

GOLF OUTING 2003

The fourth Annual Golf Outing took place on Thursday 3rd July, 2003, at Glen of the Downs Golf Club which was kindly sponsored by Deloitte & Touche and McCann Fitzgerald. Twenty-three members and their guests participated in a most enjoyable round played in very pleasant conditions. Dinner followed in the evening and the Chairman presented the prizes. Scoring was Stableford and our congratulations to:-

- 1st. Patrick Curran - 41 Points
- 2nd. Michael O'Reilly - 39 Points on Back Nine
- 3rd. John O'Brien - 39 Points on Back Nine

The highest scorer on the first nine was John Bourke with 18 Points on last six and the highest scorer on the second nine was Joe Behan with 24 Points.

Congratulations to John Lynch who scored a hole-in-one on the 16th.

Our thanks are also due to John O'Brien who kindly presented a prize consisting of a Club House Pass for the European Open at the K Club.

The venue for the 2004 Annual Outing will be the same and Thursday 17th June, 2003, is provisionally booked. Details will be published in the newsletter.



John O'Brien, John McCoy, Michael Moran, Michael O'Reilly, Joe Behan



Michael Moran, John Lynch, John McCoy



Launch of David Keane's book on Building Law. Left to Right: The Hon. Mr. Justice Ronan Keane (Chief Justice), David Keane (author), Michael McDowell (Minister for Justice & Law Reform) and Mr. Toal O'Muire (President R.I.A.I.).

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The Hon. Justice Finnegan (President of the High Court) and Ercus Stewart SC at the launch of Ercus' book on Arbitration.

News...

The Northern Ireland Group recently held a short talk entitled "The Arbitrator's Role in the Control of Costs" at the Spire Centre in Belfast which was well attended.

Schemes

SIMI— forms for the implementation of this Scheme are currently being drafted and the scheme should be up and running in the very near future.

IFA/NRA— the Branch is in the process of forming a panel for this Scheme and plans are being formalised for a formal launch. All those on the Panel will be notified.

Diary

An Entry Course will be held on 26th - 28th September 2003 in the Grand Hotel, Malahide.

This year's Annual Dinner will be held on Friday 28th November at the Royal St. George Yacht Club.

Subscriptions

The Branch and Institute depend on your subscriptions to remain in business. Those of you who have not already done so, please make your payment as soon as possible.

LEGAL BRIEF

NOTE ON CASES AND MATERIALS

Statutory Arbitration under Vocational Education Acts

County Dublin VEC, Applicant
Michael Maloney, (Arbitrator), Respondent

Kearns J, High Court, 7 November 2002. Ex-tempore, there was no written judgment.

Background

This case related to the principles applicable to a statutory arbitration scheme under the Vocational Education Act, 1930 (No.29) as amended by the 1970 Act (No.15) and relevant regulations, involving Vocational Education Committees, the Irish Vocational Education Association and the Department of Education and Science.

Main Points

The case arose from the decision of the Arbitrator who dealt with appeals from two teachers, employed in a community college under the VEC, who were aggrieved by the decision of an interview board for selecting candidates for promotion to posts as assistant principal. Two teachers, who unsuccessfully competed at the interview competition, appealed to the Arbitrator on the basis that there was pre-interview empowerment which gave an unfair advantage to the successful candidates.

It was alleged that the successful teachers had been placed in the position of year/class heads for a period before the interviews for promotion to senior posts, which were mainly for year/class heads.

At the arbitration it was claimed on behalf of the unsuccessful candidates that they had overall more experience than the successful candidates. The unsuccessful candidates had, however, been placed in positions of responsibility which reduced their chances of success at the interview compared with the successful applicants who had been given the opportunity to gain experience as year/class heads. The Applicant for judicial review, County Dublin VEC, did not accept those claims.

The Arbitrator rejected a number of other grounds of appeal but accepted that there had been pre-interview empowerment and reversed the decision of the interview board in that regard.

At the Court hearing, Counsel for the Applicant submitted that the Arbitrator was not entitled to take into account the submissions concerning pre-interview empowerment. Counsel for the Applicant submitted that such matters were outside the scope or jurisdiction of the scheme, as they related to events prior to the promotion competition and were not part of it.

Counsel for the Respondent submitted that, despite the provisions of the statutory scheme, previous events which could and did affect the manner in which the marks or marking scheme were applied to candidates indirectly came within the ambit of the arbitration scheme. If such events were brought to the Arbitrator's attention on appeal from the decision of the promotion interview board, he had a duty to deal with the matter, and he did so after hearing submissions from both sides.

Decided

The Court held that the disputed relevant matter, namely the pre-interview empowerment, was outside the scope of the statutory arbitration scheme. The Arbitrator had no jurisdiction to deal with it, irrespective of how well-intentioned he was. The Court quashed the relevant part of the Arbitrator's order.

In summary, the Court ruled that the Arbitrator must confine himself to the statutory provisions outlined under the scheme and cannot go outside them, or behind them, in making his decision.

Comment

The circumstances of the case seem like a type of "Catch-22" situation, as exemplified by Joseph Heller in the novel of that title. In bureaucracies, individuals cannot obtain something, eg experience or promotion, unless they have something else which they are not given an opportunity to obtain.

The Arbitrator tried to remedy a situation but he had no power or jurisdiction to do so.

Although cases may vary according to circumstances and the provisions of the relevant Acts and regulations, the scope, powers and jurisdiction of arbitrators in arbitration schemes established under statutes are limited by the terms and provisions of such schemes. As such, they are narrowly and strictly interpreted by the courts.

These notes are not intended as legal or other professional advice which should be obtained if considered necessary.

Thanks to colleagues, especially Ercus Stewart, SC, and Charles Corcoran, barrister, for their continuing co-operation in providing information on cases.

Anthony P. Quinn, Barrister, FCI Arb.