

**THE DISPUTE RESOLUTION AUTHORITY**

Record Number: D.R.A.15/2011

**In the Matter of The Arbitration Acts 1954-2010  
In the matter of An Arbitration**

**Between;**

**Cill Mhoconog- Ath Na Sceire**

**Claimant**

**-v-**

**The Central Appeals Committee,  
The Leinster Hearings Committee,  
Wicklow Central Controls Committee,  
Cormac Doyle Secretary, Avondale GAA Club,  
Padraig Duffy, Director General of the GAA.**

**Respondents**

**Tribunal Members: Pat Purcell (Chairman), Declan Hallissey and Tom Barry**

**Tribunal Secretary: Matt Shaw.**

**The Tribunal sat at Johnstown House Hotel, Johnstown, Co. Kildare on 25<sup>th</sup> October 2011**

**The Claimant was represented by Mr Kevin D'Arcy BL**

**The First Named Respondent was represented by Mr Simon Moroney, Chairman of the Central Appeals and Stephen Browne, Secretary of the Central Appeals Committee**

**The Second Named Respondent was represented by John Byrne, Chairman, Leinster Hearings Committee.**

**The Third named Respondent was represented by Tom Byrne, Chairman CCC Wicklow and Jackie Napier, Member CCC Wicklow and Central Council Delegate.**

**The Fourth Named Respondent was not represented.**

**BACKGROUND**

1. The dispute in question relates to a junior hurling championship game in County Wicklow. This championship game was to take place between the Claimant club, Cill Mochonog (Enniskerry) and Avondale GAA Club. This fixture was initially due to take place on the 9<sup>th</sup> of August, 2011. The Claimant, Kilmocanogoe-Enniskerry notified the Wicklow County Board on the 4<sup>th</sup> day of August, 2011 that they wished to postpone

this junior championship fixture until the senior championship had commenced. This issue arose in circumstances where Avondale GAA Club would have had the benefit of 5 regraded senior players if the junior hurling championship game proceeded before the senior championship began.

2. On the 9<sup>th</sup> day of August, 2011, Kilmocanogue-Enniskerry was notified by Wicklow County Board that the fixture was off and that the matter was to be discussed at a Central Controls Committee meeting on the same date. A decision was made by Wicklow CCC at that meeting on the 9<sup>th</sup> day of August, 2011 and notified to the Claimant by way of letter dated the 10<sup>th</sup> day of August, 2011 that the game had been awarded to Cumann Abhainn Dali, (Avondale GAA).
3. At Kilmocanogue-Enniskerry the Applicant/Appellant appealed to the Wicklow Hearings Committee. The Wicklow Hearings Committee determined that the game be re-fixed.
4. Avondale GAA Club appealed to the Leinster Hearings Committee. The Leinster Hearings Committee on the 1<sup>st</sup> day of September, 2011 upheld the appeal by Avondale GAA Club and decided to annul the decision of the Wicklow Hearings Committee. This decision was taken by the Leinster Hearings Committee pursuant to Rule 7.11(n) and 7.11(o)(1)T.O. 2011.
5. Kilmocanogue-Enniskerry GAA Club appealed the decision of the Leinster Hearings Committee made on the 1<sup>st</sup> day of September, 2011 to the Central Appeals Committee. The Central Appeals Committee on the 9th day of September, 2011 held that the Claimant had no right of appeal as it was *“not directly involved in the decision”*.

#### **THE REQUEST FOR ARBITRATION**

6. The matter comes before the Tribunal by way of request from the Claimant who disputes the following decisions:
  - (i) 09.09.11 of Central Appeals Committee CLG
  - (ii) 01.09.11 of Leinster Hearings Committee.

7. The Claimants Request for Arbitration claimed that;
- i. The “decision” related to the awarding of a match involving Kilmocanogue/Enniskerry GAA Club and that the club was directly involved and affected by the decision;
  - ii. The Claimants claim that the Central Appeals Committee was incorrect and misinterpreted the rules as set out in the Gaelic Official Guide 2011 and that it denied a right of appeal that was and should be available to the Claimant.
  - iii. That Kilmocanogue/Enniskerry is an immediate party and that the club were the only party adversely affected by the decision.
  - iv. The first named Respondent , the Central Appeals Committee, in its Response to Requests for Arbitration broadly accepted the facts as outlined. However the Leinster Hearings Committee at paragraph 4 of the response, stated that it did adjudicate on an appeal from Avondale GAA Club-v-The Wicklow Central Controls Committee and not from Kilmocanogue-Enniskerry GAA Club.

### **PRELIMINARY ISSUE**

7. Mr Tom Byrne, Chairman of the Wicklow Central Controls Committee and Mr Jackie Napier also from the Wicklow Central Controls Committee attended at the Dispute Resolution Hearing on the 25<sup>th</sup> of October, 2011. Mr Kevin D’Arcy BL on behalf of Kilmocanogue-Enniskerry GAA Club objected to the participation of the third named Respondent (Wicklow CCC) on the basis that no response to the request for arbitration had been received from this body. However, a letter dated the 22<sup>nd</sup> day of September, 2011 had been sent to the tribunal secretary but was not in the proper format i.e. not in the form of a “Response to Request for Arbitration”. The tribunal in the absence of the parties considered the matter and decided that the representatives of Wicklow CCC could remain at the hearing notwithstanding their failure to submit a proper “Response to Request for Arbitration” i.e. a Reply. In reaching this decision the Tribunal relied on Rule 7.6 of Disputes Resolution Code.

### **THE HEARING**

8. Mr D’Arcy BL in his submission referred to Tuir Oifigiúil (“T.O.”) 7.11 submitted as follows:
- i. That it was a member or unit not the decision maker who had the Right of Appeal;
  - ii. That effectively there were two Rights of Appeal;

- iii. That as the Claimant had appealed the Wicklow Central Controls Committee Decision of the 9<sup>th</sup> of August, 2011 to the Wicklow Hearings Committee that there were 2 combatants i.e. the Claimant and the fourth Respondent (Avondale GAA Club);
  - iv. That the decision makers were the third named Respondent, Wicklow CC and the Wicklow Hearings Committee;
  - v. That the fourth named Respondent appealed the decision of the Wicklow Hearings Committee to the Leinster Hearings Committee;
  - vi. That the decision maker i.e. the Wicklow Hearings Committee should not have been named and that the Respondent should have been the Claimant i.e. Kilmocanogue-Enniskerry GAA Club;
  - vii. That the second named Respondent – Leinster Hearings Committee did not have an appeal with the same combatants;
  - viii. That it was not an appeal vis-a-vis the two combatants;
  - ix. That it was a quasi judicial review and not an appeal within T.O 7.11(a).
9. Mr D’Arcy further pointed out that 2 persons from the Claimant GAA Club had been listed as present and observing at the Leinster Hearings Committee Hearing and that one of these namely a Mr Priest was told that he could observe but not take part. It was Mr D’Arcy’s contention that this was not an appeal that allowed the Claimant to be a party. Whilst the Leinster Hearings Committee had sent Kilmocanogue-Enniskerry GAA Club and Avondale GAA Club out to try resolve the matter this did not occur. Mr D’Arcy further submitted that the Claimant was not notified of the decision stating that the appeal had been upheld.
10. Mr D’Arcy then submitted that the only option left open to the Claimant was to appeal the decision of the second named Respondent as it affected the Claimant and condemned it to the “B” Championship. The Claimant submitted an appeal to the first Respondent which decided on the 9<sup>th</sup> day of September, 2011 that it Kilmocanogue-Enniskerry GAA Club did not have a Right of Appeal as “it was not directly involved in the decision”. The first named Respondent, the Central Appeals Committee, relied on T.O. 7.11(a).
11. The first named Respondent the Central Appeals Committee stated by letter dated the 9<sup>th</sup> day of September, 2011 that there were two parties directly involved, i.e. the decision maker the third named Respondent Wicklow CCC and Avondale GAA Club (the fourth named Respondent).
12. Mr D’Arcy submitted that the Claimant had been excluded on the basis that it was not directly involved. He further submitted that the Respondent in the appeal to the second Respondent i.e. The Leinster Hearings Committee should have been the

Claimant – in effect that the Claimant should have had a Right of Appeal and be present at each of the aforementioned Hearings and Appeals. By the actions of the Second Named Respondent the Claimant was excluded from active involvement notwithstanding that the Claimant was a combatant.

13. The Central Appeals Committee, the second Named Respondent represented by Mr Simon Moroney and Mr Stephen Browne responded to the Claimant's submissions. Mr Moroney stated that the Appeal to the Leinster Hearings Committee was by Avondale GAA club against the decision of the Wicklow Hearings Committee. The decision maker was the Second named Respondent i.e. the Leinster Hearings Committee. As the Appellant was the fourth Named Respondent and not the Claimant he was therefore of the view that the Central Appeals Committee ruled correctly that the Claimant, Cill Mhoconog – Ath Sceirce GAA had no right of Appeal to it under Rule T.O. 7.11(a). He stated that the critical words were "*directly involved in any decision*". This was of the view did not mean "*directly affected*" The Claimant was not directly involved in the decision under appeal and the parties involved were the decision maker, i.e. the second named Respondent (Leinster Hearings Committee) and Appellant, Avondale GAA club, the Fourth named Respondent.
14. Mr Moroney further referred to T.O. 7.11(i) which deals with notification to the decision maker and in the case of an appeal arising from an objection or counter objection to the successful party to the objection or counter objection. Mr Moroney stated that whilst there were always Parties affected they were not necessarily involved in the decision making process. Mr Moroney stated that the Rules do not admit Respondents save in regard to Objections. In this instance the Claimant was not directly involved in the decision and there was not provision for Respondents in appeals save in relation to Objections.
15. Mr John Byrne on behalf of the second named Respondent, Leinster Hearings Committee referred to page 22 of the GAA Disciplinary Handbook 2011, paragraph (vi), which stated representatives of the Parties to the previous Hearing should have the right to participate. He noted that at least twice Mr Priest on behalf of the Claimant had spoken at the appeal. In his view the decision maker was the Respondent before it and he rebutted the Claimant's point in this regard. Notification of the decision had been sent to the Claimant. He also stated that the second named Respondent had a somewhat different interpretation of T.O. 7.11(a) as he heard the fourth named Respondent's case which it would not have done if it applied the first named Respondent's logic.

16. In Mr Byrnes view there was no appeal against their Decision at this point under T.O. 7.11 as it would be outside the allowed time and the grounds now referred were not referred to in the purported appeal to the First Named Respondent.
17. In reply Mr D’Arcy on behalf of the Claimant stated that the Claimant’s Appeal had been rejected by the first named Respondent. That the Claimant should have been allowed to challenge the formalities. That an appeal was a rehearing and that the first named Respondent sought to give a completely different meaning to the word “Appeal”. He further stated that T.O. 7(m) envisaged oral evidence at a rehearing.
18. Mr D’Arcy was of the view that by agreement between the parties the Tribunal could make a final decision under Section 11.4 of the Disputes Resolution Code. He was further of the view that he believed the second named Respondent accepted that there was an inconsistency within the GAA as regards interpretation. That a Rule granted a Right of Appeal. He stated if natural justice applied there could not be a situation where a decision was made affecting a Party and actioned when the Party in question was not given a right of audience or any involvement. He submitted that T.O. 7.11 granted a Right of Appeal and a subsequent Right of Appeal. He stated therefore that the Claimant was entitled to a right of audience. The Claimant, Kilmocanogue-Enniskerry simply wanted to play a game.
19. In reply Mr Moroney on behalf of the First Named Respondent took issue with the contention that an Appeal was a rehearing. He referred to T.O. 7.11(f)(1) which related to rules allegedly infringed by a decision maker. This meant a review. He referred to the second last paragraph of page 21 of the GAA Disciplinary Handbook 2011. This set out the parameters for a second Right of Appeal under T.O. 7.11(a) page 22 (second last paragraph) stated *“appeals are narrower in scope and generally involve an examination of the procedural correctness of the original decision making process rather than a full rehearing of the substantive facts”*.
20. Mr Moroney stated that with regard to T.O. 7.11(o)(iii) the Disputes Resolution Authority had found a decision can only be substituted where evidence was heard. He submitted that was why appeals were restricted to witnesses at first hearing. An appeal he stated was not a re hearing and it was narrower in scope. Paragraph (vi) page 22 of the GAA Disciplinary Handbook made reference to representatives of the “other party (parties) to the previous hearing”. Paragraph (d) of the same page refer to two members of each other party “in the previous hearing (if applicable e.g. in the case of appeals against decisions on objections)”. The present instance did not involve an objection.

21. He further stated that under T.O. 7.11 (b) a County Committee shall in all cases have a Right of Appeal to the Central Appeals Committee against all decisions to which they were a party.
22. Mr D’Arcy responded saying that the matter should be confined to Rules and not Guidelines. He invited the Tribunal to decide if the match could be played but Mr Moroney reserved his position on that point stating that he would prefer to get the Tribunal’s Decision. Mr D’Arcy was of the view that he believed it came down to natural justice. Mr Moroney replied by saying that the ramifications of this decision could change the face of the appeals process and agreed that there was the option to get the views of other parties such as the Central Council.

### **DECISION OF THE DISPUTES RESOLUTION AUTHORITY**

22. The preliminary issue raised at the outset, regarding the participation and the presence of the third named Respondent at the hearing has already been deliberated upon.
23. Two decisions under appeal to the D.R.A. were;
  - a. The decision of the Central Appeals Committee dated the 9<sup>th</sup> day of September, 2011 and;
  - b. The decision of the Leinster Hearings Committee of the 1<sup>st</sup> day of September, 2011.
24. The sequence of events leading to these appeals were not significantly an issue and have been set out above.
25. Under T.O. 7.11 a Right of Appeal is set out as follows;
  - a. Subject to Rule 7.11 (c) and (d) below, a Member or Unit directly involved in any decision made by a Council, Committee in Charge or County/Provincial Convention (the Decision Maker) shall have a right of one Appeal (and one Appeal against the rejection of an Appeal for non-compliance with formalities) as follows...
26. The Tribunal is of the view the words “directly involved in any decision” in T.O. 7.11(a) means directly involved in the proceedings or Hearing giving rise to the decision under appeal and does not include parties directly affected. As such the

Tribunal holds that the decision of the first named Respondent on the 09.09.11 was correct.

27. The Tribunal distinguishes the case of **Mairead Ni Dhuill (Mar Ionadi ar son Coiste Chontae Loch Gorman) v Trease Ni Raghail (Mar Ionadai ar son Lar Choiste Cheannais nd gCorortaisi & Sean O HUaine (Mar Ionadai ar son an Lar Choiste Achomairc) DRA 4 /2008** on the basis that while the Tribunal in that case decided that the Claimant was “ directly affected” by a decision the issue of direct involvement does not appear to have been actually argued as in the present case.
28. A central issue it appears in the present case is the intended meaning of the word “Appeal” in T.O. 7.11. Mr. D’Arcy makes a cogent argument as to the extent and scope of the word “Appeal”. Mr. Moroney argues for a much narrow interpretation especially in cases where there is no Objection or Counter-Objection.
29. The Tribunal is more persuaded by Mr. Moroney’s argument and therefore holds that the word “Appeal” in T.O. 7.11 does not confer a right of re-hearing and that T.O. does not envisage Appeals with rights of audience for the original combatants as urged by the Claimant. The Tribunal further holds that T.O. 7.11 allows decision makers to participate in appeals.
30. Accordingly the Tribunal does not hold for the Claimant and is not prepared to strike the decisions referred to it on the basis argued by the Claimant.
31. However, as the Second named Respondent allowed the Fourth Named Respondent appeal the Wicklow Hearings Committee Decision of the 9<sup>th</sup> August 2011, (even though the Fourth Named Respondent was not a party “directly involved” in the said decision) the Tribunal decides that that decision must be set aside. This Tribunal further orders that the original decision of the Wicklow Hearings Committee made on the 9<sup>th</sup> August 2011 stands (i.e. that the game between Cill Mhoconog-Ath An Sceire and Avondale be postponed until further notice).
32. The Claimant contended if the rules of natural justice are applied there cannot be a situation where a decision is made affecting a party and actioned when the party in question is not given a right of audience or involvement and therefore as such the process giving rise to the decisions referred to the Tribunal are fatally flawed. Audi Alterem Partem is a long established principle of Natural Justice. The question is, is it an unfettered right or can it be subject to restrictions? It is recognised that the Courts allow Sports Bodies a certain degree of latitude when it comes to rules of procedure. It is also recognised that disputes before the DRA are matters of contract and a party’s rights or implied rights are pursuant to a contract with the principle



contract document being the T.O. In the present case the Tribunal is of the view that the arguments and counter arguments require considerable further ventilation before it could make a decision on that point.

33. Signed:

Pat Purcell (Chairman)

Declan Hallissey

Tom Barry