

**DISPUTES RESOLUTION AUTHORITY
An Coras Eadrana**

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

FINAL DECISION

1. Background

The Claimants are students of the North Down and Ards Institute of Higher and Further Education (NDAI). The NDAI does not have a Gaelic football team and prior to the deadline on 31 October 2005, the Claimants applied to an Comhairle Ardoideachais (CA) for permission to play for the University of Ulster Jordanstown (UUJ). Their application was considered by an Coiste Feidhmiúcháin (CF) and the Claimants were refused permission to play and they were informed of this by letter dated 5 December 2005. The Claimants lodged an appeal with the Central Appeals Committee (CAC) and this appeal was heard and determined on 17 January 2006 and the CAC upheld the decision of the CA.

The Claimants submitted a request for dispute resolution on 24 January 2006, naming the Games Administration Committee (GAC) as Respondent claiming a breach of Rule 31 of the Constitution of an Comhairle Ardoideachais (CA) insofar as they had wrongly been deemed ineligible to play for the University of Ulster Jordanstown (UUJ).

The Claimants brought applications for a number of interim reliefs on 3 February 2006 seeking to have the CA joined to the proceedings as co-Respondent and also seeking permission to play in UUJ's game in the Sigerson Cup on 8 February 2006. The CA was joined as a co-Respondent and the title of the proceedings were also amended to reflect the fact that the CAC rather than the GAC were the correct first Respondent. The Claimants were refused permission to play on an interim basis, and the hearing date for the substantive hearing was confirmed for 13 February 2006 and exchange of pleadings was directed.

2. Proceedings

Evidence was heard from both Claimants who had both previously been students at, and played football for UUJ, but had opted to leave UUJ to take a HND course in NDAI. Both students had attained the necessary credits to transfer to the degree course in UUJ when they complete their HND courses, and both expressed their clear intention to so do. Paul Rafferty also indicated that he had played in the McKenna Cup for UUJ this year.

Both Claimants produced a number of student cards. Dermot Carlin had three cards. The most relevant was a card which was from the University of Ulster. Paul Rafferty had the same three cards, and also a card issued by NDAI which Mr Carlin stated he had not applied for this year.

Both Claimants stated that the University of Ulster card enabled them to access the library in UUJ and to borrow books as well as allowing them to use a variety of other facilities including sporting facilities. The card indicated that the Claimants were members of the sports union. The Tribunal was also shown the equivalent card of a

student (Philip Mooney) studying in UUJ for comparison purposes. The cards were similar, black writing on a white background, displaying student number, the academic year etc. The University of Ulster symbol was embossed on Philip Mooney's card, and the words "STUDENT CARD" formed the background to his card, where the Claimants' cards had a blank background. A further distinction was that where Mr Mooney's card indicated the course he was studying and that it was in UUJ, the Claimants' cards simply stated NDAI.

Mr John Farrell, President of the Gaelic Football Club in UUJ then gave evidence on behalf of the Claimants. He indicated that sports union membership was limited to full-time students of the University of Ulster or students of an associate college. He made it clear that while access to the sports centre was available to non-students, that was a different matter than being a member of the sports union.

Under cross-examination, Mr Farrell doubted the figure put forward by the CA that 121 inter-county players studying at the Belfast Institute of Further and Higher Education (BIFHE) had played for UUJ between the years 1992 – 2002. He was questioned about his evidence that the reason that BIFHE players had stopped playing for UUJ was the number of applications had dropped off and agreed with Donal McAnallen for the CA that in fact there had been a number of applications in the seasons from 2002 to 2004. He agreed with Mr Fenelon for the CAC that the Claimants had been given a fair hearing of their appeal by the CAC.

The Tribunal asked Mr Farrell why all the references in the documentation provided were to the University of Ulster rather than UUJ. His evidence was that the University of Ulster was made up of a number of campuses but that the NDAI had an association with UUJ in particular.

On behalf of the CA, Mr Brian Slavin, Secretary of the GAA Club in BIFHE gave evidence. He indicated that the club was now in its third year, that it had one team with approximately 35 players, and they had just won Division Two. He indicated that the club

had expressed an interest in recruiting players from NDAI and a number of individuals had been contacted and though they showed interest it had come to nothing. He stated that it was not unrealistic that NDAI players would end up playing for BIFHE, and in fact, BIFHE were interested in this coming about.

John Devanney of the CA then gave evidence. He stated that he had been part of the constitutional sub-group which had brought the revised code for the CA before Congress. He said that they had looked at the position regarding playing for colleges other than the one that a student was attending. He said that the exceptions to the restriction in Rule 31 of the Constitution of the CA on players' eligibility to play for colleges with a team in Roinn One were there to ensure that no player would be left unable to play at all. He said the restriction relating to Roinn One teams was to ensure that the Rules were not used to simply make strong teams stronger and to encourage the development of Gaelic games in smaller colleges and those without teams.

He said that the CA had looked at the applications from the Claimants, and noted that UUJ had a team in Roinn One and therefore they had formed the view that it wasn't appropriate to permit the transfer. He indicated that there were 30 applications for permission to play with colleges with Roinn One teams this year and that all had been refused, although most had been unsuccessful as the player did not meet the full-time student requirement. He said that the CA were applying the rules in order to assist in the development of Gaelic games in colleges.

In response to questioning from the Tribunal, he stated that the CA operated a policy of refusing applications to play for colleges with Roinn One teams. He said that they had not considered the three exceptions in considering the Claimants applications because they had deemed the application inappropriate. He said that they would have had to consider those factors only if they deemed the application appropriate, and would then have had to deem the application appropriate for one of the three reasons.

3. Submissions

Mr O'Hare on behalf of the Claimants made a number of submissions. In the first instance he submitted that as the decision on the eligibility of the Claimants had been made by an Coiste Feidhmiúcháin (CF), the decision had been made *ultra vires* as Rule 11(c) of the Constitution of the CA provided that the CA adjudicate on eligibility.

He further submitted that the decision was in breach of the requirement under Rule 11 of the Official Guide that all correspondence bear the name of the Secretary.

In relation to Rule 31 of the Constitution of the CA, he submitted that the players came within all three of the exceptions provided for under sub-clause (d). He submitted that in those circumstances, the CA had no discretion and that the players' applications had to succeed. He submitted, in the alternative, that if there was a discretion to refuse an application even in the event that a player came within one of the exceptions, then the CA had failed to exercise that discretion in accordance with fair procedures and natural justice.

Mr McAnallen for the CA submitted that this was not a matter of policy, it was a matter of legality. The question about Rule 31 was about the exercise of a discretion.

He submitted that the challenge to the jurisdiction of the decision-maker was met by having regard to the Irish language version of the rule which had primacy. He submitted that the reference to the CA in the English language version of the rule was a mistake and that it was not reflected in the Irish-language version. He pointed out that the argument based on Rule 11 of the Official Guide was being made for the first time in the Claimants oral submissions, but that in any event, the requirement to have the secretary's name only referred to official lists of players for games.

With regard to Rule 31, he submitted that if there was no discretion there would be no need for the reference to the CF in the rule. He referred to an earlier decision of the DRA (DRA/2/2005) in which the Tribunal had accepted the wide discretion the County Committee had in relation to transfers. He further submitted that the UUJ was not a 'parent' college to NDAI within the meaning of Rule 31.

The parties were asked whether, in the event that the Tribunal found that there had been a misapplication of Rule 31, they wished the Tribunal to carry out its functions pursuant to Article 11(4) of the Dispute Resolution Code and to conduct the procedure to be quashed, *i.e.* determine whether the Claimants should be given permission to play for UUJ. All parties agreed that the Tribunal should so exercise its function pursuant to that Article.

4. Decision

Rule 11 of the Constitution of an Comhairle Ardoideachais provides:

“Subject to the overall jurisdiction of Comhairle Ardoideachais, the powers and functions of an Coiste Feidhmiúcháin shall be:

- (c) Subject to Rial 32(d), Treoraí Oifigiúil 2003, the CA will adjudicate on all issues of eligibility to play on 3rd Level (Higher Education) Teams.”

The Irish language version of sub-paragraph (c) provides:

- (c) “gach ábhar dlísteannachta a bhreithniú do mhic léinn le himirt d’fhoirne ardoideachais, faoi réir Rial 32 (d) den Treoraí Oifigiúil (2003).”

Rule 31(d) of the Constitution provides:

“An applicant under this rule shall not be allowed to play for a CA Club which has a team in Roinn One competitions, unless deemed appropriate by An Coiste Feidhmiúcháin for one of the following reasons:

- (i) he has a current and valid student card of the (parent) college for which he applies to play;
- (ii) the college at which he is registered and studying and the college for which he is applying to play are of equivalent size and academic remit;
- (iii) there is no CA Club in the relevant sporting code in proximity of the college/institute at which the applicant is registered and studying.”

i. Was the decision reached ultra vires?

The decision to refuse the Claimants application was made by an Coiste Feidhmiúcháin which is the committee through which the CA acts. In fact, the CA only acts as a body in its own right at its Annual Congress.

However, the English language version of Rule 11(c) provides that it is for the CA to determine the eligibility of players and the Claimants thus submit that the wrong body determined their application. The Tribunal does not accept this submission. The Irish language version of the same rule makes it clear that it is the CF which must decide on eligibility, and under Rule 9 of the Official Guide where there is a conflict between the English and Irish versions of the Rules the Irish language version prevails. The decision was therefore reached by the correct body.

Similarly, the Tribunal reject the submission that Rule 11 of the Official Guide was breached in that the notice of the decision sent to the Claimants on 5 December 2005 was not signed by the Secretary of the CA. The requirement to have the name of the Secretary on correspondence clearly only applies to official lists of players for games and the Rule has no application in this case.

ii. *Was there a misapplication of the Rule?*

While the parties to the Tribunal submitted that wording of Rule 31(d) was clear, the fact that they nonetheless argued for different interpretations of the Rule suggest that there is some room for debate as to the meaning of the Rule.

The key issue, in the view of the Tribunal, was whether the CF had a discretion to refuse an application in the event that one of the three criteria listed was satisfied. There are persuasive arguments for suggesting that there is no such discretion. The reference to three specific scenarios in which the general rule (that players shall not be eligible to play for colleges with Roinn One Teams) does not apply suggests that satisfying one of those exceptions would determine the issue. And the phrase “unless deemed appropriate for one of the following reasons” is capable of an interpretation whereby the CF would be required to deem an application appropriate. The CA argue that if there were no discretion then there was no necessity for the reference to the CF. However, even in the absence of a discretion to refuse, the CF still has a role in determining whether any of the three criteria are satisfied.

The difficulty in determining a clear meaning from this Rule is reflected in the fact that the Tribunal has found only by a majority that the CF do have a discretion to refuse an applicant who satisfies one of the three criteria. In simple terms, the majority of the Tribunal are of the view that the expression “unless deemed appropriate” has inherent within it the possibility that the CF could deem an application inappropriate.

Whether there is a discretion or not is of course only of significance if one of the criteria is satisfied. The majority of the Tribunal are of the view that the third criteria is satisfied, that is, that there is no CA Club proximate to the Applicant’s college. Although a great deal of evidence was heard regarding the association between UUI and NDAI and the consideration of the Claimants student cards, the Tribunal were not satisfied that UUI were a parent college of NDAI and thus the first criteria was not met. However, it is clear

that only one of the criteria must be met to bring a student outside the scope of the general prohibition on applications to join colleges with Roinn One Teams.

Having determined that the CF had a discretion and that it was required to exercise that discretion, the next issue to determine is whether the CF properly exercised the discretion. The Tribunal members are unanimously of the view that it did not.

Rule 31(d) has a slightly unusual structure. It provides an exception to the general rule permitting students to apply to the CF play for a third level college other than his own if his college does not have a team. Under Rule 31(d), the CF will refuse such an application if the college that the student applies to play for has a Roinn One team. However, sub-section (d) also applies exceptions to this exclusion which the CF should apply where "deemed appropriate." How then should the CF apply its discretion in order to determine what is "appropriate"?

It is the view of the Tribunal that the CF in exercising its discretion under Rule 31(d) *must* have regard to whether an applicant falls within one of the three exceptions. The process involves a number of steps. First, the CF must assess whether the college applied to play for has a Roinn One Team. If so, then the CF must consider whether the student falls within one of the exceptions to that Rule. Finally, if the student does fall within one of the exceptions, and is thus *prima facie* entitled to be permitted to play for the college he has applied to play for, the CF should only then consider whether it is appropriate to permit the student to play. It is absolutely clear that since Rule 31(d) permits of the possibility of a student being permitted to play for a college with a Roinn One Team it is not legitimate for the CF to operate a fixed policy of refusing applications to play for colleges with Roinn One Teams.

It is not possible to give an exhaustive list of factors which the CF may have regard to in determining what is appropriate. Foremost, however, must be the particular circumstances of the students who have applied to play. The CF are also entitled to have

regard to the purpose of the CA and the CF. In this regard, Rule 2 of the Constitution of the CA is relevant:

“The aims of the council shall be:

- (i) To further the aims of Cumann Lúthchleas Gael in Colleges and Institutes of Higher Education through the development, administration and promotion of Gaelic games and pastimes.”

Although the Tribunal accept that the CF's discretion was not limited to considering the three exceptions, and in fact, having regard to the general nature of the aims of the CA, it may be argued that the CF had a wide discretion to consider a broad range of factors, we are of the view that the discretion has not been properly exercised. The clear evidence of the Respondent was that it had operated a policy of refusing applications to play for colleges with Roinn One Teams. Moreover, it was the clear evidence that the CF first considered the question of whether it was appropriate to permit the Claimants to play, and having deemed it inappropriate on the basis that UUJ had a Roinn One Team, it did not consider it necessary to consider whether the Claimants fell within any of the exceptions.

Such an approach results in the CF ignoring one of the most important factors in determining the Claimants application, that is the personal circumstances of the Claimants. The CF's application of the Rule effectively resulted in it looking at the question of whether it was appropriate to permit the Claimants to play from the starting point that they were not permitted (because UUJ has a Roinn One Team), when in fact, it should have been considering the question from a starting point that they were permitted to play (because they fell within one of the exceptions to the more general rule). The Respondent may have been correct in its submission that the CF had a discretion as to whether to permit the Claimants to play or not, but that discretion can only have been exercised after *first* determining whether the Claimants qualified to play, *i.e.* whether they came within one of the three exceptions to Rule 31(d). The CF wrongfully purported to exercise its discretion without first making such an assessment.

For the reasons set out above, we find that the Claimants case that there was a misapplication of Rule 31 has been made out and the decision that the Claimants application should be refused is therefore quashed.

iii. Should the Claimants be deemed eligible to play for UUJ?

The parties agreed that the Tribunal, in the event we determined that there had been a misapplication of Rule 31, should conduct the procedure which we have quashed. It therefore falls to us to determine whether the Claimants should be permitted to play for UUJ.

As we have determined that the CF had a discretion in whether to permit the Claimants to play even in the event that they qualified to play for the college which they had applied to play for, we must consider what factors have a bearing on the exercise of that discretion. In this regard, the Tribunal are of the view that our function in carrying out the procedure which we have quashed is to put ourselves in the position of the body responsible for making the decision. In other words, we must put ourselves in the position of the CF and have regard to the factors, insofar as they have been identified to us by the parties, to which the CF ought to have had regard.

As stated above, we are of the view that one of the most important factors to consider is the personal circumstances of the Claimants. In this regard, the fact that they attend NDAI which clearly has an association with the University of Ulster, the fact that they have previously attended (and played for) UUJ and went to NDAI with a view to returning to UUJ are relevant. Moreover, both Claimants have the necessary credits to attend UUJ next year and gave evidence that it was their intention to so do. The links between NDAI and UUJ, and the history of NDAI students playing for UUJ are also noteworthy.

It was a clear part of the CF's consideration that the Claimants, and other students from NDAI, could play for BIFHE which does not currently have a Roinn One Team. The absence of any existing link between NDAI and BIFHE is of course of significant in this regard. We also note the letter submitted with the Claimants claim from Brian Henry, Director and Chief Executive of NDAI which states that he "will not permit our students to represent another FE College." It is, however, difficult to understand how or why this could be so and no formal evidence was adduced to support this contention.

On the other side was the evidence of Brian Slavin from BIFHE to the effect that students from NDAI would be more than welcome in BIFHE's GAA club. Moreover, BIFHE is in fact physically closer to NDAI than UUJ.

In addition, we must have regard to what may be called the 'global' concerns of the Respondent – to promote Gaelic games, to ensure that as many people as possible have the opportunity to play Gaelic games, and to ensure that the Rules are not applied in a way which permits the strong clubs to get stronger, undermining smaller clubs, or preventing smaller clubs from even being set up.

The balance is a difficult one to draw, and given the particular circumstances of these Claimants, the Tribunal has found it difficult to reach a consensus. Of great concern to the Tribunal is that our decision does not have the effect of making it impossible for the Claimants to play football. However, the right to play for football for a particular college is generally a privilege which goes along with having qualified to study at that college. Whatever the Claimants connection to UUJ, and it is a substantial connection, they are not students of the college, and thus are not entitled as of right to play there.

If the Tribunal had been satisfied that the Claimants would genuinely be unable to play football anywhere other than UUJ if they sought to so do, then our majority decision may have been different. However, we are not so satisfied on the evidence before us, and thus by a majority we have determined that the Claimants should not be given permission to play for UUJ in the 2005/2006 season.

We trust that it is clear from our decision that it was based on an assessment of all the factors which applied to the Claimants case, and is not based on any fixed or pre-determined policy that players should not be given permission to play for Roinn One Teams. If, for instance, it should emerge that there is some insurmountable barrier to the Claimants or other students being able to play for BIFHE, our decision may have been different. This is not to suggest that NDAI could manufacture a situation in which its players could not play for BIFHE in order to force the CF to permit them to play for UUJ.

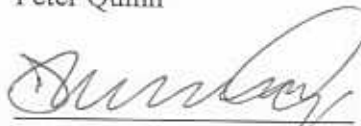
For all of the above reasons, notwithstanding the fact that the Claimants have succeeded in their case that Rule 31 was misapplied by an Coiste Feidhmiúcháin, the Tribunal, by a majority, does not deem it appropriate that the Claimants be given permission to play for the University of Ulster Jordanstown in the 2005/2006 season.

Dated this 15th day of February 2006

Signed:



Peter Quinn



David Murphy



Rory Mulcahy