

# **Disputes Resolution Authority**

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## **IN THE MATTER OF THE ARBITRATION ACTS 1954 AND 1980 IN THE MATTER OF THE DISPUTES RESOLUTION CODE OF THE GAA**

Record No: DRA/26/27/28/2006

Between:

**BARRY CUDDY  
BERNARD TREANOR  
RORY TREANOR**

Claimants

-and-

**AILISH MC ENTEE (AS NOMINEE FOR AND ON BEHALF OF GAC OF  
MONAGHAN COUNTY BOARD)**

Respondent

### **INTERIM DECISION**

#### **The origin of the dispute:**

On Saturday 9<sup>th</sup> September 2006 the Claimants' club, Truagh played a game in the Monaghan Senior Football Championship against Inniskeen. According to the referee, an altercation took place after the conclusion of the game and he reported this in his report which was received by the Respondent on 10<sup>th</sup> September 2006. On Thursday 14<sup>th</sup> September 2006 the Respondent committee met but had to adjourn as one of their member took ill. The meeting reconvened on Friday 15<sup>th</sup> September and adopted the referee's report. The Respondent notified the Claimants by telephone of the fact that they had been reported as having committed an offence, via the Club's Secretary, on Saturday 16<sup>th</sup> September, having tried but failed to make contact on Friday 15<sup>th</sup> September. The Claimants requested a review and a hearing was fixed for Thursday 21<sup>st</sup> September. Following this hearing, the Claimants were notified that they had each been suspended for a period of four weeks. This verbal notification was confirmed by letter dated Friday 22<sup>nd</sup> September, though this latter correspondence has not yet been received by the Claimants. The Claimants club is due to play Scotstown in the Semi-Final of the Monaghan Senior Football Championship today, 23<sup>rd</sup> September 2006. As Truagh finished bottom of Division 1 of the Monaghan Senior League, they will be relegated to Intermediate status unless they win the Senior Football Championship.

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### **Preliminary issues:**

The Respondent raised three preliminary issues:

1. That the Claimants should have concluded an appeal to Ulster Council before referring the matter for Arbitration to the DRA.
2. That proceedings should properly have been served on the Secretary of Monaghan County Committee rather than on the Secretary of the GAC. In this regard they referred to Rule 98 (a) of the Official Guide (2005).
3. That even if the matter is properly before the DRA, the Respondent has had insufficient time to properly prepare the case.
4. As a precedent, the Respondent referred to the matter of Pól Mac Brádaigh -v- Dónal Ó Murchú (Rúnai mar ionadaí ar son Comhairle Uladh) (DRA/16/2005).

Having considered the arguments made on behalf of the parties, I have decided as follows:

1. Whilst the Claimants are obliged to exhaust all available appeals before referring the matter to Arbitration, it is clear that an appeal to Ulster Council was not available in advance of the game against Scotstown this afternoon. The Claimants became aware of the decision of the Respondent on Thursday night 21<sup>st</sup> September. On Friday 22<sup>nd</sup> September they lodged an appeal with Ulster Council but on Friday afternoon (22<sup>nd</sup> September) they were advised by Ulster Council that they could not be provided with an appeal hearing in advance of the game on Saturday afternoon. They then referred the matter to Arbitration. These facts are not in dispute and, accordingly, I am satisfied that all available avenues of appeal have been exhausted.
2. It is a matter for the Claimants to identify the appropriate Respondent and, having done so, I am satisfied that the Secretary of that body (Monaghan GAC), is the appropriate party upon whom the Claim should be served.
3. It is in the nature of sports disputes that matters must be dealt with quickly and at short notice. One of the purposes in establishing the DRA was to provide a system that would be quick and flexible. I am satisfied that parties are well aware of the issues and are more than capable of dealing with an application for interim remedy today.
4. The issue in the matter of Pól Mac Brádaigh –v- Dónal Ó Murchú (Rúnai mar ionadaí ar son Comhairle Uladh) (DRA/16/2005) arose out of the manner in which service was effected on the Respondent. In this case the Respondent accepts that she was properly served and, accordingly, the precedent referred to does not assist the Respondent in this case.

As Secretary, I have also made a number of other preliminary rulings. I received Requests for Arbitration by fax in these matters at 9.05pm, 9.45pm and 10.20pm respectively on 22<sup>nd</sup> September 2006. Copies of the Claims were served by fax on the Respondent and on the Director General of the GAA by fax on 22<sup>nd</sup> September 2006. Under the provisions of Section 6.4 of the Disputes Resolution Code, communications served by fax are deemed to be served 12 hours after receipt of such service has been acknowledged. However, I am satisfied that the documents were received on 22<sup>nd</sup> September 2006 and I, therefore, deem such communication be effective from that date pursuant to Section 6.6 of the Code. Accordingly

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this is the Commencement Date for the purposes of Section 2.4 of the Code. I have also accepted the Claimants' deposits today as required by Section 2.3 of the Code. There has not been time to constitute a Tribunal and I am satisfied that there is a particular urgency in dealing with the Claimants' request for Interim Remedy. Accordingly I am hearing this application pursuant to Section 8.3 of the Code. I have shortened the notice required by Section 8.2 of the Code as permitted by Section 8.3 of the Code and I have notified the parties of today's hearing by telephone as provided for in Section 6.5 of the Code.

### **The Dispute:**

#### **The Claimants' Case:**

1. The GAC which dealt with the Claimants comprised six people, two of whom were members of the Scotstown Club. As it was known in advance of the hearing that Truagh's next game in the Championship was against Scotstown, the Scotstown representatives on the GAC should either have stepped aside or, at least, made a declaration of interest and afforded the Claimants an opportunity to object. This was particularly so given the crucial nature of the Truagh –v- Scotstown fixture. The Claimants referred to the principles of constitutional justice enunciated in the case of Mansell –v- Minister for Education (1940 IR) as well as the basic requirements of justice in sports disciplinary proceedings set out by McMahon J at Naas Circuit Court on 30<sup>th</sup> April 2005 in Barry & another –v- Ginnity & another and referred to in Danny Doogue –v- Niall Handy and Brian Allen (as nominees on behalf of G A C Laois CLG) and Liam O'Neill and Michael Delaney (as nominees on behalf of Coisde Bainistí Laighean CLG) (DRA/21/2006). They also referred to the general principle that "justice must be done and be seen to be done". They emphasised that they were not calling into question the integrity of any of the members of the GAC. The perception of bias in this case is heightened by the fact that the Scotstown and Truagh Clubs adjoin each other in north Monaghan.
2. A DVD of the game in question between Truagh and Inniskeen shows that Rory Treanor and Barry Cuddy did not strike anybody. Bernard Treanor accepts that he struck an opponent. Barry Cuddy "attempted to strike" but this is a different offence than "striking", the offence in respect of which he has been disciplined.
3. The Claimants requested a copy of the referee's report on three occasions but were refused same. They were advised that the letters dated 16<sup>th</sup> September 2006 setting out the charge against them was sufficient. The Claimants contend that there should be full disclosure of all available evidence, especially when it is requested.
4. Rule 142 (2)(v) Official Guide 2005 provides that:

"A player reported by the Referee as having committed a Category (A), (B), or (C) offence after the conclusion of the game, shall likewise stand suspended as outlined above. The player shall be immediately notified in writing of the Report by the Committee in Charge."

By not being notified until 16<sup>th</sup> September 2006, the entire process was delayed, thus prejudicing the Claimants.
5. Balance of Convenience. Any prejudice to be suffered by the Claimants' not being allowed to play today if they subsequently succeed in the substantive case would be greater than any prejudice which might be suffered by anybody else if they are allowed to play and subsequently lose their case. This is also true of the Scotstown

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club as, in normal circumstances, these players would have been playing against them. In addition, the implications for the Claimants and their club are far greater as a result of the risk of their being relegated to intermediate level.

#### The Respondent's Case:

1. There are, in fact, three Scotstown club members on the Monaghan GAC. Two of them are members *ex officio* by virtue of their being Central Council Delegate and Fixtures Secretary respectively. The third Scotstown member was elected to the position by the County Committee. The latter person stood aside from the hearing as he had viewed the video evidence in the context of an Investigation. The suspensions the subject of these proceedings were not as a result of an Investigation. GAA Central Council rulings made on 21<sup>st</sup> May 2005 and in 2006 require GAC members to stand aside if their club is "involved". The Scotstown club was not "involved" as the disciplinary hearing arose out of a game between Truagh and Inniskeen. If GAC members from Scotstown were obliged to step aside in these circumstances then so also should members of any club still involved in the Monaghan Senior Football Championship. If Truagh had an issue with the composition of the GAC, they should have raised it at the GAC hearing.
2. The GAC viewed the DVD evidence with the Claimants and were satisfied that the DVD confirmed what the referee had reported in relation to the Claimants. One of the Truagh players who had been reported for "striking" was exonerated following the viewing of the DVD evidence.
3. At the GAC hearing, the Truagh delegate sought a copy of the referee's report. The GAC was happy that each player had the relevant portion of the referee's report. They were in no doubt what they had to defend. The entire referee's report was not read out by the Chairman as there was another club and other players referred to in that report. It is standard practice not to furnish copies of referees' reports.
4. The requirement to immediately notify a player contained in rule 142(2)(v) of the Official Guide 2005 is there to prevent a player playing in a game where he has been reported by a referee as having committed an offence after the conclusion of a game. This is to protect a player in those circumstances. The Claimants did not suffer in any way as a result of their not being notified. There was no great urgency as there was no other game pending prior to the game against Scotstown today. The referee's report was received on Sunday 10<sup>th</sup> September and it would have been possible to notify them prior to the GAC meeting. The Scotstown -v- Truagh fixture was made on Sunday 10<sup>th</sup> September.
5. Balance of Convenience. Sometimes the available dates for hearings can be of assistance to clubs but it is simply an unfortunate fact that the Claimants cannot have their appeal to Ulster Council heard in advance of the game today. If the Claimants are granted interim remedy and Truagh lose their game today there will never be a full hearing. The winners of today's game will qualify for the Semi-Final which is due to be played on the weekend of 7<sup>th</sup>/8<sup>th</sup> October. The final is fixed for Sunday 22<sup>nd</sup> October and the winners of the Monaghan Senior Football Championship are fixed to play in the Ulster Club Championship on 29<sup>th</sup> October. If today's game ends in a draw the replay will take place on Saturday next the 30<sup>th</sup> September.

## Decision:

### Findings

1. I am satisfied that the Claimants have raised a substantial issue in relation to the make-up of the GAC which disciplined them. No allegation of actual bias has been made but rather a perception of bias. In circumstances as serious as these are for the Claimants and their club, where the club is facing relegation, I am satisfied that, in the interests of justice, the two Scotstown members of the GAC should have offered to step aside.
2. I do not believe that the GAC decision in relation to the content of the DVD can be reviewed by a DRA Tribunal unless the decision is irrational.
3. No good reason has been provided for the failure of the Respondent to furnish a complete copy of the referees report to the Claimants. In a serious disciplinary matter the interests of justice require the persons against whom disciplinary action is being taken to be in possession of all relevant information. In this case, the referee's report, which was furnished during the course today's hearing, provides evidence that members of the Inniskeen Club were reported by the referee as having struck some of their opponents. This information would have been of assistance to the Claimants at the GAC hearing
4. It is conceded by the Respondent that the Claimants could have been notified of the fact that they had been reported by the referee as early as Sunday 10<sup>th</sup> September. It does not appear to have been necessary to await the adoption of the referee's report by the GAC on Friday 15<sup>th</sup> September. This delay prevented the Claimants from requesting a review hearing on an early date, which would, in turn, have allowed time for an appeal to Ulster Council, if necessary.

### Prima Facie Case/Balance of Convenience

I must decide if the Claimants have established a *prima facie* case in relation to the relief sought in their respective Claims. That relief is the lifting of the suspensions imposed by the Respondent.

Bernard Treanor accepts that he struck an opponent and, consequently, I find that he has not established a *prima facie* case and, accordingly, I refuse the interim remedy sought by him. I am satisfied that Rory Treanor and Barry Cuddy have established *prima facie* cases, particularly in relation to points 1 and 3 above. The delay in notification referred to at 4 above has prevented an earlier review hearing and an appeal to Ulster Council.

I am also satisfied that the balance of convenience, in these cases, favour the granting of relief. The situation for the Claimants and their club is extremely serious in that if they lose today's game, not only will they be out of this years championship but they will also be relegated to the intermediate grade for next year.

Therefore, I am disposed to granting an Interim Remedy to these two Claimants.

**Orders:**

In order to prevent any injustice being done to the Scotstown team, it would be preferable for today's game to be postponed. However, the Respondent has indicated that, because of the proximity of the fixture, they would prefer the match to proceed with Rory Treanor and Barry Cuddy taking part. Accordingly, I direct that the suspensions imposed on Rory Treanor and Barry Cuddy be set aside pending the full hearing of the proceedings.

If Truagh win today's game then the full hearing must take place within the next two weeks and I direct the Respondent to furnish a Reply within one week of today's date. All documentation to be exchanged should be exchanged by the parties within this period also. If the game today ends in a draw, then a full hearing will take place prior to the replay. In these circumstances, the Respondent's Reply and all documentation must be served on or before Wednesday 27<sup>th</sup> September 2006. In the event that Truagh lose today's game then the parties are to advise the DRA of whether they wish to proceed to full hearing.

It is noted that the Claimants have already submitted an appeal to Ulster Council. Both the Claimants and the Respondent have agreed that the matter should now be dealt with in full by the DRA as it would be discourteous to Ulster Council to do otherwise. The Claimants will not pursue their appeal to Ulster Council and the Respondents concede that the Claimants have exhausted all available remedies.

Decision given at Carrickmacross, County Monaghan on the 23<sup>rd</sup> day of September 2006

Signed: \_\_\_\_\_  
Liam Keane  
Secretary DRA