

**DISPUTES RESOLUTION AUTHORITY**

**IN THE MATTER OF THE ARBITRATION ACT 2010**

**SECOND REQUEST FOR ARBITRATION**

**BETWEEN:**

**PADDY O'BOYLE**

**Claimant**

**And**

**LOUTH HEARINGS COMMITTEE**

**Respondent**

**STATEMENT OF REASONS**

**Background Facts:**

1. On the 13<sup>th</sup> March 2014 the parties agreed that the decision of the Hearings Committee the subject matter of the first request for arbitration should be remitted to the Louth Hearings Committee (LHC) for reconsideration subject to the directions of the D.R.A. on a number of stated issues.
2. The matter was reheard by LHC on the 20<sup>th</sup> March 2014. It was the decision of LHC to uphold the appeal of St. Nicholas GFC against the decision of the Louth County Competitions Control Committee (LCCC) to allow the transfer of Paddy O' Boyle from St. Nicholas GFC to O' Raghallaighs GFC.
3. The re-hearing was conducted with the benefit of the directions sought and given by the D.R.A on the 13<sup>th</sup> March 2014.
4. The Claimant has submitted that the LHC:
  - i. Erred in Law in allowing the appeal of St. Nicholas GFC;
  - ii. Acted *ultra vires* and in breach of fair of procedures and natural justice in deciding to uphold the appeal on grounds that had not been canvased by said Nicholas GFC as a ground of appeal either in its original appeal as lodged on February the 4<sup>th</sup> 2014, in its amended appeal / grounds of

complaint dated the 16<sup>th</sup> March 2014 or in the course of its submissions to the LHC;

- iii. The Hearings Committee decision was irrational and unreasonable;
- iv. The manner in which the Hearings Committee was conducted breached fair procedures and natural justice;
- v. The decision to uphold the appeal contravenes the claimant's constitutional rights.

### **Further Agreement**

- 5. The second request for arbitration coming on for hearing on the evening of the 19<sup>th</sup> May 2014, the parties agreed that pursuant to clause 11.4 of the Disputes Resolution code, and, on the basis that the decision of LHC be quashed, that this tribunal would "*conduct a full hearing as if it were an appellate body of last resort under the Rules of the Association, with power to fully conduct the procedure which has been quashed*". This was a practical and pragmatic approach given that this was the second time that this matter was before the D.R.A and thus avoid the prospect of a second remittal to LHC with further directions.
- 6. It having being agreed that this Tribunal would act as an appellate body, the matter for hearing is in fact the appeal by St. Nicholas GFC (appellant) against the decision of LCCC (respondent). Mr O Boyle, notwithstanding the fact that he is the Claimant in the request for arbitration, was not therefore a party to the appeal and his participation in the appeal was therefore at the discretion of the Tribunal. It was decided that Mr. O'Boyle could observe the proceedings and, as a party affected by any decision that the Tribunal would make, would be invited to make representations or submissions prior to the conclusion of the appeal hearing. Mr O Boyle's entitlement to retain legal representation, (which would not be allowed at a LHC hearing) was agreed on the basis that such limited participation would not prejudice the Appellant or the Respondent as his legal representative would not be entitled to cross examine witnesses.

### **The Subject Matter of the Appeal**

- 7. Mr O'Boyle submitted an inter club transfer form dated the 10<sup>th</sup> December 2013 seeking a transfer from St. Nicholas GFC to O' Raghallaighs GFC. St Nicholas GFC objected to the transfer request on the following grounds;

*"St. Nicholas GFC feel that we cannot afford to lose any player through transfers for the foreseeable future. We are lacking in numbers due to a number of facts i.e. retirement, emigration, etc."*

By email dated the 29<sup>th</sup> January 2014 under the subject matter of "*interclub transfers*" all club secretaries concerned where notified as follows;

*"The CCC shall meet on Monday, (3<sup>rd</sup> February) in the Louth GAA centre of excellence, Darver to process applications for inter club transfers (F and H, adult and juvenile). Players seeking a transfer are invited to attend. Clubs involved in these transfers are also invited to send one representative to speak on their behalf if required".*

8. The LCCC duly notified the parties concerned of their decision in regard to Mr O'Boyle's request for transfer and by email dated the 4<sup>th</sup> February 2014 the Appellant, St. Nicholas GFC requested an appeal in the following terms;

*"St. Nicholas GFC wish to request a hearing in relation to the transfers of both Paddy O'Boyle (from St. Nicholas to O' Raghallaighs) and .....We did not sign the transfer request of Paddy O'Boyle and feel that the decision of the CCC to sanction this transfer is beyond belief. Is it not the case that if a club does NOT sign a transfer that it is taken that the club does NOT wish the transfer to go through. We also stated that we cannot afford to lose any more players from our club or we will cease to exist at an adult level. The reason that we did not send any representative to the transfer meeting was that we felt that the Committee leaned towards the essence of the GAA which is community and parish and felt that they would be reluctant to sanction ANY TRANSFERS UNLESS SANCTIONED BY BOTH CLUBS".*

9. Accordingly the matter comes before this tribunal as an appeal of that decision of LCCC. The Appellant, St. Nicholas GFC was represented by Mr Alan Gregory Club secretary and the Respondent was represented by Mr Thomas Mc Quillan LCCC Chairman. Also in attendance were Mr Robert McKenna Chairman O'Raghallaighs GFC, Mr Paul Moore O Raghallaighs GFC, and Mr Paddy O Boyle represented by Caroline McGrath BL, Mr Tom Dooley and Mr David Rogers both Louth Hearings Committee (observing). It was explained to the parties that the Appeal would be conducted in accordance with the Rules of the Official Guide and that evidence would therefore be limited to that which was canvassed before the LCCC or otherwise in accordance with the directions of the DRA Tribunal dated the 13<sup>th</sup> March 2014.

#### **Evidence**

10. Mr Gregory on behalf of the appellant stated that nobody from the club attended at the CCC as they did not consider that it was necessary for them to attend, the Club having expressed their objection to the application for transfer in writing as was required under Louth County Bye-Laws. He stated that following upon the meeting of LCCC on the 3<sup>rd</sup> February they received the list of transfers and refusals as did other clubs and that no further documentation was received in regard to the transfers. He stated that the Club could not afford to lose any more players. He confirmed that St. Nicholas GFC is the first club that Mr O'Boyle played with as a juvenile and that he has played with the club ever since. As regards the reference in their request for appeal to *"the essence of the GAA which is community and parish"* he said that he was not specifically referring to Rule 6.1 of the Official Guide as he did not have

specific knowledge of that Rule at the time. He has since however learned of the relevance of this Rule.

11. Mr Mc Quillan on behalf of the respondent stated that the CCC granted Mr O' Boyle's transfer request based on:
  - a. The strong case put forward by Mr O'Boyle;
  - b. That if St. Nicholas GFC felt strongly about their objection that they would have attended at the meeting of the CCC and made a case for their objection;
  - c. Rather than attend at the CCC they merely "*sent in a couple of lines*";

Mr Mc Quillan advised that as many as 29 applications for transfers had to be dealt with that night.

12. Mr Mc Kenna on behalf of O' Raghallaighs GFC made reference to other unrelated transfers. He submitted that the ethos of the GAA is sacrosanct as regards transfers. He submitted that the ethos of the Association works both ways. St. Nicholas GFC did not show any loyalty to Mr O'Boyle by allowing various other players to leave the Club over the course of the preceding years. This has undoubtedly weakened the St. Nicholas GFC team and has hindered Mr O'Boyle's chances of winning a county championship and progressing as a player. He submitted that the address of a player is not a factor for consideration.
13. Mr O'Boyle stated that in attending at the CCC he submitted that St. Nicholas GFC were "*holding the Club back*" by allowing other players to transfer out of the Club. He said that there had been four transfers in one particular year, three of whom transferred to the same Club. These were four of the best players in the Club. It was submitted that when these four players left he considered that they could not move forward as a team. He stated that he spoke to various members of the Club committee, including the club Chairman, on a few occasions over the previous two / three years. Each year he was promised that the club would allow him to transfer the following year. He submitted that he has been with St. Nicholas GFC since he was ten years of age and has done everything within his ability to benefit the club. This is both as a player and also in assisting the Club and the team even when unable to play through injury. He was extremely disappointed that the Club had let those four players go. He noted that one of those players has since won a senior county championship. He submitted that he wanted to progress as a players and he wanted to play football at senior level. He was now 27 years of age and has not much time left as a player to achieve that goal. As regards the ethos of the Association he said that he has always thought about the Club but more recently he has thought about himself as a player. He won a Leinster Junior Football Championship with his County and he wants the chance to play football at the highest level within his County. If the Club had not let the other players go he submitted that St. Nicholas GFC would have a strong junior

team and could progress. He feels that the Club however has been let down and that he as a player with ambition and has likewise been let down.

14. The evidence having concluded all parties were asked to consider submissions and in particular as to whether anything had been put before the tribunal which had not been submitted to the CCC as in accordance with Rule 7.11 (n) an appeal should be limited to the matters raised in the Appellant's appeal as originally lodged.

There were no submissions made by any of the parties in that regard. Ms McGrath BL on behalf of Mr O Boyle submitted that in accordance with Rule 7.11 (n) of the Official Guide an appeal could only be upheld where:

- i. There has been a clear infringement or misapplication of Rule, or,
- ii. The Appellant's right to a fair hearing had been comprised to such an extent that a clear injustice had occurred.

Ms. McGrath BL submitted that there had been no such misapplication or infringement of any rule. Neither was there any unfairness with regards to the conduct of the Hearing by the CCC in that St. Nicholas GFC exercised their right to object, had the opportunity to attend and be heard and that the CCC were entitled to reach the decision which they did based on the written submissions and the substance of Mr O'Boyle's oral submission. Based on the evidence the decision of the CCC was rational and reasoned. The CCC were perfectly entitled to take into consideration Mr O'Boyle's personal circumstances and this has been elaborated upon in other cases before the D.R.A and most notably that of *Eamon Fennell -v- Dublin County Board D.R.A/3/2010 at paragraph 30*. Ms McGrath BL submitted that the ethos of the Association goes both ways. Whilst a player is considered to owe allegiance and loyalty to his first club and county and whilst the Association is based on that allegiance of its members, it was submitted that this allegiance is not unconditional. The ethos of the Association was at the heart of Mr O'Boyle's decision in previous years not to seek to transfer. However, Mr O'Boyle having considered that he no longer owed any allegiance to St. Nicholas GFC for the reasons stated, sought this transfer. Ms McGrath BL also submitted that the principal of proportionality should be considered and the impact on the player in all of the circumstances surrounding a refusal.

It was put to Ms McGrath BL that the CCC had not submitted any evidence of having considered the ethos of the Association in reaching their decision. The only reference to ethos had been in the submission of Mr McKenna on behalf of O'Raghallaighs GFC and also by Mr O'Boyle.

In the interest of fairness it was agreed to recall Mr Mc Quillan on the specific issue as to how if at all the ethos of the Association was considered in the context of the transfer request. On being recalled Mr Mc Quillan stated that;

- a. The player was determined to leave St. Nicholas GFC.
- b. It was a forgone conclusion that the CCC take the ethos of the association into account. He stated that the CCC is not a rubber stamping body and that no decision is taken lightly.
- c. The ethos of the Club is considered and this also applies to the players.

- d. He said that he could not recall everything that was said at the meeting and if in fact the word ethos had been mentioned. This reference to ethos, he stated, was something that had only been brought up tonight and that it had never been mentioned previously. On being asked specifically as regards Rule 6.5(e), Rule 6.1 and the requirement of the CCC to consider the ethos of the Association his reply was that *"what it said in the book doesn't always apply"*.

Ms McGrath BL then submitted that it was clear from the evidence that the ethos of the Association was considered. Whilst under the Rules the appellants body has discretion it must be shown that the CCC had completely disregarded the ethos of the Association in reaching their decision. It was submitted the Rule 6.1 of the Official Guide cannot be taken to mean that a player owes an unconditional allegiance to his first club. Allegiance can suggest something other than a requirement to play with the club. Were it to be suggested that such allegiance is to be unconditional and be applicable in all respects then it is severely restrictive of the role of the CCC in regulating transfers of players. It was submitted that if such be the case that the Rule could be open to Constitutional challenge. It was submitted in this instance that there is un-contradicted evidence in regard to Mr O'Boyle's dedication and loyalty to St Nicholas GFC over many years and also of his talent as a player. In this instance the Club has lost the allegiance of its player and a decision in those circumstances by the CCC to allow the transfer requested is entirely consistent with the ethos of the Association.

It was submitted that were it to be otherwise that it is incumbent upon the Association to define the ethos of the Association by reference to principals to be applied in considering transfers. This is more clearly illustrated by the fact that even in an instance where both Clubs consent to the transfer of a player that it is open to the CCC to refuse the transfer based on Rule 6.5(e) and 6.1. The need for definition is also apparent in comparing transfers in urban areas where there are a number of clubs (in some instances within the same community) against applications in rural areas where the club is so integral to the local community. In this instance the Tribunal is advised that in the urban area of Drogheda there are in fact five GAA clubs and that there is no Parish Rule in the County Bye-Laws. Accordingly there are no clearly distinguishable factors aligning any of the clubs with a specific community.

### **Decision**

In accordance with the Official Guide 2013 – the relevant Official Guide for the purposes of this appeal - the Tribunal as an appellants body under Rule 11.4 must consider the substance of the appeal in accordance with Rule 6.5 (e) which required the CCC to make its decision in accordance with the Official Guide, the County Bye-laws, any discretion available to it having regard to the submissions of Mr O' Boyle, St. Nicholas GFC and such other discretionary factors as may be provided for in the Bye-laws and **"the ethos of the Association"**.

Rule 6.1 defines the Association's ethos as follows;

*"As the Gaelic Athletic Association is community centred, based on the allegiance of its members to their local clubs and counties, the transfer and declaration Rules in this Official Guide and in County Bye-laws reflect that ethos. A player is considered to owe allegiance and loyalty to his first club and County as defined in these Rules."*

1. It is accepted by all parties that St. Nicholas GFC is Mr O'Boyle's first club as defined under the Rules.
2. The parish Rule has no application under Louth County Bye-laws.
3. The application for transfer therefore must be considered in regard to the submissions made. Where the CCC had discretionary powers these must be considered in the context of the ethos of the Association.

Having considered the submission made by all parties, the following determinations are made.

In accordance with Rule 1.9 of the Official Guide members of the Association by virtue of their membership are subject to the jurisdiction of the Rules, Bye-Laws, and Regulations which govern the relationship between Members, Clubs, County Committees and other units of the Association. In that regard one must take the Rules as they are and not as one would like them to be. Any Competitions Control Committee of the Association in adjudicating on a transfer application must consider the ethos of the Association pursuant to the provisions of Rule 6.5(e) and as defined in Rule 6.1 of the Official Guide. In this case the Tribunal accepts on the evidence that was before Louth CCC that the ethos of the Association was in fact considered. However it is clear from the evidence adduced, and the submissions made to the Tribunal that such consideration was in the context of St. Nicholas GFC being considered to have a reciprocal obligation or duty of allegiance to its individual member, and further that it is open to an individual member to consider that in certain circumstances, albeit personal to the member, that he no longer owes or should owe allegiance to his First Club and County as defined in the Rules.

The Rule is clear as to its effect and import and is not open to any such interpretation.

Accordingly it is considered that Louth CCC misapplied Rules 6.5(e) and 6.1 in its decision to grant the transfer of Mr O'Boyle. Consequently pursuant to Rule 7.11(n) the Tribunal upholds the appeal of St. Nicholas GFC on the basis that there has been a clear infringement or misapplication of Rule by Louth CCC. Pursuant to Rule 7.11(o)(i) the

decision of Louth CCC is annulled and it is directed that no further action be taken in the matter.

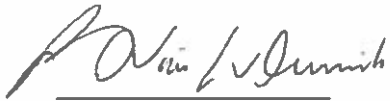
Dated this 27<sup>th</sup> day of May 2014



Damien Maguire



James Clarke



Brian Rennick