

The Irish Football Association Appeals Committee

In the matter of an Appeal by Donaghadee FC

Against a decision of the

Northern Amateur Football League

Made on the 9th May 2020

Mr Adam Wood, Solicitor, Independent Member – with whom the two other sitting members of the Appeals Committee agree.

Representatives:

Donaghadee FC represented by Jamie Bryson of JWB Consultancy

Northern Amateur Football League represented by Alan Stewart BL, instructed by Thomas Taggart and Son Solicitors, Ballymena

Introduction

[1] This is an appeal before the Appeals Committee (AC) pursuant to article 14 of the Irish Football Association (IFA) Articles of Association by Donaghadee FC (DFC) against a decision made by the Northern Amateur Football League (NAFL) on 9th May 2020. This appeal has been brought in the context of a global pandemic the like of which we are fortunate enough to have never experienced, and the issues before the AC are as a direct outcome of the ‘lockdown’ imposed on our society which had a natural yet unprecedented knock on effect on our local game.

[2] Just as the context of the pandemic changed and evolved, so did the relevant matters at hand before the AC, and ultimately some of those matters which might have required determination at the outset of this appeal no longer did so, and it is to the credit of Donaghadee FC, NAFL and their representatives for recognising and accepting this, and narrowing the issues before the AC of their own accord.

[3] At the outset of this appeal, DFC raised three decisions made by NAFL on 9th May 2020 which were objected to, appealed against, and determination sought, as set out in DFC’s letter of appeal also dated 9th May 2020:

- i. Not to seek an extension to season 2019/2020

- ii. Amend the promotion/relegation criteria acting ultra vires of the NAFL rulebook and arbitrarily applied the new criteria irrationally.
- iii. Unilaterally changed Rule 15.1 (fees) without the power to do so

[4] Whilst the AC will make reference to all of the above decisions, the only one which the Appellant ultimately sought determination on was (ii) above, namely NAFL acting to amend the promotion/relegation criteria acting ultra vires of the NAFL rulebook and arbitrarily applying the new criteria irrationally.

[5] The AC has had the benefit of numerous written submissions from both DFC and NAFL in relation to this appeal: four from DFC and three from NAFL. Parts of the written submissions from each party are specifically referenced and paraphrased within this decision. The parties should rest assured that all of these submissions have been carefully considered by the AC.

Background

[6] The background to this appeal is extensive and the AC feels that a summary of same (not intended to be conclusive) will be helpful to understand the context of where the parties found themselves in this appeal and how they arrived there.

[7] On Friday 13th March 2020 the IFA released a statement suspending the current football season, at both domestic and grassroots level, with an indication that 'we expect games to restart on Saturday 4th April 2020'. A realisation soon followed that this would not be possible, and the IFA contacted league secretaries on 28th March 2020 canvassing opinion (no later than 1st April 2020) on how the football season may be concluded, with a pro forma document asking secretaries to indicate preference for either:

- i. Season 2019/2020 to be voided
- ii. Season 2019/2020 to now end with trophies awarded based on league position as at 13th March 2020 (date of original season suspension)
- iii. Desire to complete all matches with an awareness that this might be in June or July.
- iv. Other

[8] NAFL indicated a preference that the season be voided in accordance with (i) above and DFC duly entered into correspondence with NAFL about same.

[9] The landscape continued to change and on 24th April 2020 the IFA Board released a statement indicating that they would extend the football season to 31st May 2020, also indicating:

“in accordance with Football Regulation 36a, as 31st May represents the end of the specified season any league wishing to attempt to complete the season must seek an extension of the season from the IFA Football Committee”.

[10] There followed more correspondence between DFC and NAFL on foot of this statement with DFC requesting that NAFL request an extension to the season.

[11] The IFA also prefaced their decision to extend the season with further advice to leagues on how to request an extension, drawing attention to practical issues involved in playing matches, and indicating that:

“it is also to be noted that such season extensions are normally unlikely to be granted beyond 31st July 2020...any leagues which now decide to end their season as it stands, or to take any other step to conclude the season should ensure that such actions are taken fully in line with their own governance regulations and within the league rules, or with the support of the majority of their member clubs. Should there be awards of trophies or of promotion or relegation the Association would recommend that such decisions are taken on sporting merit”.

[12] NAFL held an emergency management committee (EMC) meeting via Zoom on 27th April 2020 in which it was agreed to approach their member clubs and seek opinion. A letter from NAFL dated 28th April 2020 was sent to its clubs, explaining that an extension of the season to 31st July 2020 can be requested, and following:

*“Having discussed this communication with my fellow officers, **and in light of no clear direction within our rules (NAFL emphasis)**, I intend to ask all our clubs to indicate if they wish the league to request such extension to the season.”*

[13] A letter then circulated to clubs on 30th April 2020 asking for views on either:

- (A) The committee should seek an extension
- (B) The committee should accept the season cannot be finished

There is then further emphasis from NAFL, which we have adopted below:

“With all clubs affected it is important that everyone takes the opportunity to advise which option (A or B) they prefer the committee to adopt”.

Correspondence issues from DFC seeking clarity on a number of issues, subsequent to the poll being opened, and this is responded to by NAFL.

[14] The result of the poll is that 25 clubs vote for option A and 61 clubs vote for option B: that the committee should accept the season cannot be finished. Anonymous comments were invited from the participant clubs and the AC has had the opportunity to read these. Whilst we do not intend on publishing same, it was a very sobering experience to read these comments. It is clear that very serious thought was given to the matter by very many clubs and concerns expressed were serious and genuine, for the welfare of players, their families and more senior officials involved with their clubs. One club even sought clarity as to whether the league's insurance policy covered deaths suffered as a result of contracting Coronavirus.

[15] An EMC Zoom meeting takes place on 5th May 2020 when the outcome of the poll is discussed and the EMC resolves to recommend to the league management committee (LMC) the following:

“(a) The League should inform the IFA that the majority of our clubs have by majority poll instructed the LMC not to request an extension of the current season.

(b) The committee acknowledges as of the 7th March 2020 when the last matches were played Rosemount Rec had completed their league programme and had obtained 64 points, a number no other club could attain. It is agreed that if season 2020-2021 is possible that Rosemount Rec shall play in Section 1B and at the end of the season that the bottom three teams will be relegated with two teams promoted from Section 1C.

(c) The officers further recommended that due to the untimely finish to season 2019-2020 and the possibility of a truncated season 2020-2021 that the annual subscription fee for 2020-2021 be set at zero.

[16] A meeting of the LMC then followed on 7th May 2020 via Zoom when these recommendations were discussed and ultimately adopted. The minutes of this meeting record the issues at hand being summarised with respect to the 'majority agreeing season cannot finish' and 'safety of players, coaches, spectators paramount'.

[17] The Committee also noted Rule 19 of their NAFL rules as follows:

“the Management Committee shall have power to deal with offending club or clubs, player or players, official or officials, as they deem fit, and to deal with any matters not provided for in these Rules, and matters also noted in the attached appendices”.

Their conclusion is reached by having particular cognisance of this Rule:

“The meeting having considered Rule 19 and in particular the second part of it was of the unanimous view that a pandemic which threatened the playing of football under the auspices of NAFL was a matter which was not provided for by the rules of NAFL and accordingly the LMC could decide how to legislate for the playing of football during the pandemic.”

The recommendations outlined in para. [15] above were accepted unanimously, and subsequently communicated to the member clubs in writing on 9th May 2020.

Preliminary issue

[18] The first issue which the AC had to determine was how this matter would be heard and dealt with. Given the unprecedented situation which we all find ourselves in, the wealth of written argument already before us, and the significant narrowing of issues, the AC felt it appropriate that this matter could be dealt with on an examination of the papers. That said, both parties were advised of this and representations invited in the event that an oral hearing was sought. NAFL agreed with our proposal to hear the matter on the papers before us; DFC made representations in support of an oral hearing.

[19] DFC suggested that this would be appropriate to allow the panel to challenge the party on any issue within the position papers or seek clarity on any issue, and also reminded the AC that our decision would be scrutinised in great detail by the interested parties. They suggested that ‘given the relaxations within the regulations’ an oral hearing could be convened.

[20] The AC were not persuaded by any of the reasons advanced and as such informed the parties on 6th July 2020 that the hearing would proceed on the papers before us.

The Appeal

DFC

[21] As per para. [3] above, DFC’s appeal was lodged by letter of 9th May 2020 along the aforementioned 3 grounds. Written arguments were lodged alongside the appeal, and NAFL lodged their own response on 20th May 2020. As time passed the footballing landscape changed, and on 26th May 2020 the IFA Football Committee extended the football season until 31st July 2020.

[22] This development rendered the first limb of the appellant’s appeal redundant, and this was conceded by them, and withdrawn. Further, the respondent conceded to the third limb of the appellant’s appeal and agreed to remit the aspect of fees for the 2020/2021 season being dealt with at its AGM. This left the second limb of the appellant’s appeal requiring adjudication, namely:

ii. *Amend the promotion/relegation criteria acting ultra vires of the NAFL rulebook and arbitrarily applied the new criteria irrationally.*

This relates directly to the second decision (B) communicated in NAFL's letter of 9th May 2020, regarding the promotion of Rosemount Rec to Section 1B for season 2020-2021, with the bottom three clubs being relegated at the end of that season.

[23] The Appellant makes the case in their final written submission that this decision is wrong in law on two grounds:

- i. That this issue was expressly provided for under Rule 8.1, and it was improper to rely on Rule 19.
- ii. The decision purported to exercise powers solely reserved for an LMC elected annually for season 2020/2021, and was therefore 'ultra vires'.

It is the appellant's stated case that:

"there is simply no logical, lawful or procedural argument which can conceal the most basic and obvious reality; this decision is wrong in law and therefore must be quashed".

It therefore followed to the appellant that:

"as no decision was ever made to conclude the season, therefore it remains unfinished and as such the respondent must – via some proper mechanism – decide how to conclude the season."

[24] It is stated within the appellant's second written submission that:

"Rule 19 is not a power to supersede the rules in "exceptional circumstances", rather it explicitly allows for decision making pertaining to matters "not provided for in the rules"."

Rule 8.1 will provide the solution to the current situation, in order to deal with such exceptional circumstance according to the appellant.

[25] The appellant forms the view that both league and cups remain unfinished, and with the ability to play football from 17th July 2020, the respondent must act to conclude the competitions. However, the appellant does make it clear that this is not a matter for the AC to determine, but rather for the respondent to deal with after this AC has quashed its decision on promotion and relegation, and more properly dealt with via Rule 8.1 at its AGM.

NAFL

[26] The respondent accepts that the LMC's use of Rule 19 to make the impugned decisions is clearly an important consideration for the AC. They interpret the construction of the rule:

"Fundamentally, Rule 19 is clearly a permissive rather than restrictive rule. It explains what is permitted. It is not prohibitive...it should not be narrowly or restrictively construed. Rather, should be given a wide interpretation...The Appellant fails to appreciate that Rule 19 is by its very nature and purpose intended to be flexible in order to allow the League Rules to be workable".

[27] The respondent is clear that the situation we all currently find ourselves in is exactly what Rule 19 was created for:

"The mischief that Rule 19 is intended to cover is some unforeseen circumstance that wasn't in the mind of the drafters and consequently wasn't expressly provided for in the Rules. The COVID-19 pandemic, and its effect on football, is a primary example of such a circumstance".

[28] Regarding their decision to amend relegation criteria for the following 2020/2021 season NAFL submit as follows in their written submissions:

"...taking into consideration the need to avoid undue delay and to allow for suitable planning together with the length of time it may take to hold an AGM in the circumstances, the Respondent decided that at the conclusion of season 2020/2021 the bottom three clubs would be relegated from Section 1B. This decision was taken pursuant to Rule 19 of the League Rules. Rule 8.1 did not provide for the circumstances in question".

[29] The respondent directs us towards an independent arbitral decision of 5th June 2020 in the case of **South Shields Football Club 1888 Limited v The FA**. This matter dealt with a challenge brought by South Shields against the FA Council's decision to end its season with no promotion or relegation, given the global pandemic. The tribunal dismissed the appeal. The respondent draws our attention to the application of the relevant rules in that matter. The Council had the power under Article 147(a) of the FA's Articles of Association:

"to manage all matters relating to ...the control and management of the National League System and the leagues beneath the National League System"...

And further at Article 147 (d):

"to make or alter such regulations as are deemed necessary to provide for matters arising from or to implement the Rules in so far as any such regulation is not in conflict with any Rule".

[30] The respondent draws similarities between the powers of the Council under Article 147 to the powers of the LMC at NAFL. The respondent urges us to construe Rule 19 in a similar way to how the tribunal construed Article 147 which was used to amend the rules to give provision for the regulations to be altered.

[31] The Appellant has also had the opportunity to consider the aforementioned decision and states:

“The Respondent makes much of a decision pertaining to the English FA. This decision is on an entirely different issue. It is assumed the panel will see this for the red herring that it is.”

The distinction that the Appellant draws is that in that case, South Shields’ season was ‘concluded’ with results expunged, whereas the respondent’s actions in this case were leaving the season ‘unfinished’, going further:

“The effort to compare the relevant English FA provision with Rule 19 really stretches the credibility of the argument to the extreme. There is no comparison whatsoever between the general functions as laid out at Article 147 and the Respondent’s Rule 19 which only exists in relation to matters not provided for in the rules”.

Discussion

[32] One matter is to be determined by the AC: whether by deciding to promote Rosemount Rec and subsequently amend the relegation rules for season 2020/2021, NAFL ‘acted ultra vires of the NAFL rulebook and arbitrarily applied the new criteria irrationally’, to quote the appellant’s appeal letter directly.

[33] It is clear to the AC that in the spring of 2020, leagues across the country were faced with the same uncertainty and difficult decisions to make, in the face of an unprecedented global pandemic. This would never have been at the forefront of draftsmen when preparing league rules. It also strikes the AC that no matter what decision was made by leagues, the likelihood of an

equitable outcome for all involved was minimal, in the absence of the ability to play out the season 'on the pitch'.

[34] The league rules with respect to promotion and relegation, Rule 7.1.3, indicate that:

"The top two clubs of Section C will be promoted to Section B, whilst the bottom two clubs in section B will be relegated to Section C".

Rule 8.1, which the appellant places much reliance on, states as follows:

"The Management Committee, in the best interests of the NAFL's development, may make proposals to the Annual General Meeting on the format of the various sections which take into account matters other than the league position gained by any club and expressed in the aforementioned."

Although stated above, we repeat Rule 19:

"the Management Committee shall have power to deal with offending club or clubs, player or players, official or officials, as they deem fit, and to deal with any matters not provided for in these Rules, and matters also noted in the attached appendices".

Rule 21 states as follows:

"No alteration shall be made in these Rules, except at the AGM. Notice must be given to the League Secretary before the 30th April, in each year, of any proposed alteration in the Rules, the same to be forwarded to the Clubs at least seven days before the AGM for the revision of rules. These Rules shall be in force until the AGM. A seventy-five per cent majority (¾) of those present and voting shall in all cases be necessary."

[35] It strikes the AC that the appellant seeks to adopt a narrow construction of the league rules, and take a literal approach which does not take account of the true context in which the respondent's decision is being made. It is clear to the AC that there is no provision within the rules

which assists the respondent in dealing with a global pandemic, or any other catastrophic event which threatens its ability to finish a footballing season.

[36] The AC has considered the written decision in the South Shields case, and accepts the appellant's point to a degree, that a different factual matrix existed in that case. However, it was certainly not a red herring. The AC has had the benefit of considering the helpful discussion therein with respect to the construction and interpretation of the Rules and Articles of Association.

[37] A narrow interpretation of the league rules will not assist the functioning of the league in the current crisis, and the AC is more than satisfied that Rule 19 was not designed to be narrowly interpreted. NAFL had every reason to look to Rule 19 when faced with how to determine the end of the season, and this very crisis is the situation for which it was designed. The appellant spends much time focussing on leaving the season finished or unfinished, and emphasises how this current approach leaves the season unfinished, which is unacceptable to the appellant. The AC is not persuaded by this line of argument. The decision made by NAFL to promote Rosemount Rec and amend relegation provision for 2020/2021, brings the season to an end, no matter how it is phrased.

Sporting Merit

[38] The guidance provided by the IFA encouraged leagues to not only abide by their own governance, but to also have regard for sporting merit. The AC notes that Rosemount Rec had already secured an unassailable lead in Division 1C, and but for some unforeseen catastrophic circumstance preventing the season from concluding, would be promoted. This is obviously at the forefront of NAFL's thoughts – their decision relates to this club only.

Decision

[39] The AC is of the view that it was entirely appropriate for NAFL to rely on Rule 19 to promote Rosemount Rec. and this rule should be interpreted in such a way so as to ensure the league rules are functional. No league has carte blanche to operate their rules on a completely irrational basis,

however the AC is not persuaded by any of the appellant's arguments which try and convince us that this decision is ultra vires. The AC does not read or interpret the league rules in any way which would make Rule 8.1 the operable provision in the circumstances arising at the start of May 2020, either with respect to the promotion of a club, or the relegation of teams in the following season.

[40] On making their decision with respect to Rosemount Rec., the league then sought to make provision for next season's outcome in Section 1B, given the extra team that would participate. Again, the AC is clear that Rule 19, in the circumstances, should be interpreted to allow for this decision making. The AC agrees with the respondent's submission that Rule 8.1 does not provide for the circumstances in question and as such the issue falls out with the Rules. It appears clear to the AC that clubs craved certainty in these uncertain times, and this decision provided certainty and finality.

[41] As such the AC dismisses the second limb of the appeal accordingly. As already stated, no determination is required with respect to the first or third limbs of the appeal given the helpful positions adopted by the parties as this case progressed.

[42] The AC commends and thanks the parties and their representatives for the assistance which their detailed written submissions provided in this matter.

Irish Football Association Appeals Committee

15th July 2020