

Disputes **R**esolution **A**uthority

An Córas Eadrána

Record No: DRA/4/2005

Between:

RYAN MC MENAMIN

Claimant

-and-

CONCHÚR Ó hÓGÁIN
(mar ionadaí ar son an Lár Choiste Smachta)

Respondent

DECISION

This is a claim by Ryan McMenamin against the ruling of the Central Disciplinary Committee suspending him from playing for four weeks to date from the 23rd July 2005 in respect of an incident in the Ulster Football Final played on that date between his team, Tyrone, and Armagh. Mr. McMenmin formulated his claim as follows:

“On Wednesday 3rd August I was suspended for a period of four weeks by the CDC for dangerous play, on the basis of video evidence of the replay of the Ulster Football Final (23rd July). The referee dealt with the incident during the match by awarding a free against me and issuing a yellow card.”

He then referred to the following rules:

1. Official Guide (Part 2) Rule 1 Section 1.1, page 14 (2003)
2. Official Guide (Part 2) Rule 4 Sections 5.8, page 66 (2003)
3. Official Guide (Part 1) Rule 149 (c) (2003) page 99
4. CDC Policy item (5) minutes of 30-06-05”

Mr. McMenamin appealed to the Central Appeals Committee which disallowed his appeal on 5th August 2005 holding that there was not proof that the Central Disciplinary Committee had erred or misapplied any rule.

The Authority decided to hear an application for interim relief on 6th August 2005 pursuant to Section 8 of the Disputes Resolution Code although the Respondent was prepared to have the entire matter disposed of at that time. We held then that interim relief should not be granted on the basis that a prima facie case was not then made out to our satisfaction because to so hold would in effect be to say that video evidence could be used to exonerate players but could not be used to reach a decision contrary to that of the referee in other circumstances.

“Implementing the Disputes Resolution Code of the GAA”

At this plenary hearing we have, for course, heard fuller submissions.

What is left for resolution is whether there is any contradiction or inconsistency to be found in the Rules. Also, assuming the CDC had jurisdiction to deal with the matter should it have interfered with the referee's decision unless it was demonstrated that he had acted in a totally unreasonable manner.

There was an agreement between the parties as to the applicable Rules and the course of events.

We are satisfied that the CDC acted in accordance with the correct procedures in relation to giving the Claimant proper notice of the proposed charge and the course that the hearing took.

The matter of the use of video evidence appears at Rule 149 (c) of the Official Guide 2003 where it states "the Committee or Council in Charge may have recourse to video evidence at its discretion, but it shall not be used in relation to the result of a game".

At the meeting of the Ard-Chomhairle on the 17th August 2002 the following appears: "Use of Video Evidence" An tUachtarán said that An Coiste Bainistí was proposing that where video evidence showed a player had deserved a red card rather than a yellow card, that the player could be charged with the more serious offence. He said that it would be necessary to look at a method of having a subcommittee deal with this issue from a legal point of view and that aspects of the matter would be dealt with by An Coiste Bainistí at its next meeting. The principle involved was approved by Ard-Chomhairle".

By this ruling, as Mr. Logan submits, the Association was in effect saying that they would have to proceed on an amber light, so to speak, in relation to empowering a Committee to change a finding of conduct meriting a yellow card to one meriting a red card.

In fact, we were told, that no legal advice was sought in relation to this matter (the legal advice we take it, would be simply on how best to express the matters in the Rules; not that there was any doubt the Association could act in the matter). What happened next was that the Sub Committee on Disciplinary Rules and Procedures under the chairmanship of Padraic Duffy issued its report on 24th February 2003. Both parties referred to this as "the Duffy Report". We quote from Appendix 1:

" 1. Use of Video Evidence

The Subcommittee recommends the following revision to the Guidelines on the use of Video Evidence:

Key Relevant Rules
Riail 149 T.O. 2001: Evidence

The Committee or Council in Charge may have recourse to video evidence at its discretion, but it shall not be used in relation to the result of a game.

Riail 1.1 Rules of Control

"Implementing the Disputes Resolution Code of the GAA"

The Referee's decision on any question of fact and in regard to time shall be final.

Governing Factors

- (1) Video evidence shall not be admissible to review the decision of a Referee where the decision relates to the allowance or disallowance of a score or award of a free or the playing time allowed by the Referee.
- (2) Video evidence shall be relevant, authentic and unedited. The Committee or Council in Charge shall be satisfied that the video evidence is relevant to the matter under consideration/investigation
- (3) Where a Committee or Council in Charge decides to use video evidence, such evidence shall be made available to any affected party.

Operational Principles

- (1) A committee or Council in Charge may use video evidence to substantiate/complement/clarify what is contained in a Referees Report.
- (2) A Committee or Council in Charge or Investigating Committee may use video evidence to formulate and prefer charges in relation to alleged offences not contained in a Referee's Report.
- (3) Where a member or unit requests permission to use video evidence in any proceedings, the member or unit shall make such request in writing to the Committee or Council in Charge in advance of the date of hearing, stating the reason(s) for such request and specifying the source of the video evidence.

The Subcommittee further recommends that where the Games' Administration Committee of the Central Council proposes to use video evidence to determine whether a charge should be initiated against a member or unit, it shall appoint a Subcommittee from within its membership to view the video and establish whether a prima facie case exists. The Subcommittee shall report its findings to the parent Committee and take no further part in the disciplinary process."

We next refer to the authority of the Ard-Chomhairle which is contained in Rule 83 (b) and provides as follows:

"It is the final authority to interpret the Rules. It may also issue guidelines and directives to its units and members to assist with their compliance of Rule."

On the 30th June 2005 the CDC resolved as a matter of policy that An Lár Choiste Smachta have agreed the following as a matter of policy:

"That it would investigate incidents warranting suspension which had not been dealt with by match officials, but for which authentic evidence exists."

We are prepared to accept (and it was not argued to the contrary) that the procedures were in place for the acceptance of video evidence.

Was there was any contradiction one Rule with another?

The first Rule that has to be considered is Rule 1 of the Rules of Control which provides that the referee's decision on any question of fact and in regard to time shall be final. Both sides accept that there must be exceptions to this Rule. It is accepted that video evidence may be admissible to exonerate a player of an offence. Natural justice requires this. Further, it is clear that video evidence is admissible in relation to an incident that the referee has not seen or reported on.

The central question is: Can video evidence be used to substitute a red card offence for one that the referee thought had merited a yellow card only?

We return to the Duffy Report. It is accepted that a Committee may use video evidence to substantiate/complement/clarify what is contained the referee's report. But it does not say that it may be used to vary or contradict what is contained in the referee's report. A Committee may use video evidence to formulate and prefer charges in relation to alleged offences not contained in a referees report. But there was reference to an offence in the referee's report in this case: the referee deemed that it merited only a yellow card, not a red card. Mr. Ó Scanaill contended that the red card offence was really a separate, different offence. But if the Committee intended to implement this matter of giving a Committee power to change a yellow card to a red card, should it not have been provided for explicit terms as Mr. Logan contends? At best, the provision is ambiguous and any ambiguity must be resolved in favour of the Claimant.

In the circumstances, we do not have to deal with the submissions that were addressed to us to say that unless the referee's decision was shown to be totally unreasonable it should not be reversed we decide the matter on the jurisdictional point; we find that the CDC did not have the requisite jurisdiction to change the referee's ruling from a yellow card to a red card.

The decision of the Authority is to say that the suspension imposed should be rescinded.

This decision is unanimous.

Dated the 11th day of August 2005

Hugh O'Flaherty
Aaron Shearer
Declan Hallissey