

Disputes Resolution Authority

An C6ras Eadr6na

DRA 06 of 2023: In the matter of an arbitration under the Disputes Resolution Code and the Arbitration Act 2010

Between:

PATRICIAN ACADEMY MALLOW

Claimant

v.

MUNSTER COUNCIL

First Named Respondent

And

MUNSTER COUNCIL HEARINGS COMMITTEE

Second Named Respondent

And

MUNSTER COUNCIL POST PRIMARY SCHOOLS CCC

Third Named Respondent

And

ABBEY CBS TIPPERARY TOWN

Interested Party

Hearing: 10 February 2023 - Virtual Hearing

Heard by Secretary to the DRA, Rory Hanniffy

VERDICT: The application for interim relief is refused.

KEYWORDS: *Interim Relief Application - Section 8 DRA Code*

Whether the CCC acted correctly in awarding a game based on the referee's report – R6.43 TO 2022

LIST OF REMOTE ATTENDEES:

Claimant - Patrician Academy Mallow

Pat Heffernan
Eamonn O'Connor
James Delaney

First Respondent – Munster Council

Kieran Leddy

Second Respondent – Munster HC

Willie O'Connor

Third Respondent – Munster PPS CCC

Eoin Ryan

Interested Party – Abbey CBS

John Kiely
Sean Mullins

BACKGROUND:

1. The above hearing concerned an application for interim relief by the Claimant in which it sought an order directing *“That the u19 b Munster Final Abbey CBS v. Mitchelstown CBS fixed for 11/2/2023 at 12:30 PM in Kilmallock does not go ahead pending the outcome of these proceedings”*.
2. The application was facilitated at short notice and in fairness to all concerned, not only were each of the parties represented, the Respondent’s had managed to submit Form 2 Responses together with considerable supporting documentation and precedent decisions.
3. Within the Form 1, the Claimant identified the disputed decision as that dated 31 January 2023. The actual decision of the Third Named Respondent (hereinafter referred to as “the CCC”) is dated 1 February 2023 and I accept this is the decision the Claimant is referring to. The Claimant also identifies the decision of the second named Respondent as the final appeal. While this decision is not specifically listed as one being disputed, the entirety of the written and oral submissions confirm that the Claimant also disputes this decision and again I accept this to be the case. Therefore, the two decisions disputed are those of the CCC dated 1 February 2023 and the Munster Hearings Committee dated 8 February 2023.
4. At the outset, the Claimant conceded that the first named Respondent was not a decision-maker and had not been involved in the processing of this matter. The Claimant’s representative explained that the first named Respondent had been included out of an abundance of caution, fearing that the claim could be lost by not having included the overarching provincial Council. As such, it is accepted that the first named Respondent has no case to answer.
5. At its core, this matter relates to the awarding of the Post Primary Schools U19 B Munster Semi-Final by the CCC. The said fixture was contested by the

Claimant and the Interested Party and in accordance with Rule 6.43 TO 2022 the CCC awarded the game to the Interested Party.

6. It would appear to be accepted by all parties that the CCC made its decision on the basis of the contents of the referee's report. The decision was communicated by way of letter dated 1 February 2023.
7. Prior to making its decision, the Claimant had corresponded with the CCC and requested "an investigation into the awarding of the game". The request for an investigation arose in circumstances where towards the very end of the game, the Claimant contends that it scored a goal which was allowed by the referee. The Claimant further contends that having allowed the goal, the referee then blew the full-time whistle. The referee set out in his report that he had blown the full-time whistle but as he did so, one of his umpires called his attention. The referee indicates that he was advised that one of the Claimant's players had been in the square before the ball was kicked (a square ball) and as such the green flag had not been raised by the umpires. The referee indicates that at that point he gave a free out to the Interested Party and thereafter blew the full-time whistle for the second time. It is accepted that the referee's report recorded the final score as Abbey CBS 1-12 Mallow Patrician Academy 2-08.
8. The Claimant alleged in its Form 1 that the Respondents had breached the following rules of the Official Guide:
Part 2 of the Official Guide
3.1, 3.2 - Rules of Specification, 4.9 (b), 1.1 (iv), 1.2 (i), (v) (vi), (vii), 1.6, 2.2 (i)(d),
Part One of the Official Guide
6.43, 7.10 (h), 7.1

9. In addition to a consideration of the submissions contained within the Form 1 Request for Arbitration and accompanying documentation, and the contents of the Form 2 Responses submitted by the Respondents, oral submissions were received from Mr Eamonn O'Connor and Mr Pat Heffernan on behalf of the Claimant, Mr Eoin Ryan on behalf of the CCC and Mr Willie O'Connor on behalf of the Munster Hearings Committee. Towards the end of the hearing Mr John Kiely made a brief submission on behalf of the Interested Party.

DISCUSSION:

10. Claimants face a significant burden in establishing an entitlement to interim relief. I am required to consider whether a Claimant has established the existence of a serious/fair issue to be tried and whether the balance of convenience lies in favour of the granting of the relief.
11. It seems to me that I must first satisfy myself that the Claimant can establish the existence of a serious/fair issue to be tried or in essence a reasonable prospect of establishing before a Tribunal that the decision of the CCC was infirmed, either by reason of misapplication of rule or a breach of fair procedures. If I am so satisfied, I should then move to a consideration of the balance of convenience.
12. At the heart of this matter, the Claimant takes issue with the awarding of the index game on the basis that the score recorded by the referee was incorrect. It is noteworthy that the Official Guide provides a mechanism for objecting to the awarding of a fixture, that being the Objection procedure provided in rule 7.10.
13. The Claimant accepts that no objection was submitted and by way of explanation for not having done so, Mr O'Connor indicated that the Claimant had not been provided with the referee's report, despite having sought same,

and as such it was not in possession of the necessary information to ground such an objection. While there is some dispute between the parties as to whether the CCC refused to provide the referee's report, I am of the view that the Claimant was well aware on the day of the game that the Interested Party had been deemed the winner of the game and that the disputed goal had not been allowed. The Claimant was also seized of the knowledge that the referee had blown the whistle to conclude the game. Therefore, I do not accept the Claimant required the referee's report in order to submit an objection.

14. Not having done so, the Claimant requested the CCC to conduct an investigation, largely on the basis that the referee had made an error in blowing the full-time whistle, then consulting with his umpires, before awarding a free out and again whistling for full-time.
15. Significantly in my view, the Claimant accepted at the interim hearing that firstly the CCC enjoyed a discretion as to whether or not to carry out an investigation and secondly that it believed the CCC had carried out such an investigation but had not done so correctly. The basis upon which it was alleged the CCC had not done so correctly was that it had not found the referee had breached rule.
16. All of the above discussion somewhat avoids the important question - was the CCC entitled to act as it did in awarding the game.
17. The awarding of a game is governed by Rule 6.43 which sets out

The Award of a Game rests with the Committee or Council-in-Charge acting on the Referee's Report.

Where a Referee fails to submit his Report within a period of 10 days after the Game, the Committee or Council-in-Charge has power to deal with the Facts of the Game on the basis of such evidence as the Committee or Council - in - Charge considers appropriate.

The Committee or Council in Charge may also award a Game based on the outcome of an Objection or Counter-- Objection.

18. It having been accepted that there was no objection submitted by the Claimant, and that the referee had submitted his report, the CCC could only have awarded the game "*acting on the Referee's Report*". As previously indicated, it seems to me the Claimant accepts that the CCC did indeed award the game acting on the Referee's report, but argues that it erred in so doing due to the referee's actions at the conclusion of the game.
19. I am satisfied the report appears to have met the necessary procedural requirements of such a report and furthermore that it sets out a final score of Abbey CBS 1-12 Mallow Patrician Academy 2-08. Therefore, on the face of it, there was a basis upon which the CCC came to the decision that it did.
20. In fairness to the CCC, and presumably on foot of the correspondence received from the Claimant, it appears it did indeed examine the circumstances of the concluding moments of the match and having done so came to the conclusion that no rule had been breached.
21. While it may or may not be the case that the referee made an error in the concluding moments of the game, and I make no finding in this regard, it is not the role of the CCC to re-referee a fixture. The rules are crafted in such a way as to ensure in so far as is possible, that games are officiated on the day and not re-refereed in a committee room on a Monday night. Notwithstanding the foregoing, I am satisfied the CCC did consider the events surrounding the conclusion of the game and were satisfied on their own investigations that no rules had been broken such as would cause them not to accept the contents of the referee's report.
22. It is the Claimant's case that the CCC breached multiple rules (referenced earlier) such that their decision should be quashed by a DRA Tribunal. For the

reasons set out above, I am not satisfied that the Claimant has established a reasonable prospect of establishing before a full Tribunal that the CCC has acted contrary to rule. On the basis that the Claimant's only criticism of the Munster Hearings Committee was that it had not recognised the CCC's errors and allowed their appeal, I am equally not satisfied that the Claimant has established a reasonable prospect of establishing before a full Tribunal that the Munster Hearings Committee has acted contrary to rule or in breach of fair procedures.

23. As indicated to the parties by way of email following the hearing and when confirming the outcome of same, having found that the Claimant had not established the existence of a serious/fair issue to be tried, it was not necessary to embark upon a detailed consideration of the Balance of Convenience test. However, I would again say that it seems to me that while any postponement would by its very nature have caused some disruption, the organisers and participants would have had the capacity to absorb such a disruption.

DECISION:

24. Having taken all of the above into consideration, I am not satisfied there exists a serious/fair issue to be tried such as to merit the granting of the interim relief.

Date of Hearing regarding Interim Relief: 10 February 2023

Date of Decision regarding Interim Relief: 15 February 2023