

# Disputes Resolution Authority

An Córas Eadrána

IN THE MATTER OF AN ARBITRATION CONDUCTED PURSUANT TO THE COURT  
OF THE DRA AND PURSUANT TO THE ARBITRATION ACTS 1954 - 1998

BETWEEN

Ciaran O’Broin & Darragh Seoighe

Claimants

-v-

Cumann Luthchleas Gael Coiste Atha Cliath

Respondents

## **Backgrounds & Facts**

1. Both Claimants, Ciaran O’Broin and Darragh Seoighe are members of Whitehall Colmcille GAA Club, having played juvenile and adult football for Whitehall Colmcille GAA Club throughout their playing careers.
2. Darragh Seoighe sought a transfer from Whitehall Colmcille C.L.G.(hereinafter Whitehall Colmcille) to Parnell C.L.G. (hereinafter Parnells) and submitted an Application to Transfer during the transfer window in December 2008 to the Respondents. Whitehall Colmcille Club refused their consent to the transfer and the Application was refused by the Respondent.
3. A subsequent Application for Transfer was made in May 2009, outside the transfer window. That Application was not processed at that time due to the fact that it was outside the relevant transfer window.
4. Darragh Seoighe subsequently submitted a further Application for Transfer in December 2009. This request was dealt with by Dublin County Board under their new County Byelaw dealing with transfers “Byelaw 19”.
5. Ciaran O’Broin, the Second Claimant, made an Application to Transfer from Whitehall Colmcille to Parnell’s in December 2008. This transfer was refused by the Respondent. In December 2009 Ciaran O’Broin submitted a further Application to Transfer from Whitehall Colmcille’s to Parnells pursuant to Byelaw 19. of the Dublin County Byelaws.
6. During the course of the arbitration hearing both Claimants gave sworn evidence to the Tribunal. Daragh Seoighe stated that he last played for Whitehall Colmcille on the 17<sup>th</sup> May 2008. He contended that given some events that occurred between him and Whitehall Colmcille that he would not feel comfortable playing for the Club again. Ciaran O Broin gave evidence that he last played in late 2008, he said he received no contact during 2009 from the Club and that when the Chairman of the Club contacted him before this hearing that the ‘bridges were burnt by that stage’. Ciaran O Hogain

on behalf of Colmcille CLG stated in evidence that the Clubs position is consistent and unequivocal, that is, they want both players to play with them. He stated that there was a general policy not to consent to a transfer of a first team player. He also stated that Beaumont Parish where the claimants are from is within the Club's catchment area. He further stated that the Club's Executive and Management are committed to managing a transition for the claimants to return to the Club.

### **Submissions of the Claimants**

7. The Claimants referred the tribunal to Rule 6.8 of Teorai Oifigiuil 2009 which deals with transfers within a county and which states;
  - “(a) A county shall have a byelaw governing the transfer of players from one club to another within the county.
  - (b) A county byelaw may confine membership of a club to a catchment area which may be a parish. A parish for the purpose of this rule shall, subject to county boundaries, be the district under the jurisdiction of a parish priest or administrator. A catchment area shall be fundamentally based on permanent residence of players, subject to a player being entitled to play with his own club. Permanent residence shall be defined in county byelaw.  
  
A county shall also have the option, within County byelaw to allow a player to play with the club in which he works;
  - (c) A player who wishes to leave one club to join another in the same County must apply to the County Committee for a transfer.
  - (d) A County Committee has the right, acting within its byelaw to grant or not to grant an application for transfer.
  - (e) A County Committee may delegate to a sub-Committee the authority to deal with applications for transfer but a County Committee shall retain the right to make final adjudication on an application”.
8. It was submitted to the tribunal by Counsel for the Claimants that in earlier decisions by the DRA, the DRA has considered and interpreted Rule 6.8e as vesting in the County Committee unfettered discretion to grant or not to grant a transfer request by a player (the tribunal was referred to the case of Ross O’Bradaigh v Criostoir O’Tuathail DRA 05/2007) but only if they act in accordance with their own byelaws and observe fair procedures. The Claimants submitted that if the County Committee breached their own byelaws and failed to observe fair procedures then the purported unfair decision can be quashed or set aside.
9. In this case the Claimants submitted that byelaw 19 of the Dublin County Byelaws as it currently exists lacks fairness and does not accord natural justice to a player seeking a transfer. The Claimants submitted that byelaw 19.1 states that the Sub-Committee appointed by the County Committee or indeed the County Management Committee so appointed by the County Committee in considering the application to transfer shall:-
  - (a) consider the role played by his current club in nurturing and developing the player;
  - (b) consider the potential impact of the transfer of a player on his current club, and

- (c) consider the potential impact of the transfer of a player on the promotion of the Association if same is in Dublin in reaching their determination.
10. The Claimants contended that there was no provision within the Dublin County Byelaws allowing the County Committee or the County Management Committee in making a decision to consider the reasons why the player had sought a transfer, the background to the reasons for a transfer, whether the player was or was not playing with the club, the reasons why the player had not played with the club, the possibility of the player playing with the club into the future or at all and the reasons why the player might not be in a position to play for the club.
11. The Claimants further claimed that the byelaws adopted by the Respondent to deal with transfers were in breach of the Teorai Oifiguil. The Claimants submitted that in considering the Teorai Oifiguil and its application viz à viz the adoption and implementation of county byelaws and club transfers by the Respondent that
- (a) An Teorai Oifiguil does not state nor could any reasonable interpretation of same conclude that the objections of the transferring club be heard to the exclusion and/or unreasonable exclusion of other considerations;
- (b) An Teorai Oifiguil does not state nor could any reasonable interpretation of same conclude that the transferring club's views be given serious consideration while not permitting of any or any reasonable representation by the other interested parties, namely the player and the recipient club
- (c) An Teorai Oifiguil does not state nor could any reasonable interpretation of same conclude that in making the decision the views and opinions of other interested parties namely the player and the recipient club be equally heard and be given an opportunity to be heard
- (d) An Teorai Oifiguil does not state nor could any reasonable interpretation of same conclude that in considering whether to permit a transfer that the oral hearing be conducted on the basis that the club which has refused consent and whose views are to be given serious consideration would be permitted at the oral hearing to nominate a representative including a professional or more experienced negotiator more likely familiar with the roles and procedures of the GAA while the claimant player is denied any representation whatsoever regardless of his education, literacy or intelligence.
- (e) An Teorai Oifiguil does not state nor could any reasonable interpretation of same conclude that the transferring club's views be given any serious consideration while not permitting of any or any reasonable enquiry or proper assessment of the factual matrix, including the personal reasons and circumstances surrounding the transfer request, the number of previous requests, the relationship between the player and the club and the whole history of the matter.
- (f) An Teorai Oifiguil does not state nor could any reasonable interpretation of same conclude that the Respondent cannot or should not allow a player transfer to another club save with the consent or without objection from his own club.
- (g) That an Teorai Oifiguil having provided options or suggestions to be included in county byelaws regarding transfers such as in relation to catchment areas or places of work that the County Committee should have enquired whether such matters are

related matters, particularly in circumstances where the county has elected not to avail in their bye laws of the options given by An Teorai Oifiguil.

- (h) Where a County Committee opt to delegate authority to deal with applications for transfer to a Sub Committee that the onus is on the County Committee to ensure that that the structure and system is put into place such that the Sub Committee carried out a full and proper enquiry and delivers a full and detailed report to the County Committee so as to enable the County Committee to make a full and properly considered adjudication on each individual transfer.
- (i) Whether under An Teorai Oifiguil or the County bye law if the County Committee avails of the option to delegate to a sub-committee authority to deal with applications, then, the sub-committee is similarly required to carry out a full and detailed assessment and report including considering and hearing other parties as set out above.
- (j) Rule 6.8 of an Teorai Oifiguil states that “*The County Committee shall adjudicate*” on the transfer application. The Claimant submitted that this obliges the County Committee to personally and fully consider the matter and to make its own decisions. It was submitted by the Claimants that such a considered adjudication would include consideration of:-
  - (i) The application of the player applying for the transfer.
  - (ii) The reasons for the transfer request.
  - (iii) The reasons for the objections of the home club.
  - (iv) The reasons given by the County Management Committee as to how it arrived at its recommendation.
  - (v) To assess whether further information or evidence is required.
  - (vi) To hear interested parties if it feels it is warranted in a particular case.
- (k). The standards of deliberation in adjudicating upon whether to grant or refuse a Transfer Application must be of the higher and exacting order particularly given the effect on the Claimant and the Claimant submitted at the County Committee was aware that the Claimants are specifically precluded from appealing the decision of the County committee in relation to transfers pursuant to Rule 7.11.c(1)(i) an Teorai Oifiguil.
- (l) The Claimants submitted that the County Committee failed absolutely to adjudicate on the Claimants’ transfer requests and in doing so had breached Rule 6.8 of An Teorai Oifiguil.
- (m) The Claimants submitted that by delegating to a Sub Committee the “authority to deal with applications for transfer” and by merely rubber stamping the recommendations of the Management Committee so delegated and by not adjudicating on the transfer application the County Committee had effectively delegated the adjudication of the Claimants’ applications for transfer to the sub-committee contrary to An Teorai Oifiguil.
- (n) The Claimants further submitted that An Teorai Oifiguil does not state nor could any reasonable interpretation of same conclude that the Club, having refused consent to the Claimant’s transfer and having through its Chairman/agent appeared at the sub committee stage (Management Committee), that the club would be subsequently permitted to address the County Committee and/or vote at the County Committee

stage on a matter in respect of which it is personally interested and also personally biased and further to do so to the exclusion of the Claimant player.

11. The Claimants' further claimed that there was an inherent inequality within the Dublin County byelaw and that this inequality arose from the following:-
- (i) The Club to which the player wished to transfer is specifically precluded by bye law from making any submissions at any stage of the process;
  - (ii) The home Club is given a right of audience at every stage.
  - (iii) The player has a right of audience at only one stage.
  - (iv) The player cannot be represented regardless of his education, literacy or intelligence;
  - (v) The club can nominate a representative who is more likely to be familiar with the GAA Rules and particularly more experienced in oral submissions and/or negotiation and/or representation.
  - (vi) The Claimant player has no right of audience at the stage where his application to transfer is actually adjudicated upon.
  - (vii) Only the club (which is refusing consent) is represented at the adjudication stage of the process.
  - (viii) Only the club (which is refusing consent) can vote at the County Committee stage in circumstances where it is not only an interested party but has declared its bias.

The Claimants submitted that for reasons that it was unfair and contrary to natural justice that the claimant would be excluded from representation before the County Committee in circumstances where the home club was represented.

13. The Claimants submitted that the Dublin County byelaws and in particular byelaw 22 (otherwise known as Byelaw 19) is unfair, biased and contrary to natural justice and the rules and ethos of the GAA. It was submitted by the Claimants that the Respondent had in drafting byelaw 22 (byelaw 19) generated its own rules and regulations which were contrary to the GAA code but which were also duly burdensome on the player seeking a transfer. It was submitted by the Claimants that there was no equality or consideration to be given to any of the other interested parties connected with the transfer, namely the transferring player or the recipient club and that undue consideration was given to the views of the current club. Particular emphasis was placed by the Claimants on the fact that under Dublin byelaws the County Committee shall "*give serious consideration to the response of his current club*" in adjudicating on any transfer request. It was submitted that there was no consideration of the player himself or the recipient club.

The Claimants referred the Tribunal to the decision of Mr Justice McMahon in *Barry v Ginnity* where Mr Justice McMahon, while accepting that the courts are reluctant to interfere with the autonomy of sporting bodies in making their decisions, stated that "*there are occasions, however, where the law will intervene to ensure that justice is done and that minimum standards of fair procedures are observed*". Mr Justice McMahon stated as follows in determining the threshold of fairness to be observed by sporting bodies whilst making decisions "*the truth is that the law will demand a level of fair procedures which is sufficient in all circumstances to ensure justice for the player or member affected by the decision. The more serious the consequences the higher the standard that will be required. One cannot be more specific than from case law*".

The Claimants state that the fact the decision to grant or refuse a transfer is one that cannot be appealed means that the decision of itself is one with serious consequences.

It was submitted by the Claimants that in failing to have any regard to and in failing to indicate any regard for the player himself or his home club that the byelaw adopted by the Respondent is

- a. Objectively biased or weighted against a transfer in terms of matters to be considered
  - b. It has the effect of bias
  - c. It has the appearance of being so biased
  - d. It is unfairly weighted in terms of representation by not evaluating the player or permitting him representation
  - e. It is unfairly weighted in terms of representation by not permitting transferee club representation
  - f. It is unfair in terms of representation by permitting current club representation at the County Committee stage
  - g. It is unfair in terms by permitting current club voting at the County Committee stage.
- 14 The Claimants further submitted that the decision reached by the Respondent was unreasonable in all of the circumstances. It was submitted by the Claimants that the Respondent and in particular the various committees which considered the Claimants' application operated on the premise that the objections of the current club outweighed all other considerations presented. The Claimants submitted that the sub committee recommended that all applications for transfer be refused where the "home" club objected and the County Management Committee did likewise, save with one exception and the County Committee reversed the exceptional recommendation and held that all applications to transfer where the home club objected be refused.

The Claimants submitted that the participation of Whitehall Colmcille's at the County Board Meeting which refused the transfer requests of the Claimants contravened the principle of "*nemo iudex in causa sua*".

15. The Claimants further submitted that there was a failure on behalf of the County Committee to adjudicate on the transfer request. The Claimants pointed out that Rule 6.8 of Teorai Oifiguil mandates the County Committee to make the final adjudication. The Claimants submitted that an adjudication of itself necessitates a proper and full consideration of the matter. It was submitted that there were no proper minutes of the oral hearing where the Claimants were heard by the Management Committee and no such minutes or information was given to the County Committee which made the adjudication. They submitted that there was no objective indication of any information having been given to the County Committee to enable them make an adjudication on the transfer requests.

The Claimants submitted that the minutes of the County Committee show that the entirety of the transfer requests were block voted without any individual consideration of requests save in respect of one transfer request. The Claimants submitted that this was again in violation of the requirement of An Teorai Oifiguil that an actual adjudication on each individual case take place by the County Committee.

## **Submission of the Respondent**

1. At the hearing of this case on 23<sup>rd</sup> February 2010, the Respondent submitted that in essence the Claimants had advanced the case simply stating that there was an inbuilt and inherent unfairness in the relevant Dublin County Board byelaw which should accordingly be struck down with the result and effect that the transfer application be allowed.

2. The Respondent submitted that the relevant Dublin County Board byelaw had been adopted by all of the clubs at a County Convention in accordance with An Teorai Oifigúil and that the byelaw had been submitted to the Byelaw Sub-Committee of Central Council for approval.

3. In response to the Claimants' request that the Tribunal quash the decisions of the Respondents in relation to these two transfers Mr Fergal Logan on behalf of the Respondents stated that there was no precedent for so doing, and that the Tribunal had no right to interfere with the decision of the governing body unless there was overwhelming evidence of manifest unfairness in the manner in which the Respondents had applied the relevant County Bye Laws.

4. Mr Logan submitted that the Tribunal was not a tribunal of sympathy, that there was no manifest unfairness and that evidence of fairness would have to be very strong before any question would arise in relation to overturning or quashing the decision.

5. It was acknowledged by the Dublin County Board that there is no express right of audience for any person to attend before the County Committee (ultimately deciding) however, Dublin County Board stated in its Submissions that such facility would be made available and is not prohibited. It seems also that Dublin County Board acknowledged that further *debate* could take place at that level and indeed that the views of the Transferee club would at that stage be considered.

The Tribunal having considered the oral submissions of the Claimants and Respondents and having hearing the evidence adduced by the Claimants and Respondents at the oral hearing, which evidence combined the evidence of both players and the evidence of the Chairman of Whitehall Colmcilles, the Tribunal adjourned the hearing for the parties to put in writing their various submissions on the case and also the Tribunal decided to invite submissions from Central Council in relation to this case pursuant to paragraph 9.3 of the DRA Code.

Written submissions were received from the Claimants and Respondents and also from Central Council of the GAA. The submission from The Central Council of the GAA dealt with the issue as to whether or not there was an inherent unfairness or illegality in Byelaw 19 of the Dublin County byelaws.

## **Submissions of Central Council**

Central Council in their submissions considered the legal nature of the relationship between a member of the Association and or a unit of the Association. They submitted that the relationship was well established as being one which was contractual. Accordingly it was submitted that when considering the rights and obligations of members and the Association/County Board one does so in the context of a contract voluntarily entered into. It

was submitted that this relationship is fundamentally different to the relationship of the citizen and the state or that of citizens inter se.

Central Council stated that in requesting that the DRA find a byelaw void as being “inherently unfair” or in itself illegal, the Claimants were requesting the re-writing or “blue pencilling” of the contract of membership a contract which the same members had themselves voluntarily entered into. It was submitted that the consequences of such a declaration would be to alter the contract between all members of the Association and/or their County Board and not centre to the term in the current dispute between the Claimants and the Respondent.

It was further submitted by Central Council that in so far as the impugned rule contains or represents duly considered policy of the County Board and/or delegated policy of the Association (which in this case Central Council has stated it clearly did) the striking down or quashing of such a rule could potentially involve interference by the arbitrary process with the policy making competence of the Association. Central Council submitted that the said policy making function, absent grievous legal frailty, is entitled to a degree of deference.

It was submitted by Central Council that it was not appropriate for the Disputes Resolution Authority to alter the contract voluntarily made between the members of the association and their County. It was further submitted that in the event that the DRA were prepared to entertain such an application which Central Council submitted that it ought not, further contractual defence such as delay and estoppel might be available to the County Board as regards the Applicants.

Central Council submitted that a player whose transfer request has been refused *does* have and opportunity after recommendation made that transfer be refused for a hearing at County Committee level. The player is entitled to attend personally and make such representations as he sees appropriate.

It was submitted by Central Council that there was no inherent unfairness or illegality within byelaw 19 of the Dublin County Byelaws but Central Council did recommend that further procedures could be used by the respondent County Board to alleviate any concerns a player might have in connection with the processing of a transfer request. The recommendations made by Central Council were as follows:-

1. The transfer applicant ought to be entitled to a hearing before County Management Committee and to advance notice of the recommendation made and advance notice of the response of the transferor club.
2. Furthermore and in the event that the transferee club is afforded a right of comment/response the proposed transferee club ought to be furnished with the recommendation of the sub-committee and the response of the Transferor Club.
3. Central Council would remark that absent exceptional circumstances, there is no absolute requirement for a player who has achieved his majority to be represented at such hearing.

In the written submissions received from the Claimants and Respondents no new issues were raised by either party other than those raised by them in the course of their oral submissions at the hearing. Both the Claimants and Respondents were given copies of the submissions of



Central Council and were given an opportunity to respond further in writing to the submissions. Further written submissions were received from the Claimants and were considered by the Tribunal.

## **DECISION OF THE TRIBUNAL**

1. The Dublin County Byelaws dealing with transfers do not contain any inherent illegality and do not contradict the Teoir Offigiul 2009. The Respondent's bye laws allow and provide for a three stage process for dealing with transfers. The initial transfer applications are processed by Dublin CCC who notify the player and Transferor Club of their recommendation. A player can seek a hearing before the Management Committee who then make a recommendation to the full County Committee who are the designated decision making body. The Tribunal notes the large volume of transfer requests that have to be processed by the Respondents. This structure is not in conflict with Teoir Oifigiul 2009 provided full due process is afforded to the players and clubs involved. This Tribunal finds that there was no evidence of any bias against the Claimants by the Respondents.
2. Having regard to the manner in which the Respondent dealt with the application of Ciaran O'Broin and Darragh Seoighe for transfers and in particular having regard to the manner in which the application of Ciaran O'Broin and Darragh Seoighe for transfers were dealt with by the Management Committee of Dublin County Board where oral evidence was heard it is the decision of this Tribunal that there was an inherent unfairness in the manner in which the hearing was conducted by the Management Committee of Dublin County Board on the 25<sup>th</sup> January 2010. This unfairness arose from the following:-
  - a. It appears that no detailed record was kept by the Management Committee of the oral evidence and oral submissions made to them by the Applicants Ciaran O'Broin and Darragh Seoighe or by their existing club Whitehall Gaels Colmcille.
  - b. In order for the County Committee to fully adjudicate on the recommendation made by the Management Committee that the transfers be refused it is the view of this Tribunal that the full record of the evidence given and submissions made to the Management Committee should have been made known to the County Committee so that an informed decision could have been made by the County Committee on the transfer requests. The Tribunal notes that Teoir Offigiul requires that the final decision in relation to the transfer of players must be made by County Committee notwithstanding the fact that the County Committee can nominate a subcommittee.
3. For the above reasons it is the decision of this Tribunal that the application for a transfer of the Applicants herein namely Ciaran O'Broin and Darragh Seoighe be sent back to the County Management Committee ( or other properly appointed sub-committee) for reprocessing and for the holding of a further oral hearing in this matter.
4. The Central Council of the GAA in its submissions made to this Tribunal indicated that in its view the following safeguards would be appropriate in certain cases:-

- i. The Applicants in all transfer cases should be entitled to a hearing before the County Management Committee (as is provided for in the Dublin County Byelaws).
  - ii. The Applicants to be entitled to advance notice of the recommendation made by the County Management Committee and advance notice of the response of the Transferor Club.
  - iii. In the event that the transferee Club is afforded a right of comment/response the proposed transferee Club ought to be furnished with the recommendation of the subcommittee and the response of the transferor Club.
5. In this case, when this matter is reheard by the Dublin County Management Committee this Tribunal recommends that a full and detailed note is taken of all submissions made by the parties to the transfer request and that note should be made available to the County Committee when the matter is adjudicated upon at County Committee level.
6. This is the unanimous decision of this Tribunal.
7. The Tribunal requests written submissions from the parties on the issue of costs and the expenses of the DRA.

Oliver Shanley Chairman \_\_\_\_\_

David Nohilly \_\_\_\_\_

Albert Fallon \_\_\_\_\_

Dated this June 2010.