

DISPUTES RESOLUTION AUTHORITY

An Córas Eadrána

Re: DRA 13/2010.

**Eanna O'Neachtain – v – Coiste Eisteachta Laighean, Cumann Luthchleas Gael
agus Coiste Cheannais na gComortaisí Laighean**

Background:

1. The Claimant is a member of Clonad Hurling Club. On the 5th April, 2010 in Leinster Hurling League match against St. Peregrines, he was sent off having received a straight red card. He was subsequently reported for having committed a Category 3 Offence under Rule 7.(b)T.O.2009.
2. The Referee officiating at the game prepared a Report which was received by Coiste Cheannais na gComortaisí Laighean on the 5th May, 2010. It appears that the Referee's Report had been incorrectly sent to Coiste Conntae Laoise. There was no explanation as to why the Referee sent his Report to Coiste Conntae Laoise in the first instance, or when Coiste Conntae Laoise actually received it. There was either therefore, a delay on the part of the Referee in submitting his Report, or alternatively by Coiste Conntae Laoise in forwarding the Report to Coiste Cheannais na gCommortaisí Laighean.
3. Upon receipt of the Referee's Report Coiste Cheannais na gCommortaisí Laighean sought clarification from the Referee. This clarification was received on the 12th May. Following upon the subsequent meeting of Coiste

Cheannais na gCommortaisí Laighean on the 18th May, the Claimant was notified of the proposed penalty.

4. The Claimant requested a hearing before Coiste Eisteachta Laighean. This hearing took place on the 17th June, 2010. It was not possible to facilitate an earlier hearing as the Agenda for the next scheduled meeting of Coiste Eisteachta on the 27th May, 2010 had already been filled. At the meeting on the 17th June, 2010, An Coiste Eisteachta directed an investigation under Rule 7.3(h)TO 2009.
5. An investigating sub-Committee was convened and commenced the investigation on the 23rd June, 2010. The Respondents submitted that the investigation was extensive and involved the interviewing of some eleven witnesses and also seeking of further clarification from the Referee. The first interviews with players from the Clonad Club were conducted on the 26th June, 2010, followed by interviews with members of the St. Peregrine's Club on the 28th June, 2010. The investigating sub-Committee thought it appropriate to then seek clarification from the Referee by letter dated 30th June, 2010. The Referee's reply was received on the 5th July, 2010. The investigating sub-Committee only had the opportunity to interview the injured player on the 12th July, as he had been abroad for some time.
6. On the 14th July, 2010 Coiste Cheannais na gCommortaisí Laighean met to consider the Report of the investigating sub-Committee. Following upon this meeting the Claimant was notified of the proposed penalty.
7. The Claimant's Club, Clonad, was scheduled to play in the Laois Club Championship on the 17th July, 2010. This fixture was postponed at the request of Coiste Cheannais na gCommortaisí in order to facilitate the Claimant and to the intent that the disciplinary process would be completed

in advance of this fixture. This fixture was re-scheduled for Sunday, 25th July, 2010.

8. The Claimant having been furnished with the Notice of Disciplinary Action on the 15th July, 2010 requested a hearing in correspondence dated 16th July, 2010.
9. Coiste Eisteachta Laighean convened a meeting on the 19th July, 2010 to hear the Claimant's case.
10. On the 20th July, 2010, Coiste Eisteachta Laighean conveyed their decision to the Claimant and the Claimant submitted an Appeal to An Lár Choiste Achomhairc on the 21st July, 2010.
11. An Lár Choiste Achomhairc requested both Respondents to be on standby for a hearing on Saturday, 24th July, at 11.00 am. Mr. Norton, on behalf of the Claimant, indicated that in his communication with Mr. Stephen Browne of Croke Park, he was offered a hearing on Saturday morning, 24th July or alternatively on Monday evening, 26th July, at 8.00 pm. Mr. Norton indicated that the Saturday morning date was "less suitable" than Monday, and consequently the Appeal hearing is now scheduled for Monday, 26th July, 2010.
12. The Claimant had on the 6th July, requested the Secretary of the D.R.A. to convene a panel for hearing of his Application for Interim Relief on the basis that he would not be afforded a full hearing before the scheduled fixture on the 17th July, 2010. Once this fixture had been re-scheduled the hearing had not been necessary in advance of the 17th July, 2010. In subsequent correspondence however, between Mr. Norton on behalf of the Claimant and the Secretary of the D.R.A. a panel was convened on the basis

that the "next game is scheduled for Sunday, 25th July and it is very unlikely that we will have sufficient time to exercise all avenues of Appeal open to us".

The Claimant's Case:

1. The Claimant seeks a Declaration that the purported suspension of the Claimant be lifted with immediate effect pending the final resolution of the matter in accordance with the procedure set out in TO 2009, the Appeals system and the Disputes Resolution Code, and that the period of suspension already served be deducted from any penalty imposed on the basis that a full hearing is not possible prior to the 25th July, 2010.
2. Mr. Norton submitted that the Claimant has an arguable case and that therefore the Tribunal in exercising its discretion in weighing the balance of convenience should exercise that discretion in favour of the Claimant and grant the reliefs sought. The Claimant relied upon the decision of this Tribunal in DRA21/1008, Tomáis ó Fearghail – v – Padraig ó Laidhneadh and Seán ó Hiophin (mar Ionadaí ar son CLG Bórd Conntae na hIarmhái) the reference in that case to the decision of Ms. Justice Laffoy in Jacob – v – Irish Amateur Rowing Union Limited [2008] IEHC196.
3. Mr. Norton further submitted that the failure on the part of the Respondents to complete the disciplinary process more expeditiously and at least within the time frame of the minimum suspension period applicable to the alleged offence, i.e. eight weeks, constituted an ongoing penalty and was in breach of the principles of natural justice. Some fifteen weeks have now elapsed since the date of the match on the 5th April, 2010.

4. Finally, Mr. Norton also submitted that in accordance with the decision of Judge McMahon in Barry and Rogers – v – Ginnitty and Others delivered on the 13th April, 2005
“The more serious the consequences the higher the standard that will be required”.

The Respondents’ Case:

1. The Respondents submit that the Claimant has not exhausted all available avenues of Appeal as is required under Rule 7.13 (d).
“No member or unit of the Association shall refer such dispute to Dispute Resolution until all available avenues of Appeal under the Rules of the Association have been exhausted”.
2. Further the Respondents submit that An Lar Choiste Achomhairc offered a hearing date of Saturday, 24th July, 2010 to the Claimant and that could have facilitated the hearing of the Appeal.
3. With regard to the conduct of the disciplinary process the Respondents submitted that given the seriousness of the alleged offence the number of witnesses that had to be interviewed and the availability of some witnesses, that the investigation and disciplinary hearings were conducted as expeditiously as possible under the circumstances.

Determination:

The first point which this Tribunal has to determine is whether or not the Claimant has complied with Rule 7.13(d) and has exhausted all available avenues of Appeal under the Rules of the Association. In this regard this Tribunal notes that all of the

Respondents were available to attend at the Appeal hearing on Saturday, 24th July, 2010 at 11.00 am. The Claimant however through his representative, indicated that the date was merely "*less suitable*" than the alternative date of Monday, 26th July, 2010. "*Less suitable*" merely suggests that it was inconvenient for the Claimant or perhaps his representative to attend. In circumstances where all other parties were available for the hearing on the morning of Saturday, 24th July, 2010 and thereby conclude the Appeal in advance of the fixture on the 25th July, 2010, this Tribunal finds that the Claimant has not complied with Rule 7.13(d) and the interim reliefs sought are therefore denied.

Had An Lár Choiste Achomhairc not offered the date of the 24th July, 2010 for the conduct of the Appeal hearing and/or had the Respondents or any of them not been available for the Appeal hearing offered on that date interim relief would have been granted. It follows therefore that the Claimant's submissions in respect of the balance of convenience and the principles of natural justice could have been advanced at the Appeal hearing on the 24th July, the disciplinary process including the Appeal could have been determined. Likewise in relation to the Claimant's submission in respect of the standard by which Respondents should be judged in the conduct of the disciplinary process is a submission which can be advanced at the Appeal hearing.

Finally, the costs of these proceedings are reserved pending the outcome of the Appeal. The Claimant and the Respondents shall have liberty to apply in respect of costs for a period of one month thereafter. In the event of a subsequent referral to the D.R.A. these reserved costs shall be adjudicated upon by that Tribunal.

Dated this 23rd day of July 2010.

Signed Brian Rennick
Brian Rennick (Chairman)

John Fay
John Fay

William Penrose
William Penrose B.L.