DISPUTES RESOLUTION AUTHORITY

Record No. DRA 2/2011

IN THE MATTER OF THE ARBITRATION ACT 2010

BETWEEN:

CORR DUBH GAELS

CLAIMANTS

-AND-

AN LAR COISTE ACHOMHAIRC CLG, COISTE EISTEACHTA COMHAIRLE ULADH & AN MULLEANN IARAINN

RESPONDENTS

INTERIM DECISION

Preliminary:-

1. The DRA received this request for arbitration by email on 4.22p.m. on the 28th January 2011. The commencement date as per Section 2.4 of the DRA code for these proceedings is therefore the 28th January 2011.

2. In paragraph 10 of the request for arbitration the Claimant requests an interim temporary remedy under Section 8.1 of the DRA code. As no tribunal has been appointed by me due to time constraints as the matter is urgent given that the relief sought relates to the All Ireland Junior Football Semi-Final fixed for tomorrow the 30th January 2011 I am hearing this application under Section 8.3 of the DRA code.

3. I have shortened the notice period for this hearing in accordance with Section 8.3 of the code and pursuant to Section 6.5 of the DRA code I informed all of the Respondents by telephone of the date, time and venue for this hearing.

4. I also note that no parties have any objection to me hearing this case today notwithstanding my disclosure that I have a family connection with the Ballinabrackey team who are playing the Ulster Champions in the All Ireland Junior Football Final.

Background:-

1. Corr Dubh Gaels from Monaghan and An Mulleann Iarainn played in the final of the Ulster Junior Football Club Championship Final on the 12th December 2010. Corr Dubh Gaels won the match by 5 points. Subsequent to the match An Mulleann Iarainn lodged an objection with Ulster Council pursuant to Rule 7.10 T.O.2010 objecting to the award of the AIB Ulster Club Junior Championship Final to Corr Dubh Gaels. The grounds of the objection and the rules alleged to have been breached were outlined in the objection notice as follows:-

"Corr Dubh Gaels included in their team, as a substitute, which played in the game referred to above (wearing No.19) one Padraig O'Coinnain who is not eligible to play with Corr Dubh Gaels for the following reasons:
By playing with Corr Dubh Gaels in the game in question Padraig O'Coinnain, who appeared as a substitute in the said game, was in breach of Rule 6.18 T.O.2010 which required him to be over 16 years of age on January 1st 2010 to be eligible to play in an adult competition, in the instance the AIB Ulster Club Junior Football Championship Final played at Kingspan/Breffni Park on 12th Nollaig 2010".

The notice of objection went on to say "in accordance with Rule 4.5 T.O.2010 this objection has been sent by single email transmission and the required fee of €100.00 will be hand delivered within the period stipulated by the said Rule 4.5".

2. Arising out of a hearing before Ulster Council Hearings Committee on the 11th January 2011 both the Claimant Corr Dubh CLG and Mulleann Iarainn CLG were notified that the objection had been upheld in accordance with Rule 6.18, 7.10 T.O. 2010. The penalties that were applied were as follows:-

The game was awarded to An Mulleann Iarainn
Padraig O'Coinnain (the player) was suspended for a period of two weeks
Person in charge of the team was suspended for a period of eight weeks.

By letter dated 12th January 2011 the Claimant was notified of the outcome of this hearing and by letter dated the 14th January 2011 the Claimant appealed this decision to the Central Appeals Committee.

3. By letter dated the 21st January 2011 the Secretary of the Central Appeals Committee notified the Claimant that the Appeal was being dismissed on the basis that it had not been established in the submissions and evidence provided at the Appeal that Ulster Council had misapplied any rule in arriving at their decision.

4. The central plank of the Appeal by the Claimant to the Central Appeals Committee from the decision of Ulster Council Hearings Committee was that the manner in which the objection was lodged was in breach of Rule 7.10 T.O.2010.

At this hearing the Claimant represented by Mr Fergal Logan outlined that the Claimant's case was that Rule 7.10 T.O.2010 contained a mandatory requirement in 7.10(c) which states as follows:-

"An objection shall be lodged in duplicate with the Secretary of the Competition Controls Committee not later than three days after the official starting time of the game the subject matter of the objection. A counter objection shall be lodged within three days of the date and time of receipt by the counter objecting unit of the objection".

5. Mr Logan submitted that the provisions of Rule 7.10 repeatedly used the word shall in setting out the steps that one must take when lodging and processing an objection. He submited that Rule 7.10 T.O.2010 stands alone and contains all of the rules and requirements in respect of objections. He submitted that objections could not be lodged by email.
Mr Logan submitted that the provisions of 4.5 T.O.2010 were general provisions regarding communications and in particular he stated that Rule 4.5 (a) is a reference

to correspondence regarding objections but is not a reference to the notice of objection itself.

Rule 4.5(a) T.O.2010 states as follows:-
"Unless otherwise specified in any given case, all notices and other communications under the rules of the Association (including objections, counter objections and appeals) maybe given:
i. to a member either
1. personally or
2. by post or hand delivery to a members usual address, or
3. by email to any appropriate email address notified by or on behalf of the member to the sender or to the Council or Committee in charge, or ……."

6. Rule 4.5 (e) states "where any notice or other communication is to be accompanied by monies or any other enclosure, transmission of the notice or communication by email or facsimile shall not be invalid if the relevant enclosure is actually received within two days of the email or facsimile transmission.

Rule 4.5(f) states "where any notice or other communication, required by rule to be submitted in duplicate, is sent by email, a single transmission is sufficient compliance".

7. Mr Logan for the Claimant argued that Rule 4.5 T.O. and in particular Rule 4.5(a),(d),(e) and (f) in no way diluted or altered the positions of 7.10 T.O, and that Rule 7.10 would have referred back to Rule 4.5 if it was intended to allow objections to be lodged by email. He pointed out that in the provisions dealing with the notice of disciplinary action at Rule 7.3 , reference is made back to Rule 4.5T.O. making it clear that a notice of imposition of penalty and notice of disciplinary action can be sent out by email.

8. Mr Simon Moroney represented the Central Appeals Committee and he argued that Rule 7.10 was not a stand alone provision. He said that Rule 4.5T.O. referred at paragraph (a) to "any" notice of communication and in fact expressly refers to objections, counter objections and appeals at 4.5(a). He said that Rule 4.5(e) can only be referring to objections and appeals as they are the only communications that need to be accompanied by fees under GAA Rules and were clearly designed and drafted to allow for the lodgement of fees relating objections and appeals thatare lodged by email.

He pointed out that Rule 4.5(f) expressly provides that the obligation to lodge an objection in duplicate can be met in the alternative by using a single transmission by email.

9. Mr James Clarke represented An Mulleann Iarainn and he set out that no arguable case had been made for the ring fencing of Rule 7.10. He said that the lodgement of documents in duplicate is a requirement in four separate rules in the Teor Oifiguil and Rule 7.11(f) must be read as referring to all cases where a notice or communication is required by rule to be lodged in duplicate. He said that the rule book sections can't be read in isolation and that all rules don't have to refer back to other rules in order to be valid.

10. It was accepted by all parties that the burden of proof rested Mr Logan to satisfy me that he had a prima facia case and that the balance of convenience would favour the

granting of Interim Relief. In relation to the balance of convenience argument he pointed out that the All Ireland Junior Club Football Final wasn't fixed until the 13th February 2011 and that nobody would be prejudiced if this game was put back for a week. The relief he was seeking was the postponement of the match fixed between Ballinabrackey and An Mulleann Iarainn.

11. Mr Simon Moroney on behalf of the Central Appeals Committee argued that the injunctive relief being sought was against the Central Competitions Control Committee who were not either a Respondent or a notice party to these proceedings and were not present at the hearing and he submitted that had they being notified they might have had something to say regarding the balance of convenience argument and they might have a difference perspective to the Central Appeals Committee in responding to such an issue. Mr James Clarke on behalf of An Mulleann Iarainn felt that that the fact that the Central Competitions Control Committee weren't named as Respondents wouldn't bar the granting of an injunctive relief against them in circumstances where they were sub committee of Central Council in the same way as the Central Appeals Committee was a sub committee of Central Council.

Decision:-

If Mr Logan has established a prima facia case then in my view the balance of convenience argument will clearly favour his client. However Mr Logan's argument that all objections must be lodged in duplicate as provided for in Rule 7.10 does not have any real possibility of success before a Tribunal. He has not in my view made an arguable case that the provisions of Rule 4.5 do not apply to objections. It is my view that Rule 4.5 deals with **all** the notices and communications that arise under the Teor Oifiguil and Rule 4.5(a) must be interpreted literally as must rules 4.5(e) and 4.5(f)T.O.2010.

Rule 4.5(a) T.O. 2010 clearly refers to all notices and other communications under the Rules of the Association (including objections, counter objections and appeals). Rule 4.5(e) provides for the payment of fees arising where any notice or other communication is to be accompanied by fees and similarly Rule 4.5(f) must be interpreted literally as its language is clear and unambiguous.

It is my view that where rules of the Teor Oifiguil have a clear and unambiguous meaning it is safe to interpret them literally. The Teor Oifiguil must in my view be read as a whole and there is not in my view any reasonable prospect of success for the Claimant in pursuing this point before a Tribunal. I am therefore deciding that Mr Logan on behalf of the Claimant has not established a prima facia case and I am therefore refusing the interim relief sought.

Given that I have decided that the Claimant does not have a prima facia case it is not necessary for me to adjudicate on the issue raised regarding the fact that the Central CCC against whom the relief was sought was not a party to these proceedings.

I see no reason to shorten the normal seven day period within which the Respondent must file the response to this request for arbitration. I reserve the costs and expenses of the DRA and the parties to the hearing of this action.

Dated this 29th day of January 2011

Signed: _____

Matt Shaw
Secretary, DRA