

DISPUTES RESOLUTION AUTHORITY

Record No. 1/2005

Between:-

MARK VAUGHAN

-and-

TOMMY LYONS and LARRY RYAN

(as nominee of Kilmacud Crokes GAA Club)

Claimants

-and-

MICHEÁL Ó DUBHSHLÁINE agus LIAM Ó NÉILL

(mar ionadaithe ar son Chomhairle Laighean)

-and-

JOHN BAILEY and JOHN COSTELLO

(as nominee of Coiste Chontae Baile Átha Cliath)

-and-

LIAM Ó MAOLMHICHÍL

(mar ionadaí ar son Árd-Chomhairle Cumann Lúthchleas Gael)

Respondents

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DECISION

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**Background**

1. The first-named Claimant ("Mr Vaughan") is a member of the second-named Claimant ("Kilmacud") and a member of their Senior Football team. Kilmacud won the Dublin County Championship 2004 and in consequence represented Dublin in the Leinster Club Championship of 2004/2005.
2. In a game between Kilmacud and Port Laoise on 21 November 2004, in which Kilmacud were defeated, Mr Vaughan was ordered off the field for a Category C offence (as so classified under Rule 138 of An Treoraí Oifigiúil 2003). The automatic consequence was that he stood suspended for 4 weeks, together with (if it fell outside the said four weeks) "*the next game in the Competition in which the suspension was incurred*" (Rule 138(2)(ii) of An Treoraí Oifigiúil 2003). This suspension was imposed by the first-named Respondent ("Leinster Council"), under whose jurisdiction the game in question was played.

3. The decision to order off and the consequent suspension are not challenged. This case arises due to a difference between the Claimants and the Respondents as the interpretation of the above-quoted Rule of An Treorai Oifigiúil. While no present breach of Rule is alleged, the Claimants are concerned that they will be penalised by the Second-named Respondent (“Dublin County Committee”) in the event that Mr Vaughan plays with Kilmacud in the first round of the Dublin County Championship, a game against St Brigid’s on 20 May 2005.

### **The dispute**

4. The question at issue – whether or not the suspension applied to this upcoming match in the Dublin County Championship – was submitted by Kilmacud to Dublin County Committee, who passed the question on to Leinster Council in writing on 18 April 2005. By a decision made on 20 April 2005 Leinster Council stated that the upcoming match was the next game in the Competition in which the suspension had been incurred, and that, consequently, Mr Vaughan was debarred from playing in it.
5. In a letter incorrectly dated 19 April 2005, but in fact sent on 29 April 2005, Dublin County Committee sent the same question, worded slightly differently to Liam Ó Maolmhichíl, Árd Stiúirthóir, Cumann Lúthchleas Gael. Whether this amounted to an appeal from the decision of Leinster Council, or an entirely fresh query, is not clear.
6. The Árd Stiúirthóir replied by letter dated 3 May 2005, in the negative, the decision stated to have been “*in accordance with previous interpretations given by Central Council.*”

### **The proceedings**

7. Although a new rule passed at Congress 2005 establishes the authority of the Disputes Resolution Authority in An Treorai Oifigiúil, that rule had not come into force when this dispute arose. Nevertheless, to avoid any Court proceedings, all parties have agreed to submit to the jurisdiction and procedures

of the D.R.A. as if the new rule were in force, and the proceedings and this decision now have the authority and force applicable to arbitration proceedings under the Arbitration Acts 1954 and 1980.

8. Documents were passed by Liam Ó Maolmhichíl, Árd Stiúrthóir, Cumann Lúthchleas Gael to the Secretary of the D.R.A. on 11 May 2005, and, following telephone contact between the D.R.A. and representatives of the claimants, the Claim was made on 12 May 2005, naming Leinster Council only as Respondent.
9. The seven-day time limit for notification of the Claim was extended by the Secretary to 12 May 2005 pursuant to section 2.2 of the *Disputes Resolution Code*. Time for the Response having been abridged by the Secretary pursuant to section 3 of the *Code*, a Response was filed by Leinster Council on 14 May 2005 and a preliminary meeting was held on 16 May 2005, by which time further documents were available to the parties. At that meeting, the Tribunal decided to join Dublin County Committee as a Respondent and to invite Central Council to attend as a Notice Party. The hearing was scheduled for 17 May 2005, but after some discussion that evening, it was decided to join Central Council as a Respondent, and an Order was so made. It also appeared that Central Council required to adduce evidence of Central Council Rulings under Rule 83(b) of An Treoraí Oifigiúil (which will be discussed below), and accordingly, the hearing was adjourned to 19 May 2005, with certain directions.
10. On foot of those directions, Central Council served and filed an Affidavit stating that decisions had previously been made to the effect that the first round of a County Championship constituted "*the next game in the Competition in which the suspension was incurred*" in circumstances where suspensions were incurred at Provincial or All-Ireland Club level. We will deal with this evidence in further detail below.

### **Three preliminary issues**

11. Some preliminary issues arose, which we feel it is appropriate to comment upon, for the benefit of future cases.

*(i) Disputes regarding the interpretation of An Treoraí Oifigiúil*

12. This case is somewhat peculiar in that there is not alleged any actual breach of contract; rather, it is anticipated that a rule (Rule 138) will be misinterpreted by Dublin County Committee and Leinster Council, in the event that Mr Vaughan plays the upcoming game with Kilmacud.
13. The Claimants might have simply proceeded on the basis of their interpretation, selected Mr Vaughan to play the upcoming game, and awaited any subsequent disciplinary action that might ensue, with the intention of resisting it (before the D.R.A. if necessary). However, there are two reasons identified for not taking this approach. First, if Mr Vaughan plays and the question is decided against them after the event, they will not have an opportunity to correct their approach, as they will automatically forfeit the game (assuming, of course, that they win the game), and if Mr Vaughan does not play – in order to avoid this risk – they will have been deprived of a remedy. Secondly, if Mr Vaughan plays and the question now posed is decided against them, not only will Kilmacud lose the game (as above), but Mr Vaughan will face a penalty for having played while suspended, thereby affecting both Kilmacud's future chances, as well as Mr Vaughan's own playing career, and in this regard we are informed that Mr Vaughan has been selected for the Dublin County squad.
14. In essence, if no authoritative decision is made now, prudence will dictate that Mr Vaughan is not selected, and therefore, the fear of a double penalty will deprive the Claimants of any remedy. If a decision is made now, and it is against the Claimants, they can at least order their affairs so that they are not punished for their misinterpretation in addition to Mr Vaughan's original indiscretion.
15. In our opinion, it is both reasonable and practical to attempt to resolve this matter in advance of the first round game. We are reinforced in our view by the

law relating to alleged anticipated breaches of contract, into which category this Claim falls. While the strict doctrine of anticipatory breach deals with breaches of contract so fundamental that they amount to a repudiation of the contract, there is ample authority to support the proposition that the Court (or in this case, the D.R.A.) may grant declaratory relief where parties cannot agree as to the meaning of less fundamental terms of their contract and wish to order themselves appropriately with the benefit of an authoritative ruling. The Courts of Chancery had jurisdiction to grant such relief, which was extended to all Superior Courts by the Supreme Court of Judicature Act (Ireland) 1877. That a declaration may be the primary relief in an action (whether in a public or private law action) is recognised in Order 19 rule 29 of the Rules of the Superior Courts. The remedy of a declaratory judgment is relatively common in modern times where a contract requires to be interpreted (see for example *Glow Heating Limited v Eastern Health Board* [1988] IR 110), and its benefits are succinctly described by Borchard (*Declaratory Judgments* (2<sup>nd</sup> Ed., 1941) p. 554) as follows:

*“The declaration, rather than the more drastic and definitive coercive decree enables the parties to establish their questioned relations without irreparable injury. The declaration thus has the social advantage which should not be underestimated as an element in the administration of justice.”*

16. We are satisfied that the D.R.A., as an arbitral tribunal with jurisdiction co-extensive with those of the Court dealing with a contractual dispute, has jurisdiction to entertain questions of interpretation raised prior to an actual breach of contract, whether one classifies the issue as one of anticipatory breach or otherwise.
17. This decision should not, however, be taken as authority for the proposition that the Disputes Resolution Code is (i) the legitimate first port of call where such a dispute arises, or (ii) an appropriate forum where existing procedural remedies within the framework of An Treorai Oifigiuil are not engaged.

**(ii) Existing procedural remedies under An Treorai Oifigiúil**

18. There is no expressly prescribed method by which to resolve conflicts of interpretation in the context of an anticipated breach of rule by a Unit of the Association. However Rule 83(b) of An Treorai Oifigiúil provides that:

*“[Central Council] is the final authority to interpret the Rules. It may also issue guidelines and directives to its units and members to assist with their compliance of [sic] Rule.”*

Arising from this rule, a practice has developed whereby members and units of the Association who are unsure of, or in dispute regarding, the interpretation of rule in particular circumstances, may submit a question to Central Council. A decision issues and is treated as an authoritative interpretation of the rule concerned.

19. In our opinion, this is the correct first step to take where a misinterpretation of rule is anticipated by a member or unit; the Claimants in this case ought to have taken this step rather than to seek an interpretation from Leinster Council. Leinster Council have correctly pointed out that they do not have a role in the interpretation of Rule: they simply imposed the penalty concerned, after that they are, in legal terms, *functus officio*: their function is spent.
20. Another approach for the Claimants might have been to ask Dublin County Committee whether it proposed to impose disciplinary sanctions in the event of Mr Vaughan playing: after all, the application of disciplinary rule was in the hands of the County Committee alone (at least until an appeal was taken). In a way, this is what actually happened here, but Dublin County Committee passed the query on higher. In our view, the better approach would have been to approach Central Council in the first instance under Rule 83(b) (possibly through the intermediary of the County Committee): all that the County Committee can do is to convey an opinion, which has no particular status pursuant to Rule.

21. In this case, Central Council have raised a preliminary objection to the proceedings. It is stated in the Affidavit of Árd Stiúrthóir and in the submissions of Central Council that the letter of the Árd Stiúrthóir to Dublin County Committee, dated 3 May 2005, was not an interpretation within the meaning of the practice under Rule 83(b) and that, accordingly, they are not a correct Respondent. They state further that, no interpretation having been sought or given pursuant to Rule 83(b), the Claim should not be entertained by reason of the Claimants' failure to exhaust their existing remedies. The Arbitration Rule provides that:

*"No member or unit of the Association shall refer such dispute to Dispute Resolution until all available avenues of appeal under the Rules of the Association have been exhausted"*

22. We accept, as a matter of fact, and for reasons we will discuss further below, that the letter of the Árd Stiúrthóir dated 3 May 2005 is not an interpretation under Rule 83(b) of An Treoraí Oifigiúil.
23. We do not, however, accept that the letter of Dublin County Committee to the Árd Stiúrthóir (dated 19 April 2005 but sent on 29 April 2005) was not a *request* for such an interpretation pursuant to Rule 83(b). As we have said, the procedure for making requests under Rule 83(b) is not prescribed in express terms. It is an *ad hoc* process. Dublin County Committee were entitled to expect that the letter would be treated as a request under Rule 83(b). The Árd Stiúrthóir may, as is submitted by Central Council, filter out queries for interpretations where they are frivolous, or where, as Central Council submits, the matter has been dealt with before and a precedent exists. However the fact that this query was filtered out should not redound upon the Claimants in the manner now contended for by Central Council. As regards the content of the letter, while express reference to Rule 83(b) would have been preferable, to send a letter in the terms of that referred to the Árd Stiúrthóir, is, in our opinion, sufficient compliance with the obligation to seek a ruling under the existing practice. It is not of particular relevance in this case that the request was made by Dublin

County Committee: that this Committee acted as agent for the Claimants is obvious.

24. We hold that this preliminary objection is not sustainable.
25. As a matter of guidance for members and units for the future, where a member or unit believes that he, she or they may be prejudiced by a misinterpretation of Rule concerning an upcoming game or event, we recommend that they should first seek an interpretation from Central Council on foot of the practice developed under Rule 83(b). A letter (preferably making specific reference to Rule 83(b)) should be channelled through the Secretary of the relevant County Board, to Central Council. As we see it, for reasons we will discuss below, there is in fact no appeal from a decision on an interpretation pursuant to Rule 83(b); therefore, if the member or unit concerned is thereafter aggrieved, he, she or they may initiate a claim under the *Disputes Resolution Code*, and undertake the risks that such litigation brings with it.

*(iii) Delay*

26. A third preliminary issue, which in other circumstances might give us greater cause for concern, is the fact that the decision now been challenged could have been made as early as November 2004, if a submission had been made by the Claimants to Central Council at that stage. While the minutes of the Meeting of Leinster Council of 24 November 2004 do not make reference to the inclusion in the suspension of the next match in the competition concerned, the Claimants had sufficient information at that stage to raise the query that was ultimately raised in April 2005. It could be said that, by waiting five months until April 2005, the Claimants themselves created a state of urgency about the case that did not previously exist. As it has turned out, we have had the time to deal with the full substantive issue prior to any game arising, but if, for any genuine reason, any party was not in a position to bring the matter to hearing as quickly as they all have, we would most likely have refused an interim injunction, by virtue of the Claimants' delay. In saying this, we do not suggest that an interim



injunction would otherwise have been granted, nor indeed that it would have served any purpose on the facts of this case.

### **The D.R.A. and rulings pursuant to Rule 83(b) of An Treoraí Oifigiúil**

27. We have already considered the peculiar nature of this case: an authoritative ruling by means of a Declaration is sought as to the meaning of a rule in An Treoraí Oifigiúil. We have also recommended that a particular procedure be adopted in such cases, and we now propose to discuss the meaning and effect of this procedure.

28. We have considered already the terms of Rule 83(b) of An Treoraí Oifigiúil. In addition, we note that by section 1.3 of the *Disputes Resolution Code*:

*“the Rules of the Gaelic Athletic Association (and all rules, bye-laws and regulations applicable to the decision, the subject matter of the dispute, including rulings of Central Council pursuant to Rule 83 of An Treoraí Oifigiúil) (“the Rules”) and the laws of Ireland shall govern and be applied to any issue between the parties”*

*(emphasis added)*

29. Where, as a matter of law, does this leave the D.R.A. when it considers decisions of Central Council made under Rule 83(b)? The decision of the English Courts in *Baker v Jones* [1954] 2 All ER 553, [1954] 1 WLR 1005 concerned the rules of the British Amateur Weightlifters' Association (B.A.W.L.A.) which provided that its governing body (coincidentally called the central council) were:

*“the sole interpreters of the rules of the B.A.W.L.A. and [were empowered] to act on behalf of the B.A.W.L.A. regarding any matters not dealt with by the rules”.*

30. Discussing the meaning of the first part of this rule, Lynskey J (at 558/9) held:

*“B.A.W.L.A. is an unincorporated association. It has no legal entity. The relationship between its members is contractual. That contract is contained in, or to be implied from, the rules. The courts must consider such a contract as they would consider any other contract. Although parties to a contract may, in general, make any contract they like, there*

*are certain limitations imposed by public policy, and one of those limitations may be that parties cannot, by contract, oust the ordinary courts from their jurisdiction: Scott v. Avery ((1856) 5 H.L. Cas 811)). The parties can, of course, make a tribunal or council the final arbiter on questions of fact. They can leave questions of law to the decision of a tribunal, but they cannot make it the final arbiter on questions of law. They cannot prevent its decisions being examined by the courts. As Denning, L.J., says in Lee v. Showmen's Guild of Great Britain ([1952] 1 All E.R. 1181):*

*“If parties should seek, by agreement, to take the law out of the hands of the courts and into the hands of a private tribunal, without any recourse at all to the courts in case of error of law, then the agreement is to that extent contrary to public policy and void.”*

*With this statement of the law I respectfully agree. The interpretation of the rules is a question of law which the courts will examine. In my view, therefore, the provisions in the B.A.W.L.A. rules, making the central council the sole interpreter of the rules and their decision in all cases final, is contrary to public policy and void.”*

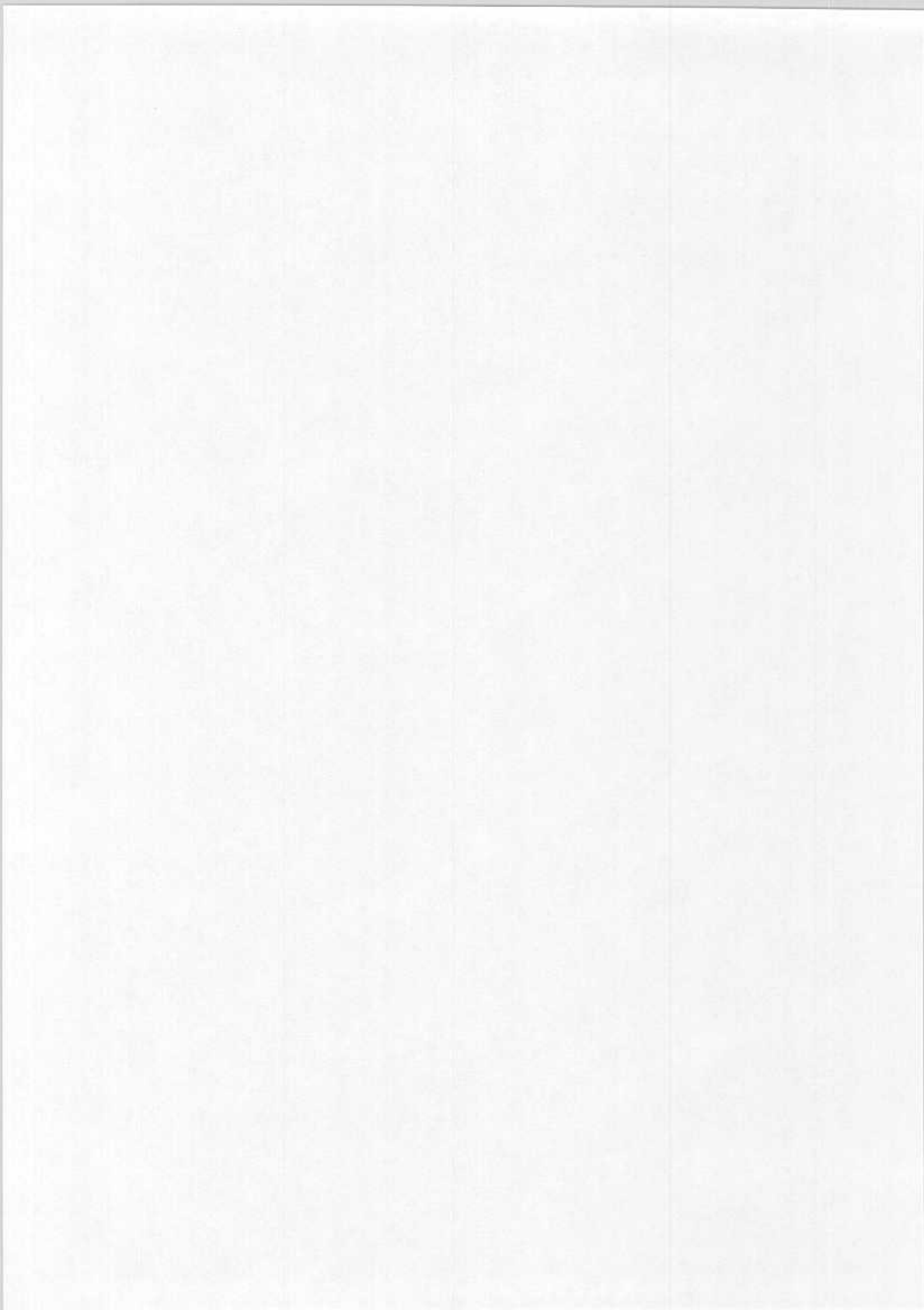
31. Parenthetically, a valid arbitration clause does not fall into this category of decision.
32. Is the first part of Rule 83(b), then, void? We will address this question now.
33. In our view, there is another aspect to Rule 83(b), which aspect was not considered by the Court in *Baker v Jones*. Central Council (of the G.A.A.) is a body of persons who have a wealth of expertise and experience regarding the operation and enforcement of the Rules of the Association. Central Council is not simply another party to the contract; it is an elected body representing the interests of the Association at large under a complex multilateral contract. Often the Rules will admit of two equally valid interpretations, neither of which is inconsistent with the rules and which must be decided by some authority without need for intervention by the Court. In particular, many questions may involve not only issues of law, but issues of fact – or indeed of opinion – and those aspects of any administrative decision are largely unassailable by a court of law (*Australian Football League v Carlton Football Club* [1998] 2 VR 546). Moreover the procedure that has developed under Rule 83(b) has proved a useful process in the past, and allows units and members to regulate their

positions under the Rules before it is too late to do so. This is particularly relevant where the circumstances are not sufficiently weighty to be the subject of legal proceedings before a Court or the D.R.A.

34. While a rule of this type might be repugnant to, for example, a bilateral consumer contract (if not under common law, then pursuant to the *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995*, Reg. 3(7) and Schedule 3, paragraph (m)), the factors identified above demonstrate that Rule 83(b) of An Treorai Oifigiúil performs a necessary function in the governance of an unincorporated association and is not, in our view, void in law.
35. Rule 83(b) does, however, fall into that category of standard contractual term which must be narrowly construed, so that an interpretation of Rule can never operate to effectively amend or negate that Rule.
36. For this reason, in our view, the Court (or the D.R.A.) is not prohibited from declaring incorrect a decision of Central Council pursuant to Rule 83(b). To hold otherwise would be to fly in the face both of justice and decided authority.
37. What then is the status of such a decision and when can it be overruled?
38. Since the G.A.A. is unique, and the characteristics of its Central Council cannot authoritatively be compared to those of other organisations, we find that decided authority will only be of limited assistance in deciding this question.
39. As a matter of general principle, where a decision *within* the jurisdiction of an agreed decision-maker is under review, the Courts (and consequently the D.R.A.) will afford great latitude to the decision-maker concerned and unless the decision is *unreasonable*, *nay irrational*, then it will not be disturbed, notwithstanding the fact that the D.R.A. may have a different view on the merits of the decision.

40. Where, however, the decision concerns the interpretation of a statute or a contract, and an interpretation under Rule 83(b) will generally fall into that category, the Court (and consequently the D.R.A.), will review the decision without restraint, because it is in excess of jurisdiction to make an error of law. Therefore, if an interpretation by Central Council is inconsistent with any term of An Treoraí Oifigiúil, it may be declared ineffective as being outside the contractual jurisdiction conferred upon Central Council by Rule 83(b).
41. Nevertheless, having regard to the value of the procedure as discussed above, in assessing the meaning of a particular Rule, a decision on the matter by Central Council and in particular the facts and opinions making up the decision-making process will be admissible as evidence before the D.R.A., subject to rebuttal evidence and counter-argument, as persuasive authority.
42. That is the status afforded to decisions made by Central Council pursuant to Rule 83(b) of An Treoraí Oifigiúil.
43. This, in our opinion, is fully consistent with section 1.3 of the Disputes Resolution Code, for, insofar as the D.R.A. is *governed* by rulings pursuant to Rule 83(b), these rulings are themselves subject to the terms of An Treoraí Oifigiúil itself, which likewise governs the decision-making process of the D.R.A.
44. However, another important question now arises: what characteristics must a decision have to be accorded the special status described above? In our view, and it is of fundamental importance in this case, the decision must, in the first instance, be a decision of Central Council itself and not that of a sub-committee, officer or agent of Central Council. The peculiar factors which give Rule 83(b) its validity do not apply to bodies or persons of subordinate status: this special and unusual jurisdiction cannot be delegated by the conferee. As Denning L.J. held in *Barnard v National Dock Labour Board* [1953] 2 QB 18 (at 40):

*“While an administrative function can often be delegated, a judicial function rarely can be. No judicial tribunal can delegate its functions unless it is enabled to do so expressly or by necessary implication.”*



While a subordinate committee of Central Council can express an opinion as to its interpretation of Rule, that expression is one of opinion only and is not afforded any particular status beyond that.

45. The second factor which must pertain to the decision is that it must be made available to the general membership of the Association, whether in a compilation of such rulings or in minutes of Central Council meetings, which are accessible to the general membership. Thirdly, the decision must be expressed, or at least be abundantly clear from Central Council's minutes, to be made pursuant to Rule 83(b). These stipulations are a necessary consequence of the narrow interpretation which we are obliged to give to Rule 83(b).

#### **The evidence of Central Council with regard to Rule 83(b)**

46. In an affidavit of the Árd Stiúrthóir, Liam Ó Maolmhichíl, sworn on 18 May 2005, a number of matters of fact are raised. We will comment upon each below.
47. First, a decision involving a player from Waterford is referred to, and, as is clear from the evidence, the request was made to Coiste Ríaracháin na gCluichí (the Games Administration Committee). That is not objectionable, as it could have been brought up at a plenary session of Central Council. This did not happen, however, as it was in fact referred to Coiste Bainistí (the Management Committee). For the reasons given above, this decision cannot be afforded the status of a decision of Central Council. It is not, therefore, necessary to argue whether this decision is on all fours with the matter now before us.
48. Secondly, two decisions concerning Cork players are referred to. Again, these are decisions of Coiste Bainistí, and we have no evidence of their replication or adoption by Central Council. They do not therefore have the status of Central Council Rulings pursuant to Rule 83(b).

49. The next specific example given concerned a Club footballer from Blackhall Gaels of County Meath. There is no evidence of Central Council having made a decision on the matter pursuant to any request for an interpretation.
50. The same can be said for the next example, which concerned a Club hurler from Coolderry of County Wicklow. While it is stated the player “was advised” that – in effect – the Leinster Club Hurling Championship and the Wicklow County Hurling Championship were “*the same Competition*” within the meaning of Rule 138(2)(ii), no evidence was given as to who advised him of this interpretation.
51. Fifthly, the example is given of a footballer from Crossmaglen Rangers of County Armagh, which, likewise, does not concern a decision of Central Council acting as a body.
52. Finally, as is stated by the Árd Stiúrthóir himself, his own letter of 3 May 2005 on this case did not constitute a decision under Rule 83(b).
53. As we see it, therefore, there has not been a decision by Central Council pursuant to Rule 83(b) of An Treoraí Oifigiúil on the facts and the Rule now before this Tribunal. We do, however, take cognisance of the fact that there has been a practice, in some cases at least, of treating the first round of a County Championship as the same Competition as the previous year’s Provincial Club Championship for the purposes of Rule 138(2)(ii). Whether this affects our interpretation of this rule remains to be discussed.

#### **The submissions**

54. The Claimants argue that the Dublin County Championship 2005 is a different competition to the Leinster Club Championship 2004, and that they are not connected. The factors to which they refer in support of their argument are:
  - (a) The fact that two different rules of An Treoraí Oifigiúil govern the organisation of each competition (Rules 111 and 114);

- (b) The fact that two separate, autonomous committees organise each competition (match programmes were proffered to demonstrate this);
- (c) The fact that separate trophies are awarded for each competition;
- (d) The fact that there are separate sponsors for each competition;
- (e) The fact that there are different criteria for Club eligibility to participate. By this it is meant that divisional teams, who may contest a County Championship, may not contest a Provincial Club Championship (Rule 114);
- (f) The fact that Junior or Intermediate players who participate in a Provincial Championship acquire Senior status; and
- (g) The fact that the heading before rule 111 refers to "*Club Championships (County and All-Ireland)*."

55. Central Council, with whom Leinster Council agreed, took the contrary view. They state as follows:

- (a) Rule 138(2)(ii) was introduced in the first place for equity of discipline amongst players: if two players on opposing teams in the Provincial Club Championship are ordered off, one will suffer a suspension and the other will not, under the Claimants' interpretation. If Central Council's interpretation does not stand, this rule is rendered meaningless and the rule becomes inoperative;
- (b) Rule 32 of An Treorai Oifigiúil provides:

"32 *A member shall not play for more than one Club except in the following cases:-*

...

- (f) *Subject to his not playing with a second Club in a Championship or the same competition of a given year, except as provided above in this Rule, a player who has commenced to play for a Club in a particular competition may finish that competition and play for another Club which he joins by declaration or transfer. The Provincial and All-Ireland Senior Club Championship shall be considered as an extension of the County Senior Championships, and playing eligibility shall be in accordance with Rule 32.*

..."

*(emphasis added)*

This, Central Council argue, suggests progression: one Championship progresses into another and there is continuity.



- (c) It is also argued that the only reason the matter was raised and, in these proceedings, litigated, was because of the draw made in the Dublin Senior Football Championship 2005 pitting Kilmacud against St Brigid's, formidable opponents, and Mr Vaughan was a vital player. It is questioned whether this application would have been brought had Kilmacud been facing less formidable opponents.
- (d) Central Council state further that the practice of treating the County Championships, Provincial Club Championships and the All-Ireland Club Championship as the same competition for the purpose of Rule 138 has been enshrined in practice for some time without complaint from clubs or players, and that the meaning they propound is the accepted meaning of the rule throughout the Association. As we have said, evidence was given of this practice.
56. Leinster Council disagreed with the interpretation of the Claimants with regard to Junior and Intermediate players acquiring Senior Status by participating in a Provincial Club Championship.
57. Both the Claimants and Central Council quoted extensively from the Congress Debates of 2003, at which Congress Rule 138(2)(ii) in its current form was brought into force, both placing particular reliance on the Statement of Prionnsias Ó Murchú that:

*"the player would receive a one month suspension for the offence if it was a Category C offence. He would, similar to here, have to suffer the consequences of the next game in the Competition if he happened to be playing in the same Competition the following year."*

### **Decision**

58. The fundamental question which we must decide is whether the first round of the Dublin Senior Football Championship 2005 satisfies the definition in rule 138(2)(ii) of "*the next game in the Competition in which the suspension was incurred*" in circumstances where the suspension was incurred in the semi-final

of the Leinster Senior Club Championship 2004, a game in which the suspended player's Club was defeated.

59. An Treorai Oifigiúil is a contract between the members of the Association. The question posed is therefore a matter of contractual interpretation.
60. It is common case, and beyond reproach, that one must in the first instance consider the literal meaning of the contractual term concerned. This is the case whether or not one imports principles of constitutional or statutory interpretation into the assessment. Is there a clear literal meaning?
61. There is no express provision stating that the Provincial Club Championships and the County Championships are to be considered one and the same competition. There is nothing to say, expressly, that they are not. Nevertheless they carry two separate labels.
62. Rule 111 of An Treorai Oifigiúil provides that

*"A County Committee shall organise its Championships on a Knock-Out, League, or a combination of League and Knockout basis...."*

63. Rule 114 provides:

*"A Provincial and All-Ireland Senior Club Championship shall be organised..."*

64. It is common case that Provincial Councils organise Provincial Club Championships and that Central Council organises the semi-finals and final of the All-Ireland Club Championships.
65. It is difficult to avoid the conclusion that, on a literal interpretation of these provisions, a County Championships and a Provincial Club Championships are different competitions. For example, on the interpretation propounded by Central Council, the Dublin County Championship and the Leinster Club Championship are the same competition. On the same premise, Kildare County Championship and the Leinster Club Championship are also the same

competition. If those propositions were correct, then Dublin County Championship and Kildare County Championship would *ipso facto* constitute one and the same competition. This proposition is unsustainable.

66. That this could not be the case is further underlined by the fact that different County Committees operate different rules, both organisationally and in terms of Club eligibility, in their Championships.
67. The second sentence in Rule 32(f) does not, in our opinion, have general application. It is clear that a particular situation is catered for in that sub-rule, and if it were correct to state that the County and Provincial Club Championships were "*the same competition*" then this sentence would not be necessary. What is more, on the doctrine *expressio unius est exclusio alterius* which applies to the interpretation of statutes but which can equally apply to contracts of governance, the very inclusion of such a provision in a specific context is indicative of a contrary general rule.
68. The Congress debates of 2003 do not, in our opinion alter this view (whether or not they are admissible to interpret the contract, a matter it is not necessary to decide here). The circumstance before this Tribunal are not actually considered; the comments referred to are equivocal on the matter, and it is not surprising, therefore, that both the Claimants and the Respondents sought to call in aid the same passages from the speeches made.
69. As a matter of contractual interpretation, it is not relevant to consider conduct and events post-dating the contract, save in very limited circumstances which do not apply here. Therefore, the failure of other members and units to litigate or otherwise to pursue the meaning contended for by the Claimants does not detract from that meaning. We have already decided that there is no actual decision made pursuant to Rule 83(b) of An Treorai Oifigiúil, so the consequences of such a decision do not require to be considered.
70. Accordingly, we declare that Mark Vaughan is not debarred, by reason of the correct interpretation of Rule 138(2)(ii), from playing in the first round of the

2005 Dublin Senior Football Championship. As a more general statement, the Dublin County Championship and the Leinster Club Championship are not the same competition for the purpose of that sub-rule.

71. It is of course the case, as has been conceded by the Claimants, that if Kilmacud Crokes progress to the first round of the Leinster Club Championship (i.e. by winning the Dublin County Championship), Mr Vaughan will not be eligible to play that game, and, if that competition is not reached this year, but in the future, that penalty will remain suspended over him until he next participates in that competition.
72. We appreciate that this is an inconvenient interpretation of the rule, and that many will consider the rule difficult to police, and perhaps even inequitable. However, the Tribunal is bound to interpret the Rules as they are, not as it might wish them to be, and to do otherwise would be an abdication of our obligation as an arbitral tribunal of law.

Dated this 20<sup>th</sup> day of May, 2005

Signed:

\_\_\_\_\_  
Pat O'Neill

*Patrick O'Neill*

*Brian Rennick*

\_\_\_\_\_  
Brian Rennick

*Micheál O'Connell*

\_\_\_\_\_  
Micheál O'Connell

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### F. Other Sources

Borchard *Declaratory Judgments* (2<sup>nd</sup> Ed., 1941)

Cox and Schuster *Sport an the Law*, Firstlaw, Dublin 2004]