

Disputes Resolution Authority

An Córas Eadrána

DRA 15 of 2016

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

Rafter & Portlaoise GAA v Laois CCC & Laois HC

Hearing: City West Hotel, Dublin, at 8pm on 1 June

Tribunal: Colm O'Rourke, Arran Dowling Hussey BL & David Nohilly
Secretary to the DRA, Jack Anderson, was also in attendance

Verdict: Claim succeeds; application upheld.

Keywords: Rule 6.5(c) and (d) of the Official Guide (2015); fair, procedural administration of player transfers by the County CCC; Bye-Law 6 of the Laois County Bye-Laws (2016) whether refusal of transfer request was compliant and in line with the Bye-Laws' regulation of transfers from Rural to Urban club; Rule 1.13(a) of the Official Guide (2015); the Association shall safeguard and promote the interest and well-being of all those under 18 years of age who are involved in its games and related activities; Rule 6.1 of the Official Guide (2015); 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.

List of Attendees:

Claimant:

Jonathan Rafter

Jimmy Rafter (Parent)

John Hanniffy (Advocate for Jonathan Rafter & Cathaoirleach CLG Port Laoise)

Pat Leogue, Runaí, CLG Port Laoise

Respondent 1, Laois CCC

Cathaoirleach, Gerry Kavanagh

Rúnaí, Niall Handy

Respondent 2, Laois HC

Cathaoirleach (acting), Mick Bolton

Rúnaí, Willie Stackpool

Background

1. The claimant (aged 15) sought to transfer from Park-Ratheniska GAA Club (his First Club pursuant to Rule 6.4 of the Official Guide (2015)) to Portlaoise GAA Club. His application was considered by the first respondent and refused in a decision dated 22 March 2016. The claimant appealed to the second respondent but the appeal was dismissed in a decision of 12 April 2016. The claimant then applied to the DRA.
2. Please note that the Tribunal considered all the written submissions, evidence, oral submissions and legal arguments made by the parties in the present proceedings. The below reasoned award refers only to the submissions and evidence the Tribunal consider necessary to explain its reasoning. The account is also sensitive to young age of the claimant and thus some background material, heard and considered fully by the Tribunal in its deliberations, is not alluded to in this written form.
3. In synopsis, the claimant made three arguments: first, a breach by the respondents of various aspects of Rule 6.5 of the Official Guide (2015); second, an argument relating to player welfare pursuant to Rule 1.13(a) of the Official Guide (2015); third, a claim that Bye-Law 6 of the Laois County Bye-Laws of 2016 had been misinterpreted to the claimant's disadvantage by the respondents.
4. The key point of deliberation for this DRA Tribunal was the third argument noted above. The first and second points are thus noted only briefly.

Argument 1: Rule 6.5 of the Official Guide (2015)

Claimant

5. On the first argument, the claimant contended that the first respondent had acted in a procedurally unfair manner contrary to Rule 6.5 (c) and (d) of the Official Guide (2015), as below:

“Rule 6.5 Transfers within County

(c) The County Committee shall delegate consideration of Applications to its Competitions Control Committee. If requested by any party involved, the Committee shall give the applicant and the two Clubs concerned the opportunity of attending a convened hearing to outline their respective positions on the application.

(d) The Club of the member seeking a transfer shall be notified of the application and its observations shall be considered if received within

such time as may be directed by the Competitions Control Committee.”

6. Individual counties, through their CCC, put the above regulations into effect and the general thrust of Rule 6.5 (c) and (d) is that the club from which the player is seeking a transfer should, on due notification and within any relevant time period stated in the County Bye-Laws, be given an opportunity to make observations (such as an objection) on the transfer request. The CCC must then consider such an observation in its deliberations. The general approach across the country, and it seems in Laois, is that where a club remains silent and/or does not otherwise object to a transfer request that is highly persuasive in motivating a CCC to accede to the transfer request.
7. The claimant’s argument here is that Park-Rathensiska were given such an opportunity, as permitted by Rule 6.5 and the Laois County Bye-Laws, to make an observation on the transfer request but did not avail of the opportunity in written form within the stated time period of no later than 10 February 2016. Accordingly, the claimant argued, as was custom and practice, the transfer should have been permitted, as others were by the Laois CCC, at its meeting of 16 February 2016 where all 2016 transfer request within the county were first considered. Instead, the claimant noted, the CCC hearing on this particular transfer was delayed until 21 March. The claimant argued that a phone call received by the Laois CCC secretary from Park-Rathensiska, prior to or even on the 16th Feb, may have been the reason behind the delay to the prejudice and detriment of the claimant’s transfer request.

Respondents

8. The respondent countered that the phone call noted above was not specifically about the claimant’s transfer request and had been received much earlier than the 16 February date and that, in any event, it had no bearing on the CCC’s deliberations. The reason for the delay from 16 February to 21 March, in the specific matter of the Rafter transfer request, was, the CCC informed the Tribunal, because they were seeking clarification of certain issues in the transfer request (e.g., clarification of the claimant’s address, clarification of when the claimant’s elder brother had transferred to Portlaoise GAA club) and furthermore that they wished to convene a hearing in which all parties to the matter could be present. In sum, the first respondents argued there was no prejudice to the claimant in the delay; in contrast, the delay, they argued, was in an effort to inform themselves fully of all aspects of the transfer request prior to reaching a decision.

Argument 2: Rule 1.13(a) of the Official Guide (2015)

9. The claimant argued that the denial of the transfer was contrary to the aims and ethos of the Association outlined in Rule 1.13(a) of the Official Guide

(2015). The claimant's submission was, in this regard, similar to that made in DRA06/2015 and DRA06/2016: the over-arching purpose of the Association is one of continuing participation and in doing so to particularly safeguard the best interests of the child. Accordingly, and with these fundamental aims in mind, the claimant argued that the interpretation of the applicable Laois County Bye-Laws given by the respondents was unreasonable and, moreover, inconsistent, when compared to other transfer requests made and granted at the same time as the claimant's.

Respondents

10. The respondents argued that with specific regard to player transfers, the ethos of the GAA was better reflected in Rule 6.1 of the Official Guide:

“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 always owe allegiance and loyalty to his First Club and County, as defined in these Rules.”

11. It was this “ethos” that the first respondent felt mandated to uphold for the greater, common good of all those who participate under the Association's Rules.

Argument 3: Bye-Law 6 of the Laois County Bye-Laws of 2016

Claimant

12. Bye-Law 6 of the Laois County Bye-Laws of 2016 is as below:

“6. Transfers

a) There shall be two distinct Club “designations” – Urban and Rural. This will allow the CCC to distinguish between Transfers and Attachment to First Clubs to and from - (i) Urban to Rural Clubs, (ii) Rural to Rural Clubs and (iii) Rural to Urban Clubs.

b) Portlaoise GAA Club will be designated an “Urban” Club and all other Clubs in Laois will be designated “Rural”.

c) Normally, Transfers within the county shall be granted only in the event of a player moving to a new place of Permanent Residence which is within the Catchment Area of the club to which he wishes to transfer. In such cases the onus of proof of new permanent residence shall be on the applicant for transfer.

d) Requests for transfer shall not be considered unless submitted to the County Secretary before January 31st in any year. Exception: In the case of an Urban to Rural Transfer! Attachment to First Club, an application may be granted provided the player has not participated in Club Competition (including Go Games) in the year in which the Transfer / Attachment to First Clubs is sought.

e) The C.C.C. shall process and make initial decisions on all applications for Transfer and Permission to Play within the county (Riall 6.5, TO. 2015). The Guidelines and Criteria which will assist the CCC in its deliberations are as follows:

f) The following criteria shall constitute “other relevant connection” for the purposes of Bye-Laws and this Bye-Law.

(i) Urban to Rural Transfer! Applications for Permission to Play

A player from a designated Urban Club may, at any time, seek Permission to Play for, or transfer to, any Rural Club without the necessity of meeting any of the criteria and! or exceptions usually associated with such Transfers/Permission to Play.

(ii) Rural to Rural Transfer! Applications for Permission to Play

a) Parentage Rule – A player may apply for Permission to play for an Independent Team or Transfer to a Club in the catchment area in which his Parent was a Player in Adult Competition or, in exceptional circumstances, a Member, who over a reasonable period of time, made a proven contribution to that Club.

b) Primary School – A player may apply for Permission to Play or Transfer to a Club / Independent Team where he is presently attending or has attended Primary School. The Primary School rule will only be taken into consideration where the player has been attending this school or has attended for at least one full school year.

c) Proximity to Club Base - A player may apply for Permission to Play or transfer to the Club / Independent Team based on proximity to Club Ground.

(iii) Rural to Urban Transfer/ Applications for Permission to Play

a) Parentage Rule – A player may apply for Permission to Play or Transfer to a Club in the catchment area in which his Parent was a player in adult competition, or in exceptional circumstances, a Member who, over a reasonable period of time, has made a proven contribution to that Club.

- b) A family moving residence into Portlaoise Parish from a different Parish in the County with players from that family who are in their 16th year or younger, but have already played with a rural club may apply for a Transfer to an urban club.”
13. From what the Tribunal was told by both parties, the Bye-Law has a long history but, put simply, it seeks to regulate and, to a certain extent, protect player development in rural clubs in the county of Laois as balanced against the fact that Portlaoise GAA club is the sole club in the county’s principal town. According to the 2011 Census, the population of Laois is 80,559 and that of Portlaoise is 20,145 = 25% of the total population of Laois.
14. The claimant’s argument was that there had been misinterpretation and/or unreasonably inflexible interpretation of Bye-Law 6 by the respondents. The focus here was on the Bye-Law’s provision for designated Rural and Urban Clubs such that Portlaoise GAA Club is the sole designated “Urban” Club within County Laois. The complicating factor in this instance is, as the claimant noted, while Portlaoise GAA Club is the dominant club in the town, Portlaoise Parish – the catchment area for GAA purposes – is a wider area and includes GAA clubs such as the Heath, Clonad and Park-Rathineska.
15. Accordingly, the claimant argued that (the illogical, unintended or unfair consequence of the respondents’ decision is that a player from outside the Portlaoise Parish/Catchment Area can move into that Parish/Catchment Area to live permanently and is free to declare for any of the clubs within the Parish/Catchment Area, including Portlaoise GAA Club; in contrast, a player already within the Portlaoise Parish/Catchment Area and who has an existing attachment to a First Club in that Parish/Catchment Area (pursuant to Rule 6.4 of the Official Guide and Laois County Bye law 5), now appears to be wholly restricted from ever transferring to Portlaoise GAA club. This was not, the claimant argued, either the proper interpretation of the Bye-Law nor did it reflect its original intention.

Respondents

16. The Respondents countered succinctly by stating that their general interpretation of the Bye-Law 6 and specifically their interpretation of Bye-Law 6(f)(iii) – on Rural to Urban transfers; was driven principally by the unambiguous designation in Bye-Law 6(b) of Portlaoise GAA club as the sole “Urban” club in the county and that all other clubs in the county were thus “Rural” and including Heath, Clonad and Park-Rathineska.

Reasoned Decision

17. First, the Tribunal fully appreciates the claimant’s love of Gaelic football and acknowledges his sincerity in seeking to develop as a player.

18. Second, the Tribunal's view on arguments 1 and 2 noted above is that the respondents acted in a procedurally fair manner (argument 1) and did not see to act in any way contrary to the player's welfare (argument 2); rather they acted in good faith with respect to what they considered best reflected and protected the ethos of the Association's and the county's rules on transfer applications.
19. Third, the Tribunal is of the unanimous opinion that the substantive issue in this case is that of argument 3.
20. Fourth, the majority view is that, as currently constituted, Bye-Law 6 and particularly Bye Law 6(f)(iii)(b) contains an ambiguity or anomaly that does not specifically take into account the situation, such as this, whereby a player with an existing attachment to a First Club within the Portlaoise Parish/Catchment Area subsequently seeks to transfer to another club within that same Parish/Catchment Area. The Tribunal finds that this anomaly is such that, by application of the *contra proferentem* rule of interpretation (where there is doubt about the meaning of a clause in a contract, the words should be construed against the person who drafted that contract), the claimant's application should succeed. The Tribunal further advises that the Laois County Board, through their county committee and convention and usual procedures, work to provide clarity or amend this aspect of their transfer byelaws. Pending that clarification/amendment, this DRA decision is not to be treated as a precedent and is distinguished to its facts.
21. Fifth, the above is reached by majority. The minority view held by Mr Dowling Hussey BL, is as follows: "I disagree, with my fellow panel members, as to there being any issue at law with the Laois bye laws as presently constituted. In that, my view is, the respondents properly applied the rules, they were obliged to consider, and it cannot follow that their decision should be quashed. On the basis of the view just set out, and for those reasons alone, I cannot concur with the decision made. Notwithstanding the remarks just made, the claimant, and his father, personally impressed me, there is no divergence from any remarks made, on the night or in writing, by the rest of the panel in wishing them both well."

Award and Directions

22. The Tribunal awards in final and binding determination of this dispute that the claim succeeds and the application is upheld.
23. The decision is reached by majority pursuant to section 11.2 of the Dispute Resolutions Code.

24. Pursuant to its powers under section 11.3 of the Disputes Resolution Code, the Tribunal by majority orders that the transfer sought by the claimant be deemed approved with immediate effect.
25. The Tribunal directs that Laois County Board should, prior to the beginning of the next playing season in 2017, deal with the anomaly identified in its Bye-Laws on transfers in a manner that addresses with due clarity the future and fair processing of player transfer applications between the existing clubs in the Portlaoise Parish/Catchment Area.

Costs

26. No application for costs was made and nor is any order on costs.
27. The Tribunal orders that the claimant's deposit be returned in full and that the expenses of the DRA in relation to the hearing of this application, as certified by the DRA Secretary, be met in full by the respondents.

Date of Oral Hearing: 1 June 2016

Date of Agreed Award: 23 June 2016

Signed: or by email agreement on

Colm O'Rourke

Arran Dowling Hussey

David Nohilly