

**AN CORAS EADRANA
DISPUTES RESOLUTION AUTHORITY**

**IN THE MATTER OF THE ARBITRATION ACT 2010 AND IN THE MATTER OF
THE DISPUTES RESOLUTION CODE**

CLG Turloch Mor

CLAIMANT

**Choiste Cheannais Na gComortaisi na Gaillimhe &
Cosite Eisteachta Chonnacht**

RESPONDENTS

DECISION

BACKGROUND

This is a second appeal before this Tribunal by the Claimants concerning a sanction imposed on them by the first named respondents (and reaffirmed by the second named respondents) in respect of a game between them and CLG Beagh on the 14th September 2014 in the Galway Senior Hurling Championship. The CCC original decision on the 2nd October 2014 was that the claimant's forfeit that game as a result of fielding an ineligible player. This was subsequently upheld on appeal by the PHC.

When this matter came before the Tribunal (DRA 13/2014) on the 11th October 2014 the unanimous decision on that day was to quash the decision of Galway CCC made on the 2nd October 2014 and 'remit the matter back for reprocessing...under Rule 7.4(a) and (b)'. As a consequence the decision of the PHC made on the 8th October 2014 was also quashed.

Subsequent to that decision, a newly appointed 'temporary' CCC was appointed to investigate the matter which ultimately resulted in a final decision being made by them on the 25th October 2014.

The decision by that ‘temporary’ CCC on that date was:-

“Cumann Turloch Mor forfeit the game in question played on the 14.09.2014 v Cumann Beithe without award of game to Cumann Beithe Ref. 7.4 (b) Treorai Oifigiuil 2014. Consequently this changes the final Group C placings of the Gaillimh Senior Hurling Championship 2014 i.e. Cumann Beithe are now in second place on three points and Cumann Turloch More are on two points”.

The Claimants appealed that decision to the PHC who on the 3rd November 2014 decided, following a hearing that the *‘Appeal not upheld Pursuant to Rule 7.11(o) (1) No clear infringement or misapplication of Rule by Galway CCC (Temporary) (2) Right of TM to a fair hearing was not compromised.’*

The Claimant then appealed to the Disputes Resolution Authority which heard the matter on the 17th November 2014 at Mullingar, County Westmeath.

CLAIMANT’S SUBMISSIONS

The claimants were represented by Mr. Phillip Ryan, Solicitor (Partner) of MacSweeney & Company Solicitors, Galway. The claimant’s submissions revolve around a number of net issues as follows:

1. The Decision of the CCC made on the 25th October 2014

Mr. Ryan stated that the CCC breached his client’s right to fair procedures and misinterpreted the Rules in its decision on the 25th October 2014. He stated that the decision made was vague particularly in relation to the Rule it was alleged to have breached. He stated that his clients have always disputed the issue of an illegible player. The previous decision of the Tribunal (13/2014) was quoted as was those well versed cases under *DRA03/2010, 15/2009, 13/2011 and Barry and Rogers v Ginnity and Others.*

2. Using Rule 7.4 (TO 2013) in isolation

The claimants submitted that the CCC in error viewed Rule 7.4 in isolation. It was stated that this rule cannot operate alone as it only provides for an investigative process. There was nothing specific within Rule 7.4 which could have been breached. It was submitted that there were many instances in which the ‘*constitution of a team*’ maybe invalid which were not set out in Rule 7.4. Mr. Ryan stated therefore that Rule 7.4 TO 2013 was misapplied. He said that this Rule is merely a framework for an investigative process.

He also stated that the CCC failed to consider any alternative penalty that could apply for a breach of this nature and reference was made by analogy to Rule 6.2(a) where the appropriate penalty is forfeiture and/or fine. It was stated that the CCC gave no consideration to the ‘proper’ or alternative penalty and that other less severe penalties should have been considered. Reference was made to the cases of *Andrew Shore* and *Joe McGillicuddy* where lengthy suspensions were imposed on the players as opposed to the sanction of forfeiture.

Finally, he went on to say that when one reads Rule 7.4 TO 2013 literally it says ‘*apply such penalty as applies*’ but Rule 6.7 TO 2013 has no penalty that ‘*applies*’ and therefore, none can be imposed. Mr. Ryan was emphatic in his view that a penalty cannot be invented where there is a gap in the Rules.

3. No Plea in Mitigation

This issue has arisen in the context of the previous decision of this Tribunal where it was stated that the claimants be afforded an opportunity to make a plea as to leniency of penalty. The claimants submitted that there were never afforded such an opportunity. Mr. Ryan also stated that there couldn’t have been any real mitigation in this case as the CCC felt it has no discretion and that the penalty that could only be imposed was forfeiture.

4. Failure to furnish by CCC of ‘briefing’ document

It was submitted by Mr. Ryan that the Respondent should have furnished to the claimants the contents of a minutes of a meeting held on the 13th October 2014 by Galway County Management Committee relating to the appointment of the temporary CCC referred to as a ‘*briefing document*’.

It was submitted that the claimants could not possibly have obtained a fair hearing because they were not on notice as to the narrow scope of the investigation (namely breach of Rule

7.4 TO 2013). It was stated that the existence of this document was only discovered at Connaught Hearings despite a previous decision of this Tribunal that all documentation be disclosed prior to the hearing. He said that this further ‘*taints*’ the process and breaches fair procedures.

5. *Anomalies within Rule 7.4*

Mr. Ryan stated that Rule 7.4 (T.O. 2013) was unclear and vague. There was a conflict between Rule 7.4 and 6.7(A) and in those circumstances, his clients should not be prejudiced and the Rule should be read as against the decision maker and not his clients. He concluded on this point that ‘*any ambiguity in the Rules must be interpreted to the favour of the person affected*’.

6. *Application of Rule 11.4 DRA Code*

The claimants requested that the Tribunal conduct a full hearing as an appellate Court of last resort under Rule 11.4 DRA Code subject to agreement from the CCC, PHC and DRA.

Finally, Mr. Ryan submitted that his clients are a club with in excess of 400 members and they have been hugely affected by the decisions of both the CCC and PHC in this matter. That this matter has brought unwanted attention to the Club and in particular, Mr. Keating. He said that his clients do not accept that they breached the Rules regarding Mr. Keating playing for two clubs in the same championship. He said that they have several grounds which are ‘*at least statable*’ on this point and that he reserved his rights in relation to those.

FIRST NAMED RESPONDENT’S SUBMISSIONS

The Respondents were represented by Mr. Michael Ryan, Solicitor (Partner) of M.G. Ryan & Co. Galway. In relation to the missing ‘*briefing*’ document as referred to by the claimants, Mr. M. Ryan stated that these are merely minutes of a meeting of the County Management Committee acting under the remit of the previous decision of the DRA 13/2014. He stated that the claimants were asked by the CCC if there was any documentation outstanding. He also stated that the CCC did not deliberately or intentionally withhold this document and in any sense the document has no real relevance.

In relation to the failure to allow submissions in mitigation, Mr. M. Ryan stated that all the submissions show the process conducted by the CCC was open and transparent. The first meeting took place on the 15th October 2014 and CLG Beagh were present at a further meeting on the 16th October 2014. A letter was sent to the Claimants before each meeting and they were given all relevant documentation and invited to make submissions. There were further discussions at a meeting on the 22nd October 2014 and on the 25th October 2014 they were advised as to the proposed sanction and were asked to prepare a case in mitigation, to which the claimants declined. It was stated that in total there was five meetings held by the temporary CCC in relation to the matter.

In relation Rule 6.2(c) and the penalties applicable, Mr. M. Ryan stated that this only applies where the committee in charge conduct an inquiry. This was not a Rule 6.2 inquiry but an investigation under Rule 7.4 which the CCC were mandated to investigate. He stated that the CCC had no choice but to investigate the dispute and reference was made to the word ‘*shall*’ contained within the Rule itself.

He stated that the CCC decided that a named player had played with two Clubs in the same Championship and Rule 7.4 says they ‘*shall impose such penalty in respect of the result of the Game as applies (including forfeiture, where appropriate...)*’. It was stated that there would be circumstances where forfeiture would not arise for example, if CLG Turloghmore had lost to CLG Beagh or if CLG Turloghmore had six points and lost two points which would mean that they would still proceed to the next round.

Mr. M. Ryan stated that he did not accept there was any problem with Rule 7.4 as interpreted on the facts of this case. Finally, the quote of McMahon J in the case of *Barry v Rogers* (2005) was submitted “*As a final word in this matter I should say that one must expect that laymen applying the disciplinary rules will occasionally do so in a somewhat robust manner. Provided those administering the rules, however, do so in a bona fide manner, giving each side a fair opportunity of participating, the onus on members who wish to challenge the findings and decisions is a heavy one. One must be careful that the heavy hand of the law does not weaken the operation of such voluntary bodies or undermine the considerable benefits they bring to society.*”

SECOND NAMED RESPONDENT’S SUBMISSIONS

Mr. John Murphy appeared on behalf of the second named respondent. Copy of minutes of the hearing by the second named respondent were distributed and handed into the Tribunal. It was stated that the Appeal Hearing took place on the 29th October 2014. It was stated that it was not a rubber stamping exercise. It was stated that a temporary hearings committee was established and that they spent two hours discussing the issues of rules and penalties. It was stated that they received all points in mitigation from the Claimants and took them into consideration in reaching their final decision which ultimately reaffirmed the decision of the CCC.

Preliminary Issues

It was noted that there was no objection from either the claimants or the respondents to the composition of the Tribunal. Additionally, there was also a request from the claimants for the matter to be dealt with under Rule 11.4 of the DRA Code however it seems that there was no consensus from the parties to the Tribunal dealing with the case under this Rule. The Tribunal, it should be noted, had no difficulty hearing the matter under Rule 11.4 DRA Code.

DECISION AND AWARD

By way of analogy only, the Court of Arbitration for Sport in Switzerland recently decided on a case not too dissimilar to this one. In August, Legia Warsaw had their appeal to the Court of Arbitration for Sport to be reinstated to the UEFA Champions League qualifiers rejected. The Polish champions were eliminated from the competition by virtue of a 3-0 forfeit as punishment for fielding an ineligible player against Celtic, allowing Celtic to advance. In another case and closer to home, last month UCC were named Munster Senior League Premier Division champions for 2013/2014 after winning a long-standing appeal. A FAI arbitration resulted in Avondale having their title revoked by the MSL league as UCC were awarded an additional two points in a complicated case which centred on an ineligible player during a game between UCC and Leeds back in November 2013.

These examples merely demonstrate (and are in no way precedent) that other sporting organisations have a penalty of forfeiture where teams allegedly field an ineligible player and that it is not something just limited to the GAA Rule Book. It is understandable for obvious reasons why it is so.

In any sense, in relation to this matter we think it is important to set out the chronology of meetings and correspondence (which in general were not challenged) leading to the final decision of the CCC on the 25th October 2014.

Chronology:

The claimants were notified by letter dated 14th October 2014 that a meeting of the temporary CCC would take place on the 15th October 2014. The letter stated ‘*A Meeting of the Temporary Competitions Control Committee, selected by the County Management Committee last night... will take place in ... on the 15th....CLAR (1) Investigation request from Cumann Beithe Re Cumann Tulroch Mor Senior Hurling Team of 14.09.2014*’

From an examination of the minutes of that meeting on the 15th October 2014 the claimants were advised by the acting Chairman, Gerry Larkin, that there would be an agreed course of action taken namely ‘*A. Read the Request from Beagh club and after a short discussion it was agreed to 1. Meet the Clubs 2. Meet the Player. When meetings were completed that a request for any information from the County Secretary would be made as required by the Committee. The secretary was then requested to make phone contact with each of the clubs and it was agreed to invite Cumann Beithe at 6.30pm on Thursday 16/10/2014. A provisional time of 2pm on Saturday 18/10/2014 was set to meet Cumann Tulroch Mor and the club to be informed that the player Maitiu O Ceitinn was also to be invited to attend....The chairman requested that all members of the Temporary CCC to be notified by email of the times agreed for the meetings. The Chairman requested confidentiality.*’

The claimants were notified on the 16th October 2014 of that confirmed meeting for the 18th October 2014 as follows ‘*I wish to inform you that a meeting of the temporary CCC, selected by the County Management Committee on the 13th...will take place....on Saturday 18th October 2014 and two members from your Cumann are hereby requested to attend faoi (meaning ‘under’) Riail 7.4(a) and (b) TO 2014 ...*’ Correspondence from Cumann Beithe in relation to their request for an investigation was also enclosed.

Important extracts from the minutes of that meeting on the 18th October 2014 are as follows:

‘The Chairman welcomed all and the minutes of the meeting with the Cumann Beithe on the 16/10/2014 were read and adopted... There were no matters arising.’ The Chairman then

outlined to the claimants the nature of the complaint by CLG Beagh. The player was then asked by Michael Curley of the CCC if he wished to say anything. The player did speak and what he said was recorded in the minutes. *'Adrian Mooney then asked if it was this body that would make a final decision and the Chairman outlined that all documentation would be collected and a decision made by the committee. **The secretary said all documentation would be supplied to them.** Frank Burke outlined that there were mitigating circumstances and Beirne O'Connor spoke of our brief as a Temporary CCC.... The Temporary CCC then had a brief discussion afterwards and the secretary was instructed to send emails to (A) Turloghmore CLG re the submission of documentation within 48 hours (B) To the County Secretary re any relevant documentation which he might have for the case. (C) The secretary was then requested to open and read the documentation supplied by the Cumann Beithe CLG (D) The Secretary was **requested to supply the Turloghmore CLG with all documentation for 48 hours consideration and notify them of Wednesdays meeting....'***

A further meeting was held on the 21st October 2014. The important extracts from the minutes of that meeting are *'The Secretary reported that he had supplied material received from Cumann Beithe and from the County Secretary had been supplied to Tuloghmore CLG. The secretary was requested to supply to the Turloghmore club the letter received from Croke Park on no sanction approval. The meeting reviewed the material forwarded to the Turloghmore Club. The secretary reported that he had received an email requesting that the Turloghmore club had 48 hours to consider documentation and he had confirmed that. The Chairman **outlined the protocol for the meeting on Wednesday evening and requested all members to report at 6pm to review any documentation received from the Turloghmore Club...***

Following this meeting, the claimants made a very detailed seven page submission (with supporting documentation) to the CCC.

The claimants were notified by letter dated 20th October 2014 of a meeting on the 22nd October 2014 again *'**fuoi Riail 7.4 (a) and (b) TO 2014***'. The important extracts of the minutes from that meeting are:-

*'Material submitted to the secretary by Turloghmore CLG was then circulated. A discussion was held on their submission and **it was agreed to hear their oral submissions but the investigation would have to be reconvened as there were issues and the validity of statements***

*required further investigation. The delegation from Turloghmore CLG ... were then welcomed and the chairman outlined that all correspondence had been forwarded to them...The Chairman outlined that we all **wanted due process** to be followed. Frank Burke then gave a **verbal presentation** of the Clubs submissionHe questioned the use of Irish on the forms and that the penalty for forfeiture of the game under rule 7.4 and suggested that rule 6.2 might be applied. He called for an improvement in the system at National Level. The club chairman Adrian Mooney paid tribute to Frank Burke on the amount of work he had put into the case. He said that they all had a passion for hurling and never wanted this for Turloghmore nor did the player. He spoke of the pressure in the community to the officers to find a solution. He stated that the Jersey of Turloghmore is Black and White but all the rules, some draconian and their sanctions were not black or white.’ The meeting was then further adjourned to allow clarification of outstanding issues.*

Following that meeting, it seems further submissions were made by Sean O’heidhin and Brid Noone in reply to the submissions made by the Turloghmore Club.

The reconvened meeting of the temporary CCC took place on the 25th October 2014. This was the final meeting.

At that meeting the Chairman outlined to the claimants the process that was to be followed. *‘(A) Upon reconvening the meeting the committee **discussed at length** all the documentation that had been received by the committee in this matter. There then took place a **long discussion on the possible decision of the committee** (pending any other material/contribution that CLG Turloghmore would make available to the committee). The matters discussed centred on the **penalty** to be imposed if the finding was that the constitution of the CLG Turloghmore team on the 14th September against Beagh was invalid and in particular Section (sect) 6.2 and Section 7.4 of TO 2014....It was unanimously agreed that given the narrow brief the committee was given, that any sanction would be under Section 7.4 TO 2014.*

*The delegation from the Turloghmore Club were then welcomed...The chairman **outlined the process to be followed** and informed the delegation of the letters received from the Office and handed them a copy of same. He afforded them (time) to present any other material they might have for the CCC. Adrian Mooney said there had been no pre arranged meeting with the staff member but he did ask on the Matthew Keating Transfer. Adrian also stated he had*

contacted New York re the Sanction form for the player but he had heard nothing. The delegation was given time to leave and study the documents.

On their return the chairman outlined the narrow brief of the CCC and said that the committee found that the Turloghmore team was in breach of Rule 7.4, Matthew Keating having played in the Championship with Long Island Gaels and in the Championship with Turloghmore against Beithe and then read the following:-

*Following investigation of validity of the constitution of Cumann Turloghmore senior hurling team of 14.09.2014 and **consideration of all evidence, documentary and otherwise**, the following is the proposed sanction by Cosite Cheannais na gComortaisi Coiste Chontae na Gaillimhe (Temporary):*

*“Cumann Turloch Mor forfeit the game in question played on the 14.09.2014 v Cumann Beithe without award of game to Cumann Beithe Ref. 7.4 (b) Treorai Oifigiuil 2014. Consequently this changes the final Group C placings of the Gaillimh Senior Hurling Championship 2014 i.e. Cumann Beithe are now in second place on **three points** and Cumann Turloch More are on **two points**”.*

*They were then asked if they would like to take a short recess but Adrian Mooney said as we had made our decision he **declined**. Frank Burke referred to Rule 131 and said they thought coming back that we would look at mitigating circumstances. (B) Frank Burke said he had difficulty with the contents of the replies from the Co Board CEO and the staff member but that it was one work against another.*

The secretary Mattie Kilroy referred to the narrow brief given to the CCC.....That concluded the business of the meeting.’

The Tribunal accepts in full the contents of the minutes of these meetings. The Tribunal has highlighted in bold those important extracts. The Tribunal accepts that a fair process was conducted by the temporary CCC in relation to both the investigation and decision making process noting that a total of five meetings were held in relation to the matter. The Tribunal finds that due process was afforded to the Claimants.

The Claimants were notified initially on the 14th October 2014 in correspondence of the Management Committee Meeting (on the 13th October) and despite not being furnished with the minutes of that particular meeting until the appeal before the PHC, they were on notice that a meeting was so held. They did not request the minutes of that meeting. The reference to those minutes by the Claimants as a '*briefing*' document is slightly misleading as it merely involved the appointment of a new temporary CCC on foot of the previous decision of the Tribunal. In any sense, we find that the Claimants were not prejudiced by not having those minutes as no decision was made (in their absence) and it was merely a case of a Management Committee exercising an administrative function.

Furthermore, the Claimants were notified on the 16th October 2014 in correspondence that the investigation was under **Rule 7.4 TO 2013**. This was in advance of the claimant's submission to the temporary CCC. The Tribunal therefore finds that the claimants were on notice of the scope of the investigation.

Whilst Rule 7.4 (A) contains the investigative provision concerning the '*validity of the constitution of a team taking part in any Game*' Rule 7.4 (B) concerns the decision making and sanction process. The CCC found that the claimants breached the Rule concerning the constitution of the team that played CLG Beagh on the 14th September 2014 following an investigation. Therefore, in those circumstances the CCC, the Tribunal finds did not misapply Rule 7.4.

The sanction of forfeiture in this case resulted in points being forfeited which resulted in them not having those sufficient points to progress to the next round. Had the claimant's sufficient points without requiring those from the game on the 14th September 2014 it would not unfortunately have had such a draconian effect on them.

It is therefore the unanimous decision of the Tribunal that the procedures implemented by the Temporary CCC were properly observed within the confines of Rule 7.4 (A) and (B). The claimants were informed of the charges against them. They were present at the meetings and in one meeting, Mr. Keating, amongst others gave evidence. They had an opportunity to challenge the charges. They were invited to make submissions both at all stages and in mitigation. There was no breach of fair procedures and/or any rights under natural and constitutional justice. The point raised by the claimants relating to the '*briefing*' document is

not accepted. The penalty applied by the CCC (and subsequently reaffirmed by the PHC) was one open to the Respondents under the Official Guide (TO 2013).

In those circumstances, we therefore dismiss the appeal and reaffirm the decision of the CCC made on the 25th October 2014 and the subsequent decision of the PHC of the 3rd November 2014.

By consent, the Tribunal makes an order that each party bears their own costs in relation to this appeal and the costs and expenses of the DRA be shared equally between the claimants and first named respondents. For the sake of clarity this is in respect of this case (16/2014) and the previous case under record number 13/2014.

Dated this *17th day of November 2014* at Mullingar Park Hotel, Mullingar.

Signed:

Willie Penrose

Paddy Collins

David Nohilly, Chairman