Disputes Resolution Authority

An Córas Eadrána

In the Matter of the Arbitration Acts 1954-1980
And in the Matter of an Arbitration under the Disputes Resolution Code of the GAA

Between

Pilib Mac Comhain

[Claimant]

And

Donal Ó Murchú (mar ionadaithe Coiste Riaracháin na gCluichí Comhairle Uladh) agus Antaine Mac Siúrtáin (mar ionadaithe An Lár Choiste Achomhairc)

[Respondents]

DRA 2/2007

In the Matter of the Arbitration Acts 1954-1980
And in the Matter of an Arbitration under the Disputes Resolution Code of the GAA

Between

Dwayne Mac Parthalain

[Claimant]

And

Donal Ó Murchú (mar ionadaithe Coiste Riaracháin na gCluichí Comhairle Uladh) agus Antaine Mac Siúrtáin (mar ionadaithe An Lár Choiste Achomhairc)

[Respondents]

DRA 3/2007

This is the first and final award of the Tribunal of three persons – Jack Anderson, Fionnuala McGrady and John Curran – selected, pursuant to section 5 of the Dispute Resolution Code, from the Dispute Resolution Authority's Panel to hear and determine the conjoined challenges known as DRA Decisions 2 and 3 of 2007.

Note of Clarification:
The Rules of the GAA referred to in this reasoned award are those taken from the *Gaelic Athletic Association's Official Guide – Part 1, Containing the Constitution and Rules of the GAA revised and corrected up to date and published by the authority of the Central Council of the GAA*, Croke Park, Dublin 3: January 2006.

WHEREAS:

On 19 November 2006, the claimants' club, Ballymacnab GAC, played Stewardstown GAC in the Ulster Intermediate Club Football Championship at Casement Park, Belfast. The match ended in a draw. As the teams left the field of play, a mêlée developed involving a considerable number of players and officials from both clubs. Subsequently, the violent scenes were widely shown on television, and attracted significant media attention. At a meeting of the first named respondents on 21 November 2006, a decision was made, pursuant to Rule 156 of the Official Guide of the GAA (2006), to hold an investigation into the events of 19 November 2006. The remit of the appointed investigation committee was to identify the persons involved in the mêlée.

The investigation committee held hearings on 27 November 2006 and 30 November 2006. Taking into consideration the evidence presented at those hearings, the investigation committee was satisfied to conclude that a serious mêlée had taken place and that both clubs involved in the game had infringed a number of named disciplinary rules. Equally, the investigation committee held that 12 named individuals had infringed a number of named disciplinary rules. With specific respect to the matter at hand, the investigation committee reported that Philip McCone, the claimant under DRA 2/2007, had a prima facie case to answer under the following Rules of the Official Guide of the GAA (2006) – Rule 156(h), Rule 146, Rule 144 and Rule 142(a) for being involved in a serious mêlée and for conduct likely to discredit the Association. The investigation committee also reported that Dwayne McParland, the claimant under DRA 3/2007, had a prima facie case to answer under the following Rules of the Official Guide of the GAA (2006) – Rule 156(h), Rule 146, Rule 144 and Rule 142(a) for being involved in a serious mêlée and for conduct likely to discredit the Association.

Pursuant to rule 156(i) of the Official Guide of the GAA (2006), the investigation committee reported its findings to the "parent Committee" – in this instance, the first named respondents – on 5 December 2006. Where it is established that a prima facie case has been made that a Member or Unit of the GAA has a charge to answer, rule 156(h) of the Official Guide of the GAA (2006) states that the procedures outlined in Rule 146 apply. Subsequently, both claimants invoked their rights to an oral hearing before the first named respondents pursuant to Rule 146(b) of the Official Guide of the GAA (2006). That hearing took place on 16 December 2006. On hearing the claimants' oral testimony, the first named respondents retired, considered both the evidence reported to it previously by the investigation committee and the testimony given by the claimants' on that evening. On 18 December 2006, both claimants were formally notified that they were suspended from 19 November 2006 for a period of 36 weeks in accordance with Rule 156(h), Rule 146, Rule 144 and Rule 142(a) for being involved in a serious mêlée and for conduct likely to discredit the Association.

On 5 January 2006, the claimants appealed their suspension to the second-named respondents, the Central Appeal Committees of the GAA. The appeals were dismissed.

The claimants challenge their suspensions to this Tribunal, and do so on three fundamental grounds.

Firstly, the claimants submit that no credible or sustainable evidence was obtained by the investigation committee, or considered by the first named respondents, to sustain allegations

of offences under the Rules of the GAA laid down in the Official Guide of the GAA (2006). Accordingly, the claimants submit that the disciplinary process as a whole, culminating in their suspension, was perverse in nature and in breach of the principles of natural justice and fair procedure. Further, the claimants submit that without prejudice to their assertion that no credible or sustainable evidence existed against them, the sanction imposed on them was disproportionate and grossly excessive and, again, in breach of the principles of natural justice and fair procedure.

The second ground of challenge is based on the claimants' submission that there was a clear infringement or misapplication by the first named respondents of certain named Rules of the GAA, namely Rules 153; Rule 157(f) and Rule 157(g); Rules 156(i); Rule 146 and Rule 142 of the Official Guide of the GAA (2006). The claimants further submit that given the clear nature of the first named respondents' rule infringements, and, in the context of Rule 156(h) of the Official Guide of the GAA 2006, the second named respondents, by dismissing the claimants' appeals, did not act in a manner that afforded the claimants fair procedure and natural justice.

Third, the claimants argue that they are entitled to relief on the general ground that the principles of natural justice and fair procedure were not adhered to by the respondents as illustrated by the fact that they, the claimants, remain (a) unaware of the nature of offences they are alleged to have committed, and (b) unaware of the evidence, if any, that was used to sustain the case against them, and (c) unaware of the mechanisms utilised to decide upon their period of suspension.

The claimant sought the immediate uplifting of their suspensions and any applicable interim relief. The latter was to be viewed in the context of the replay of the Ballymacnab v Stewardstown game being scheduled by the first named respondents for the weekend of 3/4 February 2007.

The Hearing of this challenge took place on 29 January 2007 at the Carrickdale Hotel, Co. Louth. All named parties were in attendance.

Having carefully considered the documents and submissions given, the Tribunal now presents its reasoned award setting out the evidence, reasoning on and result of each issue raised in difference between the parties.

REASONING

The reasoning underpinning this award may be read in four parts: the first fundamental ground of the claimant's case – the lack of credible and sustainable evidence; the second fundamental ground of the claimant's case – the clear infringement or misapplication of certain named Rules of the GAA; the general ground for relief located in the principles of natural justice and fair procedure and, finally, matters pertaining to delivery of oral award.

Lack of credible and sustainable evidence
The claimants' initial submission was that the first named respondents, both in investigation committee and in full council, failed to instruct themselves properly as to the relevant facts and evidence. The claimants forcefully made the point that if the Tribunal would permit them to present the video evidence, it would demonstrate that the suspensions imposed on the

claimants would not be corroborated by that video evidence, to the extent that the sanctions were perversely wrong in nature and were, in any event, disproportionate.

In support of that contention, the claimants' noted that in handing down the suspensions, the first named respondents had relied heavily on still photographic evidence. The claimants argued that photographic evidence of itself merely illustrated "one moment in time" and could in that sense be used out of context to the detriment of the plaintiffs. The claimants were prepared to illustrate this point by demonstrating to the Tribunal how still photographic evidence of the mêlée could, depending on the time or angle of shot used, be manipulated to the detriment of parties otherwise found innocent of involvement in the mêlée.

The claimants further submitted that video evidence, which would give a much more holistic view of the events of 19 November 2006, was not used by the first named respondents in their review of the investigation committee's report and that this was a dereliction of the first named respondent's duty to uphold the claimants' rights to natural justice and fair procedure.

The first named respondents noted that photographic evidence was not used in isolation but in conjunction with the referee's report, oral and written statements for a number of officials and stewards present on the day and video evidence. The first named respondents denied that did not view or utilise the video evidence presented to them by their appointed investigation committee, and denied that they told the claimants that they would not be availing of it. The first named respondents confirmed that video evidence was used by them on more than one occasion.

The tribunal adjourned briefly to consider the submissions of parties on this issue. On return, the Tribunal reminded the parties of Bryan McMahon J's views in the course of his judgment in *Barry & Rogers v Ginnity and others*, judgment delivered on 13 April 2005, Naas Circuit Court:

> "…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 findings and decisions is a heavy one".

With that principle in mind, further submissions were taken with the claimants reiterating to the Tribunal that this issue, as to the admissibility of video evidence, was fundamental to their claim. The respondents stated that the fundamental point of the arbitral hearing was to assess whether the claimants has received a fair hearing, and that, in any event, the respondent's conduct in this matter was not robust but considered. The Tribunal informed both parties that it would reserve its view on this matter in light of submissions made on the rule and procedural based contentions. The Tribunal also made it clear to the parties that it would return to this preliminary issue only if it felt the need to in the context of the rule and procedural based contentions. Both parties agreed to this qualified reservation of the claimants' initial submission, and the tribunal proceeded to hear the rule based and procedural issues of point.

At this point, the Tribunal notes that its to the claimants' initial submissions and the following procedural points is based on an adherence to a further aspect of McMahon J's judgement of 2005, namely:

> "The truth is that the law will demand a level of fair procedure which is sufficient in all circumstances to ensure justice for the player or member affected by decisions. The more serious the consequences the higher the standard that will be required."

Clear infringement or misapplication of certain named Rules of the GAA
The claimants submitted that the first named respondents at first instance, and the second named respondents in appellate jurisdiction, clearly infringed and or misapplied Rules 153; Rule 156(f) and Rule 156(g); Rule 156(i); Rule 146(a) and Rule 142 of the Official Guide of the GAA (2006).

Rule 153
Rule 153 concerns the nature, notice and giving of evidence with respect to objections, appeals and investigations held under the remit of the GAA. Rule 153(c) states: "The [Investigation] 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."

The claimants submitted that the use by the first named respondents of photographic stills violated Rule 153(c) because, on the claimants' interpretation of that Rule, there is no provision for the consideration of still photographic evidence, only video evidence. The claimants' objected to the nature of still photographic evidence because, they argued, by definition it captured a partial and frozen moment of the mêlée that might lack context to the detriment of individuals involved.

The respondents countered by contending that Rule 153(c) merely stated that the relevant investigation committee "may" have recourse to video evidence but did not state that still photographic, or any other, evidence could not be used.

The Tribunal finds that the claimants' interpretation of Rule 153(c) cannot be reconciled with any reasonable, literal or schematic reading of the Rule because the logical outcome of the claimants' argument would be that only video evidence should be used by an investigation committee. That is clearly not the nature of the Rule.

Rule 156(f) and Rule 156(g)
Rule 156 concerns investigation procedures with respect to objections, appeals and investigations held under the remit of the GAA. Rule 156(f) states: "The evidence of match officials may be heard privately by the Investigation Committee, but such evidence shall subsequently be conveyed to the parties involved in the investigation." Rule 156(g) states: "While evidence is being given, witnesses, other than match officials already heard, shall remain at the hearing."

The claimants' argued that there were technical breaches of both of these provisions because, as part of their investigation, the investigation committee of the first named respondents, accepted written statements from three stewards who attended the match. Those written statement, which were incorporated into the investigation committee's report led, it was claimed, to a denial of the claimants' fundamental right to question such witness who should, as per the claimants' interpretation of Rule 156(f) and (g), have been present in person at the hearing. The first named respondents replied that the three statements were read out to the meeting because the witness could not attend on the date in question, and that no one from the claimants' club raised any objection to that process at that time.

The Tribunal finds that this claim has little merit. The witnesses involved were witnesses to the occurrence of a mêlée, and nothing more. The statements add little to what could be seen in other evidence and, most importantly, no direct or indirect reference was made to the claimants in any of the three written witness statements.

Rule 156(i)

Rule 156 concerns investigation procedures with respect to objections, appeals and investigations held under the remit of the GAA. Rule 156(i) states: "The Investigation Committee shall report its findings and recommended penalties, if any, to the parent Committee, unless Bye-Laws provides otherwise." The claimants argue that because the first named respondent's investigation committee did not report any recommended penalties as is required under the stated rule, the subsequent imposition of sanctions by the first named respondent cannot be sustained within the context of that stated rule.

The Tribunal rejects this argument on the ground that Rule 156(b) states that "The Committee in Charge [in this instance, the first named respondents] shall decide the composition and terms of reference of the Investigation Committee." On 21 November 2006, the first named respondents did decide on the terms of reference of the investigation committee, which was limited to establishing "the identity of those involved in the mêlée referred to in the referee's report and to make a report of its findings". The first named respondents noted that these terms of reference can be located in the minutes of the meeting of the first named respondents of 21 November 2006, and in the accompanying letter of notification to the secretary of Ballymacnab GAC dated 23 November 2006.

The claimants further submit that the investigation's committee failure to recommend a penalty led to the imposition of sanction by an entity, the first named respondents, who, the claimants argue, had indicated to them that they had not viewed the photographic or video evidence, nor would they do so in reaching their decision. This, the claimants pointed out effectively resulted in imposition of a sanction with no evidential basis, and was a gross breach of their right to natural justice. The respondents deny that they ever indicated this, and were prepared to testify to that fact, and the fact that they did view all the available evidence on more than one occassion.

The Tribunal finds that the claimants' challenge on this point is not made out. The first named respondents appointed an investigation committee under rule to carry out an investigation of the events of 19 November. This was done, and done comprehensively. The report entailed considerable time and effort, and it was used by the first named respondents to then impose suspensions as they saw appropriate, but only after careful consideration and review of that report. This is good practice and it would be a perverse waste of resources, and it is not sustained by any evidence, for an experienced body, such as the first named respondents, to appoint an investigative committee, and then to, as the claimants' purport, arbitrarily and capriciously ignore its findings as to fact.

Rule 146

Rule 146 concerns procedures with respect to disciplinary jurisdiction and applicable suspensions pursuant to remit of the GAA. Rule 146(a) states that "Whenever the relevant Council or Committee proposes to adjudicate on any disciplinary matter…it shall give the…[offender]…notice in writing of the alleged offence." The claimants argue that the letter of notification by the first respondents' investigation committee with respect to a prima facie case was imprecise because no actual form of conduct other than the allegation that the claimants were involved in a mêlée was recorded in that notification.

The Tribunal finds that adequate notification was given to the claimants. The allegation of being involved in a mêlée was precisely the essence of the prima facie case against the claimants. They were notified of this through the reference in the letter of notification of Rule 144 of the Official Guide of the GAA – conduct likely to discredit the Association.

Rule 142

Rule 142 concerns suspensions (misconduct on the field) with respect to disciplinary jurisdiction and applicable suspensions of the GAA. The first respondents' investigation committee makes a reference to Rule 142(a) in the letter of notification to the claimant. More correctly, this appears to be a reference to Rule 142(A)(1) i.e., categories of offences. The Tribunal finds that this reference is imprecise despite the respondents' argument that it was included merely to expand on the guidelines for suspension considered by the first named respondents. Nevertheless, the Tribunal holds that reference was not in any way prejudicial to the claimants in terms of notification or, more generally fair procedure.

Breach of the principles of natural justice and fair procedure

The penultimate paragraph in both claimants' application for arbitration to the Tribunal argues that they are entitled to relief on the general ground that the principles of natural justice and fair procedure were not adhered to by the respondents as illustrated by the fact that they, the claimants, remain (a) unaware of the nature of offences they are alleged to have committed, and (b) unaware of the evidence, if any, that was used to sustain the case against them, and (c) unaware of the mechanisms utilised to decide upon their period of suspension.

On the first point, the claimants were made aware of the charges levelled against them at all times; in essence, a breach of Rule 144 – conduct likely to discredit the GAA. The investigation committee and the first named respondents went to great lengths not only to notify the claimant and their club of the relevant charge but to correspond in advance on all stages of the disciplinary process i.e., notification of the appointment of an investigation committee; notification of that committee's terms of reference; notification of the initial hearing of that committee; notification of an adjourned hearing of that committee, notification of that committee's findings and report; notification of the first named respondents' consideration of that report; notification of the claimant's right to an oral hearing on foot of those findings; notification of a special meeting of the first named respondents on foot of the claimants' request for an oral hearing and, finally, notification of the sanctions imposed.

On the second point, the Tribunal finds that the claimant must have been aware of the evidence used to sustain the case against them. In fact, the investigation committee were very careful to supply the claimants with that evidence – video, photographic (in DVD form) and written. Moreover, in the claimants' application for arbitration, the claimants argue a breach of Rule 153 of the Official Guide of the GAA (2006). That Rule concerns, and is expressly subtitled, "evidence", the claimants could be said to be estopped from asserting their lack of awareness of the evidence used against them when in their own statement of claim they aver in some detail to that evidence.

Third, the Tribunal cannot see how the claimants have remained unaware of mechanisms utilised to decide upon their suspensions when they participated in, were given due notice of, and availed of all avenues of redress within that disciplinary system, including an appeal of the suspension to the second named respondents, the Central Appeals Committee. Again,

there must be an estoppel of the claimants' assertion that they failed to comprehend a mechanism that they themselves used.

Finally, and in general summation, the Tribunal listened to the parties' submissions and ruled accordingly in light of the generally established obligations expected of sports disciplinary panels such as the first and second named respondents. Those obligation are well established in Irish law (see, for example, the summary of applicable Irish case law and principle given by Cox and Schuster, *Sport and the Law*, Dublin: 2004 at chap 2). They include: the obligation of a sports disciplinary panel to act lawfully in accordance with its own rules and regulations; the obligation of a sports disciplinary panel to instruct itself properly as to the facts and evidence; the obligation to act fairly in a procedural sense; the obligation to give the party charged with wrongdoing fair notice and opportunity to be heard; the sports disciplinary tribunal must not prejudge an issue; it must avoid conflicts of interest; it must avoid bias; it must act in good faith at all times; disciplinary issues must be commenced within a reasonable time and the sports disciplinary panel must not act irrationally, arbitrational, capriciously or unreasonably, especially in terms of sanction.

As the aforementioned judgement of Bryan McMahon J also makes clear, the attribution of "unreasonableness" on the part of the sports disciplinary panel in this context has traditionally been regarded as a difficult one for a challenger to sustain. This Tribunal is of the opinion that the merits of the first instance and expert decision maker in a sports disciplinary process – in this instance, the respondents – should be overturned only if its findings are so perverse and or disproportionate that no disciplinary body of its kind, properly instructing itself to the relevant facts, law and procedure, could have made such an unreasonable determination. In this instance, the Tribunal finds that claimants have failed to demonstrate that the respondents acted improperly or unjustly.

Delivery of oral judgment
The Tribunal adjourned in order to consider the submissions and informed that parties that when it reconvened it would deliver an oral decision. The parties agreed and were told by the tribunal that every 20 minutes or so they would be informed as to the estimated length of the adjournment and progress. The parties agreed to this and after approximately 45 minutes, the hearing was reconvened. The Tribunal announced that pursuant to section 11.2 of the Dispute Resolution Code, the final decision of the Tribunal would be in writing and would be accompanied by the reasons on which it is based, but that the Tribunal would give an oral decision immediately for the benefit of the parties in light of the interim relief sought.

The Tribunal informed the parties that the claimants' challenge had failed on all grounds. At this point, the claimants' representative interrupted the proceedings and asked that the Tribunal excuse itself from delivery of decision on the grounds that it had not properly returned to consider the claimants' initial and reserved submission. The claimants stated repeatedly that they had only agreed to reserve their position on the initial submission on the understating that it would be returned to subsequent to, and without prejudice to, the Tribunal hearing submission on the rule based aspects of the claimants' case.

The Tribunal informed, and reminded, the claimants that that the Tribunal had reserved consideration of the initial submission as and for itself on a qualified basis only and that (a) the claimant and the first and second named respondents had expressly agreed in word and conduct to this, and (b) that that qualifications surrounding the initial issue, had, in the view of the Tribunal who had reserved the position for itself, not been met.

With respect to point (a), the claimants had expressly agreed in word to the qualified reservation on returning from the hearing's first adjournment and had done so by conduct when they did not raise the matter prior to the Tribunal's final adjournment to consider all aspects of the submissions.
With respect to point (b), the claimants' case as to the admissibility of video evidence to the Tribunal was predicated on three assertions, namely

(i) the first named respondents had looked at still photographic evidence only and this gave only a partial insight into the happenings of 19 November 2006. As this award makes clear in its above discussion of Rule 153, and elsewhere, video evidence was utilised at all stages of the investigation. Still photographic evidence was not used in isolation and a wide range of evidence, written oral and other was availed of by the first named respondents.

(ii) the first named respondents in its special meeting of 16 December 2006 did not use, and told the claimants that they would not use, video evidence in arriving at sanction. The first named respondents, who were prepared to attest to that point, denied this allegation. That denial was accept by the Tribunal and was consistent with the actions of the first named respondents as a whole with respect to this matter.

(iii) the first named respondents did not properly instruct themselves as to the facts of the case to the point that their finding were perverse and the related sanctions grossly excessive. The Tribunal finds on this point that the scope, transparency and thoroughness of the first named respondents' actions were impressive. The investigation committee assembled a comprehensive range of evidence consisting of the referee's report, oral and written evidence, photographic and video footage. The investigation committee's initial hearing alone lasted 6 hours and was followed by a second hearing. The investigation committee's inquiry was exhaustive and the Tribunal finds that the first named respondents properly instructed themselves as to the fact.

In sum, the Tribunal, on hearing submissions and in light of the above qualifications, saw no good reason for, and little merit in, the claimants' contention that it should step aside for want of fuller consideration of the claimants' initial submission.

DECISION

The Tribunal awards and determines that in full and final satisfaction of all claims and counterclaims by each of the parties against the other in the matter of this arbitration, the reliefs sought by the claimants be refused.

The Tribunal awards and determines that the expenses of and incidental to the arbitration herein be met by the claimants.

The first and second named respondents applied for costs against the claimant. In accordance with section 11.2 of the Dispute Resolution Code, save in exceptional circumstances to be set out in writing by the Tribunal the Party deemed by the Tribunal to have been successful shall on application be entitled to its reasonable costs. In this instance, the Tribunal holds that the

normal rule on costs following the event should apply with the parties agreeing that a bill of costs be prepared and met within 14 days of the date of this award.

Signed:

Jack Anderson Fionnuala McGrady John Curran

Dated: