

Disputes Resolution Authority

An Córas Eadrána

DRA 20 of 2022: In the matter of an arbitration under the Disputes Resolution Code and the Arbitration Act 2010

Between:

CUMANN LÚTHCLEAS GAEL BARRA RUA - (BARRYROE GAA)
Claimant

v.

ROINN CARBERY CCC - CARBERY GAA CCC
First Named Respondent

And

COISTE BAINISTÍ CLG (CORK COUNTY EXECUTIVE) - CORK GAA
Second Named Respondent

And

TAGHG MAC CARTHAIGH GAA - CAHERAGH GAA
Interested Party

And

ARGIDEEN RANGERS GAA - ARGIDEEN RANGERS GAA
Interested Party

Hearing: 30th August 2022, Virtual

Tribunal: Mr. Rory Mulcahy SC, John Callinan, Jarlath Burns

Secretary to the DRA, Rory Hanniffy BL

VERDICT: The claim is **dismissed**.

KEYWORDS: *Whether local competition rules and regulations, which are in conflict with the Official Guide, are enforceable - R 6.21 (3) and R6.21 (5)(d) TO 2022 and definition of "Rule" App 1 TO 2022.*

Whether the Claimant had a legitimate expectation that the published competition rules and regulations would be followed, even when in conflict with the Official Guide.

Whether the First Respondent had a discretion under R 6.21 (5) (D) to decide which of 3 teams on equal points should prevail

LIST OF REMOTE ATTENDEES:

Claimant

Conrad Murphy - Solicitor
Eoin McCarthy - Chairperson
Richard Murphy - Secretary

First Respondent - Carbery GAA CCC

Carl O'Mahony - Solicitor
Aidan O'Rourke - Chairperson
David Whyte - Vice Chairperson
Tom Lyons - Fixtures Sec / Championship Co-ordinator

Second Respondent - Cork GAA

Marc Sheehan - Chairperson
Pat Horgan - Vice Chairperson
Kevin O'Donovan - Secretary

Interested Party - Taghg Mac Carthaigh GAA

George Gill

Interested Party - Argideen Rangers GAA

Denis O'Leary - Chairperson
Aidan Harte - Secretary
Paul Hurley - Assistant Secretary

FACTUAL BACKGROUND

1. This case concerns the Carbery Junior A Football Championship (“the Championship”) and the interaction between the Rules and Regulations issued by Carbery GAA for that competition and the applicable rules in the Official Guide.
2. In July 2022 Barryroe, Tadhg MacCarthaigh, Argideen Rangers and Bandon were drawn in Roinn 1 of the Carbery Junior A Football Championship. The Championship was to be played on a league basis with the top two in the group going through to the quarter finals of the Championship.
3. On 21 July 2022, Carbery CCC send an email to all clubs in the Competition with the Rules and Regulations for the Carbery Championship 2022 (“the Carbery Rules”). The making of such ‘local’ rules is expressly provided for in the Official Guide (Rule 6.21(3)).
4. The Carbery Rules provided, at Rule 7, that if two or more teams finished level on points in circumstances where one of the teams had been awarded points because an opponent had failed to field a team, then playoffs would be used to finalise the placing.
5. As it transpired, Bandon were not able to field a team for its match against Barryroe on 24 July 2022. Barryroe emailed Carbery CCC seeking clarification that Rule 7 would apply.
6. Carbery CCC responded via email of 1 August 2022 stating that Barryroe would be awarded the points and that the CCC would look at the matter again at the end of the competition to see whether or not scoring difference could be applied.

7. On 4 August 2022, Carbery GAA hold a full board meeting at which, for various reasons, Barryroe were not represented. The issue of Bandon's concession of the Barryroe fixture was discussed. It emerged during this meeting that there was a potential conflict between the Carbery Rules and the Official Guide.
8. In this regard, it is important to note that there had been a change from the Official Guide 2019 to the version in force at the time of the competition. Whereas Rule 6.21(5) of the 2019 version had provided that, in the circumstances referred to above, places would be decided by a playoff, the applicable version of Rule 6.21(5)(d) now stated as follows:

In the event that two teams or more finish with equal points, but have been affected by a disqualification, loss of game on a proven objection, retirement or walk over, the tie shall be decided by the following means:

- (i) Score difference from the games in which only the teams involved, (teams tied on points), have played each other. (subtracting total Scores Against from total Scores For)*
 - (ii) Highest total Scores For, in which only the teams involved have played other, and have finished equal in (i)*
 - (iii) A play off*
9. The Board purported to give plenary powers to Carbery CCC to address the issue if teams ended up on the same points at the end of Roinn 1 of the Championship.
 10. Roinn 1 of the Championship finished with the three teams (all the teams other than Bandon) finishing on equal points. On 15 August 2022, Carbery CCC decided that because Tadhg MacCarthaigh and Argideen Rangers had superior points difference to Barryroe based on games not involving Bandon they would proceed to quarter finals and Barryroe would be placed third in the group,

11. Barryroe appealed this decision to the Cork County Executive, which appeal was heard on 24 August 2022.
12. By decision of 25 August 2022, Cork County Executive rejected the appeal on the basis that Carbery CCC had correctly applied the rules in the Official Guide but noted that in the interest of natural justice and fairness it strongly recommends that Barryrow be re-instated in the competition by means of play off.
13. Any such reinstatement would have required the agreement of the other clubs which apparently was not forthcoming and therefore the initial decision of Carbery CCC stood.
14. The request for arbitration was made on 26 August 2022 by Barryroe.

THE CLAIM

15. Barryroe's complaint is in two parts. Firstly it argues that Carbery CCC failed to follow its own rules in deciding the tie between the three teams on the basis of points difference rather than a play off. It claims that there is no conflict between the Carbery Rules and the Official Guide because Rule 6.21 makes provision for the making of local rules and therefore the local rule - requiring a play off - should have been applied. It says, in any event, that Rule 6.21(5)(d) should not be interpreted as requiring that a tie be decided by scoring difference, but rather that it provided for discretion as to which of the 3 options cited could be applied.
16. In addition, they argue that insofar as Carbery CCC had a discretion as to how to resolve the tie, it should have exercised it in favour of a play off for a number of reasons. Firstly, the Carbery Rules gave rise to a legitimate expectation that that is how it would be resolved. Secondly, the version of the Official Guide on the Carbery website was, at the relevant time, the 2019 version with a version of Rule 6.21 providing for resolution of ties in this scenario by play off. Thirdly,

they had sought clarification prior to their final game and had not been told that the Carbery Rule would not be applied in circumstances where, it became apparent, the Carbery CCC had become aware of what it considered to be a conflict with the Official Guide.

17. Carbery CCC contend that it was required to apply Rule 6.21(5)(d) notwithstanding the content of the Carbery Rules and it had no discretion to order a play off. Although accepting that, on its case, it had erred in providing for a play off in Rule 7 of the Carbery Rules, and that it hadn't, therefore, applied that rule, it disputed Barryroe's claims regarding the clarifications sought and its purported reliance on a legitimate expectation that the Carbery Rules would apply.
18. The Cork Executive also argued that Carbery CCC had no option but to decide the tie by reference to scoring difference, in light of Rule 6.21(5)(d) but notably, in light of the factual dispute between the parties maintained that it had been correct to recommend that in the interests of natural justice, Barryroe be reinstated and the tie resolved by play off. It confirmed that it did not consider that it had the power to order such a resolution and did not identify any basis upon which this tribunal could order such a solution.

DISCUSSION

19. It appears to the Tribunal that the difficult question of how this Tribunal might resolve a factual dispute between parties doesn't arise in this case. Rather the case turns on the question of whether, in fact, Carbery CCC had any discretion regarding how the tie between the three teams required to be resolved. If it had such a discretion, then it seems clear that it erred in failing to address its mind to how that discretion should be exercised and the matter would have to be re-considered by Carbery CCC (and perhaps the Cork Executive) again.

20. However, if it had no such discretion, and correctly concluded that Rule 6.21(5)(d) determined its course of action, then no remedy is available to Barryroe from this Tribunal, bound as we are by the rules in the Official Guide. Of critical importance in this regard is that it wasn't seriously disputed between the parties (if not expressly accepted by Barryroe) that if there was a conflict between the Carbery Rules and the Official Guide, then the Official Guide should prevail. This reflects the definition of "Rule" in Appendix 1 of the Official Guide:

"Rule" shall include, where the context requires, any of the Association's Rules, Bye-Laws and Regulations, the Club Constitution and Rules, as well as Central Council Guidelines, Directives and Codes, all of which shall be enforceable in all respects as if their provisions were embodied in the Official Guide, provided however that should any conflict arise between such provisions and the text of the Official Guide, the text of the Official Guide shall prevail.

21. In those circumstances, the claim comes down to an interpretation of Rule 6.21 and, in particular Rule 6.21(5)(d).
22. The interpretation of Rule 6.21 and, in particular 5(d) thereof is not without its difficulties. Rule 6.21(4) refers to competition committees drawing up all "other" Regulations governing a championship. "Other than what?", one might reasonably ask. Rule 6.21(5) is expressed in mandatory terms. Although this mandatory rule *follows* Rule 6.21(4), this suggests to this Tribunal that the competition committee can draw up Regulations *other than those mandated* by the Official Guide, inter alia, in Rule 6.21(5).
23. So, what does 6.21(5) mandate? Again, the drafting here is not without its difficulties. Sub-rule (c), which sets out the procedure for resolving a tie where no issue of withdrawals or walk overs arise, sets out the mechanisms to be used but explicitly states that they are to be applied "in the order specified". As Barryroe contend, if that is stated in sub-rule (c), its absence from sub-rule (d) must mean that any of the options specified there can be applied, *i.e.* there is a discretion regarding which one to choose.

24. On the other hand, it seems to the Tribunal that if this was what was intended, the three options would be expressed as alternatives by the inclusion of the word “or”. Having considered Rule 6.21 in its totality and in particular, the three mechanisms provided for in 6.21(5)(d) for resolving a tie, we are satisfied that having regard to its purpose and context, the Rule provides that the mechanism are to be applied in the order that they are set out. This is manifest when one considers that the mechanism at (ii) could only be applied having first determined that (i) didn’t resolve the tie.
25. It is, of course, unfortunate, that the Carbery Rules, in providing for a play off in the first instance were at odds with the Official Guide. It is more unfortunate still that when the conflict became apparent to the Carbery Board that they didn’t clarify the issue immediately. If, as it believed and we have concluded, it had no discretion regarding how a tie should be resolved in such a situation, no purpose was served by simply conferring on Carbery CCC the power to decide how to proceed at the end of the competition. There was only one way in which it could proceed, and it should have clarified that at the earliest opportunity.
26. Its failure to do so certainly gave rise to a potential for unfairness and may, indeed, have operated unfairly.
27. Be that as it may, this Tribunal cannot disapply the Rules as we have interpreted them and, in the circumstances, we reject the Claimant’s claim.

DECISION

28. The Claimant’s claim is dismissed.

COSTS AND EXPENSES

29. There was no claim for costs by any party and Carbery CCC agreed to discharge the Tribunal’s expenses. The Tribunal therefore directs that the DRA’s expenses

be discharged by Carbery CCC. The Tribunal further directs that the deposit lodged by the Claimant be reimbursed by the Secretary.

Date of Hearing: 30th August 2022

Date of Agreed Award: 26 November 2022

By email agreement.

Rory Mulcahy SC

John Callinan

Jarlath Burns