DISPUTES RESOLUTION AUTHORITY

No. DRA/09/2012

IN THE MATTER OF THE ARBITRATION ACT, 2010

Between:

CUMANN CLARSAIGH CLUAIN MHOR (by its nominee, IRENE FOY)
Claimant

-and-

COISTE ÉISTEACHA LAIGHEAN (by its nominee, JOHN BYRNE)
Respondent

INTERIM AWARD AND STATEMENT OF REASONS

BACKGROUND

1. The Disputes Resolution Authority has become the arena in recent years for disputes about player eligibility, in particular, the eligibility of members to become a member of and compete on behalf of one particular club over another. The particular dispute arising in this arbitration, in the length of time it has been brewing, in the bitterness it has caused and in its apparent intractability, is a regrettably good example of this type dispute. After the hearing, we allowed a period of time to see whether the various interested parties might be able to come to an agreement as to how matters might be resolved, because determination on strict legal principles, which is all that the DRA can endeavour to achieve, is rarely the best means of resolution, and often the worst. Unfortunately, no agreement has been possible.

2. The Claimant (hereinafter "*Clonmore*") is a Club whose grounds are located in County Offaly, but in a parish, Ballinabrackey, which is located part in County Offaly and part in County Meath. The Club of Ballinabrackey is also located in that parish but on the County Meath side. Clonmore competes in Offaly and Ballinabrackey competes in Meath. Clonmore was founded in or about 1916 but at some point after that, its activities died out for some time until it was resurrected in about 1988. It is not clear whether whether it was common practice that persons resident in the parish of Ballinabrackey but County of Offaly played with the Club of Ballinabrackey or not during this period of dormancy, though it was confirmed that Peter Moore was one case in point: though resident in Killowen, on the Offaly side, he played football in the club of Ballinabrackey and indeed for County Meath, and was on the All-Ireland Championship-winning team of 1967.

3. County Offaly adheres to the "parish rule" by virtue of its Bye-Laws. It has not been explained to us whether County Meath has a parish or similar Rule in its Bye-Laws.

HISTORY

4. In February 1989, a motion was heard by the Leinster Council, moved by A. O Gallchoir of Offaly, and passed, and the entire proceedings in connection with it are set out in the minutes in the following terms:

> "***NOTICE OF MOTION***
>
> *The meeting considered the following Notice of Motion in the name of A. O Gallchoir (Uibh Faili):-*
>
> > *"That Comhairle Laighean, after examining the full facts, and background to the case, should rescind a previously taken decision which unilaterally granted part of County Offaly in Ballinabrackey parish to County na Mi."*
>
> *An Cathaoirleach reported on the meeting of Officers of Comhairle Laighean with all parties concerned and on subsequent report and recommendations of An Coisde Airgead viz.*
>
> *(1) That the new Club – Clonmore – would not in any way damage the existing Ballinabrackey Club.*
>
> *(2) That this is not a back-door for Rhode Club to get more players.*
>
> *(3) That the portion of the Ballinabrackey Parish in question should be returned to County Offaly for G.A.A. purposes.*
>
> Decision:- *By a majority of sixteen votes to six, the motion was carried.*"

5. There was some discussion of the status of this decision. The result of this discussion was certainly less than clear. However, it does not seem that any party realistically put forward an argument that it had no status whatever. We will return to this question in due course.

6. The evidence appears to show that, for some time after this decision was given, Clonmore (which, it will be recalled, had just being resurrected from its previously dormant state) drew its membership from the Offaly portion of the Ballinabrackey parish and there was little if any "migration" of residents from the Offaly side of the Ballinabrackey parish playing for the Club of Ballinabrackey in Meath.

7. Clonmore remained, however, a small club, and did not have sufficient numbers to have an effective underage regime. Consequently, an arrangement (sanctioned by the Offaly County Committee) was reached with two neighbouring Clubs. Those Clubs are Rhode and St. Brigid's. Both of those Clubs occupy the same parish (the parish of Rhode); however there is an agreed physical divide within that parish such that there are two catchment areas, one for Rhode and one for St. Brigid's. At underage level, Rhode, St. Brigid's and Clonmore form an Independent Team (a concept recognised by the Rules of the Association) whereby, although remaining members of their original Clubs, the juvenile players play together as "*Young Rhode*". Once they grow out of the juvenile regime, they return to play for their individual Clubs.

8. In recent years, Clonmore became concerned by what it regarded as a migration of young players to Ballinabrackey. Ballinabrackey had a youth regime of its own.

9. In this regard, Clonmore has had the support of Offaly County Committee throughout the process; however, since the matter crossed the boundaries of two counties, it was necessary to bring the matter to the attention of the Leinster Council in order to move it forward.

10. In relating what happened from this point onwards, we are reliant on the correspondence between the various parties in the late summer of 2012 as well as the minutes taken by a sub-committee (discussed below) of a meeting dated 27 September 2012, and we note that none of the facts asserted in any of these are contested by any of the parties.

11. At all events, it appears that that a "*Leinster CCC sub-committee*" was directed to investigate the issue.

12. We pause here to observe that the concept of an "*Investigation*" as a distinct process having specified consequences under Rule, has been abolished for some time. There are different processes, such as Objections and Disciplinary Action, which *do* give rise to consequences (such as suspensions, forfeiture of games and so on); however, investigations as now carried out are informal, as they do not have specified consequences. A decision might be taken on foot of such an investigation, such as to initiate Disciplinary Action. However that Disciplinary Action would require evidence to be presented and proved from scratch, so to speak; so there are no adverse consequences from the investigation *itself*. The appointment of a special sub-committee was therefore unnecessary as the Management Committee or Competitions Control Committee in their respective areas of competence may carry out such investigation themselves at their own discretion without the need for any direction, or indeed the creation of any sub-committee.

13. Be that as it may, the sub-committee engaged with the parties and came to a view that a number of players in the Ballinabrackey Club were properly restricted to joining Clonmore only. As a result of this, they recommended that Disciplinary Action be

taken against these players, and against the Chairman and Secretary of the Ballinabrackey Club.

14. As we have said, since the investigation is no more than an investigation, and it was open to the Competitions Control Committee not to follow the recommendation, in which case there would have been no consequences for anybody involved.

15. As it happened, however, the Competitions Control Committee *did* take action. It initiated Disciplinary Action against the players concerned and against the Chairman and the Secretary of Ballinabrackey. The fact that all concerned may have regarded the investigation as something more significant than it was does not effect the validity of that decision to commence Disciplinary Action, and nobody has suggested otherwise in the arbitration before us.

16. On 6 November 2012, Notice of Disciplinary Action were sent to each of the following members of Ballinabrackey:

    (a) Daire Ó Cinneide
    (b) Aaron Ó Cinneide
    (c) Ronan Mac Thomais
    (d) Daithi Mac Thomais
    (e) Adam Ó Cuinn

    and to the following Club Officers of Ballinabrackey:

    (f) Seamus Ó Conchuir, Chairman
    (g) Tomas Ó Cuinn, Secretary

17. In each case, the notice referred to a complaint received from Offaly County Committee and an allegation of a breach of Rule 6.3 of the Official Guide. Reference is made in each notice to the "*appropriate penalty*" set out in Rule 6.2(c)(ii) of the Official Guide and the requisite offer of an oral hearing is set out therein.

18. Although it is of no consequence given what happened, we think that it might be of assistance to point out some defects in the notices (as Provincial CCCs are not often called upon to process Disciplinary Actions, these errors are forgivable):

    (a) The references to infractions contrary to Rule 6.3 of the Official Guide were misplaced. There is no infraction identified in Rule 6.3. One can only assume that the infraction intended to be referenced was Rule 6.2(b) which states that:

        "*A player may not be a member of a Club for which he is ineligible to play.*"

        This assumption can be made because the references in the notices to penalties under Rule 6.2(c)(ii) is a reference to penalties for a breach of Rule 6.2(b).

(b) The reference to an appropriate penalty under Rule 6(c)(ii) was correct in the case of the Club Officers, but not in the case of the players: their penalty was covered by Rule 6(c)(i).

(c) None of the notices (or at least none of the copies given to us) actually state a proposed penalty.

(d) Finally, we would suggest that – as a matter of practice – rather than simply stating the rule of which a breach was alleged, it is better to state the manner in which it was alleged that the rule was breached (i.e. in this case a statement that the player concerned was a member of and competing for Ballinbrackey when ineligible so to do). Of course, if the report of the investigating sub-committee was provided, then the recipient of the notice would have sufficient information to work that out for himself. At any rate, it seems that the Defending Parties here were well aware of the issues involved.

19. We emphasise, however, that these are not necessarily fatal errors: the validity of the notices was never questioned and much would depend on specific circumstances that have not been assessed here.

20. Arising from the replies received, hearings were arranged and, over two evenings, 22 November 2012 and 27 November 2012, the hearing of the Disciplinary Action took place.

21. In preparation for the hearing, a number of documents were filed on behalf of the various Defending Parties. certain relevant issues are identified in the correspondence supplied to us, which we assume represents the arguments, broadly speaking, that were advanced in defence of the Disciplinary Action over the two evenings in question. Broadly speaking, the case seems to have been made, and accepted, that the various players had an "*Other Relevant Connection*" with Ballinabrackey (as understood by Rule 6.3) by virtue of that Club having been the First Club of one or other of their parents. For reasons that will emerge below, it is unnecessary to interrogate here either the veracity of the factual claims or whether those facts established an "*Other Relevant Connection.*"

22. The cases were all heard as one and the decision was in the following terms:

> *"**Decision:***
>
> *All of the players have satisfied the criteria outlined in Rule 6.3 T.O. 2012 and are therefore eligible to play for Ballinabrackey. As a consequence of this decision both the Chairman and Secretary of Ballinabrackey have no case to answer.*

This Decision was taken pursuant to the following Rule:- 6.3, 7.1 & 7.3 T.O. 2012

The Committee expressed disappointment at Offaly's lack of engagement in this matter.

After our decision it was decided that Noel Murphy will address a future Leinster Council Meeting regarding this matter and other situations regard Boarder [sic] *Issues*."

23. Clonmore took no part in the Disciplinary Action. This is not surprising as there is no provision in Rule for any person or entity other than the relevant Competitions Control Committee, Hearings Committee and Defending Party to do so. It appears that representatives from Clonmore heard about the decision in the media and lodged a claim with the DRA on 4 December 2013. No suggestion had been made that the claim was brought out of time.

24. The matter came to be heard before this Tribunal of the DRA on the evening of 12 February 2013. Having given prior notice of their intention to do so, representatives of the Ballinabrackey Club attended and no objection was raised to their participation in the process.

EXHAUSTION OF APPEALS

25. An argument was advanced by the Respondent, Leinster Hearings Committee (hereinafter "*Leinster*") that Clonmore had not exhausted all available avenues of Appeal under the Rules of the Association as required under Rule 7.13(d) of the Official Guide. However Leinster fairly acknowledged that any Appeal lodged would have been rejected as irregular without a hearing because Clonmore were not "*a Member or Unit directly involved in* [the] *decision*" (see Rule 7.11(a)). In fairness to Leinster, the argument was not advanced with great vigour, and rightly so, as the Code does not require an intending claimant to lodge an appeal that is out of order merely for the purpose of saying that all internal remedies had been exhausted. There will undoubtedly be cases where, perhaps by virtue of a prevailing view of the interpretation of a rule, an appeal is highly *unlikely* to succeed: in those cases, an intending Claimant must – pessimism notwithstanding – proceed with his Appeal and make his case. This is not such a case: in this case, as a matter of *jurisdiction*, the appeal could not even be considered. In the circumstances, we find that the objection grounded on the alleged failure to exhaust internal avenues of Appeal is not sustained.

LOCUS STANDI

26. Although not specifically raised by any of the parties to the arbitration, the question of Clonmore's standing to bring this dispute before the DRA was raised by the Tribunal hearing the matter. Put simply, the *locus standi* requirement in litigation dictates that the legality of any act or procedure can only be challenged by the parties

directly affected by it. In this case, as in any Disciplinary Action, Clonmore were not involved. Their participation in the investigation which ultimately lead to the Disciplinary Action was merely incidental. As explained earlier, the investigation is not a formal procedure having formal consequences, and, as also explained, Leinster's Competition Control Committee was under no obligation to initiate Disciplinary Action on foot of it, notwithstanding the findings of the sub-committee. As such, Clonmore's involvement in the investigation, such as it was, cannot suggest an involvement in the Disciplinary Action.

27. The analogy was drawn with the position of a victim of crime in the context of a prosecution. That victim might have an interest in seeing the perpetrator charged and convicted, but the victim has no entitlement to interfere in the process by, for example, forcing the Gardaí or DPP to bring a prosecution or challenging an acquittal. In this case, it was pointed out, Clonmore – having painted itself as the victim of infringement of rule – is seeking to challenge an acquittal.

28. Clonmore submitted that the jurisdiction of the DRA is a very wide one as provided for in Rule 7.13(a) of the Official Guide:

> *"In the event of <u>any dispute or difference</u> between any member or unit of the Association <u>with any other member or unit</u> of the Association, as to the legality of any decision made or procedure used by any unit of the Association in pursuance of the Rules and Bye-Laws of the Association, which cannot be settled by amicable means within the Rules of the Association, such dispute may be referred by either party to Arbitration under the Disputes Resolution Code annexed to these Rules, as initially approved by Congress and from time to time amended by the Disputes Resolution Authority with the approval of Central Council.*"
>
> (emphasis added)

29. It was submitted that Clonmore had a dispute with Ballinabrackey and with Leinster and that, consequently, the DRA had jurisdiction to hear it.

30. But jurisdiction and standing are not quite the same thing. Jurisdiction is concerned with whether the DRA *can* deal with the dispute, while *locus standi* is concerned with whether the DRA *should* deal with the dispute.

31. Mr. O'Connor, Solicitor, on behalf of Clonmore opened the classic passage from the judgment of Henchy J. in <u>*Cahill v Sutton*</u> [1980] IR 269 (at 284) as follows:

> "*If a citizen comes forward in court with a claim that a particular law has been enacted in disregard of a constitutional requirement, he has little reason to complain if in the normal course of things he is required, as a condition of invoking the court's jurisdiction to strike down the law for having been unconstitutionally made (with all the dire consequences that may on occasion result from the vacuum created by such a decision), to show that the impact of*

the impugned law on his personal situation discloses an injury or prejudice which he has either suffered or is in imminent danger of suffering."

32. In our view, the mere fact that the outcome of the disciplinary action has *some* effect on Clonmore as a Club is insufficient to give it standing to challenge the procedure used. It is understandable that Clonmore might be aggrieved, but so too is the victim of crime when the person he or she believes is guilty of the crime is not charged or is acquitted. A Club cannot say that it is deprived of any *right* because a player, who should be restricted to playing for it, plays for another Club: it certainly has an interest in that player's membership, but the rules are about the player, not the Club: the Club can never force a player to join its membership.

33. Notwithstanding these matters, however, and with some reservations, we have concluded that Clonmore do have standing to bring this claim, albeit to a limited extent only, as we will explain below. In accepting Clonmore's standing, we have taken into account two principal factors. First, no objection was raised by either Leinster or Ballinabrackey on grounds of standing and neither shied away from dealing with the merits of the matter of interpretation raised by Clonmore. Secondly, and perhaps more importantly, the issue raised is not one that begins and ends with the failure of the Disciplinary Action against the seven parties on whom Notice of Disciplinary Action was served on 6 November 2012 and determined on 27 November 2012. It is an ongoing issue between the Clubs and – if Clonmore are correct in what they say – the decision of Leinster will set an erroneous precedent for future cases.

34. As we have said, however, the standing afforded to Clonmore is not unlimited in scope. It is our view that they have no standing to upset the dismissal of the Disciplinary Action against the six named individuals concerned. The first reason for this is that no party who has been cleared of Disciplinary Action should face a re-run of that Disciplinary Action other than by means of an appeal taken within the structures of the disciplinary process and by a party directly involved in it. The second and more significant reason is that it would be most improper to visit these seven individuals with the consequences of an award reinstating the Disciplinary Action against them, in circumstances where they were not named as respondents to this arbitration. An arbitrator cannot be asked to impose such direct consequences on an individual who is not party to the arbitration before him.

35. In consequence of this, the most that Clonmore can expect is an examination of the relevant Rules and a determination whether, as a matter of interpretation, Leinster correctly decided the matter, so that – if mistakes have indeed been made – they are less likely to be repeated.

36. Lest this decision be misinterpreted, however, we wish to make clear that this Tribunal is not deciding either way the question whether – if Clonmore's interpretation proves to be correct – the individuals in question are immune from some future objection by an opposing team (within County Meath) which asks

Meath's Competitions Control Committee to uphold an objection based on the arguments advanced by Clonmore here. If that happens, and if it comes the way of any particular committee or council, or indeed the DRA, this decision should not be taken as an amnesty for all purposes (nor indeed a finding of the legality: since any such objection would have to be heard and determined based on the evidence adduced at the time). The evidence before this Arbitration is limited and based on assumed facts as much as anything else, the individuals in question not having been present. Whether the players would be protected by the decision of Leinster is another matter, and that is not before us.

STATUS OF THE 1989 RESOLUTION AND RULE 6.3 OF T.O. 2012

37. Against that background, we turn to the substantive dispute. In a number of documents, and indeed in their submissions at the hearing of this arbitration, Clonmore referred to the events of 1989 referenced above as an "*agreement*". The reality is, however, that there is no evidence of agreement in the true sense of the word: rather the matter was decided by a majority of the members of the Leinster Council. The motion was taken by the Offaly County Committee but there is no direct evidence that submission were heard from either of the Clubs involved. Therefore, to characterise the 1989 motion as an "*agreement*" is not correct.

38. A question arises as to what status this resolution might have. It is to be remembered that the motion was moved and passed under the Rules of the Association as they applied in 1989, so one cannot simply examine the 2012 Official Guide to put the rule into context. No evidence of the relevant Rules applicable in 1989 was put up in the arbitration. Clonmore nevertheless made the case that it was binding on the Counties, Clubs and Members under the jurisdiction of the Leinster Council. In circumstances where it was never appealed or otherwise challenged (or at least no evidence to that effect was moved), it seems to be correct to say that Counties, Members and Clubs were bound by it save to the extent that it might be inconsistent with the Rules of the Association or of any similar motion or declaration from a higher authority (i.e. Central Council). No evidence was given of any such motion or declaration of a higher authority.

39. It is worth saying, however, that if the resolution has a binding effect *per se,* it must follow that that resolution might be rescinded as easily as it was passed, and be replaced with an alternative resolution, or indeed no resolution at all. Clonmore (as logic compelled them to do) accepted that proposition. We will return to the effect of this (and particular how rescindment would affect acts done while the resolution was in force)

40. In essence, the position of Leinster (supported by Ballinabrackey) was that, so far as the players the subject matter of the Disciplinary Action were concerned, there was indeed a rule that cut back on the scope of the 1989 resolution. That rule was Rule 6.3. The relevant portion, on which reliance was placed reads as follows:

> "***"Other Relevant Connection:*** *A member shall be considered to have an Other Relevant Connection with a particular County, or Club (as the case may be) if:*
>
> *(i) The member's parents were, at the time of the member's birth, permanently resident in that County or the present Catchment Area of that Club, or*
>
> *(ii) That County is the County of the First Club of either of his parents, or*
>
> *(iii) In the case of a player whose parents were permanently resident in Co. Dublin at the time of his Birth, that Club was the First Club of either of his parents, or*
>
> *(iv) County Bye-Laws define either generally or for specific cases that particular factors give rise to such a connection."*"

41. An immediate difficulty with this argument is that it produced something on an anomaly, in that this particular rule did not exist until it was passed at Congress 2012. It was properly conceded by Leinster that, had the Disciplinary Action been taken in, say, 2011, the result – or at least their analysis of the matter – would have been different.

42. Clonmore maintained that Rule 6.3 did not have any effect on the 1989 resolution. They said that Rule 6.3 was merely a definitions rule. It did not establish the entitlement or non-entitlement to be a member or compete for any particular Club. In support, they made reference to the Report of the Rules Advisory Committee Report to Congress 2012, at which Congress Rule 6.3 as set out above came into being; however, we indicated that that was not admissible, since it would introduce uncertainty to the plain words of the Rule if reliance was had on the interpretations of units or individuals involved in its drafting or passing at Congress (see, by analogy, *Crilly v T & J Farrington* [2001] 2 IR 251).

43. Nevertheless, in our view, Clonmore have the better argument on this point. The purpose of provision of a definition of "*Other Relevant Connection*" in Rule 6.3 is to establish what that phrase means, for the purpose of its use in other contexts. Thus, it is evident that, by virtue of Rule 6.4(c), a County is entitled to choose one or more of the "*Other Relevant Connections*" in its Bye-Laws as a basis upon which a person seeking to become attached to a First Club can do so. Likewise, in Rule 6.5(a) a County may, again by means of a Bye-Law, restrict transfer entitlements by reference to, among other things "*Other Relevant Connections*". Thus, no person is entitled to either join a Club in the first instance or transfer to a Club by reference to the mere fact of having an "*Other Relevant Connection*", with that Club. Only if Bye-Laws provide for it, can such eligibility arise.

44. We appreciate that the matter can be rather more complex where a "cross-border" scenario arises such as here. Thus, in its Bye-Laws, County A may have unrestricted entitlement to join any First Club, whereas County B may have tight restrictions by reference to parishes or the like. On the face of it, a person within a parish straddling

the border between County A and County B would have conflicting rules attending them. However, the Rules cater for this because all Bye-Laws are subject to County boundaries: see Rule 6.4(a).

45. We understand that many neighbouring Counties have agreements in place which actually allow players to become attached to Clubs outside their County of permanent residence. Strictly speaking, his runs contrary to Rule 6.4(a), but we understand that there is a power of derogation if such an agreement is sanctioned by Central Council, although, it would seem that, without such an agreement and sanction of Central Council, the Bye-Laws of one County cannot allow its Clubs to accept new members from a different County. It should be noted that this particular point was not argued before us and is not necessary to our decisions, so this observation should be read in that context.

46. The point may be relevant in the context of the concession made by Clonmore that Leinster Council is as entitled to rescind its 1989 decision as it was to make it. Given Rule 6.4(a), the rescindment of the 1989 decision would not necessarily allow young individuals not permanently resident in County Meath to join a County Meath Club such as Ballinabrackey.

47. Of course, the 1989 decision itself, given that it *prohibited* migration across County boundaries, would not have required any derogation from a rule equivalent to Rule 6.4(a), if one existed at the time.

ANALYSIS OF ELIGIBILITY OF MEMBERSHIP: APPLYING THE RULES

48. This brings us to a very important point in this discussion. As a general proposition, changes in law should not render unlawful acts that were lawful at the time of their commission. Such retroactivity is generally ruled out and, where it is not, such effect can leave a law vulnerable to constitutional challenge. By reason of the same principles, Rules and Bye-Laws should – unless they make very clear that they are to affect existing rights or require positive corrective action – be construed to have prospective effect only.

49. That is particularly significant in the context of eligibility for membership. Just as a member should not be exposed to Disciplinary Action for something done in accordance with a Rule that has changed since the thing was done, so too, in the ordinary case, should a member's lawful membership of a club remain lawful even if that member would not, on subsequent date, be entitled to gain membership of that club. Unless some change in Rule or Bye-Law clearly provides that that change is intended to render unlawful members' previous lawful membership of a club (obliging them to leave the club by transfer or resignation), then it is to be assumed that their membership is unaffected.

50. Therefore, as a general principle, one can say that if membership has at any one time been regular under Rule/Bye-Law, then it will not be rendered unlawful by a change of Rule or Bye-Law.

51. Under current rule, the concept of attachment does not arise until the player first legally (i.e. in accordance with Rule and Bye-Law) participates in Club competition at Under 12 Grade or over (including Go-Games), organised by the County Committee or one of its Sub Committees in the County of his permanent residence, subject to that participation being at an age not more than two years younger than the designated age for the competition. The attachment rule is in Rule 6.4 and it is also expressed in the definition of "First Club" in Rule 6.3.

52. What might happen before that (i.e. when the player is younger) depends on the Bye-Laws of the County in question (see Rule 6.4(c)). There may be a choice available to members (e.g. where there are two clubs in one undivided parish). However that choice becomes irrevocable on the day that the player first plays in a game at Under 12 or higher grade: the club he plays for becomes his First Club, and future Rule changes cannot take that away from him.

53. However, we emphasise that this discussion refers the current rules and their prospective effect.

54. We cannot say precisely what was in previous iterations of the Rules relating to eligibility and transfers, but we believe that the principle of attachment to a particular club is one that has existed for some time. The terminology used was "*Home Club*" but that was liable to cause confusion and was changed.

55. Nevertheless, in individual cases, and from County to County, the Rules and Bye-Laws affecting eligibility may vary from year to year.

56. Therefore, in order to examine whether a particular player is eligible, today, to be a member of and play for a particular club, one does not look at his eligibility under the Rules and Bye-Laws applicable today. One looks instead at the point when he first competed for that club at the requisite grade (i.e. Under 12 as specified in Rule 6.4(d)) and the various points thereafter.

57. Thus, to work an example, if a player, now aged 15 is playing for Club X and a question arises as to whether that player is entitled to play for Club X or not, one must first ascertain how he came to play for Club X. If it was by virtue of a transfer, one need only consider whether the transfer was valid under the Rules and Bye-Laws applicable at the time of the transfer (it would be vexatious to seek to undermine the transfer – which, in the absence of an appeal or legal challenge within the requisite time period is protected from challenge – on the grounds that the Club from which the player was transferring was not the Club of which he should have been a member).

58. If our hypothetical 15 year-old has never transferred to that Club (i.e. it is the only Club he ever played for), then one must ascertain whether – *under the Rules and Bye-Laws in force at that time* – he was ever eligible to play for that club at Under 12 grade or over. If he was at some point eligible to, and did, play for that club at Under 12 grade or over, his membership cannot be impugned by reference to later Rules or Bye-Laws.

59. What then if the Club in question was *not* a Club that he was entitled to join when he first played at Under 12 Grade but later (by virtue of a Rule or Bye-Law change) *became* one that he might have joined? For all the time he was not entitled to join the club he actually joined, he did not have any lawful membership, either of any Club, or the Association. He remained entitled to join the Club or one of a number of Clubs (if Bye-Laws allowed him a choice) that Rule and Bye-Law provided for. If, then, the Rules or Bye-Laws change so as to entitle him to join Club X, it seems that, by playing a game at Under 12 grade or over for Club X, he becomes attached to that club (under the old rules making it his "*Home Club,*" and under the new Rules making it his "*First Club*"). His unlawful membership of that Club up to that date would not – it seems – prevent him from becoming a lawful member thereafter.

60. On one view, this penalises the individual who, wanting to join a particular Club, observes the Rules and joins instead the Club that he is obliged to under Rule and Bye-Law, whereas his hypothetical comrade who simply ignored the rules and joined the Club he wanted to join would not have the obstacle of a transfer application to overcome in the event of a change of Rule. However, the occasions when the hypothetical change of rules identified above will be very few indeed, and in any case, proper enforcement of the rules will, one would hope, restrict the capacity of a player to continue to play for a Club of which he was not entitled to be a member. Moreover, one would expect that a County Committee, in dealing with the transfer application from a player who has observed the rules notwithstanding his personal preference, would act in a sympathetic and understanding way.

61. The important point to take from this last discussion, however, is that one cannot assess eligibility by reference to the Rules and Bye-Laws in place at the date of the decision. One must instead assess whether the player was ever eligible to be a member of the club in question, for if he was, under rules applicable at some earlier time when he competed on behalf of that club, then subsequent rule changes cannot alter that eligibility. This may sound like a difficult task for, say, a Competitions Control Committee who may have neither the time nor access to all the information to interrogate the questions arising. However in this regard, we would draw attention to Rule 7.3(aa)(1)(v), which allows adverse inference to be drawn from a failure by a Defending Party to adduce evidence which he was in the post position to prove or disprove an allegation. The Competitions Control Committee need only prove ineligibility under current rule: it is for the Defending Party to prove that eligibility was lawful under previous rules.

CONCLUSIONS

62. Arising from the foregoing, the following conclusions may be drawn.

63. First, Clonmore, do not have standing to challenge the decision of Leinster on the seven cases of Disciplinary Action dealt with in November of 2012.

64. Secondly, although that decision is protected from challenge, by virtue of no party having standing to challenge it calling it into question, the decision was reached on the basis of an incorrect analysis of the Rule. Rule 6.3 is a definitions section and the relevance of the "*Other Relevant Connection*" definition in any given case cannot be assessed without regard to the relevant Bye-Laws and any inter-County agreements dealing with border parishes.

65. In stating the first two conclusions above, we are conscious that the theoretical risk exists that Counties will conspire with their Clubs to facilitate the intake of players from neighbouring counties, possibly in breach of Rule 6.4(a) (assuming no inter-County agreement), since the Clubs that "lose" the players will not have an active role in the disciplinary process. However, one should not assume that a County will deliberately disregard a breach of Rule brought to its attention by, say, a Club from another County, or indeed by Central Council; and in any event, the Objection procedure is an effective policing method whereby Clubs within a County will monitor one another's compliance with Rule.

66. Thirdly, when ascertaining whether a player is now a lawful member of a Club or not, it is open to that player to prove that, at a time in the past when he competed for that club at Under 12 Grade or over, he was entitled to do so under the Rules and Bye-Laws (including any special agreements) then in force. If he proves that, then, unless he has been the subject of a lawful transfer to another Club, or a rule (the validity of which has not been challenged) expressly renders his membership void, then one cannot conclude, by reference to present Rules and Bye-Laws, that the player is not a lawful member of the Club in question.

67. Fourthly, it would seem that, unless sanctioned by a valid agreement between Counties, a person intending to become a member of the Association may not join a Club that is not in the County of his permanent residence, irrespective of the Bye-Laws of either of the Counties concerned.

68. We would make three final observations that are not strictly relevant to the dispute before us, but which seem to be worth making. The first is that our final observation above should not be taken as an invitation to Clubs or individuals to challenge longstanding agreements between Counties on the grounds that they are in breach Rule 6.4(a). Quite apart from the question of derogation, the relevant rules are the rules applicable at the time such an agreement was made. Moreover, a longstanding agreement may not be capable of challenge once the relevant period for challenging it by appeal or arbitration proceedings has passed. The second point arising, which

follows in many respects from the last comment, is that there would be considerable merit in maintaining a register of such agreements between Counties, and examining whether anomalous or unofficial instances of cross-border arrangements should be regularised, whether by agreement, decision or indeed change of Rule. The third point we wish to make is that there would be benefit to a rule which established a sort of "*Statute of Limitations*" about challenges to Club membership. While one does not wish to encourage activity that is in breach of Rule, there comes a time beyond which an attempt to dislodge a player from a particular Club achieves nothing but rancour and resentment, and is unlikely to lead to the player remaining a member of the Club (or one of the Clubs) that he ought to have joined. Obviously, any such period would have to be sufficiently long after the player has been competing in games at Under 12 Grade or over, so that it might come to the attention of the County Committee or other Clubs, but not so long that the player is allowed to become an embedded member of the "*wrong*" Club before being forcibly removed from it. That would, of course, require a change in Rule.

INTERIM AWARD

69. In the specific result, therefore, the application must be refused, although it cannot be said that Clonmore have not achieved a substantive success in the matters raised. The parties might bear that in mind in endeavouring to reach an agreement on the question of costs. If an agreement cannot be reached, however, we will take submissions on the question and determine that by a separate award. For that reason, the above is an interim award.

Dated: 31 July 2013

Signed

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Damien Maguire

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John Healy

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Micheál O'Connell