

Statement of Reasons of Dara Byrne :

The purpose of this Statement is to clarify certain areas where I differed in reasoning from the Statement of Reasons of the Majority. It is on certain points only and can be primarily described as a difference in approach. It is my view that general principles of fair procedures and fairness, as outlined in case law governing sporting bodies and their members and previous DRA decisions provide the Tribunal with the adequate tools and remedies to assess the case before them . These general principles, rather than specific Articles of Bunreacht na hEireann are the guiding principles to apply to this case .

1. At the outset, I can state that I accept the contents of paragraph 1 –8 and 10- 24 of the Majority Statement of Reasons. In relation to paragraph 9 of the Statement of Reasons, I note that the Statement of Claim submitted by the Claimant indicates that it was November 2004, when the Claimant first indicated that he was contemplating a transfer, rather than 2006. I do not think that anything turns on this, per se.

2. I also accept the contents of paragraphs 41 – 49 dealing with the issue of Legitimate Expectation / Promissory Estoppel and paragraphs 50- 51, dealing with irrationality.

3. I set out herewith the Claimant's claim :

- a. The Respondent erred and acted ultra vires in enacting a new bye law which did not respect and/or vindicate and/or take adequate or any account of the Claimant's constitutional rights or which breached those constitutional rights ;
- b. It erred in dealing with the Claimant's application for a transfer under the said Bye-Law;
- c. In the alternative, it applied the said Bye-Law in a manner (a) which did not respect and/or vindicate and/or take adequate account of the Claimant's Constitutional Rights, (b) which directly breached the Claimant's Constitutional Rights, (c) which failed to take account of all relevant considerations;
- d. It did not act in accordance with it's own Bye-Law;
- e. The decision is unreasonable and irrational.

4. One of the issues in the case which generated some discussion at the Hearing is the claim made at c above:

In the alternative it (the Respondent) applied the said Bye Law in a manner

- (a) which did not respect and/or vindicate and/or take adequate or any account of the claimant's consitutional rights,
- (b) which directly breached the claimant's constitutional rights,
- (c) which failed to take account of all relevant considerations .

5. This claim of breach of constitutional rights was broken down into two constituent elements:

Breach of Fair procedures.

A specific claim of a breach of the constitutional right to Freedom of Association, under Article 40.6.1.iii.

6. My note and recollection of the questions asked of Counsel for the Claimant is that a concession was made by Counsel that their constitutional claim was a general one in terms of the principle of fair procedures and a specified claim, under Bunreacht na hEireann in relation to the freedom of association issue, as they cited Article 40.6.1.iii of Bunreacht na hEireann. There was also a concession made by Counsel for the Claimant in relation to the extent of any power given to this Tribunal to make specified findings, using Bunreacht na hEireann as our authority.

7. Given those concessions by Counsel for the Claimant, I am of the view that this case should be dealt with, using general principles of fairness and fair procedures. I am happy to accept the position as outlined in the Majority Statement of Reasons, Paragraph 25, line five to the end. For completeness, I set that out here:

“We have little hesitation in accepting the general principle that a member of a sporting organisation whose position in relation to a serious matter is being adjudicated on is entitled to a fair and impartial hearing. What constitutes a fair and impartial hearing in any given circumstances will depend on different factors, including the gravity or importance of the subject matter of the adjudication, viewed from the perspective on the person whose position is the subject of the adjudication. This need not always be an oral hearing, although in the present case, oral hearings are provided for”.

8. It is my opinion that general principles of fairness and fair procedures are well settled concepts in the case law governing the relationship between sporting bodies and their members and in the DRA cases to date. I cite DRA cases 17/ 2009 and 18/2009 as precedents in this regard.

I am also mindful of the decision of Mr. Justice McMahon in the case of Barry v Ginnity, as cited in the recent case of DRA case of Ciaran O’ Broin and Darragh Seoighe and I repeat here the extract contained at page 5 of that Judgement:

Mr. Justice McMahon, while accepting that the courts are reluctant to interfere with the autonomy of sporting bodies in making their decisions, stated that “there are occasions, however, where the law will intervene to ensure that justice is done and that minimum standards of fair procedures are observed”. Mr. Justice McMahon stated as follows in determining the threshold of fairness to be observed by sporting bodies whilst making decisions:

“the truth is that the law will demand a level of fair procedures which is sufficient in all 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 . One cannot be more specific than that from case law “ .

9. Having regard to the authorities cited above , I am of the view that the general principles of fairness and fair procedures between the parties provide adequate tools to both parties to resolve this issue . I am also conscious of the well established principle of Constitutional law of reaching Constitutional issues last and I cite p. 356 – 358 of “ Constitutional Law in Ireland “ , third edition by Professor James Casey as authority in that regard .

10. What does an analysis of the facts in this case illustrate, if these general principles of fairness and fair procedures are applied?

11. Both the Majority and the Minority of the Tribunal agree that the new Bye-Law (no. 22) was the applicable Bye-Law at the relevant time . That Bye-Law is set out at paragraph 7. of the Majority Statement of reasons and I set out the relevant part of that Bye- Law here :

22.6 A sub-committee shall process and make recommendations to the County Committee on applications for transfers within the county, which recommendations shall be communicated to the members of the County Committee in advance of the relevant County Committee meeting considering the applications. A transfer applicant or a transferor club not satisfied with such recommendation shall be afforded one opportunity for a hearing at County Committee level before a decision is taken (which function shall be exercised by the County Management Committee in accordance with bye – law 3 , who will affirm, or otherwise , the recommendation to County Committee) . A player shall attend such hearing personally and be unaccompanied (except in the case of underage players , who may be accompanied by their parents(s)/guardian(s)) . A transferor club shall be represented at a hearing by a maximum of 1 full member. For the avoidance of doubt; a transferee club, not satisfied with the recommendation to the County Committee , shall have no right to a hearing on the matter before the County Committee adjudication “ .

12. The sequence of events in relation to the final transfer is set out in the Majority Statement, at paragraphs 17- 21. In summary, the Claimant submitted his final transfer request in December 2009, which was refused by the Competitions Control Committee. This was then referred to the Management Committee. An oral hearing took place at that stage, with the Claimant representing himself and a representative from the club speaking on behalf of O’ Toole’s. As a result of this hearing, the Management Committee recommended to the County Committee that the transfer be granted.

13. The County Committee meeting took place on 25th January 2010. The Claimant was not present at that meeting. Two lawfully appointed delegates from the O' Toole's club, Mr. Con Clarke and Mr. Andy Cunningham were present at that meeting, in their capacity as club delegates. From the minutes of that meeting, Con Clarke opposed the Management Committee's recommendation of a transfer for both the Claimant and his brother and it was agreed to debate the matter at the meeting. It seems that there was no request for a debate on any of the other transfer applications. From the papers we were given, there were over one hundred transfer applications before that meeting on 25th January 2010.

14. The relevant extract from the minutes read as follows:

“ Con Clarke referred to the Bye – Law and stated that the management Committee decision is flawed as it could not possibly have given serious consideration to the response of O' Toole's, the role played by O'Tooles in nurturing and developing both Eamonn and Robert Fennell or be conscious of the impact on O' Toole's if the transfers were granted. He said that the County Committee has the right, acting within its Bye- Law, to grant or not to grant an application for transfer. He stated He proposed that the County Committee do not accept the recommendation of the Management Committee, in relation to the Fennell brothers and to accept the recommendation of the Competitions Control Committee. Andy Cunningham seconded the proposal. A wide ranging discussion ensued with contributions from

Decision :

The proposal received 33 votes in favour and 33 votes against. In accordance with rule 4.3 Official Guide 2009, the Chairman exercised his casting vote in favour of the proposal. Accordingly the transfers of Eamonn Fennell and Robert Fennell from O' Tooles to St. Vincent's and Naomh Mearnog respectively were refused. “

15. The Claimant's submissions on the above are set out in paragraph 80 and 81 of their submissions. I find their submission that this was a breach of fair procedures to be persuasive. The situation as outlined in the minutes clearly indicates that the two lawfully appointed club delegates addressed the meeting on the transfer issue. The Claimant was not present at that meeting, so therefore he could not address the meeting. This is an inherent unfairness and a breach of fair procedures. It can also be argued to be a breach of the Respondent's own rules; under rule 22.6, there is provision for “one oral hearing“. This clearly took place at the Management Committee stage, with the transfer being recommended as a result. As the Claimant was not present at the next meeting, obviously he could not speak on his own behalf. The Club, through their lawfully appointed delegates had a right of audience to speak on the issue. Others then spoke and a vote was ultimately taken. This could arguably be classified as a second oral hearing, in breach of rule. Certainly there is no doubt that the Applicant could credibly argue that he was adversely affected, through not being present to address the meeting.

16. It should be noted that the Respondents themselves conceded that an applicant for a transfer, who wished to attend the County Committee meeting could in fact do so. It was also conceded by the Respondent that this fact might not be widely advertised or known.

17. In light of the above, I find that there was an inherent unfairness in the process, as it was applied to the Claimant's application for a transfer. I note the comments of the Majority at paragraphs 36, 37 and 38 of their Statement of Reasons.

19. On this narrow basis, I expressly adopt the Majority Determination at e. as follows:

The decision on the Claimant's transfer application is to be remitted to the County Committee for reconsideration at the next available opportunity. The Claimant shall be entitled to appear personally and address the meeting. His personal circumstances and reasons for seeking a transfer are relevant considerations and should be taken into account in the making of the decision.

20. I was persuaded that the general principles of fairness and fair procedures gave the Tribunal adequate tools to consider the arguments put forward in this case, in part, by considering the concession which was made by the Respondent that the Claimant could have attended the final meeting, the County Committee meeting. Take the following hypothetical example:

21. What if the Claimant had in fact attended the County Committee meeting on 25th January 2010? Assume that both the Claimant and the club delegates were assigned exactly fifteen minutes each to speak on their own behalf. After that time, the debate opened to the floor in the normal way and a vote taken. If the result had been exactly the same, with a deadlock and the Chairman exercising his casting vote in favour of the status quo, in accordance with convention, what complaint would the claimant have then had?

22. It can be assumed that the Claimant might not be happy with that result. Taking that extreme hypothetical example a stage further; assume the Claimant at age eighteen decides that he wants to transfer to another club. He makes his application in the normal way and all fair procedures are followed. The deadlocked vote repeats itself and the Chairman votes for the status quo, in accordance with convention. Every year, for the next seven years, the Applicant repeats his transfer application. All fair procedures are followed. Due purely to mathematical reasons, the deadlocked vote is repeated each year and the Chairman votes for the status quo. Having regard to the totality of the situation, what results would the general principles of fairness and fair procedures give in that scenario?

23. That last extreme example , in my view , goes some way to answering the Submission made by the Claimant at paragraph 46 , namely that the Bye- Law in question “ sets up a scheme where an applicant for a transfer could conceivably never be granted a transferthereby amounting to a complete denial of the freedom of association and dissociation “of the Claimant .These extreme hypothetical examples are given , as an illustration of my view that general principles of fairness and fair procedures are sufficiently fluid to give protection to both parties in these type of disputes . They can confer rights as well as obligations on both parties.

24. Having regard to the Reasons as outlined above, I agree with the Majority Determination at e. Having regard to general principles of fair procedures , it is appropriate that the Claimant’s personal circumstances and reasons for seeking a transfer are taken into account in the making of the decision .

25. Briefly, in relation to the determinations made by the Majority of the Tribunal at a, b, c and d, I can indicate as follows:

- (a) : I agree that Bye Law 22 enacted on 22nd October 2009 does not contain an inherent illegality. I cite the recent DRA case of O’ Broin and Seoighe in that regard.
- (b) : I agree that the relevant Bye Law to be used is the “new“ Bye Law .
- (c) : I agree that the Claimant is permitted to attend the hearing of the full County Committee. As I found this to be the central part of the breach of fair procedures in this case , I have no hesitation in agreeing that this is appropriate , having regard to principles of fair procedures . I also note that the Respondent conceded during the hearing that the Claimant was entitled to attend the County Committee meeting, if he asked to do so .
- (d) I agree in principle that there are possible situations where a person seeking a transfer may require representation. In this particular case, the Claimant represented himself at the Management hearing and was successful . I do not see the issue of representation as a core issue in this case and I do not disagree with the Majority.
- (e) I expressly adopt the determination at e.

In summary, it may be a difference in approach which distinguishes this Statement of Reasons from the Majority Statement. It is my view that settled case law, both DRA cases and otherwise, provide adequate remedies for both parties in this dispute. The general principles of fairness and fair procedures contained therein give scope and flexibility for the resolution of disputes, such as this one. It is my opinion that general concepts of fairness can be precise, as in their application to a particular set of rules or regulations .They can also be broad, in terms of assessing the overall fairness of a situation between both parties. It is the inherent fluidity of the concept which persuades me that it is the appropriate tool to use in these disputes. To quote Mr.

Justice McMahon in the case of Barry v Ginnity and others (Unreported , Naas Circuit Court , 13th April 2005 .) :

“ the truth is that the law will demand a level of fair procedures which is sufficient in all 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 . One cannot be more specific than that from case law . “

Dara Byrne

30th June 2010