

Disputes Resolution Authority

An Córas Eadrána

DRA 17 of 2016: In the matter of the an arbitration under the Disputes Resolution Code and the Arbitration Act 2010

Dromin-Athlaca GAA v Limerick CCC & CAC

Hearing: Strand Hotel, Limerick, at 8pm on 25 August

Tribunal: Cian O'Kelly BL, John Callinan & Tom O'Doherty
Secretary to the DRA, Jack Anderson, was also in attendance

Verdict: Application succeeds

Keywords: Allegation that a score allowed by the referee was not recorded by him thereby affecting the result of the Game; R7.10(n)(ii) of the Official Guide (2016); Status of the Referee's Report and compelling evidence; R7.3(aa)(1)(vi) of the Official Guide (2016); Scope and hearing of appeal; R7.11(o) of the Official Guide (2016).

List of Attendees:

Applicant:

Cathaoirleach, Colum Breen
Solicitors, Maurice Power Solicitors, Kilmallock
Thomas Wallace-O'Donnell BL

Respondent 1, Limerick CCC:

Cathaoirleach, Liam Ó Suilleabhain
Rúnaí, Micheál Ó Riordáin

Respondent 2, CAC:

Paul Keane, Solicitor, Reddy Charlton
Laura Graham, Solicitor, Reddy Charlton
Matt Shaw, Chairman CAC
Mel Clarke, Member of CAC
Bernard Smith – Secretary CAC

Interested Party, Munster HC:

Rúnaí, Liam Ó Conchúir, Ciarraí

Interested Party, Drom-Broadford:

Cathaoirleach, Denis O'Carroll
Rúnaí, Jim Barry

Factual Background

1. On 13 May 2016, Dromin-Athlacca played Dromcollogher-Broadford in a group stage game in the Limerick Intermediate Hurling Championship (“the Game”) at Feenagh-Kilmeedy. In his report (signed on 16 May 2016), the referee noted that at the final whistle the score was Dromin-Athlacca 2-15 Dromcollogher-Broadford 1-17 and thus a one point win for Dromin-Athlacca.
2. In the “additional comments” section of his report, the referee noted three further points.
3. First, the referee acknowledged that an issue had arisen during the course of the Game (around the 38/39th minute) when he noticed that the scoreboard (operated by the host club) was displaying the incorrect score i.e. Dromin-Athlacca 1-11 Dromcollogher Broadford 1-15. “Out of respect for the players”, the referee reported, he used the next break in play to inform the person operating the scoreboard to change it to the correct score of Dromin-Athlacca 1-11 Dromcollogher Broadford 1-14.
4. Second, the referee acknowledged in his report that immediately after the final whistle he was approached by mentors from Dromcollogher-Broadford who queried the score, arguing that the Game had in fact ended in a draw – Dromin-Athlacca 2-15 Dromcollogher-Broadford 1-18.
5. Third, and again directly quoting from his report, the referee noted that he then “proceeded to the dressing rooms with my umpires. When in the safety of the dressing room I tallied the score with one of my umpires who I had tasked to keep the score in the game and he informed me he had the score as 2-15 to 1-17 [in favour of Dromin-Athlacca].”
6. The core, substantive aspect of this disputed matter was whether the above Game held on 13 May 2016 ended in a one point win for Dromin-Athlacca (as the referee had recorded) or whether (as Dromcollogher-Broadford mentors and others in attendance had it) the game was in fact a draw. Despite the discrete point at issue, the matter spawned a complicated hearing, appeals and ultimately DRA-led arbitral process – summarised below.

Application History

7. On 15 May 2016, Dromcollogher-Broadford lodged an objection to the awarding of the Game pursuant to Rule 7.10(a) of the Official Guide (2016). In line with Rule 7.10(d)(1), the correspondence by Dromcollogher-Broadford outlined the grounds for the objection; simply put, that in the process of changing the scoreboard the referee had wrongly deducted a point against

Dromcollogher-Broadford and thus the referee breached his duty to keep a record of the scores as per Rule 1.2(v) of the Official Guide (2016), Part 2.

8. The objection hearing was heard by Limerick CCC on 2 June 2016 (notification on 7 June 2016). The minutes of the Limerick CCC hearing recorded that it heard from the following:
 - a. The secretary of the objecting club;
 - b. The chair and secretary of Dromin-Athlacca;
 - c. A letter from the independent scoreboard operator which stated, "Approximately ten minutes or so into the 2nd half the referee approached me to take a point off Drom/Broadford to bring their score back to 1-14 from 1-15. I found this strange as I always keep the score updated on paper before changing the board and my script read 1-15 to Dromcollogher-Broadford at the time. Obviously I did as the referee said."
 - d. Evidence from a person working the gate on the night (MO'S), who was called as a witness before the Limerick CCC. The minutes of the Limerick CCC hearing noted that MO'S "outlined that he was administrating the gate on the night and arrived in from the gate 5 mins into the second half. During the course of the second half [JL] from Feenagh-Kilmeedy [who appears also to have been working the gate on the night] stated the referee had made a mistake with the score with a point not recorded by him. MO'S was of the same opinion."
 - e. Another independent witness was said to be able to verify that JL's report (above) was also correct.
9. Limerick CCC reviewed the above and placed particular emphasis on the fact that the Dromin-Athlacca representatives "had no objection to the score at 1-15 [to Dromcollogher-Broadford] the point of the game where the referee instructed the scoreboard operator to change the score."
10. Limerick CCC unanimously decided to uphold the objection pursuant to Rule 7.10(n)(ii) of the Official Guide (2016) and namely that "a score allowed by the referee was not recorded by him....thereby affecting the result of the Game." Consequently, the Game was deemed to have ended in a draw.
11. Dromin-Athlacca appealed the above to the Munster HC who heard the matter, pursuant to the scope and hearing of appeals laid down in Rule 7.11(o) of the Official Guide (2016), at a hearing held on 15 June 2016
12. On hearing the submissions made by all the parties and on reviewing the procedure of the Limerick CCC used in the objection hearing, Munster HC concluded that Limerick CCC had misapplied and clearly infringed Rule 7.3(aa)(1)(vi) of the Official Guide (2016): "A Referee's Report, including any Clarification thereto shall be presumed to be correct in all factual matters and

may only be rebutted where unedited video or other compelling evidence contradicts is." The determination of facts by Limerick CCC, in the context of what might constitute "compelling" evidence pursuant to Rule 7.3(aa)(1)(vi), and in the context of justifying a determination per Rule 7.10(n)(ii) of the Official Guide (2016) that "a score allowed by the referee was not recorded by him....thereby affecting the result of the Game", was, according to Munster HC, manifestly incorrect.

13. Munster HC decided that pursuant to Rule 7.11 (p)(i) they would annul the decision appealed against and direct that no further action be taken by the decision-maker (Limerick CCC). It followed that Munster HC was declaring that the Game should be deemed, as the referee had it, to have ended in a one-point victory for Dromin-Athlacca.
14. Limerick CCC appeal this decision to the CAC, principally on the grounds that Munster HC had gone beyond the scope of its powers laid down in Rule 7.11(o) and that, in effect, Munster HC had set out to re-hear the matter thus usurping the role of the primary decision-maker (Limerick CCC).
15. By way of a decision dated 6 July 2016, the CAC upheld the appeal and did so on two grounds.
16. The first ground was (below is a direct quote for the CAC decision):

"It is not open to an appellate body to decide what does or does not amount to compelling evidence in a particular case. This is a reserved function of the decision maker. If an appellant in its written appeal states that a decision of fact is irrational or manifestly incorrect then the appellate body may review all of the evidence considered by the decision maker. [The CAC] accept that [Munster HC] did not want to embark on a rehearing, but they have in fact made a judgement on the quality of the evidence that [Limerick CCC] considered compelling, without having heard all of that evidence. It was agreed before [CAC] that the witnesses who gave evidence before [Limerick CCC] did not give evidence before [Munster HC]."

17. The second ground was (again a direct quote for the CAC decision):

"In their decision [Munster HC] clearly state that the determination of facts by [Limerick CCC] has been shown on appeal to be manifestly incorrect, but this was not a decision that was open to them to make when they did not hear the evidence of the witnesses who attended before [Limerick CCC]."

18. CAC decided that pursuant to Rule 7.11 (p)(i) they would annul the decision appealed against and direct that no further action be taken by Munster HC. It

followed that the CAC was declaring that the Game should be deemed to have ended in a draw.

19. On receipt of the CAC decision, and in line with the requirements of section 2 of the Disputes Resolution Code, Dromin-Athlacca, the applicant, made a request for arbitration to the DRA. Limerick CCC and the CAC were named as respondents to the matter and both Munster HC and Dromcollogher-Broadford were deemed interested parties.

Submissions

20. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the reasoned discussion that follows. While the appointed DRA Tribunal has considered all the facts, allegations, arguments, materials and evidence ("the submissions") submitted by the parties in the present proceedings, this Award refers only to the submissions and evidence they consider necessary to explain their reasoning.

Applicant's Submissions

21. The applicant's submissions were essentially two fold in nature and focused on Rule 7.3(aa)(1)(vi) and Rule 7.11(o) of the Official Guide (2016) - both outlined below.

Rule 7.3(aa)(1)(vi)

A Referee's Report, including any Clarification thereto shall be presumed to be correct in all factual matters and may only be rebutted where unedited video or other compelling evidence contradicts it.

Rule 7.11 (o)

An Appeal shall be limited to the matters raised in the Appellant's Appeal as originally lodged and shall be upheld only where (i) there has been a clear infringement and misapplication of Rule by the Decision-Maker or (ii) the Appellant's right to a fair hearing has otherwise been compromised to such extent that a clear injustice has occurred. No determination of fact by the Decision-Maker shall be set aside unless shown to be manifestly incorrect."

22. On Rule 7.3(aa)(1)(vi), the applicant also referred to the guidance on "Evidence" found in Part V of the GAA's Disciplinary Handbook, 7th edition, 2016.

"Evidence: Subject to exceptions, evidence should be given orally. Letters and documents should not be treated as conclusive evidence of

what they say if their contents are going to be the subject of a major dispute. Obviously the person who created a document may give oral evidence that the document is accurate: if he does, then the document is considered to have the status of oral evidence. Essentially, the Hearings Committee should assess each item of evidence and where it is coming from, and attach weight or importance to it accordingly. Thus a letter from the Defending Party's brother, stating that the Defendant Party "*has never been in a fight in his life*", would obviously be of little value to the Hearing.

Referees' Reports: One of the principal exceptions to the general preference for oral evidence is the Referee's Report. The Referee's Report (including any Clarification) is proof of what it says except where "*unedited video evidence or other compelling evidence*" shows that the Referee has made a mistake. There is no special manner by which video evidence should be shown. The video can be slowed down, speeded up and so on, as long as it is not altered. Whoever is introducing it in must provide the other side with a copy of the tape/DVD in advance of the Hearing so that they have a chance of viewing it.

What is "other compelling evidence"? It is not possible (or indeed desirable) to define this exhaustively. This rider is added to the Rule because there is always a possibility that some evidence may be available that is of such evidential force that it cannot be ignored. It may, for example, be a photograph of an incident proving mistaken identity. It may be a *combination* of other items of evidence. While what is "compelling" is a question of fact to be decided by the Hearings Committee, it is suggested that the following are some examples of what - taken on their own - would *not* be "compelling":

- the opinions of spectators at the game;
- the opinions of County Committee Officials present at the game;
- an admission by another player that it was he who committed the infraction (as that would tend to invite false admissions from weaker team members to exonerate the "star" player).

Note, however, that the above matters may, combined with other evidence, demonstrate that the Referee's Report contains an error."

23. In light of the above, the applicant's submission was that Limerick CCC's decision was flawed in terms of what it ascertained to be sufficiently compelling evidence permitting it to rebut the presumption in favour of the referee's report. The applicant submitted that, based on the Limerick CCC's minutes of its hearing, the evidence taken was largely hearsay in nature or

from witnesses who were either not independent of the teams in question or had not seen the match as a whole. Moreover, the applicant submitted that the principal basis of the Limerick CCC's reasoning – that the Dromin-Athlacca representatives had no objection to the score at 1-15 [to Dromcollogher-Broadford] the point of the game where the referee instructed the scoreboard operator to change the score – was an inaccurate and partial reflection of what the applicant's representatives had in fact said on the point on the night.

24. The applicant went on to make the point that Limerick CCC could have (but didn't) exercised its discretion, pursuant to Rule 7.3 (aa)(1)(viii) to seek clarification from the referee who, as the applicant reminded the DRA Tribunal, was in any event clear in the additional comments section of his report as to what had happened and how he had double checked the score with his umpires. It followed, the applicant submitted, that there was no evidence, compelling or otherwise, to show that a score allowed by the referee was not recorded by him thereby affecting the result of the Game and thus no basis for Limerick CCC to sustain the objection per Rule 7.10(n)(ii) of the Official Guide (2016)
25. In summary, the applicant was of the view that the Munster HC's decision was correct and fully compliant with Rule 7.11(o) (i) and (ii) – there being a misapplication of rule and a manifest incorrectness by Limerick CCC evidenced by a lack of compelling factual evidence both to determine and justify a rebuttal of the referee's report pursuant to Rule 7.3(aa)(1)(vi) Rule and to determine and justify an objection pursuant to Rule 7.10(n)(ii) of the Official Guide (2016).

Respondents' Submissions

26. The respondents' joint submission focused centrally on Rule 7.11(o). It was emphasised repeatedly to the Tribunal that the core matter was how an appellate committee (such as the Munster HC) ought properly to distinguish between a decision correctly made (by the primary decision-maker, Limerick CCC) and whether the decision arrived at was the correct one. The former necessitates an evaluation of the procedure used by the primary decision-maker; the latter necessitates an evaluation of the substantive outcome reached by the decision-maker. Rule 7.11(o) is, the respondents submitted, concerned solely with the former but that in this instance the Munster HC had strayed into the latter and thus had acted in breach of Rule 7.11(o).
27. Relying on DRA09/2015, among other arguments, the respondents further submitted that, in effect, the Munster HC had, despite assurances by them otherwise, inadvertently attempted to carry out a full merits review of Limerick CCC's decision. This breach of the scope of Rule 7.11(o) was compounded by the fact that Munster HC chose not to hear from all of the

witnesses heard by the Limerick CCC. In sum, the respondents' argued that the appeal process carried out by Munster HC was neither in line with Rule 7.11(o) nor was it a full de novo hearing and thus the CAC was fully justified in setting the decision of Munster HC aside.

Reasoned Decision

28. For three reasons, noted below, the case at hand is a rather odd one.
29. First, the merits appear, at first instance, to hinge straightforwardly on whether there was sufficiently compelling evidence to uphold Dromcollogher-Broadford's original objection and thus amend the score of the game and overturn or correct the referee's record of the final score. What followed was not, however, so straightforward and is now, three months later, the subject of a fourth hearing - Limerick CCC, Munster HC, CAC and DRA. One simple question, however, remains outstanding. Although clarification was sought from gatemen, the score board operator and other witnesses at the Game; why wasn't the referee asked for further clarification of his report pursuant to the Limerick CCC's discretion to do so in Rule 7.3(aa)(1) (viii)?
30. Admittedly, it may well be that Limerick CCC felt that there was no need to exercise their discretion to clarify matters any further with the referee given the adamant nature of his additional comments. Nevertheless, clarification from the referee, subsequent to the evidence of the above witnesses at the CCC hearing, might have assisted all parties to the initial objection hearing and beyond, as it did this year in the Christy Ring final where, on acknowledgement of a scoring error by the referee, a replay between Meath and Antrim was ordered by the CCCC.
31. The second feature of this case is that during the proceedings Limerick CCC had to transform itself from the body which was the primary decision-maker on the matter, to then becoming a respondent at Munster HC, to being an appellant at the CAC, before reverting to a joint respondent at the DRA. Limerick CCC were, of course, fully entitled to exercise the various, above rights of appeal in line with Rule 7.11 as currently constituted. Nevertheless, the practice of decision-making units of the GAA becoming respondents and later appellants and then respondents again may not always be what is best for the efficacy of GAA justice. In this, some thought may be given to better reconciling, for example, the rights of appeal found in Rule 7.11(b) and Rule 7.11(e) (5).
32. The third, noteworthy feature of this matter is the manner in which the CAC in its submissions to the DRA argued forcefully and with certainty that Munster HC had acted outside the scope of appellate committees in the GAA (Rule 7.11(o)) by misinterpreting their role on the determination of fact. The

certainty with which the CAC acted against Munster HC was demonstrated not only in their arguments before the DRA but also by the fact that rather than remit this matter back to the Munster HC (as is “the most likely course of action” if an infringement of misapplication of rule has taken place as per the guidance on “Appeals” found in Part VII of the GAA’s Disciplinary Handbook, 7th edition, 2016 at p26), CAC decided to take the option (“applicable in a small minority of cases, *ibid*, Disciplinary Handbook) to annul Munster HC’s decision.

33. Despite the forcefulness and certainty of this stance by CAC towards Munster HC at its hearing on 6 July 2016 and in the CAC’s submissions to the DRA; the CAC nonetheless, and somewhat incongruously, requested at the DRA that “the hearing avail of the opportunity to set out clearly the role of appellate committees within the Association, in particular in relation to determination of fact by hearing committee and the evidence relied upon by such committees.” Bluntly, if the CAC had any doubts as to this issue then why didn’t it extended the benefit of that doubt towards Munster HC? Put another way, would it not have been preferable if the CAC, as the leading appellate committee in the Association, had taken the opportunity on 6 July to itself clarify this issue of determination of fact by remitting this particular matter to Munster HC with directions? Such directions could then be used to the benefit of all other appellate committees in the Association.
34. To be fair to the CAC in this instance, it may be – in a scenario where it is seeking to clarify a matter of exceptional importance to the Association (to paraphrase section 9.3 of the Disputes Resolution Code) – worth considering giving such a Unit in the Association a facility to seek an advisory opinion from the DRA on the matter at hand, rather than having to take what might be seen here as a “test case”. Such an advisory opinion facility could easily be accommodated by way of an amendment to the existing Disputes Resolution Code. In any event, some guidance on the role of appellate committees is provided by this Tribunal below in the sub-section headed “Directions”.
35. Returning to the matter at hand, the fulcrum of this matter is the decision by Munster HC. Munster HC was of the opinion, as argued in front of it by Dromin-Athlacca, that the evidence used to rebut the presumption in favour of the referee’s report was not in any way compelling and was premised on a manifestly incorrect error of fact relating to whether a score allowed by the referee was not recorded by him thereby affecting the result of the Game pursuant to Rule 7.3(aa)(1)(vi) and Rule 7.10(n)(ii) respectively.
36. In contrast, Limerick CCC was of the opinion that no error of fact was made and that their decision in relation to Rule 7.10(n)(ii) must be seen in light of the fact that at the objection hearing the Dromin-Athlacca representatives “had no objection to the score at 1-15 [to Dromcollogher-Broadford] the point of the game where the referee instructed the scoreboard operator to change

the score.” More importantly, Limerick CCC argued that the evaluation of, and weight given to, the evidence gathered by them (in terms of whether it was sufficiently compelling or not to rebut the referee’s report) was solely a matter for them as the primary decision-maker but that the Munster HC had, by themselves evaluating that evidence, breached Rule 7.11(o). The Limerick CCC’s view was supported by the CAC.

37. The nature of compelling evidence in the context of allegations that a referee has inaccurately recorded the final score was the matter of two recent DRA cases (DRA18/2015 and DRA19/2015) – neither mentioned in the parties’ submissions. In both instances, the applicants claimed to have compelling evidence as to the inaccuracy of the referee’s report as relating to the final score of a game. In both instances, the CCC and HC involved held that the presumption in favour of the referee’s report had not been rebutted. In both instances, there was implied concurrence with the point made at paragraph 19 of DRA 15/2015 (see also DRA08/2016 at paragraph 19ff): “This Rule [Rule 7.3(aa)(I)(vi)], can be found in many other sporting codes grants special status to the Referee’s Report and the presumption granted to that Report ought, for evident reasons, to be a very difficult one to rebut.”

38. In both instances (DRA18/2015 and DRA 19/2015 on whether there was compelling evidence to rebut the referee’s report as to the final score), the DRA Tribunals in question took the approach, in line with a number of previous DRA awards, that the applicable test for the Tribunal in reviewing the matter was analogous to that used in judicial review when a court seeks to ascertain whether the decision maker acted rationally and/or reasonably in arriving at their decision. A summary of that test found in High Court case of *Brady v Board of Management of Castleblayney Infant National School & Anor* [2015] IEHC 554 at para 53, encapsulates the approach:

“The court [by analogy the DRA] has no jurisdiction on judicial review to determine the merits of the decision: this application is not an appeal from the decision-maker. The court under this heading must consider whether the impugned decision “plainly and unambiguously flies in the face of fundamental reason and common sense” (per Henchy J, in *The State (Keegan) -v- Stardust Compensation Tribunal* [1986] I. 642 at p658: see also *O’Keeffe v An Bord Pleanala* [1993] 1 IR 39 and *Meadows v Minister for Justice* [2010] 2 IR 701). The occasions upon which the court will be justified in intervening to quash a decision on this basis are limited and rare. There is a heavy burden on an applicant in such a case. It is not sufficient to demonstrate that this court might have reached a different decision or that a different result might, on a review of the materials, have been reached.

39. Applying the above test to DRA 18/2015 and DRA 19/2015, and keeping in mind the “heavy burden” on the applicant, the Tribunals in question found

that the respondents were not irrational or unreasonable in their interpretation of what could not be considered compelling evidence in the context of Rule 7.3(aa)(1)(vi).

40. In contrast, but also applying that above test to the matter at hand, this Tribunal finds, in an example of one of those “limited and rare” occasions, that the CAC’s decision that Munster HC acted outside the scope of Rule 7.11(o) to be unreasonable and irrational in the circumstances. The Tribunal finds that Munster HC acted within the scope of 7.11(o) by reasonably and rationally holding that a misapplication of rule, in terms of compelling evidence rebutting the referee’s report, and a manifestly incorrect determination of fact, as to the referee not allowing a score, had occurred at the original Limerick CCC objection hearing dated 7 June 2016.

Directions

41. With regard to the directions sought by the CAC on the role of appellate committees, the following guidance is provided.
42. It is a general principle that appellate committees in the GAA are normally tasked with considering whether the primary decision-maker (usually a hearings committee) reached its decision in the right way rather than whether the decision-maker reached what the appeals committee might think to be the right outcome.
43. With the above general principle in mind, Rule 7.11(o) constraints an appellate review of a decision making/hearings process in 4 ways: the first element holds that “An Appeal shall be limited to the matters raised in the Appellant’s Appeal as originally lodged”; the second element is that an appeal “shall be upheld only where there has been a clear infringement or misapplication of Rule” at the primary decision making stage or (and this is the third element) the appeal shall be upheld only where the “Appellant’s right to a fair hearing has otherwise been compromised to such extent that a clear injustice has occurred ” at the primary decision making stage or (and this is the fourth element), “No determination of fact by the Decision-Maker shall be set aside unless shown to be manifestly incorrect.”
44. The underlying idea of constraining an appellate review in the 4 ways above has been (as it is in public law) formulated by reference to the different roles of the primary decision maker and the appellate committee. The primary decision maker enjoys significant advantages over the appellate committee in the gathering and assessment of oral evidence, in making findings as to the credibility of witnesses and in gaining an insight into the context and nuances of the case as a whole as it unfolds before them. The supervisory nature of the role of appellant committees found in Rule 7.11(o) therefore reflects and protects all primary decision makers who have properly informed themselves

of the relevant facts evidence and applicable rules and, with respect to the principles of fair procedure, have impartially evaluated and weighted that evidence against those rules to arrive at what they consider to be the correct decision.

45. The above is good practice, how it works in practice is another matter. The CAC has asked that, within the context of 7.11(o), some guidance be given in relation to reviewing the process of determination of fact by hearings committee. In a way the CAC is asking the wrong question and the Rule 7.11(o) question is better framed as follows: how might, on the balance of probabilities, an appellant demonstrate, to the satisfaction of an appeals committee, that a breach of Rule 7.11(o) has occurred?
46. Keeping in mind the important preliminary point, that an appeal shall be limited to the matters raised in the appellant's appeal as originally lodged, appellants have, in effect, three chances to succeed under Rule 7.11(o). The first (Rule 7.11(o)(i)) is to attempt to satisfy the appeals committee that a clear infringement or misapplication of rule has occurred. In terms of public law, this equates to an illegality or error of law point and, in analogy to the GAA, this means that the appellant is trying to convince the appeals committee that the hearings committees did not correctly apply the applicable Rules of the Official Guide (principally Rule 7.3) that regulate their decision-making powers. If it can be shown that a hearings committee has not followed Rule correctly, hence misapplying a Rule; their decision, action, or failure to act must be annulled or remitted or substituted as per Rule 7.11(p) by the appeals committee. In addition, an action or decision may be unlawful (in the sense of being a breach of Rule) if the appellant can show that the hearings committee had no power to make it in the first place or exceeded the powers given to them.
47. The second element can be found in the first sentence of Rule 7.11(o)(ii) and relates to (again using a public law analogy) procedural impropriety, which is a charge by the appellant of lack of fair procedure against the hearings committee. Again, strict guidance is given on fair procedure/due process by hearings committees, principally in Rule 7.3 and to which strict compliance is expected. In a general sense, procedural impropriety relates to a breach of the principles of natural justice such as a failure by the hearings committee to hear both sides and/or pre-judgment (bias) by the hearings committee of the matter at hand. As mentioned in previous DRA decisions (e.g., DRA 18/2015, paras 24-29) the procedural impropriety must generally be shown to have been materially prejudicial to the appellant and appeals committees should be highly circumspect of arguments by appellants that seek to conflate minor procedural errors by decision-makers into an argument of substantial unfairness.

48. The third element can be found in the second sentence of Rule 7.11(o)(ii) and relates to determinations of fact by the decision-maker being set aside only where proven to be manifestly incorrect. In public law/judicial review terms, this third element appears to be similar to a judicial review where the applicant seeks to demonstrate that the primary decision maker's decision was fatally flawed (vitiating) by a material error or errors of fact.
49. The High Court recently summarised Irish law on error of fact in decision making in *The West Cork Bar Association & Ors v The Courts Service* [2016] IEHC 389 (08 July 2016). Drawing on that, and by analogy to the GAA's Rules, in order to succeed under this heading of error of fact, the appellant must show to an appeals committee:
- that the mistake by the primary decision-maker was a mistake on an existing fact (including mistake as to the availability of evidence on a particular matter); and
 - the error of fact must be unambiguous and not an argument on the interpretation or evaluation of a fact; and
 - the appellant must not have been responsible for the error of fact; and
 - the error of fact must have played a material part in the primary decision-makers reasoning to such a prejudicial and/or manifestly unfair extent that a different decision might have been made by the primary decision-maker but for the error of fact.
50. Again, it must be emphasised that the above is guidance only. In a general sense, it must not be forgotten that the three elements to Rule 7.11(o) will often overlap e.g., in this instance, there was an error of fact by Limerick CCC as to Dromin Athlacca's acceptance of the scoreboard change on which the objection was upheld per Rule 7.10(n)(ii) and that overlapped with the misapplication of Rule 7.3(aa)(1)(vi) on compelling evidence rebutting a referee's report. In a specific sense, it must also be reiterated that, as in judicial review proceedings, applications on error of fact are seldom likely to succeed. It will likely be very difficult for an appellant to satisfy all four of the above criteria (in paragraph 49) and rightly so keeping in mind the principles of constraint on appellate reviews in the GAA, outlined in paragraph 44 above.
51. If the above guidance was to be taken on board, Rule 7.11(o) could be amended as follows:

Rule 7.11 (o)

An Appeal shall be limited to the matters raised in the Appellant's Appeal as originally lodged and shall be upheld only where (i) there has been a clear infringement and misapplication of Rule by the Decision-Maker or (ii) the Appellant's right to a fair hearing has

otherwise been compromised to such extent that a clear injustice has occurred or (iii) there has been an error of fact by the Decision-Maker which was material to the decision made by that Decision-Maker.

52. Finally, given the above, it is reiterated that the “cascade” of disciplinary jurisdictions in the GAA now appears as follows: hearings committees are the primary decision-makers acting principally and strictly in compliance with Rule 7.3; while appeals committees have a supervisory role constrained by and limited to Rule 7.11(o) and including misapplication of Rule or lack of fair procedure or (as above) material errors of fact. The DRA’s role appears to be settled at that outlined in paragraph 38 above or, in simple terms, and paraphrasing the celebrated sports law case of *Calvin v Carr* [1980] AC 574, whether the various internal disciplinary (hearings, appeals) mechanisms of the GAA have reached what in the end is a fair, rational and reasonable decision.

Award

53. The Tribunal awards in final and binding determination of this dispute, and in line its power under section 11.3 of the Dispute Resolution Code, that the application is upheld. It follows that:
- (i) the decision of the CAC dated 6 July 2016 is set aside; and
 - (ii) the result of the Limerick Intermediate Hurling Championship game between Dromin Athlacca and Dromcollogher Broadford held on 13 May 2016 stands as 2-15 to 1-17 in favour of Dromin Athlacca.

Costs

54. The Tribunal directs, in line its power under section 11.2 of the Dispute Resolution Code, that the applicant is entitled to their legal costs and expenses as discharged in full and solely by the second respondents, the CAC. In line with section 11.2 of the Dispute Resolution Code, “if requested by either party, the Tribunal shall measure costs.”
55. The Tribunal directs that the costs and expenses of the DRA, as calculated by the DRA secretary, be discharged in full and solely by the second respondents, the CAC.
56. The Tribunal directs that the deposit paid by the claimant of €1,000 to the DRA Secretary is refunded.

Date of Oral Hearing: 25 August 2016

Date of Agreed Award: 27 September 2016

By email agreement on agreed date above

Cian Kelly BL

John Callinan

Tom O'Doherty