

Disputes Resolution Authority

An Córas Eadrána

DRA 09 of 2015

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

Go speisialta Coiste Comhdhéanta de Choiste Éisteachta Laighean (Gos, CCCEL)
v An Lár Choiste Achomhairc (CAC)

Hearing: Spa Hotel, Lucan, Co Dublin at 8pm on 2 June 2015

Tribunal: Arran Dowling Hussey; Jim Murphy; and Colm MacGeehin

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

Verdict: Claim succeeds.

Keywords: Unit of the Association; Disciplinary Jurisdiction; Rs 1.9 and 7.1 and 7.13 of the Official Guide (2015); Appeals; Whether determination of fact by decision-maker should be set aside as being manifestly incorrect; R 7.11 of the Official Guide (2015).

List of Attendees:

Claimant:

Colm Crowley and Andrew O'Sullivan, Coiste Eisteachta Laighean;
Michael Reynolds on behalf of Comhairle Laighean;
Dick Butler and John Byrne Coiste Eisteachta Laighean also present.

Respondent

Mel Clarke, CAC
Bernard Smith, Rúnaí, CAC

Whereas

1. The undersigned were appointed by *An Coras Eadrána* to sit as Arbitrators in the instant dispute between the parties under the rules of the Dispute Resolution Authority (hereafter "DRA") and in accordance with the 2010 Arbitration Act.

2. A hearing was held at the Lucan Spa Hotel, Dublin, on June 2, 2015 at 8PM, which was attended by the undersigned and representatives of the parties. The said hearing lasted for around 2 hours. Oral and written submissions were made. Whilst all submissions were received and considered it is neither necessary nor appropriate to set out the totality of same. The Award herein is not a transcript of all issues advanced orally and in writing to the Tribunal but is a summation of the decision made.
3. The Arbitration Tribunal duly appointed had satisfied themselves on their appointment by An Coras Eadrana that they individually and as a Panel knew of no issue precluding them from acting as arbitrators in the instant dispute. Moreover none of the parties raised an objection to the appointment of the Panel as constituted. The Panel proceeded to elect Colm MacGheein, Solicitor as the Chairperson of the Tribunal.
4. The parties in the instant dispute will be hereafter described as 'CCEL' in relation to GO SPEISIALTA COISTE COMHDHEANTA DE CHOISTE EISTEACHTA LAIGHEAN and 'CAC' in relation to AN LAR CHOISTE ACHOMHAIRC.

Preliminary Matters

5. CAC contended as a preliminary point that CCEL lacked the requisite standing and interest to bring the application before the Panel. As a matter of statutory interpretation of the requisite rules of the GAA (and namely Rules 1.9 and 7.1 and 7.13 of the Official Guide (2015)) the Panel did not find that this preliminary point was made out. This initial application which would have had the effect of concluding the Claimant's case was therefore disallowed. It cannot be the case that as argued that the CCEL were not a unit of the association within the meaning of the rules. The effect of reading all of the relevant rules was such that the argument advanced that the CCEL had no standing to bring the application was not persuasive on the Panel. It was not a question of, as the Panel were implicitly or explicitly invited to do, reading one or two rules on their own but rather an issue wherein the Panel had to look at the body of rules. By following the approach set out the Panel could only but dismiss the preliminary point that the CAC sought to rely on.
6. Likewise the separate but related argument that the CCEL, if it did have standing to bring the instant case (which was denied) did not have a sufficient interest in the matter at interest was also not made out. The role of the Dispute Resolution Authority is to enpanel Arbitrators on foot of an application by one of the parties to a dispute that has arisen under the rules of the Gaelic Athletic Association (GAA) to issue a final binding determination on the issue/s in dispute. No argument that was put as to the CCEL's claimed lack of a sufficient interest persuaded the Tribunal of the validity of the point advanced. Some reference was made to a previous DRA decision. Whilst this

past decision was said to bind the Panel on the issue of sufficient interest- the panel neither follows nor distinguishes that case from the one it had to consider. In that a full decision was not put before the Tribunal and it was sought to rely on a 3-4 line summary of the case- the Panel would be amiss by paying note to the decision one way or the other. It was just not possible to say what if anything that decision decided let alone to go any further and apply or not apply the case to the facts before the Tribunal. The decision was therefore disregarded.

Comment on the Claimant's Case and Respondent's Reply: Role of the Tribunal

7. The arbitration arose as a result of a suspension imposed on a player. It is not necessary for the Tribunal herein to discuss the background to this suspension in significant detail. The Tribunal's role is not to analyse the facts arising in relation to the match that was played that led to the suspension - rather the Tribunal is empowered and tasked with considering whether the rules of the GAA and fair procedures were followed in relation to disciplinary processes that were held after the match and before this instant arbitral hearing.

Reasoned Decision

8. The decision of the CAC which was impugned by the CCEL in these arbitral proceedings was that the CAC were wrong in finding that the CCEL's decision to impose a suspension on Kevin Dowd was "manifestly incorrect". Such a finding had to be made so as to allow the CAC within the Rules of the GAA overturn the suspension. It was not the function of the CAC to consider the matter *ab initio*. Rather they had to review the decision of the CCEL and satisfy themselves that there was no basis for the decision that was made. This is as a principle within the past decisions of the DRA and more generally in relation to administrative law a high test indeed. Whilst the CAC or indeed this Tribunal may have had they acted at first instance, at the stage where the CCEL imposed the suspension, come to a different decision it does not follow that the CCEL lacked a basis in fact and law for their decision. Accordingly the CAC's decision was incorrect. There was not as was required by rule 7.11(o) a basis for them to overturn the finding of fact made by the CCEL.

Award

9. The Tribunal awards in final and binding determination of this dispute that the claimant's claim succeeds for the reasons outlined in paragraph 8 above. It follows that given the finding that the CAC's decision was incorrect that the said decision is held to have been rescinded. The original suspension that was imposed on March 23, 2015 would have ended as of June 2, 2015. The suspension is held to have been concluded, and is therefore 'spent' and is not reconstituted or restarted as a result of the first decision herein as to the status of the impugned CAC decision.

Costs

10. The Tribunal, having invited oral submissions on costs on the night of the hearing, directs that all parties bear their own legal costs and expenses and that the claimant having succeeded in its claim have its deposit returned, less the balance of the costs associated with the arbitral hearing, as calculated by the Secretary of the DRA.

Dated of Oral Hearing: 2 June 2015

Date of Agreed Award: 17 June 2015

Signed:

Arran Dowling Hussey

Jim Murphy

Colm MacGeehin

PRINCIPAL : COLM MAC GEEHIN

ERIN BROGAN

DERVLA SUGRUE

LAURA HORAN

MACGEEHIN TOALE
-----SOLICITORS-----

Mr Jack Anderson

Via email:

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Our Reference 10615-02-C
17th June 2015 rr

**R: DRA Hearing
Hearing at Lucan**

Hi Jack

Thank you for your email of 16th inst. I can confirm that I am now happy with the award and it can be published.

Yours truly

Colm MacGeehin
MacGeehin Toale

Encl.

Jack Anderson

From: Jack Anderson
Sent: 19 June 2015 15:07
To: Jack Anderson
Subject: RE: June 2 hearing from Lucan, DRA09, O'Dowd [MF-LIVE.FID1404021]

From: Murphy, James - McCann FitzGerald [mailto:James.Murphy@mccannfitzgerald.ie]
Sent: 17 June 2015 10:03
To: 'Arran Dowling Hussey'; Jack Anderson
Cc: legal@macgtn.ie; legal11
Subject: RE: June 2 hearing from Lucan, DRA09, O'Dowd [MF-LIVE.FID1404021]

All
I am fine on all points now.
Kind regards
Jim Murphy

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From: Arran Dowling Hussey [mailto:adhussey@lawlibrary.ie]
Sent: 17 June 2015 10:03
To: Jack Anderson
Cc: legal@macgtn.ie; Murphy, James - McCann FitzGerald; legal11
Subject: Re: June 2 hearing from Lucan, DRA09, O'Dowd

Thanks Jack I let Colm and Jim confirm they are ok on that point and more generally
Regards
Arran

MR. ARRAN DOWLING-HUSSEY LL.M, B.L| Co-Editor Construction, Engineering & Energy Law Journal of Ireland| Barrister, Arbitrator, Accredited Mediator and Adjudicator| Dublin/SE Circuit/1215 Chambers London|Law Library Distillery Building, 145-151 Church Street, Dublin7 (DX: 818222 Four Courts), Ireland. Tel: +353 (0) 1 817 5847 | Fax: +353 (0) 1 872 0455 | E:adhussey@lawlibrary.ie|W:arrandowlinghussey.com
