

DECISION OF THE DISPUTE RESOLUTIONS AUTHORITY DATED THE 28TH
DAY OF JANUARY 2006

DRA
RECORD NUMBERS 30/31/32/2005

BARRA O'SEARCAIGH
AARON O'hUIGINN
AODHAN GABHANN

Claimants

-and-

GEORGE MCGUIGAN
(NOMINEE OF THE WARICKSHIRE GAA COUNTY BOARD)

Respondent

DECISION

We, the undersigned, find as follows:

Background

1. On the 4th day of September 2005 John Mitchells GFC Club and St Brendan's GFC played the Warwickshire Intermediate Football Championship Final at Pairc na hEireann in Solihull. The match was won by St Brendan's with a late penalty.
2. The report of the match referee details a number of incidents that occurred after the final whistle in the match. The referee's report details that the 1st named Claimant is alleged to have tried to trip the referee and the 3rd named Claimant is alleged to have pushed him.
3. Following the adoption of the said Referee's Report at a meeting of the Warwickshire GAA County Board on the 5th day of September 2005 a decision was made by the County Board that an investigation of the said, and other incidents, should take place.
4. Pursuant to the said decision of the County Board a letter dated the 19th day of October was sent by the Respondent to the Secretary of John Mitchels GFC. The letter identifies four persons, including the three Claimants, as persons whose attendance were required before the Committee investigating the above-mentioned matter. The investigation was proposed to, and in fact did, take place at Pairc na hEireann clubhouse on Monday 31st October 2005.
5. It is contended by the Claimants in their applications to the DRA and in subsequent submissions that the said investigation was unfair, in that it failed to follow proper

procedure, was in breach of the Association's Rules and failed to afford to the Claimants due process.

6. Arising from the hearing of the Investigation Committee certain recommendations were made to the Warwickshire GAA County Board. The recommendations were adopted at a meeting of the County Board on the 7th day of March 2005. The first and third named Claimants were found guilty of an offence pursuant to Rule 138 of the Official Guide and were suspended for 24 weeks. The 2nd named Claimant was also found guilty of an offence pursuant to Rule 138 and was suspended for 8 weeks.
7. The Claimants were advised of the decisions of the Warwickshire GAA County Board, and the resulting suspensions, by letter addressed to the Secretary of John Mitchels GFC dated the 9th day of November.
8. On the same date, the 9th day of November 2005, the Claimants lodged individual appeals against their suspensions. The letters of Appeal are exhibited at **Appendix A** of this decision. As per Rule 151(b)(ii) of the Official Guide 2003, an appeal against a decision of a County Board lies to the relevant Provincial Council. In this instance the relevant Provincial Council is the Provincial Council of Great Britain.

Preliminary Issue

9. It is contended by the Respondent that the appeals to the Provincial Council lodged by the Claimants in this matter are not in the correct form. Indeed, the Claimants accept that their appeals were not in the correct form. The Respondent has raised a preliminary issue in this regard. The Respondent contends that by failing to set out their appeals in proper form, in effect lodging invalid appeals, that the Claimants ought to be deemed to have failed to exhaust all avenues of appeal available to them pursuant to the Rules of the Association. That being the case the Respondent contends that the Claimants should be precluded from invoking the jurisdiction of DRA.
10. Paragraph (iv) of the Arbitration Rules reads as follows:

"No member or unit of the Association shall refer such Dispute to Dispute Resolution until all available avenues of Appeal under the Rules of the Association have been exhausted."
11. Section 2.1(e) of the Disputes Resolutions Code reads as follows:

"Confirmation that all available avenues of appeal under the Official Guide have been exhausted;"
12. In determining whether the failure of the Claimants to properly constitute their appeals to the Provincial Council of Great Britain should serve to preclude a reference of these matters to this Tribunal, it is the unanimous finding of the Tribunal that that should indeed be so.

13. The Tribunal finds that in failing to properly constitute an appeal against a decision at first instance in accordance with Rule 146 of the Official Guide 2003 a Claimant necessarily prevents all avenues of appeal open to it from being exhausted. An appeal deemed invalid is in the view of the Tribunal not an appeal at all.
14. Clearly it is proper that a decision to deem an appeal invalid should itself be capable of being appealed. It is the view of the Tribunal that the Rules of the Association provide a mechanism for such an appeal process pursuant to Rule 151(b) of the Official Guide.
15. In the within matters the Tribunal finds that it was open to the Claimants to appeal the decision of the Provincial Council of Great Britain (i.e. its decision to deem the Claimants' appeals out of order and invalid) to the central Appeals Committee. The Claimants did not choose to pursue this option and indeed they have accepted that their letters of appeals (dated 9th November) were improperly constituted.
16. The Tribunal has been referred by counsel for the Claimants to the decision in "Neasden Gaels" (Record No DRA/18/2005). It is argued by the Claimants that in that case the Tribunal found that no appeal from a decision of a Provincial Council lay to the CAC. The Tribunal finds that a distinction, however, exists between the facts of "Neasden" and the facts of the within case. In Neasden it was held by the DRA Tribunal that no appeal lay against a decision of the Provincial Council to the Central Appeals Committee (CAC) in circumstances where the relevant Provincial Council had already conducted a full hearing of the Claimant's appeal. In Neasden the Claimant was in essence seeking a second appeal hearing. In the within matter no appeal hearing actually took place by reason of the invalidity of the Claimants' Notices of Appeal and had the Claimants appealed to the CAC, their appeals would, as stated, have been an appeal not against the decisions to suspend them but rather the decision to deem their purported appeals to the Provincial Council of Great Britain invalid.
17. The Tribunal also finds that a right to apply to the DRA in respect of a decision of the CAC to deem an appeal invalid also exists. Such an application to the DRA would necessarily be restricted to a consideration of the issue of the validity or otherwise of an appellant's appeal.
18. One other very important issue arise in this case. It concerns the manner in which the Provincial Council of Great Britain notified the Claimants were notified of the decision of the Provincial Council was ultra vires. The Tribunal also accepts that this was so. Since the procedure of notification of the decision of the British Provincial Council was ultra vires, the Tribunal as a consequence must find that the claimants have not been yet received proper notification of the Provincial Council's Decision. Given the lapse of time since, the Tribunal is minded to quash the decision of the Provincial Council to deem the Claimant's appeals invalid.
19. In these circumstances the Tribunal finds that it is open to it to invoke Section 11.4 of the DRA Code. This states as follows:

“In the event of a decision or procedure being quashed, and with agreement of both parties, the Tribunal may conduct a full hearing as if it were an appellate body of last resort under the Rules of the Association, with power to fully conduct the procedure which has been quashed. No decision made by the Tribunal in this context shall be susceptible to appeal or review by any body.”

The parties have agreed to the Tribunal invoking Section 11.4. The Tribunal shall therefore proceed to determine the Claimants’ appeals against decisions of the Warwickshire GAA County Board to suspend them.

20. It is held that the Claimants’ appeals be allowed subject to terms agreed between the parties, which said terms have been provided to the Tribunal.

Aaron Shearer

Declan Hallisey

Jim Murphy

APPENDIX A

Aaron Ó hUiginn
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09 November 2005

An Chara,

In accordance with Rules 146, 147, 148, 149, 150, 151 and 152 of The Official Guide 2003, I seek clarification on the decision of Coiste Conndae Warwickshire to suspend me (pursuant to R 138 CG) following a meeting held at Pairc Na h'Eireann on 7 November 2005. The grounds for this request are as follows:

1. Clarification on Rule 59 of The Official Guide 2003 - Has Coiste Conndae Warwickshire complied with this rule?
2. Was Rule 142 of The Official Guide 2003 adhered to in this case?
3. Clarification on Rule 152, of The Official Guide 2003 - Did Coiste Conndae Warwickshire correctly apply this rule?

Pursuant to Rules 146 and 147 of The Official Guide 2003, this correspondence is in duplicate together with the fee in the sum 40 Euros.

Is mise le meas



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09 November 2005

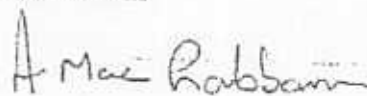
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