

Disputes Resolution Authority

An Córas Eadrána

DRA 06 of 2016

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

**Joseph Leech (player) & Patrick Leech (parent), v Dublin CCC2 Committee &
Dublin HC**

Hearing: Lucan Spa Hotel, Dublin, at 8pm on 5 May

Tribunal: Tom Barry, Jim Murphy, Eddie Keher

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

Verdict: Claim fails; application dismissed

Keywords: Rule 6.5 of the Official Guide (2015); Player transfer; transfer within county; whether refusal of transfer request was reasonable; 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"; Bye-Law 22.1 of the Dublin County Bye-Laws (2015; the GAA is community centred, based on the allegiance of its members to their local Clubs, the object of which is to promote the Association's aims at local level. A player is considered to always owe allegiance and loyalty to the Club he first legally participated with in Club competition.

List of Attendees:

Claimant:

Patrick Leech, parent
Conor English, witness

Respondent 1, Dublin CCC2
Cathaoirleach, John Larkin
Rúnaí, Damian Murphy

Respondent 2, Dublin HC
Cathaoirleach, Colm Crowley
Member, Donal Hickey

Factual Background

1. The claimant (aged 14) sought to transfer from Liffey Gaels (his First Club pursuant to Rule 6 of the Official Guide (2015)) to Round Towers GAA, Clondakin. His application was considered by the first respondent and refused in a decision issued on 20 January 2016. The claimant appealed to the second respondent but the appeal was dismissed in a decision notified on 24 February 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.

Claimants' Submissions

3. 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) and including the reference in Rule 1.13(c) to the Association's Code of Best Practice in Youth Sport for the protection and safeguarding of children/young people under 18 years of age. Reference was made to DRA06/2015: the over-arching purpose of the Association is one of 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 Dublin 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.
4. The applicable Dublin County Bye-Laws were those approved by Comhdháil Bliantiúil Átha Cliath of 15 December 2014 and specifically Bye-Law 22 thereof, which is noted below:

"22. Registration/Transfers

Transfers shall be dealt with in accordance with Rules 6.5, 3.20(ii) and 3.20(iv) Treoraí Oifigiúil 2014.

22.1 As the GAA is community centred, based on the allegiance of its members to their local Clubs, the object of which is to promote the Association's aims at local level, the transfer rules in An Treoraí Oifigiúil and this Bye-Law reflect that ethos. A player is considered to

always owe allegiance and loyalty to the Club he first legally participated with in Club competition.

The County Competitions' Control Committee, when adjudicating on a transfer application, shall give serious consideration to the response of his current Club, and: -

- a. be cognisant of the role played by his current Club in nurturing and developing the player;
- b. consider the potential impact of the transfer of the player on his current Club; and
- c. consider the potential impact of the transfer of the player on the promotion of the Association's aims in Dublin

in reaching their determination.

22.2 Annually, the opening date for the receipt of transfer applications, at all ages, shall be the 1st December and the closing date shall be 5.30pm on 8th December. Exception: Transfers falling within the category set out in 22.4 below.

22.3 An application shall be submitted and accepted only on the form as currently approved by County Committee. The application shall be completed in the prescribed manner as indicated on the form and in accordance with An Treoraí Oifigiúil and this Bye-Law. In the case of underage players (up to and including U16 grade) an application for transfer shall also be accompanied by an authorisation signed by the player's parent(s)/guardian(s).

22.4 Where the family of an underage player (i.e. up to and including U16 grade) who is still in full-time education, changes permanent residence from the Catchment Area of one Club to that of another, an application for transfer (only to a Club, the Catchment Area of which, includes his new permanent residence) may be submitted (without reference to the dates as determined at 22.2) for consideration by the County Committee.

22.5 The Secretary of the Competitions Control Committee (Adult / Juvenile as appropriate), shall forward the transfer application to the applicant's Club, which Club shall be required to respond in writing within seven (7) days of the date of receipt, indicating their refusal, or otherwise, to consent to the transfer application. Their observations will be considered by the Competitions Control Committee. A Club failing to so reply in writing will be deemed to have consented to the transfer application.

22.6 The Competitions Control Committee shall make its decision in accordance with Rule and the County's Transfers Bye-Law and any discretion available to it shall be exercised having regard to the submissions of the transfer applicant and his existing Club, such other discretionary factors as may be provided for in Bye-Law and the ethos of the Association.

22.7 Multiple transfers from a Club shall not be approved pending consideration by the County Management Committee and the presentation of a report thereon to the County Committee.

22.8 Permanent residence, in the context of this Bye-Law and An Treoraí Oifigiúil, shall mean residing at a fixed address for a minimum period of twenty four (24) weeks prior to the date of the transfer application, but residence in a Club Catchment Area for the purpose of attending a Primary or Post-Primary School shall not qualify as a permanent residence eligible to avail of this Bye-Law."

5. The claimant's father outlined the context of the claimant's circumstances and particularly his son's love of Gaelic football as his principal sport of interest, his development as a player, his current relationship with his First Club, and his connections through school friends and other acquaintances with the Third Party Club. In this context, the claimant argued that any reasonable interpretation of the three criteria outlined in Rule 22.1 of the Dublin Bye-laws ought to have favoured his transfer request. The claimant also argued that certain procedural aspects of Rule 22.5 had not been complied with by the first respondent and that in other cases, similar on the facts to the claimant's, the first respondent had permitted the transfer request. On the latter, the claimant was supported by Mr English. In addition to these arguments, the claimant submitted that, given the circumstances and context, the first respondent should reasonably have exercised its Rule 22.6 discretion in the claimant's favour.

Respondent's Submissions, Respondent 1

6. The first respondent responded by clarifying that the timeline of notice/response mandated in Rule 22.5 had been adhered to. This was then accepted by the claimant.
7. In respect of the application of the criteria contained in Rule 22.1, and the alleged inconsistency of its decisions relative to other transfer requests, the respondent noted that it had carefully considered the claimant's case on its individual merits and within its specific context, as it did with all cases of this nature. In this case, the first respondent noted in particular that it had considered the "nurturing" role of the First Club found in Rule 22.1(a). The first respondent also noted, in response to the claimant's argument based on

Rule 1.13 of the Official Guide (2015), that with specific regard to player transfers, the ethos of the GAA was better reflected in Rule 6.1 of the Official Guide (and echoed in Rule 22.1 of the Dublin Bye-Laws):

“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.”

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.

8. In sum, taking the above ethos into account, and on considering the claimant’s application against the criteria outlined in Dublin County Bye-Law 22.1, the first respondent argued that it saw no reason to exercise its “Byelaw 22.6 discretion” in favour of the claimant.

Respondent’s Submissions, Respondent 2

9. The second respondent stated that its role as an appeals body was to consider the matter in light of its remit pursuant to Rule 7.11(o) of the Official Guide (2015) Rule 7.11(o) has four elements. The first element holds that “An Appeal shall be limited to the matters raised in the Appellant’s Appeal as originally lodged”. The second element is that an appeal “shall be upheld only where there has been a clear infringement or misapplication of Rule” by the primary decision maker or (and this is the third element) the appeal shall only be upheld where the “Appellant’s right to a fair hearing has otherwise been compromised to such extent that a clear injustice has occurred.” The fourth and final element is that “No determination of fact by the Decision-Maker shall be set aside” unless shown to be “manifestly incorrect.” No breach, pursuant to its remit under Rule 7.11(o), was found by the second respondent in this instance.
10. The second respondent was also anxious to state, as did the first (and as echoed by this Tribunal), that they fully appreciate the claimant’s love of Gaelic football, that they acknowledge his sincerity in seeking to develop as a player and that they recognise his talent as a member of a county-wide, development squad. Nevertheless, as with the first respondent, they noted, that their job was to adhere to the relevant rules in the Official Guide and Dublin County Bye-Laws, which were drafted and approved with the common good of the Association in mind.

Reasoned Decision

11. This DRA Tribunal is of the opinion that, in the specific circumstances and context of this matter, the respondents acted fairly, reasonably and rationally at all times and that the first respondent's interpretation and application of Byelaw 22 was neither overly rigid nor disproportionate in light of the objectives and ethos underpinning the regulations on transfers found in Dublin County Bye-Law 22 and Chapter 6 of the Official Guide (2015).

Award

12. The Tribunal awards in final and binding determination of this dispute that the claim fails, the application is dismissed and the reliefs sought refused.

Costs

13. No application for costs was made and nor is any order on costs.

14. The expenses of the DRA in relation to the hearing of this application, as certified by the DRA Secretary, shall be met from the deposit lodged by the claimant with any remaining surplus being refunded to the claimant, as administered by the DRA Secretary.

Date of Oral Hearing: 5 May 2016

Date of Agreed Award: 30 August 2016

Signed: or by email agreement:

Tom Barry

Jim Murphy

Eddie Keher