

Disputes Resolution Authority

An Córas Eadrána

DRA 20/2011

Colm O'Dabhoireann v Coiste Eisteachta Comhairle Na Mumhan CLG

DECISION

Background:~

This case relates to disciplinary proceedings arising from a game played on the 1st day of October 2011. The Claimant had been reported by the referee for “*striking me with head after the game*”.

Clare CCC issued a Notice of Disciplinary Action to the Claimant notifying him that he had been reported by the referee for “striking the referee with your head after the game” which they classified as a category V infraction and proposed the minimum penalty of 48 weeks suspension in all codes and at all levels. The Claimant in response to the Notice of Disciplinary Action sought a hearing before Clare Hearings Committee and the hearing was held on the 24th October 2011.

A Notification of Decision from Clare Hearings Committee issued to the Claimant which was dated the 22nd October 2011 and which stated inter alia as follows:~

“having heard and considered the evidence from both parties Coiste Eisteachta An Chlair CLG decided that the offence under 7.2 (b) category IV T.O. 2011 of “striking a referee with the head” is proved. The decision of Coiste Eisteachta An Chlair is to impose the minimum prescribed penalty of 48 weeks suspension as per rule 7.2(B) T.O. 2011 to apply in all codes and at all levels. The suspension will commence from the date of the game i.e. 1st October 2011 in accordance with rule 7.5 (h) (1).”

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The Claimant appealed the decision of Clare Hearings Committee to Munster Council Hearings Committee and listed the following rules as having been breached in the grounds of appeal:~

1. Rule 7.3(ff) ~ Decision of Hearing Committee predates the date of the hearing.
2. Rule 7.2 (b) Category IV T.O. 2011 ~ Minimum is imposed but not stated as in rule.
3. Rule 7.2(b) ~ Contact with referee, accidental and caused by others.

A Hearing took place before Munster Council Hearings Committee on the 10th November 2011 and by notification of decision of appeal dated the 11th November 2011 the Secretary of Munster Council Hearings Committee stated inter alia as follows:~

“The appeal by Ciolm O’Dabhoireann, Micheal Chiosog CLG Contae An Chlair against the decision of Coiste Eisteachta CLG Contae An Chlair in which it was alleged there were infringement of rules 7.3(ff) and 7.2(b) T. O. 2011 is upheld.

Coiste Eisteachta Comhairle Na Mumhan finds that the notification of the decision of the hearing sent to the appellant by Ruani Coiste Eisteachta Contae An Chlair contained two typographical errors, the date of notification and category of the infraction.

The matter is remitted to Coiste Eisteachta CLG Contae An Chlair for reprocessing”

The Notification of Decision on appeal went on to say “the said Decision proposed were taken pursuant to rule 7.11 (o), 7.11 (o) (2) and 7.11 (p) T. O. 2011.”

By a second Notification of Decision of appeal also dated the 11th November 2011 the Secretary of Munster Council Hearings Committee issued a clarification to the Claimant and to the Secretary of Clare Hearings Committee as follows:~

“To clarify any perceived ambiguity in the Decision of Coiste Eisteachta CLG Comhairle Na Mumhan on remitting the matter to Coiste Eisteachta CLG Contae An Chlair for reprocessing it was our decision that a corrected notification of their decision be sent to the

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appellant Colm O’Dabhoireann (correcting the two typographical errors in the original Notice i.e. the date of notification and category of the infraction.”

Submissions of the Claimant:~

The Claimant in his submission lodged with the request for arbitration claims that the decision of Munster Council was

- (a) made ultimately rule 7.11 (o) of the T. O. 2011
- (b) was made in excess of and outside of the jurisdiction as conferred upon it by rule 7.11 (o) of T.O. 2011
- (c) was made contrary to law and based on a misunderstanding and misconstruction of its powers and functions
- (d) was in breach of the requirements of natural justice and constitutional justice and in breach of fair procedures and
- (e) was in breach of the legitimate expectations of Colm O’Dabhoireann.

The Claimant pointed out that rule 7.11(o) of T. O. 2011 provides that *“in the event of an appeal being upheld, the appellant’s Hearings Committee shall either:~*

- i. Annul the decision appealed against and direct that no further action be taken by the decision maker.*
- ii. Remit the matter for re~hearing or re~processing (with or without recommendations as to procedure) or*
- iii. Substitute its own decision on the matter.”*

The Claimant submitted that the courses of actions at i, ii and iii identified above in rule 7.11 (o) are alternatives. The Claimant pointed out that Munster Council can do one of those three things but that in this instance what Munster Council purported to do was to do two things, namely to remit the matter back for re~processing **and** to substitute its own decision on the matter. This, the Claimant submits, is outside the powers of Munster Council Hearings Committee.

Alternatively the Claimant submitted that what Munster Council purported to do was to remit the matter for re-processing but with recommendations, not as to procedure (which it would have been empowered to do) but rather as to a substantive finding (which they submit it had no power to recommend). It is submitted that in this case the second letter issued by Munster Council on the 11th November, 2011 did not contain a recommendation but rather a substitution of its own decision.

The Claimant has submitted that where Munster Council uphold an appeal of the Claimant certain consequences are thereby necessary entailed when one has regard to the provisions of rule 7.11 (n). Those consequences are according to the Claimant:~

1. It means that there had to have been a clear infringement or misapplication of rule by the decision maker or
2. It means that the appellant's right to a fair hearing had other wise been compromised to such an extent that a clear injustice had occurred and
3. It means that the determination of fact by Coiste Eisteachta An Chlair that Ciolm O'Dabhoireann had committed a category 4 playing infraction stood.

None of the submissions to the DRA of the Claimant take into account the matters that were argued before Munster Hearings Committee, the minutes of which are available to this DRA Tribunal. Those minutes show that the representative of Clare Hearings Committee submitted to the Tribunal that a typographical error had been made in the Notice of Decision issued to Ciolm O'Dabhoireann and that the typographical errors related to the date of the notification and also to the category of infraction under which a 48 week suspension was imposed.

The submission of the claimant is to the effect that where Munster Council have upheld the Claimants Appeal it follows that this means that Clare Hearings Committee were incorrect in imposing a 48 week suspension for a category IV infraction, where the minimum penalty prescribed by such rule is 12 weeks.

The Claimant further submitted that having regard to the incorrect date on the Notification of Decision of Clare Hearings Committee justice was clearly not seen to be done in

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circumstances where according to the Claimant it appears that Clare Hearings Committee made a preordained decision to impose a 48 weeks suspension of Colm O'Dabhoireann regardless of the playing infraction involved and in advance of ever hearing from Colm O'Dabhoireann at all.

Submissions of the Respondent:~

Munster Council the sole Respondent in this case made submissions which may be summarised as follows:~

1. Munster Hearings Committee states that its decision was based on two technical defects that were cited in the appellant's two grounds of appeal and were dealt with in the evidence given at the appeal hearing. Munster Council Hearings Committee concluded that the first mistake was a typographical error, namely a minor error, in that the date of the Notice of Decision was incorrectly dated the 22nd October on the Notice when it should have post-dated the hearing of the 24th October. They say that no evidence whatsoever was put forward at the hearing before Munster Council to substantiate the claim that the decision had taken place prior to the hearing. They submit that there was no prejudice caused to the appellant by this simple typographical error.
2. Munster Council Hearing Committee submitted that at the hearing before them a second mistake by Clare Hearings Committee, another typographical error, was noted in that category IV was referred to in describing the offence as opposed to category V. They submitted that the correct rule number and correct minimum penalty (7.2(b) and 48 weeks suspension) were both stated in the notification of the Decision.
3. Munster Council submitted that both matters were correctly before them as the Claimant in the Notice of Appeal had referred to a breach of rule 7.3 (ff) and 7.2 (b). They submitted that the Claimant did not on his grounds of appeal claim that his right to a fair hearing had been compromised to such an extent that a clear injustice had occurred nor did he claim that the determination of facts by the decision maker were manifestly incorrect. Munster Council Hearings therefore submitted that in its decision the facts as found by Clare Hearing Committee were not claimed or proven

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by the Claimant to be manifestly incorrect and further more a rehearing of the substantive issues of the case would have been outside of its remit in dealing with the appeal within the scope of rule 7.11 (n) T. O. 2011.

4. Munster Council therefore submitted that in dealing with the appeal before them there were only two substantive grounds of appeal namely an infringement or misapplication of rule 7.3 (ff) and 7.2 (b). They submitted that it was based on these technical defects and the notification of decision of the hearings committee of Clare County Board that the appeal was upheld and nothing else.
5. Munster Hearings Committee went on to submit that having heard the representatives of Clare Hearings Committee at the Munster Council Hearing they were entitled to accept that the errors on the notification of decision from Clare Hearings Committee contained two typographical errors namely the date and reference to the incorrect infraction.
6. Munster Council submitted that there was nothing in the minutes of the hearing before Clare Hearings Committee to suggest that the facts of a category V infraction namely “striking the referee with the head” had not been proved. All of the information before them at the hearing at Munster Council level indicated that a category V infraction had been proven. This was also the infraction contained in the referee’s report and the notice of the disciplinary action which clearly referred to a category V infraction. Munster Council denied that its decision was in any way ultra vires and they denied that the decision that they made was contrary to law or based on any misunderstanding or misconstruction by them of their powers or functions.
7. Munster Council denied that they had substituted their own decision but stated that they had upheld the appeal and referred the matter back to Clare Hearings Committee for reprocessing.

The decision of the Tribunal in this case is based on a review of all of the documentation submitted. The parties to this dispute requested that this Tribunal adjudicate based on written submissions only. No oral evidence was heard.

Summary

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The Claimant was subjected to a disciplinary process following receipt by Clare CCC of a referee's report indicating that a category V infraction had been committed namely "striking with the head". The Claimant was at all times aware that this was the offence being dealt with and the notice of disciplinary action which he received from Clare CCC correctly identified the offence as being a category V infraction.

Subsequently this Claimant received a hearing before Clare Hearings Committee and received a notice of decision of the Hearings Committee which contained two "errors" which lead to an appeal to Munster Council and a subsequent lodgement of a request for arbitration before the DRA. The two "errors" relate to the date and the category of infraction referred to in the notice. The Claimant approached this case in two ways:-

1. He submitted that there had been a breach of natural justice due to the fact that the case had been heard and prejudged by Clare Hearings Committee before hearing from the Claimant. He relies on the date of the notice of decision to support this argument.
2. The Claimant submitted that the incorrect minimum suspension had been imposed upon him; that because the notice of decision of Clare Hearings Committee referred to a category IV infraction, the error on the face of the decision was that it referred to the incorrect minimum suspension.

The Tribunal notes that on the one hand the claimant seeks to attack the legality of the decision of the Clare hearings Committee on the basis of the incorrect date argument, but also seeks to take advantage of the second clear error in the written decision, namely the category infraction.

One the first point the Tribunal notes that Munster Council at its hearing accepted, having heard the evidence, that this was simply a typographical error. The Tribunal notes that the Claimant still appears to advance such an argument, notwithstanding the evidence given, and without providing any opposing evidence of any kind.

In relation to the second point this Tribunal notes that Munster Council at their Hearing accepted the evidence given that there was a mistake in the notice of decision in that it referred to an incorrect infraction rather than an incorrect minimum suspension. This

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Tribunal finds no compelling evidence adduced to rebut that position. The Tribunal also notes that the Claimant has chosen not to contest the substantive decision of Clare Hearings Committee and in the view of this Tribunal has rather sought to preserve for his own benefit the clear mistake that was made in the notice of decision of Clare Hearings Committee. In this regard the Tribunal notes that Rule 7.2(b) referring to Category V and the decision of Clare Hearings Committee each contain the persuasive conjunction of the words “Striking” and “Referee”.

This Tribunal is in no doubt but that the incorrect category was referred to in the Clare decision, in error.

Munster Council reached a decision to allow the appeal on the basis that rule 7.3(ff) and 7.2(b) had been broken. This Tribunal having examined the documentation submitted by both parties can find no fault with the manner in which Munster Council arrived at their decision. Munster Council decided to send the matter back to Clare Hearings Committee for reprocessing and then chose to communicate that decision to the Claimant and Clare Hearings Committee. For some reason, which has not been explained, Munster Council decided to follow up it’s decision with a purported letter of clarification issued on the same date. That letter, which was expressed to be for the purpose of “clarifying any perceived ambiguity” failed in it’s purpose, and merely added to the confusion which has dogged this case. However this Tribunal does not accept the argument of the Claimant that the decision of Munster Council, including the contents of that letter, amounted to a situation where Munster Council substituted it’s own decision. It is quite clear that Munster council upheld the appeal on the basis that there were infringements of Rules 7.3 (ff) and 7.2(b). The decision went on to note the errors in the Clare decision, and remitted the matter for re-processing. This Tribunal does not accept that a recommendation that a clear and obvious error be corrected amounts to a decision on a substantive matter. It is clearly a procedural matter.

However the Tribunal does note with some concern that the defining features of this case has been the series of errors and confusion which have accompanied it through it’s short life. While the Tribunal is of the view that the Claimant has not in any meritorious sense been prejudiced by these errors, he is entitled to have the matter dealt with in a more competent

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manner. For this reason our decision is to direct that this Appeal be remitted to and reheard in full by the Munster Hearings Committee.

The Tribunal directs that the Claimant be awarded the costs of this award, to be measured by the Tribunal in default of agreement.

Dated 22nd February 2012

Signed;

Richard Kennedy _____ (Chairperson)

Brendan Ward _____

Niall Cunningham _____