

DISPUTES RESOLUTION AUTHORITY

AN CÓRAS EADRÁNA

DRA 21/2011

MICHEAL LAIGHLEAS V COISTE CHEANNAIS NA GCOMORTAISÍ CHONDAE LAOISE, COISTE EISTEACHTA LAOISE & COISTE EISTEACHTA LAIGHEAN

BACKGROUND:-

1. The Claimant received a 24 week suspension from Laois Hearings Committee for “disruptive conduct” by a team official (not causing the premature termination of a game).
2. The incident that gave rise to the disciplinary proceedings occurred at Laois football championship quarter final between the Claimants club Portlaoise and Arlas-Kilcruise on the 17th September 2011. An altercation arose between the Claimant and the opposing team Manager Mick Byrne shortly before half time following which the referee went to both men and asked them to leave the side line. The referee in a subsequent report reported as follows, “Mick Byrne and Mick Lillis were both removed from the side line following an altercation between both managers”.
3. On the 21st September 2011 the Secretary of Laois CCC Niall MacLaitimh at the request of Laois CCC wrote to the referee seeking clarification into this game in accordance with rule 7.3TO 2011. A reply to this letter was received dated the 17th September 2011 and was considered at a meeting of Laois CCC on the 23rd September 2011 as a result of which notice of disciplinary action issued to the Claimant dated 24th September 2011 indicating a “proposed penalty” of 24 weeks suspension. A hearing was subsequently requested by the Claimant and a further clarification of the referees report was requested by the Claimant which was issued and received by the Claimant and Laois Hearings Committee.
4. The Tribunal were furnished with minutes of the various meetings of Laois CCC and Laois Hearings Committee.
5. The Claimant was notified by letter dated 29th September 2011 of the decision of Laois Hearings Committee which was to impose a penalty of 24 weeks suspension on the Claimant, which suspension started from the 29th September 2011 and that decision was taken pursuant to rule 7.2(d)(3) of the teor oifigiúil 2011.
6. The Claimant appealed this decision to Leinster Council by letter of appeal dated 1st October 2011 and Leinster Council considered the appeal on the 10th November 2011

and notified the Claimant by letter dated the 11th November 2011 that his appeal was lost and that decision was taken pursuant to 7.11(n)(TO) 2011.

Submissions Made:-

In summary the submissions made by the Claimant were as follows:-

- (a). The Claimant submitted that the infraction described in the original referee's report was clear and precise and contained no ambiguity and that therefore the CCC were not entitled to seek any further clarification from the referee in relation to his report as an infraction had been disclosed in the report.
- (b). The Claimant submitted that the CCC and Laois Hearings Committee had misinterpreted the word "infraction" by placing the worst possible interpretation on it.
- (c). The Claimant complained that comments were made by Brian Allen the Chairman of Laois CCC at Laois Hearings Committee to the effect "we all saw what happened". The Claimant submitted that this comment being made was prejudicial. The Claimant further complained that at Laois Hearings Committee the Chairman of the Hearings Committee Andy Dunne made reference to newspaper articles and photos but neither the article or the photo were produced as evidence and that they were raising a prejudicial matter at the hearing. He also raised an issue as to the existence of a video of the match and submitted that the Hearings Committee had asked him why a video hadn't been produced in evidence if it was available. He submitted that he had informed the Hearings Committee that the video wasn't used as it might incriminate other individuals.
- (d). The Claimant further complained that Mick Byrne with whom he had the altercation at the match in question only received a 12 week suspension from Leinster Hearings Committee in relation to this case and that it was contrary to laws of natural justice and fair procedure that two separate hearings committee would impose two different penalties in relation to the same offence. The reason why the Leinster Council Hearings Committee dealt with Mr Byrne's case as a Hearings Committee was that Mr Byrne was from Carlow and therefore a Laois Hearings Committee had no jurisdiction over him.
- (e). In the view of this Tribunal the strongest point made by the Claimant in his submissions was contained at paragraph 10.5 of the request for arbitration. The Claimant submitted that during the course of the appeal to Leinster Hearings Committee, the Chairman of Laois Hearings Committee disclosed that an unnamed member of the Hearings Committee gave "us the full story of what had happened at the match". The Claimant submitted that therefore something had been said at the Laois Hearings Committee after the hearing had concluded and not in his presence and that this was contrary to rule 7.3 (aa) (3) which states "no evidence shall be given or submissions made in the absence of any party to the disciplinary action unless they fail to attend the hearing without reasonable explanation. If evidence is so giving through inadvertence, it shall be repeated in the presence of all parties, so that no prejudices caused to the party who is absent".

Furthermore the Claimant submitted that after the appeal to Leinster Council had been lodged it was disclosed by Mr Andy Dunne that Laois Hearings Committee had obtained a copy of the match video and had viewed the video and the Claimant submitted that it was further asserted by Mr Dunne at the Leinster Council Hearings Committee that the video “had been edited” and as such wasn’t used. The Claimant submitted that the use of the video evidence without giving the Claimant an opportunity to view the video was in breach of rule 7.3 (aa) (1) (iii) which states “Video evidence introduced by any party shall be admissible provided: (a). a copy has been furnished to all other parties within a reasonable period prior to the hearing, and (b). the Hearings Committee is satisfied that the video evidence is reliable and unedited.”

Submissions of the Respondents:-

Brian Allen on behalf Laois CCC submitted that in relation to the role of Laois CCC they were entitled in his view to seek clarification of the referees report under rule and he also included that Michael Lillis had written to Laois CCC admitting his involvement in “an altercation”.

Andy Dunne the Chairman Laois Hearings Committee addressed a number of issues which can be summarised as follows:-

- (a). In relation to the Claimant’s submissions regarding the meaning of the word “altercation” Mr Dunne submitted that what’s important here is what the referee understood or intended by using the word “altercation”. He said that clarification was sought from the referee regarding the nature of the altercation, and the referee had clarified his report by confirming in writing that Mr Byrne and Mr Lillis were fighting.
- (b). Mr Dunne said that he chaired the Hearings Committee and that it was up to the Hearings Committee to decide the case based on the evidence before it. He said that this case was decided based on the referee’s report and the clarifications received only and that the Hearings Committee did not take into account or rely upon any statements made by Brian Allen or anybody else from the CCC.
- (c). In relation to the reference made to newspaper articles and photos he said that he may have made reference to such photographs or articles in the course of the hearing but that he was well aware and his committee were well aware that they could only decide the case based on the evidence before it and that this protocol was strictly adhered to in this case.
- (e). In relation to the allegation made by the Claimant that Laois Hearings Committee had considered video evidence and had also taken into account the views of a member of Laois Hearings Committee who was at the match, Mr Dunne told the Tribunal that these matters needed to be viewed in a particular context. He outlined that context by stating that after the conclusion of the hearing before Laois Hearings Committee the Committee sat down to deliberate. He said that the Claimant and his representative

and the CCC had been warned as to their obligations under the *teor oifigiúil* to be truthful in relation to the evidence that they were going to give and not in anyway to mislead the Hearings Committee and they were warned as to the possible penalties should they mislead the Hearings Committee. When the deliberations were taking place one member of the Hearings Committee said that he was at the match, that he saw the incident himself and that this Hearings Committee had been misled. Mr Dunne said that this was now a second issue that the Hearings Committee had to deal with. He said that the member in question was adamant that the Hearings Committee had been misled and that in the light of his views the Hearings Committee decided to view the video to deal with this second issue and the Hearings Committee meeting was adjourned. He said that the video was obtained and viewed the following evening. Mr Dunne said the Committee took the view that the video had been edited to such an extent that they couldn't rely upon it, that it showed only the start and the end of an incident and therefore the Committee couldn't be sure that it had been misled. He said the Committee therefore went back to deal with the first issue which was the hearing sought by Mr Lillis in relation to the infraction and that this issue was decided by the Hearings Committee based on the referee's report and the clarifications received and based on no other issues. He said that the Hearings Committee compartmentalised the video evidence that they had viewed and also the views of the member of the Hearings Committee who was at the match and who felt the Hearings Committee had been misled.

On behalf of Leinster Hearings Committee Mr John Byrne clarified for the Tribunal why Mr Mick Byrne's case had been dealt with by Leinster Hearings Committee and not by Laois Hearings Committee and pointed out that because Mr Byrne lived in Carlow he was not under the jurisdiction of Laois Hearings Committee and the Leinster Councils Hearings Committee had to sit as a Hearings Committee rather than as an Appeals Committee to hear his case. He said that he himself had not been involved in that hearing that it had been chaired by another member of the Hearings Committee as he Mr Byrne was from Carlow. He said that in dealing with Mr Lillis' appeal, Leinster Council were confined to dealing with the rules as quoted in the appeal. He said that new issues regarding Leinster Council's role couldn't be raised with the DRA which weren't raised in the appeal. He also said that at the appeal before Leinster Hearings Committee Mr Andy Dunne of Laois Hearings Committee clarified for the Leinster Hearings Committee that Mr Lillis' case was adjudicated upon based only on the referee's report and the clarifications received.

Mr Byrne pointed out that in the request for arbitration before the DRA Mr Lillis the Claimant has argued that Laois Hearings Committee misapplied rule 7.2d(iii). He said that this issue was not raised in the appeal to Leinster Council and that therefore based on the Grattan Og case that issue could not be considered by the DRA.

By way of a further submission Mr Lillis questioned the account now being given by Laois Hearings Committee that they only considered the referee's report and the clarifications received in the context of his case and said that if this was true then why did Mr Dunne mention this other video evidence at the appeal before Leinster Hearings Committee.

Decision & Statement of Reasons:-

1. In conclusion, the Tribunal is of the view that Laois Hearings Committee has erred in the manner in which the decision was made by them on the 28th September 2011 and subsequently on the 29th September 2011.

The introduction of apparent uncorroborated evidence to include such video evidence, by the Hearings Committee compromised the Claimant's right to a fair hearing to such an extent that an injustice did occur. It is irrelevant whether the Hearings Committee actually relied on this evidence or not, or whether in the case of the video evidence, it was edited or not.

It is the function of the Hearings Committee to adjudicate upon the evidence and facts before them whilst affording the Claimant an opportunity to address the evidence against him. This did not occur.

At the hearing on the 28th September and 29th September 2011, witnesses ought to have been asked to give their version of events, and to answer any questions put to them by the Claimant. Likewise, the Hearings Committee, if in any doubt as to a version of events should have sought to have those issues clarified at the hearing itself and in the presence of parties, as the case may be.

It is not the function of the Hearings Committee to investigate and source new evidence. The procedure applicable to the conduct of such hearings is extensively detailed in the GAA Disciplinary Handbook 2011 pg. 12 – 14.

We therefore, quash the decision of the Laois Hearings Committee made on the 29th September 2011 to suspend the Claimant for 24 weeks pursuant to Rule 7.2 (d)(3) T.O. 2011.

The Tribunal has jurisdiction pursuant to Section 11.3 of the Disputes Resolution Code to direct parties to take or abstain from taking any steps under the Rules of the Association, including but not limited to the rehearing and reprocessing of disciplinary processes. Rather than direct a rehearing or reprocessing of the matter commencing from any particular point, we would leave the CCC free to decide whether to commence Disciplinary Action *de novo*, but in the event that it does, the following shall apply to any recommenced Disciplinary Action:

- (a) In light of the fact that this has already been heard, we would direct that the Hearings Committee next dealing with the matter be comprised of different personnel, to include any member of the CHC not present at the hearings of 28th September and 29th September 2011 and any additional temporary members appointed under Rule 7.14 of the Official Guide;
- (b) In the event that an Infraction is proved against the Claimant in the context of any re-processing of the matter that any period of suspension already served is to be taken into account when calculating the date of expiration of any suspension imposed.

2. In light of the fact that the Claimant has succeeded on the primary ground advanced, it is not necessary to go any further into the detail of the other grounds of claim by him or any other parties.
3. In relation to the issue of costs, the Tribunal makes this decision in accordance with Rule 11.2 primarily and where appropriate, Section 29 of the Arbitration Act, 1954 as amended. It is further noted that sole discretion regarding any award of costs rest with the Tribunal. As costs "*follow the event*", the successful party is entitled to have his costs paid by the unsuccessful party.
4. In that regard, the Claimant is entitled to have his costs paid by *Cosite Eisteachta Laoise* and *Coiste Eisteachta Laighean* jointly and severally.
5. All costs and expenses of the Disputes Resolution Authority shall be discharged by the Respondents. The deposit paid by the Claimant shall be refunded to him.

Dated this 9th day of January 2012 .

Signed:

Willie Penrose, Chairman

Brendan Ward

David Nohilly