

Disputes Resolution Authority

An Córas Eadrána

**In the Matter of the Arbitration Acts 1954-1998
And in the Matter of an Arbitration under the Disputes Resolution Code of the
GAA**

Between

Christina Ingram (on behalf of Ryan Ingram)

[Claimant]

And

**Sean Óg Caidin (mar iondaí ar son Bórd na nÓg Coiste Contae Fhearmanach) agus
Gréagoir Ó Ceáúaigh (mar iondaí ar son Coiste Contae Fhearmanach CLG)**

[Respondents]

DRA 36/2006

This is the first and final award of the Tribunal of three persons – Jack Anderson, John McConnell and Michael Flanigan – selected, pursuant to section 5 of the Dispute Resolution Code, from the Dispute Resolution Authority's Panel to hear and determine the above matter.

WHEREAS:

The claimant's son was sent off at the end of a Co. Fermanagh U16 Championship game between his club, Tempo, and Roslea on 14 August 2006 for allegedly hitting the referee. As a result of a meeting of the Executive of Bórd na nÓg Coiste Contae Fhearmanach ("Fermanagh Bórd na nÓg") on 21 August 2006, Ryan Ingram was suspended from all competitions for 48 weeks, reduced on grounds of his age to 24 weeks from the date of the match. On 28 September 2006, Coiste Contae Fhearmanach CLG ("Fermanagh County Management Committee") notified Ryan Ingram that they had considered his application to appeal against the decision of the Fermanagh Bórd na nÓg, dated 11 September 2006, on foot of which they asked him to attend the next meeting of the Fermanagh County Management Committee on 16 October 2002. Ryan Ingram was further notified that in attending that meeting, he could be accompanied by an officer or member of his club.

At that meeting of the 16 September, Ryan Ingram was accompanied by Tempo club Youth Officer Paul McCann. Ryan Ingram denied the charge of assault on the referee after the match in question and contended that Fermanagh Bórd na nÓg had made two

procedural errors in administering his suspension, namely a breach of Rule 146 (c) and Rule 146 (d) of the Official Guide of the GAA (2006). After the Vice-Chairman of Fermanagh Bórd na nÓg, Mr. Tommy Curry, who had sat in the suspension of Ryan Ingram, left the meeting, Fermanagh County Management Committee decided to seek further evidence before reaching a decision at its next meeting. At its next meeting, on 2 November 2006, Fermanagh County Management Committee dismissed Ryan Ingram's appeal holding that Fermanagh Bórd na nÓg's suspension breached neither Rule 146 (c) nor Rule 146 (d).

The claimant, on behalf of her son, appealed that decision to this Tribunal, on three fundamental grounds. Firstly, the claimant argued that there was a breach of Rule 146 (c) by the Fermanagh Bórd na nÓg. Second, that there was a general breach of Rules 150-155 of the Official Guide of the GAA (2006) relating to the administration of objections, appeals and investigations. Third, that there was a breach by Fermanagh Bórd na nÓg of Ryan Ingram's right to natural justice and, similarly, a breach of the general duty of fairness in the manner in which the suspension was handled. Accordingly, the claimant sought the immediate uplifting of her son's suspension to allow him to participate in school and club teams, realising and understanding this to be an interim remedy only.

The initial Hearing of this case took place on 22 November 2006 at the Hill Grove Hotel Monaghan, wherein a preliminary matter was heard and an adjournment followed. The adjourned Hearing took place on 29 November 2006 at the same venue.

Having carefully considered the documents and submissions given, the Tribunal now presents its reasoned award setting out the evidence, reasoning on and result of each issue raised in difference between the parties.

REASONING

Initial Hearing

The respondents were not present at the initial Hearing of this case on 22 November 2006. However, by a fax dated the 22 November and furnished to the claimant, the respondents countered the claimant's request for arbitration by denying that the claimant had exhausted all available avenues of appeal under the Rules of the GAA ("the Association").

That contention is encapsulated in Part (iv) of the Preamble to the Disputes Resolution Code, which states:

"No member or the unit of the Association shall refer such Dispute to Dispute Resolution until all available avenues of Appeal under the Rules of the Association have been exhausted."

In specific reference, the respondents argued that the claimant should more properly have appealed the stated case to the Ulster Council pursuant to Rule 155 (b)(ii) of the Official Guide of the GAA (2006), which states:

“An aggrieved Club or individual shall have the right to one appeal against a decision on the point at issue as follows...if it is against the decision of a County Committee, the appeal is to the Provincial Council.”

On being presented with this argument at the initial hearing, the claimant suggested that both in substance and in form the investigations by the Fermanagh County Management Committee of 16 September and 2 November, were, in effect, hearings in appeal from the decision of first instance by the Fermanagh Bórd na nÓg. It followed that the integrity of Rule 155 (b)(ii) – that an aggrieved individual have one right of appeal only – was not breached.

The Tribunal sought to clarify, as a preliminary matter of urgency, the status of the Fermanagh Bórd na nÓg. This could only be done through a reading and interpretation of the County Fermanagh CLG Bye-Laws, no copy of which could be supplied. In order to facilitate its preliminary ruling, as to whether the Tribunal was in fact the claimant’s final avenue of appeal, the Tribunal sought to adjourn the hearing for a period of seven days. The claimant respectfully agreed to the adjournment, noting that respondents’ absence from the hearing, the lateness of their counter to the request for arbitration and the possibility that by hearing Ryan Ingram’s “appeal” on both the 16 September and 2 November, they, the respondents, might be estopped from denying the claimant’s right to request arbitration under the Disputes Resolution Code.

Adjourned Hearing

Both parties were in attendance at the adjourned Hearing of 29 November 2006. Again, the hearing focused on the preliminary matter as to whether the Tribunal was the proper forum to hear the stated case or whether the claimant should more correctly have exhausted all her avenues of internal appeal, specifically, in this instance, and pursuant to Rule 155 of the Official Guide of the GAA (2006), to the Ulster Council.

Submissions were taken from both parties on this preliminary issue. The claimant argued succinctly that the Fermanagh County Management Committee’s examination of the Ingram suspension was not a ratification of decision made by Fermanagh Bórd na nÓg but in form and substance, it was an appeal. Therefore, having exhausted their one right of appeal pursuant to Rule 155, the claimant, stated that she had exhausted her internal avenues of appeal and was now quite rightly present at the Tribunal. The respondent argued that the examination by Fermanagh County Management Committee of the Ingram suspension might well be deemed an appeal, but that during the course of that examination new and material evidence had come to light to the extent that the matter as a whole was now an novel investigation that should consistently be appealed to the Ulster Council.

On taking these initial submissions, the Tribunal pointed out to both parties that section 4 of the County Fermanagh CLG Bye-Laws (“the Bye-Laws”) provided for a number of Sub-Committees appointed by Fermanagh GAA’s County Committee. For instance, section 4.2 of the Bye-Laws provided for a 10-member Games Administration Committee (“GAC”). Section 4.2 laid down the responsibilities of the GAC (“for all

fixtures and disciplinary matters arising from games”), the membership of the GAC and, crucially, that “Plenary powers shall be delegated to the Games Administration Committee.” In contrast, section 4.8 of the Bye-Laws, while stating that the Fermanagh Bórd na nÓg – referred to interchangeably as a Youth Sub-Committee – is to be “responsible for the initiation and coordination of all youth activities”, and further providing for the membership of this Youth Sub-Committee, section 4.8 nevertheless remained silent as to that Committee’s powers.

The Tribunal put it to the respondents that if the Bye-Laws required the Fermanagh Bórd na nÓg to have plenary powers of the type expressly retained by the GAC, the Bye-Laws should have done so. The respondents submitted that section 4.8 did however provide that Fermanagh Bórd na nÓg be responsible for the coordination of “all” youth activities within the County, which must, by implication include plenary powers. Moreover, the respondents noted, and it was not contested, that within the affairs of Fermanagh GAA, Fermanagh Bórd na nÓg had long operated in a plenary fashion. The claimant further noted that it was not her intention to question the authority of Fermanagh Bórd na nÓg to suspend Ryan Ingram and that she was prepared to proceed with the substantive issues.

Final Consideration

The Tribunal takes the view that customary practice of the type argued by the respondents is not necessarily best practice. Rule 60 (a) of the Official Guide of the GAA (2006) provides:

“The County Committee shall also have the following powers...to form Divisional Sub-Committees and other Sub Committees (e.g., Football, Hurling, Minor and Youth Sub-Committees, whose functions and powers shall be defined in County Bye-Laws.”

The Tribunal finds that section 4.8 of the County Fermanagh CLG Bye-Laws cannot be reconciled with Rule 60 (a) of the Official Guide of the GAA (2006). Plenary powers were not expressly granted to Fermanagh Bórd na nÓg. If the respondents wished to grant such powers to its Youth Sub-Committee, they should have done so expressly within the overall terms and context of the County Fermanagh CLG Bye-Laws, as had been done for the GAC.

In sum, the suspension of the claimant’s son was *ultra vires* or outside the powers of Fermanagh Bórd na nÓg.

DECISION

The Tribunal awards and determines that the reliefs sought by the claimant be granted with immediate effect in full and final satisfaction of all claims and counterclaims by each of the parties against the other in the matter of this arbitration. The Tribunal, having determined the application on the preliminary point, was not required to make a finding in relation to any other issue or issues in the claimant’s application.

The Tribunal awards and determines that the expenses of and incidental to the arbitration herein be divided equally among the parties.

The claimant applied for costs against the respondent. In accordance with section 11.2 of the Dispute Resolution Code, save in exceptional circumstances to be set out in writing by the Tribunal the Party deemed by the Tribunal to have been successful shall on application be entitled to its reasonable costs. In this instance, the Tribunal holds that the by reason of the fact that the application was dealt with on a preliminary point, and that the Tribunal had invited submissions on the powers delegated to the Youth Committee, that there were exceptional circumstances in this case and that the correct order was that each side should bear their own costs in the matter.

Signed:



Jack Anderson



John McConnell



Michael Flanigan

Dated: 29 November 2006, Monaghan.