

DISPUTES RESOLUTION AUTHORITY

Record No: DRA 9/2009

**IN THE MATTER OF THE ARBITRATION ACTS 1954 – 1998 AND IN THE
MATTER OF AN ARBITRATION BETWEEN**

BETWEEN:-

Éamonn Mac Cathmhaoil

Claimant

-and-

An Lár Choiste Achomhairc

Respondents

DECISION AND AWARD

1. BACKGROUND

The Claimant is the Manager of the Donegal County Senior Hurling Team. He received an eight week suspension from the An Lár Choiste Éisteachta (the Central Hearings Committee) on the 8th June 2009 and appealed this decision to An Lár Choiste Achomhairc (the Central Appeals Committee). The Central Appeals Committee ruled his appeal out of order.

The Claimant sought a hearing before the Disputes Resolution Authority (DRA) and on the 16th and 17th June 2009 filed email correspondence to the Secretary of the DRA. Neither of these emails contained a claim form in the format set out in the DRA code. A further email to the DRA of the 18th June contained a claim form.

The Claimant was informed via email on the 23 June 2009 by the Secretary of the DRA that not all avenues of appeal under the GAA rules had been exhausted. He was referred to Section 2.1(e) of the DRA code which states:

- 2.1 Any party to a dispute governed by this Code who seeks a determination (“the Claimant”) must submit to the Secretary of The

Disputes Resolution Authority a written request for dispute resolution proceedings (“the Claim”) containing the following details:

- (e) Confirmation that all avenues of appeal under the Official Guide have been exhausted;...

He was also referred to the fact that where an appeal is ruled out of order, the appellant is deemed not to have exhausted all avenues of appeal under the GAA rules. The DRA decision 30/31/32/2005 was highlighted to the Claimant in this regard. The subsequent outcome was that the Claimant’s request for arbitration on the substantive issue was denied on the grounds that the DRA did not have the jurisdiction to deal with this matter.

However the Secretary of the DRA in his correspondence of 23rd June 2009 also informed the Claimant that he may request arbitration from the DRA to review the decision of the Central Appeals Committee to rule his appeal out of order. He was reminded that his request for arbitration must be limited to this decision only, as set out in a letter to him by the Central Appeal Committee dated 8 June 2009.

Subsequently, the Secretary of the DRA exercised his discretion under section 2.2 of the DRA code to extend the time limit to allow the Claimant to lodge his request for arbitration in relation to the decision of the Central Appeals Committee.

The Respondents were asked for their reply to the Claimant’s claim on the 24th June 2009 and the time limit for filing their response was reduced by the Secretary of the DRA under section 3 of the DRA code. The time limit was reduced due to the fact that the Donegal Senior Hurling team were playing in the semi-final of the Lory Meagher Cup on the 27th June 2009. The Respondents filed their reply by 25th June 2009.

A hearing was proposed for Friday 26th June 2009 and notified to all parties. This notification also set out the provisionally selected panel members citing that if there were any objections to any of the proposed members then such objections were to be notified to the Secretary of the DRA stating reasons for their objections by 1.00pm on the 26th June. No objections were received from either party.

2. PRELIMINARY MATTERS

The Claimant was represented by Mr. Danny Cullen, a fellow Donegal Club member, and the Respondents were represented by Mr. Peadar O’Horgán, Recording Secretary and Mr. Simon Moroney of Páirc an Chrócaigh

At the commencement of the Hearing on the 26th June 2009, the Secretary of the DRA introduced the panel members to the parties. The Secretary announced that one of the original panel members had to be called away on short notice and would be unable to attend the Hearing. A new panel member had been appointed by the Secretary under section 5.5 of the DRA code.

The Respondents were asked by the Secretary whether they had any objections to the newly appointed panel member, to which they replied "no" and confirmed their consent for the constituted panel, as sitting, to hear the proceedings.

The Claimants were asked by the Secretary whether they had any objections to the newly appointed panel member. The Claimant's representative, Danny Cullen, asked where the new panel member was from and in particular was he from South Down. The member replied that he was not from South Down but was from County Louth. Mr. Cullen responded in laughter and when asked by the Secretary for his confirmation that he was satisfied to proceed with the new panel, as constituted and sitting, he confirmed that he was.

The Respondents in their written reply to the request for arbitration raised several points questioning the DRA's jurisdiction to hear the proceedings. They raised five objections namely; the request for arbitration was out of time according to section 2.2 of the code; the request was not in the correct format under section 2.1 of the code; the request was not served upon the Respondents in accordance with section 2.4 of the code; not all avenues of appeal had been exhausted under Rule 157(d) of Treoraí Oifigiúil 2008; no appeal fee was lodged as required under Rule 155(e)(3) of Treoraí Oifigiúil 2008.

The panel sought and received oral submissions from both parties on these objections before the substantive hearing took place.

The panel retired to consider the submissions and make a determination on the issue of jurisdiction of the proceedings.

After reconvening the hearing, the panel announced its decision that indeed it had jurisdiction to hear the proceedings and replied as follows:

On objection 1 the panel found that the Secretary correctly exercised his power under s.2.2 of the code in extending the time limit for acceptance of the request.

On objection 2 the panel ruled that a claim form had been lodged notwithstanding the omissions in certain sections of the form.

In determining a decision on objection 3 the panel found that the presence of the Respondents at the hearing, the filing of their reply and the lack of proof of an incurrance of prejudice on their part demonstrated that this objection was without foundation. The ruling on this particular objection is unique to these circumstances and the panel does not in any way condone the actions of the Claimants in not serving the correct party to these proceedings. Section 2.4 of the code is quite clear on persons or parties to be served.

On objection 4 the Respondents referred the panel to the DRA decision of 30/31/32/2005 and in particular paragraphs 12 and 13. The panel considered their submission and refers the Respondents to paragraph 17 of the same case which specifically states:

"...a right to apply to the DRA in respect of a decision of the CAC to deem an appeal invalid also exists. Such an application to the DRA would necessarily be restricted to a consideration of the issue of the validity or otherwise of an appellants' appeal."

The panel ruled that insufficient evidence to the contrary was presented by the Respondents which would lead the panel to depart from this clearly applicable precedent.

Objection 5 was deemed by the panel to be irrelevant to the submission of jurisdiction of the DRA as this objection related to the substantive issue arising from the Central Appeals Committee.

In summary this Tribunal had full jurisdiction to hear the Claimant and the Respondents in this matter. Both parties were informed of the matter to be heard and that any other material or evidence adduced would not be taken into account by the panel. Both parties confirmed their understanding of the issues to be heard and the purpose of the hearing.

3. SUBMISSIONS MADE BY CLAIMANT AND RESPONDENTS.

The Claimant's representative submitted to the panel and to the Respondents a three page document outlining the "background summary" and the chronology of documents traversing both parties. Mr. Cullen proceeded to read this document to the Tribunal. He then submitted to the panel and to the Respondents a document entitled "Notice of Decision on a Hearing" which dealt with the decision of the Central Hearings Committee. The panel objected to this evidence being produced at the hearing as it referred to the substantive issue of the suspension which the panel had previously stated was outside its remit to hear. The Claimant was reminded of the purpose of the hearing and the issues to be determined.

The Claimant's representative submitted a three page document to the panel and the Respondents. This document outlined counter submissions of the Claimant to the Respondents replies to the Claimant's original claim. Mr. Cullen read through the three page document. Several counter submissions were made, such as:

- (i) Mr Cullen submitted that there was no date on the Respondents replies to the claim. This was refuted by the Respondents and it was pointed out that the replies were indeed dated "25ú Meitheamh 2009".
- (ii) Mr Cullen submitted that the address of the addressee was in English, contrary to Riail 10(c) T.O. 2008. It was pointed out by the Respondents that this related to the substantive issue arising from the Central Appeals Committee and therefore was not part of the present hearing.
- (iii) Mr Cullen quoted the declaration which the Respondents had signed as part of their replies. No further assertion was made or presented by the Claimant on this point.
- (iv) Mr Cullen stated that the Respondents failed to quote a Rule under Treoraí Oifigiúil 2008 when replying to the Claimant's claim under the dispute resolution proceedings. This was denied by the Respondents and evidence was shown to the Tribunal to the contrary.
- (v) He further submitted that a request made by him to the Central Appeals Committee for an oral hearing under rule 155(j) T.O 2008 was not complied with. The Respondents pointed out that the decision maker has the authority to make a decision without an oral hearing. They

stated that once a request is made, an oral hearing is applied only if a valid appeal is lodged which did not occur in this case.


DECISION & AWARD


The Tribunal has considered the written request for arbitration of the Claimant and the written response of the Respondents and having also reviewed and read the documentation furnished to this Tribunal and oral submissions by the parties, we the Tribunal after careful consideration find as follows:-

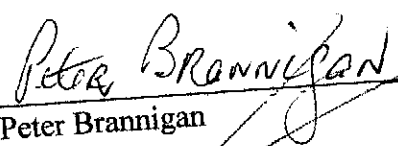
1. The request for arbitration is limited to the single issue of whether or not the Central Appeals Committee correctly applied their own rules and observed fair procedures in ruling the appeal by the Claimant from the Central Hearings Committee to it, out of order. This Tribunal is not dealing with the substantive issue of the suspension of the Claimant nor is it adjudicating on the manner in which the matter was handled by either the Central Controls Competition Committee or the Central Hearings Committee.
2. Formal requirements in relation to an appeal to the Central Appeals Committee are clearly set out in Rule 155 T.O.2008.
3. It is the decision of this Tribunal that the appeal by the Claimant to the Central Appeals Committee did not specifically set out the rules that he was claiming were impugned by the Central Hearings Committee in arriving at its decision.
4. Consequently, this Tribunal finds that the Central Appeals Committee correctly applied its own rules and were not in breach of any rules of natural justice or fair procedure in arriving at their decision.
5. This Tribunal finds the Central Appeals Committee were correct in ruling the appeal by the Claimant out of order.
6. The decision of the Tribunal is that we refuse the Claimant's the relief sought or any relief. This is the unanimous decision of the Tribunal.
7. The Tribunal directs that the unsuccessful Claimants should pay the costs of the Respondents and the expenses of the Disputes Resolution Authority. The Tribunal could find no exceptional or special circumstances which would justify departure from the general rule that the unsuccessful party to the arbitration should pay the costs for the successful party.
8. As per Rule 11.2 of the Disputes Resolution Code, the Respondents are entitled to their reasonable legal costs. If requested by either party, the Tribunal shall measure these costs.

Dated this 31st day of March 2010

Signed:


Felix Swift BL, (Cathaoirleach)


David Nohilly


Peter Brannigan