DISPUTES RESOLUTION AUTHORITY

Record No. DRA/4/5/2006

Between:

Dermot Carlin

And

Paul Rafferty

Claimants

-and-

Liam O'Maolmhicil

(ar son the Central Appeals Committee),

And

Donal McAnallen

(ar son an Comhairle Ardoideachais)

Respondents

DECISION ON COSTS AND EXPENSES

Background

1. On or about the 15th day of February 2006 the substantive decision in these proceedings issued. In that decision, the complaint by the Claimants that the Respondents had wrongly applied Rule 31 of the Constitution of an Comhairle Ardoideachais was upheld. The parties had indicated that, should that be the determination of the Tribunal, they wished the Tribunal to exercise its function as an appellate body under Rule 11.4 and conduct the procedure that had been quashed. The Tribunal therefore assessed whether the Claimants should be given permission to play for University of Ulster Jordanstown (UUJ) and concluded by a majority that they should not, which decision coincided with the impugned decision of the Respondents herein.

2. This decision concerns the costs and expenses arising from the hearing of those proceedings. Both the Claimants and the Respondents have made an application for the costs of the hearing and have submitted that the other party should discharge the costs and expenses of the Disputes Resolution Authority

Legal Costs

3. It is within the absolute discretion of the Disputes Resolution Authority to determine the issue of costs (section 29 of the Arbitration Act 1954 (as amended). The Disputes Resolution Code is silent on the issue of costs. The only guidance offered by the Code is to be found at paragraph 7.7 thereof. It states:

> "If any party deliberately or recklessly misleads the Secretary or the Tribunal as to any facts relevant to the dispute or referral, the Tribunal may dismiss their Claim or strike out their Reply and make punitive awards as to costs."

4. No such "deliberate or reckless" misleading of the Tribunal occurred in this case which was conducted by both parties in an appropriate manner, and therefore the Rule does not provide much assistance in this instance.

5. The normal rules of procedure may therefore be deemed to apply, and the normal rule is that, as submitted by the Claimants, "costs follow the event." The issue then is to determine what the event is. The Claimants contend that they 'won' the case, because the impugned decision was quashed. The Respondents claim that they 'won' the case, because, in exercising its appellate function, this Tribunal arrived at the same decision had the Respondents.

6. The Claimants were entitled to a fair procedure in their application to the Respondents to be permitted to play for UUJ. This they did not receive, because the Respondents wrongfully fettered their discretion in determining that question. It is the Tribunal's view that the Claimants should not be penalised on costs

because it was required to make an application to this Tribunal in order to have a fair determination of their application. Nor should they be penalised for agreeing to submit to the appellate jurisdiction of this Tribunal – had they not done so, they would undoubtedly have been entitled to their costs, and would have put the other parties to even greater convenience and expense.

7. In all the circumstances, it is the Tribunal's view that the Claimants should be entitled to their costs.

Expenses

6. It is our understanding that the costs of the Dispute Resolution Authority must be met by the parties to any claim. In the circumstances of this claim, we determine that the Respondents should discharge the costs and expenses of the Tribunal.

Dated this 9th day of October 2006

Signed: Peter Quinn, David Murphy, Rory Mulcahy