DISPUTES RESOLUTION AUTHORITY

Record No. 16/2008

Idir:-

PÓL Ó FIONNALAIGH

Claimants

-agus-

TERESA REHILL
(mar ionadaí ar son An Lár Choiste Cheannais na gComórtaisí)
SEAN Ó LAOIRE
(mar ionadaí ar son An Lár Choiste Éisteachta)
agus
FERGAL McGILL
(mar ionadaí ar son An Lár Choiste Achomhairc)

Respondents

AWARD AND STATEMENT OF REASONS

Background

1. The Claimant is a footballer and a member of the Monaghan Senior Football Team, which competed in the Ulster Senior Football Championship 2008 and, since being defeated by Fermanagh on 25 May 2008, in the All Ireland Senior Football Qualifier competition.

2. In a contemporaneous addendum to the Referee's Report of the said game between Fermanagh and Monaghan, the Claimant was reported to have approached the Referee as he was leaving the pitch after the termination of the game, and to have made certain remarks to him. It is accepted that this addendum forms part of the Referee's Report.

3. The words alleged to have been used were set out in the addendum to the Referee's Report. Redacted appropriately, the addendum states as follows:

> *"After this game I was walking off the pitch when I was approached by a Monaghan player number 9 Paul Finlay: This player was shouting at me saying you blew me for a f***ing pick of the ground I didn't pick the f***ing ball of the ground you f***ing tramp."*

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4. It would seem fair to comment that, if the words reported were used, and especially if they were shouted at the Referee as suggested, then it was open to the Council or Committee in Charge to conclude that the words constituted "*abusive language towards a Referee*" (an Infraction contrary to Rule 146(b) T. O. 2008) and no case is made to the contrary. However the Claimant denied having used the words and contended in the disciplinary proceedings that he protested his innocence in relation to a decision made by the referee during the game, without use of abusive language.

5. The Referee's Report was processed by An Lár Choiste Cheannais na gComórtaisí ("*the CCCC*"), and Notice of Disciplinary Action was sent to the Claimant on 28 May 2008. The Infraction alleged in the Notice was "*verbal abuse towards a referee*" in breach of rule 146(b) T.O. 2008. Quite rightly, no issue is taken as to any minor difference in terminology between the Notice and the Rule. A penalty of 8 weeks was proposed. The minimum applicable for the Infraction is 4 weeks. Under Rule 146(b), a suspension imposed would be applicable in the same code and at the same level as the game in question, to include the next game in the same competition of that year even if the game were to fall outside the 8-week suspension period.

6. Some internal emails of the CCCC dated 26 May 2008 have been made available, which show that the decision to propose an 8-week penalty was made in the following way. First, the Chairman of the CCCC suggested to the Secretary that an 8-week penalty be proposed. Secondly, the Secretary emailed the other members of the CCCC informing them of this suggestion and seeking their input. Thirdly, one member of the CCCC replied by telephone and three replied by email, all but one agreeing with the suggested proposed penalty. The member who differed suggested that four week suspension would be sufficient but that he would "*go along with whatever was proposed.*" Fourthly, the Secretary checked with the Monaghan County Board and duly confirmed that the Claimant had not committed an Infraction within the previous 48 weeks such as would have doubled the minimum applicable penalty. Fifthly and finally, the Notice of Disciplinary Action was sent out.

7. The Respondents submitted that – since the adoption of the new Disciplinary Rules of the Association on 1 January 2007 – a practice had been in place whereby the task of proposing a penalty in accordance with Rule was delegated to

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its Chairman between meetings, subject to an obligation to consult the other members. If any objection was received, the matter would be processed at the next meeting of the CCCC. The Claimant was not in a position to gainsay the submission and it was considered unnecessary to give formal evidence in relation to the matter, although it was noted that the Claimant did not accept the evidence. The Claimant submitted that that methodology was not adopted by the Competitions Control Committee for County Monaghan; similarly, the CCCC was not in a position to challenge that submission.

8. The Claimant requested a hearing on 29 May 2008, thereby rejecting the proposed penalty. A hearing was arranged for 5 June 2007 before An Lár Choiste Éisteachta ("the CHC"). Minutes of the hearing indicate the CCCC relied on the Referee's Report while oral evidence was presented on behalf of the Claimant.

9. The CHC notified the Claimant of its decision on 6 June 2008. The decision was to impose an 8-week suspension (on the applicable terms as to Code and Level).

10. The Claimant appealed the decision to An Lár Choiste Achomhairc ("*the CAC*") on 9 June 2008 on the following ground:

> *"An Lár Choiste Éisteachta misapplied rules 143(b) and 146(b) – further clarification should have been sought in accordance with Rule 144Z(viii) T.O. 2007* [now Rule 147(z)(viii) T.O. 2008]. *I wish to emphatically state that I did not call the referee a f***ing tramp"*

11. The Appeal was heard by the CAC on 26 June 2008, and by decision notified on 27 June 2008, the Claimant and the CAC were notified that the Appeal had been unsuccessful pursuant to Rule 155(m) T.O. 2008.

12. On 3 July 2008, the Claimant commenced these arbitration proceedings and it is accepted that the same were brought within the time limits imposed by the Code. The grounds on which the legality of the decisions is being challenged are set out as follows in the Claim:

> *"1. A reasonable Hearings Committee should have sought clarification from the Referee in accordance with Rule because of a direct conflict with evidence.*
>
> *2. CCCC was not properly constituted to form an opinion to propose any penalty in accordance with the Rule Book.*

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3. CCCC has acted out of ultra vires."

Post-Hearing Clarification of Referee's Report

13. Rule 147(z)(viii), part of the sub-rule dealing with evidence in disciplinary and related hearings, provides as follows:

> *"After the Hearing, the Hearings Committee may, in its sole discretion, seek Clarification in writing of any matters in the Referee's Report. Any written Clarification or comment by the Referee shall have the same status as the Referee's Report itself, but may only be used for the purposes of exoneration of the Defending Party or mitigation of any allegations made against him. Such Clarification may not be challenged in any way or made the subject matter of any further Hearing."*

14. This process is to be distinguished from the pre-hearing clarification procedures whereby:

(a) under Rule 146(e) a Competitions Control Committee may seek clarification of any ambiguity in the Referee's Report or may seek clarification in relation to a possible Infraction not disclosed in his report, and

(b) under Rule 147(r) a Defending Party in his Reply requesting a hearing may request clarification of a Referee's Report.

15. In this case, no pre-hearing clarification was sought by the CCCC or the Claimant pursuant to either of the above sub-rules.

16. As stated in paragraph 4 above, there was a conflict of evidence as to the events the subject matter of the Disciplinary Action. On the one hand there was the Referee's Report and on the other, there was the evidence of the Claimant and of his Team's Manager, Mr McEnaney.

17. Rule 147(z)(vi) provides:

> *"A Referee's Report, including any Clarification thereto, shall be presumed to be correct in all factual matters and may only be rebutted where unedited video or other compelling evidence contradicts it."*

18. Mr Keane, on behalf of all the Respondents, contended that the words of the Addendum to the Referee's Report were utterly unequivocal and could not be

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made any clearer than they were. As such, clarification was unnecessary and unfeasible. Mr Logan, on behalf of the Claimant, argued for a broader definition of "clarification" so as to allow a Hearings Committee to ask a referee to reassess his report and confirm or alter (as the case may be) the item raised. We are of the opinion that a Hearings Committee may ask a referee to re-assess his report as well as to merely remove an ambiguity in it. Although pre-hearing clarification is a different matter, it is evident from the provisions of Rule 147(e) at least that a Referee can be asked to re-assess the content of his Report as well as to resolve ambiguities, and we feel that consistency requires that this facility should also be available in the context of post-hearing clarification (which, of course, can only be used for exoneration or mitigation of penalty).

19. That is by no means the end of the matter, however. It is abundantly clear that Rule 147(z)(viii) vests an extremely wide discretion in the Hearings Committee. Mr Keane contended that this discretion as unreviewable by an Appeals Committee or the Disputes Resolution Authority save in cases of fraud or gross *mala fides*. We think that the test is not quite as severe as that. We think that if a decision not to seek clarification is irrational (i.e. on the test of administrative unreasonableness), then the DRA should review it, and to that extent we agree with Mr Logan. That is, of course, an extremely stiff test to overcome, and in the result we do not think that the decision of the CHC in this case came close to the degree of irrationality required in order to warrant interference by this Tribunal. A mere conflict of evidence is not enough. If the conflicting evidence was extremely strong (perhaps sufficient to carry the label "compelling"), then one might argue for irrationality, but the DRA must be extremely careful not to trespass on the fact-finding jurisdiction of the internal disciplinary bodies of the GAA. In this case, the conflicting evidence bears no special characteristic that calls either for an ambiguity to be removed or for a decision to be re-evaluated; still less, in our opinion could it amount to an example of what constituted "compelling evidence". Having regard to the words of Rule 147(z)(vi), we consider that, to earn that label, the conflicting evidence must be considered – as a general approximation – to be as reliable as, for example, unedited video evidence, and, with no disrespect whatever to the witnesses in the matter, we conclude that mere oral testimony would not, except perhaps in extremely limited circumstances, meet that standard.

20. The Claimant has not therefore made out his claim that the CHC exercised its discretion unreasonably.

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Procedures adopted by the CCCC

21. The Claimant draws attention to the position of the CCCC (and all Competitions Control Committees) as "Committees" of the Association. This status, it is contended, brings with it the obligation to observe certain formalities. To illustrate the formal nature of committee proceedings, Mr Logan drew our attention to the following rules:

(a) Rule 90(a):

"[The CCCC] *shall consist of a Chairperson appointed by the Management Committee, the Secretary of each Provincial Council, and one member from each of the four Provinces appointed by the Management Committee. The Committee shall have a three year term of office."*

(b) Rule 90(c):

"[The CCCC] *shall investigate and process matters relating to the Enforcement of Rules (including hearing Objections and Counter Objections) and Match Regulations arising from Competitions and Games under the jurisdiction of the Central Council."*

(c) Rule 97:

"Quorum
The quorum for all meetings of Committees or Councils of the Association shall be one-quarter of the members entitled to attend, unless these Rules or Bye-Laws provide otherwise.
This requirement shall not apply to a Club General Meeting."

(d) Rule 98:

"Voting
Except where otherwise provided in these Rules, all decisions at General Meetings and Committee Meetings shall be taken by a simple majority of those present entitled to vote and voting, and in the event of a tie, the presiding Chairman shall have a casting vote, irrespective of whether or not he had originally voted on the issue. Any decision taken at a duly convened meeting of any Committee or Council of the Association, shall not be rescinded at a subsequent meeting, unless due notice of intention to propose rescindment has been previously conveyed to each member, and the consent of two thirds of those present entitled to vote and voting is obtained."

(e) Rule 101

"Video and/or Telephone Conferencing
Video and/or Telephone Conferencing at Conventions, Meetings and Hearings ("the Meeting") is allowable, when deemed appropriate by the Committee-in-Charge.

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A member may apply to avail of such facility by making application, in writing, at least seven days prior to the Meeting (or immediately, where less than seven days notice has been given of the Meeting).
If the facility requested is not allowed by the Committee-in-Charge, the applicant shall be so informed, in writing, at least three days prior to the Meeting (or immediately, where less than three days notice has been given of the Meeting).
A Member participating in Video and/or Telephone Conferencing shall be considered as being "present" at the Meeting.
When Video and/or Telephone Conferencing is deemed appropriate, the facilities for same shall be provided by the Committee-in-Charge."

22. It was accepted that Rule 147(a) allowed for certain of the functions of the CCCC to be delegated to one or more of its members, but Mr Logan drew attention to the absence of any formal minutes or bye-laws delegating any particular functions of the Committee to any particular persons or persons. Unless and until that was done, he contended, the CCCC was obliged to meet in the manner in which Committees were traditionally understood to meet and carry out their business, with motions being proposed, seconded, debated and decided upon by a vote.

23. In the specific context of the enforcement of rules, attention was drawn to the following:
    (a) Rule 147(d) (1) to (3),
    (b) 147(i), and
    (c) 147(m),
    and it was urged upon us to conclude that those sub-rules in their terms required Committee approval. In particular, it was contended that sub-rule (m), which set out the basis upon which a proposed penalty is determined, requires a meeting that is quorate, where the members of the Committee sit and debate the question and come to a conclusion that represents the "opinion" of the Committee.

24. Mr Keane raised a preliminary objection to this issue being raised at all in the context of the present hearing. Rule 155(c)(3) provides that:

> *"(c) There shall be no Appeal against:….*
> *(3) A decision of any Competitions Control Committee in the course of the commencement, investigation and preparation of Disciplinary Action.*
> *(A grievance relating to any such matter may be raised at a Hearing, and a Decision of the Hearings Committee on such matter may be the subject of an Appeal."*

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25. The Respondents contend that this rule illustrates the nature of the CCCC's function in preparing disciplinary action. Mr Keane submitted that the proposal of a penalty is a facility or screening process for the benefit of members of the Association accused of Infractions, allowing them to avoid the annoyance, embarrassment and intrusion of a full hearing. It is not a decision that imposes any sanctions, and the moment that a proposed penalty is rejected it counts for nothing. The screening process, together with the flexibility of procedures available to the Competitions Control Committees delivers a mechanism by which members can deal quickly and efficiently with complaints made against them.

26. The decision in *Royal British Bank v Turquand* (1856) 6 E & B 327 was cited as authority for a presumption that all steps taken by the CCCC were regular. The principle in that case concerned specifically the entitlement of a third party dealing with a company to assume that that company had taken all proper internal steps in their dealings with him: the presumption did not favour the company. Here, the CCCC is in the position of the company, not the third party. There is perhaps a more apposite basis for the CCCC's proposition in the wider doctrine *omnia praesumuntur rite esse acta* (the presumption that e.g. an administrative body has acted in accordance with all formalities). The doctrine has no application, however, where due observance of formalities is proved or disproved.

27. We note also that no objection was ever made by any individual member of the CCCC to the procedure used or the penalty proposed in this case: since the proposal of the penalty here there has been at least one formal meeting of the CCCC, and emails have been produced from members who did not reply to the email circulated on 26 May 2008, stating in each case that they agreed at the time with the proposal and for that reason did not reply. The respondents rely on Decision DRA/1/2006 *McManus v Dublin GAC* in which it was considered that a decision by a single member of a committee could later that day be ratified by a quorate meeting as a valid decision.

28. The Claimant counters that, by the time a proposed penalty is rejected, it is usually in the public arena and that publication of the proposed penalty may influence Hearings Committees so that if a penalty is imposed, that committee will tend to impose the penalty that had been proposed by the Competitions Control Committee. The Claimant contends further that the democratic ethos of the Association demands that committee practices be formally implemented and that deviations from the traditional *modus operandi* of a committee, unless

expressly and formally sanctioned by rule or bye-law, infect the entire process that follows. In this case, he maintains, the suspension imposed is void *ab initio* as the product of a flawed process.

29. In order to weigh the competing contentions of the parties, it is as well to commence with a brief overview of the disciplinary process of the Association. New rules came into effect on 1 January 2007 which fundamentally altered the manner in which Infractions were investigated and findings made. Where previously the procedure had been inquisitorial, in that the same body investigated, charged and adjudicated, it is now an adversarial process. The Competitions Control Committee is the policeman and prosecutor in the system, while the Hearings Committee adjudicates on disputed cases. While the old system was workable, the separation of the investigative and adjudicative functions avoids at least the perception that, by the time a charge is laid, the outcome has been predetermined.

30. Another key difference that was made with effect from 1 January 2007 is the "*proposed penalty*" function. Prior to that date, wherever a charge was laid, a hearing was held. A member accused of an Infraction might attend if they wished, but if they did not, the matter would proceed notwithstanding. Often, especially where they accepted responsibility for the Infraction charged, members would not take the trouble to attend the hearing. In the majority of cases, the minimum penalty would be imposed, so the member would not be the worse off for not attending. However, it was perfectly open to the Disciplinary Committee to impose such penalty as they sought fit, so long as it was not less than the minimum and not more than the 96 week maximum.

31. The "*proposed penalty*" function remedied two undesirable aspects of this procedure. First, it eliminated the need for a hearing at all where the Defending Party did not want it; in that way, the administrative workload of the Committees was significantly reduced, and greater attention could then be given to cases where a hearing was requested. Secondly, it allowed the Defending Party to make an informed choice when deciding whether or not to request a hearing; in that way, a Defending Party who accepted that he was responsible for an Infraction alleged could decide not to trouble himself with a hearing, knowing the full extent of his exposure for that decision. If he accepted responsibility for the Infraction but considered the proposed penalty to be too harsh, he could attend the hearing

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and argue for leniency. Obviously, a Defending Party who protests his innocence would likewise be entitled to request a hearing.

32. Since January 2007, where the Defending Party seeks a hearing, whether it is to protest innocence or seek a lenient penalty, the proposed penalty is a "dead letter"; that is, it is of no effect. That proposition is clear and unquestionable and cannot be repeated too often. If any ambiguity existed in the Rules extant in 2007, it has been put beyond question in certain amendments to an Treoraí Oifigiúil brought into effect at Congress 2008, which expressly state that the Hearings Committee is not to have regard to any proposed penalty that is brought to its attention in the context of any hearing, and which require the proposed penalty to be "blacked out" in the copy of the Notice of Disciplinary Action sent to it for the purpose of the hearing.

33. One commonly comes across statements in the media and in casual conversation that Competitions Control Committees "suspend" players or "impose suspensions". References to "appeals" against proposed penalties to Hearings Committees are likewise common. Statements and references of this sort are wrong and misrepresent the disciplinary processes of the GAA. One might liken the proposed penalty to a "plea bargain" as understood from criminal proceedings as depicted in U.S. television shows. If the bargain is done, the deal stands, and if not, the Trial proceeds without either side being the worse off for having offered or rejected it.

34. While – in the event of a hearing – the Competitions Control Committee may seek to have a penalty imposed that reflects the proposed penalty, any submission made by it to the Hearings Committee at the hearing is merely a consequence of its assessment of the gravity or otherwise of the Infraction alleged. That assessment begets both the proposed penalty and such submissions as may be made at hearing. The terms of a proposed penalty begets nothing and adds no weight to any submissions made by a Competitions Control Committee at any hearing, and any such submissions are no more than an argument, which may be accepted or rejected by the Hearings Committee.

35. We have identified above, two fundamental ways in which those procedures have changed as a result of the rule changes made effective from 1 January 2007 (the adversarial method and the proposed penalty). Certain other procedural steps are worth commenting upon at this stage. It is of importance to be able to identify

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when and by what means Disciplinary Action commences. Rule 147(d) sets out the events that trigger Disciplinary Action. In this regard we note but do not accept the Claimant's argument that a Referee's Report does not of itself commence Disciplinary Action and that a further decision from the Competitions Control Committee is required: it is clear from Rule 147(d) that three separate circumstances are provided for as commencing disciplinary action (the second of which, under Rule 147(d)(2), is qualified by Rule 147(f)). Rule 147 sub-rules (h) and (i) deal with the investigation of complaints. Rule 147 sub-rules (k) to (n) set out how a person accused of an Infraction is to be notified of the accusation and the proposed penalty. There is a reasonably logical chronological process in these various steps.

36. The questions that arise for determination here concern the level of formality required of a Competitions Control Committee in carrying out the different functions above, in particular the decisions as to what proposed penalty to offer, and the consequences of any failure by that Competitions Control Committee to adhere to any particular procedural requirements applicable to the function concerned.

37. Rule 147(a), so far as relevant here, provides:

> *"(a) The investigation and processing of matters relating to the Enforcement of Rules shall be dealt with by:*
> *(1) In the case of matters arising from Competitions or Games, the Competitions Control Committee of the Council or Committee in Charge, ...*
> *...*
> *The Competitions Control Committee ... may appoint one or more of* [its] *number to carry out certain of its functions in connection with any Disciplinary Action.*"

38. Rule 147(h) provides:

> *"(h) Where Disciplinary Action is commenced, the Competitions Control Committee shall investigate the matter <u>in such manner as is expedient</u>, interview such persons (including Match Officials) as they deem appropriate, accumulate such relevant evidence as is made available to it (whether suggestive of the commission of an Infraction or exonerative of the Members or Units concerned), and prepare a Report ("the Disciplinary Report"). <u>In the event that the Competitions Control Committee omits from the Disciplinary Report evidence that is subsequently shown to be relevant, this shall not of itself affect the validity of the Disciplinary Action</u>."*
>
> (emphasis added)

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39. It is also noteworthy that what would be considered a fundamental principle of fair procedures in a quasi-judicial context – *audi alteram partem* or the obligation to hear both sides – is plainly absent. The Competitions Control Committee is not obliged by Rule to take into account any representations made to it by a Defending Party or putative Defending Party at the investigation stage.

40. A further common (though not essential) aspect of fair procedures, the Right of an Appeal, is expressly precluded in relation to any decision of the Competitions Control Committee "*in the course of the commencement, investigation and preparation of Disciplinary Action*" (rule 155(c)(3))

41. Thus we see a power to delegate certain functions (without exception) to one or more members of the committee; we see freedom to carry out an investigation in such manner as is deemed expedient, without penalty for failing to accumulate all relevant evidence; and we see that there is no right to be heard or to appeal a decision in this context. If the Defending Party has procedural rights at this stage of the process, then these would by any reckoning be striking omissions from the Rules. That is, however, to beg the question as to whether indeed a Defending Party has, or ought to have, such procedural entitlements at this stage.

42. The traditional requirements of Natural Justice apply (to varying levels of strictness) in the following general circumstances:

    (a) where a body making a decision or otherwise acting is doing so in a Quasi-Judicial (as distinct from administrative) capacity, and

    (b) where the decision, although administrative in nature, affects the rights and entitlements of a third party to such extent that that third party must be afforded commensurate procedural entitlements.

43. A Competitions Control Committee acting in the commencement, investigation and preparation of disciplinary action makes no decision that affects in any substantive way the rights or entitlements of a member of the Association. True, a member served with Notice of Disciplinary Action must trouble himself to reply to it in order to avoid a proposed penalty becoming effective three days later. But the avoidance of adverse consequences is entirely in the hands of the Defending

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Party, and having to reply to the Notice is hardly such an imposition as to amount to undue interference with the Defending Party's rights.

44. It was contended on behalf of the Claimant that publication to the world at large of a proposed penalty in excess of the minimum would tend to influence both the public at large and the Hearings Committee. There was no evidence, however, to suggest that the Hearings Committee was directly informed of the proposed penalty in this case. Moreover, publication to the world at large causes no direct harm because it is not the public at large which adjudicates on the matter, and any embarrassment that might be felt is an unfortunate consequence of any disciplinary process: indeed the mere accusation may be undesirable, but the accusation process will have to be carried out in any case, and the inconvenience or embarrassment this causes is one of the unfortunate but largely unavoidable side effects of playing in a highly publicised sport.

45. This is not a case in which it has been alleged that there was unfair pre-hearing publicity such as to deprive the Claimant of a fair hearing. If it were, the arguments would not turn so much on the procedural propriety of the CCCC's internal functions, but rather on the effect of the pre-hearing publicity. We think that the circumstances in which a Hearings Committee could be so influenced by unfair pre-trial publicity so as not to be able to deal fairly with an individual case are extremely limited, and it is difficulty to conceive of a case in which disciplinary action might be stayed in that ground. We are not dealing with anything like such a case here. In our view, cases as rare as that will turn on their own facts, and the possibility that such cases might arise is no justification for an argument that the Competitions Control Committee should be subject to full procedural review in the process of commencing, investigating and preparing Disciplinary Action.

46. Another argument, which was not made but might have been, would be to say that the Defending Party is "entitled" to a "reasonable" or "fair" proposed penalty. We would not agree with such an argument. As we have said, the proposed penalty is not binding: it represents an opportunity in addition to the existing two-tier disciplinary structure (hearing and the appeal). To treat the proposal of a penalty as a further "tier" in the process would be an extravagance that effective administration of an organisation such as the GAA cannot afford. There is therefore no requirement to import concepts of natural justice into the rules relating to the process of proposing a penalty.

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47. It follows, in our opinion, that the internal workings of the Competitions Control Committee are not generally amenable to review by the DRA, just as they cannot be made the subject of an appeal. We say "generally" because if there were *mala fides* or serious abuse of power by a Competitions Control Committee – equivalent perhaps to a malicious prosecution of a member – then some remedy would most likely be available, provided that such *mala fides* could be proved. The evidence put before us in this arbitration would not nearly approach what is understood to be *mala fides* in the legal sense.

48. The Claimant has pointed to certain aspects of the CCCC's practice that one might conclude to consist of "irregularities." For example, there does not appear to be any formal delegation of authority by the Committee to its Chairman pursuant to Rule 147(a) to propose penalties: at most, a practice had developed whereby the Chairman made the decision as to what penalty to propose, subject to consultation with the other members of the committee, with any disputes as to what to propose being deferred to the next meeting of the Committee. The absence of a formal minute recording the general delegation of function and the parameters of the authority being delegated is, in our view, less than ideal. There is an added difficulty in this particular case in that one member of the CCCC did in fact suggest an alternative proposed penalty, and although his suggestion was heavily qualified, the terms of the informal delegation arguably gave rise to a requirement that the matter be deferred to the next meeting of the Committee.

49. If those irregularities mean that the CCCC acted contrary to rule (and in light of our previous findings above, it is not necessary to conclude that they did), it does not follow that the entire Disciplinary Action is stymied as a result. First, because acceptance of the proposed penalty is optional, no adverse consequences follow from any substantive or procedural error in the process of proposing a penalty; consequently the decision is not reviewable for procedural error alone. Secondly, no loss or damage in any real sense has been sustained by the Claimant as a result of the irregularities and, while he maintains that he did not use the words which the Referee reported him to have used, there is insufficient connection between – on the one hand – any irregularity in the decision to propose a penalty and – on the other – the Claimant's ability to defend the Disciplinary Action commenced against him. For that reason, even if the pre-hearing processes were reviewable in the manner contended for by the Claimant, we would exercise our discretion against quashing the processes that followed. The errors did not – either in law or

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fact – taint the process. In this regard, the oft-quoted words of His Honour Judge McMahon (as he then was) in *Barry and Rogers v Ginnitty* (Unreported, Circuit Court, 13 April 2005) at page 12 are most relevant. The passage in question reads:

> *"There are a few exceptions, but the general picture is one where the local administration is done by unpaid volunteers who do so for the love of the games and out of a sense of social duty. This means, of course, that they are not normally lawyers or persons of legal training. Rather they are characterised as persons who in their decision-making roles display large measures of pragmatism and common sense. For the most part, they are not trained professional administrators but enthusiastic amateurs. It would appear to me that provided the basic rules are not inherently unfair on their face, the process is not flawed because it relies on commonsense and a layman's pragmatism, even if, on occasion, it is a somewhat robust process. In such a situation one cannot demand a level of sophistication in the administration that one might expect of a lawyer or of a professional administrator."*

50. The point was made on behalf of the Claimant that the CCCC is the most highly positioned Competitions Control Committee in the GAA and in fact includes some Professional Administrators. That may well be the case, but the rules apply equally to the CCCC as to, for example, the Competitions Control Committee of a divisional committee in the West, and every procedural burden placed on the CCCC will likewise encumber its equivalent committees at all levels. Although the DRA was established specifically to deal with sports-related disputes, it must nevertheless be remembered that legal tribunals should allow a margin of appreciation to sports organisations, in particular amateur organisations, that might not be allowed where legal rights in other spheres (personal liberty, property rights etc) are in question.

51. A number of other matters of fact and interpretation of rules arose in the context of this hearing. Points were made by both sides relating to, for example, whether the Claimant's failure to seek pre-hearing clarification of the Referee's Report precluded him from challenging the decision of the CHC not to seek post-hearing clarification; whether the Claimant had or had not sought minutes of the decision as to the penalty to be proposed and whether, if he did not, that precluded a challenge to any acts of the CCCC; whether one side or other was responsible for the proposed penalty being disclosed publicly; whether the publication of the new rulebook (T.O. 2008) gave rise to any rights or infirmities; whether dealing with another disciplinary matter at the same time as the Claimant's one "contaminated" the process; and so on. While we appreciate the points that were made and the

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time taken to make them, we are conscious of the need to deliver this award and statement of reasons within a very short time frame (2 days) due to an upcoming game, and we consider that the issues are either not sufficiently relevant to the core issues raised in the claim or are superseded by our conclusions on the issues dealt with above. For those reasons, although we have considered the points made, we do not propose to set out any detailed discussions of those issues.

52. It is not appropriate for this Tribunal to comment on the merits of the decision to impose an 8-week suspension in this case. One might have sympathy that the penalty was double the minimum. We would comment that the process would be improved if Defending Parties were given a reason (even if shortly stated) for the imposition of penalties in excess of the minimum applicable. In the result, however, the Claimant does not succeed on either ground raised in the Claim.

53. This is an interim award in as much as costs remain to be determined.

Made this 18th day of July 2008

_____
Jimmy Gray

_____
Catriona Byrne

_____
Micheál O'Connell (Chairman)

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