

DECISION OF THE DISPUTE RESOLUTIONS AUTHORITY DATED
8th day of October 2012
DRA/22/2011

Between

CLG GAEIL LEITIR CEANNAINN

Claimants

And

AN COISTE EISTEACHTA COMHAIRLE ULADH

&

COISTE CHONTAE DUN NA NGALL

Respondents

We, the undersigned, have found as follows:

Background

1. The within matter arises out of a dispute regarding boundaries and catchment areas for two clubs in County Donegal, namely the Claimants herein, and CLG Naomh Adhamhnain.
2. The dispute was initially adjudicated upon by the second named Respondent on the 7th November 2011. The second Respondent determined the dispute in favour of the Claimant.
3. CLG Naomh Adhamhnain appealed the determination of the second Respondent to the first Respondent pursuant to the provisions of Riall 7.11 of the T.O. The first Respondent, by decision dated 24th November 2011, determined the matter in favour of CLG Naomh Adhamhnain.
4. The Claimant was not represented at the appeal hearing. Nor, pursuant to the provisions of Riall 7.11, was it entitled to be. It did not otherwise have an opportunity to make submissions to the first Respondent.

5. The Claimant wished to appeal or review or otherwise challenge the determination of the first Respondent. It initially inquired (by letter dated 29th November 2011) whether it was entitled to appeal the decision to the Central Appeals Committee. By letter of Stiofan de Brun dated 5th December 2011 the Central Appeals Committee determined it did not have jurisdiction to accept or hear an appeal from the Claimant.
6. In the circumstances the Claimant has made application to this body. Application papers were lodged on 10th December 2011. Whilst an extension of time to make application to this Tribunal has not been sought it appears to us that same is required. Indeed the need for an extension of time is implicit in the submission made by the Claimant to the Tribunal. The Tribunal has powers to grant pursuant to Clause 2.2 of the Tribunal's Code. This is a matter to which we will return below.
7. A hearing before this division of the Authority was fixed for the Hillgrove Hotel, Monaghan on Monday 9th July 2012. In attendance were representatives of the Claimants, representatives of CLG Naomh Adhamhnain and Stiofan de Brun of the Central Appeals Committee. The first and second Respondents were not represented.
8. The Tribunal first considered the matter of the Claimant's locus standi to pursue the within application. Absent representation from the named Respondents, and in particular the first Respondent whose decision the Claimant seeks to review, the Tribunal directed submissions from the Claimant, the Respondents and Central Council in respect of this preliminary issue.
9. Submissions were received from the Claimant. Limited submissions were also received from Central Council. The submissions of Central Council were confined to the question of the Tribunal's jurisdiction and they raised issues as to the Tribunal's jurisdiction to determine even the locus standi issue.

CLAIMANT'S CASE

10. The nature and essence of the Claimant's case is that it has been materially affected by a decision of an appeals body, the first Respondent, and as such should have a means of either appealing or reviewing that decision.
11. The Claimant cites, inter alia, Clause 5.7 of the Tribunal's code which allows the Tribunal to "*decide on its own jurisdiction including any objections with respect to the existence or validity of the particular referral to arbitration in accordance with the Official Guide.*" In addition the Claimant cites a general failure of fair procedures and natural justice that it should be denied an opportunity to either appeal or review a decision which materially affected it which decision was made absent any opportunity for the Claimant to present its case.

THE POSITION OF CENTRAL COUNCIL

12. The submissions received from Central Council reserve the right to deal with the substantive issue of “locus standi”. This is a curious position to have adopted to an invitation to make submissions on the issue of locus standi. Instead Central Council raise three matters which it submits preclude the Tribunal from considering the case:
- a. That the within matter is not properly before the Tribunal on the basis that application papers were not lodged within 7 days of the date of the making of the decision sought to be impugned. The decision of the first Respondent was made on 24th November 2011 and application papers were lodged by the Claimant on 10th December 2011;
 - b. That Riall 7.11 allows one appeal and one appeal only and since that appeal has been exhausted, then no further appeal can lie.
 - c. That the circumstances of this dispute are such that it does not meet the condition for a reference to arbitration provided for at Riall 7.13 of the T.O.

FINDINGS

13. The Tribunal’s function in the within instance is to determine whether the Claimant has locus standi to review the decision of the first Respondent before this Tribunal. Having considered the submissions made we find as follows:
- a) That the Claimant does have locus standi to bring the within application to the Tribunal and that being so, we will fix a date for hearing of the substantive issues in the case.
 - b) That Riall 7.11 does provide “a right of one appeal” to a “*Member or Unit directly involved in any decision made*”. We find that the Central Appeals Committee was correct in determining that it did not have jurisdiction to hear an appeal from the Claimant. It was clearly not a party directly involved in the decision made by the first Respondent on 24th November 2011.
 - c) That the principles of natural justice and fair procedures demand that the Claimant should have an avenue of redress or review. This is an apparent lacuna in the T.O. that might require some consideration.
 - d) That absent any means of redress or review within the T.O. that any question of the Claimant having failed to exhaust any internal avenues of redress does not arise.
 - e) That Clause 5.7 of the Tribunal’s code gives the Tribunal power to “*decide on its own jurisdiction including any objections with respect to the existence or validity of the particular referral to arbitration in accordance with the Official Guide.*” The Tribunal determines that it does have locus standi to consider the Claimant’s application. In this regard this division of

the Tribunal relies upon the decision in *DRA 04/08 MAIRÉAD NÍ DHÚILL (MAR IONADAÍ AR SON, COISTE CHONTAE LOCH GARMAN)-V-TREASA NÍ RAGHAILL (MAR IONADAÍ AR SON LÁR CHOISTE CHEANNAIS NA GCOMÓRTAISÍ) & SEÁN Ó hUAINE (MAR IONADAÍ AR SON AN LÁR CHOISTE ACHOMHAIRC)* as authority for the proposition that a party directly affected, though not directly involved in a decision made may in certain circumstances have redress before this forum.

- f) That an extension of time to bring the within application is required. The decision sought to be impugned was made on the 24th November 2011. The application to the Tribunal was made on 10th December 2011. A Claimant has seven days from the date of the relevant to decision to make application to the Tribunal and clearly in this instance the Claimant is out of time.
- a) The Tribunal has powers pursuant to Clause 2.2 to extend the time to make application and it is a power we feel ought to be exercised in this case. Specifically we note that apparent confusion within the Central Appeals Committee as to whether or not an appeal lay to it and given the obvious cloud of confusion about the matter generally and the absence of clarity on what avenues of redress were open to the Claimant the exercising of our discretion pursuant to Clause 2.2 appears to be appropriate.

DETERMINATION

14. The Tribunal directs:

- a) That the Claimant is entitled to maintain its application to this Tribunal and that a date convenient for all sides should be fixed by the Secretary of the Tribunal;
- b) That the issues of costs be reserved;
- c) Liberty to apply;

Aaron Shearer

David Murphy

Jarlath Burns