

Disputes Resolution Authority

An Córas Eadrána

DRA 05/2017 Brian Daly v Laois CCC & Laois HC

Hearing: Louis Fitzgerald Hotel, Dublin, at 8pm on 11 May 2017

Tribunal: Helen O'Mara, Eamonn Denieffe and Declan Hallissey

Secretary to the DRA, Jack Anderson, Incoming Secretary Rory Hanniffy also in attendance

Verdict: The claimant's club transfer request is remitted for rehearing to the Laois Competitions Control Committee.

Keywords: *Transfer request- retrospectivity – whether presumption against retrospective application of rules or bye laws – Rule 3.40(g) T.O. 2016– scope of appeal to Hearings Committee – evidence – Rule 7.11(o) T.O. 2016*

List of Attendees:

Claimant:

Mr Hugh O'Flaherty BL

Mr Brian Daly, claimant

Mr Ger Daly, father of the claimant

Respondents

Mr Matt Shaw, solicitor

Mr Niall Handy, secretary of Laois CCC and Laois GAA

Mr Gerry Kavanagh, chair of Laois CCC and Laois GAA

Mr Mick Bolton, chair of Laois HC

Mr Willie Stackpool, secretary of Laois HC

Interested Party 1: St Joseph's GAA Club

Mr Brendan Dunne, chairperson

Mr Micheál Condrón, secretary

Interested Party 2: Barrowhouse

Ms Liz Burke, chair

Mr Pat Whelan, member

Background

This appeal to the Disputes Resolution Authority Tribunal arises from the refusal by Laois Competitions Control Committee (*Laois CCC*) to grant a request by Mr Brian Daly (*"the claimant"*) to transfer from Barrowhouse GAA club in Laois to St Joseph's

GAA club in Laois. The claimant's Transfer Application was undated but was submitted before the closing date of 31 January, 2017.

The transfer request was heard by Laois CCC on 6 March, 2017 and by letter dated 7 March, 2017 Laois CCC notified the claimant that his transfer request had been refused *"pursuant to the Rule 6.5 T.O. 2016 and Laois GAA Transfer Byelaws 6 (e) and (f), with deliberation given to the evidence provided at the hearing and due consideration given to the negative effect the transfer would have on his Home Club"*.

The claimant appealed to Laois Hearings Committee (*"Laois HC"*) by letter dated 8 March, 2017 in the following terms:

"I wish to appeal the decision of Laois CCC to refuse my transfer request to St. Joseph's GAA.

As it is my belief the Laois C.C.C. misapplied Rule 6.5 T.O. 2016 and Laois GAA transfer bye laws 6(e) & (f) when reaching their decision".

Laois HC heard the appeal on 28 March, 2017 and notified the claimant by letter of 29 March, 2017 that his appeal had been dismissed pursuant to Rule 7.11(o) T.O. 2016.

The claimant made a request for arbitration pursuant to the Dispute Resolution Code and a joint response was received from Laois CCC and HC.

The DRA Tribunal hearing commenced at 8pm on 11 May 2017 and was chaired by Helen O'Mara BL.

Preliminary Matters

None

Relevant Rules of the GAA Official Guide (An Treoir Oifigiúil) ("T.O.") and Laois Transfer Bye-Laws

Rule 7.11(o) T.O. (2016) provides that:

"An Appeal shall be limited to the matters raised in the Appellant's Appeal as originally lodged and shall be upheld only where (i) there has been a clear infringement or misapplication of Rule by the Decision-Maker or (ii) the Appellant's right to a fair hearing has otherwise been compromised to such extent that a clear injustice has occurred. No determination of fact by the Decision-Maker shall be set aside unless shown to be manifestly incorrect."

Rule 3.40(g) T.O. (2016) provides (so far as relevant) that:

"A new Rule or amendment shall not have retrospective application."

The 2017 Laois Transfer Bye-Laws provide (so far as relevant) that:

"6(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."

- ...
- 6(e) *The CCC shall process and make initial decisions on all applications for Transfer and Permission to Play within the county...Such decisions shall reflect the ethos of the Association as outlined in Riall 6.1.T.O. 2016 and give due consideration to the negative effect, if any, it may have on the player's First club.*
- 6(f) *The Guidelines and Criteria which will assist the CCC in its deliberations and which shall constitute "other relevant connection" for the purpose of Bye-Law 5,6 and 7 are as follows:-*
- (i) Urban to Rural Transfer*
-
- (ii) Rural to Rural Transfer*
- ...
- (c) *Proximity to Club Base – A player may apply for a Transfer to the club/Independent Team based on proximity to Club Ground".*
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The Claimant's Evidence and Submissions

The claimant asserted that the respondents had applied the 2017 Laois Transfer Bye Laws ("*the 2017 Bye Laws*") to his transfer request and that these 2017 Bye Laws had been ratified by a meeting of the GAA Central Council on 28 February, 2016. The 2017 Bye Laws had therefore been applied retrospectively to his case. The 2017 Bye Laws 6(e) contained a new provision requiring Laois CCC in considering transfer applications "*to give due consideration to the negative effect, if any, it may have on the player's First Club.*" The claimant submitted that his transfer request should have been dealt with under the 2016 Laois Transfer Bye Laws ("*the 2016 bye laws*").

The claimant submitted that he had been prejudiced by the consideration of his transfer request pursuant to this amended provision both at first instance and on appeal.

In addition, the claimant submitted that Laois HC had erred on the hearing of the appeal in two ways: firstly by considering the transfer application under the (new) 2017 Bye Laws and secondly by hearing or permitting the introduction of evidence (including evidence not adduced at the hearing before Laois CCC) in relation to the claimant's permanent residence in breach of 7.11 T.O. thereby acting *ultra vires*.

In his request for arbitration the claimant stated that, at the appeal before Laois HC, the chairperson of Laois CCC questioned the permanent address given by the claimant on his transfer request stating that the house at this address was derelict. The claimant produced an electricity bill for that address and a member of Laois HC questioned the number of electric units. Since the issue of permanent residence is dealt with under

bye-law 6(c) but the claimant appealed in relation to bye-laws 6(e) and 6(f) only, the claimant submitted that the introduction of this evidence was in breach of rule 7.11(o).

The claimant submitted that the Tribunal ought to grant the transfer request.

The Respondents' Evidence and Submissions

The respondents accepted that they had applied the 2017 Bye Laws and that these bye laws had been ratified on 28 February, 2017 after the closing date for transfer applications. The respondents stated that Laois CCC had delayed the 2017 hearings for transfer requests until after the 28 February, 2017 when the 2017 Bye-laws came into force.

However, the respondents denied that this had caused any prejudice to the claimant. They submitted that although the 2017 Bye Laws - unlike the 2016 Laois Transfer Bye Laws - contained a new provision directing Laois CCC "*to give due consideration to the negative effect, if any, [a transfer] may have on the player's First Club*" nevertheless under the 2016 Bye Laws Laois CCC had a wide discretion to consider all consequences of the transfer request including the effect on the club the player wishes to leave. The Laois Transfer Bye Laws had been amended to comply with a direction from the DRA Tribunal in a largely unrelated matter - DRA 15/2016 *Rafter and Portlaoise GAA v Laois CCC and Laois HC*. The DRA Tribunal decision required, *inter alia*, a special Laois County convention, and a slight delay in the annual update of the Laois Transfer Bye Laws. The text of the proposed amendments had been circulated to all clubs including both interested parties before ratification.

In relation to the conduct of the appeal before Laois HC, the respondents argued that Laois HC had given all interested parties the time and space to make their case as to whether Laois CCC had erred or misapplied a rule within the meaning of 7.11(o) TO such as would entitle the claimant to succeed in his appeal but Laois HC remained conscious of the limited scope of the appeal under 7.11(o) T.O. (2016). The chairperson of Laois HC gave evidence that the issue of the claimant's address or residency came up during the appeal hearing when the claimant himself gave evidence in relation to his proximity to St. Joseph's GAA Club. He also gave evidence that he allowed everybody to have their say at the appeal hearing but that he knew what had to be ignored. However, it seems to have been accepted by the respondents that the issue of the claimant's residency or address was first raised at the appeal by Laois CCC. The respondents submitted that Laois HC had heard 9 appeals on 28 March, 2017 and that a certain robustness was to be expected and should be accepted.

Reasoned Decision

Two issues arise for consideration on this appeal:

1. whether Laois CCC and Laois HC ought to have decided the claimant's transfer request pursuant to the 2016 or 2017 bye laws, and
2. whether Laois HC was in breach of Rule 7.11(o) (2016) - which sets out the scope and hearing of appeals from, *inter alia*, the Competition Control Committee to

the Hearings Committee - in permitting the introduction of evidence in relation to the claimant's address or residence at the appeal hearing.

1. Rule 3.40(g) T.O. 2016 provides that "*A new Rule or amendment shall not have retrospective application*". There seems to be no equivalent T.O. rule in relation to county bye laws or any rule in the 2016 Bye Laws which deals with whether changes to those bye laws shall have retrospective effect.

The Tribunal has considered the decision in *Breathnach & O'Baoill v Comhairle Ardoideachais* (DRA 10/2012) where the claimants argued that they had accrued a vested right to play in third level competition and that they could not be deprived of this right by a subsequent change in the rules governing eligibility. The Tribunal rejected this argument holding that neither claimant had a "*vested right*" to play in third level competition as that term is understood in the context of the retrospective effect of Oireachtas legislation. Moreover, the Tribunal in that decision considered that it should exercise caution in applying the principles of retrospectivity applicable to the interpretation of statutes to the rules of An Comhairle Ardoideachais.

The Tribunal considers that a different issue arises in this case, one which does not involve the consideration of vested rights. The claimant has not argued – nor could he – that he had a right to transfer clubs under the 2016 Bye-Laws which he lost by virtue of the retrospective application of the 2017 Bye Laws. The claimant's argument is that his completed transfer request should have been considered in accordance with the rules and criteria in operation at the closing date for such requests.

The Tribunal considers that it should apply a presumption against the retrospective effect of the 2017 bye laws in line with rule 3.40(g) T.O. (2016). In the civil law of the state, this presumption follows from the requirement that the law be public and ascertainable and the Tribunal considers that, by analogy, applicants for club transfer ought to know which rules will apply to their application at the time of the closing date for applications and that Rule 3.40(g) T.O. (2016) supports this approach. The Tribunal notes that the presumption against retrospectivity may be rebutted by an express rule to the contrary.

In the absence of such express rule to the contrary, the Tribunal considers that the claimant's transfer request ought to have been decided pursuant to the Laois Transfer Bye Laws in force on the closing date for transfer applications, that is, the 2016 Bye Laws, and not the bye laws in force at the date of the hearing before Laois CCC or Laois HC.

The Tribunal unanimously finds that this is a misapplication of Rule within the meaning of Rule 7.11(o) T.O. which of itself entitles the claimant to have his transfer request re-considered.

The Tribunal accepts that under the 2016 Bye Laws, Laois CCC would have been entitled to consider the consequences for the claimant's first club of allowing the claimant's transfer application. However, the Tribunal considers

that it is not necessary for the claimant to show any substantive prejudice where a rule has been misapplied within the meaning of Rule 7.11(o).

2. Rule 7.11(o) T.O. states that an Appeal shall be limited to the matters raised in the Appellant's Appeal as originally lodged. The Tribunal considers that the evidence given at the appeal in relation to the claimant's address or residence is relevant to the issue of the claimant's proximity to the club ground within the meaning of 2016 Bye Law 6(f)(ii)(c). As 2016 Bye Law 6(f) formed part of the claimant's appeal as originally lodged, the Tribunal considers that this evidence fell within the scope of the appeal.

Although the issue does not arise on the facts of this case, the Tribunal observes that to interpret Rule 7.11(o) T.O. as rendering an appeal unfair if evidence relevant to matters not raised in the Appellant's Appeal is adduced would create significant and, in the Tribunal's view, undesirable procedural difficulties. The parameters of such an interpretation are also unclear. Is the giving of any evidence, no matter how unimportant, not relevant to the issues on the appeal to constitute a breach of Rule 7.11(o) and which body decides this question? Should it matter which party introduced the evidence or the reason for introducing such evidence? Must an inaccuracy remain uncorrected because the correction necessarily involves a reference to irrelevant material? Must the claimant object to the introduction of irrelevant material immediately and, if the objection is upheld, must a new hearings committee be constituted? This is an indication of the difficulties that such a rule might create.

The Tribunal unanimously finds that Laois HC did not act in breach of Rule 7.11(o) T.O. (2016) in permitting the introduction of evidence at the appeal in relation to the claimant's address or residence.

Award and Directions

For the reasons outlined above, the Tribunal directs that this matter be remitted to a specially constituted Laois CCC as appointed by the Management Committee of Laois County Board and that the membership of such Laois CCC be drawn from independent members nominated by Leinster Council not including the members who decided the claimant's transfer request on 6 March, 2017. The specially constituted Laois CCC should, if practicable, meet within 2 weeks of the date of this award and should consider the claimant's transfer request afresh and under the Laois Transfer Byelaws of 2016 and not 2017. For the avoidance of any doubt, Laois CCC is not limited to hearing the evidence adduced on 6 March, 2017 or to considering only those grounds on which the claimant's transfer request was refused on 7 March, 2017 but should hold a full hearing on all matters arising under the 2016 Laois Transfer Bye Laws and the Treoir Oifigiúil 2016 and any other applicable rules in force as of 31 January, 2017.

If the claimant wishes to appeal the decision made by Laois CCC on this rehearing, the members of Laois HC hearing such an appeal should be appointed in the same way as set out above in relation to Laois CCC.

Costs

The Tribunal deems the claimant to have been successful in the dispute resolution proceedings in accordance with Rule 11.2 of Appendix G T.O. (2016) (and T.O. 2017) and notes that the claimant is entitled under the rule to his reasonable costs if he applies for them save in exceptional circumstances to be set out in writing by the Tribunal.

The Tribunal directs that, any application by the claimant for his costs be communicated to the Secretary of the DRA in writing within 14 days of the notification of this decision to the claimant (to be reckoned exclusively of the date of notification and inclusively of the last day). The claimant should also indicate within this time limit whether he wishes the Tribunal to measure his costs and, if so, should quantify his claim for costs.

If the respondents wish to submit that there are exceptional circumstances which would justify the Tribunal in refusing to award costs to the claimant, they must communicate same in writing to the Secretary within 14 days of the notification to them of the claimant's claim for costs (if any) and the amount so claimed. The respondent should also indicate at this time whether they wish the Tribunal to measure the claimant's costs.

The Tribunal directs that the costs and expenses of the DRA, as calculated by the DRA secretary, be discharged in full and solely by Laois CCC.

The Tribunal directs that the deposit paid by the claimant of €1,000 be refunded by the DRA Secretary to the claimant.

Date of Oral Hearing: 11 May 2017

Date of Agreed Award: 25 May, 2017

By email agreement on agreed date above

Helen O'Mara,

Eamonn Denieffe

Declan Hallissey