

DISPUTES RESOLUTION AUTHORITY

Record No: 15/2008

BETWEEN/

PÓL Ó GEALBHAÍN

Éilitheoir

- AGUS -

TREASA NI RAGHAILL
(MAR IONADAÍ AR SON AN LÁR CHOISTE CHEANNAIS gCOMÓRTAISÍ)

SEAN Ó RAGHALLAIGH
(MAR IONADAÍ AR SON AN LÁR CHOISTE ÉISTECHTA)

-AGUS-
SEÁN Ó hUAINE
(MAR IONADAÍ AR SON AN LÁR CHOISTE ACHOMHAIRC)

Cosantóirí

DECISION OF THE TRIBUNAL AND STATEMENT OF REASONS

BACKGROUND

1. The Claimant is a gaelic footballer and Captain of the County Kerry Senior Football Team for 2008. On 15th day of June 2008 the Claimant played in a senior football championship game between Counties Clare and Kerry.
2. It is accepted that during the course of that game the Claimant was ordered off by the referee on foot of a second cautionable infraction. For the purpose of completeness the Claimant accepted the facts as set out in the referee's report and those facts are not in dispute. The addendum to the referee's report sets out the following:-

“During the second-half of the match, my linesman Mike Meade, reported Clare No 7 John Hayes and Kerry No 10 Paul Galvin for jostling off the ball. I called the two players together and I yellow

carded John Hayes and as I was about to Yellow Card and Red Card Paul Galvin (as I had yellow carded him already in the first half), he knocked my book from my hand.

I picked up my notebook and showed him a yellow card and as I was taking the red card out, he ran to the linesman Mike Meade, and began to remonstrate with him. At this point Tomás O'Shea (Kerry) led Paul Galvin away and he left the field of play. At the end of the match Mike Meade reported Paul Galvin for calling him a f... g b.....ks."

3. By notice of disciplinary action dated the 17th day of June 2008 the Central Competitions Control Committee (CCCC) notified Mr Galvin that

"arising from the contents of the referee's report ... you are hereby notified that you have been reported to have committed the following playing infractions which carry the appropriate penalties set out in RIAIL 146(b)T.O.2008

Category I – Second cautionable infraction

Category II – Abusive language towards a linesman

Category IV – Minor physical interference."

By way of this notice Mr Galvin was informed that in respect of the Category 4 infraction the CCC were proposing that he be suspended for 24 weeks in all Codes and at all levels. They also proposed an 8 weeks suspension in respect of the Category II offence. He was informed that he could either:-

- (a) Accept the proposed penalties; or
- (b) Request a hearing before the Central Hearings Committee (CHC).

4. The Claimant exercised his right to have the matter heard before the CHC. This hearing took place at Páirc An Chrócaigh on the 23rd June 2008. The Claimant was represented by Mr Eamon O'Sullivan, Secretary of the Kerry County Board.
5. After hearing evidence from three CCCC members Ms Rehill, Mr Dunne and Mr Reilly and from Mr O'Sullivan on behalf of the Claimant it was decided to impose penalties identical to those penalties proposed in the Notice of Disciplinary Action dated the 17th day of May 2008.
6. Mr Galvin appealed this decision to the Central Appeals Committee (CAC) which hearing was held on the 26th June 2008. After the CAC hearing the CAC agreed that Mr Galvin's appeal should fail under Rule 155(m) T.O. on the basis that the CHC had not been shown to have misapplied or infringed any rule.
7. The Claimant made a request for arbitration and a hearing was duly convened at Dunboyne Castle Hotel on Tuesday 15th day of July 2008.

THE DISPUTE RESOLUTION AUTHORITY (DRA) AND ITS FUNCTIONS

8. The DRA was set up by the Gaelic Athletic Association Congress in 2005. The workings of the DRA are governed by Rule 157 of the GAA Official Guide 2008. It is provided for under that rule that dispute resolution shall be conducted under the Disputes Resolution Code provided for under the Rules and the Arbitration Acts 1954 and 1980.
9. It is vitally important to note that the DRA does not normally sit as an Appeal body to deal with facts applicable to any case that might come before it. Generally speaking the DRA does not have any jurisdiction to deliberate on the actual facts of any given case unless the parties i.e., the Claimants and the Respondents agree that the DRA can hear the case as if it was an Appellate body. Therefore, unless the parties agree, the only jurisdiction of the DRA is to in effect review the decision making process/processes of disciplinary bodies/appellate bodies within the structure of the GAA. For example the DRA, if so requested, can scrutinise the manner in which a Rule had been applied by the CHC.

10. The DRA carries out its functions in many respects in a similar fashion to the High Court in a Judicial Review application or in an application for an injunction. Similarly, the DRA acts as a body set up to examine and review decisions of, for example, disciplinary committees. The DRA does not carry out its functions as a Court of Appeal unless requested to do so by the parties.
11. It is worth bearing in mind that the DRA was initially set up to offer Claimants an alternative to going to the High Court seeking injunctive relief of decisions made by Disciplinary Committees within the Association. The DRA offers a cheaper and speedier method of reviewing such decisions.

SUBMISSIONS OF THE CLAIMANT

12. On behalf of the Claimant it was submitted by Donagh MacDonagh BL, that the suspension imposed and the manner in which the decision was reached was:
 - (a) In breach of the applicable rules of the GAA Rulebook;
 - (b) Involved an infringement and/or a misapplication of the Rules;
 - (c) Was in all the circumstances excessive and disproportionate;
 - (d) Was in breach of fair procedures and offended the principles of natural and constitutional justice;
 - (e) That the referees report did not disclose a Category IV infraction;
 - (f) That the decision of the CHC to impose suspensions that were greater than the minimum and the decision of the CAC in upholding same was a decision that was not supported by evidence;

- (g) That the policy of doubling the minimum period of suspension under Rule 146 for an incident involving match officials was in breach of Rule 146 and in breach of the principles of natural justice and fair procedures;
- (h) That the CHC in failing to provide reasons for its decision to impose a suspension greater than the minimum stipulated in Rule 146 acted in a manner that violates the principles of natural justice and fair procedures;
- (i) That the CCCC acted in contravention of Rule 147(z)(6) by deliberately disclosing the penalty it had proposed in the Claimant's case.
- (j) That in all the circumstances the decision was manifestly incorrect and disproportionate.

SUBMISSIONS OF THE RESPONDENT

- 13. On behalf of the Respondents, Mr Patrick O'Reilly BL, argued that the second named Respondent, pursuant to Rule 147(aa) T.O. has the final power to determine all matters of fact and all sources of evidence submitted to the hearing shall be considered.
- 14. That an appeal should be limited to the matters raised by the Appellant's appeal as originally lodged and shall be upheld only where:-
 - i. There has been a clear infringement of its application of the Rule by the decision maker; or
 - ii. The Appellant's right to a fair hearing has otherwise been compromised to such an extent that a clear injustice has occurred.

Mr O'Reilly BL on behalf of the Respondents further submitted:

- iii. That no determination of fact by the decision maker shall be set aside unless shown to be manifestly incorrect;

- iv. That Rule 157 T.O. provides that the DRA may arbitrate as to “the legality of any decision made or procedure used by any unit of the Association in pursuance of the Rule”.
- v. That the Disputes Resolution Code (Appendix 3 of T.O.) and in particular Sections 11.3 and 11.4 of the Dispute Resolution Code provide a system for reviewing decision of units within the Association.
- vi. That by reference to the DRA case of **Dónal Ó Cisosóg and others –v- MacShiurthain**, DRA 13/14/15 2007 the Respondents submitted that it was not for the CAC to simply substitute its views for those of the CHC, even if it wished to do so.
- vii. That whilst the DRA may consider that a decision was irrational or fundamentally at variance with common sense it may not disturb such finding of fact for any other reason and indeed may not substitute its own views therefor.

15. An issue also arose as to whether or not the first named Respondent (the CCCC) disclosed to the CHC the penalty which it had proposed to the Claimant. The first named Respondent called witnesses to assert that no such disclosure was made.

DECISION OF THE TRIBUNAL

16. The DRA Tribunal which sat on the 15th and 21st July 2008 quashed the decision made by the CHC on the 23rd day of June 2008.

17. Whilst Mr Galvin, the Claimant, accepted that an incident happened on the 15th June 2008 which warranted the commencement of disciplinary proceedings this DRA Tribunal is of the view that procedural irregularities occurred at the CHC

hearing on the 23rd June 2008 which were in breach of his right to fair procedures and to a fair hearing. The basis of this decision is as follows:

- (i) Having heard evidence from three CCCC members, Ms Rahill, Mr Dunne and Mr Reilly and from Mr Sullivan, Kerry County Board this DRA Tribunal has accepted on the balance of probabilities that the CCCC member, Mr Dunne, did say that CCCC had a policy of “doubling the suspension” for an infraction involving a match official.
- (ii) In this regard the contemporaneous note made by Mr Sullivan at the CHC hearing with reference to the fact that the CCCC had a “policy of doubling suspensions” was compelling evidence in deciding which version of the evidence it preferred in relation to the CHC hearing on the 26th day of June 2008. It was the only contemporaneous record presented in evidence.
- (iii) That the mere fact of stating that such a policy of “doubling of sentence” existed was in breach of Rule 147(z)(6) which states:-

“Procedures for disciplinary related hearings

Any proposed penalty shall not be disclosed to a Hearings Committee, but if disclosed mistakenly such disclosure shall not invalidate the Hearing and it shall be disregarded by the Hearings Committee.”

- (iv) That whilst accepting that the CHC can reach its own decision based on the merits of any particular case, this Tribunal nonetheless is of the view that reference to such a policy was likely to make it more difficult for the CHC to ignore such a policy of the CCCC (in assessing the merits of the case) as opposed to a once off doubling of an offence.
- (v) To highlight this point the Tribunal relies on the decision of **McMahon J in Barry and Rogers v Ginnity and Others** wherein he stated: *“The law*

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

17. This Tribunal is further of the view that all available material that was sought by the Claimant in advance of this hearing should have been disclosed by the Respondents in advance of the hearing. Whilst this non disclosure of material following a request by the Claimant is not a relevant point in the view of this Tribunal in reaching this determination, nonetheless for the purposes of a speedy resolution of hearings all such material should in future be disclosed.
18. This Tribunal is further of the opinion that it would be preferable that decision making bodies with the GAA, such as the CHC, should give clear reasons for its decision. Whilst the Respondents in this case argued that the Claimant well knew the reasons why he was suspended it would be in everybody’s interest, both Claimant and Respondents, if more concise and detailed reasons were given.
19. We do of course accept that the Rules do not provide that reasons must be given but nonetheless we believe that it is something that should be considered by Disciplinary Committees in the future.
20. The failure to give detailed reasons as to the rationale behind the decision of the CHC on the 26th June 2008 would not of itself have resulted in a breach of fair procedures in this particular case. That is not to say that it would not constitute a breach in a different set of circumstances.
21. For the reasons as outlined above and in particular the breach of Rule 147(z)(6) this Tribunal has quashed the decision of the CHC made on the 23rd June 2008 and directed that the matter be re-heard by a newly convened CHC as soon as possible.

22. This is an interim award insofar the issue of costs remains to be determined.

Made on this the 12th day of September 2008

Signed: _____
John Fay

Signed: _____
Brian Rennick

Signed: _____
Pat Purcell (Chairman)