

**DISPUTES RESOLUTION AUTHORITY
IN THE MATTER OF THE ARBITRATION ACTS 1954 AND 1980**

DRA 16/2006

**PÓL Ó BRAONÁIN agus PÁDRAIG MAC GIOLLA PHÁDRAIG
(mar ionadaithe ar son Club CLG An Spinc)**

Séamus Ó Ceallaigh (mar ionadaí ar son PÁDRAIG Ó CEALLAIGH)

Séamus Ó Ceallaigh (mar ionadaí ar son SÉAMUS Ó CEALLAIGH)

Séamus Ó Pailméir (mar ionadaí ar son MAITIÚ Ó PAILMÉIR)

Gearóid Ó Donnacha (mar ionadaí ar son SEÁN Ó DONNACHA)

Gearóid Ó Dúlaigh (mar ionadaí ar son LORCAN Ó DÚLAIGH)

CLAIMANTS

**NIALL MAC A' LÁITHIMH
(mar ionadaí ar son CLG Laoise)**

RESPONDENT

The Facts:

The Claimants currently are under-age members of Club c.l.g. Baille na Coille and sought a transfer to play with Club c.l.g. An Spinc. Both clubs are in the same parish. The Respondent's Transfers Committee on the 6th March 2006 refused the transfers based on Rule 38(d) (O.G.2006) and subsequent County Bye-Laws enacted. The matter was appealed to the County Committee Meeting on 20th March 2006 and according to the minutes, the appeal was rejected by a vote of 8 to 4. The matter was further appealed to Comhairle Laighean who refused to hear the appeal as it did not have jurisdiction in accordance with Rule 155 (O.G. 2006).

The matter appeared before us on Friday 29th May 2006 in which the Tribunal recommended to both parties that they enter negotiations prior to us publishing our decision. The parties had a deadline of Friday 9th June 2006 in which to reach a compromise and unfortunately as the parties could not reach a compromise the following is our decision (as decided on the 29th May 2006).

The Claimants' Submissions:

The Claimants in their written submission and in oral evidence to the Tribunal claim amongst other things, firstly, that the Respondents breached Rule 38 (O.G. 2006) by not acting within their own bye-laws, secondly, Club c.l.g. An Spinc were not notified in writing of the reasons for the refusal, thirdly, the Respondents are acting in a discriminatory manner as a previous player from Club c.l.g. Baille na Coille was granted a transfer to another club outside the parish even though the transfer was not in accordance with Rule 38 (O.G. 2006), and finally, relief sought is immediate transfer for all five named claimants.

The Respondents' Submission:

In reply the Respondents' state that the matter was fully discussed at the County Committee meeting on the 20th March 2006 and the Spink GAA delegate, Mr. Larry Doone was advised of the reasons for the refusal of the transfers by the Transfer Committee Meeting on the 6th March 2006 as follows:

“Reasons Transfers Committee Recommended Refusal of Transfers:

1. Pdraig Kelly, James Kelly, Matthew Palmer, John Dunphy and Lorcan Dooley had played all their Juvenile football with Ballinakill GAA up to and including Under 16 grade. The meeting decided therefore that Ballinakill GAA was their Home Club (Riail 33, T.O. 2006), as well as the fact that they also must consider

- Ballinakill GAA to be their Home Club as they were applying for a Transfer from Ballinakill GAA.
2. The five players attended Ballinakill National School, which caters for the Ballinakill GAA catchments area. Knock National School traditionally caters for the Spink GAA catchments area.
 3. In recent years, prior to the introduction of the new Byelaws regarding Catchment area and Transfers, juvenile players from Spink GAA catchments area have traditionally played their juvenile football as isolated players with either Abbeyleix Gaels or Ballyroan Gaels.
 4. Four of the players live within less than a mile radius of the Ballinakill GAA ground; Matthew Palmer lives within a two-mile radius of the grounds. The Spink GAA ground is in excess of three mile from each player.
 5. It was determined that none of the player's fathers' had played with Spink GAA.
 6. It was also determined that none of the players had moved from the address of their parents since they last played.
 7. In taking into account all the aforementioned points and in the remit of our Byelaws (i.e. Home Clubs catchments area within Parish Rule and that the players didn't move from their Parents permanent address), the Transfer Committee decided not to recommend the applications for transfers for all five players from Ballinakill GAA to Spink GAA (Riail 38(d) & (e).”

Decision

The Rules governing transfers in these circumstances between two clubs in the one parish are contained in the Gaelic Athletic Association Official Guide 2006 and the relevant rules appear to be:-

“38. Transfers Within County:

- 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 Laws, to grant or not to grant an application for Transfer.
- e. A County Committee may delegate to a Sub-Committee the authority the authority to deal with applications for Transfer, but a County Committee shall retain the right to make the final adjudication on an application.

Penalty: For playing without transfer – 12 weeks suspension.”

“40. **Transfers General**

- a. A transfer becomes effective on being granted by the appropriate Committee.”

“60. **Additional Powers**

The County Committee shall also have the following powers:

- a. To form Divisional Sub-Committees and other subcommittees...whose functions and powers shall be defined in County Bye Laws.”

Transfers within County Laois are covered by their own **Bye Laws** namely:-

“5. A players Home Club shall be determined as the club for which a player first legally participates in a Club Competition (Under 12 or over), organised by the County G.A.C.

or Juvenile Committee, subject to that participation being at an age not more than two years younger than the designated age level of the competition.

6. In the event of Independent Teams, a Home Club's Catchment area within the Parish Rule shall be determined and defined by Parentage rule, Traditional Boundary, Proximity to Club Base and Primary School being attended, which in the event of a dispute will be arbitrated on by County Transfers Committee on applications received on or before February 28th in any year and prior to the player legally participating in a Club Competition."

The Claimants are all under-age players, and their family homes are in the Ballinakill parish. They have played both hurling and football since they were very young with Club c.l.g. Baille na Coille (Ballinakill GAA Club) a club which caters for both games. We would therefore determine that Club c.l.g Baille na Coille to be the Claimants' 'Home Club'.

At the outset, we think it is prudent that that the views of Mr. Justice McMahon in *Barry v. Ginnity* (Circuit Court) 15th April 2005 are expressed:

'..... it should be noted that the law is willing to allow sporting bodies a good deal of autonomy in regulating their own affairs. Respecting the principle of freedom of contract, and for good social policy reasons, the courts recognise that governing bodies of such associations are in a better position to determine how their affairs are to be run and how their disciplinary matters are to be conducted...there are occasions, however, where the law will intervene to ensure justice is done, and that minimum standards of fair procedures are observed. If the decision, for example, would have serious consequences for the player or member of the association, the courts are prepared to intervene to prevent an injustice, and to insist that an appropriate standard of fair procedures are observed.'

Whilst we acknowledge the oral testimony of Mr. Dunphy with regard to the difficulties which may be caused for his child, and indeed all the Claimants, should the decision stand, it is our opinion that fair procedures were observed. From an examination of the submissions by both parties it is our decision that the Transfer Committee and County Committee acted *intra vires* its rules, in other words, the Transfer Committee and the County Committee adhered strictly to the rules. The Claimants were given notice of the meetings of the Transfer and County Committees and the Claimants were equipped to make the best possible case at these two appearances before the Transfer and County Committee meetings. Although the grounds for refusal are a source of conflict this matter should have been discussed extensively at the Transfer Committee Meeting and County Committee meeting.

As far as the Bye Laws dictate, when a County Committee (or Transfers Committee for that matter) may refuse a transfer, in our view this is matter for the determination of the individual Transfer Committee and County Committee in accordance with the circumstances then pertaining within that County, assuming they follow fair procedures. It is our opinion that the Respondents have acted correctly within the Rules and Bye Laws under which they are authorised to act. Whilst we do sympathise with the Claimants in this matter, we are not a tribunal of sympathy but a Tribunal acting within the constraints of legal precedent and the Arbitration Acts 1954 and 1980.

The Claimants have further argued in their submission that the Respondents have breached Rule 38 (O.G. 2006). This interpretation we cannot accept, and in our view the wording of Rule 38 (O.G. 2006) is quite clear. The learned Mr. Justice McCracken in the High Court decision *O'Donohoe v. O'Baroid and Quirke (1997)* stated "A player wishing to transfer must apply to the County Committee for a transfer, and the use of the word 'apply' seems to me to imply with it that the County Committee has a discretion whether to allow such transfer. If the Rule has not intended there to be a discretion, it would simply have stated that a player who wished to join another club must notify the County Committee of this transfer."

The further submission raised by the Respondents was based on discrimination based on another player who has been granted a transfer from Club c.l.g. Baille na Coille to a club outside the parish without any basis for transfer eligibility. This submission is not within our jurisdiction to consider. Each case is judged on its individual merits and it is not within the remit of this Tribunal to analyse other individual cases unless decided by the Disputes Resolution Authority.

Notwithstanding that, we would warn all parties concerned however that children are not to be used as pawns and that they are actively encouraged to continuing their playing careers with their Home Club or whichever such Club they chose to play for in the future, as is the spirit of the Gaelic Athletic Association.

For all the above reasons we refuse the Claimants the reliefs sought or any relief.

Dated this the 29th day of May 2006

At the Montague Hotel, Emo, Portlaoise, County Laois.

David Nohilly

James V. Healy

Noel Walsh