

Disputes Resolution Authority

An Córas Eadrána

DRA 10 of 2018: In the matter of an arbitration under the Disputes Resolution Code and the Arbitration Act 2010

Between:

EAMONN MAC GIOLLA GEANAINN

First Named Claimant

and

CORMAC Ó hAILLEANÁIN

Second Named Claimant

and

SEÁN Ó hAILLEANÁIN

Third Named Claimant

and

SÉAMUS MAC AN MHAOIR

Fourth Named Claimant

and

FINNIAN MAC AMHLAIDH

Fifth Named Claimant

v.

COISTE ÉISTEACHTA SHLIGIGH - (SLIGO HC)

First Named Respondent

and

COISTE CEANNAIS NA gCOMÓRTAISÍ SHLIGIGH - (SLIGO CCC)

Second Named Respondent

Hearing: Green Isle Hotel, St John's Drive, Newlands Cross, Dublin at 8.00pm on
13th September 2018

Tribunal: Mr. Dermot Flanagan SC, Mr. Eamonn Denieffe, Mr Con Hogan
Secretary to the DRA, Rory Hanniffy BL

VERDICT: Claimant succeeds.

KEYWORDS: *Applicability of county byelaws to applications for sanctions to play with another club where code not provided for in own club – whether byelaws can be amended by committee regulations – whether procedural rules have retrospective effect.*

Section 2.3 DRA Code – payment of deposit – multiple claimants.

7.13(d) – whether all avenues of appeal exhausted.

LIST OF ATTENDEES:

Claimants:

Adrian Smyth
Padraig Hallinan
Maura Hallinan

Sligo HC:

Conor Sally
Terrence Marren
Dominic Conlon

Sligo CCC

Sean Carroll

FACTUAL BACKGROUND

1. This matter comes before the Tribunal pursuant to the Dispute Resolution Provisions, arising from the Decision of the Connacht HC of the 16th August 2018.
2. The Co-Claimants are members of the St. Farnan's Club in Sligo. St. Farnan's does not field or register a hurling team at adult level. On 8th February 2018, nine members of St. Farnan's submitted to the County Board requests for permits to play hurling with Easkey for 2018 pursuant to Bye-law 5 of the Sligo Bye-laws.
3. The Bye-laws were sanctioned on the 19th January 2018.
4. On the 1st March 2018 Sligo CCC made a decision to refuse permission to all Applications to play with Easkey under Rule 6.8 exception (1) TO 2018.
5. On the 16th March, by way of Appeal, the Hearings Committee decided to return the matter for re-processing pursuant to Rule 7.11 (o) and (p).
6. On the 5th April 2018 there was a second hearing before the CCC whereby it denied the request as per Rule 6.8 2017 TO Part I (B) Exception (1).
7. On the 19th April 2018 there was a further Appeal to the Hearings Committee.
8. The record of this Decision of the 29th April 2018 notes that the byelaws were sanctioned on 19th January 2018 and are in force and held that the CCC did not use the full scope of Bye-law 5.
9. On the 2nd July 2018, at an EGM, a Motion to repeal and replace Bye-law 5 was rejected.

10. On the 13th July 2018, Rules of Procedure were proposed and adopted at a meeting of the CCC.
11. On the 17th July 2018 a meeting of the CCC decided in respect of 4 applicants to grant permission to play hurling with alternative clubs as per Bye-law 5. The Claimants were denied permission on that occasion. In summary, of the nine applicants, four were granted permission and five [the Co-Claimants] were denied.
12. On the 23rd July 2018 at the hearing of a further Appeal, Sligo HC indicated that it could not hear the Appeal as it did not have jurisdiction and advised that the Connacht HC was the appropriate forum.
13. On the 8th August 2018 the matter came before the Connacht HC by way of an Appeal by the Claimants whereby Connacht HC addressed the appellate structures and remitted the matter for further hearing as if the matter proceeded to Appeal as 'originally submitted without the requirement to have them resubmitted'. That decision was taken pursuant to Rule 7.11 (o) (i) and 7.11 (p) (ii) TO 2018. This decision was not the subject of the dispute resolution process.
14. On the 13th August 2018 the further hearing took place before the Hearings Committee and rejected the Appeal on behalf of the Claimants, upholding the decision of the CCC and refusing the Applications of the five Co-Claimants. The records of the Decision dated 14th August 2018 states that 'the said Decision was taken pursuant to Rule 6.8 (b) No. 1 CO Sligo's Bye-law 5 (ii) TO 2018'.
15. On the 16th August 2018, Connacht HC ruled that the Appellate structures had been exhausted and referred to Rule 7.13 TO 2018 which refers to the Dispute Resolution Code.

16. No further Appeal on under the Dispute Resolution process was taken in relation to this decision.

DISCUSSION

Preliminary Matters:

17. The parties to the Dispute Resolution Process agreed that certain matters be addressed by the Tribunal as preliminary issues.

A. The Deposit in respect of the Dispute Resolution Process.

18. The Tribunal is satisfied that the appropriate deposit was paid in circumstances where the request for Arbitration is brought by co-claimants in relation to one decision made on the 16th August 2018 and in which the same question arises for determination which affects all of the co-Claimants equally.
19. Accordingly, the Tribunal finds the Appeal to be properly constituted.

B. Have all avenues of Appeal been exhausted by the Claimants?

20. As stated above, the Tribunal finds that the Claimants did exhaust all potential remedies. The Tribunal noted the Appeal by the Claimants which was considered by the Connacht HC on the 8th August 2018, to the Hearings Committee Decision of the 13th August 2018 and to the Decision by the ConnachtHC of the 16th August 2018 in which the Connacht HC decided that all avenues had been exhausted.

21. In the circumstances, the Tribunal is satisfied that the Claimants have, as a matter of fact, exhausted all available remedies and that the Claimants have invoked Rule 7.13 correctly. Furthermore, the Tribunal is of the view that the Respondents are estopped by their conduct from raising this point having regard to the procedures adopted by the Respondents and the delay in a process that commenced on the 1st March 2018. Any further delay causes prejudice to the Claimants.

22. The Tribunal further refers to the acquiescence on the part of the Respondents in relation to the decision-making process which has taken place on three occasions.

C. The Legality of Bye-law 5.

23. The Respondents raise a doubt in relation to the validity of Bye-law 5. However, at Paragraph 9 of its response to the request for Arbitration it states:

'It is accepted that the byelaws are ratified.'

24. The Tribunal is satisfied that, for the purposes of the decision-making process, the Respondents did in fact apply Bye-law 5 in its ultimate decision-making.

25. In the circumstances, any doubt as to the validity of the byelaws raised on the 19th April 2018 is rendered nugatory by the fact that the Respondents did in fact apply Bye-law 5 in granting the application to 4 Applicants and rejecting that of the 5 Co-Claimants.

26. The Tribunal is of the view that the Respondents have acquiesced in applying Bye-law 5 and are estopped from raising any issue in relation to its validity.
27. Without prejudice to the foregoing, the precise basis of invalidity has not been established, for the purposes of this Dispute Resolution Process.
28. In summary, the 'decision' is a decision for the purposes of Dispute Resolution Process – see *State Abenglen v Dublin Corporation [1984] IR 381*

Application of Bye-law 5 and the Rules of Procedure:

Retrospective Effect:

29. The Tribunal finds that the procedural rules adopted by the CCC on the 13th July 2018 do not have retrospective effect.
30. Furthermore, the Tribunal finds that there is no basis for the application of Rule 2 to the interpretation of Bye-law 5. Rule 2 purports to oppose a maximum number of 4 permit applications per team per year. In so much as Rule 2 purports to alter, vary or amend Bye-law 5, the Tribunal finds that Procedural Rules cannot be invoked which purport to alter the interpretation of Bye-law 5. In this regard the Tribunal finds that to the extent to which Bye-law 5 allows for procedures to be adopted in the case of applications, such Procedural Rules cannot be invoked to alter, amend or substitute Bye-law 5.
31. The Tribunal finds that the application of Bye-law 5 as sanctioned on the 19th January 2018 must be interpreted by reference to the wording of Bye-law 5 itself and that no substantive change to such byelaws can occur other than in accordance with the appropriate procedures for the amendment of byelaws. In

this regard it is noted that an EGM was held on the 2nd July 2018 and a Motion to Appeal and replace Bye-law 5 was rejected.

32. In summary, the Tribunal finds that it was unlawful for the Respondents to impose a restriction on the number of applicants pursuant to Rule 2 of the Procedural Rules adopted on the 13th July 2018 in the interpretation or application of Bye-law 5.
33. The Tribunal finds in favour of the Claimants that Bye-law 5, as ratified for the purposes of the decision-making process, does not impose any restriction on the number of applicants.
34. The Tribunal further finds that any 'custom and practice' cannot displace the clear wording of Bye-law 5.
35. The Tribunal further finds that it is in breach of the principles of fair procedures for the Respondents to seek to adopt Procedural Rules on the 13th July 2018 in order to restrict or circumvent the wording of Bye-law 5.
36. The Tribunal further finds that Bye-law 5 constitutes an alternative arrangement within the meaning of Rule 6.8 TO 2018 by way of exception (1).
37. The Tribunal further rejects the submission on the part of the Respondents that there remains a discretion in the interest of the promotion of hurling and football which requires to be 'read in' to the particular wording of Bye-law 5. In the Tribunal's view, the proper interpretation of Bye-law 5 is that there is limited discretion under Bye-law 5, where annual written permission is sought to play hurling with a dual club 'in his own divisional road area'.
38. The Tribunal finds in favour of the Claimants that any 'discretion' is provided within the alternative arrangement set out in the particular wording of Bye-law.

CONCLUSION AND DETERMINATION

39. The Tribunal unanimously finds that there has been a mis-application of Bye-law 5 by the Respondents.
40. The Tribunal unanimously finds that Rule 2 of the Procedural Rules cannot be applied retrospectively and cannot be invoked to purport to amend or vary Bye-law 5 as ratified.
41. For the reasons outlined above, the Tribunal directs that the decision of the 14th August 2018 be quashed and that the matter will be remitted to the CCC.
42. The Tribunal further directs that a new Committee is constituted and that, for the purposes of an Appeal, a separate Committee hears any Appeal arising therefrom.
43. The Tribunal further directs that the CCC makes its determination within 7 days of the Tribunal's ex-tempore decision delivered on the 13th September 2018

This is the unanimous decision of the Tribunal

COSTS AND EXPENSES

44. The Tribunal directs that the Claimants deposit be reimbursed and that the expenses of the Tribunal be discharged by the Respondents.
45. The Tribunal further directs that the Claimants costs be discharged by the Respondents, such costs to be determined in default of agreement by this

Tribunal. Any application for such determination should be received by the Secretary not later than six weeks from the date of receipt of this decision.

Date of Oral Hearing: 13 September 2018

Date of Agreed Award: 5 March 2019

By email agreement on agreed date above.

Mr. Dermot Flanagan SC

Mr. Eamonn Denieffe

Mr Con Hogan