

**DISPUTES RESOLUTION AUTHORITY**

Record No. DRA/10/2010

**IN THE MATTER OF THE ARBITRATION ACTS 1954 – 1998**

BETWEEN/

**TADHG HARAN**

CLAIMANT

AND

**COISTE CHONTAE NA GALLIMHE**

RESPONDENT

**AWARD AND REASONS**

**Introduction**

1. In this arbitration, the claimant has challenged the legality of the respondent's refusal to grant him a transfer from Salthill Knocknacarra GAA Club (referred to throughout this award as "Salthill Knocknacarra") to Liam Mellows Galway City GAA Club. The claimant has submitted that:
  - a) the respondent did not adopt bye-laws governing the transfer of players from one club to another as it was required to do by rule 6.8 of the Official Guide;
  - b) the respondent did not act in accordance with its own byelaws and, in particular, bye-law 13;
  - b) the procedures adopted by the respondent in arriving at its decision were unfair.
  
2. An oral hearing in the matter was held at the Hudson Bay Hotel in Athlone on the 6<sup>th</sup> of September 2010. The claimant was represented by his solicitor, Mr. Shane McSweeney, whose comprehensive and clear written submissions greatly assisted the Tribunal. The respondent was represented by its chairman, Mr. Gerard Larkin and its secretary, Mr. Michael Monahan. Mr Donal Lyons and Mr Frank McCann

from Salthill Knocknacarra also attended the hearing. They did not wish Salthill Knocknacarra to be joined as co-respondent to the arbitration but did give evidence in relation to certain matters.

## **Background**

3. The claimant was born on the 6<sup>th</sup> of September, 1991 and joined Salthill Knocknacarra when he was 7 or 8 playing both hurling and football and excelling at both but especially at hurling where he was a member of the 2009 All Ireland Minor Hurling winning team.
4. On the 22<sup>nd</sup> of January 2010, he completed the usual transfer application form which provided a five line space for the applicant to set out his reasons for requesting a transfer.
5. This form was then sent to Salthill Knocknacarra which objected to the transfer and gave its reasons for its objection on the five line space provided on the application form.
6. Salthill Knocknacarra also wrote an undated two page letter to the respondent expanding on its reasons for refusing. At the hearing before the DRA tribunal, Salthill Knocknacarra stated their belief that the letter was appended to the application form. However, the claimant, through his solicitor, stated that he had collected the completed application from Salthill Knocknacarra and delivered it to the respondent and that there was no letter appended to it. There is no doubt but that the letter reached the respondent and was considered by it in making its decision.
7. The respondent considered the transfer request at a meeting of the respondent held on the 17<sup>th</sup> of February 2010 and decided to refuse it. The claimant states that the respondent did not notify him of this decision before he learned of it from an unnamed person who approached him at his place of work and commiserated with him. The respondent stated that it was usual for applicants for transfer requests to

be notified in writing of the decision but did not furnish a copy of any such letter to the claimant.

8. Within days of the decision (of the 17<sup>th</sup> of February 2010) the claimant wrote to the respondent by letter dated the 22<sup>nd</sup> of February 2010 stating, *inter alia*, that he understood that by law 13 of the respondent entitled him to a transfer and asking the respondent to reconsider his application. The claimant also asked that the respondent give him an opportunity to put his case in person to the respondent or alternatively, that the respondent “*state the official position in writing for declining his request with reference to the relevant rules and byelaws*”.
9. The respondent replied to the claimant by letter dated the 2<sup>nd</sup> of March 2010 pointing out that the issue had been discussed at a full meeting of the respondent on the 17<sup>th</sup> of February 2010 and that the decision had been taken in accordance with Rules 6.1, 6.8(c), 6.8(d) and 7.11(c) of the GAA Official Guide. The Tribunal accepts the claimant’s evidence that this was the first notification given to him by the respondent of its decision to refuse his transfer request. It is the date of this letter (i.e. the 2<sup>nd</sup> of March 2010) that is given by the claimant as the date of the decision challenged in this arbitration.
10. The claimant’s review request was discussed subsequently at a meeting of the management committee held on the 25<sup>th</sup> of March 2010 when the decision to refuse the transfer was confirmed. (It is not clear whether this decision was ever communicated to the claimant.)
11. On the 31<sup>st</sup> of March 2010, the claimant notified the respondent by e-mail that he wished to appeal the respondent’s “*violation of its bye-laws*” and, in particular, its violation of byelaw 13. The respondent’s secretary replied on the 8<sup>th</sup> of April 2010 that there was no appeal from a transfer decision. The claimant replied on the 13<sup>th</sup> of April 2010 that he understood that there was no appeal from a transfer decision but that he wished to appeal the county board’s violation and inconsistent application of its byelaws. On the 3<sup>rd</sup> of May 2010 the respondent replied that, if the claimant had an issue with the respondent, he could put his case to the secretary of the Hearings Committee.

12. The claimant made his complaint with regard to the respondent by letter of the 14<sup>th</sup> of May 2010 to the secretary of the Hearings Committee and asked for details of the procedure or, if a hearings process was not available, confirmation that all available avenues of appeal under the rules of the GAA had been exhausted as he was considering taking the matter to the DRA.
13. On the 14<sup>th</sup> of June, 2010 a meeting was held between the chairman, secretary and treasurer of the respondent on the one hand and the officers and members of Salthill Knocknacarra on the other hand in order to discuss matters of mutual concern including the claimant's transfer request and Salthill Knocknacarra reiterated their objection to the transfer and their reasons. Shortly afterwards on the 16<sup>th</sup> of June 2010, a meeting of the Management Committee was held where the views of Salthill Knocknacarra as expressed at the meeting on the 14<sup>th</sup> of June 2010 were put before the meeting and the Management Committee confirmed the original decision to refuse the transfer request.
14. There was then a meeting of the Competitions Control Committee on the 24<sup>th</sup> of June 2010 when the meeting was informed of the claimant's request to the hearings committee for a hearing and of the hearing committee's decision that "*there were no grounds for a hearing as the decision did not relate to any infraction as covered by rule and that the decision would have to be reviewed by the Coiste Cheannais na gComortaisi*". The Coiste again voted against granting the claimant's transfer request.
15. On the 25<sup>th</sup> of June 2010 the respondent wrote to the claimant referring to the claimant's letter to the Hearings Committee and stating that the Hearings Committee was precluded from granting a hearing in relation to the matter and had referred the matter back to the Competitions Control Committee for review and that the Competitions Control Committee had discussed the matter at their meeting on the 24<sup>th</sup> of June 2010 and agreed that the transfer could not be granted.
16. The claimant requested this arbitration on the 2<sup>nd</sup> of July 2010.

**The claimant's submissions in relation to the respondent's bye-laws.**

17. To summarise the claimant's submissions in this regard, it is necessary to set out in full the relevant rules and bye-laws from the GAA Official Guide 2009 (*"the Official Guide"*) and the respondent's Bye-Laws and General Regulations, April 2009 (*"the bye-laws"*).
18. Rule 6.8 of the Official Guide is entitled *"Transfers Within County"* and states as follows:
  - " (a) A County shall have a Bye-Law governing the transfer of players from one Club to another within the County.
  - (b) A County Bye-Law 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 Home Club. Permanent Residence shall be defined in County Bye-Law. A County shall also have the option, within County Bye-Law, to allow a player to play with a Club in the area 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 Bye-Law, to grant or not to grant an application for a 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."

19. Rule 7.11(c)(1) of the Official Guide provides that:  
*“there shall be no appeal against the decision of a County Committee with regard to: (i) transfers within a County,...”*
20. Three of the respondent’s bye-laws deal with transfers as follows:
- “9. Application for transfer must be signed by the applicant personally on the official form to be had from the County Secretary and must state the exact grounds on which such application is based.*
- 12. Subject to R.33, T.O. 2008 no player shall pay outside the parish where he resides or works, without the permission of the County Committee, such permission to be sought through the County Committee before “closing date” according to By-Law 9.*
- 13. Unless exempted by the Co. Committee a player must continue as a member of the Galway City Club with which he first played as juvenile until he reaches the age of eighteen, unless his family changes residence in which instance he may be granted a transfer.*
21. It was common case that bye-law 12 is not applied in Galway city and the claimant submitted that bye-law 13 was passed as, in effect, the city counterpart of bye-law 12 and that bye-law 13 expressly recognised the situation that pertains within the Galway city urban area where clubs draw players from across the city.
22. The claimant submitted firstly, that these bye-laws were incomplete and ambiguous and, in relation to procedural matters, provided solely for the submission of the application form itself without reference to, or provision for, the substantive procedure including the decision making process, right(s) of audience or the right to make submissions or the matters to be considered in determining a transfer request. The claimant submitted that there had been an abject and material failure on the part of the respondent to comply with the mandatory requirements of rule 6.8(a) of the Official Guide which should not entitle it to engage in *ad hoc*, arbitrary and illogical conduct to the prejudice of the claimant.

23. The claimant submitted secondly, that bye-law 13 on its correct interpretation meant that a player, on reaching the age of 18 years, was entitled to transfer to another Galway city club of his choosing. Bye-law 13 expressly prohibits the transfer of players between clubs in Galway city **until** the age of eighteen without (a) the respondent's consent; or (b) the respondent's consent following upon a change in the location of the player's family's residence. By expressly inserting a prohibition on transfers (save with the 2 exceptions noted) until a player reaches the age of 18 years, the rule clearly implies that when a player reaches 18 years he or she may transfer to a city club of his or her choosing.
24. The claimant also submitted that there was no evidence that the respondent had considered bye-law 13 or its meaning or correct interpretation in reaching its decision to refuse the claimant a transfer.
25. The Tribunal queried whether, in the light of rule 2.1(c) of the Official Guide, the claimant had continued to be a member of Salthill Knocknacarra after the 6<sup>th</sup> of September 2009 when he turned 18. Neither the claimant nor the respondent had prepared legal argument on this matter and the Tribunal has not considered or determined this issue in this award.

**The respondent's submissions in relation to its bye-laws.**

26. The respondent believed that it had correctly applied bye-law 13 and that bye-law 13 did not entitle players to an inter-club transfer in the city on reaching the age of 18.

**Rule 6.8(a) of the Official Guide and the meaning of bye-law 13.**

27. The Tribunal is unanimously of the view that the respondent complied with Rule 6.8(a) of the Official Guide in making bye-laws 9, 12 and 13 even though rule 13 was difficult to interpret. The Tribunal accepts that the claimant was entitled to fair procedures in the decision making process and this issue is dealt with below.

28. The Tribunal is unanimously of the view that bye-law 13 does not mean that a player, on reaching the age of 18 is automatically entitled to transfer to another club. The Tribunal accepts that the bye-law in providing that “*a player must continue as a member of the Galway City Club with which he first played as a juvenile until he reaches the age of eighteen*” unless (a) exempted by the respondent or (b) granted a transfer by the respondent on the sole grounds of change of family residence clearly implies that this position changes in some way or another when the player reaches eighteen. The Tribunal’s view is that bye-law 13 implies not that a player over the age of eighteen is *entitled* to a transfer but that he may apply for a transfer for a reason other than his family’s change of residence. In other words, a player over the age of eighteen may apply to the County Committee for a transfer without restriction on the grounds that may be advanced. It is then a matter for the County Committee to grant or refuse the application.

**The claimant’s submissions in relation to the procedures adopted by the respondent.**

29. The claimant submitted that the procedures adopted by the respondent were unfair in several respects in that:
1. the claimant was not granted an opportunity to reply to the submissions made by Salthill Knocknacarra in its undated letter to the respondent;
  2. the claimant was not given an oral hearing;
  3. Salthill Knocknacarra were given an opportunity to present their views in person to the respondent while this was denied to the claimant;
  4. the respondent first informed the claimant that he was entitled to appeal to the hearings committee and then withdrew this avenue of appeal.



The claimant submitted that the treatment given to Salthill Knocknacarra by the respondent was markedly more favourable than that given to the claimant.

### **The respondent's submissions in relation to its procedures**

30. The respondent stated that it tried to help every player and had no wish to hamper the claimant in his career. There was no personal element in the respondent's decision and they were happy to offer an oral hearing to the claimant if the Tribunal decided that this ought to have been done.

### **Were the respondent's procedures unfair?**

31. The respondent did not object to the Tribunal reviewing the fairness of its procedures after the claimant was notified by the letter of the 2<sup>nd</sup> of March 2010 that his transfer request had been denied. Accordingly, the Tribunal has not embarked on any consideration of the competence of the respondent to reconsider its decision of the 17<sup>th</sup> February 2010 and has reviewed the respondent's decision making process as one complete process commencing with the submission of the transfer request and culminating in its letter of the 25<sup>th</sup> of June, 2010.
32. The tribunal is unanimously of the view that the procedures adopted by the respondent were unfair and that the claimant's transfer request must be remitted to the respondent for a fresh decision and also that the claimant must be given an opportunity to make both written and oral submissions to the respondent in support of his request.
33. The tribunal decided by a majority that the claimant ought to have been given an opportunity to consider and respond to the undated letter sent by Salthill Knocknacarra to the respondent. The tribunal was unanimous in deciding that the meeting of the 14<sup>th</sup> of June 2010 constituted, in effect, the grant of an oral hearing to one party only, that is, to Salthill Knocknacarra and that this was manifestly unfair to the claimant.

### **Award**

34. For the reasons given above, the Tribunal remits the claimant's transfer application to the respondent for reconsideration and directs the respondent to permit the claimant to appear personally and to address the respondent in relation to the matter.
35. The issue of costs remains to be determined. It seems to the Tribunal that the costs should follow the event in the normal way and that the claimant is entitled to his costs but the Tribunal will consider submissions from the respondent in this regard such submissions to be received by the secretary of the DRA within 14 days of the date of the award. If the Tribunal requires to hear from the claimant in reply, the Tribunal will issue further directions.

Dated the 22<sup>nd</sup> of October, 2010.

Signed \_\_\_\_\_

Richard Kennedy

Signed \_\_\_\_\_

Declan Hallissey

Signed \_\_\_\_\_

Helen O'Mara