

# Disputes Resolution Authority

An Córas Eadrána

**DRA 21 of 2016: In the matter of the an arbitration under the Disputes Resolution Code and the Arbitration Act 2010**

*Kilcoo GAC v Down CCC and Ulster HC*

**Hearing:** Carrickdale Hotel, Dundalk, at 8pm on 12 Jan 2017

**Tribunal:** Pat Purcell BL, David Curran (solicitor) & Jarlath Burns  
Secretary to the DRA, Jack Anderson, was also in attendance

**Verdict: Application upheld**

*Keywords: Status of interested parties to DRA proceedings; awarding of league title for non-fulfilment of fixture; powers of CCC; R3.20(ii) of the Official Guide (2016); right of appeal against a CCC; R7.11(e) of the Official Guide (2016); rules which are inflexible and/or interpreted inflexibly have an obvious potential for injustice; judicial review-like jurisdiction of the DRA.*

**List of Attendees:**

*Applicant:*

Gerry O'Hare, O'Hare Solicitors.

Roger Morgan, Kilcoo

Terry O'Hanlon, Kilcoo

*Respondent 1, Down CCC*

Ciaran Rafferty, solicitor

Jack Devaney, Down CCC

Jarlath Tinnelly, Down CCC

*Respondent 2, Ulster HC*

Seán McKenna, secretary

*Interested Party, Castlewellan*

Ciaran White BL

Brian Kelly, solicitor

Kerry Green, Brian Kelly solicitors

Kevin Sweeney, Chair, Castlewellan GAC

## **Factual Background**

1. The factual background and timeline of this application is quite complex and what follows is a summary only of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced. The Tribunal has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, but refers in this Award only to the submissions and evidence considered necessary to explain the Tribunal's reasoning.
2. The final of the Down ACFL Division 1 league between Kilcoo and Castlewellan was originally fixed for Sunday 23 October 2016. Kilcoo, as county champions, were due to play (vs Glenswilly) in the quarter final of the Ulster Club Championship on Sunday 30 October and thus the final was postponed until the week commencing Monday 31 October. On Sunday 30<sup>th</sup> October, Kilcoo were also due to play an U21 championship game against Downpatrick. This was also postponed and refixed for Thursday 3 November. The Down ACFL Division 1 league final was refixed by Down CCC for Thursday 3 November. Given the clash of fixtures, and for reasons that will be explained, Kilcoo fulfilled the U21 fixture only.
3. At the next meeting of the Down CCC on Tuesday 8 November, Down CCC decided that as a result of Kilcoo not fulfilling the league final fixture of 3 Nov, the ACFL Division 1 league title for 2016 would be awarded to Castlewellan. Kilcoo appealed to Ulster HC. The appeal was dismissed on 23 November 2016 and principally on the grounds that there was no clear infringement or misapplication of Rule by the Decision-Maker pursuant to Rule 7.11(o)(i) of the Official Guide (2016). Kilcoo then applied for arbitration pursuant to Rule 7.13 of the Official Guide (2016) and in line with the requirements of section 2 of the Disputes Resolution Code.

## **Application Hearing**

4. On 1 December 2016, a written request for arbitration was received by the DRA Secretary from the applicants and notified to the respondents on 2 December 2016. From this date, Castlewellan were also copied into all correspondence as an interested party. On 3 December, Ulster HC filed a written response to Kilcoo's request for arbitration. On 9 December, Down CCC filed a written response to Kilcoo's request for arbitration. On 12 December the DRA Secretary wrote to all parties and including the interested party encouraging, pursuant to section 4 of the Disputes Resolution Code, a period of "without prejudice" mediation or negotiation between Down CCC and the respective clubs, as facilitated by the Down County Secretary. It was hoped, for example, given that all parties were to be present at the Down County Convention of 14 December 2016, that they would take the opportunity to reach a mediated settlement.

5. A mediated resolution at the Down County Convention and over the Christmas period was not forthcoming and on 6 January the DRA Secretary wrote to the applicants, the respondents and the interested parties to inform them that the above DRA Tribunal had been appointed and a date of 12 January 2016 set for the Tribunal hearing. In these directions of 6 January, the DRA Secretary also: (a) provided all the parties and the interested parties with a bundle of the submissions already filed; (b) asked all the parties and the interested party to give him and the Tribunal notice if they wished to make any further written submissions or call witness evidence not otherwise notified in their original submissions made in December; and (c) inform him and the Tribunal of who would be attending or representing them on the night in question. A deadline of 5pm on Tuesday 10 January, extended to 1pm on Wednesday 11 Jan, was set for (b) and (c) above. The applicants took the opportunity to make a further written submission, copied to all the parties and the interested party. No further submissions were received from the respondents and none from the interested party. All the parties and including the interested party informed the DRA Secretary of who would be attending and/or representing them.
6. Prior to the formal opening of the Tribunal on 12 January, all parties, and including the interested party, were again encouraged by the Chair, Mr Purcell, to engage in a “without prejudice”, confidential mediation-led process in an effort to reach a non-adversarial solution. A settlement could not be reached and an arbitral hearing commenced.

### **Preliminary Matters**

7. For the notification of all parties, Mr Curran made it known that he and Mr Rafferty (solicitor for Down CCC) were members of the same club. This was noted by the applicants; no objection was raised. The DRA Secretary made it known that he was a member of the same club as Mr Devaney (Down CCC) and Mr White BL (for Castlewellan). This was noted by the applicants; no objection was raised.
8. The applicants raised the matter of the status of Castlewellan as an interested party to the proceedings. By convention, an interested party to a DRA proceeding is someone who is not a party but who the DRA Secretary reasonably decides, either unilaterally or on the request of a party or on request of the interested party, has a possible interest in the outcome proceedings or may assist in achieving a mediated settlement to the dispute in advance of a hearing and thus should be notified about the hearing and copied into its correspondence. On such notification, the interested party can then request the Tribunal’s permission to participate fully in the matter and preferably by way of prior, written submissions to the Tribunal via the DRA Secretary, who shall copy all other parties in such a request. Ultimately, the extent of the interested party’s participation in the actual hearing of the matter at hand shall be for the appointed Tribunal to decide as a preliminary matter.

9. In this instance, the interested party was copied into all correspondence by the DRA Secretary from its date of commencement on 2 December 2016. No written submissions were received from the interested party prior to the hearing of 12 January 2017, though they were fully represented (by way of solicitor and counsel) at the oral hearing of that date. The Tribunal heard briefly from the interested party on this preliminary matter but restricted their involvement thereafter on the grounds that (a) fundamentally the matter at hand was a grievance between Kilcoo and Down CCC emanating from decision made by Down CCC on 8 November 2016; (b) that the 8 November decision had been appealed (unsuccessfully) by Kilcoo to Ulster HC at which the interested party had not been present and (c) ultimately, if the remedy sought by Kilcoo, a refixture, were to be grant, it could only be implemented by Down CCC, the first respondent, and not the interested party.

### **Applicants' Submissions**

10. The applicants' submissions were fivefold in nature: the unreasonable context of the fixture clash of Thursday 3 November; an overly rigid, inflexible and unjust interpretation of the relevant County Competition regulations; procedural irregularities in the decision making of the Down CCC; the unique nature of the loss suffered by the applicants; and the nature of the remedy sought which was simply a re-fixing of the game. The applicants' submission were principally directed against Down CCC but implied logically that the decision of Ulster HC should also be struck down; it being incorrect in stating that no misapplication of Rule had occurred at the primary decision-making stage.
11. On the first issue, the applicants made the point that they were, at the disputed time, and as county representatives, in the middle of a concerted effort to win their first Ulster club championship - a title last won by a Down club in 1988. At the time of dispute, Kilcoo were due to play the semi-final of the Ulster club championship on 13 November, having defeated Glenswilly in the quarter final. Moreover, the dilemma posed by the Thursday 3 November fixtures clash included: (a) a logistical difficulty for supporters, players and mentors given that the fixtures were at the same time but at different venues; (b) the fact that 6-8 players were members of both the U21 and senior squads; (c) the regulations concerning the Down U21 football championship mandated that any postponed game would have to be played prior to the next round of fixtures (scheduled for 6 November). Given the above, Kilcoo sought a postponement of the league final fixed for 3 November and offered alternative dates in the week commencing 14 November.
12. In light of the above, Kilcoo further submitted that Down CCC should have made greater efforts to re-arrange the league fixture to a later date and that

Down CCC were taking an overly rigid approach to Regulation 9 of the Down County Competition Regulations which state:

“Subject to Regulation 9, postponements of fixtures under the control of CCC will only be permitted in the event of agreement from both clubs involved in the fixture.”

13. The level of inflexibility shown by Down CCC was, Kilcoo claimed, of such a nature that Down CCC had, in effect, prejudged the matter to the detriment of Kilcoo and, in addition, were acting contrary to guidance given by the DRA in DRA 06/2015 *Flynn v Antrim CCC and Antrim HC* at paragraph 19, which warned decision-makers to be: “mindful of the dangers posed by any rules which are (a) inflexible or (b) interpreted inflexibly. By this stage it is well established law that rules which are inflexible and/or interpreted inflexibly have an obvious potential for injustice.”
14. As regards procedural irregularities, Kilcoo reminded the Tribunal that the primary duty of decision-makers in processing a matter in the GAA is to comply with the procedural requirements of the Official Guide (2016) and those of fair procedure recognised more generally in law (and as outlined in DRA 15/2015 *Connolly v CHC & CAC*). Kilcoo argued, for example, that pursuant to Rule 7.10(c) of the Official Guide 2016, they had been denied to right to object to the award of the league final to Castlewellan. Under R7.10 (c), an objection has to be lodged 3 days after the start of the disputed game, which in this case would have been 6 November 2016 but, as the Down CCC did not meet until 8 November, Kilcoo were not, they claimed, given the chance properly to avail of the objection procedures of the Official Guide laid out more fully in R7.10.
15. Kilcoo informed the Tribunal that the loss suffered by them in this matter was considerable in the context of an exceptional playing season in 2016, which was the product of many years’ hard work and time by its members. Noting that at the end of the regulation part of the league Kilcoo had finished on top of the league, (Castlewellan had finished third but qualified for the league final on defeating Burren, who had finished second, in a playoff) Kilcoo also pointed to the fact that 2016 saw it on the verge of an unprecedented “double double” i.e., the winning of the Down senior championship, the Division 1 title, the premier reserve league and the premier reserve championship.
16. The remedy sought by Kilcoo was straightforward: that the DRA order Down CCC to refix the league decider such that the matter could be decided on the field of play.

### **Respondents’ Submissions**

17. Down CCC succinctly made the point that pursuant to Rule 3.20(ii) of the Official Guide (2016), it has responsibility for all arrangements relating to

fixtures of games and that further under Regulation 8 of the County Competition Rules, postponements and re-fixtures should only be facilitated where a Regulation 9 exception can be established and including the agreement of both clubs. Noting that Kilcoo had not approached Castlewellan in this regard and that by email dated 3 November 2016 Kilcoo had explicitly informed the Down Co Secretary that they would not participate in the league final on the evening of 3 Nov - an email which was fundamental to the subsequent decision of Ulster HC - Down CCC lawfully and reasonably invoked its powers to award the game to Castlewellan as per its decision of 8 November 2016. Down CCC also noted that the importance of its role, as with all CCCs, in ensuring the good and smooth administration of GAA fixtures is underpinned by the limits on the right of appeal against its powers to arrange games found in R7.11(e) of the Official Guide (2016).

### **Reasoned Decision**

18. This DRA Tribunal, in line with awards made previously, is of the view that the applicable test for the Tribunal in reviewing this matter is 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] IR 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.”

19. Applying the above test to the matter at hand, and keeping in mind the “heavy burden” on the applicant, the Tribunal in question finds that the decision of the Down CCC of 8 November was irrational and unreasonable given that: (a) the clash appears to have been the result of an (uncorrected) miscommunication in the workings of the Down CCC and not of Kilcoo’s making; (b) its consequences was to create a logistical impossibility for Kilcoo supporters, players and mentors given that the fixtures were at the same time but at different venues and most especially for the 6-8 players who were members of

both the U21 and senior squads; (c) the fact that the Down CCC (and Kilcoo) were bound by the regulations concerning the Down U21 football championship mandating that any postponed game in that championship would have to be played prior to the next round of fixtures (scheduled for 6 November) and (d) alternative dates within a reasonable period of time, the week commencing 14 November, might have been available.

20. For the above reasons, and in line with its jurisdiction (outlined in para 18 above) the Tribunal is of the view that it ought to intervene to quash the Down CCC decision of 8 November on the ground that it was so demonstrably unreasonable as to constitute an “irrationality” or “perversity” on the part of the decision maker (Down CCC).
21. It must be strongly reiterated by this Tribunal that the factual circumstances at hand are one of “limited and rare” occasions mentioned in the *Brady* case above. This was a series of unfortunate events and one unlikely to happen again, given subsequent changes to Down Competition Regulations eliminating league playoffs. It follows that this award is very much distinguished to its facts and, in this sense, of little precedential value beyond its facts. Moreover, the Tribunal fully acknowledges and respects the onerous duty on CCCs, pursuant to their powers under Rule 3.20(ii), to ensure the smooth arrangement of a county’s fixtures for the good of all clubs involved. This is rightly reflected in the restrictions on the right of appeal with regard to the arrangement for the date and venue of games laid down in Rule 7.11(e). Down CCC handle huge amount of fixtures, estimated at 2,500 yearly and do so efficiently. Again, this must be acknowledged as must the point that any possible miscommunication within the Down CCC as to the fixtures clash on the evening on 3 November must be balanced against the apparent failure by the clubs to engage in Regulation 9 resolution of the matter i.e., to agree a re-fixture between themselves.
22. The above notwithstanding, the application by Kilcoo is deemed successful. The decisions of Down CCC of 8 November and Ulster HC of 23 November are quashed, and the Tribunal directs that the matter be remitted to the Down CCC for re-fixing.

#### **Section 11.4 application**

23. On the oral delivery of the above verdict, the applicants applied for the DRA Tribunal at hand to act as the appellate body of last resort on the matter, pursuant to section 11.4 of the Disputes Resolution Code. The respondents agreed. Before a section 11.4 hearing could take place, the Tribunal asked, for a third time, that Down CCC and the respective clubs, as assisted by the Down County Secretary and the DRA Secretary, might consider a period of mediation.

24. The Tribunal adjourned temporarily to facilitate same reminding the parties (Down CCC and the respective clubs) that a section 11.4 hearing is very much a hearing of “last resort” and that in this instance, the fixture of the game, it might be better for the parties within the county to agree to a solution rather than having to ask a DRA Tribunal to impose one on the county. No solution was, however, forthcoming and the DRA Tribunal began a section 11.4 hearing.
25. The section 11.4 decision made by the appointed DRA Tribunal forms the operative part of this award below.

### **Award and Directions**

26. The Tribunal awards in final and binding determination of this dispute, and in line with its power under section 11.4 of the Dispute Resolution Code, that:
- (i) Down CCC provide that the schedule of fixtures for Round 1 of the 2017 Down Division 1 ACFL include a fixture between Kilcoo and Castlewellan, to be held at a neutral venue, and that that fixture shall act both as a 2017 league fixture but also as the final of the 2016 ACFL Div 1;
  - (ii) If the above fixture at (i) ends in a draw, the teams shall be awarded a league point each for the 2017 league and extra time shall be played in order to ascertain the 2016 league winners;
  - (iii) Notwithstanding the outcome of the first meeting between the teams, the second, scheduled 2017 league meeting between the Kilcoo and Castlewellan shall also to be held at a neutral venue and, if necessary, to serve as a replay for the 2016 league if the first meeting (at (i) and (ii)) ends in a draw after extra time;
  - (iv) The gate receipts from both fixtures above shall be shared equally;
  - (v) As this decision is made pursuant to section 11.4 of the Disputes Resolution Code, it cannot be held susceptible to further appeal or review.

### **Costs**

27. No application for costs was made by the applicants.
28. The applicants’ full deposit to be returned by the DRA Secretary on the issuing of this award.
29. The costs associated with the holding of the arbitration to be borne by Down CCC, as calculated by the DRA Secretary.



Date of Oral Hearing: 12 January 2017

Date of Agreed Award: 3 February 2017

**By email agreement on agreed date above**

Pat Purcell

David Curran

Jarlath Burns