Disputes Resolution Authority

An Córas Eadrána

DRA 19 of 2015

In the matter of an Arbitration under the Disputes Resolution Code and the Arbitration Act 2010

Westerns, Louth v Louth CCC & Leinster Hearings Committee

Hearing: Louis Fitzgerald Hotel, Dublin at 8pm on 3 Nov 2015

Tribunal: Arran Dowling Hussey, Dara Byrne, Albert Fallon

Secretary to the DRA, Jack Anderson, was also in attendance

Verdict: Claim fails.

Keywords: ***Incorrect score recorded by the referee; meaning of the status of the Referee's Report, unedited video and compelling evidence in R 7.3(aa)(1)(vi) of the Official Guide (2015); procedural unfairness; bias; irrationality test.***

List of Attendees:

Claimant:
Conor Sally, Logan & Corry Solicitors
Frank Scriven, Chairman
Thomas Brennan, Secretary
Eugene Duffy
Danny Martin

Respondent 1,
Sean Carroll, Secretary Louth CCC
Declan Byrne, Louth CCC

Respondent 2,
John Byrne, Secretary Leinster HC
Tom Jones, Leinster HC

Whereas

1. Whereas the undersigned were appointed by *An Coras Eadrana* to sit as Arbitrators in the instant dispute between the parties under the rules of the Dispute Resolution Authority (hereafter "DRA") and in accordance with the 2010 Arbitration Act.

2. Whereas a hearing was held at the Louis Fitzgerald Hotel near Clondalkin, Dublin, on November 3, 2015 at 8.30PM, which was attended by the undersigned and representatives of the parties, as listed, and oral submissions were made further to the written submissions that were received prior to the holding of the hearing. The said hearing concluded a little before 1am in the early morning of November 4, 2015 and lasted for roughly 4 ½ hours.

3. The Arbitration Tribunal (hereafter "Tribunal") in accepting their appointments to act as Arbitrators in this reference DRA19/2015, before their attendance at the Louis Fitzgerald Hotel, knew of no reason that would individually or as a Tribunal preclude them from hearing the arbitral reference. The Tribunal shortly before the hearing started elected Arran Dowling-Hussey as Chairperson. No objection was then raised by any of the parties when the Chairperson asked the parties if they knew of a matter that the Tribunal may not so as to impact on the Tribunal's ability to proceed.

4. In that the hearing lasted 4 ½ hours it is not the purpose or function of this Award to also serve as a transcript of the totality of the submissions made to the Tribunal. Suffice to say the Tribunal has considered all oral and written submissions that were adduced to it. The Award made herein is a summary of the reasoning that led to the decision set out on the final page herein. The parties have already been advised of the findings set out on the last page herein in an oral decision given at around 1am on November 4, 2015, and this was done, on the basis that the written Award would follow and be issued within one month of the hearing of the Arbitral reference.

Factual Background

5. The claimant's contested that the two respondents Louth CCC and the Leinster Hearings Committee erred in not allowing the appeals that they brought arising from a match played on September 5, 2015 between the claimant club and Sean Mc Dermotts. Subsequent to that match they say that the result of the game had been wrongly recorded. Evidentially the claimant relied at least in part in making the aforementioned argument on a video recording of the match and in that context invited the Panel to watch the video. This led into a preliminary point as to whether the video was evidence that the Tribunal sitting on the 3/11/15 could consider.

Preliminary Matters

6. In that in the reliefs claimed this instant Tribunal is being asked to overturn the decision of the referee it can only under the rules of the association have regard to video evidence that is unedited evidence. No criticism is intended in any way of the witness who was in attendance and also recorded the game (Mr Martin). He was a bona fide witness who was endeavouring to assist in the resolution of a process his club had started. However for the purposes of legal construction it was clear that the video he had recorded could not be an unedited video within the meaning of the applicable rules and principally Rule 7.3(aa)(1)(vi). In short, Mr Martin had stopped and started the recording at his own election when he thought that there was dead time. That is a process that is art and not science and there is no way in which his decisions of what part of the game to record can gainsay the requirement inherent in the rule to have a fulsome recording of the match available. The Tribunal accordingly declined to view the whole or part of the video evidence.

7. In that the Tribunal did not view the video evidence it can not say that it was presented with visual evidence within the meaning of the rules that there was a substantive error as to the result of the game. It also follows that the Tribunal has taken no issue with findings made by the respondents as to the status of the video. The Tribunal's decision making process and manner in that it considered this issue may well have been different but it is in agreement with decision/s made by the respondents that this was not material and relevant evidence within the meaning of the rules of the association.

8. The Tribunal was asked implicitly, or explicitly, to hear from oral witnesses to the said match. Some of the witnesses were not in attendance at the hearing but it was suggested that their evidence could be tendered by way of the telephone or through video conferencing packages such as 'Skype.' In that the hearing had been set down in advance and there was a reasonable gap in time between the request for Arbitration and the hearing of the reference there was no sufficient reason such that any witnesses not in attendance could be called to give evidence. Whilst exceptional circumstances might notionally arise such that evidence can be called by telephone from a party who was not in attendance at the hearing of the reference and whom had not been signalled in advance as being a witness of fact or law, that would be relied on, in general for administrative and other reasons the witnesses called are those whom it has been flagged in advance will be in attendance at the hearing. The thread that runs through the process of Arbitration which the parties have agreed to use to settle any difference/s between them is that it will be conducted in an expeditious manner.

9. If a Tribunal starts to hear as a matter of form from people not at the hearing, who it may then said can not be challenged as to their evidence as fully as if they were in the room due to the quality, or lack of, of a telephone or video link the Tribunal's task can not be performed expeditiously and with certainty. Once a witness is accepted as being necessary for the purposes of a hearing notwithstanding they have not been listed in advance and/or are not in attendance then at the point that the telephone or video link which they are on "drops out" and they can not be re-contacted- the Tribunal is then faced with a procedural issue as to whether in the interests of fairness the hearing has to be adjourned and re-convened so as to allow for that witnesses evidence to be finalised. This approach would be undesirable and not in keeping with the manner in which the DRA has operated for a number of years.

Reasoned Decision

10. For the Tribunal to grant the reliefs sought has to be persuaded that there was an irrationality to the decision/s that are sought to be impugned. It is a thread running through Dispute Resolution Authority decisions specifically and more generally Irish administrative law that this is in general a very high threshold to meet (see *inter alia The State (Keegan) v The Stardust Victims Compensation Tribunal* ((1986) IR 642 and *Meadows v Minister for Justice Equality and Law Reform* [2010] IESC 3

11. The Tribunal as has already been stated declined to view video evidence that the Claimants looked to tender. It also, for reasons described earlier, declined to hear evidence from witnesses via the telephone or video link. Moreover no evidence was taken on November 3, 2015 as to what did or did not happen in the match in question. The foregoing arose in that the Tribunal is performing a review process where it does not look to the merits of the initial impugned decision but as to whether the decision/s made by the respondents on foot of the appeals by the Claimant was other than in accordance with law and/or *ultra vires*. As per the dicta in *Keegan* and other cases it is not for the Tribunal to step into the shoes of the respondents at the time that they made the impugned decisions. Whether the Tribunal would have made a different decision to the respondents is not a question that needs to be considered. Rather the issue that was considered but does not arise herein was whether there some pathological issue in the manner in which the respondents heard and weighed the evidence at first instance.

12. The claimants fail to meet the threshold needed as to 'irrationality'.

13. Moving away from the treatment of video witnesses or the fact that oral witnesses evidence was as, was within their margin of discretion, not accepted by the respondents, it is next necessary to see if there was some wider issue as to process and fair procedure that would be relevant in terms

of the claimant's application. A failure to record in the minutes of one of the respondents' bodies when someone left a meeting is not a material issue for the purposes of the exercise in hand. The Tribunal accepts the oral evidence of others in attendance at that impugned meeting, who were at the instant hearing on November 3, 2015, that all that had transpired in relation to the minuting issue complained about was merely an error in the record keeping in relation to the listing of attendance at the said meeting. No evidence was before the Tribunal that someone had sat in at a meeting of the first named respondent's which they should have but failed to excuse themselves from.

14. We find that the respondents considered the matters raised before them at an appropriate length and made reasoned decisions on the evidence that was made to them. It does not follow that as they did not make decisions that were those sought by the claimants that there was a failure of process. They were entitled as a matter of law to make a decision that was different to that sought by the claimants. The issue that could have most borne on the status of the impugned decisions by the respondents would have been if there had been an inherent irrationality or substantial procedural irregularity. It just can not be said that one of more of these grounds were made out to the requisite standard necessary for an application of the type made by the claimants to have been successful.

Award and Costs

15. The claim fails. The reliefs sought are refused.

16. Whereas the Claimant has as required lodged a deposit and had not succeeded with their claim the Tribunal can find no reason, having received no submissions on costs, to depart from the legal principle that the costs of the Tribunal be met by the Claimant. This Tribunal therefore directs that the Claimant be refunded that part of their deposit lodged with the Disputes Resolution Authority which is left after the costs of the Award have been met.

Date of Oral Hearing: 3 Nov 2015

Date of Agreed Award: 1 Dec 2015

Award dated and agreed by email.

Signed: _____

Arran Dowling-Hussey B.L
Chairperson

_____

Dara Byrne

_____

Albert Fallon