

DISPUTES RESOLUTION AUTHORITY

DRA/15/2009

IN THE MATTER OF The Arbitration Acts 1954-1998

AND IN THE MATTER OF an Arbitration between BRIAN COLOHAN (mar Ionadai Ar Son Biorra C.L.G) – v – MARTIN BOLAND (mar Ionadai Ar Son Coiste Conntae Uibh Fhaili) agus PARAIC O'DUFAIGH (mar Ionadai Ar Son Lar Coiste Achomhairc).

DECISION

1. Background:

CLG Birr is a Hurling Club which is based in the Parish of St. Brendan's, Co. Offaly. There are two other Clubs within this Parish, namely, CLG Crinkill and CLG Carrig and Riverstown. In 1969 an Agreement was reached between the Claimants and CLG Carrig and Riverstown in respect of the areas within the Parish from which each Club would draw their membership. A further Agreement was reached between the Claimants and CLG Carrig and Riverstown in 1977 whereby it was agreed

“that the line of division between the Birr and Carrig and Riverstown Clubs be the Brosna river and this boundary shall have the force of a Parish boundary except

in the case of a player from a purely Junior Club playing Senior with a Senior Club in the Parish”.

This Agreement was subsequently ratified by Offaly County Board on the 19th July, 1977.

2. In 1997 CLG Crinkill applied to Offaly County Board to amalgamate at underage level with CLG St. Ciarans. The Claimants submit that this application was refused on the grounds that there was a Hurling Club within the same Parish that CLG Crinkill is situate which could cater for underage hurling in accordance with the County Bye-laws. The Club being referred to was in fact the Claimant Club, CLG Birr, as CLG Crinkill and CLG Birr were in the same area as defined by the 1977 Agreement referred to at paragraph 1 above.

3. In 1998 the County Committee sanctioned the amalgamation of CLG Crinkill and CLG Carrig and Riverstown (CRC Gaels) for underage purposes. This amalgamation would subsequently be reviewed on an annual basis.

4. At a meeting of the Juvenile Board in January, 2000, it was agreed that

“All future requests for permission and amalgamation at underage level should be considered, in the first instance, by Bord na nÓg and referred with a recommendation to An Coiste Chontae for ratification”.

At the meeting of the Juvenile Committee on the 12th February, 2001, the amalgamation of CLG Crinkill and CLG Carrig and Riverstown at underage level (CRC Gaels) was once again accepted by the Juvenile Board.

5. In or around May, 2008, the Claimants and CLG Crinkill entered into a further Agreement. In accordance with Clause 11 of this Agreement, Offaly County Committee would

“explore CRC Gaels affiliation and, following consultation with all Clubs in St. Brendan’s Parish, will rule on its validity”.

Subsequently submissions were invited from the three Clubs pursuant to Clause 11. Having received the submissions it was decided to seek some guidance from “Croke Park”. Accordingly, the Director General of The Gaelic Athletic Association, was briefed with the requisite documentation and submissions on the following terms:

“On behalf of Offaly County Committee we would welcome a decision as to whether the future participation of CRC Gaels (Carrig and Riverstown and Crinkill) may be permitted”.

It appears that the Director General requested a further submission from Leinster Council. The response from Leinster Council dated 3rd December, 2008 included the following paragraph:

“Coiste Conntae Uibh Lúthcleas CLG – favours the retention of the CRC Gaels affiliation. However, somebody – and I think it is Ard Chomhairle/Coiste Bainistí – must rule on the status of the 1977 decision of Coiste Conntae Uibh Fhailí CLG”.

By email dated 23rd December, 2008, the Director General communicated with Offaly County Board as follows:

“The issue of the CRC Gaels affiliation was discussed at the last two meetings of Coiste Bainistí. Having sought information from Comhairle Laighean on the matter, Coiste Bainistí decided at its meeting on 12th December that the affiliation of CRC Gaels is in order. It was advised that the arrangement should be ratified on an annual basis by Offaly County Board”.

6. The Claimants took issue with the final paragraph of the letter dated 3rd December, 2008 from Leinster Council to the Director General on the basis that it compromised the independence of the Offaly County Committee by indicating to the Director General that Offaly County Board favoured the retention of the CRC Gaels affiliation. Mr. Michael Delaney, on behalf of Leinster Council subsequently explained that the opinion which he expressed in his letter of 3rd December, 2008 was a personal opinion only. On reflection he accepted that this was not perhaps appropriate and subsequently conveyed this to both Offaly County Board and to the Director General.

7. The Clubs within County Offaly had been circulated with documentation pertaining to the matter which included the letter from Leinster Council dated 3rd December, 2008. Finally, at a meeting of Offaly County Board on 3rd March, 2009, the matter of the affiliation of CRC Gaels was put before the Delegates by way of secret ballot. The affiliation of CRC Gaels was passed on a vote of 47 Delegates in favour and ten against.

8 On Appeal the Central Appeals Committee upheld the decision of Offaly County Board dated 3rd March, 2009.

9. The Dispute:

A. The Claimant claims that the inclusion of the letter dated 3rd December, 2008 from Leinster Council to the Director General, which expressed the personal view of Mr. Michael Delaney and notwithstanding his subsequent retraction of the said personal views, influenced the Director General and the Delegates to Offaly County Board and was prejudicial against the Claimants' case.

B. The decision of Offaly County Board dated 3rd March, 2009 in deciding to

approve the affiliation of CRC Gaels was in breach of a number of stated Rules in the Official Guide and further, in breach of Bye-law No. 9 of Offaly County Bye-laws, 2009, in that should CLG Crinkill fail to affiliate teams at underage level these players should play with CLG Birr (being within the same Parish) and not with a Club from another Parish i.e. CLG Carrig and Riverstown, which according to the Agreement of 1977 was a separate Parish.

Bye-Law 9 2009 states as follows:-

“The Parish Rule shall be in force for all grades, except for minor where there is no team in a parish, where a player may play with a team in an adjoining parish willing to facilitate him, and failing this, such players be allowed to play with a nearby club. All such permissions to have the sanction of the County Committee”

Accordingly, the Claimant seeks the following reliefs:

1. A Declaration that the decision of Offaly County Board on the 3rd March, 2009 is in breach of County Bye-law 9 of 2009.
2. A Declaration that the decision of Offaly County Board dated 3rd March, 2009 is in breach of Rule 155(a) 2, 3 and 4 and Rule 155(m)(ii) of Official Guide 2008.
3. A Declaration regarding the enforceability and status of Agreements between Clubs within the County, and whether such Agreements take precedence over County Bye-laws and Rules as contained within the Official Guide.

10. Preliminary Issues:

A request for Arbitration was lodged on behalf of the Claimant by letter dated 20th March, 2009 and the response was submitted on the 28th March, 2009 on behalf of the First Named Respondent. The Second Named Respondent considered that as no allegation or complaint was made against the procedures adopted by the Central Appeals Committee, no purpose would be served by its involvement in the proceedings. On the 2nd April, 2009, application was made by CLG Crinkill to then “*call a witness at the forthcoming hearing.*” In addition on the 2nd April, 2009, a request was submitted on behalf of CLG Carrig and Riverstown to have two representatives present at the DRA hearing scheduled for the 7th April, 2009. At the commencement of the hearing, both Clubs were invited to clarify the nature of their requests. It was not apparent as to whether they wished to be joined as Respondents to the proceedings or whether they wished merely to observe the proceedings as parties that would be affected by any decision of the Tribunal. Both Clubs were advised that any submissions in this regard must of necessity be restricted to the matters at issue and that the Tribunal would not expand on the issues which were set out in the request for Arbitration and the response. As no submission was then made to be joined as Respondents to the proceedings it was suggested by the Tribunal therefore that the only basis on which they would have involvement in the proceedings would be on the invitation of either the Claimant or the Respondent to give evidence. There was no objection to this suggestion on the part of either the Claimant or the Respondent.

It was noted that the Claimants had in their Request for Arbitration requested the production of certain documents from the Respondents. Whilst some of the documents sought were not available the Claimants accepted the representations from the First Names Respondent that all documentation at their

disposal had been furnished or were available for inspection but had not been inspected.

11. Claimant's Submission:

The Tribunal heard evidence from Mr. Finbarr Spain on behalf of the Claimant. The Claimant submitted:-

(a) that according to the 1977 Agreement the division of the Parish of St. Brendan effectively created two Parishes for the purpose of the application of the Rules. Therefore CLG Carrig and Riverstown is a Club in an adjoining Parish. It was submitted that in accordance with the "Parish Rule" that where CLG Crinkill cannot affiliate a team at minor level, that the players should play with a team within the same Parish. In this regard, the Claimants relied upon two previous decisions of Offaly County Board.

- in 1997 CLG Crinkill applied to amalgamate with CLG St. Ciaran's. It was submitted that Offaly County Board refused that application based on the Parish Rule.
- It is submitted that the application for the transfer by Ger Oakley from CLG Carrig and Riverstown to CLG Birr in the late 1990s was also refused on the basis of the Parish Rule as evidence was given that he was living within the Carrig and Riverstown area.

It was submitted therefore that the decision of Offaly County Board of the 3rd March, 2003 was not only contrary to the County Bye-Laws but was in fact inconsistent with the previous decisions of Offaly County Board who had heretofore applied the Parish Rule. The County Board was bound to apply its own Bye-Laws in accordance with Rule 6 of the Official Guide 2008.

(b) that the decision was in breach of Rule 155 of the Official Guide 2008 and relied on the documentation submitted with the request for Arbitration in this regard.

(c) the Claimant requested a Declaration on the status of the 1977 Agreement in particular.

12. Respondent's Submissions:

The Tribunal heard evidence from Mr. Pat Tehan, Chairman Offaly County Board, Mr. Denis Hctor, CLG Carrig and Riverstown, Mr. Robert Corboy, Chairman of CLG Crinkill and Mr. Robert O'Brien, CLG Crinkill and Riverstown on behalf of the First Named Respondent. The Respondents submitted:-

(a) that the Parish of St. Brendan had been divided by Agreement in 1969 and subsequently in 1977. At the time in accordance with the Official Guide of 1978 Rule 42, the Parish Rule was defined as follows:

“County Committees shall have the power to confine membership of Clubs to the Parish in which players reside or work. A Parish for the purpose of this Rule shall be, subject to County boundaries, the district under the jurisdiction of a Parish Priest or Administrator. The Parish Rule shall not apply to cities or to towns of more than one Parish except in Minor Grade, when it shall be the responsibility of the County Committee concerned to determine its application, should they so desire”.

(b) that the Parish Rule was in fact abolished at Annual Congress in 2004. Accordingly, the equivalent of Rule 42 as per the Official Guide of 1978 is now contained within Rule 38(b) of the Official Guide, 2008.

“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) that Rule 38(b) Official Guide 2008 should be applied to St. Brendan’s Parish in which case there would be three “catchment areas” within the Parish. It was submitted that the County Bye-laws must be read in the context of the current Rules and in that regard the Bye-law should be read by replacing the phrase “Parish” by “catchment area”.

(d) that the County Committee in accordance with Rule 60(c) of the Official Guide 2008, has the power to

“allow Minor and/or Under 21 players of Clubs unable to field Minor/or Under 21 teams to play on an Independent Team”.

(e) that the Parish Rule as it was, was strictly confined to Club membership. The current Rules governing transfers, namely, Rule 38 of the Official Guide 2008 was confined to Club membership. In an instance where a player joins an Independent Team which has been properly affiliated under Rule 60(c) that this does not constitute a transfer to a Club for the purpose of the Rules. It was accepted by the Claimant under cross-examination that in 2003, CLG Carrig and Riverstown and CLG Crinkill formed an Independent Team.

(f) With regard to the matter of fair procedures it was submitted that the onus was on the Claimant to establish that Rule 155 of the Official Guide, 2008, had been

breached. Mr. Tehan on behalf of Offaly County Board gave evidence as to the procedure adopted by the Offaly County Committee in carrying out its obligations under Clause 11 of the 2008 Agreement. All three Clubs were consulted; advice was sought from the Director General to refer the matter to An Coiste Bainistí. There was a difficulty with regard to the letter dated 3rd December, 2008 from Leinster Council, but this was subsequently cleared up. All of the Clubs within the County were appraised of the issues, oral submissions were also made at the County Board meeting of the 3rd March, 2009, and the matter was determined by secret ballot. It was submitted that no evidence had been called at this hearing to impeach this process. Accordingly, the Claimant has not established a clear infringement of Rule 155 (m).

(g) that the County Board has wide powers under Rule 60. They must be given a wide discretion in the best interests of the players within the County and within the ethos of the G.A.A. generally. Independent Teams exist independent of a Parish or a catchment area.

13. Decision

The first matter that this Tribunal must determine is whether or not County Bye-law No. 9 of 2009, (otherwise known as the Parish Rule) applies. The Tribunal accepts the submissions on behalf of the Claimants in this regard and is satisfied that the Parish Rule has application in County Offaly in accordance with Bye-law No. 9 of 2009. The Rule was not abolished as submitted by the Respondents, by Congress in 2004 but was simply expanded upon to provide that a County Bye-law may confine Club membership to a catchment area. It also provides however that a catchment area may in fact be a Parish. In that regard, Bye-law No. 9 of 2009 in the Offaly County Bye-laws is not inconsistent with Rule 38(b) of the Official Guide 2008 and in that regard the Parish Rule as per Bye-law No. 9 of 2009 applies in County Offaly.

The issue to be determined therefore is the matter as to whether or not the decision of Offaly County Board on the 3rd March, 2009 is in breach of Bye-law No. 9 of Offaly County Board Bye-laws 2009. The text of this Bye-law has been set out at paragraph 9B above. Essentially the question is, can a player from a Club which cannot field a Minor team play with an Independent Team in circumstances where there is another Club within the same Parish which is fielding a Minor team? The affect of the Parish Rule in respect of Minor grades is as follows:-

- Where there is no Minor team in a Parish a player may play with a team in an adjoining Parish willing to facilitate him.
- Where there is no Minor team in a Parish and where the player cannot be facilitated in an adjoining Parish, then that player can be allowed to play with a nearby Club.

The above is subject to sanction by the County Committee. In the instant case CRC Gaels is an independent team affiliated under Rule 60(c) of the Official Guide 2008. This Rule allows Minor and U-21 players with Clubs which are unable to field Minor or U-21 teams “*to play on an Independent Team*”. The issue in essence therefore is as to whether Bye-law 9 of 2009 prohibits a player from playing with an independent team in a circumstance where there is in fact another Club within the same Parish as that player’s own Club which could facilitate that player. It is clear from the text of the Rule that it does not prohibit such a player playing with an Independent Team. In the event that there was no such independent team the affect of the Bye-law would be that the player should play with the team in the Parish, namely CLG Birr. The Claimants did not address the submissions made by the Respondents with regard to Rule 60(c) of Official Guide 2008.

The Tribunal finds that the decision of Offaly County Board on the 3rd March, 2009 was not therefore in breach of County Bye-law 9 of 2009.

14. The Claimants also contended that the decision of Offaly County Board of the 3rd March, 2009 was in breach of Rule 155(a)(ii) of the Official Guide 2008. This Rule provides that any decision of a County Committee should be to the Provincial Hearings Committee. No arguments were advanced in this regard at the hearing. However, it is this Panel's decision that it would have been inappropriate to appeal the matter to the Provincial Hearings Committee given Leinster Council's involvement in the process.

15. Rule 155(a)(iii)

The Claimants have also taken issue with this Rule which provides for the appeal of a decision of Provincial Council to the Central Appeals Committee. Once again, no submissions were made in this regard at the hearing. Given that the matter was in fact appealed to Central Appeals Committee and in the absence of this matter being addressed at the hearing, it is presumed by this Panel that this claim is in fact in error.

16. Rule 155(a)(iv)

Ditto.

17. Rule 155(m)(ii)

This Rule provides as follows:

“An Appeal shall be limited to the matters in the Appellant's Appeal as originally lodged and shall be upheld only where..... (ii) the Appellant's right to a fair hearing has otherwise been compromised to such extent that a clear injustice has occurred. No determination of fact by the Decision Maker shall be set aside unless shown to be manifestly incorrect”.

It is in this instance incumbent upon the Claimant to establish

- A) That their right to a fair hearing had been compromised.
- B) As a consequence that a clear injustice occurred.

In this regard the Claimant relied upon the letter from Leinster Council dated 3rd December, 2008 referred to above, and the fact that it had been

- A) submitted to the Director General, and which may therefore have influenced the assessment of the matter by An Coiste Bainistí and
- B) that this letter was circulated to the Clubs within County Offaly with other material prior to the meeting of Offaly County Board on the 3rd March, 2009 at which affiliation of CRC Gaels was ratified. In this regard it was submitted that the Club Delegates were likewise influenced.

On the other hand Mr. Tehan on behalf of Offaly County Board set out the procedure adopted by Offaly County Committee in carrying out its obligations under Clause 11 of the 2008 agreement.

- All three Clubs were consulted.
- Advice was sought from the Director General and he in turn referred the matter to An Coiste Bainistí.
- A submission was sought from Leinster Council
- The Claimants took issue with the offending paragraph in the Leinster Council's submission and as a consequence it was clarified that this was a personal view of the Author only.

- All of the Clubs within the County were appraised of the issues and facts before the County Board meeting of the 3rd March, 2009.
- The Claimants were afforded and availed of the opportunity of addressing that meeting.
- The matter was determined by a secret ballot.

Whilst some reference was made during the course of the hearing to the entitlement of the County Committee to refer the matter to the Director General, the only ground relied upon in support of the Claimants' submission vis a vis Rules 155(m) was the fact that the letter from Leinster Council influenced An Coiste Bainistí in formulating its opinion and the opinion of An Coiste Bainistí as evidenced in the letter from the Director General to the County Committee influenced the Club Delegates at the County Board meeting of the 3rd March, 2009.

We are of the view that the Author of the letter from Leinster Council should not have expressed his personal opinion on the matter. However, what we have to decide is whether or not the affect of this letter is such as to have compromised the Claimants' right to a fair hearing "*to such extent that a clear injustice has occurred*". We are of the view that the procedure adopted by the County Committee was fair and transparent given that the Author of the letter from Leinster Council withdrew his personal opinion and further that CLG Birr were afforded and availed of the opportunity of addressing the County Board Delegates on the 3rd March, 2009 and thus ensure that the Delegates in attendance and entitled to vote were fully appraised. In this regard, the Tribunal relies on the decision of McMahon J. in Barry & Rogers – v – Ginnitty and Others wherein he stated:

"The law will demand a level of fair procedure which is sufficient in all of the 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.”

The basic principles of fair procedures as established by Common Law precedent, Bunracht na hEireann and Article 6 of the European Convention on Human Rights are that the parties

- a) be furnished with copies of all relevant evidence/material relevant to the matters at issue
- b) have the opportunity to cross-examine, particularly in respect of disciplinary hearings.
- c) have the opportunity to rebut and the right to address any relevant bodies.

See (In re Haughey)[1971IR217].

It is our view that the appropriate standard of fair procedures has been established in this instance by the Respondent and that there therefore has been no breach of Rule 155(m).

The final point, which we have been asked to adjudicate upon is the status of Agreements as and between Clubs within the County, and whether such Agreements take precedence over County Bye-laws and Rules as contained in the Official Guide. In this regard we refer to Rule 6 of the Official Guide 2008 which provides as follows:-

“Members of the Association shall, by virtue of their membership, be subject to the jurisdiction of the Association’s Rules, Bye-laws and Regulations, which shall govern the relationship between the various units, between members, and between members and units”.

Clubs and County Committees are Units as defined by Rule 6. The Rules as contained in the Official Guide take precedence and can only be amended at Annual Congress as provided for in the Rules of the Official Guide. Within the framework of the Rules, County Conventions can make Bye-laws. In accordance with Rule 57 of the Official Guide 2008 *“A County Bye-law shall not be contrary to a Rule in the Official Guide”*.

It follows therefore that any Regulations made by any County Committee or sub-Committee pursuant to the Rules of the Official Guide and the County Bye-laws must not be contrary to a Rule in the Official Guide and therefore the Official Guide takes precedence.

The question then arises as to whether an Agreement between units of the Association can vary or alter the application of the County Bye-laws and the Official Guide. It is our view that any such Agreements should not be contrary to the County Bye-laws and/or the Rules as contained in the Official Guide. It is this Tribunal's opinion only. We are asked to give a Declaration generally regarding the enforceability and status of such Agreements. This request has been made in the context of this instant case and in circumstances where it is not in fact alleged that the 2008 Agreement or the 1977 Agreement are contrary to either the County Bye-laws or the Rules as contained in the Official Guide current at the relevant time. In fact the 2009 Agreement specifically states that:

“All elements of this Agreement are subject to Treoir Oifigiúil of Cumann Lúthchleas Gael and the Bye-Laws of CLG Uibh Fhailí”.

We do not therefore think that it is appropriate in those circumstances for this Tribunal to give a general Declaration as sought. Such a remedy would be more appropriate in circumstances where a party to a dispute alleged that any such Agreement was either contrary to County Bye-laws or the Rules as contained in the Official Guide.

Alternatively, as any such Declaration would have ramifications for the Association generally if this Tribunal is to deal with the matter submissions would have to be sought from Central Council.

For all of the above reasons we refuse the reliefs sought by the Claimants. In the event that the Claimants and/or the Respondents wish to proceed with the matter of the Declaration in respect of the status of the Agreements, then we will adjourn the matter in order to obtain submissions from Central Council.

Dated this 3rd day of May, 2009.

Signed _____

John Faye

Cian Kelly

Brian Rennick