

DISPUTE RESOLUTION AUTHORITY

RECORD NO. DRA/23/2008

**IN THE MATTER OF THE ARBITRATION ACTS 1954 – 1998 AND IN THE
MATTER OF AN ARBITRATION BETWEEN**

DECLAN BONNER AND CHARLIE MULGREW

-V-

**CHARLIE O'DONNELL AND SEAN KELLY (AS NOMINEE FOR AND ON
BEHALF OF COISTE BAINISTI CLG DHUN NA NGALL) AND CHARLIE
O'DONNELL AND SEAN KELLY (AS NOMINEE FOR AND ON BEHALF OF
COISTE CHONTAE CLG DHUN NA NGALL)**

DECISION AND AWARD

1. Background

- (a). The Claimants were two of a number of persons interviewed by an “Interview Sub-Committee” appointed by Coiste Chontae Dhun na nGall to select a Team Manager for the Donegal Senior Football team. This “Interview Sub-Committee” was appointed by Donegal County Board on the 29th September 2008.
- (b). The applicants were notified by letter of the date, time and format for their interview for the position of Manager of the Donegal Senior Football Team.
- (c). On the evening of the 15th October 2008 the Claimants received a phone call from Sean O’Ceallaigh Chairman of Donegal County Board offering them the position of joint Manager for the Donegal Senior Football Team subject to ratification by the County Committee and the offer was accepted by the Claimants. The records of the minutes of the various meetings that took place including the minutes of the meeting of Donegal County Board on the 22nd October 2008 show that An Coiste Bainisti agreed at their meeting on the 15th October 2008 to forward their recommendation regarding the appointment of the Claimants as Team Manager to the County Committee for ratification.
- (d). The meeting at which the Claimants believe that their ratification as Managers of the County football team would take place was the 22nd October 2008. Prior to that meeting on the 22nd October 2008 it became public through the media that immediately prior to the Claimants being offered the position of joint team manager An Coiste Bainisti through the County Board Chairman Sean O’Ceallaigh had offered

the position of County Team Manager to John Joe Doherty subject to ratification by the County Board. The minutes of the County Board meeting of the 22nd October 2008 record the County Board Chairman Sean O’Ceallaigh stating that “it was never envisaged that matters that arose during the interview process would become public knowledge. The position was that John Joe Doherty was offered the position of Senior Team Manager, subject to ratification by County Committee, but that John Joe was not prepared to accept the position under the conditions that the offer was made”.

- (e). The minutes of the County Board meeting of the 22nd October 2008 record that the recommendation of An Coiste Bainisti to forward the names of Charlie Mulgrew and Declan Bonner to the County Committee for ratification as County Senior Team Manager was put to the meeting by the County Chairman Sean O’Ceallaigh.
- (f). A debate ensued between various delegates at the County Board meeting of the 22nd October 2008 in the course of which John Joe Doherty sought to address the meeting. The minutes of the meeting of the 22nd October show that when John Joe Doherty attempted to address the meeting he was informed by the Cathaoirleach Sean O’Ceallaigh that he was not a delegate and could not do so. The minutes record that the Naomh Mhuire delegate Donal O’Donaill asked that John Joe Doherty be allowed to represent Naomh Mhuire and this request was granted by Cathaoirleach.
- (g). After a lengthy debate between the delegates a Motion “that the interview committee resume at the position they were at at 9.07p.m. last Wednesday when John Joe Doherty was deemed the successful candidate, that they interview him in order that he can have his issues clarified, and, based on their findings bring a recommendation back to the County Committee” was proposed and seconded and approved by the County Board on a vote of 25 for the Motion and 14 against the Motion.
- (h). The Claimants sent an email to the Cathaoirleach of Donegal County Board on the 24th October 2008 posing certain questions and at a Coiste Bainisti meeting on the 29th October 2008 attended by the Claimants and their Solicitor Adrian O’Kane; both the Claimants and their Solicitor addressed the meeting and the Cathaoirleach Sean O’Ceallaigh informed the meeting that he wished to answer questions posed in the email received from Declan Bonner and Charlie Mulgrew on the 24th October 2008 and the minutes of the said Coiste Bainisti meeting on the 29th October 2008 contain a record of the questions asked and the replies to them.
- (i). The minutes of the Coiste Bainisti meeting of the 29th October 2008 record that the County Chairman when asked why the Motion to have Charlie Mulgrew and Declan Bonner ratified by the County Committee was not proposed by him, he replied “I informed the meeting that Charlie Mulgrew and Declan Bonner were selected by the interview panel, that this recommendation was considered and approved by the County Management Committee, and that he put the recommendation to the meeting for approval”. “I did not get a proposal from any delegate to support the recommendation and if I did we would have voted on that”.
- (j). The minutes of the Coiste Bainisti meeting of the 29th October 2008 record that Adrian O’Kane, Solicitor for the Claimants, stated to the meeting that “a fatal error was made

when another candidate addressed the meeting and due to that the entire process must be set aside”.

- (k). A further County Board meeting took place on the 3rd November 2008 which was addressed by Declan Bonner and Charlie Mulgrew the Claimants. A protracted discussion between a number of delegates took place regarding the appointment procedure for the County Senior Football Team Manager. In the course of the meeting a Motion “that John Joe Doherty be appointed Manager” was proposed and seconded and was approved by the County Board meeting by 27 votes to 19.
- (l). Subsequent to the County Board meeting on the 3rd November 2008 the Secretary of the Disputes Resolution Authority received a request for arbitration which was finally received in the correct format on the 10th November 2008 after the Secretary of the Disputes Resolution Authority made a decision to extend time for the lodgement of the request for arbitration in this matter.

2. Preliminary issues raised.

The Respondents in their written response to the request for arbitration and in particular at paragraph 4(b) and 4(c) make the point that under Rule 155 (c)(1) “no appeal can lie against a decision of a County Committee on team management issues”. In the alternative the Respondents claim that under Rule 155(a) if the Claimants had a right of appeal they should have gone to the Provincial Council with their appeal and on that basis have not exhausted all avenues of appeal under the GAA rules and therefore cannot bring their application before the Disputes Resolution Authority pursuant to Rule 157(d) of the Treorai Oifigiuil 2008. In response Mr Des Fahy B.L. for the Claimants stated that this is not an appeal against a decision to appoint Mr John Joe Doherty as Team Manager. Rather Mr Fahy stated that this was a request for arbitration on the legality of a process. The end of the process was when the job was offered to Mr Doherty but it was the manner in which the decision was arrived at that was being impugned. Mr Fahy further stated that there are issues within the GAA framework that can't be appealed and that those matters can be brought to the Disputes Resolution Authority. He stated that in this case there was no decision being appealed rather it was the process which led to a decision that was being objected to. The Respondents through their Solicitor Mr Denis O'Mahony further stated that if the Claimants were appealing the process which led to the decision to appoint John Joe Doherty then the issue as to whether they had brought their claim within the seven day prescribed period from the date of the decision complained of would present itself.

3. Ruling on preliminary issues.

- 1. The Respondents have submitted that this application to the Disputes Resolution Authority is an appeal from a decision of the County Committee and the Respondents make reference to Rule 155(c)(1) of the Treorai Oifigiuil 2008 in this regard.
- 2. This Tribunal finds that an application to the DRA is a request for arbitration on the legality of any decision made or procedure used by any unit of the association as provided for in Rule 157 (a) of the Treorai Oifigiuil.

3. Rule 155 (c) (1) states that no appeal shall lie from certain decisions of a County Committee. This Tribunal finds that this is a reference to an appeal under internal GAA rules.
4. This Tribunal finds that the Claimants have exhausted all avenues of appeal prior to bringing their application for arbitration as there is no appeal on matters regarding the management of County teams under Rule 155 (c)(1) of the Treorai Oifigiuil.
5. This Tribunal has full jurisdiction to hear the Claimants and Respondents in this matter.
6. In hearing this application the Tribunal will in accordance with Rule 157 (b) of the Treorai Oifigiuil 2008 have regard to both the Rules of the Association and the Laws of Ireland.
7. The Tribunal points out that the Disputes Resolution Code has a specific section dealing with the requirement for notice of witnesses who are to be called (Section 10.1 of the Code applies). In relation to documents intended to be relied upon at an arbitration hearing under the DRA Code Rule 7.5 copies of any documents to be relied upon should be submitted to the Secretary in advance and copied to all other parties. The Tribunal reminds both the Claimants and Respondents that full adherence to Rule 7.5 and 10.1 of the DRA Code will assist all parties and the Tribunal in progressing the hearing.
8. Arising from the submissions made this Tribunal directed that the Respondent gave a synopsis to the Claimants and to the Tribunal of the evidence that their witnesses intended to give and secondly that the Claimants' and Respondents' legal representatives exchanged with each other and copy to the Tribunal any case law or previous decisions of the DRA which they intended to rely upon.
9. As provided for in Clause 4.1 of the DRA Code we wish to remind both the Claimants and Respondents that the Tribunal has an obligation to point out the possibility of mediation to both parties and to put forward to both parties the names of mediators if it is felt by the Claimants and Respondents that the matter would benefit from mediation.

4. Submissions made by Claimants and Respondents.

1. Mr Des Fahy B.L. for the Claimants stated that his clients' case was that four basic rights or entitlements had been infringed as a result of the process used by Donegal County Board to appoint a Team Manager. He highlighted the four areas of infringement as follows:-
 - (a). Breach of fair procedures.
 - (b). Breach of due process.
 - (c). Breach of his clients right to have a procedure explained to them.
 - (d). The right of his clients to be heard.
- (a). It was submitted by Mr Fahy that the appointment of the Interview Sub-Committee had no terms of reference or if there were terms of reference these terms of reference

hadn't been furnished to his clients and that this had caused some of the difficulty in this case. The interviews according to Mr Fahy took place in accordance with a format and at a time notified to the applicants and they were raising no issue in relation to this part of the process.

- (b). He further submitted that on the 15th October 2008 the applicants were told that they were deemed by the Sub-Committee to have been successful in their application for the position of Team Manager and that their names would go forward to the next County Board meeting for approval and that his clients had been content with this.
- (c). Difficulties arose according to Mr Fahy at the meeting on the 22nd October 2008. His clients knew from media reports that before they were offered the position of Team Manager, the job had been offered to someone else and that the offer to this person, Mr John Joe Doherty, had been withdrawn. He said his clients were making no issue regarding what had transpired between the Sub-Committee and John Joe Doherty.
- (d). Mr Fahy submitted that there was a key detail missing from the minutes of the meeting of the County Board on the 22nd October 2008. He submitted that the Motion from the Sub-Committee to approve the applicants wasn't put to the County Board meeting but that another Motion was put instead. He said that having had in effect pre-contract negotiations in the matter, an offer had been made to his clients which had been accepted on the basis that their appointment would be put to the next County Board meeting for ratification but that this process had not been finished. He said that another counter motion was put to the meeting and voted upon. He said that Mr John Joe Doherty was there at that meeting as a member of the GAA but not as a delegate. He pointed out that one delegate per club was allowed voting rights at such a meeting and that the minutes of the meeting on the 22nd October recorded that a Naomh Mhuire delegate stood aside and allowed Mr Doherty in his place. He also submitted that the delegate at the meeting who stood aside was a delegate who was entitled to speak and that the process had been manipulated.
- (e). Mr Fahy submitted that his procedural fairness point was that Mr Doherty was a candidate for the job and that if he was going to be allowed to speak at the meeting on the 22nd October 2008, then all of the other applicants should have been allowed to speak also. He claimed that Mr Doherty had attempted to sway the delegates at that meeting and that his clients had a right also to be heard at that meeting.
- (f). He submitted that the Motion which was put to the County Board meeting on the 22nd October 2008 and voted upon proposed to turn the clock back to a point before the applicants were offered the post. He said that there were no circumstances on which such a proposal could be deemed to be procedurally fair. He said that when the vote took place on this Motion the question arose as to whether Mr Doherty was entitled to vote. Mr Fahy submitted that if Mr Doherty was, as was being suggested, the delegate of Naomh Mhuire then he was entitled to vote and that this was procedurally unfair. He said that it was unfair that Mr Doherty would have voting rights on a matter directly affecting him as an applicant for the position and that it did not matter how Mr Doherty had in fact voted but the fact that he could have voted flew in the face of any concept of procedural fairness.

- (g). Mr Fahy further submitted that the flaws in the appointment of Mr Doherty as Team Manager flow from the flaws in the process used on the 22nd October 2008 and that the entire process was flawed. Mr Fahy submitted that the Claimants had an opportunity to make representations to the Coiste Bainisti on the 29th November 2008 but these representations were being made after the fact, and “ that at this stage the horse had bolted”and that a Motion to turn back the clock to a point before his clients had been offered the position had been carried at the County Board meeting on the 22nd October.
- (h). He referred the Tribunal to DRA case Record No.12/2008 involving Pol O’Gaelbhain and in particular the quotation from a decision of Mr Justice McMahon. In that case Mr Justice McMahon stated “the law will demand a level of fair procedure which is sufficient in all of the circumstances to ensure justice for the player or member affected by the decision. The more serious the consequences, the higher the standard that will be required.”

Mr Denis O’Mahony Solicitor, for the Respondents submitted to the Tribunal as follows:-

- (a). He stated that everything that Mr Fahy has submitted to the Tribunal relates to the County Board meeting on the 22nd October 2008 and that it is ultimately that decision that Mr Fahy seeks to impugn. Mr O’Mahony submitted that the Claimants application for relief was dated the 8th November 2008 which was outside the seven day time limit for bringing an application to the DRA.
- (b). Mr O’Mahony submitted that John Joe Doherty had attended the County Board meeting on the 22nd October as a delegate and that every delegate is entitled to speak and that the two Claimants attended a later meeting as delegates on the 29th October 2008 and a subsequent County Board meeting on the 3rd November 2008.
- (c). It was submitted to the Tribunal by Mr O’Mahony for the Respondents that the minutes of the meeting on the 22nd October 2008 recorded that the Chairman of the County Board informed the meeting of the 22nd October that the Coiste Bainisti had approved the two Claimants as County Team Managers, and had forwarded their names to the County Board meeting on the 22nd October 2008 for ratification but that no proposals were made and no vote was taken by the delegates to approve or ratify the Claimants for the position of the County Senior Football Team Manager. It was submitted that this was not the fault of the Respondents.
- (d). It was submitted on behalf of the Respondents that a Motion had been put to the floor at the meeting on the 22nd October 2008 to go back to the position that existed at 9.07 pm. before the Claimants had been offered the position. That Motion was proposed and seconded and there was no counter Motion from the floor.
- (e). Regarding the submission that it was procedurally unfair for Mr John Joe Doherty to have the ability to vote at the County Board meeting on the 22nd October 2008 the Respondents submitted that there was no procedural unfairness if Mr John Joe Doherty was at that meeting as a delegate from his Club. It was submitted that the County Board had acted in good faith at all times. It was further submitted that the County Board had no obligation to tell the two Claimants that Mr John Joe Doherty had been offered the job prior to the position being offered to them.

- (f). The Respondents called Mr Cormac McGarvey to give evidence and his testimony was that he was a member of Naomh Mhuire and also Chairman of that Club and that he was present on the 22nd October 2008 with one other appointed delegate and that John Joe Doherty was a delegate. He said that a decision was taken by his Club Executive on the Sunday before the meeting on the 22nd October 2008 to appoint Mr John Joe Doherty as a delegate. He said that he didn't speak at the meeting except to tell the County Board Chairman that he was stepping aside as delegate and allowing Mr Doherty to speak in his place.

Further submissions

The Claimants by way of further submission in relation to the right of the Claimants to have the procedure explained to them submitted that "part and parcel" of any procedural fairness is a right to have a decision explained. He said that this was never done. The Respondents through Mr Denis O'Mahony referred to the minutes of the meeting on the 29th October 2008 regarding the questions that had been put by the Claimants through their Solicitor to that meeting and the responses that were given. The Claimants through their Counsel Mr Fahy submitted that such explanations had to be sought on a post facto basis and that explanations given after the fact don't meet the requirements on fairness.

5. Decision & Award.

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

1. This Tribunal finds that the decision of an Coiste Bainisti to recommend the appointment of the Claimants as Managers of the Dhun na Ghall County Team was put to the County Board meeting by the Chairman of Donegal County Board on the 22nd October 2008. There was no proposal from any delegate attending at that meeting to ratify their appointment. It was open to the delegates at the County Board meeting on the 22nd October 2008 to propose and second the ratification of the Claimants as Managers of Donegal Senior Football team, but this did not happen.
2. The Tribunal has heard evidence from a Mr Cormac McGarvey of the Naomh Mhuire Club that Mr John Joe Doherty addressed the County Board meeting on the 22nd October 2008 as a delegate of the Naomh Mhuire Club. This evidence was not challenged by the Claimants.
3. The Claimants and their legal adviser attended the Coiste Bainisti meeting on the 29th October 2008 and received replies to previously submitted written questions and the Claimants both attended and addressed a County Board meeting on the 3rd November 2008.
4. The decision to appoint John Joe Doherty as Manager of the Donegal Senior Football team was made on the 3rd November 2008 after his appointment was proposed by a

delegate and seconded by another delegate. A vote took place and the Motion to appoint Mr John Joe Doherty as a delegate was carried by a majority.

5. This Tribunal notes that the minutes of the Coiste Bainisti and County Board meetings submitted to this Tribunal are accepted by both the Claimants and Respondents as being a correct record of fact as to the business conducted and the matters discussed at these various meetings. These minutes show that the Executive of Donegal County Board and in particular the County Chairman Mr O'Ceallaigh gave a very frank account of the manner in which the appointed Sub-Committee had offered the position of Donegal Senior Football team Manager to Mr Doherty initially and then subsequently to the Claimants. The manner in which these matters were dealt with and discussed in the media is not a matter for this Tribunal to consider. This Tribunal is satisfied that the delegates to Donegal County Board were in full possession of all the information and facts regarding the initial offer of the position to Mr Doherty and its subsequent offer to the Claimants.
6. This Tribunal finds that the fact that Mr John Joe Doherty addressed the County Board meeting on the 22nd October 2008 as a delegate from his Club does not render the appointment procedure flawed and further does not give rise to such procedural unfairness as would render the entire process invalid.
7. This Tribunal finds that both Mr John Joe Doherty and the Claimants had separate opportunities to address County Board meetings before a final decision was taken on the 3rd November 2008 to ratify the appointment of Mr John Joe Doherty as Senior Football Team Manager.
8. This Tribunal finds that while Donegal County Board led the Claimants to believe that their appointment as Team Managers had been agreed subject to ratification by the County Board, it was not within the power or procurement of Donegal County Board to ensure the ratification of the Claimants as this was a matter for the County Board meeting through its delegates to approve and ratify.
9. In looking at the appointment process, this Tribunal has to have regard to the entire process rather than the individual aspects of the process which the Claimants have highlighted as being in their view procedurally flawed. County Boards have to be allowed to regulate and conduct their business in a somewhat robust manner provided always that the procedure that they use as a whole is fair. In this case the final decision on the appointment of Mr John Joe Doherty as Team Manager was taken by the delegates to Donegal County Board in a vote on the 3rd November 2008. The delegates of Donegal County Board had an opportunity to vote on the merits of the appointment of both the Claimants and Mr John Joe Doherty and furthermore had this opportunity on two separate occasions namely 22nd October 2008 and 3rd November 2008. At both of those meetings, Motions were put forward favouring the appointment of Mr John Joe Doherty and both of those Motions were carried by a majority of the delegates present. From the minutes of these meetings it is clear to this Tribunal that the Donegal County Board put all of the relevant facts in relation to the offer of the position of Team Manager to both Mr John Joe Doherty and the Claimants, in full before the Board, and the vote that was taken by the delegates to finally appoint Mr John Joe Doherty as Team Manager was taken by those delegates at a time when they were in full possession of all of the facts regarding the matter and at a time when both

Mr Doherty and the Claimants had had an opportunity to address the County Board meetings.

10. There were some minor elements of procedural irregularity as regards the general handling of this matter by the Respondents. However this was not of such magnitude as to vitiate the integrity or objective of the decision made.
11. Furthermore, the Respondents via the Cathaoirleach admitted in the minutes of the meeting of the 22nd October 2008 that “a telephone conversation was not the way to go about such an important announcement” and added “I realise now that you can’t have such a conversation over the phone in a satisfactory manner”. The Tribunal concurs with this view and recommends that this approach be made redundant as to any future County administrative matters. This is not a satisfactory manner in which to conduct business.
12. The Tribunal finds however that overall the Respondents did act within the principles of fairness and natural justice in this instance. The Claimants have failed to satisfy this Tribunal that there was sufficient evidence of unfair procedures or lack of due process in relation to the appointment of the Manager of the Donegal Senior Football team.
13. The decision of this Tribunal is that we refuse the Claimants the relief sought or any relief. This is the unanimous decision of the Tribunal.
14. The Tribunal invites written submissions from the parties on the following matters

- (a) Legal Costs and,
- (b) The expenses of the DRA

Dtaed this 26th day of November, 2008

Signed:

Matt Shaw, Chairman

Felix Swift B.L.

Albert Fallon