

Disputes Resolution Authority

An Córas Eadrána

DRA 05 of 2015

**In the matter of the an arbitration under the Disputes Resolution Code
and the
Arbitration Act 2010**

**Gearóid Mac Coindlis (CLG Seamroga Baile) v Coiste Éisteachta Uladh (CEU)
agus Coiste Éisteachta Dhoire (CED)**

DRA 05/2015

Hearing: Wellington Park Hotel, Belfast at 8pm on 26 March 2015, adjourned until 19
May 2015

Tribunal: Mr Gerry Hyland (Chair); Mr Jarlath Burns and Ms Fionnuala McGrady

Secretary to the DRA, Mr Jack Anderson, was also in attendance

Verdict: Claim Allowed

Keywords:

List of Attendees:

The Claimant attended and was represented by Mr F. Logan assisted by Mr S. McGeehan. The Claimant's father also attended both hearings. Mr B. McIvor attended the 19 May 2015 hearing upon an indication he may have been called as a witness by the Claimant. In the event he was not called to give evidence

The First Respondent was represented by Mr É. Mac Mathúna, CEU

The Second Respondent was represented by Mr B. Mac Giolla Earnain, CED. Mr McGurk was also in attendance.

The Tribunal are grateful for the carefully prepared and delivered written submissions and oral arguments on behalf of the Parties.

Factual Background:

The claim arises from events during and after the County Senior Football Final played on 19 October 2014. Arising from the Referee Report and CCC investigation, the Claimant was informed of a number of infractions. The claim focused upon the

imposition of penalties of 48 weeks suspensions concurrently for 3 infractions under Rule 7.2 (b) Category VI.

The first infraction under Rule 7.2 (b) Category VI had been imposed by CCC after consideration of the DVD evidence and amounted to an "assault" on a match umpire where the Referee had issued a yellow card during the game for dissent.

The second infraction under Rule 7.2 (b) Category VI arose from a reference in the Referee's report that the standby referee/linesman had informed the referee after the match, that the claimant had "slapped" him twice in the face.

The third infraction under Rule 7.2 (b) Category VI had been imposed by CCC and arose from the DVD showing events as players, officials, stewards and spectators left the pitch through a gate when the Claimant appeared on video to jump into the air and make a hand/arm movement. The specific incident with the Claimant was not mentioned in the Referee's report.

The Claimant gave evidence before CED and CEU and denied the infractions in question as stated by the Respondents, he provided additional oral and written evidence.

At a hearing on 18 December 2015 CED imposed the sanctions of 48 weeks suspension concurrently for the three infractions. The Claimant appealed.

At a hearing on 22 January 2015 CEU determined that the appeals failed.

Preliminary Matters:

The Tribunal agreed to a request on behalf of the Claimant to admit a DVD from Coiste Chontae Dhoire, that had been viewed before CED and CEU, and viewed relevant portions of the game and aftermath at the hearing on 19 May 2015.

The Parties agreed to the jurisdiction and composition of the Tribunal at the hearings.

Claimant's Case:

The Claimant provided a bundle of relevant documents for the Tribunal including: Request for Arbitration; Responses; Referee's Report and Addendum; Notices; Decisions and Minutes.

On behalf of the Claimant it was submitted that the Respondents had erred in application in various rules in application of Rule 7.2 and within Rule 7.3 regarding the conduct and findings of the appeal. Further the Respondents should have sought further clarification from the referee arising from the "slap" incidents in the game and they acted unreasonably in their findings on the evidence available at each stage of the process.

Mr Logan cited, and provided copies of the decision in, DRA/17/2008 and the dicta of Henchy J. in State (Keegan) -v- Stardust Victims Compensation Tribunal [1986] IR 642 as authorities for the proposition that the test of unreasonableness or irrationality lies in considering whether the impugned decision plainly and unambiguously flies in the face of fundamental reason and common sense.

Seeking to rely on the video evidence to contradict or conflict with material in the Referee's report, Mr Logan offered that the absence of a crowd reaction on the sound recording of the DVD could amount to sufficient compelling evidence to challenge the Referee's report and/ or give rise to the need for clarification of a matter arising from the Referee's report.

Further it was submitted that where there is a possibility of an alternative interpretation of events leading to a different categorisation of an infraction, a failure to seek clarification gives rise to a decision challengeable as unreasonable and irrational. It was suggested that clarification had been sought at the hearings before both CED and CEU.

Respondent 1, CEU:

The First Respondent in written and oral submissions stated that the issue was not one for CEU, and rather lay between the Claimant and the Second Respondent. Mr Mac Mathúna submitted that CEU determined that there was no misapplication of rules by the decision maker and that questions of fact were resolved by CED.

Respondent 2, CED:

The Second Respondent submitted that CED acted in accordance with the Rules in the Official Guide 2014 and no clarification was required from the Referee. Mr Mac Giolla Earnain stated that the CED findings arose from Referee's report and the viewing of the DVD evidence and the infractions were found proven to the standard required by Rule 7.3 (bb). He submitted that CED acted in accordance with the Official Guide and the guidance provided by the Disciplinary Handbook 2014 5th Edition in the consideration of what "compelling" evidence shows that the Referee has made a mistake in Rule 7.3 (aa) (1) (vi) and (vii).

Mr Mac Giolla Earnain stated that applying the authorities cited to the handling of this case did not reach the standard of "unreasonableness" suggested and both Respondents reached considered findings which were not perverse or "flying in the face of reason".

It was suggested on behalf of the Second Respondent that to require clarification of the allegation of "slapping" contained in the Referee's report would be unreasonable. It was submitted that the standby referee/linesman who had made the allegation contained in the Referee's report was himself a senior and experienced inter-county Referee well familiar with the Rules of the Association.

Reasoned Decision:

The Tribunal considered the detailed written and oral submissions on behalf of the Parties made in full at the Hearing and found as follows:

- I. The Claimant was dealt with by the Respondents for serious infractions under the Official Guide in circumstances where clarification of the Referee's Report had been requested at the least before CEU arising from one infraction. No Clarification was granted. In the circumstances of this case where the Referee's Report noted the term "slapped" it was unreasonable for the CED and/or CEU not to request clarification of this matter given that the term is capable of amounting to an infraction under Rule 7.2 (b) Category V (...laying a hand on an official) rather than the more serious Category VI (...any type of assault). The Rules envisage that "Clarification", whether before the hearing or after, will provide comprehension of the facts and remove confusion. The potential overlap in the infractions here require clarity on the part of the CCC, CED and CEU as to the factual basis to underpin the offence. If the case was made, as here, that a sarcastic or ironic gesture was made to touch the cheek of the official then the difference in severity of the infractions and penalties would require CED to seek appropriate written clarification from the Referee. The Tribunal would not accept the suggestion on behalf of the Claimant that an inference should be drawn from the lack of crowd noise reaction to the alleged slap. The Tribunal find that the absence of clarification requires the reconsideration of the finding on this infraction.
- II. The test of unreasonableness cited on behalf of the from *Keegan* was further elaborated by Finlay C.J. in *O'Keefe -v- An Board Pleanala [1993] IR 39* where it was made clear that a court should not interfere with a decision purely on the grounds that it was satisfied on the facts that it, itself, would have raised different inferences and conclusions, or that it was satisfied that the case against the decision made was stronger than the case for it. Further in the dicta of Hardiman J. in *FP -v- Minister of Justice [2002] 164* where he considered that the degree to which reasons for a decision require elaboration are based on the nature of the decision. However, on the facts of this case, the Tribunal agree with the argument put forward by the Claimant that the context involved in the exercise of a decision require the disciplinary authorities to provide cogent evidence of infractions and apply the Rules in the Official Guide fairly and efficiently.
- III. CED adjudicated on two other infractions, not mentioned in the Referee's Report, from available DVD evidence and considered evidence offered by the Claimant. The Tribunal are satisfied that CED erred in considering the matters of the alleged infractions based on DVD evidence that did not give a clear, continuous and unobstructed view of the incident. The evidence used in relation to the first and third infraction was not of sufficient quality. The Tribunal strike out both findings

- III. The actions of CED in application of facts as found by them to the Rules in the Official Guides, and decisions on the lack of compelling evidence as a question of fact, are fundamentally matters within the range of decisions open to CED as decision maker and the Tribunal should be cautious to interfere. The Rules contained within the Official Guide grant appropriate discretion in decision-making to the appropriate bodies within the disciplinary structure as found in DRA/2/2005 and DRA/1/2006, for example. However it cannot be said that the discretion is exercisable fairly or reasonably where inherently poor video evidence was the only basis for the laying of the first and third infractions.
- VI. Likewise the decisions of CEU in dismissing the appeal and finding no mis-application of Rules was a decision that should be overturned in the circumstances of this case for the reasons outlined above. The request for clarification was not acted upon and on the basis of the Response of CEU they accepted the facts as found by CED.

Award:

The Tribunal decision in final and binding determination of this matter is that:

- 1. The findings and decisions of CCC, CED and CEU on the two infractions under Rule 7.2 (b) Category VI regarding interaction of the Claimant with umpires during the game and after the game and the penalties imposed thereon should be struck out.**
- 2. The findings of CED and CEU on the infraction under Rule 7.2 (b) Category VI on the alleged "slapping" of an official should be struck out and CEU are directed to require clarification from the Referee on the nature of the contact prior to their reconsideration of the matter. It shall be a matter for CEU to determine whether the clarification results in the matter being considered under Rule 7.2 (b) Category V or VI . Thereafter CEU should make a finding on the matter.**

Costs:

The Tribunal determines that each Party should bear their own costs and the deposit from the Claimant should be refunded less the expenses of the Panel as calculated by the Secretary DRA.

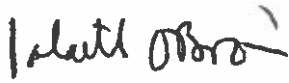
Dated of Oral Hearing: 26 March 2015, adjourned until 19 May 2015

Date of Agreed Award:

Signed:


Gerry Hyland

Jarlath Burns



Fionnuala McGrady