

Disputes Resolution Authority

An C6ras Eadr6na

DRA 16 of 2017: In the matter of the an arbitration under the Disputes Resolution Code and the Arbitration Act 2010

Between:

CUMANN TURLOCH M6R

Claimant

v.

COISTE EISTEACHTA CHONNACHT

First Named Respondent

GALWAY CCC

Second Named Respondent

COISTE EISTEACHTA NA GAILLIMHE

Second Named Respondent

PORTUMNA CLG

Interested Party

Hearing: The Bridge House Hotel, Tullamore, Co Offaly at 7.30pm on 9 October 2017

Tribunal: Aaron Shearer BL, Richard Kennedy and Paddy Collins

Secretary to the DRA, Rory Hanniffy BL

Verdict: The claim is dismissed.

Keywords: *Preliminary issues – jurisdiction - 7.13(d) TO - Obligation to exhaust all avenues of appeal - 7.11(a) TO - Right of appeal, appeal against the rejection of an appeal for non-compliance with formalities.*

List of Attendees:

Claimant – Cumann Turloch Mór:

Tom Sheil
Ita Lyons
Mary Forde
Pat Moore
Jamie Holland
Joe Brolly

Respondent 1 – Connacht HC:

Sean Feeney - Cathaoirleach
Tod O'Mahoney - Member
Seamus Maher - Member
Michael Ryan - Solicitor

Respondent 2 – Galway CCC 3:

Tom O'Doherty - Cathaoirleach

Respondent 3 – Galway HC

Padraig O'Ceallachain - Runai
Mattie Potter - Cathaoirleach

John Hynes - Runai - CLG Galway

Interested Party – Portumna CLG:

Martin Donoghue
Fiona O'Meara

FACTUAL BACKGROUND

1. The within application pertains a dispute which arose from the Galway Senior Hurling Championship match between the Claimant and the Notice Party on the 3rd day of June 2017. The Claimant won the match.
2. The dispute centres around the playing eligibility of one of the Claimant players, Jamie Holland. Mr Holland applied and was granted a sanction to play hurling in America for the summer. It is common case that Mr Holland was granted a sanction and common case that he was scheduled to fly to America on the 6th day of June 2017. A considerable dispute arose as to when the sanction was granted and also about the method and means of publication and notification of the granting of a sanction.
3. The matter came before the Galway CCC, the Galway Hearings Committee and The Connacht Hearings Committee on a number of occasions, the matter having been remitted back to the Galway CCC on two separate occasions. The outcome of the match has become central to the conclusion of the Galway Hurling Championship in that one or other of the Claimant or Notice Party will progress to the quarter finals of the Championship, depending on the outcome of the dispute.
4. The matter came before the Tribunal on foot of an application by the Claimant dated 26th September 2007. The Tribunal convened at the Bridge House Hotel in Tullamore on the evening of 9th October 2017.
5. The Claimant sought to review a decision of the Coiste Eisteachta Chonnacht dated 20th September 2017. That decision determined as follows:

“Coiste Eisteachta Chonnacht has ruled that the Appeal is out of order as it does not comply with Riall 7.11(g)(1)....”

6. The immediate matter for the Tribunal was an issue of jurisdiction and specifically a preliminary point was raised by the Respondents who contended that the Claimant had failed to exhaust all remedies within the Official Guide and as such it was argued that the Tribunal had no jurisdiction to consider the application.

7. The Respondents highlighted the provisions of Riall 7.11(a)(3):

"...a member or unit directly involved in any decision made by a Council...shall have the right of one appeal (and one appeal against the rejection of an Appeal for non-compliance with formalities) as follows:

(3) In respect of decisions of Provincial Council to the Central Appeals Committee."

8. The Respondents contended that the decision by Coiste Eisteachta Chonnacht constituted a rejection of an appeal for non-compliance with a formality. That being the case, it was argued that the provisions of Riall 7.11(a)(3) provided that the Claimant had a further avenue of appeal within the rules - specifically an appeal to the Central Appeals Committee. The Respondents argued that no discretion was provided to a party in terms of the requirement to exhaust all avenues of redress under the Official Guide and highlighted that it is a requirement of any application to the DRA that a party must be able to confirm that it had exhausted all internal avenues of redress or appeal.

9. The Claimant for its part acknowledged that it had not been aware of the provisions of Riall 7.11(A)(3) and accepted that the rule provided for a further appeal mechanism - to the Central Appeals Committee from Coiste Eisteachta Chonnacht. However, it was argued with some force that the Tribunal had a discretion in exceptional circumstances to forgive a failure to exhaust all internal avenues of redress.

10. Specifically the Tribunal was referred to a request for clarification of rule (the rule relating to the granting of a sanction) which was made to Croke Park by the Galway County Secretary. It was argued by the Claimant that since the clarification given by Croke Park was adverse to the Claimant's case and since (it was argued) that any subsequent decision-making body was bound to determine the matter in a manner which was consistent with the clarification given by Croke Park, that any further appeal made by the Claimant was certain to fail and therefore pointless. The Claimant's case (on this preliminary issue) was that an appeal bound to fail is no appeal at all, and the circumstances of the case were so exceptional as to permit a reference of the matter directly to the Tribunal, and obviating the need to appeal to the Central Appeals Committee.
11. The Claimant contended that if it had appealed to the Central Appeals Committee and had been successful then the matter would simply have been referred back to Coiste Eisteachta Chonnacht which body would simply have made a decision which gave effect to the clarification provided by Croke Park. In those circumstances the Tribunal was encouraged to the position that the Claimant should not be obliged to exhaust (and should not be penalised for not exhausting) what were in essence futile avenues of redress.

FINDINGS

12. The Tribunal finds that Riall 7.11(a)(3) required the Applicant to appeal the decision of Coiste Eisteachta Chonnacht to the Central Appeals Committee. It finds that the Applicant had an obligation to exhaust that avenue of redress. It did not do so. The Tribunal in this regard confirms the findings of the Tribunal in DRA 32/2005.

13. The DRA Code requires that all internal avenues of redress should be exhausted before an application to the DRA may be made. The DRA Complaint Form requires parties to confirm that all avenues of redress under the Official Guide have been exhausted. The Claimant confirmed in its application that it had exhausted all avenues of redress under the rules. It had not done so. The Tribunal in this regard confirms the findings of the Tribunal in DRA 33/2005.
14. The Tribunal must of course consider the proposition that exceptional circumstances existed which obviated the general and well-established requirement that a party must exhaust all avenues of redress available to it under the Official Guide before making application to the DRA. Unhelpfully for the Claimant, the admitted position was that the Claimant was unaware that a further avenue of appeal was open to it. In this regard, the Claimant's representative very reasonably accepted that ignorance of the existence of a rule is no excuse for non-adherence to it - indeed the fact that the Claimant's secretary did not know of the existence of the rule was not advanced as a ground of review by the Claimant at the hearing.
15. As regards the practicalities of an appeal to the Central Appeals Committee, the Tribunal was told that an appeal hearing, had it been sought, could have been determined within a period of approximately ten days. There was no suggestion made to the Tribunal that the Central Appeals Committee would have dealt with an appeal in anything other than a fair manner.
16. The matter that could have been appealed to the Central Appeals Committee (but was not) was the decision of Coiste Eisteachta Chonnacht dated 20th September. That decision was to the effect that the Claimant's appeal to it was "*out of order as it does not comply with Riall 7.11(g)(1)....*". Had an appeal been brought, the Central Appeals Committee could have done two things. It could have endorsed the decision of Coiste Eisteachta Chonnacht, or it could have

upheld the appeal and remitted the matter back to the Coiste Eisteachta Chonnacht. The Tribunal has considered both of these hypothetical scenarios.

17. What would the implications of a decision by the Central Appeals Committee to find that Coiste Eisteachta Chonnacht was right and that the Claimant's appeal was in fact out of order? The Claimant could either have accepted that decision or it could have applied to the DRA to review that decision. It did neither and consequently the decision of Coiste Eisteachta Chonnacht deeming the Claimant's appeal out of order remains unchallenged.
18. The Claimant asks the Tribunal to disregard the decision deeming its appeal out of order and argues that the Tribunal can in any event proceed to consider what might be described as the substantive matter. The difficulty with this proposition is that the Claimant did appeal to Coiste Eisteachta Chonnacht and when one asks "*why?*", the only reasonable answer to that question is "*because the Claimant knew it had to*". Indeed, the submission made to the Tribunal was that the Claimant had received legal advice to the effect that it needed to go through the appeal process before it could apply to the DRA. The Claimant club's ignorance of the existence of the additional layer of appeal does not excuse its failure to exercise the right of appeal to the Central Appeals Committee, in the opinion of the Tribunal.
19. The other hypothetical scenario for the Tribunal to consider is if the Central Appeals Committee had upheld the Claimant's (hypothetical) appeal (against the decision of Coiste Eisteachta Chonnacht to rule its appeal out of order). Had that happened the Central Appeals Committee would have had to remit the matter back to Coiste Eisteachta Chonnacht to hear (what we term for convenience) the substantive appeal.
20. The substance of the Claimant's argument to the Tribunal is that a newly constituted Coiste Eisteachta Chonnacht would unquestionably have found

against the Claimant on appeal and would have done so because of the interpretation of rule previously given by Croke Park. The Tribunal finds that there is no or no adequate evidence which supports this contention. It would certainly have been open to the Claimant to advance the argument in a substantive appeal that the rule interpretation given by Croke Park was either wrong or was not binding on Coiste Eisteachta Chonnacht. The Tribunal is asked to accept that any such arguments would as a matter of certainty have been unsuccessful. The Tribunal does not accept that proposition.

21. The Tribunal makes no findings about what circumstances, if any, might be deemed as so exceptional as to obviate the need to exhaust the relevant avenues of redress under the Official Guide. In this case the fact that the Applicant chose to appeal to Coiste Eisteachta Chonnacht and the fact that it admits to not knowing that it had a further avenue of appeal to the Central Appeals Committee undermines the argument it now makes to the Tribunal. It is not clear whether the Applicant considered and rejected the option of applying directly to the DRA instead of appealing to Coiste Eisteachta Chonnacht, but having chosen to appeal the Club appears to have been acting on what the Tribunal believes was correct legal advice, namely that a party making application to the DRA is first bound to exhaust all avenues of redress available to it under the Official Guide.

DETERMINATION

22. The Tribunal finds that it has no jurisdiction to hear this dispute and dismisses the claim.

RECOMMENDATION

23. The Tribunal recommends that the application form or template in respect of applications for a sanction should allow for a person applying for a sanction to indicate a “start date” or “effective date”.

COSTS AND EXPENSES

24. The Tribunal directs that the Applicants shall pay the Tribunal’s expenses. There is no order for costs.

This is the unanimous decision of the Tribunal

Date of Oral Hearing: 9 October 2017

Date of Agreed Award: 10 November 2017

By email agreement on agreed date above.

Aaron Shearer BL

Richard Kennedy

Paddy Collins