

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

An Córas Eadrána

IN THE MATTER OF THE ARBITRATION ACTS 1954 and 1980

**Record No.
DRA/13,14,15/2007**

Between:

**Donal Og O’Ciosog
Diarmuid O’Suilleabhain
Sean Og O’hAilpin**

Claimants

-and-

**Antoin Mac Shiurthain
(mar ionadaí ar son Central Appeals Committee)**

Respondent

DECISION AND AWARD

1. This is a hearing into three requests for arbitration from the above-named Claimants. All three are challenging the legality of the Central Appeals Committee’s (CAC’s) decision made on 15 June 2007 to uphold the earlier decision of the Central Hearing Committee’s (CHC’s) decision to suspend the three players for a period of four weeks for an infringement of Rule 143(b) of the Official Guide – “contributing to a melee.”
2. Contributing to a melee is a Category II Infraction, being the lowest level of infraction other than a Category I infraction which relates solely to being ordered off for a second cautionable infraction, *i.e.* two yellow cards.

3. Having regard to the urgent nature of the matter, with Cork's involvement in an inter-county championship match tomorrow, 17 June 2007, and considering that the decision of the CAC was only made last night, the Tribunal agreed to abridge the time for the service of notices pursuant to section 7.4 of the Dispute Resolution Code, and the claims were thus deemed to be properly before the Tribunal.
4. The claim by the three players is that the decision of the CAC was illegal on the basis that no reasonable committee could have arrived at such a decision. In the case of Mr O'hAilpin only there is a further claim that the video evidence considered by the CAC in upholding his suspension should not have been admitted since it was not reliable and unedited within the meaning of Rule 144(z)(iii)(b) of the Official Guide.
5. Submissions were received as to the scope of the Tribunal's jurisdiction to consider these claims. Mr Fenelon on behalf of the CAC reminded us that the role of this Tribunal is to review the legality of decisions made by units of the Association, and that we were not an appellate body. He contended therefore that we should not view the video evidence which had been considered by the CAC as this would involve the Tribunal in an appellate function. Mr Murphy on behalf of the three claimants argued that the decision was irrational and that if we saw the video and heard the players' evidence we would be in position to determine this for ourselves.
6. It seems to us that an argument that the decision of the CAC was irrational is, in effect, an argument that there was no material/evidence before the CAC upon which it could reasonably have based a decision to uphold the suspensions. In order to determine that question, it was necessary for us to examine the evidence which was considered by the CAC and we thus agreed to view the video evidence together with the submissions and explanations made of same by the three

players. We also heard from Mr Sean O’Laoire, Secretary of the CHC, in relation to the submissions made to the CAC.

7. We note that another case arising out of the same incident is currently pending before the CAC, and therefore we must necessarily be circumspect in discussing the evidence which we heard and viewed.
8. The decision of the CHC was that, pursuant to Rule 144(aa) the infraction charged against the three players was more likely to have occurred than not to have occurred. The CAC’s function in considering that decision pursuant to Rule 152(m) was not a full appellate function. Rather the CAC was required to uphold the decision of the CHC unless there had been a clear infringement or misapplication of Rule by the CHC or the claimant’s right to a fair hearing had been compromised to such an extent that a clear injustice had occurred. The CAC had no power to set aside the decision of the CHC unless that decision was shown to be “manifestly incorrect.” It should be noted that none of the three claimants has made any claim as to the absence of fair procedures.
9. The CAC then has limited scope to review the decision of the CHC and this Tribunal must consider its decision in that context.
10. The offence of contributing to a melee is, we have heard, a new offence in the GAA Official Guide. What constitutes “contributing to” a melee is not defined, and the parties have shown a marked reluctance to try and define the rule’s scope. This Tribunal must give some consideration to what is meant by “contributing to a melee” in order to determine whether it was rational for the CAC to determine that the CHC had not been manifestly incorrect in finding that the players were more likely than not to have infringed the rule.
11. In the absence of some special meaning being attributed to the expression ‘contributing to a melee’ the words must be given their ordinary meaning. Clearly

therefore the offence can cover a multitude and that seems to have been the intention of the Association in enacting the new rule. Moreover the expression must, if it is to have any meaning, be capable of referring to matters not otherwise encompassed within Category II – V offences, such as striking or attempting to strike with a hurley, arm, elbow or knee. Also, we must have regard to the fact that an infraction of the rule is the lowest form of infraction provided for in the rules not related to the issuing of yellow cards.

12. Mr Murphy has referred to the jurisdiction of this Tribunal to issue decisions defining the meaning of Rules of the Association, and has invited us to do so here. However, it seems to us that having regard to the urgent nature of this hearing, and the requirement for a decision to be delivered as a matter of urgency, the fact that the parties have not been in a position to make submissions on the meaning of the Rule, and the fact that these claims involve a challenge to the rationality of a decision of the CAC rather than a decision on the Rule itself, it does not seem to us appropriate to offer a definition of what constitutes ‘contributing to a melee’ or to consider its meaning beyond the extent necessary to determine these claims.
13. The three players have explained their roles in the incident which occurred on 27 May 2007 prior to the Munster Senior Hurling Championship match between Cork and Clare with reference to the video evidence. All three have described themselves as non-aggressors, and we have not been told whether the CHC, or for that matter the CAC, accepted or rejected that evidence. The players have each argued, and in particular Donal Og O’Ciosog and Sean Og O’hAilpin, that on the basis of the video evidence which we have reviewed, it was not logical that they have been charged while others, identifiable on the video, were not. There is some force to this argument.
14. We are told that the CHC reviewed the video evidence which we have seen and heard the submissions of the players, and considered that the three players were more likely than not to have contributed to the melee. On the basis of the evidence

- given by the players, the determination by the CHC that all 3 players contributed to the melee seems based on a very broad definition of “contribute to” and is an application of Rule 143(b) which places a very significant onus on players if and when such a situation arises.
15. However, the CAC are required to ask whether the CHC were manifestly incorrect in so deciding, and they formed that view that they were not manifestly incorrect, and therefore upheld the suspensions. And we cannot say that that decision was irrational. It was not for the CAC to simply substitute its views for those of the CHC, even had it wished to do so, still less is it our role to substitute our views.
 16. With regard to the claim by Mr O’hAilpin that the video evidence relied on by the CAC was in his case not reliable and unedited within the meaning of Rule 144(z)(iii)(b), it seems to us that ‘edited’ in this context means edited so as to be misrepresentative. Mr O’hAilpin has explained to us his involvement in the scenes shown on the video extract, and in this regard, the video evidence is not at odds with his explanation. If viewed outside the context of Mr O’hAilpin’s evidence, the extract could be considered to misrepresent his level of culpability, but taken together with his evidence, the extract seems to us to be reliable, and the fact that it was an extract does not appear to have been prejudicial to him.
 17. While fully acknowledging the genuineness and sincerity of the three players, it seems to us that the CAC acted within jurisdiction in upholding the decision of the CHC.
 18. For the foregoing reasons, the Claims of all three Claimants are refused.

Dated 16 June 2007 at the Montague Hotel, Portlaoise.

Andy Smith

Eddie Keher

Rory Mulcahy