

Disputes Resolution Authority

An Córas Eadrána

DRA 03/04/05/06/07 of 2021: In the matter of an arbitration under the Disputes Resolution Code and the Arbitration Act 2010

Between:

**DEVON RYAN, AARON BROWNE, GERARD BROWNE, NATHAN RYAN AND
SCOTT RYAN**

Claimant

v.

**COISTE CEANNAIS NA GCOMORTAISÍ TIOBRAID ÁRANN - (TIPPERARY
CCC)**

First Named Respondent

And

COISTE ÉISTEACHTA TIOBRAID ÁRANN - (TIPPERARY HC)

Second Named Respondent

Hearing: 20th May 2021, Remotely

Tribunal: Mr. Michael Murray BL, Mr Patrick Moroney, Mr Eamonn McMahon

Secretary to the DRA, Rory Hanniffy BL

VERDICT: Claimants succeed. Decisions of First Named Respondent of 19th March 2021 and decision of Second Named Respondent of 1st April 2021 refusing Claimants' Applications to transfer clubs are quashed. Matter remitted to freshly constituted sitting of First Named Respondent for rehearing.

KEYWORDS: *Transfer Application within county - R6.5 TO 2020 - Tipperary Bye-law 7 - Applicability of County Bye-Laws to application to transfer clubs within county.*

LIST OF REMOTE ATTENDEES:

Claimants

Eoin O'Connor BL
Madeleine Ryan - Parent

First and Second Respondents

Patrick Murphy - Solicitor
Jimmy Minogue - CCC Chairperson
Seamus O'Grady - CCC Secretary
Anthony Purcell - HC Chairperson
Jerry Ring - HC Secretary
Tim Floyd - Tipperary GAA Secretary

FACTUAL BACKGROUND

1. This matter concerns the applications by each of the Claimants submitted in January 2021 to transfer from Knockavilla – Donaskeigh Kickhams (“KDK”) to Cashel King Cormacs (“CKC”) following a series of events which culminated in the breakdown of relations between the Claimants and KDK.
2. The Claimants filed respective applications to transfer from KDK to CKC (the “Applications”) in January 2021 in accordance with the Tipperary County Bye-Laws (the “Bye-Laws”).
3. The First Named Respondent considered the Applications by way of remote hearing conducted on the 18th of March 2021.
4. The decisions of the First Named Respondent refusing the Applications were communicated by way of individual notice dated the 19th of March 2021 issued to each Claimant in identical terms as follows:-

“...The County Competition Control Committee, notifies you of its Decision in accordance with County Bye-Law 7(A), (B), (C), (D), (F) 2021, Riail 6.5 T.O. 2020. Riail 6.5(e) only permits the CCC to “make its decision in accordance with rule and the County’s Transfers Bye-Law” The CCC examined all the evidence given by hard copy and oral evidence as per County Bye Law 7(B) that states that the person seeking the transfer must reside permanently in the parish in which he plays. The hearings committee of the CCC felt that the application was not proven. The committee also decided that the applicant’s permanent residency is in the parish of [KDK] which was not contested by [the Claimant]. The County CCC deems that the transfer application by [the Claimant] fails...”

5. The Claimants each filed appeals with the Second Named Respondent in respect of the decisions of the First Named Respondent refusing the Applications by way of application forms dated the 21st of March 2021.

6. The Claimants based their appeals on a number of different grounds, including, *inter alia*, a contention that Riail 6.4(e) T.O. was not taken into consideration and a contention that the Bye-Laws were not applicable in this instance. By way of written addenda to the appeal forms filed, the Claimants submitted, *inter alia*, that “...all the rules that the CCCC based their decision on are not applicable...as [they] did not seek the transfer on the grounds of permanent address...There was a misapplication of the rule...by the decision making Committee, when they applied rules hinging around first club and permanent address.”
7. The Second Named Respondent considered the Claimants’ appeals by way of remote hearing conducted on the 31st of March 2021
8. The decisions of the Second Named Respondent affirming the decisions of the First Named Respondent and refusing the Applications was issued by the Second Named Respondent on the 1st of April 2021. The Second Named Respondent held, *inter alia*, that there was no clear infringement or misapplication of rules by the First Named Respondent and that the decision of the First Named Respondent was reasonable, having regard to the spirit of the Rules of the Association and applicable Bye-Laws. The Second Named Respondent further determined that sufficient evidence was not produced by the Claimants to confirm that they had been refused membership of a club. On the contrary, representatives of KDK stated that the Claimants were “...very welcome to continue as...member[s] and player[s] in the club,” and that accordingly, under Riail 6.4(e) TO the Claimants were “...not entitled to join any other club”.
9. The Claimants contend that relations with KDK have broken down to an irreconcilable extent and requested arbitration of the refusal of the Applications by the Respondents on the 12th of April 2021.

DISCUSSION

10. Following preliminary submissions on behalf of the Respondents, the Tribunal determined that the appeals (all of which were conducted simultaneously) would be confined to the following issues:-

(a) Whether the First Named Respondent failed to apply Riail 6.4(e) T.O.;

(b) Whether the CCC incorrectly applied the Bye-Laws, specifically Clauses 7(A), 7(B), 7(C), 7(D) and 7(F) in relation to the Claimants; and

(c) If so, whether the Second Named Respondent was correct to decide that there had been no clear infringement or misapplication of the rules by the First Named Respondent.

11. During the course of preliminary discussions, Ms. Madeleine Ryan, a parent of three of the Claimants, addressed the Tribunal in relation to specific issues raised and confirmed that relations between the Claimants and KDK had irretrievably broken down and remained so. She confirmed that she herself was an active volunteer with KDK and that the Claimants had not participated in any club related activity since relations had broken down. She further confirmed that a number of the Claimants that had previously played at inter county level were no longer participating in inter county panels.

The Tribunal accepted without equivocation the Claimants' contention that relations had broken down to an irretrievable extent as confirmed by Ms. Madeleine Ryan, and was genuinely and not frivolously held.

The Tribunal noted, and it appeared to be common case, that CKC had been receptive to and remain receptive to accepting the Claimants as members, subject to approval of the Applications by the First Named Respondent.

The Tribunal further notes (though the matter was not canvassed during the course of the oral hearing) that, the minutes of the meeting of the First Named Respondent do not appear to record the attendance of any member of CKC nor were the views of CKC as being agreeable and amenable to the Applications recorded in the minutes. In this regard, it is notable that neither party availed of the provisions of Riail 6.5(c) T.O. to request that CKC be afforded the opportunity to address the First Named Respondent at the Applications meeting in relation to their position with regard to the Applications.

The Tribunal observes that the views of CKC may well have provided considerable assistance to the First Named Respondent when considering the Applications.

The Tribunal furthermore noted and accepts without equivocation that KDK confirm that the Claimants are welcome to remain members of KDK.

12. At the outset of a comprehensive consideration and discussion of the issues, the Tribunal reiterated that it's role was confined to that of adjudication as to the legality of any decision made or procedure used by either of the Respondents and specifically the fact finding jurisdiction of the First Named Respondent and supervisory appellate jurisdiction of the Second Named Respondent. This jurisdiction is expressly set out in Riail 7.13(a) of T.O. and has been repeatedly affirmed in successive decisions of the Tribunal, most recently the decisions in Donal Moloney-v- CHC & CAC (DRA 08/2018) and Turlough O'Brien & ors. -v- CAC & ors. (DRA 15, 16 & 17/ 2019).

Accordingly, the Tribunal did not enter into a substantive inquiry into the sequence of events which culminated in the Applications but it did note that attempts at mediating a solution were made prior to the filing of the Applications.

13. The Tribunal then considered Clause 7 of the Bye-Laws which are concerned with Playing Eligibility/ Transfers/ Declaration and, for completeness, are set out in full as follows:-

“A. Catchment Area

For the Purpose of these Bye-laws the boundaries of the catchment area in Tipperary, as defined by the county Committee, shall be the Parish area under the jurisdiction of a Parish Priest or Administrator (subject to County Boundaries) as per 6.3 T.O.

(i) Subject to Rule 6.8(B)(C) T.O. and County Committee approval a player or players may play hurling with one club and football with another club (and vice-versa,) within the county. The players from a named club can only play with one other named club within the county. This only applies where clubs play one code only. Application must be made to the County C.C.C. by the 10th of January of the year of the competition and must be signed by both participating clubs. Applications must be made annually. Where two clubs enter an arrangement of this nature (1) the two clubs must be adjoining parishes (2) players from the clubs involved may play for one club only in hurling and football.

(ii) Subject to Rule 6.8 (D) Exceptions (1)(a)(b) Players whose own club does not field a U/21/20 minor or younger grade team within the county in a particular code may play for another club within the county in that code subject to the following guidelines:-

The application must be to the nearest possible club geographically;
A maximum of four players per club is recommended and anything more will be considered a group team;
A personnel (sic) letter of application from the player (or Parent/ Guardian if under 18 years old) must be sent to the County CCC

secretary, accompanied by a letter of acceptance from the secretary of the benefitting club.

The closing date for application will be midnight, January 10th of the championship year.”

The Tribunal determined that this clause was of no application to the Applications as it is primarily concerned with the definition of ‘catchment area’, provisions governing the transfer of players between clubs that do not play both hurling and football and provisions governing the transfer of underage players to clubs that field underage teams. Furthermore, the Tribunal determined that this bye-law could not form a legitimate basis for refusing the Applications by the First Named Respondent.

The Tribunal noted that Clause 7(B) comprised a definition of ‘Permanent Residence’ as follows:-

“(B) Permanent Residence

The address at which a person normally resides, and is, if aged eighteen or over for statutory purposes such as Taxation, Social Welfare or Register of Electors, and if aged under eighteen, the address at which ones parents or guardians normally reside and are registered for Taxation, Social Welfare or Register of electors.”

The Tribunal further noted the statement of the ‘first club rule’ pursuant to Riail 6.4 T.O. contained at Clause 7(C) of the Bye-Laws as follows:-

“(C) Attachment to first Club – Rule 6.4

A person first becoming a member of the Association shall be restricted to becoming a member of the club in the catchment area (as determined by Co. Committee under rule 6.3 T.O. 2020) where he permanently resides.”

The Tribunal determined that the provisions of Clauses 7(B) and 7(C) constituted a valid definition of ‘Permanent Residence’ and the ‘First Club

Rule' for the purposes of the Bye-Laws but did not constitute in themselves relevant or applicable criteria for consideration of transfer applications such as those under consideration.

The Tribunal further determined that the First Named Respondent misdirected itself as to the terms and applicability of Clause 7(B) in this instance and was mistaken when stating in the Notice of Decision dated the 19th of March 2021 that Clause 7(B) stipulates that the person seeking the transfer must reside permanently in the parish in which he plays.

The Tribunal further noted the contents of Clause 7(D) of the Bye-Laws affirming the right of the First Named Respondent in the first instance and the Second Named Respondent on appeal to adjudicate upon transfer applications within the county, which provides as follows:-

“(D) Transfers

The County CCC shall be responsible in the first instance, for making decision on applications for transfers within the County as per Rule 6.5 T.O. 2020. The County Hearings Committee shall adjudicate on Appeals that may arise from decision (sic) of the County CCC.”

The Tribunal determined that the provisions of Clauses 7(D) constituted a valid statement of a rule empowering the First Named Respondent to adjudicate upon transfer applications and empowering the Second Named Respondent to adjudicate on any appeals thereon for the purposes of the Bye-Laws, but did not constitute a relevant or applicable criterium for consideration of transfer applications such as those under consideration.

The Tribunal finally considered the provisions of Clause 7(F) of the Bye-Laws which provides as follows:-

“(F) All the applications for transfers within the County shall commence from January 1st each year and in accordance with Rule 6.5 T.O. 2020 and must be

made on the official inter-club's transfer form, and must be fully documented. Documents submitted as proof of residence must be original and dated at least 28 days prior to the original date of application for transfer.

The County CCC will adjudicate on all applications and reserve the right to waiver any of the above guidelines in exceptional circumstances."

The Tribunal determined that Clause 7(F) did not constitute in the circumstances a relevant or applicable criterium for consideration by the First Named Respondent of transfer applications such as those under consideration.

DECISION

14. The Tribunal takes the view that Riail 6.4(e) T.O. providing discretion to County Committees such as the First Named Respondent to authorise an applicant "...for membership of such other Club(s) as it deems appropriate having regard to the spirit of the Rules and Bye-Laws applicable," applies solely to prospective applicants to a First Club (as defined in T.O.) and is of no application to applicants with pre-existing membership of a club such as the Claimants. Arguments advanced on behalf of the Claimants at the appellate hearing before the Second Named Respondent and subsequent consideration and application of Riail 6.4 T.O by the Second Named Respondent was accordingly of no consequence to the ultimate determination of this matter by the Tribunal.
15. In applying the decision of the Tribunal in Ballypickas GAA -v- Laois CCC & ors. (DRA 03/2018) and Riail 6.5(a) T.O. the Tribunal affirms that absolute discretion is vested in the relevant county committee (such as the First Named Respondent in County Tipperary) pursuant to the Bye-Laws whether to allow a transfer from one club to another within that same county or not. This discretion must be exercised fairly by the relevant county committee and each decision must be reached on its own merits, with an emphasis on fairness and the merits of the individual case and with regard to the Basic Aim of the GAA

as provided by Riail 1.2 T.O. being the “...preservation and promotion of Gaelic Games and pastimes.”

16. The Tribunal is of the unanimous view that the First Named Respondent misdirected itself as to the applicability of clauses 7(A), 7(B), 7(C) of the Bye-Laws to the Applications and that it misdirected itself in applying the permanent residency of the Claimants as the primary criterium for refusing the applications and accordingly quashes the decisions of the First Named Respondent dated the 19th of March 2021.
17. The Tribunal takes the view that the First Named Respondent did not misapply clauses 7(D) and 7(F) of the Bye-Laws insofar as they were in any way relevant to the Applications. Furthermore, and for the avoidance of doubt, the Tribunal is of the unanimous view that the right to waive any of the guidelines, vested in the First Named Respondent and set out in Clause 7(F), applies solely to the procedural provisions contained in clause 7(F) and is not of general application to other Bye-Laws and was, in any event, of no relevance to the Applications.
18. The Tribunal is of the unanimous view that because of the manner in which the First Named Respondent misdirected itself in relation to the Bye-Laws in reaching its decision in relation to the Applications, the decisions of the Second Named Respondent to affirm those determinations on the 12th of April 2021 are similarly quashed as a direct consequence.

CONCLUSION AND DETERMINATION

19. Pursuant to clause 11.3 of the Disputes Resolution Code governing the operation of the Tribunal, the Tribunal directs that the Applications be remitted to a freshly constituted sitting of the First Named Respondent, with a recommendation that the constituent members of the First Named Respondent comprise independent members from outside County Tipperary if practicable.

20. The Tribunal further directs that the sitting of the First Named Respondent to consider the Applications be arranged and convened within one week of the communication of this decision.

This is the unanimous decision of the Tribunal.

COSTS AND EXPENSES

21. The Tribunal directs that the DRA's expenses be discharged by the Respondents. The Tribunal further directs that the deposit lodged by the Claimants be reimbursed by the Secretary.
22. The Tribunal notes that no application was made by the Claimants for the costs of the Tribunal hearing.

Date of Hearing: 20th May 2021

Date of Agreed Award: 31st May 2021

By email agreement on agreed date above.

Michael Murray BL

Patrick Moroney

Eamonn McMahon