

DISPUTE RESOLUTION AUTHORITY

(An Coras Eadrana)

RECORD NUMBER – DRA05/2011

In the matter of the Arbitration Act 2010

Between

John Mitchells CLG

Claimant

And

Kerry County Board

First Named Respondent

and

Munster Council

Second Named Respondent

DECISION

INTRODUCTION:

1. Whereas the undersigned were appointed by An Coras Eadrana to act as arbitrators in the dispute between the parties as provided for in the DRA code and in accordance with the 2010 Arbitration Act.

2. A hearing was held at Kilmurry Lodge Hotel in the City of Limerick on the 22nd of June 2011 which was attended by representatives of the parties including but not limited to Counsel, Brid McElligot and Barry Tulgalton on behalf of the Claimant, Mr. Peter Twist, Secretary of the Kerry County Board who appeared on behalf of the first named Respondent and Pat Fitzgerald Secretary of Munster Council appeared on behalf of the Second named Respondent.

RELIEF SOUGHT:

1. The Claimant sought an examination of the application of Parish rule to the transfer of a player from one club to another club within the town of Tralee
2. The Claimant sought a direction as to whether the reference to a catchment area in T.O 6.8 included reference to a town as set out in the County Bye-laws.

BACKGROUND:

1. The claim related to the eligibility of a player by the name of Paul O'Donoghue originally of London, England and whose home club is Round Towers Clg.
2. Having seen a media interview with Mr. O'Donoghue, officials on behalf of the Claimant contacted him to see if he would be interested in playing Gaelic football for the claimant when he moved to Tralee, Co. Kerry to undergo a course of education at the Tralee Institute of Technology .Mr. O'Donoghue agreed to this proposal and the necessary transfer was granted to enable him to legally play for the Claimant. At all material times Mr. O'Donoghue was an adult player only with the Claimant.
3. Since Mr. O'Donoghue moved to Tralee, County Kerry, he has at all times lived in Main Street, Tralee, County Kerry in an apartment complex for students of the Institute of Technology in Tralee This complex is located in the St. John's Ecclesiastical Parish. Mr. O'Donoghue is still a student and living in the same complex as of the date of the hearing.
4. After playing three competitive seasons with the claimant, Mr. O'Donoghue sought and obtained a transfer to play for Austin Stacks CLG. This transfer was approved by the First Named Respondent despite the objections of Claimant. Mr. O'Donoghue has played league and championship fixtures for Austin Stacks since the transfer was granted and approved by the Kerry County Board.
5. Paragraph 20 section 1 of the Kerry Bye laws 2010 states as follows

“ A player may play only with a club in the parish, as defined in Rule 6.8 T.O 2010

(a) Where he resides

(b) Where he

(c) A player who resides or works in a town of more than one club may play for any club in that town subject to the following restriction:

“Players under 16 years of age in such town of more than one club shall not be allowed to transfer to another club in that same town, except in exceptional circumstances”.

(d) A player may play for his home club as defined in rule 6.3O.G2010

If no such club exists from the above list he may with the permission of the County Committee play with the nearest club or team to his place of residence or as directed

by County Committee. No deviations or derogations from above stated conditions are allowed without prior application to and permission of County Committee whose decisions are final and binding on all parties concerned.

6. "Paragraph 21 of the Kerry bye-laws deals with transfers within the County and paragraph 21.1.d states that for the purpose of this bye-law and in accordance with rule 6.8(b)O.G 2010 permanent residence shall mean the applicant for transfer most normally be resident on a continuous basis on the catchment area (parish) of the club to which a transfer is sought for a period not less than the entire previous playing season and must satisfy the CCC and County Committee to this effect".
7. The Claimant submitted that Mr. O'Donoghue resides in the St Johns Ecclesiastical Parish and was permitted to transfer to another parish without being able to show that he had moved residence to St. Brendan's Ecclesiastical Parish. The Claimant submitted that of the 4 clubs in Tralee town there is only one club which crosses parish boundaries . The Claimant set out that byelaw 20 (1) c refers to a town and that prior to 1980 Tralee town had only one ecclesiastical parish. The Claimant said on foot of that, that if the byelaw stands a player in the town can transfer to another club in the same town but not another parish. The claimant submitted that the most recent bye laws had been updated to reference the ethos of the GAA. The Claimant in response to questioning by members of the Tribunal submitted that no defined boundaries for the four clubs in Tralee exist.
8. On behalf of the first named Respondent Mr. Twist Submitted Rule 6.1 T.O. is a mission statement and is aspirational and that T.O.6.8a requires a county to have transfer byelaws. He also submitted that it was within the power of every club in the County of Kerry to contest all byelaws at the convention.
9. Mr. Twist stated that Tralee is a catchment area and is open area. Mr. Twist also stated that Tralee is one catchment area and Killarney is another catchment area and they are the only two areas to which the previously referred byelaw applies. He further stated the Parish Rule applies outside of Tralee and/or Killarney and that paragraph 20(c) of the Kerry County Byelaws 2010 refers specifically to a town.
10. Mr Twiss for the first named Respondent submitted that the Kerry County Bye-laws were approved by Croke Park whose bye law subcommittee cleared with them as being in compliance with An Treoir Oifigiuil in February of this year. The Claimant said the Player could have transferred to either of the other two clubs in the same ecclesiastical parish as shared with the claimant.

11. The relief sought by the Claimant in the request for arbitration requires this Tribunal to examine the application of parish rule to the transfer of a player from one club to another within the town of Tralee and to confirm whether reference to a catchment area in rule 6.8 TO includes the reference to a town as set out in the Kerry County bye-laws.

Paragraph 20.1(c) of the Kerry County Bye-Laws is clear and unambiguous in providing that a player who resides and works in a town of more than one club may play for any club in that town subject to a restriction regarding juvenile players. It is therefore clear to this Tribunal that parish rule does not apply within the town of Tralee and Kerry County Committee were entitled to grant the transfer to Mr O'Donoghue from John Mitchells to Austin Stacks Tralee.

The Teor Oifigiuil requires all Counties to have bye-laws governing the transfer of players from one club to another within that County and the Teor Oifigiuil permits a County bye-law to confine membership of a club to a catchment area which may be a parish. It is the view of this Tribunal that the permanent residents test set out in Kerry County Bye-Laws at paragraph 21(d) is a test for the purpose of a transfer from one catchment area (parish) to another and therefore does not apply to and is not binding within the town of Tralee.

12. The unanimous decision of the Tribunal was to reject the claim as the tribunal felt that the transfer was conducted in full compliance with the Rules of the Association, An Treoir Oifigiuil and the Kerry County Bye laws.
13. While it is the view of this Tribunal that the Kerry County Bye-Laws were unambiguous in relation to the application of parish rule and the existence of an open area within the town of Tralee, the members of the Association within Kerry could have greater clarity if the bye-laws simply stated that parish rule applies in Kerry in all areas except for the towns of Tralee and Killarney and that within the towns of Tralee and Killarney the permanent residence test as set out in paragraph 21(c) of the bye-laws does not apply for transfers from one club to another within those towns.

Dated 1st December 2011

Cian Kelly B.L., Chairperson

Emmett O'Brien

Noel Stephen Walsh