DISPUTES RESOLUTION AUTHORITY
D.R.A./26/2005

IN THE MATTER OF THE ARBITRATION ACTS

AND IN THE MATTER OF THE DISPUTES RESOLUTION CODE OF THE GAELIC ATHLETIC ASSOCIATION

AND IN THE MATTER OF AN ARBITRATION BETWEEN

John McCaffrey and David Billings and Donal Howlin
(mar Ionadaithe ar son U.C.D. G.A.A.Club)

Claimants

-AND-

Pat Daly and Sean MacCague
(mar ionadai ar son Central Appeals Committee)

1st Named Respondents

-AND-

John Devaney and Donal McAnallen
(mar ionadai ar son an Comhairle Ard Oideachais)

2nd Named Respondents

Background:

1.1. The Claimant is a student attending University College Dublin, where he is enrolled as a first year student on the Diploma Course in Sports Management. On the 27th October 2005, the Claimant was adjudged by the Second named Respondents to be ineligible to play with U.C.D. G.A.A. Club under Rule 30 of the Constitution of An Comhairle Ard Oideachais on the grounds that the Course "does not meet the CA criteria of eligibility".

This decision was appealed to the Central Appeals Committee who on the 9th November 2005 upheld the decision of An Comhairle Ard Oideachais.

1.2. The claimants submitted a Request for Arbitration to the D.R.A. on the 11TH November 2005. A preliminary hearing was scheduled for the 6th December 2005. On the 18th November 2005, An Comhairle Ard Oideachais (the Second named Respondents) applied to the Secretary of the D. R. A. to be joined as co- respondents .

1.3. The First named Respondents submitted their Response on the 6th December 2005.

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The Preliminary Hearing:

1.4. The Preliminary Hearing took place on the 6th December 2005. A note of the rulings made has been posted on the Dispute Resolution Authority's website. The ruling can be summarised as follows:

(a) There was no objection to An Comhairle Ard Oideachais being joined to these proceedings and they were so joined (the Second named Respondents)

(b) The late delivery of the Response from the first named Respondents was considered. The Tribunal considered the objections raised by the Claimants but, having heard submissions from both parties, extended the time for the Response to be submitted, pursuant to Section 7 (1) of the Disputes Resolution Code. An award for the expenses of that hearing was made against the First Named Respondents.

1.6 The matter was adjourned further and ultimately was listed for hearing on 13th January 2006. In the interim, a response to the Request for arbitration was received from the Second named Respondents, together with further documentation from the Claimant, in support of their claim.

The Hearing on 13th January:

2.1 The Tribunal invited submissions on an initial issue:

It was the Claimants case that he had applied to the Second Respondent on the 3rd October 2005 and again on the 7th October 2005 for clearance to play for UCD. The Claimant heard nothing from the Second Respondent until the 27th October 2005. In the meantime, the Annual Convention of An Comhairle Ard Oideachais convened on the 15th October 2005 and ratified inter alia a change to Rule 30 in relation to players' eligibility. The Claimant submitted that his application had been made under the previous Rule 30 and also to the previous Committee and therefore the application should be considered under the previous Rule 30.

Documentation which had been submitted to the Tribunal included a Constitution marked "draft". This Constitution was ratified at the Annual Convention on 15th October 2005.

2.2 The Second Named Respondents submitted that the rule change was initiated on 24th September 2005 at the Constitutional Convention It was then ratified on the 30th September by an Coiste Bainisti. Under Bye-Law 9(e) of The Constitution and Bye-Laws of An Comhairle Ard Oideachais, it was then deemed to be the applicable rule dealing with the eligibility of Students to play in CA competitions. The application form of the Claimant was drafted after the ratification of the new rules and UCD had been represented at the Constitutional Convention on the 24th September 2005.

2.3 The Second named Respondants further submitted that the Claimants were aware of the rule change and had proposed a number of Motions at the Convention on 15th October

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2005, dealing with this issue. A new Form of Application, which had been devised after this rule change, was in fact used by the Claimant, in making his application.

FINDING: Having considered the submissions from all parties, the Tribunal accepts the Second Respondents submission that the applicable rule, Rule 30 as amended at the Constitutional Convention on the 24th September and ratified by An Coiste Bainisti on the 30th September, became operative as of that date in accordance with Bye-Law 9(e). The Tribunal further accepts that UCD knew or ought to have known about these changes. As Mr. McCaffrey's application commenced on 3rd and then 7th October, he was bound by the amended rule and therefore no error in the processing of his application took place.

2.4 Having made the above finding , the Tribunal is of the view that a student entering their first year in College or University is entitled to know the applicable rules in his/her case and whether or not he/she is eligible to compete in competitions , on behalf of his/her College. The Tribunal accepts that the Bye-Law cited by the Second named Respondents enacted the rule change on the 30th September 2005. It is suggested that , as the academic year commences on the 1st September each year it might be preferable if a period of grace were allowed, so that the implementation of a rule change during the course of one academic year would be deferred until the commencement of the next academic year. Alternatively, any proposed rule changes could be made well in advance of the commencement of the academic year. We note the submissions of the Second named Respondents on the practical difficulties in dealing with these issues over the summer months and this was dealt with in some detail. (See para. 2.5 (below))

2.5 The Tribunal then heard lengthy submissions on the CA structure and the role of An Comhairle Ard Oideachais in the making of decisions affecting the eligibility of players. The Second named Respondents outlined the special situation which college clubs find themselves in, given the structure of the academic year. The academic year commences on the 1st September and runs through until the 31st August the following year. A Committee is selected in mid October and decisions regarding player eligibility and other issues will not be dealt with until that new committee is in place. All applications regarding player eligibility have to be submitted by the 31st October each year. Accordingly, decisions are not made until after the Annual Convention which is generally convened in mid-October. It is always therefore the incoming committee who deal with the issue of player eligibility, irrespective of whether the individual players application was received before the Annual Convention and by the outgoing committee. This was described by the Second named Respondents as a practice, which had been in place for the last number of years. The Second named Respondents also explained that it would be very difficult in practical terms to convene their Annual Convention earlier in the year, as many club members, being students, would be abroad during the summer months.

2.6 In this case, the Claimant applied to the Second named Respondents for clearance to play with UCD on Oct 3rd and 7th, but did not receive a response until 27th October. The response was a communication, the body of which was five lines long. It conveyed the facts that the request had been considered, the information submitted regarding his course was considered and that Mr. McCaffrey was deemed ineligible, "as this course does not meet the CA criteria of eligibility, as outlined in Fodhli (30)".

2.7 It is the considered opinion of the Tribunal that requests made by applicants for clearance to play with their registered College or Institute of Study should be processed as expediently as possible. The Tribunal is mindful of the practical situation that the academic year creates, as outlined by the Second named Respondents, but is of the view that every effort should be made to ensure that applicants are informed of their status as soon as possible. The Tribunal is further of the view that that applicants such as the Claimant should be provided with reasons, in writing, when an application made by them has been refused. While the reason is set out in the communication sent to the Claimant, it simply stated that, in the opinion of the Second named Respondents, the Claimants course did not meet the criteria of eligibility. The document did not set out the basis for this opinion. It is the view of the Tribunal that any refusal for clearance to play made by the Second named Respondents should be accompanied with a written statement, outlining in some detail the reasons why the application has been refused.

2.8 Having found that the Rules as amended at the Constitutional Convention on the 24th September and approved by An Coiste Bainisti on the 30th September were the correct rules to apply to the Claimant's case, the Tribunal went on to consider the precise application of those rules to the facts of the Claimants case. The relevant rule is rule 30, (a), (b) and (c). There was no issue between the parties as to whether the Claimant was a bona fide student as defined by Rule 30(a); the sole issue to be determined was whether his course was eligible under the wording of rule 30 (b) . Certain sections were clearly not applicable, and it was accepted by all parties that the course would have to fall within categories (i), (ii), (v) or (vi) as clearly categories (iii) and (iv) did not apply.

2.9 The Claimant submitted that the Course in question qualified under rule 30 (b), as it had been described in documentation submitted to the Tribunal as a course ranked sufficiently to be included in the CA qualifying courses , under rule 30 (b) (i). The Claimant further submitted that NUI awards and Diplomas (as opposed to Degree Courses) did not come under the category system (the FETAC system) used by the CA, to determine the ranking of a course. However it was submitted that it was a course which "equates to the NQAI Level 7 of the National Framework of Qualifications" The classification system of courses and awards was described by the Claimant as an evolving one and as an "equivalent" course in many respects it should be considered to be a qualifying course. There was much discussion of this aspect of the case, with submissions being made as to the comparisons which can be made between courses, leading to different awards. The Claimant contended that the course was worth 60 ECTS credits if counted over "a period which straddled two or more academic years" as is required by the Rule.

The Second named Respondents submitted that the provision in the Rule providing that the 60 ECTS points may be counted over a period which straddles two or more academic years was specifically to cater for those colleges whose academic year falls outside of the standard academic year (ie 1st September to 31st August) as defined in Bye-Law 4 of the Constitution and Bye-Laws of CA. It was further submitted that, while the course may equate to a NFQ (National Framework of Qualification) Level 7 course, it was not in fact included in the NFQ Level 7 courses. In support of this submission the NFQ brochure of October 2003 was submitted which clearly indicated that a University course must be at Degree level, to be included at Level 7. The

claimant's course is clearly not a Degree course. It was stated that the information on the October 2003 brochure was accurate in this respect and currently applicable. The Claimant was not in a position to dispute this contention.

FINDING: Having regard to the various submissions made, the Tribunal found rule 30 (b) (i) to be the relevant section. The Tribunal further accepts the Second named Respondents submissions as to the applicability of the Rule to the Claimants course, The course clearly is not an NFQ Level 7 course or higher and it therefore is not a qualifying course under Rule 30(b) (i). The Tribunal also accepts the explanation of the Second named Respondent in respect of the calculation of the 60 ECTS credits.

The Tribunal also noted that the Claimant accepted on his initial application form that he was ineligible to play according to CA Bye-Laws and the basis of his application was that his 60 ECTS credits straddled a period of two or more academic years as defined in Bye-Law 4.

2.10 The Tribunal however notes the lack of a definitive list of accredited courses and is of the view that this could easily be compiled, with reference to a body such as the Further Education Training Awards Council (FETAC). Principles of fairness and transparency would be well served, if a list of all applicable Courses was drawn up, as soon as possible. This would lead to greater certainty for applicants to the First and Second named Respondents in such circumstances, in the Tribunal's view.

Having made the finding that the Claimant's course was not a qualifying course under Rule 30(b)(i) the Tribunal noted that Rule 30(b)(vi) appeared to be a catch-all type provision affording the Second named Respondent a discretion to consider applications which would otherwise fall outside of the provisions of Rule 30. The Tribunal then invited the Second named Respondents to address them as to the considerations they took into account, having regard to Rule 30 (b) (vi). This section gives the Second named Respondents the power to designate any course which they consider comes under the heading of "Higher Education" to be an eligible course, for the purposes of rule 30.

Prior to hearing any submissions on this issue , the Tribunal advised the Second named Respondent (as they were not legally represented) that it was a matter of interpretation and some debate as to whether the Tribunal was in fact entitled to enquire behind their exercise of a discretionary function. The Second named Respondents had no difficulty in addressing this issue in the interest of clarification.

The First Named Respondent (who was legally represented) was also invited to address the Tribunal on this point, regarding their concerns, if any, at the Second Named Respondents being asked to outline to the Tribunal the discretion exercised by them in these circumstances and the reasoning applied by them. .The First named Respondent had no objection, subject to it being noted by the Tribunal that the Second named Respondent was voluntarily assisting the Tribunal, in the interest of clarifying the particular provision in the Rule and that the issue as to whether or not the Tribunal was entitled to so enquire would not therefore be addressed and no precedent therefore would be set in this particular case.

This is duly noted by this Tribunal.

The Second named Respondents went on to explain that they had considered every aspect of the case i.e.:

- The nature of the course,
- the fact that it required the Claimant to attend classes 1 day per week,
- that for 3 days per week the Claimant would be participating in Gaelic games,
- that the annual ECTS credits for this course is 30, which is one half of the minimum requirement,
- the changing nature of education

The Second Respondents stated that they expended a considerable period of time in their deliberations but concluded that the case, as submitted by the Complainant was not a borderline case and therefore determined that the Claimant was ineligible to play for UCD. They indicated that their practise was to reserve this particular provision for borderline cases. They reached this conclusion, having considered all documents and issues put to them at that time by the Claimant.

Ruling: The Tribunal, having heard and considered all submissions, concluded that the Claimant was ineligible to play for UCD GAA club. The decision of the First and Second named Respondents was therefore upheld.

3.1 The First named Respondents then addressed the Tribunal on the award of costs which had been made against them, at the December hearing and asked the Tribunal to re-visit the issue. The Tribunal holds that its ruling of 6th December 2005 should stand, for the reasons outlined on that date. The First named Respondents are therefore to pay the expenses of the parties, in respect of the Preliminary hearing on 6th December 2005.

Dated this 13th day of February 2006.

Signed:

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Brian Rennick

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Dara Byrne

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John Mc Connell