

**DECISION OF THE DISPUTE RESOLUTIONS AUTHORITY DATED
21st day of March 2013
DRA/22/2011**

Between

CLG GAEIL LEITIR CEANNAINN

Claimants

And

AN COISTE EISTEACHTA COMHAIRLE ULADH

&

COISTE CHONTAE DUN NA NGALL

Respondents

CLG NAOMH ADHAMHNAIN

Notice Party

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 Claimant herein, and CLG Naomh Adhamhnain, the Notice Party hereto.
2. The “boundary 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. The exact nature of that dispute and the

issue that the second Respondent was asked to decide upon is considered more fully below.

3. The matter came before the second named Respondent in the following circumstances. In or about May 2009 the Claimant club made formal application to have approved the formal establishment of the club within the boundaries of the Parish of Aughaninshin.
4. Following the adoption of the 2010 Bye-Laws, and specifically Bye-Law No.10 on Club Boundaries, the Claimant contended that pursuant to the provisions of that Bye-Law the Parish of Aughaninshin became the Letterkenny Gaels club catchment area. The Notice Party disputed this contention claiming that an existing agreement on club boundaries was in place and that this agreement served to supersede the contended effect of the said Bye-Law.
5. As per the minutes of the County Committee meeting dated 7th November 2011 what those present were asked to vote upon was "*whether there is an agreement in relation to boundaries between both clubs*" (namely the Claimant and Notice Party). The Committee voted as follows: 40 that there was no agreement between the clubs; 36 that there was an agreement; 6 spoiled votes.
6. 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. The first Respondent found that "*the matter at issue is the subject of a previous County Committee decision. As such a two thirds majority was therefore subsequently required at the meeting of 7th November last....*"
7. 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.
8. 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.
9. In the circumstances the Claimant made application to this body. By decision of the Tribunal dated 8th October 2012 we determined, inter alia, that the principles of natural justice and fair procedures demanded that the Claimant should have an avenue of redress or review. On the basis of that decision the matter came before the Tribunal once again for the purpose of reviewing the decision of the first Respondent to allow the Notice Party's appeal.

10. Whilst a named Respondent to these proceedings the second Respondent, Coiste Chontae Dun na nGall, decided not to take part in the proceedings and has adopted a neutral stance.

CLAIMANT'S CASE

11. The nature and essence of the Claimant's case is that the first Respondent erred in finding that there had been a previous decision of the Donegal County Committee in relation to the alteration of club boundaries, which decision required a two thirds majority of the County Committee before that decision could be rescinded.
12. The Claimant contended that the net effect of the 2010 Club Boundaries Bye-Law was to make the Parish of Aughanishin the club's catchment area. The Tribunal was referred to the relevant bye-law which reads: "*...the club catchment area of CLG Chontae Dhun na nGall shall be confined to at least a parish. However, where an agreement on boundaries exists between two or more clubs this may also be accepted as the club catchment area*".
13. The Claimant denied any previous agreement was in place and in this regard referred the Tribunal to minutes of the County Committee dated April 1st 1996.
14. In addition the Claimant argued that insofar as a decision was made in March/April 1996 in relation to the club boundaries in Letterkenny (and it seems to us that the Claimant does not go so far as to accept that a decision was actually made) that the "decision" that there be no changes to the club boundaries was one which would operate only to the commencement of the 1998 season when a full review of the situation would take place.

THE POSITION OF AN COISTE EISTEACHTA COMHAIRLE ULADH

15. The Ulster Council Hearings Committee stands over its decision. It contends that there had been a previous decision (or indeed decisions) on the issue of club boundaries made by the Donegal County Committee such as required a two thirds majority of the Committee before that decision/those decisions could be rescinded. In particular, the first Respondent contended that there had been an agreement on boundaries in April 1996, the effect of that decision being that there would be no boundaries demarking separate club catchment areas within the Letterkenny area. The first Respondent contended that to set that decision aside required first the service of a Notice to Rescind and secondly for a vote rescinding the decision to be carried by a two thirds majority. All the parties hereto accept that there was not service of such a Notice to Rescind.
16. In the alternative, the first Respondent highlights the finding of the Boundary Committee Report (dated December 1986) and seeks to rely upon the finding and determinations of that report, contending that any deviation from the finding of that report was likewise a matter which required approval of a two thirds majority of the County Committee.

17. By way of further submission, the first Respondent did not accept that the effect of the decision of the second Respondent in November 2011 was necessarily to fix the Claimant club's catchment area as the Parish of Aughaninshin.
18. The minutes of the County Committee dated 16th January 2012 were opened to the Tribunal. At that meeting the Claimant club sought to amend the minutes of the crucial November 2011 meeting to reflect that "*The County Committee confirmed that the Parish of Aughaninshin be the catchment area of the Letterkenny Gaels Club*". The proposal to amend the minutes was defeated and it is noted that the existing minute, ie that the vote in November 2011 was on whether or not there was an agreement in place on boundary, was endorsed.

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19. The Tribunal also notes the position adopted by the Notice Party which availed of the opportunity to make submissions on the issue. It largely adopted the position made the first Respondent but refined it to this extent.
20. The Notice Party did not accept that the effect of the decision of the second Respondent was to fix the Parish of Aughaninshin as the Letterkenny Gaels club boundary. It did, however, fear in November 2011 that this was a possible consequence of the second Respondent's decision and as such exercised its right to appeal to the first Respondent. In appealing the November 2011 decision, the Notice Party's intention was to try and ensure that the actual consequence of the said decision was not to fix the Parish of Aughaninshin as the Letterkenny Gaels club boundary.
21. Likewise, for the purposes of this application, the Notice Party does not accept that the effect of the 2011 County Committee decision was to fix the Parish of Aughaninshin as the Letterkenny Gaels club boundary. However, it says that if that was the effect of the November 2011 decision then it serves to rescind a previous decision of the County Committee (the 1996 decision) and as such would require service of a Notice to Rescind and for the vote to be carried by a two thirds majority.
22. The Notice Party highlighted the limited nature of the Tribunal's powers. It highlighted that there had been no suggestion of a breach of rule or absence of fair procedures levelled at the first Respondent. Likewise there was no suggestion that the first Respondent had acted ultra vires in making its decision. The Notice Party therefore contended that the decision of the first Respondent could only be vitiated if the decision made was irrational. The Notice Party contended, whether the first Respondent was right or wrong, that there was a basis for it to have made the decision it made, that it did not fly in the face of reason, and as such could not be set aside by the Tribunal.

FINDINGS

23. Having considered the submissions made we find as follows:

- a) Bearing in mind the limited nature of its powers, the Tribunal does not feel that the Claimant has made out a case such as would warrant the setting aside of the decision made by the first Respondent dated 28th November 2011.
- b) That there was evidence and information before the first Respondent such as entitled it to come to the decision it made and in those circumstances the Tribunal does not feel it can look behind that decision.
- c) That the minutes of the County Committee meeting dated 16th January 2012 in any event appear to endorse the view that the effect of the County Committee vote on 7th January 2011 was **not** to confirm the Parish of Aughaninshin as the catchment area for the Letterkenny Gaels Club. Rather the County Committee appears to have decided that no agreement on boundary was in place between the Claimant and the Notice Party. The impact and effect of that vote does not appear to have been properly considered by the second Respondent and it is not for this Tribunal to speculate what the impact and effect of that vote was, or might be.

DETERMINATION

24. The Tribunal directs:

- a) That the Claimant's application be dismissed;
- b) That on consent of all parties, that there should be no orders as to costs;
- c) That the expenses of the Tribunal should be deducted from the Claimant's application fee and the balance of the fee returned to it.

AARON SHEARER B.L.

JARLATH BURNS

JOHN HYLAND