

**IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES OF SPORT RESOLUTIONS (“THE RULES”)**

**AND IN THE MATTER OF AN ARBITRATION AGREEMENT DATED 13 AUGUST 2020 (“THE ARBITRATION AGREEMENT”)**

**AND IN THE MATTER OF THE ARBITRATION ACT 1996**

Before:

Nicholas Stewart QC (Sole arbitrator)

**BETWEEN:**

**Donaghadee Football Club**

**Applicant**

and

**Irish Football Association**

**Respondent**

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**DECISION ON APPLICANT’S SECTION 57 APPLICATION**

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**Introduction: The arbitration and award**

1. On 20 September 2020 I delivered my award in this arbitration (“the Award”). The Award was made on an appeal by the applicant Donaghadee Football Club (“**DFC**”) against a decision of

the IFA Appeals Committee made on 15 July 2020 (“the **July Decision**”). The appeal was resolved as an arbitration, by a written arbitration agreement dated 13 August 2020 which expressly made it subject to the Arbitration Act 1996 (save where varied, but there were no variations relevant to this application).

2. The July Decision was itself made on appeal by DFC against a decision of the Northern Amateur Football League (“the **NAFL**”) made by its League Management Committee on 7 May 2020 (“the **LMC Decision**”). It upheld the LMC Decision on all the points of challenge by DFC. References to the “appeal” in the rest of this decision are to the appeal against the July Decision by this arbitration.
3. The Award upheld the July Decision. Paragraph 115 of the Award stated: “All the applicant DFC’s claims for relief are dismissed”.

#### **This application under section 57 of the Arbitration Act 1996**

4. On 5 October 2020 the applicant Donaghadee Football Club (“**DFC**”) submitted a written application under section 57(3) of the Arbitration Act 1996. Section 57(3) states:

The Tribunal may on its own initiative or on the application of a party –

- (a) correct an award so as to remove any clerical mistake or error arising from an accidental slip or omission or clarify or remove any ambiguity in the award, or
- (b) make an additional award in respect of any claim (including a claim for interest or costs) which was presented to the tribunal but was not dealt with in the award.

5. The application is for an additional award under paragraph (b), alternatively for correction of the Award under paragraph (a).
6. As required by section 57(3), the respondent The Irish Football Association (“the **IFA**”) was given the opportunity of making representations, which it did by a written submission dated 23 October 2020.

7. To avoid the need for extensive quotation from the Award, this decision on the section 57(3) application is to be read together with the Award.

### **The section 57(3)(b) application**

8. I deal first with the application for an additional award under section 57(3)(b), as that appears to be DFC's primary application.
9. DFC, represented by Mr Jamie Bryson as it has been throughout this arbitration, says that the Award failed to deal with a claim contained in ground 1(ii) of its appeal.
10. That ground relates to part (b) of the LMC Decision made on 7 May 2020:

The committee acknowledges as of the 7<sup>th</sup> March 2020 when the last matches were played Rosemount Rec had completed their league programme and had obtained 64 points, a number no other club could attain. It is agreed that if season 2020-21 is possible that Rosemount Rec should play in Section 1B and at the end of the season that the bottom three teams will be relegated with two teams promoted from Section 1C.

11. In the appeal, DFC challenged both elements of that decision: the promotion of Rosemount Rec to Section 1B and the relegation of the bottom three teams at the end of the 2020-21 season. This section 57 application is only directed to the decision about relegation ("the **Relegation Decision**").
12. There were four main grounds of appeal, with sub-grounds. Ground 1 had two parts, summarised as:

**Ground 1(i):** The LMC was elected only for the season 2019-20 and could not exercise powers in relation to the conclusion of the 2020-21 season

**Ground 1(ii):** The LMS-LMC had pre-emptively made decisions which could only properly be made at the conclusion of the 2020-21 season.

13. The essential point on Ground 1(i) was DFC's contention that an LMC could not validly make a decision on a matter which would only arise after the annual election of a new committee under the NAFL rules. DFC's accepts the Award's rejection of that Ground 1(i).
14. It is Ground 1(ii) which is the basis of this application. The formulation of that ground in paragraph 12 above reflects the heading to this ground in DFC's statement of claim in the arbitration. It was developed in paragraphs 31 to 38 of the statement of claim and in DFC's further written submissions dated 8 September 2020.
15. Ground 1(ii) included the same DFC objection as in Ground 1(i), as mentioned in paragraph 13 above. On this application, DFC accepts that this particular objection was dealt with, so it is not the basis of its section 57 application.
16. The thrust of DFC's complaint on this application is that Ground 1(ii) had a second limb which was not dealt with in the Award. That second limb was that even if the LMC did have power to make decisions with effect beyond its annual term of office, under the NAFL rules it had no power anyway to make the Relegation Decision. In particular, DFC say that the LMC could not validly use NAFL rule 19 to make the Relegation Decision, so as to override specific provisions in rules 7 and 8 which would come into play at the end of the 2020-21 decision. The Award's decision on ground 2 did deal with the validity of the LMC's use of rule 19 rather than rules 7 and 8. DFC accepts that but says that the Award did not deal with that question in relation to the Relegation Decision.
17. DFC's submissions cite *Cadogan v Turner* [2013] 1 Lloyds Rep 63; All ER 125, where in relation to section 57(3)(b) Hamblen J said, at paragraph 43:

"A claim is "dealt with" in an award if it has been finally determined by it. Although the dispositive part of the award is likely to be the most important part of the award for the purpose of considering that issue, where, as is almost invariably the case, the written reasons form part of the award, the whole of the award needs to be considered, and the dispositive part of the award considered in the context of the written reasons."

18. That is clearly correct and I follow that guidance here. It is clearly supported by Eder J in the other authority cited by Mr Bryson, for DFC: *Union Marine Classification Services v The*

*Government of the Union of Comoros* [2015] EWHC 508 (Comm), particularly paragraphs 27 to 31.

19. Guidance is also to be gathered from the two further authorities cited in the IFA's submission on this application: *Torch Offshore LLC v Cable Shipping Inc* [2004] EWHC 787 (Comm) and *Gracie v Rose* [2019] EWHC 1176 (Ch). In paragraph 27 of his judgment in *Torch*, Cooke J said:

In my judgment section 57(3)(b), which uses the word "claim", only applies to a claim which has been presented to a Tribunal but has not been dealt with, as opposed to an issue which remains undetermined, as part of a claim. It is noteworthy that the terms of section 57(3)(b) differ from the terms of section 68(2)(d) in the language used. I consider that the terms of section 57(3)(b) are **apt to refer to a head of claim for damages or some other remedy (including specifically claims for interest or costs) but not to an issue which is part of the process by which a decision is arrived at on one of those claims.**

The short passage highlighted here in bold was cited with approval in *Gracie v Rose*, at paragraph 32.

20. That distinction between "claim" and "issue" is pertinent here. Applying the guidance cited in paragraph 17 above, I consider the whole of the Award and not just the blanket dismissal of all DFC's claims by paragraph 115 of the Award.
21. The claim for setting aside part (b) of the LMC Decision was unequivocally rejected by paragraph 46 of the Award. The rejection of all claims in paragraph 115 obviously includes that claim but paragraph 46 on its own is a clear enough decision on that claim. The fact that paragraph 46 did not mention the two limbs of the argument in support of the claim does not make it any less an unequivocal rejection of the claim. It is a claim which has therefore been dealt with for the purposes of section 57(3)(b).
22. On reading the Award again, I do acknowledge that the two limbs of that argument could have been explicitly and separately addressed in the Award. However, it should not be inferred that the second limb was not fully considered and it does not affect the outcome of this application anyway.

### **The section 57(3)(a) application**

23. Although the application under section 57(3)(a) has some ring of a makeweight, I must and do give it proper consideration.
24. I can nevertheless state my conclusion in brief terms. The fact that the second limb of the argument under ground 1(ii) was not explicitly addressed in the Award is not a matter falling under any of the categories in section 57(3)(a). In particular, there was an unambiguous rejection of the challenge to part (b) of the LMC Decision, including the Relegation Decision.

### **Conclusions**

25. DFC's submissions on this application have gone into the merits of the second limb of its argument under ground 1(ii) of its appeal. The IFA's submissions did not, but argued that there were neither grounds for an additional award under section 57(3)(b) nor a correction under section 57(3)(a).
26. I accept the IFA's submission that I have no jurisdiction or power to take any step under section 57(3) in relation to the Award.
27. I therefore dismiss the whole of this application by DFC under section 57 of the Arbitration Act 1996.
28. While I have said in paragraph 7 above that this decision is to be read together with the Award, the converse does not apply. This decision is not a supplement to the Award, which continues to stand on its own as the full decision in this arbitration.

### **Costs**

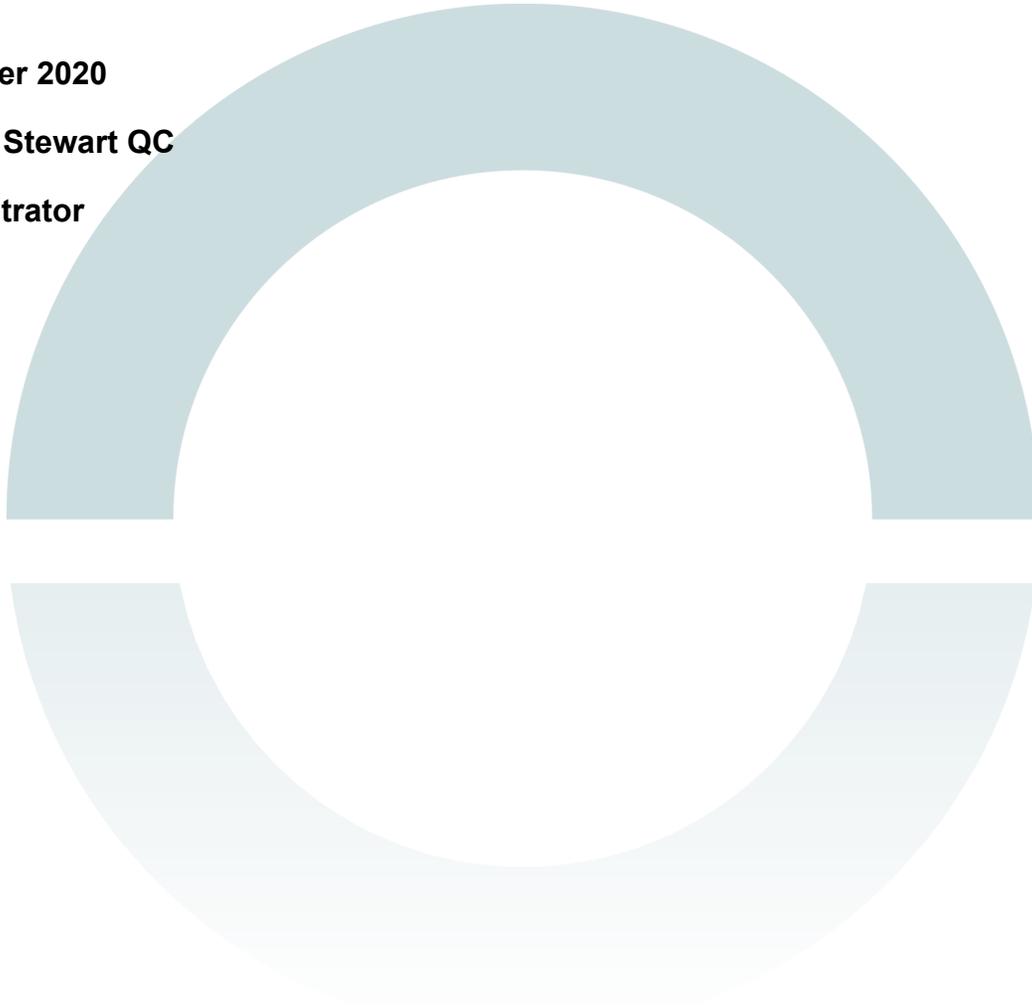
29. If either party wishes to make any application in relation to the costs of this application, it must do so in writing with seven days after the communication of this decision by Sport Resolutions to the parties. I shall consider for any further directions in the light of any such submissions received.



**29 October 2020**

**Nicholas Stewart QC**

**Sole Arbitrator**



1 Salisbury Square London EC4Y 8AE [resolve@sportresolutions.co.uk](mailto:resolve@sportresolutions.co.uk) 020 7036 1966

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