

DISPUTES RESOLUTION AUTHORITY

DRA 05/2010

Cumman Peile Athar O'Griofa Èire Òg

(Claimant)

AND

Coiste Chontae NaGaillimhe

(Respondent)

**In the matter of the Arbitration Acts 1954-1998
and in the matter of an Arbitration**

AWARD

Introduction

This Arbitration claim initiated by the Claimants came before this DRA Tribunal sitting on 20th May 2010 at the Hudson Bay Hotel, Athlone, Co. Westmeath.

The claim arises out of a decision of the Respondent (Galway County Board) to accede to a request from a young player and member of the Claimant club to transfer from that club to an adjoining club, St. James club.

It is asserted by the Claimants that this consent to transfer should not have been granted for the reasons set out by the Claimants in their submission and it is further asserted by the Claimants that the consent to the transfer is in breach of the bye-laws of Coiste Chontae Na Gaillimhe, specifically Bye-law 13, and further is in breach of rules 6.1, 6.3 and 6.8 of the GAA Official Guide 2009.

The Respondents deny the claim and assert that they acted properly and within their rights in granting the transfer request.

Background.

A. The player in question is Christian Lomboto and he joined the Eire Og Club in 2003. At the time Christian joined this club in 2003 it was not a thriving club. The club members and committee were aware of this as also was the Galway County Board. In January and February 2007 discussions were initiated between the Club and the Galway County Board and as a result of these discussions the Èire Òg club amalgamated with an adjoining Club, Fr. Griffins club in Galway and this resulted in the formation of a new club which was called Fr. Griffins Èire Òg. All members of each club automatically became members of the new club.

Coincidentally with this amalgamation the Galway County Board was also involved in discussions with two other Galway juvenile clubs, namely Renmore and Mervue and as a result of these discussions these two clubs also amalgamated with each other to form St. James club.

It appears that as part of these latter discussions which led to the formation of the St James club, an area in Galway was in effect given as a catchment area to this new club, and that area included the Sean Bhaile area in Galway.

At the hearing of the Arbitration there was a matter of some disagreement between the parties as to whether or not the area known as Sean Bhaile was an established catchment area for Èire Òg or not. It was the contention of the Claimants that that area of Galway had long been part of their traditional catchment area and they assert that they were not made aware at the time of their amalgamation negotiations that that particular area was to be ceded to St. James club.

The Respondents did accept that the area would have been traditionally recognized as an Èire Òg area but claimed that that area was not being utilized by Èire Òg club at the time that the amalgamations were being considered.

The Respondents described the area as being “no mans land” because up until a number of years ago there was very limited population in the area and Eire Og were not actively recruiting members from that area.

The Respondents did accept the principle that to give a catchment area to one club of necessity involves taking it from another club and the Respondent did not assert that this area was an established catchment area of any club other than the Claimant club.

B. The player in question, Christan Lomboto, joined the Èire Òg club in 2003 at which time he, with his family, lived in Tirellan, Galway. Christian started playing at the under 10 level. In late 2004 or early 2005 Christian and his family moved to the area of Galway known as Sean Bhaile. This did not affect his membership of the Club and he continued to play with the club, playing at various levels until the end of 2009. He was by all accounts a gifted player and he received a lot of support and mentoring from the club over the years.

C. At the end of 2009 and early 2010 Christian Lomboto indicated to the Claimant club that he wished to transfer from the Claimant club to St. James club. In spite of attempts to

persuade Christian otherwise he had made up his mind and he subsequently set in train the process to apply for a transfer. On the 18th February 2010 a copy of a transfer application from Christian was sent to the secretary of the Fr. Griffen Èire Òg club by the secretary of the Galway Board.

The response of the Claimant club was to indicate their opposition to the proposed transfer on two grounds namely, that the proposed transfer was in breach of Bye-law 13 and also on the basis that as part of the amalgamation discussions in 2007 a commitment had been received by the two clubs from the Galway County Board that the Board would not give consent to any juvenile transfers from the new Fr. Griffen Èire Òg club to any other club in the city.

Notwithstanding this objection the Galway County Board gave its consent to the transfer. It appears that the fact of this consent was not transmitted to the Fr. Griffen Èire Òg club and the first they knew of the consent was when Christian himself informed the coach of the minor team on the 29th March 2010 that the transfer had been approved by the Board.

The reason given by Galway County Board for their approval of the transfer request was that the player, Christian, had changed residence since he began playing with the Èire Òg club and was now resident in the St. James club area and the Transfer was therefore in conformity with Bye-law 13.

Application of Rules.

The power of the County Board to consent or otherwise to a transfer is contained particularly in Rule 6.8 of the Official Guide 2009 and is quoted as follows:

“6.8 Transfers within County

- A. A County shall have a Bye-law governing the transfer of players from one club to another within the County.*
- B. A County bye-law may confine membership of a club to a catchment area, which may be a parish..... a catchment area shall be fundamentally based on permanent residence of players, subject to a player being entitled to play with his own club....*
- C. A player who wishes to leave one club to join another in the same County must apply to the County committee for a transfer.*
- D. A County committee has the right, acting within its bye-law, to grant or not to grant an application for transfer.”*

The relevant Galway County Bye-law quoted and relied upon by the Claimants reads as follows:

“13. Unless exempted by the County committee a player must continue as a member of the Galway city club with which he first played as a juvenile until he reaches the age of 18, unless his family changes residence in which instance he may be granted a transfer.”

This bye-law would appear to envisage that there are two circumstances in which a player can transfer to a different club and they are:

- (a) unless exempted by the County committee and ;

(b) unless his family changes residence in which instance he may be granted a transfer.

It is clear that the exercise of these two possible options is subject to the discretion on the part of the County committee.

At the Arbitration hearing the Respondents did not claim that this player was “exempted” by the County committee but rather relied upon the second ground, that is that the players family had changed residence and it was on this basis that the transfer was granted.

In relation to the Bye-law, specifically the second ground referred to above, there are a number of considerations.

Firstly, it is clear from the Bye-law that the event which gives rise to a possible right to a player to transfer is if the family changes residence.

Secondly, it is the view of the Tribunal that the words “*unless his family changes residence*” referred to in the Bye-law implicitly mean that the change of residence be to a different club catchment area.

It is important to note that in this case when this event took place, that is when the family did change residence, the new residence was not in the catchment area of any club other than the Claimant club, and consequently that move of residence of itself did not entitle the player to a transfer under Bye-law 13 at that time. At the time of moving residence in 2004/2005 the player was not moving residence to a different club catchment area.

Even on the Respondent’s evidence in relation to the catchment area rights to Sean Braille, it is clear that at the time of the change of residence these catchment area rights were not owned by or assigned to any other club.

It is a fact that the change of residence in 2004/2005 was not a change of residence by the player into a new catchment area but in reality what happened over two years later, in 2007, was that the “catchment area” moved into the area in which the player was residing.

It is the view of the tribunal that even the most imaginative reading of Bye-law 13 cannot capture a situation where the player has not in fact moved residence to a different catchment but where the catchment area has in effect moved to where the player actually resides.

Accordingly it is the view of the Tribunal that the provisions of Bye- Law 13 as relied upon by the Respondents, were not applicable to the circumstances of this proposed transfer.

Having come to that decision the Tribunal does not consider it necessary to decide on the issues raised as to whether or not Galway County Board should or should not have granted the transfer in the light of the commitments which were asserted to have been given to the club at the time of the amalgamation discussions.

Decision and Award.

Having heard and evaluated all of the evidence and considered all of the issues the Tribunal is satisfied that in granting consent to the Transfer under Bye-law No 13 of the Galway County Bye-Laws the Galway County Board has misapplied the Rule and accordingly the Tribunal finds that the decision of the Respondent in that regard is null and void.

Costs.

The Tribunal heard the submissions of the parties in relation to costs. In the circumstances the Tribunal sees no reason to depart from the established rule that costs follow the event and accordingly awards the costs of the reference in favour of the Claimant as against the Respondent and directs that the Respondent shall also pay the expenses of the DRA.

Dated the 25th day of June 2010

Signed;

(Chairman) _____
Richard Kennedy

John Fay

Niall Cunningham