

DISPUTES RESOLUTION AUTHORITY

No. DRA/04/2013

IN THE MATTER OF THE ARBITRATION ACT, 2010

Between:

Aidan Griffin

Claimant

-and-

**Cosite Eisteachta Cill Dara &
Coiste Cheannais na gComortaisi Contae Cill Dara**

Respondents

DECISION

BACKGROUND

The Claimant was granted a transfer from Ardclough CLG to Kill CLG following a hearing by the Kildare Competitions Control Committee on the 25th March 2013. This decision was subsequently appealed by Ardclough CLG to Kildare Hearings Committee on the 29th March 2013, where following a further hearing, decided to allow the appeal in favour of Ardclough CLG and thus, refuse to grant the Claimant a transfer.

DECISION

A Hearings Committee when sitting as an appellate body and can only set aside the decision of a Competitions Control Committee ('CCC') if an appellant, in this case, Ardclough CLG, has established that the CCC, that is, Kildare CCC, in the first instance, clearly misapplied a rule or breached natural justice and/or fair procedures in arriving at their decision.

Rule 6.5 (e) T.O. (2012) states "The Competitions Control Committee shall make its decision in accordance with Rule and the County's Transfers Bye-Law and any *discretion* available to it shall be exercised having regard to the submissions of the transfer applicant and his existing Club, such other discretionary factors as may be provided for in Bye-Law and the ethos of the Association." (*italics our emphasis*)

The task of the Hearings Committee when sitting as an appellate body, is to adjudicate if rules were breached in exercising that 'discretion' or there was an

unfairness or breach of natural justice. In this case it was not suggested by any party that there had been any breach of fair procedures or natural justice by Kildare CCC.

The test to be applied by an appellate body in reviewing the exercise by the CCC of its discretion is known as the 'reasonableness' or 'irrationality' test.

This test is best set out in the decision of Henchy J in *State (Keegan) v Stardust Compensation Tribunal (1986)*:-

'I would myself consider that the test of unreasonableness or irrationality...lies on considering whether the impugned decision plainly and unambiguously flies in the face of fundamental reason and common sense. If it does, then the decision-maker should be held to have acted *ultra vires*, for the necessarily implied constitutional limitation of jurisdiction in all decision-making which affects right or duties requires, *inter alia*, that the decision maker must not flagrantly reject or disregard fundamental reason or common sense in reaching his decision.'

In this case Kildare Hearings Committee decided that Kildare CCC had breached Rule 6.5(e) T.O by giving insufficient weight to the ethos of the association in arriving at its decision. However the subjective opinion of the Hearings committee on the question of insufficient weight attaching to the ethos of the Association does not satisfy the test set out above. The decision made by the CCC was a decision open to them having regard to the facts of the case. There was nothing irrational or unreasonable about it.

Therefore, the unanimous decision of this tribunal is to remit this case to a newly reconstituted hearings committee for re-processing as soon as possible. Suffice to note that the appeal of Ardclough CLG (who are a notice party to these proceedings) to the newly constituted hearings committee is limited to the those grounds as previously raised in their correspondence of the 27th March 2013.

In relation to the issue of costs, the Tribunal makes this decision in accordance with Rule 11.2 of the DRA Code. It is further noted that sole discretion regarding any award of costs rest with the Tribunal. As costs "*follow the event*", the successful party is entitled to have his costs paid by the unsuccessful party.

In that regard, the Claimant is entitled to have his costs paid by the second named Respondent.

All costs and expenses of the Disputes Resolution Authority shall be discharged by the second named Respondent. The deposit paid by the Claimant shall be refunded to him.

Dated this 24th April 2013 at Johnstown House Hotel, Enfield.

Signed:

Aoife Farrelly

John Healy

David Nohilly