

Disputes Resolution Authority

An Córas Eadrána

DRA 02 of 2016

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

Killybegs and Burt v Donegal GAA & Ulster HC

Hearing: Silverbirch Hotel, Omagh, at 8pm on 22 April

Tribunal: Damien McMahon, Gerry Hyland and Albert Fallon

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

Verdict: Claim fails; application refused.

Keywords: Law of Meetings, Standing Orders at a County Convention; SGM or EGM Approval of a Motion from a Club for consideration at County Convention as per Rule 3.14 of the Official Guide (2015); Whether a County Convention is a "unit" of the Association as per Rule 1.9 of the Official Guide (2015); Whether there is a Right to Appeal from a County Convention as per Rule 7.11(a) and (e).

List of Attendees:

Claimants:

Damian Dowds, Burt

Danny Dowds, Burt

Niall Erskine, Killybegs

John Cunningham, Killybegs

Respondent 1,

Denis O'Mahony, Solicitor

Sean Dunnion, Cathaoirleach

Aideen Gillen, Rúnaí

Respondent 2,

Sean McKenna, Ulster Hearings Committee

Declan Woods, Ulster Hearings Committee

Factual Background

1. This was a joint application for arbitration brought by CLG An Bheart and CLG Na Cealla Beaga, two clubs within the jurisdiction of CLG Dhun na nGall, ('the Claimants') against a decision taken at An Comhdhail Bhliaintuil of CLG Dhun na nGall, on 12ú Mi na Nodlag 2015, adopting a Motion concerning eligibility to play for any particular club within the county, encapsulated in the concept of "first registration".
2. There were a series of inter-connected motions before An Chomhdhail in this matter. The application specifically concerned Motion 6 on the Clár. The Claimants asserted that the adoption of this Motion had been neither proposed nor seconded, contrary to Standing Orders of An Chomhdhail and contrary to long-standing custom and practice and, in any event, the Motion was not in compliance with Rial 3.14, Treoir Oifigiúil 2015 ("T.O."). The Claimants brought an appeal against this purported decision of CLG Dhun na nGall before Coiste Eisteachta Uladh of CLG. The appeal was refused in a decision made on 21u Eanáir 2016.
3. The Claimants lodged their Request for Arbitration with the DRA on 2ú Feabhra 2016.
4. The Response of the Respondents was served on 17ú and 15u Feabhra 2016, respectively.
5. The Claimants were represented by Mr. Damien Dowds, Runai, CLG An Bheart and Mr. Niall Erskine, CLG Na Cealla Beaga. Mr. D. O'Mahony, Solicitor appeared for CLG Dhun na nGall. Coiste Eisteachta Uladh was represented by Mr. S. McKenna, Cathaoirleach an Choiste.

Preliminary Matters

6. There were two preliminary issues.
7. The first preliminary matter concerned whether the Claimants had a right of appeal to Coiste Eisteachta Uladh and, if not, whether the Claimants' application to an Coras Eadrana was out of time and should not be admitted.
8. It was submitted on behalf of the CLG Dhun na nGall that Rial 7.11(ii), T.O, that set out a right of appeal to Cositi Eisteachta Chuige only provided a right of appeal against a decision of Coisde an Chondae - not a decision of Comhdhail Bhliantuil an Chondae. It was submitted that An Chomhdhail Bhliantuil was not a "unit", of CLG, as defined in Rial 1.9, T.O.
9. It was confirmed on behalf of Coiste Eisteacta Uladh, that jurisdiction to hear the appeal brought by the Claimants had been accepted by it.

10. It was submitted on behalf of the Claimants that there was precedent, from 2009, of successfully challenging a decision of a county Comhdhail Bhliantuil before Coiste Eisteachta Cuige. It was submitted that An Comhdhail Bhliantuil was the supreme decision-making body within a county and that Rial 7.11(e) (that set out a list of decisions that could not be appealed to Coiste Eisteachta Cuige), did not include a challenge to a decision of a county Comhdhail Bhliantuil.

11. The second preliminary issue was whether the draft Miontuarisci of Comhdhail Bhliantuil CLG Dhun na nGall 2015 should be disclosed to the Claimants, together with the Miontuarasaci for Comhdhail Bhliantuil Dhun na nGall 2011-2014, inclusive, and the motion paper submitted by CLG An Bheart to An Comhdhail Bhliantuil 2015.

12. The representative for CLG Dhun na nGall confirmed that it objected to disclosure of the various Miontuarisci but would disclose them to the Claimants and the Tribunal if required. He pointed out that the Claimants would be in possession of the Miontuariscai for the years 2011-2014, inclusive in any event. (A copy of the said motion paper from CLG An Bheart had been subsequently disclosed in advance of the hearing).

13. The representative for CLG Na Cealla Beaga stated that the previous Miontuarascai were not retained but that clubs in Dun na nGall were promised that the affairs of CLG in Dun na nGall would be conducted in a spirit of openness.

14. The Tribunal ruled, after a short recess to consider the preliminary issues, that, on the first matter, the county unit of CLG was embodied in An Comhdhail Bhliantuil, that made decisions for the county unit and which comprised delegates from clubs representing all members of CLG within the county. An Coiste Chondae was merely the decision-making body of the county unit, under powers delegated to it by An Comhdhail Bhliantuil, from one Comhdhail Bhliantuil to the next (including any extraordinary Comhdhail Bhliantuil that may be held in any one year). In this regard, An Choisde Chondae was analagous to the Board of Directors of a limited company, while An Comhdhail Bhliantuil was analagous to that of an AGM of a limited company. The supreme authority of the county unit rests in An Comhdhail Bhliantuil - not in An Choisde Chondae. Accordingly, if the T.O. provided for a right of appeal of a decision of a county unit, then that right had to include a decision of An Comhdhail Bhliantuil.

15. The fact that the T.O. does not make explicit reference to a right of appeal against a decision of An Comhdhail Bhliantuil cannot mean that a decision of a county unit can only be the subject of appeal to An Coisde Eisteachta Cuige if it is a decision made by An Coisde Chondae: to hold otherwise would be irrational. There may well be a technical lacuna in the T.O. in this regard. However, for the purposes of these proceedings before An Coras Eadrana, the Tribunal concluded that the Claimants, in bringing an appeal before An Coiste Eisteachta Uladh, were acting properly in challenging a decision of the CLG unit that is CLG Dhun na nGall.

16. In the alternative, if this is incorrect, the Tribunal has discretion to extend time limits, and does so, to admit this application for hearing. It was regrettable that this issue was not raised before the commencement of the hearing by CLG Dhun na nGall since An Runai of An Coras Eadrana has authority to extend time limits if there is good reason for so doing. The fact that this issue was not raised until the commencement of the hearing was in itself good reason to extend time. Further, Coiste Eisteacta Uladh had accepted jurisdiction and determined the Claimants appeal to it. In any event, however, the interests of justice and fair hearing dictated that this application be admitted for hearing. Accordingly, the application of CLG Dhun na nGall was refused.

17. The second preliminary issue was resolved by agreement and the various documents sought were disclosed to the Claimants and to the Tribunal. It was regrettable, however, that the documents, save one, were not disclosed in advance. To have done so could easily have been on the basis that CLG Dhun na nGall objected to the relevance of some or all of those documents. However, to unilaterally decide not to disclose them was not acceptable. The Tribunal considered that the documents were relevant and perfectly understood why the Claimants sought their disclosure. It is important that parties to proceedings before An Coras Eadrana exercise the utmost openness and transparency in their conduct of those proceedings at all times.

Claimants' Submissions on the Substantive Matter

18. The substantive matter at issue was whether Motion No. 6 was validly adopted by an Comhdhail Bhliaintuil.

19. Mr. Dowds gave sworn evidence. He submitted that while Standing Orders were adopted to govern the proceedings of An Comhdhail Bhliaintuil, they were not followed in relation to the motions before An Comhdhail that concerned the concept of "first registration". He explained the process by which the seven Motions were considered. He stated that all seven motions were put forward, for administrative convenience, by CLG An Bheart on behalf of a sub-committee of CLG Dhun na nGall but that CLG An Bheart was in favour of Motion 7 only. However, after Motion 6 was passed, on a simple majority, An Cathaoirleach of CLG Dhun na nGall ruled that Motions 7-12 fell. He confirmed that the fact that Motion No. 6 was adopted was the issue in the proceedings insofar as the Claimants were concerned and that they wished the Tribunal to rescind the purported passing of Motion No. 6 and that the Motion be re-examined by An Comhdhail Bhliaintuil. He confirmed that all seven Motions were discussed as a group. He maintained, however, that none of the seven motions were formally moved or seconded, a position that contrasted with the discussion of Motion No. 13 on the Clar, which was not voted upon as there was no seconder. He stated that the need for a seconder for Motion No. 14 came up as an afterthought and then a seconder was retrospectively put forward for Motion No. 6. He maintained that traditionally in An Comhdhail Bhliaintuil in CLG Dhun na nGall, every motion was proposed and seconded. He asserted that the requirements of Rial

3.14 had not been met in any event. This required a motion from a club to An Comhdhail Bhliaintuil to have been approved at a meeting of the club. He stated that none of the seven motions put forward by CLG An Bheart was in compliance with Rial 3.14.

20. Mr. Dowds stated that it was only later in the meeting that it was realised that Motion 6 had not been proposed or seconded and that CLG An Bheart was concerned that the adoption of Motion 6 as a county bye-law would not stand up to scrutiny. He agreed that a Motion could be brought to An Comhdhail Bhliaintuil to change the bye-law once adopted. He also agreed that there was nothing in the Standing Orders adopted by An Comhdhail Bhliaintuil to govern its proceedings that required a motion to be seconded but maintained that this was always done in Dun na nGall.

21. Mr. Dowds submitted that An Cathaoirleach, CLG Dhun na nGall accepted that something was amiss as he accepted a seconder at a later time in the meeting.

22. The representative for CLG Na Cealla Beaga stated that it was only after the outcome of the appeal to Coiste Eisteachta Uladh that it became aware that no meeting of CLG An Bheart had taken place to approve the motions sent by it to An Comhdhail Bhliaintuil. He submitted that this was a mandatory imperative. Accordingly the motions were not validly on the Clar of An Comhdhail Bhliaintuil and Motion No. 6 was not validly adopted.

23. It was submitted that Coiste Chondae Dhun na nGall, could have put the said seven Motions on the Clar, rather than ask CLG An Bheart to do so, and thus avoid the issue of Rial 3.14, T.O.; instead, the Motions, while accepted by Coiste Chondae Dhun na nGall, were improperly placed on the Clar as, being in the name of CLG An Bheart, they were not compliant with Rial 3.14, T.O.

Respondents' Submissions

24. It was submitted on behalf of CLG Dhun na nGall that the raising of an alleged breach of Rial 3.14 at this stage was not acceptable since it had not been raised by the Claimants before Coiste Eisteachta Uladh. He submitted that if it was correct that the Claimants could, and had to, bring an appeal before Coiste Eisteachta Uladh, then that ground of dispute had to be ventilated before Coiste Eisteachta Uladh before the Claimants could bring an application in respect of that aspect to An Coras Eadrana.

25. Mr. S. Dunnion, Cathaoirleach, CLG Dhun na nGall, gave sworn evidence. He explained that a number of meetings and discussions on the issue of the concept of "first registration" had taken place, through the offices of a sub-committee, established to look at this issue (that had been a controversial issue for a number of years) before An Comhdhail Bhliaintuil took place out of which the seven motions were drafted. He stated that advice had also been taken from Comhairle Uladh CLG and An tArd Stiurtheoir, CLG. He confirmed that he was not surprised that CLG An

Bheart objected to Motion No. 6. He confirmed that he had asked CLG An Bheart, and they agreed, to formally submit the seven motions - a practice that was traditional in CLG Dhun na nGall. He confirmed that the adoption of the Standing Orders for an Comhdhail Bhliaintuil were proposed and seconded at the meeting. He stated that he decided, as Cathaoirleach, to permit a general discussion at the meeting of the seven motions in question. He stated the process whereby each Motion was considered, two of which were withdrawn by the clubs that had proposed them, including motion No. 4). Motion No. 5 and Motion No. 6 was put to a vote and tellers and a returning officer appointed, having been formally proposed and seconded. Motion No. 6 was passed on a vote of 75-67. Mr. Dunnion then explained that, as Cathaoirleach, he considered that Motions 7-12 inclusive could not be put since they were direct negatives and, accordingly, they fell. Mr. Dunnion confirmed that Mr. Dowds spoke twice in the debate on Motion No. 6, speaking against the Motion.

26. Mr Dunnion stated that he had attended very many meetings of an Comhdhail Bhliaintuil of CLG Dhun na nGall, both before and after he became Cathaoirleach and could not say that every Motion was formally proposed and seconded. He agreed, however, that it was custom and practice to have a proposer and seconder.

27. Mr. Dunnion confirmed that when Motion No. 13 was called for consideration, the proposing club spoke in its favour. However, no seconder was forthcoming (that he himself sought in order to promote debate) and so the motion fell.

28. He confirmed that there had been full engagement by the meeting in the discussion of Motions 4-6 and there had been no objection on procedure at any point. However, later in the meeting, objection was taken by a club (other than either of the two Claimant clubs) to the question of a seconder to Motion No. 6 and certain other Motions, following which a seconder was formally taken for those Motions at that time. Mr. Dunnion confirmed that he had conducted the meeting using his own experience.

29. It was submitted that there the only purpose of a formal proposer and seconder on a question before an Comhdhail Bhliaintuil was to engender debate and the obtaining of a proposer and seconder for every question was not a practice rigorously adhered to in practice. It was submitted that it was clear there had been a debate and that everyone present at the meeting understood the matters being debated. It was submitted that even if there was no seconder, if one was required, there was no prejudice to the Claimants and there had been no breach of Standing Orders of An Comhdhail Bhliaintuil.

30. Mr. S. McKenna, on behalf of Coiste Eisteachta Uladh, confirmed that it had nothing additional to add to the Respondents' case, save that, as an observation, CLG An Bheart did not have to submit the said seven Motions or any of them.

Findings and Reasoning

31. The determination of the substantive issue in this application essentially revolved around the law and practice of meetings, at common law, rather than any consideration of the provisions of the T.O.

32. At common law, there is no obligation to have a motion before a meeting formally proposed and seconded. The Respondent, CLG Dhun na nGall submitted that by virtue of a Motion appearing on the Clar of An Comhdhail Bhliaintuil, having been submitted by a club, it was formally proposed by that club. The Tribunal found nothing inherently wrong or unlawful in that submission. However, even if that is so, a motion before a meeting is nothing more than a proposal unless, and until, it is adopted by the meeting.

33. The Standing Orders adopted by An Comhdhail Bhliaintuil of CLG Dhun na nGall did not require a proposal to be seconded as a prerequisite to the proposal going forward for debate, and possible adoption, as a resolution of the meeting. Against that, it is good governance and practice at meetings to have a proposal formally seconded at the meeting (and formally proposed too) and, indeed, this is what was explicitly done, on occasions, at An Comhdhail Bhliaintuil in 2015. Further, it was clear from both the evidence of Mr. Dunnion, Cathaoirleach and from the draft Miontuarascail of An Comhdhail Bhliaintuil 2015 and the Miontuarascail of previous meetings that the practice of having a question formally proposed and seconded was a common, while inconsistent, practice of An Comhdhail Bhliaintuil, CLG Dhun na nGall. The crucial issue was whether there was a full debate, and all views given a fair hearing, so that the Cathaoirleach properly ascertained the views of the meeting on the question under consideration. In order to avoid a controversy such as arose in this case, it would have been highly desirable to have the impugned adoption of Motion No. 6 (and all Motions and questions) formally proposed at the meeting and formally seconded in order to afford greater certainty and clarity.

34. It is useful to set out the powers and duties of a Cathaoirleach at common law. These include a duty to act impartially; ensure that the business of the meeting is conducted in a proper and efficient manner in accordance with law and Standing Orders; ensure that all views are given a fair hearing and to ascertain the views of the meeting on the questions under consideration. The powers of a Cathaoirleach include the power to regulate the course of the proceedings of the meeting; make rulings on any point of order; close discussion on a question under debate and move to a vote (with the consent of the meeting); lay down the order in which questions are to be taken (including ruling that all questions on a particular topic must be dealt with at one time) and an inherent right to keep a discussion within reasonable bounds and to end discussion once sufficient debate has taken place and a fair cross section of views obtained subject to all views being given a fair hearing. Accordingly, a Cathaoirleach has very considerable power and discretion as to the conduct of proceedings at meetings.

35. The Tribunal was impressed by the evidence of Mr. Dunnion, Cathaoirleach, CLG Dhun na nGall: he came across as credible, honest and forthright and doing his best to manage a difficult and controversial topic at the meeting. This, indeed, was expressed acknowledged by the representatives of the Claimants. The Tribunal had no doubt that Mr. Dunnion, in chairing An Comhdhail Bhliaintuil, acted entirely within the parameters of his powers and duties as a Cathaoirleach at common law and that the decisions reached by the meeting under his chairmanship could not be impugned at common law.

36. The Tribunal attached significance in reaching its decision to the comments of the Circuit Court in *Barry and Rogers v. Ginnity & Others* where it was stated: "The law will demand the level of fair procedures which is sufficient in all the circumstances to ensure justice for the players or members affected by the decision". The Tribunal was entirely satisfied that these criteria were met in this case, having regard to the fact that CLG is an amateur sports organisation.

37. Further, the Tribunal attached much significance to the fact that neither Claimant raised a point of order at the meeting, whether touching upon the matter of Motion No. 6, or at all. The issues raised by the Claimants before the Tribunal were precisely the kind of issues that could properly have been the subject of a point of order application at the meeting of An Comhdhail Bhliaintuil.

38. It is correct that the said seven Motions submitted to An Comhdhail Bhliaintuil in the name of CLG An Bheart, one of the Claimants, did not comply with Rial 3.14, T.O., a provision that only appeared in the T.O. for the first time, in the 2015 version. However, to allow the application on that ground would be to allow CLG An Bheart to benefit from its own procedural failings. The Tribunal concluded that to do so would be unconscionable and inequitable in principle in circumstances where CLG An Bheart received, by any objective standard, a fair and full hearing at An Comhdhail Bhliaintuil. In any event, a vote was taken on Motion No. 6 and that proposal was clearly defeated by a reasonably significant margin. The Tribunal noted as well that there is nothing to stop CLG An Bheart bringing a motion to another Comhdhail Bhliaintuil to rescind or amend the county by-law brought into existence by the adoption of Motion No. 6 (albeit, to do so, will require a two thirds majority of those present and voting at any such meeting).

Award

39. The applications of the Claimants are refused.

40. The impugned decisions of the Respondents are confirmed.

Costs and Expenses

41. The Tribunal, in its discretion, makes no Order as to costs.

42. Costs were applied for by the CLG Dhun na nGall, one of the successful parties. The Tribunal was satisfied that exceptional circumstances existed in these proceedings that permitted the Tribunal to make no order as to costs. The Tribunal was satisfied that CLG Dhun na nGall could have avoided what occurred and the proceedings of An Comhdhail Bhliaintuil could have been better conducted with greater formality and better governance practice. Further, there was a certain lack of openness and transparency by CLG Dhun na nGall in the context of these proceedings, accentuated by it raising only at the commencement of the hearing an issue challenging the right of the Claimants to make their application to an Coras Eadrana - a challenge that had no merit.

43. The expenses of the DRA in relation to the hearing of this application, as certified by An Rúnaí, An Coras Eadrana, shall be met from the application fee paid by the Claimants with any remaining surplus being refunded to the Claimants in equal shares.

Dated at An Omaigh this 22ú lá d'Aibreain 2016.

Sínte: _____
Damien Mac Mathúna (Cathaoirleach)

Gearoid O hAoilain

Albert O Fallain

Date of Oral Hearing: 22 April 2016

Date of Agreed Award: 8 June 2016

Signed: or by email agreement on: 8 June 2016

Damien McMahon

Gerry Hyland

Albert Fallon