

DISPUTES RESOLUTION AUTHORITY

AN CORAS EADRANA

**IN THE MATTER OF AN ARBITRATION CONDUCTED PURSUANT TO THE
COURT OF THE DRA AND PURSUANT TO THE ARBITRATION ACT 2010**

Record No. DRA 08/2010 and 09/2010

Between:

KEVIN ANDERSON and RORY SIMPSON

Claimants

And

**CUMANN LUTHCHLEAS GAEL COISTE CHONTAE AN DUIN AGUS COISTE
CHEANNAIS NA gCOMORTAISAI AN DUIN**

Respondents

And

AGHADERG CUMANN LUTHCHLEAS GAEL

Notice Party

DECISION AND STATEMENT OF REASONS

Background and facts

This dispute involves the purported transfer of the Claimants from Aghaderg CLG to Annaclone CLG. Both Claimants were represented before the Tribunal by Mr. Fergal Logan, Solicitor. The Respondents were represented by Mr. Kieran Rafferty, Solicitor.

The Tribunal heard the matter originally at the Carrickdale Hotel, Co. Louth on 6 July 2010. The Notice Party was not involved at that stage of the proceedings. The parties indicated at the outset that they had made attempts to narrow matters of dispute between them and suggested that the ventilation of a preliminary issue – as to the date on which the 3 day notice period within which a club could challenge the grant of a transfer – might assist matters. The Tribunal was agreeable to the proposal.

The Respondents, however, having noted that Aghaderg was not present or represented at the hearing, applied to adjourn the hearing to allow Aghaderg to attend and to make representations. This application was opposed by the Claimants on the basis that Aghaderg appeared to have been served with the proceedings and that in any event they were not required to be present at the hearing. Both parties agreed at that point to speak on the agreed preliminary issue before requesting a ruling on the adjournment application.

Preliminary Issue

Mr. Logan stated on behalf of the Claimants that this was a difficult and emotive case. The essential argument was that the Respondents' challenge of the transfer applications fell outside the time allowed by the rules and that certain steps had been taken by Claimants on that basis which could not now be reversed. The Claimants believed that their transfers had been granted and as a result they had each played four games with Annaclone before the County Committee reversed the decision of the CCC to grant their transfers.

Mr. Logan then set out a timeline of events along the following lines. On Tuesday 25 May 2010, the CCC met and granted the Claimants' transfer requests. At 7.20am the following morning (Wednesday 26 May 2010) the Claimants were informed by Sean Rooney, runai CCC (and leas-runai of Coiste Chontae An Duin) that their transfers had been approved. Annaclone was scheduled to play a league match on Friday 28 May 2010, some 3 days after the decision to grant the transfers, and so to protect the club's interests, and conscious of a possible challenge, Pat McColgan, runai Annaclone, made telephone contact with Mr. Rooney that day to enquire as to whether the Claimants were eligible to play for Annaclone in that game.

While it seems the contents of that telephone conversation are in dispute, Annaclone took it that the transfers had been approved and that the Claimants were eligible to play. It was accepted on behalf of the Claimants that Aghaderg did not receive any correspondence from the CCC or County Committee to say that the transfers had been granted. On Saturday 29 May 2010 at 10.31pm the runai of Aghaderg, Mr. Aidan Lavery sent an email to Mr. Rooney seeking confirmation in relation to the Claimants' transfer requests because he had heard "from a number of sources" that their transfers had been granted. Mr. Rooney confirmed by email on Sunday 30 May 2010 at 7.10pm that the transfers had been "granted last Tues night..." It was submitted on behalf of the Claimants that the contents of that email amounted to notice of the granting of the transfers to Aghaderg for the purposes of bye-law 3.6. The point at which Aghaderg received notice of the grant of the transfers was vital because, according to the County regulation relating to bye-law 3.6, a Club which wishes to challenge the grant of a transfer, must do so within 3 days of receipt of notice of the grant of the transfer. The Tribunal was also referred to Rule 4.5 of the Official Guide entitled 'Communications' which provides that all notices under the Rules of the Association may be given to a member by email. Rule 4.5 goes on to provide that where a notice is given by email the time of delivery is at the time of transmission.

According to the Claimants, the next link in the chain of correspondence was dated 4 June 2010, some five days after Aghaderg had been notified that the Claimants' transfers had been approved. In this email, entitled "Aghaderg – Annaclone Transfer Review" and addressed to the runai Coiste Chontae An Duin, Mr. Lavery of Aghaderg noted the "recent decision of the CCC to allow the transfer of Kevin Anderson and Rory Simpson from Aghaderg to Annaclone" and stated the belief of Aghaderg that the transfers were not legal according to the County bye-laws. He went on to state that a review of the CCC's decision on the transfers be put on the agenda of the next county board meeting. Thus, the first indication that Aghaderg wished to challenge the decision of the CCC came after the 3 day period for the making of a challenge had expired. On 9 June 2010, the runai Coiste Chontae An Duin sent an email entitled "Re County Board Meeting" to Mr. Lavery advising him that he could not put anything on the Clar for the county board meeting unless Aghaderg challenged the decision of the CCC on the transfer applications and in this regard brought his attention to bye-law 3.6 and the associated county regulation. Later that evening, Mr. Lavery, having earlier that day received the CCC report for May 2010 confirming that the transfers had been granted, sent an email to the leas-runai and runai Coiste Chontae An Duin in which he expressed the wish of Aghaderg to challenge the granting of the transfers and to have the matter formally brought up at the next County Committee meeting. However, by the time Aghaderg lodged their challenge, which was in any event late, the Claimants had played two matches for Annaclone and they played two further matches after 9 June 2010 and before the County Committee met on 17 June 2010. It was submitted that at no stage were the Claimants told not to play or that they could not play. Although the minutes are undated, the Claimants accept they were published to all parties on 9 June 2010.

For the Respondents, Mr. Rafferty argued as a stand alone point that regard must be had to the rules and bye-laws and that each club had a copy of same. Reference was made to Rule 6.8 Official Guide and to the bye-laws. He submitted that there was no ambiguity about the fact that the County Committee retains the right to final adjudication in transfer applications and that it cannot be taken as read that any other decision taken in relation to transfer applications amounts to a final adjudication. He submitted that the final decision on the Claimants transfer applications did not and could not rest with the CCC.

In relation to notice, Mr. Rafferty agreed with Mr. Logan's submissions that Rule 4.5 Official Guide provided for communications "*under the Rules of the Association*". However, he submitted that communications for the purposes of the rules of the Association are contained in the official minutes of the County Committee meeting, not in a flurry of emails between various parties. In this case, the communication was contained in the official minutes of the May 2010 CCC meeting sent by Mr. Rooney to all clubs on 9 June 2010. Aghaderg had indicated their desire to challenge the decision of the CCC within 3 hours of receiving these minutes and it was submitted on behalf of the Respondents that the speed with which Aghaderg had done so was noteworthy, having regard to the fact that they had a full 3 days within which to lodge their challenge to the grant of the transfers. Moreover, it would be contrary the role and functions of the County Committee if it were to be deprived of its residual discretion to make a final adjudication on the transfer applications. It was submitted that the right of the County

Committee to exercise that discretion was without challenge and was not dependent upon, or subject to, the objection of any party.

It was submitted that the rule 6.8 Official Guide was drafted so as prevent parties acting on the basis of unilateral communications which might not be available to all parties concerned. Moreover, Aghaderg accepted that it was only on receipt of this notice that their right to challenge arose and that they exercised that right almost immediately. Rule 3.6 Official Guide is drafted to provide protection for all parties and it would be a breach of natural justice if Aghaderg were to be denied their right to challenge the decision of the CCC.

It was submitted that the Tribunal should take account of the Respondents' adherence to the rules. Notice had been given under the Rules and the County Committee retained the right to make a final decision on the transfer. It was submitted that it could not be the case that an email sent by the runai CCC and member of the County Committee, Mr. Rooney, to the Claimants confirming that the CCC had granted their transfer applications could amount to notice by the County Committee itself. This simply confirmed the gravity with which transfer applications are treated generally by the County Board.

Mr. Logan, for the Claimants, stated in reply that the de facto position was that the custom and tradition of the County Committee was that transfer applications were dealt with in full by the CCC. The bye-laws, which the County Committee itself made, and in respect of which it was therefore on notice, state that the CCC decision is final in all other cases unless challenged. It was wrong, he said, for the Respondents to now say that the Claimants' transfer applications were always going to be dealt with by the County Committee. In fact, the email from Mr. Rooney to Mr. Lavery stating that "we can't put it on Clar until Aghaderg put it on Clar" appeared to suggest otherwise. Thus, there could be no assumption that the County Committee would have dealt with the transfer applications. It was submitted that the period between 29 May and 4 June was more than a mere technicality and that as a general principle any ambiguity in the meaning and interpretation of the rules must be interpreted contra proferentem. Finally, it was submitted that the Respondents' argument in relation to the residual power of the County Committee to adjudicate on transfer applications was not as neat as had been suggested.

Mr. Rafferty stated that he had set out the de jure position which was clear and concise and that he could not add any more to his submissions.

Ruling on Preliminary Issue

Having considered the submissions made by the parties, the Tribunal ruled that the 3 day notice period within which Aghaderg could challenge the decision of the CCC to grant the Claimant's transfers commenced on 9 June 2010. This was the date on which the runai of Aghaderg received notice from the County Committee of the decision of the CCC to grant the Claimants transfers.

At that point, further submissions on the Respondents' adjournment application were invited. Mr Logan stressed that time was of the essence and that the Claimants were in a limbo in that they had already played four games for Annaclone. He also mentioned the costs of the evening's proceedings and suggested that it was for the Respondents to notify Aghaderg of their right to attend the hearing. Mr. Logan informed the Tribunal that there was an upcoming fixture for Annaclone on 8 July 2010 and he applied to the Tribunal for leave to be granted to the Claimants to continue playing for Annaclone during the adjourned period.

Mr. Rafferty indicated that the County Committee would postpone the fixture if it would assist matters.

The Tribunal declined to grant leave to the Claimants on the basis that it would be inappropriate for the Tribunal to do so prior to the resolution of the dispute and stated that it was a matter for the County Committee as to how they wished to deal with their own fixture list.

The Tribunal granted the Respondents' application for an adjournment and the hearing was adjourned to 27 July 2010 with the consent of the parties. The following directions were made by the Tribunal:

1. that Aghaderg be joined to the proceedings as a Notice Party;
2. that all the parties send outline written submissions to the Tribunal in advance of the date of the adjourned hearing;
3. that the County Committee notify Aghaderg of the adjourned hearing date and provide photocopies to them of all documentation;
4. that the County Committee furnish all parties with minutes of the CCC meeting on 25 May 2010;
5. that the Claimants be furnished with copies of minutes of CCC meetings where transfers applications were granted and subsequently determined by the County Committee during the period from 25 May 2008 to 25 May 2010, both dates inclusive.

Adjourned hearing – 27 July 2010

The Tribunal reconvened on 27 July 2010 having received outline written submissions on behalf of all the parties to the proceedings.

Written submissions on behalf of the Claimants

The written submissions filed on behalf of the Claimants stated that the position in relation to transfers generally in County Down is somewhat confused and that the Claimants are the victims of that confusion in that their football interests have been affected. Where such confusion in the application of the rules existed, the contra proferentem rule should apply. At all times, the Claimants believed that their transfers had been granted. They played four matches thereafter and this was not challenged. As the Claimants were relying therefore on a settled and stated position, the County Committee was estopped from reversing that position. The Claimants also raised the argument in their submissions that fair procedures were not followed at the County Committee meeting on 17 June 2010 in that both they and Mr. McColgan sought to address the meeting but this was not permitted by the County Committee. Having regard to the provisions of Rule 7.11(c)(1)(i) that there is no appeal against a decision of a County Committee with regard to transfers within a County, the consequences of this absence of fair procedures was all the more serious. Moreover, the fair procedures to which the Claimants were entitled, and the requirements of same which the DRA had previously upheld in the Ciaran O'Broin & Darragh Seoighe and Eamon O'Fionnail cases, could not now be followed in the light of the views expressed in an exchange of emails and letters between Aghaderg and certain County Committee officials. Therefore the Claimants sought a declaration from the Tribunal that the transfers were valid and/or remittal of the matter to the County Committee with a direction to grant the transfers. While the Claimants had acted lawfully throughout, the County Committee proceeded on a very unsure basis to deal with the transfers in its application of both the bye-laws and the rules contained in the Official Guide resulting in an unusual and difficult set of facts which were difficult to resolve fairly and objectively. The situation in which the Claimants now found themselves was as a result of a lack of clarity surrounding the proper procedure being followed.

Written submissions on behalf of the Respondents

The thrust of the Respondents written submissions was that fair procedures had been followed. The Respondents say that the Claimants were advised by Sean Rooney that they could attend the County Committee meeting on 17 June 2010 and give oral evidence but they chose instead to present further documentation to verify their application for transfer. It was open to the delegate from Annaclone who attended the County Committee meeting to state the case for the Claimants but he made no contribution to the debate. Thus there was no breach of natural justice.

The Respondent submitted that the custom and practice of Coiste Chontae An Duin in relation to transfers was clear and consistent. The county regulation states that it is only when a decision of the CCC on a transfer is challenged that the matter is brought before the County Committee. Further, under Rule 6.8(d) Official Guide, a County Committee has the right acting within its bye-law to grant or not to grant an application for transfer. In support of this contention the Respondents referred to a recent transfer involving two other clubs in County Down which showed a clear application of the county regulation and confirmed the jurisdiction of the County Committee to make a final adjudication on a transfer application which had been challenged. The reference in the county regulation

that “...in all other cases, the decision of the CCC is final” was to those transfer decisions made by the CCC which were uncontested.

The Respondents submitted that the Claimants’ transfers could not be perfected or fulfilled until the process under which those transfers were challenged had been completed. This process was not completed until the meeting of Coiste Chontae An Duin on 17 June 2010 at which time the issue was debated and the delegates made a decision.

In relation to the estoppel argument raised by the Claimants, the Respondents stated that although the Claimants had played a number of matches for Annaclone, the transfer process had not been completed when they did so and that therefore in circumstances where Aghaderg had exercised the right under the county regulation to challenge the decision of the CCC it would be unjust and contrary to the principles of equity to allow the Claimants to profit from a failure to comply with the process set out in the County bye-laws.

Written submissions on behalf of the Notice Party

The written submissions filed by the Notice Party stated in general terms that smaller clubs stood to lose out to bigger clubs where transfer applications such as those of the Claimants were not challenged. There was little point investing in coaching and mentoring players at underage level when they could simply move away as they got older to perceived better clubs. Other issues were raised in the written submissions in relation to the particular details of the Claimants’ transfer applications concerning addresses which they had provided and the manner in which they had pursued their applications. These matters were not expanded upon orally by the Notice Party at the adjourned hearing.

Before the adjourned hearing commenced, Mr. Logan explained that while it was his understanding that Aghaderg were to be joined to the proceedings as a Notice Party, he queried whether it was appropriate that the Notice Party had filed written submissions. He was concerned that those written submissions might prejudice the Claimants and the Tribunal was invited to make a ruling on the point.

The Tribunal ruled that the directions it had issued on 6 July 2010 envisaged the filing of written submissions by all the parties to the dispute and added that if any of the contents of the written submissions filed by the Notice Party were prejudicial of the either or both of the Claimants, the Tribunal would exercise its power to exclude any such contents.

By way of an oral summary of his written submissions, Mr Logan stated that the nub of the case was a lack of natural justice and fair procedures at the County Committee meeting on 17 June 2010. The Claimants should have been present at the County Committee meeting. The two parties who in fact spoke on the transfers at the meeting were the CCC and the Aghaderg. This was an error when considered in the light of Rule

7.11.(c)(1) Official Guide which provides that there shall be no appeal against a decision of the County Committee with regard to transfers within a county. It was submitted that when compared to some recent decisions of the DRA, the very least that the Tribunal should do would be to remit the matter to the County Committee or to a more limited version of same, namely, the County Executive to avoid rehashing the issues as to how the transfers were dealt with. However, the justice that the situation now required could not even be met by remittal because the process had been so contaminated by remarks and comments made by Aghaderg officials and County Committee officials. A fair hearing was no longer possible. It was submitted that the Tribunal could sit as a final appellate body and that it could direct the confirmation of the Claimants' status as Annaclone players. Overall, he argued, the manner in which the Coiste Chontae dealt with the Claimants' transfers was irregular.

It was submitted that the Claimants wanted to avoid sworn oral testimony with officers of the County Board in relation to matters of dispute concerning in particular the contents of a phonecall between Pat McColgan of Annaclone and Sean Rooney, runai CCC and the reasons why Mr. McColgan did not speak at the County Committee meeting on 17 April 2010. Reference was also made to a second phonecall between Pat McColgan and Sean McAteer, runai County Committee.

It was submitted that the Respondents were operating on the basis of a misunderstanding as to what a challenge to a transfer was. It was argued that the Respondents seemed to think it was an appeal and that accordingly they wanted to show a breach of a rule. However, the Official Guide was clear that any party could challenge a transfer. The Official Guide does not use the word 'appeal'. Mr. Logan queried whether the County Committee had properly delegated the authority to deal with applications for transfer to the CCC. Rule 6.8(e) Official Guide, he argued, suggests that the proper delegation is from the County Committee to a sub-committee. He submitted that there was a misconception on the part of the County Board that this was an appeal to the County Committee.

In his oral summary of the written submissions filed on behalf of the Respondent, Mr. Rafferty pointed out that the Respondents sought a resolution of the dispute. He pointed out that while the Tribunal had the power of sitting as a final appellate body, it could find itself in an invidious position of hearing evidence by the parties and having to determine which witness was telling the truth. It was indicated that the Respondents were amenable to the matter being remitted. The Respondents rejected the Claimants submission that the procedure was irregular. In response to the Claimants' argument that even if the matter were remitted, the proceedings were now so contaminated that a fair hearing would be impossible, Mr. Rafferty stated that there were wise, considerate and dispassionate people at County Board level who could administer justice. For example, if the matter were remitted, no member would be allowed to be a judge in his own cause. He pointed out that there were 18 members of the County Executive and that four of them had participated in the CCC procedures. As a demonstration of the Respondents' good faith, none of those four individuals would be permitted to participate in any remittal hearing. A fair hearing would be afforded to all parties. It was acknowledged on behalf of the

Respondents that if the matter were remitted, partisan views would be expressed but that was only to be expected and that in any event this would not be incompatible with a fair hearing. The Respondents argued that remittal offered a route to a resolution of the dispute.

Mr. Logan stated in reply that his concern was not so much that partisan views would be expressed if the matter were remitted but that the view of administrators toward the transfer applications would be prejudiced. He repeated that the County Committee knew on 9 June 2010 that the transfers had been granted and yet the Claimants played two further games with Annaclone without objection.

Mr. Aidan Lavery on behalf of the Notice Party stated that Aghaderg had always acted within the rules and had acted correctly at all times. As far as they were concerned, the transfers could not be said to be valid.

Having considered the matter, the Tribunal made the following ruling with directions:

“The Tribunal has considered the written and oral submissions on behalf of the parties to this dispute.

The Tribunal notes that the process for dealing with transfers generally in Co. Down has not been in accordance with Rule 6.8(e) Official Guide 2009 or bye-laws 3.4 and 3.6 of the Bye-Law and Rules Coiste Chontae An Duin, 2010.

The Tribunal also notes that for good and sensible reasons the parties do not wish to give sworn evidence against each other in relation to certain disputed matters of fact.

The Tribunal acknowledges the very real concerns of the Claimants in relation to certain comments and statements expressed by certain individuals involved in the process concerning their transfer applications.

The Tribunal notes the assurance given by Down County Committee that if the matter were to be remitted to the County Committee, a fair hearing would be provided to the Claimants.

In the light of that assurance, and having regard to the preferred wishes of both parties not to give sworn evidence against each other, the Tribunal directs that the matter be remitted to the County Committee with the following directions:

1. that the County Committee shall advert to and act in compliance with Rule 6.8 Official Guide 2009 when considering the Claimants’ transfers;
2. that both Claimants be invited to make written submissions to, and to attend and be heard at, the County Committee meeting which deals with their respective transfer applications;

3. that no member of the County Committee who sat on the CCC be in attendance at the County Committee meeting; and,
4. that the authors of any letters or emails or any written correspondence which has been opened to the Tribunal and which purports to question the integrity or motives of either of the Claimants be excluded from the County Committee meeting. In particular, neither the Chairman nor the Secretary of Aghaderg Club may attend the County Committee meeting. However, Aghaderg is entitled to be represented at the meeting by any two other club delegates.

A statement of reasons will follow in due course in the usual manner.”

That brought the adjourned hearing to a conclusion.

Statement of Reasons on the preliminary ruling of 6 July 2010

The Tribunal ruled that the notice period for the purposes of the 3 days within which a challenge of the CCC’s decision could be made commenced on 9 June 2010. This was on the basis that the notice came in the form of the publication by the County Committee to all the clubs of the “May 2010 Report from Coiste Cheannais na gComortaisi” i.e. the minutes of the CCC meeting held on 24 May 2010. Upon receipt of same, Aghaderg duly notified the leas runai Coiste Chontae An Duin later the same day of their wish to challenge the decision of the CCC on the Claimants’ transfer applications. Therefore, the challenge was in accordance with the bye-laws and regulations of Coiste Chontae An Duin.

The Tribunal finds that it would be to ignore the requirements of the County regulation relating to bye-law 3.6 (as it is described in the Fo-Dhlithe agus Rialacha 2010 Coiste Chontae an Duin) if it were to regard the email communication by the runai of the CCC to the runai of Aghaderg on 30 May 2010 as constituting notice for the purposes of the regulation. Moreover, it would disregard and frustrate the plain and ordinary meaning of the regulation to regard notice as being other than official communications sent by the Coiste Chontae to all clubs. Clearly, when Aghaderg received the minutes of the CCC meeting on 9 June 2010, it simply confirmed what they had known to be the case since 30 May i.e. that the CCC had granted the transfers. However, the Tribunal finds that it would be incorrect to deny Aghaderg the right to challenge the decision of the CCC by interpreting the regulation to the effect that the 3 day notice period for the making of that challenge began to run from the date of receipt by Aghaderg of what can only be regarded as an unofficial communication by Mr. Rooney via email that the transfers had been granted. To do so would be to undermine the integrity of the challenge process itself as set out in the regulation and would lead to uncertainty among players and clubs alike in relation to transfer applications generally.

Decision and Award

Rule 6.8 Official Guide entitled “Transfers Within County” states as follows:

“(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 Parish for the purpose of this Rule shall, subject to County boundaries, be the district under the jurisdiction of a Parish Priest or Administrator. A Catchment Area shall be fundamentally based on permanent residence of players, subject to a player being entitled to play with his Home Club. Permanent Residence shall be defined in County Bye-Law. A County shall also have the option, within County Bye-Law, to allow a player to play with a Club in the area in which he works.

(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 a transfer.

(e) A County Committee may delegate to a Sub-Committee the authority to deal with applications for Transfer, but a County Committee shall retain the right to make final adjudication on an application.”

Rule 6.10(a) Official Guide entitled “Transfers General” provides that “A transfer becomes effective on being granted by the appropriate Committee...”

Rule 7.11 which deals with appeals and the right of appeal generally states at (c) that “There shall be no appeal against: (1) a decision of a County Committee with regard to: (i) transfers within a county....”

Rule 3.6 Fo-Dhlithe agus Rialacha 2010 Coiste Chontae an Duin provides as follows:

“The County Committee shall delegate to the County Competitions Control Committee the authority to deal with applications for transfer and the grading of Clubs and Players within the county but the County Committee shall retain the right to make the final adjudication on an application. [See County Regulation, Page 21]”.

The County Regulation relating to County bye-law 3.6 on page 21 states as follows:

“Where a club or player wishes to challenge the decision of the County Competitions Control Committee on an application for Transfer or the grading of Clubs and Players, such challenge shall be notified to the County Leas Runai within three days of receipt of notice of the decision by the Runai of the club. The County Committee shall consider the issue at its next meeting and make a final adjudication on the application. In all other cases, the decision of the County Competition Controls Committee is final.”

This dispute relates to a decision taken by the County Committee on 17 June 2010 to reverse a decision taken by the CCC on 24 May 2010 to grant the Claimants' transfer applications from Aghaderg to a neighbouring club Annaclone. Having ruled on 6 July 2010 that Aghaderg's challenge of the CCC's decision to grant the Claimants' transfers was properly before the County Committee and having explained the reasons for that ruling, the Tribunal will now set out its reasons for directing on 27 July 2010 that the matter be remitted to the County Committee for reprocessing.

The Claimants have each played four games for the club to which they say they have validly transferred. For obvious reasons that state of affairs presents difficulties for all the parties concerned. Events have in a sense moved beyond the question of whether or not the transfer applications were dealt with properly. However, the Tribunal finds that the transfers which were granted by the CCC were not valid transfers because the proper procedures as set out by the relevant rules and bye-laws in relation to transfers which are challenged were not followed. The Claimants began playing with Annaclone before the challenge process had been exhausted. Accordingly, it would be wrong for the Tribunal to permit the Claimants to enjoy the benefits flowing from what were invalid transfers. Thus, the estoppel argument raised by the Claimants must fail. That is not to suggest that the Claimants acted inappropriately or surreptitiously. Indeed, they could be forgiven for thinking that they had been given the green light to play, so to speak, when they received the emails on 25 May 2010 from Mr. Rooney. And it seems that Annaclone did make efforts to confirm that the transfers had been granted before the Claimants played any matches for what they believed was their new club. However, the rules must be observed and while the Claimants rightly point out that they are in an exceptional position, the Tribunal believes that it would set a bad precedent if it were to legislate for an exception such as this.

Having said all of that, the Tribunal remitted the matter to the County Committee with directions because of a concern in relation to a lack of, or what might appear to have been lack of, fair procedures at the County Committee meeting on 17 June 2010. Aghaderg brought their challenge within the 3 day limit as set out in the County regulation. Thus, once a challenge is properly before the County Committee, as it was in this case, the Tribunal is satisfied that, as a general proposition, the County Committee is entitled to confirm or overturn decisions taken by the CCC in relation to transfer applications. The authority of the County Committee to do so is set out in bye-law 3.6 which in summary provides that it shall retain the right to make the final adjudication on a transfer application. So, while the Tribunal is not concerned with the result of the County Committee's deliberations in relation such a challenge, it is concerned with ensuring that the process by which that result was reached was fair.

There is a dispute between the parties as to why it was that the Annaclone delegate, although present at the County Committee meeting, did not contribute to the debate about the CCC's grant of the transfers. What is clear is that the Claimants were not present at the meeting even though again there appears to be some conflict between the parties as to why this was so. However, the Tribunal is of the view that the Claimants should have

been present at the County Committee meeting. The DRA has held recently, in **Ciaran O’Broin & Darragh Seoighe v CLG Coiste Atha Cliath (DRA 1&2/2010)** that in order for the County Committee to exercise its discretion to grant or refuse a transfer, it must fully consider the matter and make its own decisions. That case held that such a considered adjudication ought to have regard to the following factors: -

- a. the application of the player applying for the transfer;
- b. the reasons for the transfer request;
- c. the reasons for the objections of the home club;
- d. the reasons given by the County Management Committee as to how it arrived at its recommendation;
- e. to assess whether further information or evidence is required;
- f. to hear interested parties if it feels it is warranted in a particular case.

In the light of those considerations, the Claimants’ absence at the County Committee meeting could be interpreted as amounting to a denial of their right to fair procedures and it could be considered that there was an inherent unfairness in the manner in which the County Committee dealt with the Claimants’ transfer applications on 17 June 2010. For that reason alone the remittal of the matter to the County Committee for reprocessing is justified.

In relation to the concerns expressed that the Claimants would not now get a fair hearing in the light of comments made and views expressed by certain individuals involved in the process, the Tribunal is satisfied that those concerns can be met by the directions accompanying the decision to remit the matter to the County Committee, as set out above.

Finally, the Tribunal is of the view that the final sentence of the County regulation relating to bye-law 3.6, to the effect that in all transfer applications other than those which are challenged the decision of the County Competitions Control Committee is final, is contrary to Rule 6.8 Official Guide(e) which provides that a County Committee shall retain the right to make final adjudication on a transfer application.

The Claimants did not seek the costs of the hearing against the Respondent and the Tribunal therefore makes no order as to costs. The Tribunal however directs that the Respondent bear the expenses of the Tribunal.

This is the unanimous decision of the Tribunal

Patrick McCartan _____

Liam Dockery, Chairman _____

Damien Maguire _____

Dated this 20th day of August, 2010.