

# Disputes Resolution Authority

An Córas Eadrána

**DRA 01 of 2021: In the matter of an arbitration under the Disputes Resolution Code and the Arbitration Act 2010**

*Between:*

**GREG THOMAS**

*Claimant*

*v.*

**COISTE CHEANNAIS NA gCOMÓRTAISÍ GAILLIMH - (GALWAY CCC)**

*First Named Respondent*

*And*

**COISTE ÉISTEACHTA GAILLIMH - (GALWAY HC)**

*Second Named Respondent*

*And*

**BALLYGAR HURLING CLUB**

*Interested Respondent*

*And*

**CASTLEGAR HURLING CLUB**

*Interested Respondent*

**Hearing:** 20<sup>th</sup> April 2021, Remotely

**Tribunal:** Mr. David Nohilly, Mr Cian Kelly BL, Mr Seamus Woods

Secretary to the DRA, Rory Hanniffy BL

**VERDICT:** The claim succeeds.  
Rule 11.4 DRA Code invoked. Transfer allowed.

**KEYWORDS:** *Transfer matter*  
*Whether transfer application contrary to 6.1-6.5 TO 2020 and Galway Byelaw 8.*  
*Whether byelaws correctly applied by the CCC.*  
*Tribunal exercising its power under Section 11.4 of the DRA Code to hear the application.*

**LIST OF REMOTE ATTENDEES:**

*Claimant – Greg Thomas*

Greg Thomas - Claimant  
Fergal Lynch – Castlegar HC Senior Team Manager  
Tom Thomas – Parent  
Bernie Campbell Thomas – Parent

*First Respondent – Coiste Cheannais Na gComórtaisí Gaillimh – (Galway CCC)*

Pat Kearney – Chairperson  
Seamus O’Grady - Secretary

*Second Respondent – Choiste Éisteachta Gaillimh – (Galway HC)*

Mattie Potter – Chairperson  
Padraig O’Callaghan – Secretary

*Interested Party – Ballygar Hurling Club*

Neil Geraghty - Chairperson

*Interested Party – Castlegar Hurling Club*

John Connolly - Chairperson

## FACTUAL BACKGROUND

1. The Claimant is a member and player with Ballygar Hurling Club, a club in rural County Galway. On the 30<sup>th</sup> October 2020 he submitted a club transfer request to transfer to Castlegar GAA Club, a club in Galway City. Both Clubs are in the same County (albeit 60km away from each other).
2. Notwithstanding the claimant turning 18 years in February 2021, he was 17 years at the time he submitted the transfer request and as such, is a minor/underage for the purposes of this decision.
3. For completeness also, it is not disputed by the parties that Ballygar Hurling Club is the Claimant's First Club for the purposes of Rule 6.4.
4. The transfer request by the Claimant indicated that he was now residing with his family at an address in Kocknacarra, Galway having recently moved. Notwithstanding that it was argued that the more appropriate Club might be considered as being Salthill/Knocknacarra (based on his new address), the Claimant submitted a transfer to the Castlegar Club. This is also where his older brother was playing having been successful in securing a transfer.
5. Ballygar Club objected forcefully and stridently to this transfer in their correspondence, which they were entitled to do.
6. The Claimants' parents in support of their son's transfer submitted various documents which we have seen, without objection, to prove they had moved residence.
7. On the 9<sup>th</sup> February 2021 the Claimants were notified that Galway CCC declined the transfer request as it was '*contrary to rules 6.1 – 6.5 TO 2020 and Galway Bye Law No. 8*'. When the Claimant indicated he wished to appeal, it was further clarified in a subsequent email by Galway CCC that their decision was taken pursuant to Rule 6.1 TO and Bye Laws 8.6 and 8.7.
8. There were no minutes of the CCC meeting ever produced.
9. The appeal by Galway Hearings was held on the 18<sup>th</sup> February 2021. That appeal failed due to the application of Rule 6.1. and 6.5(e) TO 2021 and Bye Laws 8.6 and 8.7 according to the hearings committee.

10. The Claimants who were unsatisfied with the decision of Galway Hearings Committee submitted their request for Arbitration in the usual form to the DRA.

## **DISCUSSION**

11. There was much discussion, often heated, regarding this transfer.
12. The claimant through Mr. Lynch, their representative, who spoke without objection, maintained that both the CCC and Hearings Committee erred in their failure to apply the Bye laws correctly, that under current rules in force the Claimant had an entitlement to a transfer. He also highlighted inconsistencies within the Galway city catchment area itself in terms of different players eligibilities to play with different clubs within the City.
13. The claimant's parents also spoke about their desire for the transfer to allowed, how the claimants brother was playing with the Castlegar Club and it would be unthinkable that he would not similarly play there.
14. The Respondents maintained that the current Bye Laws were correctly drafted and posed no difficulties. They stated that even if the player had moved residence (which they did not accept), there was an unwritten rule that he should be playing with Salthill/Knocknacarra Club and not Castlegar GAA Club. They said there are 'unwritten rules' pertaining to Clubs within Galway City in determining a player's eligibility to play with a certain Club.
15. Mr. Gergahty of Ballygar GAA Club spoke passionately and impressively about his Club. He said whilst they wished the Claimant well in his future career their Club was his First Club and one that he owed loyalty to.
16. Mr. Connolly of Castlegar GAA Club spoke about the current Bye Laws in place and submitted that that from their reading of same, a city club could be regarded as the Claimants first Club. He maintained that the transfer should have been allowed.

## **DECISION**

17. The issue for us to consider is whether the decision by Galway HC was manifestly wrong, which is a high bar. We do not consider whether the Claimant

had or had not moved residence, but whether the decision makers on the committee acted in an irrational and/or wrong manner. This is not a rehearing. It is an examination only of the decision-making process.

18. The rules regarding transfers within a County are well set out and versed in the Official Guide. It is not necessary that we repeat them here but briefly they do provide a facility to each County to put in place a mechanism to process transfer requests. This is the County Bye Laws. There are logical and practical reasons for this. Not every County is the same in terms of player transfer requests viz the rural/urban divide but the overarching principle with these Rules is to ensure a 'level playing field' for all Clubs in a County. It may for example, be designed to protect the smaller clubs or to avoid the flood gates opening of players transferring to a trophy rich Club.
19. This is a very delicate balancing act by committees and invariably becomes very emotive.
20. Rule 8.6 of the Galway County Bye Law 2020 states:

*“Unless exempted by the County Committee, a Player shall continue as a Member of his first club **in the Galway City Catchment Area**, until he reaches the age of eighteen, unless he has changed permanent residence, in which instance he may be granted a transfer, after due consideration by the CCC, in accordance with Rule 6.5 TO 2020.” [our emphasis]*
21. It is clear to us from a plain reading that this Rule only applies to the Galway City Catchment Area. It does not take account of city to rural and rural to city club transfers. Where there is an ambiguity in the Rule it must be read as against the draftsman (*contra proferentem rule*).
22. This bye law has created a new rule subset that only deals with 'City' transfers.
23. There is no provision for rural to urban transfers and vice versa. That is not the case in Galway. There is one rule for the City clubs (which only applies to underage) and no rule at all to protect the rural clubs.
24. In addition, the Galway City catchment area is, it would seem, an open boundary. It is not defined. It may be unwritten but when questioned no one could answer where the boundary ends or begins.
25. We do not agree that from a literal reading of the Rule that it could conceivably result in a player having two first clubs (a rural first club and a city first club).

This rule is drafted only with Galway City clubs in mind where underage players have their first club within Galway City. The Official Guide is clear on what is a first club, that is, the club the player first legally played with at under 12 grades.

26. Rule 8.7 is applicable in this instance, which sets out the general aspirations of protecting a player's first club, cognisant of the role played by that club in nurturing the player, the Association's ethos, the impact on the current Club and the submissions by the player. However, it offers no real guidance or substance to assist us or indeed the committee members.
27. In this case, the Hearings Committee (and the CCC) relied upon **both** Rule 8.6 and 8.7 of their Bye Laws in reaching their decision. They explicitly referred to same in the minutes. The decision was made based on a reliance on a wrongly applicable rule. It would create an unhelpful precedent for us to say that Bye Law 8.6 does apply to rural clubs when this is clearly not the case.
28. The bye laws as currently drafted are not fit for the County's purpose. They do not serve the rural clubs at all. It places them in a very disadvantageous position.
29. In general, ambiguities or inconsistencies in a County's Bye Laws particularly in a contentious area such as transfers invariably result in increased referrals to the DRA. Bye Laws need to be clear, watertight, and unambiguous to avoid perceived injustices on members of the Association.
30. There is also another issue which is important to highlight and one which was before the DRA in 18/2019 and DRA 24/2019. A Hearings Committee when considering an appeal in cases such as this is limited by Rule 7.11(o) TO 2021.
31. It states *"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."*
32. What this means for a hearings committee in cases such as this are: -
  - 1) They do not re hear the case;
  - 2) They do not determine matters of fact;
  - 3) They do not hear evidence from witnesses;

- 4) Their sole function is to satisfy itself that there was a basis for the decision made by the CCC.
33. In this instance, the hearings committee attempted to determine again matters of fact and proceeded with hearing evidence from witnesses. They conducted a rehearing of the case. This is *ultra vires* their role. This shows a lack of understanding of their function. This is disappointing because this was highlighted to them previously in 2019 (DRA 18/2019 and DRA 24/2019).
34. Similarly, it does not help that there are no minutes of the meeting from the CCC.
35. A recommendation was made in 2019 by the DRA that the Bye Laws for County Galway be redrafted. This it seems was ignored. The result is the case we have before us now.

## CONCLUSION AND DETERMINATION

36. The Tribunal therefore unanimously decides that it must quash the decisions of the Respondents as being *ultra vires* and manifestly incorrect.
37. Considering the circumstances of this case, the age of the player, our comments made out above, the Tribunal (unusually) invoked its jurisdiction under Rule 11.4 of the DRA Code.
38. In other words, with the agreement of all parties the Tribunal takes the place of the CCC and makes a final decision in relation to the transfer itself.
39. All parties agreed with this course of action.
40. The Tribunal proceeded to hear evidence from both the Claimant's parents and Ballygar GAA. The Tribunal accepted the evidence, documentary and otherwise, that the Claimants had moved residence from Ballygar to Knocknacarra. This was not challenged in any meaningful way.
41. The Tribunal was satisfied under Bye Law 5.1 and 5.2 that the Claimant had established a permanent residence in Knocknacarra and was entitled to a transfer.
42. It follows therefore that the transfer request by the Claimant to a transfer from Ballygar GAA Club to Castelgar GAA Club as set out in the Transfer Request Form dated 30<sup>th</sup> October 2020 be allowed.

43. The Tribunal directs that the transfer be granted with immediate effect.
44. This Transfer decision was made under Rule 6.5 TO 2021 and in accordance with existing County Galway bye laws.

#### **COSTS AND EXPENSES**

45. The Tribunal directs that the DRA's expenses be discharged by the first and second named respondents equally. The Tribunal further directs that the deposit lodged by the Claimant be reimbursed by the Secretary.

**Date of Hearing:** 20<sup>th</sup> April 2021

**Date of Agreed Award:** 5<sup>th</sup> May 2021

**By email agreement.**

**David Nohilly, Chairman**

**Cian Kelly BL**

**Seamus Woods**