

**DISPUTES RESOLUTION AUTHORITY**  
**An C6ras Eadr6ana**

**Record No. 14/2010**

**BETWEEN**

**CLG M6ICHAEL MAC DAIBH6ID**

**Claimant**

**-and-**

**COISTE CHEANNAIS na gCOM6RTAIS AONTROIME CLG**

**Respondent**

**DECISION**

**Background**

1. This is an application for arbitration brought by CLG M6ichael Mac Dabh6id ('the Claimant') against a purported decision of Coiste Cheannais na gCom6rtais Aontroime ('the Respondent'), taken on 106 Meitheamh 2010 requiring all future games involving the Claimant to be played on an enclosed pitch. No Riail of An Treoir Oifigi6il 2009 ('T.O. '), or any County Bye-Law or County League Regulation was cited by the Respondent in the notification of the said decision to the Claimant as authority to purport to impose such requirement on the Claimant.
2. The Claimant purported to exercise its right of appeal to Coiste 6isteachta Uladh, and following dismissal of that purported appeal on 126 L6uil 2010, as being out of order – essentially due to the Claimant not having cited the T.O. Riail(-acha) which it alleged had been breached by the Respondent. The Claimant then purported to exercise its right of appeal to An L6ar Choiste Achomhairc. That purported appeal, too, was dismissed on 266 L6uil 2010 as being invalid, being submitted out of time.
3. The Claimant lodged its Request for Arbitration with the DRA on 156 L6uil 2010.
4. Further documentation was served on behalf of the Claimant on 196 Lunasa 2010.

5. The Response of the Respondent was served on 18ú lúil 2010
6. Mr. Declan Quinn, BL instructed by Flynn & McGettrick, Solicitors, appeared for the Claimant. The Respondent was represented by Seosamh Mac Éadbháird, Uas., Cathaoirleach, Coiste na gComórtais Aontroime. Stiofán de Búrca, Uas, Rúnaí, was in attendance to represent the interests of An Lár Choiste Achomhairc. No-one was in attendance from, or on behalf of, Coiste Éisteachta Uladh.

## **Preliminary Issues**

### **1. Parties**

Whether Coiste Éisteachta Uladh and An Lár Choiste Achomhairc should be joined in the proceedings as co-Respondents alongside the existing Respondent in circumstances where a copy of the Request for Arbitration had been sent to those other parties by the Claimant.

### **2. Jurisdiction**

Whether the Claimant had exhausted all avenues of appeal before bringing its Request for Arbitration.

## **The Respondent's Submissions on Jurisdiction**

- Riail 7.13, T.O. does not permit a dispute to be referred to the DRA until all available avenues of appeal have been exhausted.
- The Claimant wrongly certified that it had exhausted all avenues of appeal.
- The Claimant failed to exhaust all avenues of appeal by failing to submit a valid appeal to Coiste Éisteachta Uladh in that the Claimant 'failed to ask for a hearing'.
- The Claimant also lodged a Request for Arbitration to the DRA before going to An Lár Choiste Achomhairc.

## **Representations on behalf of An Lár Choiste Achomhairc on Jurisdiction**

- A purported appeal by the Claimant to An Lár Choiste Achomhairc was not received within the time limit set out in Riail 7.11(d), T.O. and was, therefore, invalid.

## **The Claimant's Submissions on Jurisdiction**

- The Tribunal was referred to the written submissions set out in

correspondence from its solicitors dated 17.06.2010.

- The Claimant relied on the Decision of the DRA in the conjoined applications of **O Searcaigh, O hUiginn agus Mac Gabhann v. Coiste Chondae Warwickshire** (DRA 30, 31 and 32/2005) (**'O Searcaigh'**). It was submitted that in that Decision, it was held that if the initial decision was defective, and could therefore be quashed, then the Tribunal on an application to the DRA could conduct a full hearing as if it were the appellate body of last resort under the Rialacha of Cumann Luthchleas Gael. In the instant application, it was submitted that the notice of sanction issued to the claimant by the Respondent was ultra vires as the decision imposing the sanction was manifestly a disciplinary decision but without the proper procedures being followed.

## Reasoning

1. The Code of the DRA, at clause 2.1(f) and Riail 7.13(d), T.O., requires the Claimant in any Request for Arbitration brought before the DRA, to have exhausted, and to confirm it has exhausted, all available avenues of appeal under An T.O., failing which the Tribunal cannot accept jurisdiction.
2. The Claimant appealed to Coiste Éisteachta Uladh on 16.06.2010 against the sanction notified to it by the Respondent on 11.06.2010. Coiste Éisteachta Uladh ruled the appeal out of order on a number of grounds – the most important being, for the purposes of these proceedings, the failure of the Claimant to cite the specific Riail(-acha) alleged to have been infringed or misapplied by the Respondent, contrary to Riail 7.11(e)(1), T.O.
3. It was accepted by the Claimant that this requirement had not been satisfied and that the Claimant should have complied in lodging its appeal with Coiste Éisteachta Uladh.
4. The Claimant cannot rely on any supposed ignorance of the Rialacha to excuse its failure to submit a properly-constituted appeal to Coiste Éisteachta Uladh and the Tribunal refers to the provisions of Riail 3.1, T.O.
5. The Claimant also lodged an appeal to An Lár Choiste Achomhairc on 23.07.2010 against the sanction imposed by the Respondent and the rejection of the Claimant's appeal to Coiste Éisteachta Uladh for non-compliance with formalities. This was ruled invalid as it had been lodged out of time. Accordingly, jurisdiction to hear that appeal was declined.
6. The Claimant accepted that its appeal to An Lár Choiste Achomhairc was out of time and, further, that there was no reason why it could not have been lodged in time. Further, in any event, the Claimant had lodged its Request for Arbitration before it lodged its appeal to An Lár Choiste Achomhairc.

7. Accordingly, the Tribunal had to decide, in all the circumstances, whether, in fact, the Claimant had exhausted all avenues of appeal under the Rialacha of Cumann Luthchleas Gael before bringing its Request for Arbitration.
8. The Claimant argued, however, relying on the authority of **O Searcaigh** submitted that this was not the end of the matter for the reasons set out in its written and oral submissions.
9. The Tribunal must inevitably conclude that where a Claimant has lodged an invalid appeal to an appellate body to which it has recourse, (in this case, Coiste Éisteachta Uladh and An Lár Choiste Achomhairc), the Claimant cannot be said to have complied with the requirements of Rial 7.13(d), T.O. and clause 2.1(f) of the Code of the DRA and is, therefore not entitled to bring a request for Arbitration to the DRA. The Tribunal finds that the Claimant in these proceedings failed to comply with these provisions and exhaust all its avenues of appeal.
10. If the Claimant had lodged an in time appeal to An Lár Choiste Achomhairc, it could have had the alleged invalidity of its appeal to Coiste Éisteachta Uladh heard and determined and, if dismissed on the merits, or if jurisdiction had been declined, the Claimant would have been perfectly entitled to bring a Request for Arbitration to the DRA, on the question of whether its appeal to Coiste Éisteachta Uladh was invalid. This was precisely the position in **O Searcaigh**.
11. The decision in **O Searcaigh** in fact is not supportive of the position advanced by the Claimant since it clearly found that an invalid appeal was not an appeal at all. This is precisely the position in the instant case.
12. While **O Searcaigh** did accept jurisdiction and go on to make an Order on the substantive issue, that was on the particular facts of the **O Searcaigh** case, namely, that terms were agreed between the parties and, secondly, there was an inordinate length of time had elapsed before the impugned decisions, albeit *ultra vires* decisions, had been issued, by the Respondent to the Claimant in that case. Those circumstances did not arise in the instant case and the Tribunal distinguishes **O Searcaigh** on that basis.
13. The Tribunal further relies on the authority contained in the Decision in the **CLG Ghrattan Óig** case (DRA 12/10) in reaching its decision on the question of its jurisdiction to hear this application.
14. Quite apart from the issue of jurisdiction, while the Tribunal did not hear any evidence or oral submissions on the substantive issue and, in light of the Tribunal's conclusion on the question of jurisdiction, it cannot consider the substantive issue, the Tribunal feels compelled to express a view that this clearly was a disciplinary matter and that, accordingly, the correct procedures and processes pursuant to the Rialacha in An T.O. to address disciplinary matters were not followed by the Respondent. The Tribunal also feels

compelled to express its concern at the nature and extent of the sanction it imposed on the Claimant. The Tribunal expresses the hope that the Respondent will carefully reflect on these comments.

## **Decision**

### 1. Parties

There was no dispute as to whether it was sufficient that the only Respondent was Coiste Cheannais na gComortáis Aontroime. The Tribunal so finds.

### 2. Jurisdiction

The Tribunal has no jurisdiction to hear the Claimant's Request for Arbitration as the Claimant did not exhaust all avenues of appeal pursuant to Rial 7.13, T.O.

## **Costs and Expenses**

1. The Tribunal makes no Order as to costs since it has declined jurisdiction.
3. The Claimant shall pay the expenses of the DRA in relation to the hearing of this application as certified by An Rúnaí;
4. The application fee of €1000.00 paid by the Claimant shall be forfeit and applied on account to discharge the said expenses of the DRA.

Dated at Corr an Charnáin this 17ú lá de Mhí na Samhna 2010.

Sínte: \_\_\_\_\_  
Damien Mac Mathúna (Cathaoirleach)

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Seán Mac Thaidhg

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Donard Mac an Rí