is also based on the allegiance of its Members and Players to both our Gaelic Games and their local Clubs; the object of which is to promote the Association's aims at local level, the Transfer Rules in the Official Guide and these Bye-Laws reflect that ethos. A Player is considered to always owe allegiance and loyalty to the Club with which he first legally participated in official Club competitions in County Galway.

14.2 A Player in County Galway may only play with:

- (a) A Club in the Catchment Area / Parish, where he permanently resides
- (b) His First Club (as defined in Rule 6.3, T.O. 2012), or
- (c) The Club in the Parish that the Players Parents were permanently resident, at the time of his birth

14.3: Further to 14.2 above, if no such Club exists, a Player may with the permission of the County Committee, play with the nearest Club to his place of permanent residence, or as directed, by the County Committee, in exceptional circumstances.

14.4: Club membership alone per se, does not confer automatic playing eligibility. A Player must also qualify under one or more of the conditions outlined in T.O. 2012 and in these Bye-Laws, or as directed by decision of the County Committee, at all times.”

6. With specific regard to Bye Law 14.3, CIT argued that it should be read in the context of three points of issue. First, they argued that Bye-Law 14 refers to “Playing Eligibility” which was not at issue and that more properly the Bye-law of relevance was Bye-Law 16 of the Galway County Byelaws (2013) on “Transfers and Permission to Play”. More specifically still, Tuam argued that various breaches of Byelaw 16.2, 16.3, 16.6 and 16.9(v) had occurred. Bye-Law 16 is reproduced below.

“16. TRANSFERS AND PERMISSION TO PLAY

16.1: The closing date for receipt of Transfer and Permission to Play applications, at all ages and levels shall be the 14th February each year. Exception: Where a Player changes permanent residence from the catchment area of one Club to that of another, an application for Transfer or Permission to Play (only to a Club, in the catchment area of his new permanent place of residence) may be submitted for consideration by the County Competitions Control Committee, without reference to the opening and closing dates stated above.

16.2: A Transfer request or Permission to Play request is primarily a matter between a Player and the County Competitions Control Committee. When a Player completes a request for either a Transfer or Permission to Play, his current Club has no right to delay or refuse Permission for this request. If the Club has a valid reason as to why a Player may not be granted a Transfer or Permission to Play, the Club must state such reason in writing, quoting the applicable Rules and Bye-Laws, to the Secretary of the County Competitions Control Committee.

16.3: An Application for either a Transfer or Permission to Play shall be submitted and accepted only on the official forms, as currently approved by County Committee. The Application shall be completed in the prescribed manner as indicated on the form and in accordance with the T.O. 2012 and these Bye-Laws and submitted directly to the Secretary of the County Competitions Control Committee.

In the case of underage Players (up to and including under-18 grade) an application for Transfer or Permission to Play must be accompanied by an authorisation signed by the Player’s Parent(s) or Guardian(s).

16.4: The Secretary of the County Competitions Control Committee shall forward a copy of the Transfer and / or Permission to Play request (application) to the applicant’s Club, which Club shall be required to respond in writing, within seven (7) days of the date of receipt, indicating their refusal and quoting the applicable Rules and Bye-Laws, or otherwise, to consent to the Application. A Club failing to so reply in writing, within seven (7) days will be deemed to have consented to the relevant Application.

16.5: The County Competitions Control Committee (C.C.C.) shall process and make the decisions on all Applications for Transfers and Permissions to Play within the County and such decisions shall be communicated to the Player in question and his current Club.

16.6: A Transfer or Permission to Play Applicant, or either of the two Clubs involved, not satisfied with such decisions, shall have a right of Appeal to the County Hearings Committee in accordance with Rule 6.5, T.O. 2012.

16.7: The County Competitions Control Committee (C.C.C.), when adjudicating and reaching its determination on either a Transfer or Permission to Play Application, shall give consideration to the response of his current Club, and shall

i. Be cognisant of the role played by his current Club, in nurturing and developing the individual Player

ii. Consider the potential impact on his current Club;

iii. Consider the potential impact on the promotion of the Association's aims in County Galway.

iv. Be fully cognisant also of Bye-Laws 15 and 16, in their entirety.

16.8: Permanent residence, in the context of these Bye-Law and Rule 6.3, T.O. 2012, shall mean residing at a fixed address for a minimum period of eight consecutive weeks, prior to the date of the Transfer or Permission to Play application. Documentary proof of such residence shall be required. Residence in a Club catchment area for the purpose of attending a Primary School, Post-Primary School or Higher Education College, shall not qualify as a Permanent Residence, for the purpose of this Bye-Law.

16.9: In accordance with Rule 6.7, T.O. 2012

(i) A Player from an exclusive Hurling Club may be granted Permission to play Football with a Dual Club.

(ii) A player from an exclusive Football Club may be granted Permission to play Hurling with a Dual Club.

(iii) An under-18 Player, from any Club either Football or Hurling, may apply for Special Permission to Play either code, with an adjoining / appropriate Club in the same code, provided that his current Club has not affiliated a Team in the requested Grade, in that same code, and cannot do so in the particular year of application; but not more than five (5) Players shall be facilitated from one Club to another Club in either Grades, in the specific year.

(iv) An under-21 Player, from any Club in either Football or Hurling, may apply for Special Permission to Play either game, with an adjoining / appropriate Club in the same code, provided that his current Club has not affiliated a team in the requested grade, in that same code, and cannot do so in the particular year of application; but not more than five (5) Players shall be facilitated from one Club to another Club in either Grades, in the specific year.

(v) A Juvenile Player (up to and including under-16), from any Club in either Football or Hurling, may apply for Special Permission to Play either code, with an adjoining / appropriate Club in the same code, provided that his current Club has not affiliated a team in the requested Grade (age-group), in that same code, and cannot do so in the particular year of application; but not

more than ten (10) eligible Players shall be considered into one Club, from another Club or Clubs, in either Grades, in the specific year.

(vi) An Adult Player from any Club in either Football or Hurling, may apply for Special Permission to Play either code, with an adjoining / appropriate Club in the same code, provided that his current Club has not affiliated a team in the requested Grade, in that same code, and cannot do so in the particular year of application; but not more than ten (10) eligible Players shall be considered into one Club, from another Club or Clubs, in either Grades, in the specific year.

(a) All such applications for Permission to Play shall be processed in accordance with T.O. 2012 and these Bye-Laws and the County Competitions Control Committee's (C.C.C.) decisions on all such applications shall be final, unless appealed to the County Hearings Committee in accordance with Rule 6.5, T.O. 2012.

(b) All Transfers and Permission to Play Requests become effective three days after the decision of the County Competitions Control Committee (C.C.C.) has been notified to the relevant parties, subject to compliance with Rule 2.3, T.O. 2012, and only if no appeal has been lodged in accordance with Rule 6.5, T.O. 2012."

7. Second, CIT argued that Bye-Law 14.3 should be read in the historical context that all players requesting Permission to Play requests from Dunmore have historically played hurling with CIT and had never played with any other hurling club and as evidence CIT used copies of the 2012, 2013 and 2014 "Approved Permissions to Play" in Galway.
8. Third, CIT pointed out to the Tribunal, as they had done to CEG, that in relation to the application of Bye-Law 14.3, as "a matter of fact" CIT is the hurling club nearest to the players' permanent residence and not Sylane. CIT argued that Sylane is 6.5km from Tuam, Dunmore is 14km from Tuam and Dunmore is 20.5km from Sylane. Moreover, CIT argued that Bye Law 14.3 had to be read in conjunction with decisions by Coiste Chontae na Gaillimhe of 16 June 2011 and November 2013 (the catchment letters") which held that Sylane could use "only players from Corofin parish together with players from Caherlistrane and Kilconly parishes who receive Permission to Play...". CIT also brought to the attention of the Tribunal that within the above catchment, Sylane had, CIT claimed, access to 13 National Schools and could draw on players from six football teams; Tuam, Corofin Caherlistrane, Headford, Kilconly, Killererin.
9. In assisting their case on the above points relating to Bye-Law 14.3, CIT Micheal Breatnach, Cathaoirleach and Risteard Mac Liaim, Runaí of CIT gave testimony and CIT also asked question of Noel Treacy, Chairman, CLG na Gaillimhe and John Hynes, Secretary, CLG na Gaillimhe.

10. Finally, CIT argued that CEC's refusal to hear their appeal was a breach of Rule 7.11(a) (2) and Rule 7.11(e) (2) of the Official Guide (2014).

Respondent 1, CEC

11. CEC was not present and no written submissions were made.

Respondent 2, CEG

12. CEG's response was relatively succinct (and threefold) in nature. CEG denied that there was a lack of fair procedure at the 18 March hearing (countering the arguments made by CIT in this regard and outlined in paragraph 4 above). Mattie Potter, Chairman and Michael Monaghan, Secretary of the CEG both commented on the fact that all parties (interested and directly affected) by this matter had been heard during a lengthy and comprehensive hearing on 18 March. They also noted that the "catchment letters" were never enshrined in any Bye-Law and thus lacked the authority that CIT attached to them. Finally, and simply, CEG noted that the Permissions to Play were made in accordance with Bye Law 14.3 and 16.9 and there the matter ended.
13. Thereafter some discussion focused on the application of Bye-Law 14.3 and specifically on why CEG used the "exceptional circumstance" discretion therein to permit the permissions to play given that historically those from Dunmore McHales who wished to play hurling would have gone to Tuam and not Sylane. The respondents noted here that evidence from the parents involved - and at least one of the parent has a family connection with Sylane - convinced them to use their discretion in this regard. The parents in question were then presented as witnesses to the Tribunal, as was the Secretary of Dunmore McHales.

Reasoned Decision

14. Hearings and Appeals Committees of all kinds within the GAA have a duty to act in a procedurally fair manner in exercising their remit. They are not however courts of law and sometimes in discharging their duty such Committees can take a "somewhat robust" view of process in line with the views of McMahon J in *Barry v Ginnity*, Unreported, Circuit Court, 13 April 2005 at p12 of the transcript;

"The people, who wash jerseys, line the pitches and man the turnstiles, do so on a voluntary basis. The same is true, in general, of the officers of the clubs and of the County Boards. There are a few exceptions, but the general picture is one where the local administration is done by unpaid volunteers who do so for the love of the games and out of a sense of social duty. This means, of course, that they are not normally lawyers or persons of legal training. Rather are they characterised as

persons who are committed to the games and the ideals of the Association, and as persons who in their decision-making roles display large measures of pragmatism and common sense. For the most part, they are not trained professional administrators, but enthusiastic amateurs. It would appear to me that provided the basic rules are not inherently unfair on their face, the process is not flawed because it relies on commonsense and a layman's pragmatism, even if, on occasion, it is a somewhat robust process. In such a situation one cannot demand a level of sophistication in the administration that one might expect of a lawyer or of a professional administrator. Further, to demand such a level of professionalism in the administration might well undermine the very success of the organisation to the detriment not only of the Association itself, but to the detriment of society in general."

15. Taking into account McMahon J's direction and given the fact that the matter in front of this Tribunal was, in effect, heard de novo, the procedural concerns raised by the claimants about the 18 March CEG hearing are not of a nature to justify either rescinding or remitting the CEG's decision. That being said, the practice whereby the parents of the children in question were heard in camera is not one that should be repeated.
16. In essence, this matter revolved around the application of Bye-Law 14.3 and specifically the exceptional circumstances discretion therein. As in general administrative or public law, a GAA decision-maker's exercise of discretion comes with a broad margin of appreciation relating to that decision-maker's experience of, and competency in, the matter at hand. This means that any challenge to a decision maker's discretion - for instance, that it was exercised in an unreasonable or disproportionate or unfair way - will have to cross a high threshold in order to be successful. That threshold was not crossed in the case at hand. Nevertheless, it is suggested that the relevant authorities in Galway GAA consider giving some guidelines or examples of what it or the County Committee mean by exceptional circumstances within the context of Bye-law 14.3

Award

17. The Tribunal awards in final and binding determination of this dispute that the claimant's claim fails in full.

Costs

18. The Tribunal 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.

Date of Oral Hearing: 15 May 2015

Date of Agreed Award: 18 June 2015.

Signed: Ricella Carpenter, Chairperson

Michael J Neelam, Member

Donal Fitzgibbon, member