

# **DISPUTES RESOLUTION AUTHORITY**

**Record No. 1/2007**

**BETWEEN**

**BRENDÁN Ó CEALLACHÁIN mar ionadach Fó Chumann Na  
Cealla Beaga**

**Claimant**

**-and-**

**CRONA REGAN mar ionadach Coiste Chondae Dhún na  
nGall**

**and**

**CLG COMHAIRLE ULADH**

**Respondents**

## **DECISION**

### **Background**

1. This is an application for arbitration brought by Fó Chumann Na Cealla Beaga ('the Claimant') against a decision of Coiste Chondae Dhún na nGall ('the First Respondent'), taken on 3ú Eanáir 2007, that purported to disqualify the Claimant from Craobh an Chondae Faoi 21 Roinn 1 pursuant to Rial 117, An Treoirí Oifigiúil ('T.O.') 2006.
2. The Claimant exercised its right to appeal to CLG Comhairle Uladh ('the Second Respondent'). The appeal was heard on 9ú Eanáir 2007 and was dismissed.
3. The Claimant exhausted all its available remedies before making this application to the Tribunal.
4. The Claimant lodged its Request for Arbitration with the Disputes Resolution Authority ('the DRA') on 10ú Eanáir 2007. A Statement of Facts was served on 18ú Eanáir 2007. Further documentation was served on 19ú Eanáir 2007, namely, a letter from Fó Chumann Naomh Mhuire Íochtar na Rosann dated 18ú Eanáir 2007 and a written response to the Response of the Respondents to the Claimant's Request for Arbitration. At the opening of the hearing, the Claimant submitted two further documents, namely, an unsigned and undated statement from Jason Callaghan and Rosaleen Callaghan. The Claimant's nominee pointed out an error in this statement, namely, that the date

'31/12/06' should read '30/12/06'. The Tribunal noted this amendment. The Claimant also submitted an unsigned and undated statement from Manus Boyle, Manager of the Claimant's Under 21 team.

5. The Respondents submitted their Response to the Claimant's Request for Arbitration on 17ú Eanáir 2007. This was within the abridged time for doing so ordered by An Rúnaí, DRA, in view of the urgency of the matter, the final of the Donegal Under 21 Championship, fixed for 13ú Eanáir 2007, having been postponed by the First Respondent in the light of the Claimant's application. Upon the opening of the hearing, the Respondent's solicitor applied to make a number of amendments to the Statement of Facts in the Respondents' Response. The Tribunal agreed to make these amendments. In light of the significance and number of the amendments, the Claimant accepted the Tribunal's offer of a short adjournment in order that the Claimant might consider the Respondents' amended Statement of Facts. In the course of cross-examination of the Claimant's representative, the Respondents handed in a copy of draft Minutes of the First Respondent's 'Executive Meeting' held on 3ú Eanáir 2007. The Claimant objected to this as the Minutes had not yet been ratified. The Tribunal permitted their introduction as draft Minutes of the meeting.

#### **Preliminary Issues**

6. The Tribunal, with the consent of the parties, formally added the Second Respondent as a party to these proceedings, noting that An Rúnaí of the DRA had alerted the First Respondent's solicitors to the issue and the said solicitors having indicated that the Response submitted was on behalf of both Respondents.
7. It was agreed between the parties and the Tribunal that this application be determined by reference to the rules contained in T.O 2006.

#### **The Substantive Issues**

8. The following issues substantive issues fell for determination by the Tribunal:
  - (1) whether the First Respondent was required to give four days notice of the re-fixing of the Under 21 County Championship game between the Claimant and Fó Chumann Ghleann Súile pursuant to Rial 116, T.O.2006;
  - (2) whether, in any event, the meeting of the 'Executive Committee' of the First Respondent on 3ú Eanáir 2007, at which the Claimant was purportedly disqualified from the Under 21 County Championship, had power to impose such sanction pursuant to Rial 117, T.O. 2006.
  - (3) whether the remedy sought by the Claimant, namely, re-instatement in the Under 21 County Championship, or any remedy, should be granted to the Claimant.

## **The Claimant's Case**

9. The evidence of the Claimant was set out in the various documents already referred to in this Decision and in sworn evidence from Manus Boyle, Brendan Ó Ceallacháin and Rosaleen Callaghan. The first two witnesses were cross-examined by the solicitor for the Respondents. The Tribunal, by way of clarification of their evidence, questioned all three witnesses.
  
10. In summary, the evidence given on behalf of the Claimant was as follows:
  - that, due to non-availability of a number of players living in Dublin and Galway, it was not possible to field a team on the re-fixed date of 31ú Eanáir 2006, at such short notice, that is, the day following the postponed fixture, or on the alternative date subsequently fixed, namely, 1ú Eanáir 2007;
  - that it never agreed to the re-fixed game being played on either of the re-fixed dates, but would have been willing to consider 1ú Eanáir 2006 had the venue been Ballybofey or Letterkenny, as these were on the main bus routes;
  - that no notice of the game actually having been re-fixed for 1ú Eanáir 2007 was received by An Rúnaí for the Claimant until three hours before the throw-in, whereupon the First Respondent was immediately informed that the Claimant would not be fielding and invoking Rial 116, T.O. 2006;
  - that, although the Claimant understood that the meeting on 3ú Eanáir 2007 would be discussing the purported re-fixing of the game, no indication had been given that this was any kind of a disciplinary hearing.

## **The Respondents' Case**

11. The evidence of the Respondents was set out in the various documents already referred to in this Decision and in sworn evidence from Edward Molloy and Seán Kelly. Both witnesses were cross-examined by the Claimant's representative. The Tribunal, by way of clarification of their evidence, questioned both witnesses.
  
12. In summary, the evidence given on behalf of the Respondents was as follows:
  - that the First Respondent, in the person of Mr. Molloy agreed to the original fixture being called off, due to the pitch being deemed unplayable by the referee, rather than transferred to Annagry, as the Claimant had not agreed to the transfer;
  - that of the other quarter-finals, two had already been played, and the other was being played that day in Ballybofey;
  - that Mr. Molloy, having talked to others of the First Respondent, decided to re-fix the game for the following day, 31ú Mí na Nollag 2006 in Gaoth Dobhair and informed both clubs at 5.40pm on 30ú Mí na Nollag 2006;

- that the Claimant phoned back shortly afterwards to request that the game be played on 6ú Eanáir 2007;
- that the Claimant was immediately advised that this was impossible, whereupon the Claimant subsequently suggested 1ú Eanáir 2007 instead, preferably in Ballybofey or Letterkenny;
- that the Claimant was advised that neither venue would be available, whereupon the Claimant agreed that the game would proceed on 1ú Eanáir 2007 in Gaoth Dobhair;
- that the Leas Rúnaí of the Claimant, Brendan Conaghan, telephoned Mr. Molloy on 31ú Mí na Nollag 2006 at 1.30pm to express the view that the Gaoth Dobhair pitch would be unplayable on 1ú Eanáir 2007;
- that An Rúnaí of the Claimant telephoned Mr. Molloy on 1ú Eanáir 2007 at 10.30am to state that the Claimant was not aware that the re-fixed game was on that day;
- that the first Respondent's Oifigeach Caidreamh Poiblí had been instructed to advise radio stations of the re-fixtiture and it had been placed on the First Respondent's website;
- that the objections of the Claimant to the original date of the re-fixtiture, namely, 31ú Mí na Nollag 2006, were taken into account and the re-fixtiture changed to 1ú Eanáir 2007;
- the 'Executive Committee' of the First Respondent is the 'Disciplinary Sub-Committee' of the County Games Administration Committee and that this is provided for in the First Respondent's Bye-Laws;
- that it was decided to hold a meeting of this Committee to find out the facts of why the re-fixed game had not proceeded and to give both clubs a hearing;
- no notice was given to the Claimant as this meeting fell under the Exception (4) in Rial 146 T.O. 2006, namely, 'Application of penalties for breaches of competition regulations';
- that the Claimant's appeal to the Second Respondent was a complete re-hearing of the issues in any event.

### **The Claimant's Submissions**

13. The following submissions were made by the Claimant in light of the evidence:

- the 'competition regulations' envisaged by Rial 146 do not govern the County Under 21 Championship; accordingly, the Claimant required to have been given notice in writing of its alleged offence;
- the re-fixtiture was not properly made as the requisite four days notice in writing had not been given to the Claimant; accordingly, no 'offence' had been committed by the Claimant;

- An Rúnaí of the First Respondent asked whether the Claimant would like to come along to the meeting of the Executive Committee held on 3ú Eanair 2007; at no time was any indication given that this was a disciplinary hearing with a view to imposing a sanction on the Claimant.

### **The Respondents' Submissions**

14. The following submissions were made on behalf of the Respondents:

- the provisions of Clause 1.3 of the Disputes Resolution Code of the DRA must be read in conjunction with, and subject to, the judgement of Judge McMahon in the case of ***Barry and Rodgers v. Ginnity and Others***;
- if the Tribunal is satisfied that Mr. Molloy and Mr. Kelly were, in a bona fide fashion, trying to be fair to the Claimant, the Tribunal should be loathe to interfere;
- the Claimant had received two full and fair hearings of its case;
- the Tribunal had to decide whether it was agreed by the Claimant that the game be re-fixed for 1ú Eanair 2007 in Gaoth Dobhair; it was the Respondents' submission that the Claimant clearly had so agreed;
- although Rial 116 requires four days notice to be given of a re-fixture (but there being no requirement for that notice to be in writing), even the Claimant accepted that this rule was not applied on all occasions, but did require to be waived on those occasions by the parties concerned;
- the Claimant had not suffered any breach of natural justice.

### **Reasoning**

#### Notice of the re-fixed game

15. Rial 116 T.O. 2006 provides that four clear days notice of a re-fixed Championship game (which includes an Under 21 Championship game) **shall** be given (although this is not required to be in writing).
16. It is common case that this was not done in this case and, further, that it often is the case that such notice is not given. It is also common case that the giving of the requisite notice can be waived with the agreement of all the parties, that is, the two Clubs in question and, in this case, the County Board.
17. In this application, the Claimant argues that it did not agree to the arrangements for the re-fixture, while the First Respondent maintains that the Claimant did so agree.
18. There is an irreconcilable conflict of evidence in this regard. The Tribunal noted that there was a welter of telephone calls, texts and so on, not only between the Secretary of the Claimant and the Fixtures Secretary of the First

Respondent (who were the only two persons who should have been involved), but between others, both on behalf of the Claimant and on behalf of the First Respondent. The Tribunal finds that this led, as was inevitable, to possible confusion, misunderstandings and breakdowns in communication between the Claimant and the First Respondent. In those circumstances, the Tribunal cannot be satisfied, on the balance of probabilities, in light of the totality of the evidence, that the Claimant had waived the requirement on the First Respondent to give four days notice of the re-fixture to the Claimant and had agreed to the game proceeding on 1ú Eanair 2007. The Tribunal attaches significant weight to the evidence of Mr. Molloy that An Rúnaí of the Claimant telephoned him on the morning of 1ú Eanair 2007 to say that he was not aware the game was proceeding that day. The Tribunal also noted the evidence of Mr. Molloy that as the Under 21 Championship took place over four, maybe five, weekends that there were a lot of fixture problems. The Tribunal took that to mean that there was a certain pressure to get the Under 21 Championship completed as soon as possible, although Mr. Boyle for the Claimant appeared to agree with the need to get this fixture played as soon as possible.

19. Accordingly, the Tribunal finds that the Claimant was entitled to rely on the notice provisions of Rial 116.
20. It is important to record that the Tribunal, in reaching this conclusion, does not attribute any fault or blame to anyone from the Claimant club, nor from the First Respondent. In particular, the Tribunal recognises the very difficult task faced by Mr. Molloy as Fixtures Secretary of the First Respondent and acknowledges the fact that the First Respondent took the Claimant's concerns at the prospect of re-fixing of the game for 31ú Mí na Nollag 2006 into account.
21. The effect of the Tribunal's finding in relation to the notice issue is that the Claimant, in fact, did not fail to fulfil a fixture. Accordingly, the Claimant committed no 'offence' and there were no grounds to impose the sanction erroneously imposed by the First Respondent, whether pursuant to Rial 117, T.O. 2006, or otherwise. However, the Tribunal feels it is important to consider and determine the other issues raised by this application.

#### Meeting of 3ú Eanair 2007

22. A number of issues arise in relation to the meeting convened by the First Respondent on 3ú Eanair 2007. The draft Minutes of that meeting state that it was a meeting of the 'Executive Committee' of the First Respondent. It appears from the draft Minutes that this was a meeting only to discuss the events surrounding the fixture that is the subject of this application. Both the Claimant and Fó Chumann Ghleann Súile were invited to the meeting. The draft Minutes simply record that the meeting decided to disqualify the Claimant from the Craobh Faoi 21 at the end of a discussion of the matter.
23. The Tribunal finds that the purpose of this meeting was to adjudicate on an alleged disciplinary matter, namely, the alleged failure of the claimant to fulfil

a fixture. The provisions of Rial 146, T.O. 2006 govern such circumstances. These require the relevant Committee to give the alleged offender notice in writing of the alleged offence except in a number of specified circumstances. In the circumstances of this application, the only relevant exception, if any, was ‘Application of penalties for breaches of competition regulations’. It was argued by the First Respondent that ‘competition regulations’ were those set out in Rialacha 115-117, T.O. 2006. However, the Tribunal finds that the term ‘competition regulations’ refers to regulations, if any, drawn up by a County Board prior to the start of a competition to govern the organisation of the competition, as opposed to ‘Rules’ set out in An T.O. 2006. Accordingly, the said exception did not apply in this instance and the First Respondent was obliged under Rial 146, T.O. 2006 to have given notice in writing to the Claimant of the alleged offence.

24. It is not at all clear to the Tribunal that the ‘Executive Committee’ of the First Respondent can lawfully be its ‘Disciplinary Sub-Committee’, as envisaged by Rial 61. Evidence was given by the First Respondent that this was the case. Rial 61 states that a County Committee *shall* appoint a number of Sub-Committees, including a Games Administration Committee responsible for all arrangements, for control of, and any matters arising from, games under the jurisdiction of the County Committee. In addition, the County Committee *may* appoint a separate Disciplinary Sub-Committee. There is no provision whatsoever in An T.O. 2006 for the establishment by a County Committee of an ‘Executive Committee’ having particular powers and functions. The Tribunal concludes, on the evidence that the meeting called by the ‘Executive Committee’ of the First Respondent on 3ú Eanair 2007 was not, in fact, a meeting where it was proposed to adjudicate on a disciplinary matter, but was an informal meeting of the officers of the First Respondent to discuss, in a non-disciplinary context, what had occurred in relation to the re-arranged fixture. If it had been the disciplinary meeting envisaged by Rial 146, T.O. 2006, it would have been inappropriate to have Fó Chumann Ghleann Súile present also participating in the hearing. There was no suggestion that this meeting was an investigation under Rial 156, T.O. 2006; had it been so, then the presence of Fó Chumann Ghleann Súile would have been entirely appropriate, as could the fact that the Investigation Committee could have comprised the ‘Executive Committee’ of the First Respondent.
25. The Tribunal concludes that the meeting of 3ú Eanair 2007 was, in fact, an investigation into what had occurred. If the outcome of that investigation was that it appeared that disciplinary action should be taken against the Claimant, then a disciplinary hearing should have been convened pursuant to Rial 146, T.O. 2006. The Tribunal further concludes that the ‘Executive Committee’ of the First Respondent had no power to impose the sanction it purported to impose on the Claimant, or any sanction.

## **Decision**

26. The Claimant is entitled to succeed in this application.

27. The Tribunal orders the re-instatement of the Claimant in the current Craobh Chondae Dhún na nGall Faoi 21.
28. The Tribunal finds that, pursuant to Rial 116, T.O. 2006, four clear days notice of the re-fixture of the Craobh Faoi 21 game between the Claimant and Fó Chumann Ghleann Súile required to be given to the Claimant by the First Respondent and that the First Respondent failed to do so.
29. The Tribunal finds, on the evidence, on the balance of probabilities, that there was no agreement forthcoming from the Claimant to waive the notice provisions of Rial 116.
30. The Tribunal is satisfied that the meeting of the First Respondent's Executive Committee held on 3ú Eanáir 2007 was not a properly convened disciplinary hearing pursuant to the provisions of Rial 146, T.O. 2006.
31. In the alternative, if it was a properly convened disciplinary hearing, it required written notice to be served on the Claimant by the First Respondent pursuant to Rial 146 since the meeting purported to adjudicate on a disciplinary matter that resulted in the imposition of a penalty on the Claimant.
32. The Tribunal is further satisfied that none of the exceptions set out in Rial 146 applied in the circumstances of this case; in particular, The Tribunal determines that the reference to 'competition regulations' in Rial 146 are not the provisions set out in Rialacha 115-117.
33. Accordingly, the Tribunal determines that the First Respondent had no power to invoke Rial 117 in this case.

### **Costs and Expenses**

34. The Tribunal invited submissions from the parties in relation to costs and in relation to the expenses of the DRA in relation to this hearing.
35. The Claimant sought no costs or expenses.
36. The Respondent made no submission in relation to either costs or expenses.
37. The Tribunal makes the following Order in relation to costs and expenses:
  - i. No order as to costs.
  - ii. The Respondents shall pay the expenses of the DRA in relation to the hearing of this application as certified by An Rúnaí.
  - iii. Upon receipt of the said expenses from the Respondents, the application fee paid by the Applicant in the sum of €1000 shall be repaid to it.



Dated at Muineacháin this 19ú lá d'Eanair 2007.

Sínte: Damien Mac Mathúna (Cathaoirleach)  
Donard King  
James Treacy