IN THE MATTER OF THE ARBITRATION ACTS 1954 AND 1980
IN THE MATTER OF THE DISPUTES RESOLUTION CODE OF THE GAA

Record No: DRA/14/2008

Between:

Ross Carr

Claimant

-and-

Jimmy Dunne (as nominee for and on behalf of the Central Competitions Control Committee) and John Heaphy (as nominee for and on behalf of Central Hearings Committee) and Paraic O'Duffy (as nominee for and on behalf of the Central Appeals Committee)

Respondent

INTERIM DECISION

1. <u>The origin of the dispute:</u>

1.1 The Claimant is the Manager of the Down senior football team and was in charge of the team for a National Football League match against Fermanagh on Sunday 20th April 2008 which Fermanagh won. The following day remarks attributed to the Claimant appeared in The Irish News newspaper in which the Claimant was critical of the referee's handling of the game the previous day and in which he was reported inter-alia as having said "But it has come down to a call; either someone is incompetent or biased. That referee was one of the two – I don't know which."

1.2 On the same day (21 April 2008) the first named Respondent (Central Competitions Control Committee (CCCC)) served a Notice of Disciplinary Action on the Claimant in which it alleged that the Claimant had engaged in misconduct considered to have discredited the Association contrary to Rule 143 (d) of the Official Guide 2007. The CCCC proposed a penalty of 8 weeks suspension. The Claimant indicated that he was not accepting the proposed penalty and sought a hearing before the second named

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Respondent (Central Hearings Committee (CHC)). The CHC hearing took place on 29th April 2008. It appears that there was some communication between the Secretary of the CHC and the Claimant subsequent to this hearing. A clarification was published in The Irish News of 1st May 2008 and it appears that this formed some part of the CHC deliberations. On 5th June 2008 the Claimant was notified by the CHC that it was imposing a suspension of 8 weeks but that this suspension was to be backdated to 29th April 2008. The Claimant appealed this decision to the third named Respondent (Central Appeals Committee (CAC)). On 7th June 2008 the CAC upheld the decision of the CHC.

2. Request for Arbitration

2.1 The Claimant submitted a Request for Arbitration to the DRA on 7th June 2008 and this is the Commencement Date for the purposes of Section 2.4 of the Disputes Resolution Code. At paragraph 10 of the Request for Arbitration the Claimant sought an interim temporary remedy to wit "removal of suspension ban pending a full hearing to enable Ross Carr to carry out his duties as a manager at the Ulster Senior Football Championship game between Down and Tyrone on Sunday 8th June 2008". Today's hearing is an application for an interim ruling under Section 8 of the Disputes Resolution Code. The notice requirements for such a hearing are set out in Section 8.2 of the Code but I have shortened the required notice pursuant to my powers under Section 8.3 of the Code in view of the urgency of the situation from the Claimant's perspective. I have given the parties notice of the hearing by telephone as permitted by Section 6.5 of the Code. The hearing of the application is being conducted pursuant to powers given to the Secretary by Section 8.3 of the Code. All parties are satisfied that the relevant service requirements have been complied with.

3. Claimant's arguments

3.1 The Claimant argued that the charge made against him was not properly formulated in that the Notice of Disciplinary Action did not set our clearly the manner in which he had discredited the Association. In particular, none of the non-exhaustive list of

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examples of such misconduct listed at Rule 143 (d) of the Official Guide 2007 had been specifically referred to in the Notice of Disciplinary Action.

3.2 The Claimant also argued that the alleged discrediting was caused by the publication of the remarks made by the Claimant. He contended that if these remarks had been made in private they would not have discredited the Association. The Claimant never intended the remarks to be published and the fact that they were published was as a result of either a mistake by The Irish News or a misunderstanding by the Claimant and the reporter. Mr. O'Hare, for the Claimant, argued that where publication of comment is accidental or unintentional this provides a defence to defamation.

3.3 The Claimant also argued that the words used were not defamatory at all. Example (3) in Rule 143 (b) of the Official Guide 2007 refers to defamation as an example of misconduct which might discredit the Association. The Claimant alleged that the Respondents now seem to be referring to comments which might be derogatory rather than defamatory. Mr. O'Hare argued that for comments to be defamatory they must lower the estimation of the person about whom such comments are made in the eyes of right thinking members of the community generally. He contended that those members of the community which would have read the remarks quoted in The Irish News would, at most, constitute 25% of the population of Northern Ireland. He therefore argues that this did not constitute defamation. In addition, he argued that the allegations made were of a kind which are commonly heard at GAA grounds and could not therefore be defamatory.

3.4 The Claimant also argued that there had been unreasonable delay in dealing with the disciplinary action. He was notified of his suspension by telephone call on Thursday 5th June 2008 almost on the eve of the first round of the Ulster Championship. This gave him no opportunity to make alternative arrangements in relation to the management of the team and did not afford the Claimant an opportunity to submit a Request for Arbitration in sufficient time to allow the DRA establish a tribunal to conduct a full hearing of the matter. Mr. O'Hare argued that where there is an agreed procedure for conducting a hearing or an appeal, then that procedure should be adhered to and where it is not adhered to then a decision to impose a disciplinary

sanction should be set aside. The Claimant alleged that the only explanation given for the delay at the CAC hearing was that the CHC liked to deal with a number of cases at a single meeting rather than having a series of meetings.

3.5 The Claimant also argued that the balance of convenience favoured the granting of the interim remedy sought because if the Claimant is unsuccessful at the full hearing then a suspension can be imposed which will cause the Claimant to miss Down's next championship game (whether it be in the Ulster Championship or the qualifier series).

4. Respondents' Argument

4.1 The Respondent contended that the Notice of Disciplinary Action adequately set out the nature of the charge being made against the Claimant. This is particularly so given that a copy of the relevant newspaper article was attached. The Respondents contended that there was no obligation to refer to one of the "non-exhaustive list of examples" contained in Rule 143 (b) Official Guide 2007. The Respondents also referred to a decision of the Árd Chomhairle of the GAA made on 8th December 2007 when it adopted various match regulations. At that same meeting Árd Chomhairle accepted a view submitted to it by the CCCC that "derogatory comments in relation to games officials (made) before, during or after a game in interviews" by various listed personnel, including a team official "shall be dealt with in accordance with Rule 143 (b) T.O. 2007"

4.2 The Respondents also alleged that there was no obligation on the CCCC to allege that the comment was defamatory. In any event, Mr. Hogan for the Respondents pointed out that the Irish definition of defamation as set out in McMahon & Binchy's Irish Law of Torts and accepted by the Irish Courts is much broader than the definition advanced on behalf of the Claimant in that the test is whether the words complained of might tend to lower the estimation of the person allegedly defamed in the eyes of rights thinking members of the community generally.

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4.3 The Respondents also pointed out that there were two members of the Down County Committee at a meeting of County Officials when the match regulations adopted by Árd Chomhairle were discussed. The nature of the Claimant's comment to the news reporter when Mr. Carr said "I suppose there's a directive from Croke Park not to comment but how would you assess the performance of the referee in the second half?" would indicate that the Claimant was fully aware of the fact that derogatory comments in relation to a match referee would be in breach of Rule 143 (b) of the Official 2007. The Claimant was aware of what he did and was alleged to have done and he has never denied having made the comments alleged. The Respondents also argue that the question of the definition of defamation was not one which should be examined by the DRA.

4.4 The Respondents say that the Claimant was not in a position to produce evidence to the CHC in support of his contention that it was never intended that the remarks might be published. The CHC afforded the Claimant an opportunity to seek clarification or retraction from The Irish News and to present this to the CHC subsequent to the hearing. When the clarification was published in The Irish News on 1st May 2008 the Claimant telephoned the Secretary of the CHC. This clarification and discussion, apparently, formed part of the CHC deliberations. The CCCC were not involved in the matter subsequent to the hearing of 29th April 2008.

4.5 The Respondents accepted that the CHC hearing had taken place on 29th April 2008 and that the Claimant was not notified of the CHC decision until 5 June 2008. They were not in a position to offer any explanation for the delay of over one month.

4.6 The Respondents contended that if the Claimant was granted interim relief then he would serve no period of suspension and would never be deprived of an opportunity to be involved in a championship game with Down. They also contended that the Claimant had not established that there was a serious issue to be tried. They pointed out that whilst the balance of Mr. Carr's convenience might favour the granting of relief, the DRA must examine whether the granting of such relief would lead to the preservation of the status quo.

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4.7 The Respondent agreed that the CHC had backdated the period of suspension to 29th April 2008. The Respondents accepted that the Claimant would not have known that he was suspended during the period between 29th April and 5th June and that his "suspension" in this case would have been of no effect.

4.8 The Respondents alleged that to refer to a referee as being "biased" or "incompetent" was highly defamatory and that it would be unreasonable to expect a GAA disciplinary body to conduct enquiries in every case as to whether comments were made either on or off the record.

5. Decision

5.1 The test to be applied in relation to the formulation of the charge is whether the person against whom disciplinary action was being taken (the Claimant) was aware of what was being alleged. This matter was dealt with by Judge Bryan McMahon (as he then was) in Barry & Rogers –v- Ginnity & Others (unreported Circuit Court Decision 13th April 2005) when he pointed out that even where a charge is clumsily formulated, it was perfectly acceptable if it indicated the matters of concern. The allegation in this case is quite clear. The Notice of Disciplinary Action at paragraph 1 states

> "1. An Lár Choiste Cheannais na gComortaisí at it's meeting today decided to commence disciplinary action arising from comments attributed to you in today's Irish News (copy attached) concerning the **Allianz National Football League** fixture between **An Dún** and **Fear Manach** at **Newry** on the **20 Aibréan 2008** under the Rules of the Association.
>
> You are hereby notified that a charge is laid against you as having committed the following Infraction of Rule; Misconduct considered to have Discredited the Association which carries the appropriate penalty set out in Rule 143 **(d) T.O. 2007**."

A copy of the newspaper was attached and the Claimant was advised that it was the view the CCCC that this had discredited the Association. I am fortified in my view that the Claimant was fully aware of the allegation made against him by the fact that he had obtained an email from the newspaper reporter, in advance of the hearing (though it was not produced at the hearing), seeking to clarify the content of the offending article. In addition, the Claimant argued his case fully at the CHC based on the relevant newspaper article. Indeed in a procedure which would appear to be somewhat questionable, though used in this case in ease of the Claimant, he was afforded a further opportunity to clarify matters subsequent to the hearing.

5.2 I am also satisfied there was no obligation on the CCCC of the CHC to refer to any of the 8 examples of misconduct considered to have discredited the Association given in Rule 143 (b) Official Guide 2007. This list is stated to be "non-exhaustive" and, in fact, does not appear in the 2008 Official Guide.

5.3 I am further satisfied that the CHC is not obliged to apply a full legal test of defamation. The law allows sporting bodies a fair degree of latitude in the administration of their affairs. It is perfectly acceptable for the Association to hold that derogatory and/or defamatory remarks amount to misconduct discrediting the Association though, because of the wide ranging nature of the "discrediting rule", it is preferable that it be used sparingly. The CHC is not a Court of Law and the members of various Hearings Committees throughout the country cannot be expected to deal with cases as if they were lawyers. The CHC was entitled to hold that an allegation of incompetence or bias against the referee should not be made unless it can be substantiated. There has been no effort by the Claimant to substantiate the allegation.

5.4 It would appear that the order made by the CHC to suspend the Claimant may be ultra vires its own rules. Rule 146 (f)(4) Official Guide 2007 provides that "a Term of Suspension shall commence….. in the case of a Non-Player, from the date of the decision of the council or committee in charge". There does not appear to have been any basis in Rule for the decision to backdate the suspension to 29th April 2008.

5.5 The comment made by the Claimant were made immediately following a match on 20th April 2008. The newspaper article appeared on 21st April 2008. Notice of Disciplinary Action was served on the Claimant on the day on which the article was published (21st April 2008). The Claimant opted not to accept the penalty proposed by the CCCC and sought a hearing which took place on 29th April 2008. The "clarification" appeared in The Irish News of 1st May 2008. However the decision of the CHC was not made until 5th June 2008. No reason has been given for the delay from 1st May to 5th June. The Claimant immediately appealed the decision of the Central Hearings Committee and was afforded an early hearing by the CAC on 7th June 2008. It is, of course, preferable that careful consideration be given to any decision to impose a disciplinary sanction but, in the sporting context, delays of this nature are not reasonable without sufficient excuse.

5.6 I am satisfied that there is a serious issue to be tried. The effect of the suspension of a team manager is not as serious as a suspension of a player but it is very important none the less, in the modern game.

5.7 The assessment of where the balance of convenience lies must be made in the context of the preservation of the status quo ante and certainly not by looking at what is most convenient for the Claimant. It appears to me that if the suspension is set aside and a Tribunal subsequently decides that the Claimant was properly suspended then he will miss Down's next game. If the suspension is not set aside he will miss today's game and will, in all likelihood, be available for Down's next game.

5.8 The urgency in this case has been created by the CHC and not by the Claimant. This has led to a situation where the Claimant was forced to apply for Interim Relief if he wished to pursue a Request for Arbitration to the DRA and seek to obtain a meaningful remedy. In the circumstances I am satisfied that there are issues to be tried in relation to delay and the question of whether the decision made by the CHC was defective. I am also satisfied that the balance of convenience favours granting the relief sought in circumstances where it appears that the Claimant will suffer a similar penalty if he is ultimately found have been correctly suspended.

5.9 Accordingly, I direct the setting aside of the suspension of the Claimant pending a full hearing of the Claimants Request for Arbitration. I direct all parties to co operate fully with a view to an early hearing of the substantive matter before a DRA Tribunal. All other matters (including the question of costs and expenses) are reserved to the full hearing.

Dated at Dunshaughlin on 8th June 2008

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Liam Keane
Secretary DRA

Phone: 01 825 0825 Fax: 01 825 0824 Mobile: 087 6631111 email: secretary@sportsdra.ie