Disputes **R**esolution **A**uthority

An Córas Eadrána

IN THE MATTER OF THE ARBITRATION ACTS 1954 AND 1980

Record No: DRA/15/2006

Between:

Conchúr Ó Muireartaigh

Claimant

-and-

John Devaney (mar ionadaí ar son an Choiste Feidhmiúcháin Comhairle Ardoideachais)

Respondent

DECISION AND AWARD

1. This Claim is by way of challenge to a decision of the Respondent made on 15th March 2006 and notified on 16th March 2006. On foot of this decision, the Claimant was suspended for 8 weeks pursuant to Rule 142 T.O. (2006).

2. It was not possible to complete any appeal against the decision within the time frame necessary to permit the Claimant to play a game for his County (Mayo) on 19th March 2006 and therefore it was argued, and we hold, that Rule 158(iv) T.O. (2006) has been complied with.

3. The Claim was made on 17th March 2006 and an application for interim relief was fixed for today 18th March 2006 in Croke Park.

4. The parties agreed – after preliminary discussion and submissions – to treat this hearing as the final hearing of the Claim. This is, in our view, appropriate, as the primary facts are not in dispute and as an interim declaration or stay on the Claimant's suspension might cause particular inconvenience in the event that the original suspension was subsequently upheld.

5. The evidence having been agreed, it was not necessary to hear oral evidence, although there was disagreement as to the secondary inferences to be taken from the agreed facts.

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6. The Claimant participated in a game held on 1 March 2006 between his Third Level College (Dublin City University) and N.U.I. Galway. The referee's report includes a letter (referred to as "the addendum") which states inter alia:

> "*On my way off the pitch a DCU player known to me as Conor O Mortimer came to me and also verbally abused me.*"

7. By letter dated 8th March 2006, the Respondent, by its officer Córa de Bealtúin, notified the Claimant of the report and enclosed copy of pages 1, 2 and 3 of the report and a copy of the addendum. It was stated that Rules 142 and 144 applied to the case.

8. The letter further stated that the Claimant had three days within which to submit a written explanation or to seek by writing an oral hearing in relation to the alleged offence.

9. On 10th March 2006 Mr. Paul Madden, Solicitor and member of the Claimants' unit, wrote to the Respondent seeking an oral hearing. A further request in materially identical terms was sent by the Secretary of the Claimant's unit on 13th March 2006. We accept that this was most likely as a result of having been told by the Respondent to submit a request in this format.

10. The hearing was held on 15th March 2006, the Claimant having been notified personally that his request for an oral hearing had been granted.

11. At this hearing, it is accepted that the Claimant stated that the words used were as follows:

> "*What went on today was ridiculous. It was an absolute joke.*"

12. The Respondent agreed that the Claimant said he had used the words quoted; they did not, however, accept that this was necessarily the case and relied solely on the words used by the referee.

13. Against this background, the Claimant makes five arguments, on the basis of which he contends that the decision and consequent suspension are unlawful.

14. First, he states that verbal abuse after the conclusion of the game is not an offence under Rule 142. He refers to Rule 142(2)(v) which states that:

> "*A player reported by the Referee as having committed a Category (A), (B), or (C) offence after the conclusion of the game, shall likewise stand suspended as outlined above. The player shall be immediately notified in writing of the Report by the Committee in Charge.*"

    He argues that this is a rule that allows the Referee to report offences committed during the game but which he did not report <u>during</u> the game for one reason or another. It did not, it is argued, concern offences <u>committed</u> after the game.

15. He argues further that Rule 144 is the appropriate Rule under which to "prosecute" players for post-match offenses. The applicable sentence states:

> "*The minimum penalty for conduct considered to have discredited the Association shall be 8 weeks suspension.*"

16. He also emphasises the absence of a "comma" after the word "Referee" in the first line of Rule 142(2)(v). That, he argues, means that offences after the game are not its concern but rather reports made after the game.

17. In our view, this argument is not well founded. The Rule 142 (2)(v) is clear and unambiguous in its meaning, and plainly refers to offences committed after the conclusion of the game. The fact that the word "*likewise*" is used demonstrates that another type of offence is being provided for. In our opinion the offence referred to in the addendum to the referee's report is provided for in Rule 142 (2)(v) and the penalty is set out in Rule 142 (3)(i).

18. The second and third arguments on behalf of the Claimant may be taken together. They go as follows: because the request for an oral hearing was made by the Claimant's Solicitor (and also – albeit out of the time – by his Unit Secretary) it was not made in accordance with Rule 146(b) which requires that requests for oral hearings shall be made personally, where an individual member is concerned. It follows, goes the argument, that the Respondent had no jurisdiction pursuant to Rule 144 to hear the matter.

19. We reject this argument. We do not consider that a Claimant may rely on his own default to undermine the procedures adopted by the Respondent in attempting to facilitate him with an oral hearing. It is not denied that the Solicitor and Secretary had authority to write on his behalf, and indeed the solicitor attended with him at the hearing.

20. It was contended that this error - while the Claimant's own error - was done on foot of bad advice from officers of the Respondent. The fact that the rule book is available to the membership generally, the fact that the Claimant was afforded a hearing and therefore suffered no prejudice, and the fact that no objection was made on jurisdictional or other grounds relating to the Request for a hearing, demonstrates that the point made has no merit.

21. The fourth argument was that the words stated by the Claimant to have been the words used at the game did not and could not constitute "*verbal abuse*" in their ordinary meaning. It was argued that the words were neutral (i.e. about the game) and not directed towards the Referee or his performance. It was submitted that these words, if used in the course of a game would only have amounted to a cautionable offence (dissent).

22. It was contended that the Respondent had an onus to seek clarification from the official in respect of the interpretation of his words. It was accepted that no clarification was sought by the Claimant, but it was argued that only the Respondent could seek this clarification by reference to Rule 146(d).

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23. We reject these arguments also. The words the Claimant states he used cannot be said to be incapable of constituting "*verbal abuse*" or, to use the words of Rule 142 (3)(i) "*abusive…. language*" (which is the same thing). While the words could constitute a communication that was not abusive, it is not for the DRA to substitute its interpretation of the meaning of words in a given context, for the interpretation taken by the Referee or the committee in charge. It was accepted that the referee is an experienced and highly qualified referee and his interpretation was communicated within one week of the game, when, presumably, the events were fresh in his mind. It was open to the Claimant to request the Respondent to seek clarification of the words used, but this was not done. In the absence of such a request, we cannot see how the Respondent should be required to prepare the Claimant's defence. In saying this, we are not stating that Committees in Charge are bound to seek clarification if requested, but that point was never reached here.

24. The final point raised by the Claimant concerned the exclusion of pages 4 to 7 of the Referee's report and he argues accordingly that the Respondent breached the principles of fair procedures. It was accepted that the Referee's Report furnished at the hearing before this Tribunal is the original Referee's Report (with the expenses sheet detached). The Claimant submits that he was deprived of the opportunity to raise inferences arising from the matters excluded from the report (the "missing" section of the report was in fact blank). Our attention was drawn to the fact that whereas the addendum mentioned eight cautions issued during the game, the list of reported offences excluded reference to any of these. It was also argued that the Rules of the Association do not make reference anywhere to "addendums" to referees reports. We note that whereas particular forms are used for reports, the rules are silent as to the use of prescribed forms (Rule 1.6 Rules of Control deals with the required content of reports).

25. In our view, minor errors or inconsistencies in a Referee's report, which do not refer to the player defending disciplinary proceedings, do not affect the jurisdiction of the Committee in Charge or render the procedure used unfair. No case was made that any specific factual matter of relevance that occurred at the game ought to have been included. Moreover the "missing" pages made no reference whatsoever to the Claimant. In our view, therefore, there was no breech of fair procedure in the exclusion of those pages from the notice of disciplinary proceedings dated 8th March 2006.

26. Furthermore, there is no rule, express or implied, that the document referred to as the "addendum" cannot be said to be a part of the Referee's report as understood in Rule.

27. For the reasons above we do not believe that the Claimant is entitled to the relief sought and accordingly we now award and direct as follows:

- That the Claimant's Claim be dismissed.

28. We will refrain from making the award final until we have decided the question of costs and expenses and, if appropriate, the measurement of costs and expenses.

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Dated 18th March 2006

Signed: Marc Bairead Patrick J. McCartan Micheál O'Connell

- We decide and award that the costs and expenses of the Tribunal and the DRA be borne by the Claimant and that the Claimant contribute the sum of €100 in respect of each of the two representatives of the Respondent present (i.e. their expenses).

Dated 18th March 2006

Signed: Marc Bairead Patrick J. McCartan Micheál O'Connell

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