

Disputes **R**esolution **A**uthority

An Córas Eadrána

Record No: DRA/4/2007

In the matter of the Arbitration Acts, 1954 and 1980

Between:

Pól Mac Craith

Claimant

-and-

Simón Ó Maolrunaí (mar ionadaí ar son CCC Comhairle na Mumhan) and Sean Fogarty (mar ionadaí ar son HC Comhairle na Mumhan) agus Liam Ó Maoilmhichíl (mar ionadaí ar son CAC)

Respondents

INTERIM DECISION

1. Background:

- 1.1. On 27th January 2007 the Claimant played for his club (Tuaim Uí Mhéara) in a Senior Hurling match against University of Limerick (UL). No sanction was sought for this game. The referee was appointed by the UL club. During the course of the game, the Claimant was sent off by the referee who reported that he had struck an opponent causing injury (a Category III infraction under Rule 143 of the GAA's Official Guide 2007).
- 1.2. The first named Respondent sent a Notice of Disciplinary Action to the Claimant and proposed a penalty of 8 weeks. The Claimant requested a hearing before the second named Respondent. This hearing took place on Thursday 8th February 2007, following which a decision was made to suspend the Claimant for a period of 8 weeks. The Claimant appealed this decision to the third named Respondent who heard the Claimant's appeal on last night, Friday 9th February 2007. The third named Respondent upheld the Decision of the second named Respondent.

2. Preliminary

- 2.1. The Claimant's solicitor contacted me as Secretary of the DRA at 10p.m. last night to advise that a Request for Arbitration was being submitted. At approximately 12.30a.m. this morning he advised that it had been sent by email. This email was not received but I accept that every effort was made to serve me with a copy of the Claim. The original Claim was handed to me this morning before this hearing.

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- 2.2. The Claim includes a request for an Interim Temporary Remedy, under Section 8 of the Disputes Resolution Code, setting aside the suspension imposed on the Claimant pending the full hearing of the action.
- 2.3. Under the provisions of Section 8.2 of the Disputes Resolution Code, I have shortened the notice required for an interim hearing and, as there has not been time to appoint a Tribunal, I am conducting this hearing under the provisions of Section 8.3 of the Code. There is a clear urgency in the matter as the Claimant is due to play for his Club in the All Ireland Senior Hurling Championship Semi-final today at 1pm.
- 2.4. The first and second named Respondents were served with a copy of the Claim by email and were contacted by telephone. I have been advised by the third named Respondent that the first and second named Respondents were unable to attend this hearing due to time and distance constraints. The third named Respondent was represented by Mr. Tony Jordan, a member of the Central Appeals Committee, who advised that he was happy to proceed with the hearing despite having only had sight of the Request for Arbitration this morning. Mr. Jordan also advised that he had authority to represent the interests of the first and second named Respondents.

3. The Claimants arguments

- 3.1. The Claimant raises two interrelated issues:
 - (a) Under the provisions of Rule 139 (a) of the Official Guide “all tournament and challenge games shall be sanctioned by the appropriate authority, which shall deal with any disciplinary matters arising.”
 - (b) Rule 111 states inter alia that “the Central Council, Provincial Council (subject to the provisions of Rules 72(a)(ii) and 92 (b)) and County Committee shall have the absolute power to appoint the match officials for all games under their respective jurisdictions”.
- 3.2. The appropriate council or committee in this case was Comhairle na Mumhan. It is common case that no sanction was sought for the game in question and that the referee was not appointed by Comhairle na Mumhan. The case revolves around the consequences of these failures. The Claimant says that the consequence is that the game is not a tournament or a challenge game but is a rather a practice match akin to an internal club game played during a training session. He argues that it is not subject to the disciplinary provisions of Rules 143 and 144 of the Official Guide though he accepts that it is subject to various other rules, in particular the Playing Rules.
- 3.3. The Claimant also argues that a major injustice would be inflicted on him and his club if he succeeds at this substantive hearing and loses today. He points out that it is the dream of every club player to get an opportunity to play in an All Ireland Club Final. Consequently, he argues that the balance of convenience favours the granting of interim relief lifting the suspension imposed by the second named Respondent pending the hearing of the full action.

4. Respondents case

- 4.1. The Respondents argued that any game between teams from different clubs was a challenge match within the meaning of Rule 139 (a). Permission for such games shall be sought according to the Rule. Failure to obtain such permission or sanction has a consequence as set out in Rule 141 in that a player or team taking part “shall be liable to a minimum suspension of 8 weeks”. They pointed out that the first named Respondent had, to date, dealt with the disciplining of the Claimant but that the question of the team taking part in an unauthorised challenge match had yet to be dealt with. They also submitted that the Claimant and his club should not profit from their breach of Rule 139 (a).

5. Decision

- 5.1. The situation that I am confronted with is analogous to the position that “he who comes to equity must come with clean hands”. The Claimant seeks to rely on a breach of Rule by him and his club to escape disciplinary sanction. I am not satisfied that he has made out a prima facie case either (a) that the consequence of his club’s failure to obtain sanction for the game is that all Rules apply save for those dealing with the application of disciplinary sanction to players dismissed during the course of the game or (b) that he is entitled to rely on a breach of one rule by himself as a means to escape the consequences of his breaching another rule.
- 5.2. Accordingly, I am refusing the request for interim relief.
- 5.3. I am reserving the costs associated with this application to the full hearing of the action.

Dated at Distillery Building, Church Street, Dublin, this 10th day of February 2007

Signed:

Liam Keane
DRA Secretary

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