

Disputes Resolution Authority

An Córas Eadrána

DRA 03 of 2020: In the matter of an arbitration under the Disputes Resolution Code and the Arbitration Act 2010

Between:

SÉAN O MÁILLE (JOHN O'MALLEY)

Claimant

v.

AN LAR CHOISTE ACHOMHAIRC - (CAC)

First Named Respondent

And

COISTE CHONTAE MAIGH EO - (MAYO GAA)

Second Named Respondent

And

COISTE ÉISTEACHTA CONNACHT - (CONNACHT HC)

Interested Party

Hearing: 16th July 2020, Green Isle Hotel, St John's Dr, Newlands Cross, Dublin 22

Tribunal: Mr. Aaron Shearer BL, Mr. Mark Curran BL, Mr Willie Barrett

Secretary to the DRA, Rory Hanniffy BL

VERDICT: The claim is dismissed.

KEYWORDS: *County Convention - Election of Provincial Representative – R3.10-3.17 TO 2019*

Proportional Representation – whether procedures applied - 3.11(f) TO 2019

Special Convention – Whether County Committee entitled to convene a Special Convention – existence of a special circumstance – whether error in the counting of votes amounted to a special circumstance – 3.10 TO 2019

Right of Appeal – whether Declaration of Election is a decision – 7.11 TO 2019

LIST OF ATTENDEES:

Claimant – Chris Kelly

Johnny O'Malley
Jacqueline O'Malley
John Paul Comerford

Central Appeals Committee

Brian Rennick
Declan Hallissey

Mayo County Committee

Dermot Butler

Connacht Hearings Committee

Declan Bohan

FACTUAL BACKGROUND

1. On or about the 15th day of December 2019 the Mayo County Convention took place in Belmullet. Among the other business of the convention, there was a vote to elect the two representatives of the Mayo County Board to Connacht Provincial Council. The election of delegates was on the basis of Proportional Representation.
2. The Claimant was one of four candidates for the two delegate positions on Connacht Council and after the counting of votes the Claimant and one other candidate, Vincent Neary, were declared by the County Convention to have been elected.
3. At some point on the evening of the convention but after the declaration of the results of the vote, it was noticed that the distribution of the votes of the first eliminated candidate had not been carried out in accordance with the rules of proportional representation. It is noted that whilst not accepted by the Claimant that the rules of Proportional Representation had been misapplied, no evidence was led which contradicted the contention of the Mayo County Board that the counting of votes had not been carried out correctly.
4. The Claimant and the other candidates in the election were advised on or about the 16th day of December 2019 that there had been an error in the counting of the votes. Two options were given to candidates. Option one was a recount. Option two, in the absence of agreement to option one, was a fresh vote at a Special Convention.
5. The Claimant's evidence is that he inquired from the County Board Secretary of the basis in rule for the setting aside of the declaration (of the election of delegates by the County Convention). In the absence of a satisfactory explanation the Claimant refused to accede to either of the presented options. The Claimant's

position at that time, and it has remained his position, was that there was no basis in rule to set aside the declared result by the County Convention.

6. The Mayo County Board conducted a review meeting on or about the 6th day of January 2020 and on the 8th day of January 2020 the Chairman and Secretary of the County Board met with the four candidates and appraised them of the position. The two options previously presented to the candidates were represented to them and again the Claimant sought a basis in rule for setting aside the decision/declaration of the County Convention. Once again unsatisfied with the answer provided to him, the Claimant refused to agree to either a recount or a fresh vote.
7. One or about the 9th day of January 2020 Notice of a Special Convention to elect the Mayo County Board's delegates to Connacht Provincial Council was circulated to the clubs in the county. The Special Convention was scheduled for 27th January 2020.
8. On or about the 13th day of January 2020 the Mayo County Board met and made a formal decision to convene a Special Convention on the 27th day of January 2020. The Special Convention was convened pursuant to Rule 3.10 of the Official Guide. The Claimant appealed the decision to convene a Special Convention to the Connacht Hearings Committee ("CHC")
9. The CHC met on the 23rd day of January 2020. It upheld the Claimant's appeal. The CHC found that the Mayo County Board had misapplied Rule 3.10 and found that in the absence of an appeal against the result of the election declared at the County Convention, that no power to convene a Special Convention arose.
10. The Mayo County Board appealed the decision of the CHC to the Central Appeals Committee ("CAC"). The CAC upheld the appeal of Mayo County Board. The basis of that decision was that whilst it was accepted that candidates

in the election of delegates had a right to appeal the “decision” of County Convention to declare Vincent Neary and the Claimant elected, the County Board did not have a right of appeal in respect of a decision of the County Convention. Absent an appeal mechanism to rectify the counting error alleged in this election, the CAC found that the convening of a Special Convention was a power vested in the Mayo County Board.

11. The Claimant has challenged the County Board’s power to convene a Special Convention and challenged the validity of the CAC’s decision to allow the County Board’s appeal.

DISCUSSION

12. Whilst not true to say that there was agreement by the parties that the counting of votes for the election of delegates to Connacht Provincial Council was flawed, no evidence was led which would gainsay the contention that the counting of votes was not carried out in accordance with the rules of Proportional Representation, as required by Rule 3.11(f) of the Official Guide.
13. The panel was asked to consider whether the declaration of the result of the election of delegates to Provincial Council was a “decision” such as was capable of appeal pursuant to Rule 7.11 of the Official Guide. Rule 7.11 of the Official Guide provides a right of appeal against, inter alia, “*any decision made by a... County Convention...*”. The view was canvassed that the declaration of the result of the election was just that, a declaration, and was not a decision.
14. If the County Convention had made a “decision” capable of being appealed, the question then arose as to which persons or parties had a right to appeal that decision. Rule 7.11 provides a right of appeal to a “*Member or Unit directly*

involved” in the decision in question. The parties agreed that the candidates themselves were directly involved in the decision to elect delegates. The central question was whether the County Board was a Unit directly involved in the decision and whether it had a right of appeal against the “decision” of the County Convention. It was suggested by the Claimant that persons who voted at the County Convention in the election to elect Provincial Council delegates were also directly involved in the decision and pointed out that none of those present at the convention had appealed. The Claimant’s central contention was that absent a successful appeal of the election result that the election result stood and could not otherwise be set aside.

15. If the County Board did not have a right of appeal against the “decision” of the County Convention, did it otherwise have a mechanism to correct the apparent error in the counting of votes in this election. Rule 3.10 of the Official Guide provides as follows: “*In special circumstances, a County Committee may summon a Special Convention*”. The proposition advanced, and the central issue in the case, is that the error in the counting of votes was a “special circumstance” such as warranted the convening of a Special Convention.

DECISION

16. The panel finds that there was an error in the counting of votes in the election of delegates from Mayo County Board to Connacht Provincial Council.
17. The panel finds that the declaration by Mayo County Convention of the result of the election of delegates to Connacht Provincial Council was a “decision” such as was capable of appeal pursuant to Rule 7.11 of the Official Guide. On the basis that the rules acknowledge that County Conventions can make decisions capable

of being appealed, it seems axiomatic that the outcome of elections held at the Convention are in fact decisions within the meaning of Rule 7.11.

18. In terms of who could appeal the decision of the County Convention, the panel finds that the candidates themselves were the only people directly involved in the decision to elect delegates and consequently the only persons with a right of appeal. We find that the County Board was not directly involved in the decision and had no right of appeal against the decision of the County Convention. We find that persons who voted at the County Convention to elect Provincial Council delegates had not a level of involvement in the decision such as gave them a right of appeal.
19. We find that that the use by the County Board of the power provided for in Rule 3.10 (to convene a Special Convention) was lawful and in accordance with rule. We find that the error in the counting of votes was a “special circumstance” such as warranted the convening of a Special Convention.

CONCLUSION AND DETERMINATION

20. The Tribunal determines that there is no basis to impugn the decision made by the second named Respondent on the 13th day of January 2020 to convene a Special Convention.
21. The Tribunal determines that there is no basis to impugn the decision made by the first named Respondent in allowing the second named Respondent’s appeal against the decision of the Connacht Hearings Committee.
22. This is the unanimous decision of the Tribunal

COSTS AND EXPENSES

- 23.** The Tribunal directs that the DRA's expenses be discharged by the Claimant from the deposit lodged with any surplus reimbursed.

Date of Oral Hearing: 16th July 2020

Date of Agreed Award: 19th August 2020

By email agreement.

Aaron Shearer BL

Mark Curran BL

Willie Barrett