

# DISPUTES RESOLUTION AUTHORITY

Record No: DRA/19/2006

**BETWEEN:-**

**Tomás O hAodha (mar ionadaí ar son Tomás O hAodha),  
Gearard O'Muineachain (mar ionadaí ar son Seán O'Muineachain),  
Agus  
Gearard O'Muineachain (mar ionadaí ar son Deaglán O'Muineachain)**

**Claimants**

**-and-**

**Padraig Óg Nuinseann  
(mar ionadaí ar son Coiste Riarachain na gCluichí, Ard Mhacha)**

**Respondents**

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## DECISION

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### Factual background

A request for Arbitration was lodged with the DRA by fax on 9<sup>th</sup> June 2006 by the Claimants. This request was refused for the following reason. According to the Claim form, the Claimants final appeal under the Rules of the GAA was heard on 22<sup>nd</sup> April 2006 and the Claimants were in receipt of that decision on 31<sup>st</sup> April 2006.

Section 2.2 of the Disputes Resolution Code requires claims to be notified to the DRA “within seven days of the last decision”. The Claimants sought Arbitration on 9<sup>th</sup> June 2006 and did not seek an extension of the time limit and therefore the claim could not be entertained by the DRA. This decision was communicated to the Claimants by letter from the DRA, dated 11<sup>th</sup> June 2006.

A further request for Arbitration was received from the Claimants by fax on 20<sup>th</sup> June 2006 which included an application for an extension of time for submission of their claim. The DRA, by way of letter dated 23<sup>rd</sup> June 2006, sought the views of the Respondent named in the application as regards the extension of time. This action was notified to the Claimants by letter dated 23<sup>rd</sup> June 2006.

The Respondent replied by letter dated 29<sup>th</sup> June 2006 stating that the Claim should be rejected by the DRA for being out of time.

After consideration of both submissions as regards an extension of time, the DRA was satisfied that the final appeal for the purposes of the Disputes Resolution Code was the appeal to Coiste Riarachain na gCluichí, Ard Mhacha (Armagh GAC). The Claimants stated that they received this communication on 3<sup>rd</sup> June 2006. The Respondent did not dispute this fact. Accordingly, for the purposes of section 2.2 of the Disputes Resolution Code, time began to run from 3<sup>rd</sup> June 2006.

The DRA exercised its discretion to extend the time limit for the Claimants application stating that in these particular circumstances there was no obvious prejudice to the Respondent in doing so. The corresponding time limit for the Respondent to submit their reply was extended pursuant to section 3 of the Disputes Resolution Code. This was communicated to all parties by letters dated 17<sup>th</sup> July 2006.

The venue, date and time for the hearing by the DRA of the dispute was communicated to all parties by letter dated 27<sup>th</sup> July 2006.

### The Dispute.

The Claimants have exhausted their rights of appeal as per Rule 158 of the Gaelic Athletic Association Official Guide 2006 and now wish to make a request for arbitration to the Disputes Resolution Authority. The parties have agreed to submit to the jurisdiction and procedures of the DRA and this decision will therefore have the authority and force applicable to Arbitration Proceedings under the Arbitration Acts 1954 and 1980.

The Claimants (Tomás O hAodha, Seán O'Muineachain & Deaglán O'Muineachain) wish to appeal the decision of Coiste Riarachain na gCluichí, Ard Mhacha received on 3<sup>rd</sup> June 2006 which refused the transfer of three underage players from Shane O'Neill's GAA club to St.Patrick's Carrickcruppen GAA club. Both clubs are in the same parish. The Claimants submit in their application that the Respondent is in breach of the following rules, laws or entitlements.

1. The Respondents are in breach of the GAA Official Guide 2006 in its failure to ensure registration of the Claimants as members under Rule 17 & 18, therefore the Claimants cannot be deemed as players under Rule 32 as the parents never consented to the Claimants being members.
2. The Respondent failed to allow the Claimant freedom of association and freedom of movement under human rights and European legislation.
3. The Respondent is in breach of natural justice in exercise of its authority in accordance with fairness, precedent and principles of natural justice.
4. The Respondent failed to adhere to the GAA code of best practice for youth sport.

The Respondent refutes these claims and states that the decision to refuse the transfers was done within the Rules of fair procedure and natural justice.

### Preliminary Issues.

At the commencement of the proceedings, the Tribunal raised some preliminary issues with both the Claimants and the Respondent. It was submitted that the Claimants were to be represented by Mr. John Kearns, Solicitor and that the Respondent was to be represented by Mr. Gerry O'Hare, Solicitor.

Firstly the Claimants were asked to clarify the issue of whether they were in fact members of Shane O'Neill's GAA Club and ultimately members of the GAA at all, as this was raised in their application. The Claimants stated that although they nor their parents had not signed the membership forms as required by the Rules, they were in effect members of Shane O'Neill's GAC as they had played for the club. Tomás O hAodha and Deaglán O'Muineachain had been playing for less than five years with the club and Seán O'Muineachain for just under two years. According to Rule 33 Official Guide 2006

“Home Club within the County shall mean the Club with which a player first legally participated in Club competition (under 12 or over), organised by the County Committee or one of its Sub-committees, subject

to that participation being at an age not more than two years younger than the designated age level of the competition.”

The clarification of this issue resolved the Claimants first stated alleged breach by the Respondent that they were not members of Shane O’Neill’s GAC.

When the Armagh County Board entertained the appeal of the decision of the South Armagh Board, they sought advice from Croke Park Central Management as regards underage transfers before making their decision. This advice directed them to apply the appropriate bye-laws. The Tribunal sought on the second preliminary issue, clarification on where and what were these bye-laws as they appeared to be absent from the documentation submitted for the proceedings. After lengthy examination of this issue, the County Board submitted that they did not have a bye-law governing the transfer of underage players from one club to another within the County as required by Rule 38 of the Official Guide 2006. Their bye-law merely stated that a divisional committee should deal with all transfer requests for players under the age of 16 years within their jurisdiction.

The Tribunal considered the question of interim temporary remedies sought by the Claimants in their application which stated “leave to play with Carrickcruppen in the interim”, however we do not believe that this is a suitable matter for such relief and accordingly we propose to deal with the substantive issues of this dispute.

#### The Claimants Submissions

The Claimants made a number of submissions and sought to challenge the decision of the County Committee on a number of grounds. The Claimants contended that the decision had been reached in breach of fair procedures. In particular, they contended that in the absence of bye-laws governing the transfers of underage players between clubs within the County, regard should then be had to the principles of fairness, precedent and natural justice.

The Claimants contended that at a meeting of the South Armagh Divisional Committee, it was stated that the County Board had no power to refuse transfers of underage players between clubs in the County. This issue was raised through the sworn testimony of the Claimants witness Kate Loughran (Assistant-Secretary of the County Board) who was present at said meeting. In cross examination by the Respondent, it emerged that the witness’ son was a good friend of one of the Claimants and who also played for Carrickcruppen, the club to which the Claimants wished to transfer to. It was contended by the Claimants that there was no persuasion or otherwise on the underage players by Carrickcruppen GAC to transfer to their club and that the decision was solely the Claimants own.

The Claimants submitted that a similar transfer had occurred in 2004 when an underage player had a transfer granted from Carrickcruppen GAC to Shane O’Neill’s GAC by Coiste Ard Mhacha Theas on the grounds of freedom of movement and human rights under European legislation. They further submitted that no reasons had been given as to the grounds for refusal of the transfer and that this was a breach of natural justice by the Respondents in exercise of its authority in accordance with fairness and precedent.

The Claimants submitted at the hearing in front of the South Armagh Divisional Committee that the reasons for the transfer to Carrickcruppen GAC was that Shane O’Neill’s GAC cancelled too many games and in particular that the Claimants would get more football if they played for Carrickcruppen GAC. They further submitted that there was an issue of alcohol being supplied to the Claimants which was of concern to them. Lastly they stated that the Claimants were not being dropped-off at the designated point at the Club but instead were being left at the nearby village of Camlough.

The Claimants finally referred to the DRA decision of Club CLG An Spinc (DRA 16/2006) and in particular quoted the following in support of their contentions,

“...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 Club they choose to play for in the future, as is the spirit of the Gaelic Athletic Association.”

In further support, they referred to the DRA decision of St. Joseph's GAC Glenavy (DRA 12/13/2005) which concerned the issue of a transfer, which was successful by the Claimants.

### The Respondents' Submissions

In reply to the Claimants' case, the Respondent raised a number of points. The Respondent's witness, Kevin Brady (Vice-Chairman of the County Board) was called to give sworn testimony in support of the Respondent's case. The Respondent confirmed that the matter had earlier come before the South Armagh Divisional Committee and that submissions were heard from the Claimants through their parents and also that Shane O'Neill's GAC were represented at that hearing.

The Respondent stated in reply to the argument that there had been a breach of natural justice in the exercise of its authority in accordance with fairness, that at the Armagh County appeal hearing, those officers who had been in attendance for the Divisional hearing were asked to absent themselves from the hearing in order to ensure that the appeal would be independent and not in breach of fair procedures.

They stated that they had contacted Croke Park Management Committee concerning underage transfers in general and had been advised by Croke Park to apply the appropriate bye-laws in the County. The Respondent confirmed that after consideration, they had upheld the decision of the South Armagh Divisional Committee.

The Respondent submitted that they had investigated each individual reason put forward by the Claimant for the transfer and found these to be unfounded.

It was stated that there was no evidence of any alcohol being supplied to the underage players. Secondly, there was only one game cancelled in 2005 and this was because the opposing team and themselves were due to meet the following week in a competitive match and that with the consent of the other team they agreed to cancel in order to prepare fully for the competitive match. Thirdly, they contended that Shane O'Neill's GAC would play as many games as Carrickcruppen GAC, if not more. As regards the final reason put forward by the Claimants, the Respondent stated that the bus would drop players off at the designated point unless requested otherwise by the players. The fact was conceded that the bus would drop-off players in the village of Camlough as the boys wanted to go to the shops for sweets, drinks or even chips. The Respondent contended that this was a natural thing considering the attitudes and ages of the boys.

The Respondent further contended that according to the County Bye Laws 2006 (vi), no player is to be transferred unless he has left the County or has changed his residence to another district in the County. They submitted that none of the Claimants had changed addresses or schools and therefore the transfer was correctly refused.

They further contended that the case referred to by the Claimants where a previous transfer had taken place, should not be considered as this was not a case precedent that had been decided by the DRA and therefore not of relevance to the present proceedings.

Finally, the Respondent referred to the DRA decisions of Club CLG An Spinc (DRA 16/2006) in support of their contentions and seeking that the guidelines therein be applied in this case. They submitted that the DRA decision of St. Joseph's GAC Glenavy (DRA 12/13/2005) should not be applied and considered in this situation as the County Board in that case were inactive in response to the proceedings, unlike the present.

They submitted that at all stages in the transfer request process, the Claimants were given a fair hearing and that their representatives were given ample opportunity to set forth their case.

### The Rules

Rules referred to by both parties throughout the Tribunal hearing of this particular dispute were as follows:-

The Official Guide 2006 - Rules 17, 18, 32, 33 & 38.

Armagh County Bye-laws 2006 – (ii) County Committee point 3, (iii) County Sub-committees/Functions point 7(f) and (vi) Players.

### The Decision

The Tribunal has considered the written and oral submissions on behalf of the Claimants and Respondent and after careful deliberations, we unanimously find as follows:

1. After certain agreed facts, the substantive issue underlying this dispute was whether Armagh County Board acted in breach of fairness, precedent and principles of natural justice when deciding upon the appeal of the South Armagh Divisional Committee's decision in refusing the transfer of three underage players from Shane O'Neill's GAA Club to Carrickcruppen GAA Club.
2. We accept that this matter has already been heard by three bodies before its appearance in front of the DRA, i.e. the Claimants Home Club Shane O'Neill's GAC, the South Armagh Divisional Committee and the Armagh County Board.
3. We accept that Armagh County Board does not have appropriate bye-laws in place which govern the transfer of underage players between clubs within the County as required by Rule 38(a) of the Official Guide 2006.
4. We accept that the County Board did investigate the decision of the Divisional Committee fully and did so in accordance with the principles of fairness and natural justice.
5. We accept the reasons submitted by the Claimants as being genuine for the transfer.
6. We do not accept the contention that in the absence of a relevant bye-law governing the transfer procedure for underage players that this automatically confers a right upon all members of the County to transfer without consideration of merit.
7. We do not find that the DRA decision of St. Joseph's GAC Glenavy (DRA 12/13/2005) is to be followed in these proceedings as proposed by the Claimants, as there is important differentiating circumstances which exist to make these present proceedings quite distinct.
8. We also do not find that the Respondent's precedent of the DRA decision of Club CLG An Spinc (DRA 16/2006) in support of their contentions as being appropriate for the same reasons.
9. The submission by the Claimants of a similar transfer in 2004 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 DRA. Despite this analysis however, if the similar case had indeed been put to full proofs by the

introduction of all main witnesses and testimony, then it may have indeed had a more meritorious application in these proceedings.

10. The Claimants submit that their right to freedom of association and freedom of movement under human rights and European legislation was interfered with by the Respondent. The Respondent submitted that the parents of the three underage players had brought their boys to the games from a young age and were happy that they were playing with Shane O'Neill's GAC. The Claimants did not dispute this fact and therefore the Tribunal finds no evidence to support the Claimants contention. The right to freely associate cannot correspondingly impose upon an organisation a right to permit entry and in respect of this, we reject the Claimants assertion.
11. The contention that the Respondent failed to adhere to the GAA code of best practice for youth sport was not disputed by the Respondent and therefore we find that this assertion to be of fact. Whilst this may be the case, it is not so fundamental of nature as to warrant the Respondent overriding the decision of the Divisional Committee.
12. This dispute is unique to the point that the absence of procedure from the bye-laws on this issue would tend in normal circumstances to indicate a general right of transfer yet it is peculiar that the practice of the County appears to be to adjudicate upon these issues with a relative level of fairness and natural justice yet without any form of written guidelines.
13. Notwithstanding the previous paragraph, the Tribunal directs that the Armagh County Board establishes an appropriate bye-law for governance on this issue with haste as this present situation is not acceptable to its members as demonstrated by the initiation of these proceedings.
14. The Tribunal accepts that it is understandable that members are confused and possibly misled on the issue of underage transfers whenever there are no appropriate bye-laws within the County to deal with such. In today's Association, this can only lead to a gradual eradication of our proud structures and can only be viewed with great disappointment upon the character and service of the Armagh County Board. The members of the Association look to their Officers to provide leadership, direction and clarity on such issues and whenever this comes lacking, the resultant confusion is to be borne.
15. The DRA is highly critical of the manner in which the Respondent conducted themselves in relation to the DRA process of submission of documents. Evidence submitted by the Respondent and accepted at the actual hearing by both the Claimant and the Tribunal was an encumbrance wholly due to its lateness of submission. We would direct that all documentary evidence to be relied upon at a hearing be submitted correctly as per procedure. Information sought by the Claimants prior to the hearing and relevant to the issue at hand, was not forwarded by the Respondent and we, the Tribunal, are disapproving of such, as to have submitted same may have avoided the need for such a hearing.
16. There were some minor elements of procedural irregularity as regards the general handling of this matter against the Claimants by the South Armagh Divisional Committee and the Armagh County Board. However this did not affect the integrity or objectivity of any decision made thereof.
17. Whilst we accept that the Armagh County Board did act within the principles of fairness, precedent and natural justice in this instance, we can only hope that the upholding of the decision of the Divisional Committee does not create undue harshness upon the three Claimants. It is clear from Rule 31 of the Official Guide 2006 that as the Gaelic Athletic Association is community centred, based on the allegiance of its members to their local clubs and Counties, the transfer Rules and County bye-laws should reflect this ethos. A player is considered to owe allegiance and loyalty to his Home Club and County. The Tribunal trust that the Claimants will continue to show this, as they have unswervingly in the past and that their playing careers will flourish with their Home Club.
18. The Tribunal invites the parties to make written submissions on
  - (a) Legal Costs and,
  - (b) The expenses of the DRA.

The decision of the Tribunal is that we refuse the Claimants the relief sought or any relief.

Dated this 4<sup>th</sup> day of August 2006.

Signed:

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FELIX SWIFT. BL. ( CHAIRMAN ).

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DAVID CURRAN.

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PETER BRANNIGAN.