

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964

IN THE MATTER OF AN APPEAL

VR/24/2002

BETWEEN

DRUMMOND CRICKET AND FOOTBALL CLUB - APPELLANT

AND

THE COMMISSIONER OF VALUATION – RESPONDENT

Re: 42 Drumsurn Road, Limavady, County Londonderry

Lands Tribunal

The Honourable Mr Justice Coghlin

and

Mr M R Curry FRICS IRRV MCI.Arb Hon.FIAVI

Belfast – 13th December 2002

1. This appeal has been brought on behalf of Drummond Cricket and Football Club (“the Appellant”), which is an unincorporated association that occupies premises at 42 Drumsurn Road, Limavady, County Londonderry. The Appellant’s primary function is that of a cricket club during the summer months although, during the winter, it does operate as a soccer club. The Appellant’s premises comprise a modern clubhouse, including a bar, sports hall and changing rooms, together with cricket pitches and a football pitch. The Appellant has a licence to sell alcoholic liquor on its premises and the profit made from the bar sales effectively finance the Appellant’s sporting activities.
2. Until 2000 the Appellant enjoyed the benefit of rating relief under the provisions of Article 31 of the Rates (Northern Ireland) Order 1977 upon the ground that the major part of its hereditament was used solely for the purposes of a prescribed recreation and was occupied for the purposes of a club that was not established or conducted for profit and did not employ any person to engage in any recreation for reward.
3. In 2000 the District Valuer was required to revise the Net Annual Capital Annual Valuation of the hereditament as a consequence of a recent extension carried out to

the Appellant's clubhouse. At that time the District Valuer learned that the Appellant was employing a cricket professional during the playing season and, having considered the circumstances and, in particular, the contract between the Appellant and the said professional, the District Valuer decided that the Appellant was no longer entitled to sport and recreation relief under Article 31. The Appellant appealed this decision to the Commissioner of Valuation ("the Respondent") and the Respondent transferred the appeal to the Lands Tribunal for determination in accordance with Article 53 of the Lands Tribunal Compensation Act (Northern Ireland) 1964.

4. For the purpose of the hearing Mr Horner QC appeared on behalf of the Appellant while Mr Hanna QC represented the Respondent. The Tribunal acknowledges the assistance which it derived from the well-structured skeleton arguments and succinct submissions prepared on behalf of both parties.

The Statutory Framework

5. Article 31(1) of the Rates (Northern Ireland) Order 1977 provides:

"31(1) Subject to paragraph 5 and Article 42(2A)(b)(i) the amount which, apart from this Article, would be payable on account of a rate in respect of hereditament to which this Article applies shall each year be reduced in accordance with paragraphs (3) and (4).

(2) This Article applies to a hereditament –

(a) which, or any part of which is used solely for the purposes of a prescribed recreation; and

(b) which is occupied for the purposes of club, society or other organisation that:-

(i) is not established or conducted for profit, and

(ii) does not employ any person to engage in any recreation for reward, except for the instruction of other persons who are

themselves engaging or preparing to engage in it otherwise and for reward; and

(c) which is not distinguished in the valuation list as exempt from rates as being a hereditament of a description mentioned in Article 41(2)(e) or (f) (recreational charities)".

The Relevant Contracts

6. In accordance with an agreement, dated 26th August 1999 (the "1999 Agreement"), made between the Appellant and Mr Waseem Haider the Appellant engaged Mr Haider as a professional coach. Mr Haider is the only professional employed by the Appellant.
7. Clause 1 of the 1999 Agreement provided that:
 - "1. The Professional shall act as Professional Coach to the Club for the North West of Ireland Cricket Union seasons 2000 and 2001, i.e. from 21st April 2000 – 18th September 2000 and from 22nd April 2001 – 19th September 2001, and the Club hereby engage the Professional to act in such capacity upon the terms and subject to the conditions hereinafter contained".

Clauses 3 to 7 of the 1999 Agreement set out details of the Professional's coaching responsibilities, clause 8 referred to the expectation of the Appellant that the Professional would socialise with the players and clauses 9 and 10 specified the relevant details of the Professional's costs, expenses and remuneration.

8. However, clause 2 of the 1999 Agreement, a provision that was of fundamental importance in this Appeal contained the following requirement:
 - "2. The Professional shall play in all games for the Club and shall not at anytime during the continuance of this Agreement play in any cricket match other than the matches organised by his Club except by permission of the Committee of the Club".

9. In the “Statement of Case “ prepared for these proceedings the Appellant included, at Appendix 4, a copy of the agreement which currently regulates the employment of Mr Haider in respect of the seasons 15th April 2002 to 25th September 2002 and 15th April 2003 to 25th September 2003. This Agreement (“2002 Agreement”) contains the following provision;

“3.6 The Coach shall not at anytime during the continuance of this Agreement provide coaching services for any club other than Drummond Cricket Club nor play in any cricket match, should he so desire, other than for Drummond Cricket Club in which case and for the avoidance of doubt it is hereby confirmed as between the parties hereto that the Coach is not by virtue of this agreement being employed to play cricket for Drummond Cricket Club for reward but that should he wish to play for any of the Club Teams he may, as a member of the Club, do so on a personal and voluntary basis, without reward”.

It appears the Respondent has accepted that, in the context of this new agreement, rating relief in accordance with Article 31 may be restored to the Appellant and, consequently, the basic issue for the Tribunal was whether the 1999 Agreement and, in particular, clause 2 thereof offended against the provisions of Article 31(2)(b)(ii) of the Rates (Northern Ireland) Order 1977 so as to deprive the Appellant of the relevant rating relief.

Factual Background

10. Mr Haslett and Mr Walsh gave oral evidence on behalf of the Appellant.
11. Mr Haslett is the Assistant Director of Limavady College of Further and Higher Education and has been the Secretary/Treasurer of the Appellant Club for some 20 years. He has a strong family association with the Club and the Tribunal has no difficulty in accepting his assertion that “cricket is my life”. Mr Haslett provided the Tribunal with interesting detail about the sport of cricket in the North West of Northern Ireland emphasising the high degree of interest, fuelled by intense local rivalry, in a sport which attracts both participants and spectators without regard to social, cultural

or religious allegiance. On the other hand, Mr Haslett told the Tribunal that, as a result of a number of changes in education policy and in the role of teachers, coaching of cricket had declined in schools and it had become more and more difficult for clubs such as the Appellant to stimulate interest in and improve the skills of young players. It was to this end that the Club first engaged Mr Haider in 1999. Mr Haider was seen as a particularly prestigious acquisition for the Appellant having played international cricket for Pakistan as well as being a graduate in Sport Science and the holder of several coaching certificates and awards. The significance of Mr Haider's coaching abilities may be measured not only in the outstanding record of youth teams and young players at the Appellant Club during the 2001 and 2002 Seasons (at Appendix 3 of the Appellant's Statement of Case) but also in the use made of his services by not less than 6 local schools. These schools are not charged by the Appellant for the provision of Mr Haider's services.

12. In cross examination by Mr Hanna QC Mr Haslett agreed that Clause 2 of the 1999 Agreement had both positive and negative aspects insofar as it contractually bound Mr Haider to play for the Appellant in all club games and prevented him from playing for any other club without the permission of the Appellant's Committee although Mr Haslett did point out that, in any event, the rules of the North West Cricket Union effectively "tied" a player to a particular club after playing one game. Mr Haslett also accepted in cross-examination that, when he played for the club, Mr Haider, together with the 10 other members of the team, would have been playing to win each match, that there would always be some young players in the 1st XI and that, before the advent of Mr Haider and his predecessor, the club had existed for many years without the services of a professional coach. However, Mr Haslett emphasised that, whether he was representing the 1st XI in a competitive match or taking part in formal or informal coaching sessions, at all times Mr Haider was engaged in coaching the other members of the club by example or instruction. Indeed, Mr Haslett emphasised that, in some ways, a competitive match offered one of the best opportunities for improving the skills and experience of other players. By way of example he referred to the bowler's ability to set a tactical field - a skill that may require to be exercised and reassessed several times during a match and for the full development of which there is little real substitute for competitive games. He also referred to the opportunity that existed for the playing coach to offer practical on and off field advice and instruction during the course of a game. According to Mr Haslett, there has been a "massive"

improvement in the skills of junior players at the Appellant Club since the advent Mr Haider. Mr Haslett conceded that the new format of the 2002 Contract had resulted from the withdrawal of rate relief but maintained that, in practice, there had been no material change in the duties and activities of Mr Haider on behalf of the Appellant.

13. The Appellant also relied upon the evidence of Mr Walsh who is the Cricket Development Officer for the Northern Ireland Cricket Association. His responsibilities include administration, coaching and player development and he confirmed the importance of ensuring that a professional coach enjoyed a full role as a player. Mr Walsh agreed with the suggestion by Mr Hanna QC that, when fulfilling such a role, the professional coach, in company with the other members of the team, was directing his attention towards the goal of winning the game.

The Submissions of the Parties

14. On behalf of the Appellant Mr Horner QC submitted that, properly interpreted, the Agreement of 1999 commenced by setting out the nature of Mr Haider's employment in Clause (1) and that the subsequent clauses then proceeded to delineate the specific obligations, conditions and benefits of that employment. He relied upon the evidence of Mr Haslett and Mr Walsh in support of his submission that, in Mr Haider's case, the obligation to play competitively for the Appellant should be construed simply as one of his professional coaching duties. Mr Horner QC argued that Article 31(2)(b)(ii) of the Rates (Northern Ireland) Order 1977 clearly recognised that an appropriate club, society or other organisation could employ a professional coach without jeopardising its entitlement to rate relief and he suggested that it would be surprising if the right to such a relief was to be sacrificed by the employment of a person whose opportunities for coaching were, if anything, enhanced, according the unchallenged evidence of Mr Haslett and Mr Walsh.
15. On behalf of the Respondent, Mr Hanna QC drew the attention of the Tribunal to the word "any" in Article 31(2)(b)(ii) and submitted that the employment of even one person to engage in the recreation for reward, other than in accordance with the Article, would disqualify the appellant from rate relief. He argued that clubs, such as the Appellant, had a free choice as to whether or not to employ a professional and that it was not just fully professional soccer or other sporting clubs that would be caught by the provisions of Article 31(2)(b)(ii). In relation to the 1999 Agreement Mr Hanna

suggested that it was only clauses 4 to 7 which specifically referred to Mr Haider's coaching sessions or duties whereas clause 2, which obliged him to play for the Appellant, contained no reference to coaching at all. Mr Hanna QC also contrasted the provisions of the 1999 Agreement with those of the 2002 Agreement, which relieved Mr Haider of any contractual obligation to play for the Appellant, and which he accepted was now, unarguably, a coaching only contract.

Conclusions

16. The Tribunal considers that two distinct issues fall to be considered in order to resolve the problem raised by this Appeal;

(1) The proper construction of Article 31(2)(b)(ii) of the Rates (Northern Ireland) Order 1977

The Tribunal considers that sub-paragraphs (i) and (ii) of Article 31(1)(b) specify two conditions which effectively disentitle an otherwise qualifying club, society or organisation to rate relief, namely, the club, society or organisation being established or conducted for profit and the employment of any person to engage in any recreation for reward. However, sub-paragraph (ii) provides for an exception. In the Tribunal's opinion it is important to carefully analyse the precise nature of that exception. The case of a person employed to engage in a recreation who is instructing other persons who are preparing to engage in it appears to be the "classic" coaching activity. In terms specific to this case the club may pay a professional cricketer to engage in the recreation of cricket for the purpose of preparing others to engage in cricket otherwise than for reward. However, the other limb of the exception allows for the instruction of other persons who are themselves engaged in cricket otherwise than for reward. Clearly, one possibility might be for the coach to stand at the edge of the cricket square and impart his instructions vocally or, possibly, by some means of amplification. Alternatively, it might be suggested that the provision was aimed at the non-playing coach instructing both those preparing to play cricket, ie those who have not played for a team as well as those who are regularly selected. However, it seems to the Tribunal that the exception also expressly permits the employment of a person as a playing coach to engage in the recreation for reward for the purpose of instructing persons who are at that time themselves engaged in that recreation although not for reward. In other words, once again specifically in the context of this case, a person may be employed to play cricket for reward for the purpose of instructing other persons who are themselves engaged in playing cricket otherwise

than for reward. The Tribunal takes the view that this clearly contemplates the situation of a professional coach imparting instructions during the course of a competitive match in which he himself takes part as a player at the same time. The Tribunal is strengthened in this view by the complete absence of any provision specifically prohibiting such a set of circumstances.

(2) The factual evidence

Despite any ambiguity which may have been created by the wording of clause 2 of 1999 Agreement the Tribunal has been completely satisfied by the unchallenged evidence of Mr Haslett and Mr Walsh that, when taking part in competitive games for the Appellant club, Mr Haider was also discharging his obligation to coach and instruct the other members of the team, both young and more mature in the skills and technique of the sport. On the basis of this evidence there can be no question of Mr Haider in some way sloughing off his role as a coach and participating only as a professional player when taking part in a club match.

17. Accordingly, the Tribunal proposes to allow the Appellant's appeal. The Tribunal would wish to emphasise the importance of the particular circumstances of this case and the specific factual evidence in reaching its decision.

ORDERS ACCORDINGLY

30th January 2003

**The Honourable Mr Justice Coghlin and
Mr M R Curry FRICS IRRV MCI.Arb Hon.FIAVI
LANDS TRIBUNAL FOR NORTHERN IRELAND**

Appearances:-

Appellant - Mr Mark Horner QC instructed by W B Thompson & Co, Solicitors.

Respondent – Mr Nicholas Hanna QC instructed by Departmental Solicitor's Office.