

# Disputes Resolution Authority

An Córas Eadrána

**DRA 10 of 2017: In the matter of the an arbitration under the Disputes Resolution Code and the Arbitration Act 2010**

*Kieran Maguire v. Down CCC and Down HC*

**Hearing:** Carrickdale Hotel, Carrickcarnon, Ravensdale, Dundalk, A91 PR63, Ireland  
at 8pm on 24 July 2017

**Tribunal:** Mr Jarlath Burns, Martin Rodgers QC, Gareth Robinson BL,

Secretary to the DRA, Rory Hanniffy

**Verdict:** Claimant succeeds.

**Keywords:** *Transfer request- proof, permanent residence, current driving license, Bye Law 26 An Dún, Rule 6.1, 6.3, 6.4 (b), 6.5 (a-f) T.O. 2016*

## **List of Attendees:**

### Claimant – Kieran Maguire:

Mr Kieran Maguire, Claimant

Mr. Joe Brolly BL

Mr Ruairi Gillen, committee member, solicitor Clann na Banna

Willie Gribbon – Chairman Clann na Banna

### Respondents - Down CCC and Down HC:

Mr. Ciarán Rafferty, Solicitor

Mr. Jack Devanney, Secretary, Down CCC

### Interested Party – Aghaderg GAA Club

Mr Donal Moran, Chairperson

Mr Mark O’Kane, Committee Member / Senior Team Manager

## **Factual Background**

This appeal to the Disputes Resolution Authority Tribunal arises from the refusal by Down Competitions Control Committee to grant a request by Mr Kieran Maguire (“the Claimant”) to transfer from Aghaderg GAA club to Clann na Banna GAA Club. Both these clubs are situate in Down and are neighbouring clubs.

In April 2016 , a transfer request was made by the Claimant which was turned down by Down CCC and latterly by Down HC on the basis that it was ‘out of time’.

The transfer request was resubmitted on 6<sup>th</sup> March 2017 on the same basis and it was the subject of an objection by Aghaderg GAA. The Claimant included relevant documentation to verify his place of permanent residence, namely bank statements, mobile phone bills, driver’s licence and electoral registration card.

The request failed on Bye Law 26.1 which required that the Claimant prove that he had lived at the *fixed address for a minimum period of two months prior to the transfer application being made*. Since the documentation provided did not prove that the Claimant was resident at the stated address for a minimum period of two months, the transfer was turned down.

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

The DRA Tribunal hearing commenced at 8pm on 24 July 2017 and was chaired by Jarlath Burns.

## **Preliminary Matters**

Mr. Brolly requested that a series of text messages which issued between the Claimant and the Chairman of Aghaderg GAA Club be submitted as helpful evidence which would prove the lack of animosity which attended all aspects of this process. After consultation with all parties, the request was granted.

## **Relevant Rules of the GAA Official Guide and Down Transfer Bye-Laws**

### **Treoir Oifigiúil**

#### **6.3 First Club:**

The Club (or Club within an Independent Team) with which a player first legally (i.e. in accordance with Rule and Bye-Law) participated in Club Competition at U12 Grade or Over (including Go-Games) organised by the County Committee or one of its Sub-Committees in the County of his permanent residence.

## 6.5 Transfers within County

- (a) A County shall have a Bye-Law governing the transfer of members from one Club to another within the County. Such Bye-Law shall be consistent with Rule. Such Bye-Law may restrict the eligibility of a member to a transfer by reference to such matters as the County shall consider appropriate (e.g. by reference to permanent residence or Other Relevant Connections between the transfer Claimant and the Catchment Area of the proposed new Club etc.).  
A County shall have the option, within County Bye-law, to allow a player to play with a Club in the area in which he works. Additional restrictions of a procedural nature may be imposed if the County considers them appropriate (e.g. limiting the time within a given year when transfer applications might be made).
- (b) A member who wishes to leave one Club to join another in the same County must apply to the County Committee for a transfer.
- (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 Claimant 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.
- (e) The Competitions Control Committee shall make its decision in accordance with Rule and County Bye- Law.

## Down Bye Laws

### 26.0 Transfers:Aistriú

#### 26.1 Procedures

1. Any player wishing to transfer from one Club to another within the County shall make application between January 1<sup>st</sup> and March 31<sup>st</sup> inclusive.
2. Applications shall be made to the Rúnaí of the County Committee on the official form as approved by the County Committee and shall be processed in accordance with Rial 6.5 T.O 2016.

3. A player who wishes to join a Club in Down from a Club in another County must apply for a transfer to the Provincial or Central Council, as appropriate, and must comply with Rial 6.6 T.O. 2016. The player may only transfer to the local club in the catchment area of his permanent address.

A Transfer shall be deemed invalid if it transpires that the Claimant Player was illegal at the time of granting.

#### Definition of Permanent Residence

“Permanent residence” is the fixed address at which the Claimant permanently resides, his true, fixed and permanent home as determined by the *County C.C.C.*

An Claimant shall reside at this fixed address for a minimum period of two months prior to the date of the transfer application being made.

Residence in a club catchment area for the purpose of attending a Primary School, Post-Primary School or Third Level Institution shall not be considered as a qualifying criteria in respect of “permanent residence”.

For an Claimant under eighteen years of age, residence shall be deemed to be that of the ‘permanent residence’ of his family. In the event of the parent(s)/guardian(s) of an Claimant under eighteen years of age not living at the same address, the matter of permanent residence shall be determined by the County Competitions Control Committee based on the information available to them.

The onus of proof of a permanent residence rests with the Claimant.

#### Documentation

An Claimant seeking to transfer from one Club within the County to another Club within the County may submit supporting documentation, together with his completed transfer application form. The CCC will assess the application based on all the information before them. Where required, the following documentation must be provided to support an application:

Current Electoral Registration Details  
And

Current Driving Licence/Provisional Licence (both parts). Claimants who do not possess current driving licence/provisional licence must provide alternative photographic identification.

Where the Claimant is under eighteen years of age, a copy of his birth certificate must be submitted with the application.

#### Criteria

All applications for transfer from one Club within the County to another Club within the County must be made on the official form as approved by County Committee. Applications for transfer shall not be considered except in the following cases:

- (a) An Claimant whose permanent residence has changed to the catchment area of the club to which he wishes to be transferred;
- (b) An Claimant whose permanent residence has changed to a catchment area common to two or more clubs and who is presently a member of a club outside of the catchment area of his residence, shall be entitled to transfer to the club of his choice in the catchment area of his residence;
- (c) An Claimant whose permanent residence is already in the catchment area of the club to which he wishes to be transferred to, and who is presently a member of club which is outside the club catchment area of his permanent residence;
- (d) An Claimant whose permanent residence is in a parish common to two or more clubs may apply to transfer to another club within the same parish area;
- (e) An Claimant who has not taken part in an official league or championship with his club during the previous year, may apply to transfer to the club of his choice within the same parish area only.
- (f) Catchment area as determined by the County Committee under Rule 6.3 T.O. 2015 is that area consisting of the parish of the Club or within a Town an agreed division of the town boundary.

#### **Claimant's Submissions**

The Claimant made seventeen points in their submission which provided a narrative of the circumstances of Mr. Maguire and claimed that *Bye Law 26 does not require an Claimant for transfer to produce a driving licence and electoral registration card showing he has lived at an address for a minimum of two months; he must merely establish on the balance of probabilities, by whatever means, that the address is his permanent residence*

The Claimant also stated that in the misinterpretation of the bye law, this amounted to a 'misapplication of rule'. They concluded that the decision *as a matter of law was disproportionate, unreasonable and unfair*.

The Claimant referred to *DRA 05 (sic.) 2015*. (It is presumed that the actual case referred to is *DRA 06 2015*) and the application of test of administrative unreasonableness, introduced in Decision *DRA 16/2008*, more particularly and appropriately set out by Denham J in her dicta (ratio) in *Meadows v Minister for Justice Equality and Law Reform (2010) IESC*, which is as follows:

"This test includes the implied constitutional limitation of jurisdiction of all decision- making which affects rights and duties. Inter alia, the decision-maker should not disregard fundamental reason or common sense in reaching his or her decision. The constitutional limitation of jurisdiction arises inter alia from the duty of the courts to protect constitutional rights. When a decision-maker makes a decision which affects rights then, on reviewing the reasonableness of the decision: (a) the means must be rationally connected to the objective of the legislation and not arbitrary, unfair or based on irrational considerations; (b) the rights of the person must be impaired as little as possible; and (c) the effect on rights should be proportional to the objective."

## **Respondents' Submissions**

In a detailed submission, Mr. Devanney outlined the history of Bye Law 26 and stated that it had been unanimously adopted by the clubs of An Dún in 2015 to attempt to stop the flow of transfers which were routinely passed by way of 'addresses of convenience'. He said that under normal circumstances there is no requirement for such robust application of the rule, but that Aghaderg objected to this transfer and therefore, the rule had to be applied to the letter. He said that since none of the required pieces of verification of permanent residency fulfilled the definition as stated in Bye law 26 ie *an Claimant shall reside at this fixed address for a minimum period of two months prior to the date of transfer application being made*, therefore the request had to be turned down.

An examination of the bye law by the members of the Tribunal focused on the word *current* under the heading 'Documentation' in the bye law and asked for clarification as to the meaning of this word and how it related to the actuality of the proof of address which was offered. A further examination of the administrative processes employed by CCC AN Dúin focused on the transfer application form, particularly Section III *Certification of Claimant's Address by Parochial Authority*. This stated *'To be completed by the Parochial Authority for the area in which the Claimant is now resident*. The word *now* in this form was seen as a matter of interest by the members of the Tribunal and a discussion ensued as to its meaning in terms of supporting the requirement of Bye law 26 under the heading *Definition of Permanent Residence*.

## Interested Party's Submissions

The chairman of Aghaderg GAA, supported by Mark O'Kane, a committee member and senior team manager, outlined their discomfort at the transfer request and stated their objection to the address which was offered as the place of permanent residency of the Claimant. They gave a recent history of the club and stated that there are strenuous efforts being made within Aghaderg to ensure that the values and ethos of the GAA are being honoured by the gael's of that area. They concluded by commenting that Kieran is welcome to come back to the senior team and that he had captained it to success in 2015 as a twenty year old. They also stated their disappointment at Clann na Banna for supporting the transfer request.

## Reasoned Decision

The Tribunal found in favour of the Claimant under the *contra proferentem* - rule of construction - providing that, where a promise, agreement or term is ambiguous, the preferred meaning should be the one that works against the interests of the party who provided the wording.

In this instance, the Tribunal found that while in the substantive part of Bye law 26, the definition of *permanent residence* was clear and unambiguous, it was not in fact substantiated to a degree which was fair to the Claimant in its request for a verification of address which requested a *current* Electoral Registration Card and a *current* Driving licence. A fair reading of this section of the bye law could reasonably conclude that the documents of identity did not have to prove that the Claimant was resident at this address for the stipulated two months, but that he was *currently* residing there.

This interpretation is further supported by the section in the transfer form which requests that the form is counter signed by a 'Parochial Authority' which merely asks that the priest/minister of religion for the area confirms that the Claimant is *now* resident at this address.

The Tribunal found that the electoral identity card, the driving licence and the supplementary forms of identification and verification fulfilled the requirements of *current* and *now resident*, therefore the decision made by CCC and HC An Dúin was unreasonable and must be quashed.

The Tribunal wished to put on record the sincerity of Coiste an Dúin in its application of Byelaw 26 as an instrument to ensure that only genuine transfer requests are granted. The Tribunal recommends that at its convention of 2017 that this bye law be amended to reflect the letter as well as the spirit of the bye law.

## **Award and Directions**

The Tribunal awards in final and binding determination of this dispute, and in line with its power under Section 11.4 of the Disputes Resolution Code, that the decision made on the 6<sup>th</sup> April 2017 by An Dúin CCC and the decision (on appeal) made on the 22<sup>nd</sup> June 2017 by An Dúin HC be quashed.

## **Costs**

The Claimant indicated that he was not pursuing an application for costs and as such no costs Order was made.

The Tribunal directs that the expenses of the Tribunal as calculated by the Secretary be discharged by the Respondents and further directs the Secretary to refund to the Claimant the deposit of €1,000.



Date of Oral Hearing: 24 July 2017

Date of Agreed Award: 1 August 2017

**By email agreement on agreed date above**

Jarlath Burns

Martin Rodgers QC

Gareth Robinson BL: