

DISPUTES REGULATION AUTHORITY

AN CORAS EADRANA

IN THE MATTER OF THE ARBITRATION ACTS 1954 AND 1980

Record Number: DRA 18/2009

BETWEEN

TERRY HARTON (mar ionadai ar son CUMANN LOCH GAMHNA CLG)

CLAIMANT

MICHEAL GREENAN (mar ionadai ar son COISTE EISTEACHA CABHAIN CLG)

SEAN Mac THAIDHG(mar ionadai ar son COISTE EISTEACHA ULADH)

RESPONDENTS

Decision of the Tribunal and Statement of Reasons

Background:

The Claimant is the Chairman and nominee of Cumann Loch Gamhna. The Respondents respectively are the nominees of the Cavan County Committee and the Hearings Committee of the Ulster Council. On the 6th September 2009 Cumann Loch Gamhna played a SFC game against Cumann Kilgarry at Breffni Park, Cavan. It is accepted that there was an

incident at the end of the game and certain of the Loch Gamhna players confronted the referee. The referee described the incident in his report as “serious and intimidating language followed by some pushing”. On receipt of the referee’s report Cavan CCC proposed certain sanctions of the players mentioned in the referee’s report. Six of the seven named players accepted their proposed sanction without calling for a hearing. The seventh named player requested a hearing and was exonerated. The within dispute arises from the further decision of the Cavan CCC to propose a further penalty against the Loch Gamhna Club. Specifically there was a charge against the club of “misconduct considered to have discredited the Association”. A penalty was proposed of 12 weeks suspension for the Loch Gamhna Division 1 Senior team and also proposed was a fine of €2000. The wording of the proposed penalty is significant in this matter. A Hearing was requested and the matter was dealt with by the Cavan Hearings Committee on 8th October 2009. The Hearings Committee agreed with the proposed penalty from the Cavan CCC and the Loch Gamhna Division 1 Senior Team was suspended for 12 weeks from 8th October 2009. Cumann Loch Gamhna was fined €3000. The Claimant Club appealed the decision of the Cavan Hearings Committee to the Ulster Council. The appeal was heard on 22nd October 2009. Notice of Decision on an Appeal was dated 23rd October 2009. The Ulster Council’s decision was to disqualify Cumann Loch Gamhna from participating in Division 1 of the Cavan All County Football leagues for a period of 12 weeks from 8th October 2009. Cumann Loch Gamhna were fined €1500. The Notice of Decision on Appeal stated that “The above penalties are a substitute for those penalties previously imposed by the Cavan Hearings Committee”.

The Claimant submitted a Request for Arbitration dated 30th October 2009. In it the Claimant alleged that the Respondents had acted in breach of a number of the Rules of the Association. The Claimant raised a number of issues at the Arbitration Hearing. These issues are briefly summarised below:

- (1) That the referee that officiated at the match the subject matter of the disciplinary action was not a referee properly appointed pursuant to the mandatory requirements of rule 6.40 of the Official Guide 2009.
- (2) That the Claimant's right to a fair hearing was critically compromised by comments about the upcoming hearing allegedly made by the Chairman of the Cavan County Board to the Anglo Celt Newspaper.
- (3) That by imposing a penalty on the Loch Gamhna Division 1 side, in addition to penalties already imposed and accepted by six members of the said team, the Cavan County Board Hearings Committee effectively subjected the six players involved to double jeopardy.
- (4) That the proposed disciplinary sanction was to suspend the Loch Gamhna Division 1 team.
- (5) The Ulster Council imposed a sanction of disqualification of the club. It was argued in this regard that the Rules do not provide for the disqualification of a club. Secondly it was argued that the such a change of penalty could not subsequently be imposed without a fresh start.
- (6) That the failure of the Respondents to give reasons for their decisions to impose a penalty greater than the minimum sanction impugned the said decision.

- (7) That Rule 7.11(n) TO only entitles an appellate Hearings Committee to substitute its own decision on a matter in the event that it upholds an appeal. Since it is submitted that the Ulster Council did not uphold the appeal of Cumann Loch Gamhna it was not entitled to substitute its own penalties for those of the Cavan Hearings Committee.
- (8) Cumann Loch Gamhna rely on the failure of the Ulster Council to state in its Notice of Decision that the appeal had been upheld and the failure to refund their appeal fee, or even to reply to an e-mail (dated 27th October 2009) requesting same, as proof of their contention that the Ulster Council had not upheld the Cumann Loch Gamhna appeal before substituting its own decision for the one originally made by the Cavan Hearings Committee.

The Tribunal sought clarification in respect of the final issue detailed above. It requested that the Ulster Council provide clarification of the decision made by it on the 23rd October 2009. The representatives of the Ulster Council undertook to furnish the Tribunal and the Claimant with approved minutes of the appeal hearing. Submissions and Reply Submissions were invited from the parties. The approved minutes of the Ulster Council state as follows:

“Reviewing the appeal AnCoiste Eisteacha Uladh decided to substitute its own penalty as provided for in Rule 7.11(n)(iii) TO 2009. Terminology employed by An Coiste Eisteacha [AnCabhan] with regard to the use of the word “suspension” **as in Point 1 of the appeal by loch Gamhna** had not been technically correct. **‘Disqualification’ was the correct word.** However,

An Coiste Eisteacha Uladh was satisfied that, **while the appeal was therefore upheld**, Loch Gamhna had a cause to answer and therefore was substituting the following penalty, this having been duly proposed seconded and agreed without dissentation”.

The words in bold represent amendments to the draft minutes provided to the Tribunal at hearing.

In submissions received from the Respondents it is maintained that the appeal of LochGamhna had been upheld and that in those circumstances it was open to the Ulster Council to substitute its own decision in the matter.

In submissions received from the Claimant issue is made of an alleged failure by the Respondents to submit the amended minutes within the time allowed by the Tribunal. The Tribunal acknowledges the point made in the Claimant’s submissions but accepts the explanation proffered by the Respondents, specifically that it understood that the Tribunal would forward copy minutes to the Claimants. The Tribunal received the amended minutes within the timeframe allowed but did not forward them to the Claimant. More specifically the Claimant contends that the amended minutes represent an account of the “revisiting and reappraisal of the decision taken and notified with the objective of shoring up an argument only introduced late on in the hearing” – namely that the Ulster Council had not in fact upheld the appeal before substituting its own decision.

Decision of the Tribunal:

DECISION

Having heard what was urged by both parties the Tribunal finds as follows:

The Tribunal finds that the Ulster Council's Notice of Decision on an Appeal dated 23rd October 2009 fails to make clear that the Claimant's Appeal had been upheld. The Tribunal does not find that the Ulster Council revisited and reappraised its decision. However the Tribunal does find that the failure to specify on the Notice of Decision on an Appeal that the appeal had been upheld and the failure of the Ulster Council to reply to an e-mail from Loch Gamhna requesting the return of the appeal fee, does give rise to a perception that it revisited its original decision of 23rd October 2009. The Tribunal finds that the said perception serves to impugn the decision made by the Ulster Council to disqualify Cumann Loch Gamhna from participating in Division 1 of the Cavan All County Football league for a period of 12 weeks from 8th October 2009 and consequently directs that the matter be referred back to a newly constituted Hearings Committee of County Cavan for fresh consideration. It is further directed that the County Cavan Senior football league Division 1 be suspended until the final resolution of the within matter. The Respondents to bear the Claimant's costs of the Hearing. The Respondents to bear the costs associated with the providing of facilities for the Hearing. Liberty given to apply.

Made this the 9th day of December 2009.

Signed: Aaron Shearer Chairman

Frank McManus

Jarlath Burns