

Disputes Resolution Authority

An C6ras Eadr6ana

DRA 27 of 2024: In the matter of an arbitration under the Disputes Resolution Code and the Arbitration Act 2010

Between:

NOLLAIG O'DUBHARTAIGH - NOEL DOHERTY

Claimant

v.

KILKENNY COMPETITIONS CONTROL COMMITTEE

First Named Respondent

And

KILKENNY HEARINGS COMMITTEE

Second Named Respondent

And

LEINSTER HEARINGS COMMITTEE

Third Named Respondent

And

LAR CHOISTE ACHOMHAIRC - CENTRAL APPEALS COMMITTEE

Fourth Named Respondent

Hearing: 4th and 12th February 2025, Virtual

Tribunal: Mr. Gareth Robinson BL, Ms Richella Carpenter BL, Mr Declan Hallissey

Secretary to the DRA, Mr Rory Hanniffy

LIST OF REMOTE ATTENDEES:

Claimant

Dr Neville Cox BL
Noel Doherty
Shane Doherty
Willie Dempsey

First Respondent – Kilkenny CCC

Jim Fennelly – Chairperson
Martin Delaney - Secretary

Second Respondent – Kilkenny HC

Aodhan O'Rourke
Eddie Buckley

Third Respondent – Leinster Hearings Committee

John Byrne

Respondent 4 – CAC

Brian Rennick

FACTUAL BACKGROUND

1. On the 19th September 2024, the Claimant was found by the Kilkenny Hearings Committee to have committed a Category II offence of using abusive language to a referee and was suspended, pursuant to Rule 7.3 (3) T.O for a period of 4 weeks.
2. There then followed a further disciplinary process arising from an allegation that the Claimant had acted as a team mentor for Thomastown on the 28th of September 2004 whilst serving the aforementioned term of suspension. This matter was subsequently heard by Kilkenny Hearings Committee on the 17th of October 2024 and the Claimant was found to have so acted. Thereafter, Kilkenny Hearings Committee imposed a 24-week suspension upon the Claimant.
3. The Claimant, through the Secretary of Thomastown GAA, submitted an Appeal of this Decision to Leinster Hearings Committee. By way of decision dated 22nd October 2024, Leinster Hearings Committee determined that the Appeal was out of order in circumstances where the Notice of Appeal had not been signed by the Claimant as is required by Rule 7.5 (g).
4. On 24th October 2024, Kilkenny Hearings Committee received a further appeal from the Claimant in respect of the decision of the Kilkenny Hearings Committee, and by way of response dated 25 October 2024, Leinster Hearings Committee referred to its earlier decision dated 22nd October 2024 to rule the appeal out of order and further indicated that the second appeal dated 23rd October 2024, failed to comply with R7.5(f) TO insofar as same was not received within three days from the date and time of notification of decision.
5. The Claimant then submitted an Appeal to CAC against the decision of Leinster Hearings Committee dated 22nd October 2024 which had ruled his Appeal out of

order. The CAC in rejecting the appeal held that Leinster Hearings Committee had not erred in ruling that the Claimant's Appeal as lodged was not in compliance with the provisions of Rule 7.5 (g). The date of the CAC decision is identified by the Claimant in his Form 1 as being 16th November 2024, while the CAC refers to it being dated 24th November 2024, while the decision itself (page 193 of the Booklet of documents) would appear to be dated 2nd November 2024. Notwithstanding same, it is common case that the decision arises from the hearing which took place before the CAC on 13th November 2024, and for ease of reference will simply be referred to as the decision of the CAC.

PRELIMINARY:

6. Mr Rennick submitted as a preliminary point on behalf of the CAC, that the DRA's jurisdiction in respect of this matter was curtailed to an examination in the first instance of the CAC decision and that if the DRA found that the CAC had erred in some way, the DRA could then examine the decision of Leinster Hearings Committee which had been appealed to the CAC, that being the decision dated 22nd October 2024. Again, if that decision was found by the DRA to be infirmed and was quashed, the Tribunal would be required to remit the matter back to Leinster Hearings Committee for them to conduct the appeal.
7. In response, Mr Cox on behalf of the Claimant contended that the DRA had jurisdiction to review each of the decisions from the inception of the disciplinary process by Kilkenny CCC up and including that of the CAC. In support of this submission, the Claimant contended that the process had been flawed from the outset for among other reasons, the failure by Kilkenny CCC to serve the Notice of Disciplinary Action upon the Claimant's own club, Galmoy GAA.
8. The Tribunal took some time to consider this initial submission and was satisfied that it was confined in its jurisdiction to an examination of the decision of the CAC dated 16th November 2024, which was an appeal of the decision of Leinster

Hearings Committee dated 22nd October 2024 only. Should the Tribunal find the CAC had erred in some way, the Tribunal would examine the decision of Leinster Hearings Committee dated 22nd October 2024.

DISCUSSION:

9. The Disputes Resolution Authority derives its jurisdiction from clause 7.13 TO – Cuid 1. It is an Arbitration Clause and provides at clause 7.13 (d) that:

“No member or unit of the Association shall refer such Dispute to Dispute Resolution until all avenues of Appeal under the Rules of the Association have been exhausted”

10. The prerequisite is echoed in clause 2.1 of the Disputes Resolution Code. Clause 2.1 (e) provides the following:

“Any party to a dispute governed by this Code who seeks a determination (“the Claimant”) must submit to the Secretary of the Disputes Resolution Authority a written request for dispute resolution proceedings (“the Claim”) containing the following details:

.....

(e) Confirmation that all available avenues of appeal under the Official Guide have been exhausted,”

And clause 2.2 of the Disputes Resolution Code provides:-

“The Claim shall be notified to the Secretary of the Disputes Resolution Authority as soon as possible after all available appeals within the Rules have been completed, and in the event within 7 days of the last decision, and no Claim shall be entertained after that date, unless the Secretary is satisfied that there is good reason for extending time.”

11. Clause 7.11 (a) of An Treoir Oifigiuil – Cuid 1 provides

“Subject to Rule 7.11 (d) and (e) below, Member or Unit directly involved in any decision made by a Council, Committee-in-Charge or County/Provincial Convention (the decision maker) shall have the right of one Appeal (and one Appeal against a rejection of an Appeal for non-compliance with formalities) as follows:

...

(2) In respect of decisions of a County Committee or a Sub-Committee formed under Rule 3.20 exercising plenary powers, to the Provincial Hearings Committee”

DECISION

12. The Tribunal is satisfied that the only decision appealed to the CAC was that of Leinster Hearings Committee dated 22nd October 2024, to rule the appeal to them out of order for non-compliance with R 7.5(g).

The Tribunal is also satisfied that the Claimant had not appealed the decision of Leinster Hearings Committee dated 25th October 2024 to treat the second appeal received on 24th October 2024 as out of order for non-compliance with R 7.5(f). As the Claimant had not appealed this decision, he had failed to exhaust all avenues of appeal in respect of same and was precluded from raising same before the DRA.

13. The Tribunal finds that the Claimant has exhausted the entirety of the remedies available to him in this matter insofar as the decision of Leinster Hearings Committee dated 22nd October 2024 is concerned. The Claimant appealed from Leinster Hearings Committee to the Central Appeals Committee and the grounds of appeal as summarised in the decision of the CAC were as follows

Rule 7.5 Official Guide Part 1- Appeals – Right of Appeal

“The Appellant made an honest error in the application of Rule 7.5 whereby the secretary of Thomastown GAA signed the request for appeal and not the Appellant

Code 5.3(e) - Signatures

"The Appellant submitted that the effect of Code 5.3 (e) is that the Request of Appeal as sent by email is deemed to have been signed by him once his name was included in the email and that it was clear from the content of the email that it was his appeal.

14. Having considered the appeal, the CAC ruled that there had been no breach or infringement of the rule by the Leinster Hearings Committee, and that Leinster Hearings Committee had dealt with this matter appropriately.
15. The Tribunal finds that its role with regard to this matter is limited to reviewing the appropriateness of the decision-making process. With regards to *DRA 14 of 2017, Tadhg De Burca -v- CAC and CHC* , and in particular to paragraphs 22 and 23.

"22. The role of the CAC is more limited than that of the CHC. It may only interfere with a finding of fact made by the CHC if satisfied that is "manifestly incorrect". Moreover, it could only uphold an appeal where satisfied that there had been a clear infringement or misinterpretation of the Rules by the CHC, or where an appellant's right to a fair hearing had been compromised to such extent that a clear injustice had been done."

16. The Tribunal finds that the function of the CAC in hearing the Appeal was to assess the Appeal in terms of the Grounds of Appeal submitted which were limited to an alleged infringement or misapplication of Rule 7.5 and Code 5.3 (e). The CAC was further required to review the lawfulness of the decision made by the Leinster Hearings Committee.
17. The Tribunal finds that the CAC acted appropriately, and in accordance with the rules of the Association in considering the grounds of appeal as submitted by the Claimant, hearing the submissions of all parties and finding as it did that there had been no breach or infringement of Rule 7.5 (g) of T.O. or Code 5.3 (e) by the Leinster Hearings Committee. The Tribunal is satisfied that such a finding was open to the CAC.

18. The CAC having considered all grounds and having satisfied itself that there had been no infringement or misapplication of the Rule on the part of Leinster Hearings Committee was entitled to dismiss the Claimant's Appeal.

CONCLUSION AND DETERMINATION

19. The claim is dismissed.

COSTS AND EXPENSES

20. The Tribunal directs that the expenses of the Tribunal be discharged by the Claimant from the deposit lodged. The Tribunal further directs that any surplus held by the secretary in respect of this claim be reimbursed to the Claimant.

Date of Hearings: 4th and 12th February, 2025

Date of Agreed Award: 3rd March 2025

By email agreement on agreed date above.

Gareth Robinson BL, Chairperson

Richella Carpenter BL

Declan Hallissey