

Disputes Resolution Authority

An Córas Eadrána

DRA 18 of 2016: In the matter of the an arbitration under the Disputes Resolution Code and the Arbitration Act 2010

McGuire v Clare CCC and Clare HC

Hearing: Strand Hotel, Limerick, at 8pm on 25 October
Tribunal: Cian Kelly BL, Gareth Robinson BL & Tom O'Doherty
Secretary to the DRA, Jack Anderson, was also in attendance

Verdict: Application dismissed.

Keywords:

Perception of bias of Tribunal member; Rule 7.13(d) of the Official Guide (2016), no arbitration until all available avenues of Appeal under the Rules of the Association have been exhausted; Rule 7.11(p)(ii) power of appeals committee to remit a matter for re-hearing or re-processing (with or without recommendations as to procedure.

List of Attendees:

Applicant:

Sean McGuire, father of the Applicants.
Bernadette McGuire, mother of the Applicants.
Shane O'Neill, Solicitor for the Applicants.
Emmet O'Brien, BL, Counsel for the Applicants

Respondent 1, Clare CCC & Respondent 2, Clare HC:

Pat Fitzgerald, Secretary, Clare GAA
James Nash, Solicitor
Lorcan Connolly, BL

Interested Party, Banner GAA:

Eoghan Ó Rinn, leas Rúnaí, An Bratach Inis

Interested Party, Kilmaley GAA:

Vincent Hennessy (Rúnaí) and Eoin O'Malley (Leas-Rúnaí)

Factual Background

1. The application related to a transfer request approved by Clare CCC on 12 April, subsequently appealed, on foot of an objection, to Clare HC (22 June 2016) and remitted to Clare CCC (15 September 2016, received on 20 Sept).

The outcome of the Clare CCC decision of 15 September 2016 was that the request by the applicants (then aged 11 years and 15 years) to transfer from C.L.G An Bratach Inis to C.L.G. Cill Mhaile was refused.

Application Hearing

2. On 26 September 2016, a request for arbitration was received by the DRA from the applicants. On receipt of the parties' submissions, a date of 25 October 2016 was set for the Tribunal hearing.
3. Prior to the formal opening of the Tribunal, all parties, and including the interested parties, engaged in a "without prejudice", confidential mediation-led process as facilitated by the DRA Secretary. A settlement could not be reached and an arbitral hearing commenced.
4. The appointed DRA Tribunal elected Mr Cian Kelly BL as chair, as supported by Mr Robinson and Mr O'Doherty.

Preliminary Matters

5. The respondents raised, as a preliminary matter, their preference would be for Mr Kelly recuse himself given his connection, through the Na Piarsaigh club, with Mr O'Neill - solicitor for the applicants. The respondents stated forcefully that there was no allegation of bias against Mr Kelly but that for the good, or the "optics", of the process a recusal would be preferred. Mr Kelly did stand down and the parties then agreed to the matter being heard by a two person Tribunal, as chaired by Mr Robinson.
6. The respondents also raised a further preliminary matter relating to the jurisdiction of the DRA to hear the dispute. The essence of their argument was that this matter was heard by Clare CCC on 12 April, then, on appeal, at Clare HC on 22 June, who remitted the matter to Clare CCC. On remittal, Clare CCC delivered a decision on 15 September - the impugned decision. Consequently, the respondents argued, the applicants ought first to return to Clare HC as that remained their primary avenue of appeal from Clare CCC, even on remittal.
7. Put in another way, the respondents argued that the DRA's jurisdiction to hear this matter was not properly invoked for want, by the applicants, of exhausting all internal avenues of appeal pursuant to Rule 7.13(d) TO 2016, which holds:

"No member or unit of the Association shall refer such Dispute to Dispute Resolution until all available avenues of Appeal under the Rules of the Association have been exhausted."

8. The applicants argued inter alia that the decision of Clare HC of 22 June was not a “decision” that could be properly reconciled with Rule 7.11(p) TO and thus they were left with no option but to seek arbitration at the DRA.
9. The applicants’ argument in this regard was that Clare HC breached the provisions of Rule 7.11(p) TO by appearing to remit the matter for re-hearing or re-processing without making any decision, at first instance, as to whether the appeal by C.L.G. An Bratach against the transfer request was upheld or refused. The applicants stated that Clare HC should have first made a decision as to whether An Bratach’s appeal was upheld or refused and only then could its power be invoked to remit the matter.
10. The basis of the applicants’ submissions in this regard was an interpretation of an email (of notification) from Donal O’Connor, Secretary of Clare HC dated 22nd June 2016 which, the applicant argued, provided evidence that no decision was made by Clare HC on the stated date. The consequence of this breach of Rule 7.11(p) TO was, according to the applicants, that they were, in effect, estopped from again returning to Clare HC given that the jurisdiction of the CHC’s remittal (of June 22) was fundamentally flawed and unlawful in the first instance.
11. On hearing from both sides and adjourning to consider the points raised on this second preliminary matter, the Tribunal found for the respondents.
12. The Tribunal noted in particular that the email from Mr O’Connor, dated 22 June 2016, could be reconciled with the clearly worded nature of the provision found in Rule 7.11(p)(ii):

“...In the Event of an Appeal being upheld the appellate Hearings Committee shall either :....(ii) remit the matter for re-hearing or re-processing (with or without recommendations as to procedure)...”

Award and Directions

13. The Tribunal awards in final and binding determination of this dispute, and in line with its power under section 11.3 of the Dispute Resolution Code, that the application is dismissed.
14. The Tribunal directs that the matter be heard by Clare HC and that this should be done within one month of said date i.e., before Friday 25th November 2016.

Costs

15. No application for costs was made by the respondents.

16. The balance of the applicants' deposit to be returned, less the costs associated with the Tribunal hearing.

Date of Oral Hearing: 25 October 2016

Date of Agreed Award: 16 December 2016

By email agreement on agreed date above

Gareth Robinson BL

Tom O'Doherty