DISPUTES RESOLUTION AUTHORITY

Record No. 6/2011

Between:-

Eanna Ó Neachtáin

Claimant

-and-

Coiste Éisteachta Laighean and Coiste Éisteachta Achomhairc

Respondents

AWARD AND STATEMENT OF REASONS

Background

1. The Claimant is a member of Clonad GAA Club of County Laois. On 5 April 2010, while playing on behalf of his Club in a hurling match in the Leinster League, against St. Peregins of Dublin, he was ordered off the field of play by the Referee. The Referee's report states the Infraction in the following terms: "*Category 3 strike with hurley with force causing injury*".

2. On 18 May 2010, a Notice of Disciplinary Action was served on the Claimant by the Leinster CCC. It was drawn to our attention that, prior to that date, a letter had been sent to the Leinster Council from the injured player's father and that clarification pursuant to the Official Guide had been sought from the Referee by a member of the Leinster CCC. This was the subject of an issue at a separate hearing of the DRA and is no longer of significance here.

3. On 17 June 2010, a hearing commenced before the Leinster Hearings Committee who directed that an investigation be carried out and a new Disciplinary Report be prepared and Notice of Disciplinary Action served.

4. On 15 July 2010, a second Notice of Disciplinary Action was served by the Leinster CCC together with information arising from the further investigation. That document (or series of documents) has not been put before the Tribunal hearing this matter.

5. On 19 July 2010, a further hearing took place before the Leinster Hearings Committee. A decision was communicated on 20 July 2010, by which a 72-week suspension was imposed. The Claimant lodged a valid Appeal against this and the Appeal was heard on 26

July 2010. The Appeal was upheld by decision dated 28 July 2010 and the CAC elected to substitute its own decision for the decision of the Leinster Hearings Committee, imposing a suspension of 96-weeks.

6. A claim was lodged with the Disputes Resolution Authority shortly thereafter and on 12 August 2010, the DRA granted what was initially referred to as interim relief suspending operation of the Claimant's suspension pending determination of the matter. In fact, it appears that that decision was a final determination of the arbitration – quashing the decision of the Leinster Hearings Committee and the CAC – and the only issue remaining concerned what would happen next. The parties were invited to either request the DRA to rehear the matter pursuant to Section 11.4 of the Disputes Resolution Code or otherwise to have the matter reheard by the Leinster Hearings Committee under Section 11.3 of the Code. The parties were unable to agree the format by which the DRA might rehear the matter, so on 11 February 2011, a formal written decision of the DRA with its statement of reasons was issued. This gave certain directions regarding the rehearing, to which we will presently return.

7. On 31 March 2011, the Leinster Hearings Committee notified the Claimant in writing that the re-hearing would take place on 12 April 2011. The letter of 31 March 2011 requested a list of the Claimant's witnesses to be delivered by 5pm on Friday 8 April 2011 and stated that the CCC's list would be furnished in due course. On 5 April 2011, the Claimant reverted, stating that he was not going to be calling any witnesses. The Leinster CCC did not deliver its own list of witnesses to the Claimant but, it seems, notified the Leinster Hearings Committee, who in turn sent the list to the Claimant on 11 April 2011, the day before the hearing. The list consisted of six players and officials, all, it appears from St Peregrin's. There was some dispute as to whether five or six of these witnesses gave evidence at the hearing on 12 April, 2011. The minutes suggest that five had given evidence, but the Leinster Hearings Committee believed that all six had given evidence. The Claimant did not express a view to the Tribunal as to how many gave evidence. We believe that little turns on that ambiguity. In addition to the oral evidence, three short medical reports were adduced. The first (dated 17 July 2010) simply confirmed that the injured player had attended the Doctor in question. The second (dated 5 August 2010) was a radiology report. The third (dated 11 April 2011) was brief summary of the injured player's condition at that time.

8. The Leinster Hearings Committee issued its decision on 13 April 2011, imposing a 96-week suspension. An appeal to the CAC was lodged on 15 April 2011. Thirteen numbered grounds of appeal were listed. A hearing before the CAC took place on 28 April 2011 and a decision issued on 3 May 2011. In that decision, which dealt individually with the thirteen grounds of appeal, twelve were dismissed and one was upheld. The ground upheld, as it appears on the Notice of Appeal was as follows:

> *"The Leinster Hearings Committee infringed and/or misapplied rule 7.5(h) of Official Guide 2010 by applying a suspension taking effect from the date of the Hearing when the alleged infraction was in respect of a playing offence by a Player."*

9. The decision of the CAC on this point was as follows:

> *"The ground for your appeal as lodged is upheld under rule 7.11(m)(i) as it on Lár Choiste Achomhairc CLC determines that Coiste Éisteachta Laighean CLG infringed and misapplied rule 7.5(g) Treoraí Oifigiúil 2009 (7.9(h)) Treoraí Ofigiúil 2010) in its decision as claimed.*
>
> *An Lár Choiste Achomhairc decided to substitute its own decision in this matter in accordance with Rule 7.11(n)(iii). The decision of Lár Choiste Achomhairc is as follow:*
>
> *The suspension shall commence on the 5 April 2010 in accordance with the provisions of Rule 7.5(g) Treoraí Oifigiúil 2009 (7.5(h)) Treoraí Oifigiúil 2010) and shall run in accordance with the provisions of Rule 7.5(h) and (i) Treoraí Oifigiúil 2009 Rules 7.5(i) and (j) Treoraí Oifigiúil 2010)."*

The Claim

10. The said decision was made the subject of a request for arbitration under the Disputes Resolution Code. Section 8 of the Claim Form, which requires the grounds relied upon by the Claimant for the relief sought, is set out in ten paragraphs. The Tribunal marked these as (a) to (j) for ease of reference at the hearing. It was assumed that these were self-standing and independent grounds of challenge; however as the hearing developed it emerged that there was a considerable degree of overlap between the various grounds raised, and that some of the points were merely statements of general principle that were developed more specifically under other points.

11. At the close of the Claimant's case, we informed the parties that we did not require to hear from the Respondents in relation to certain of the points raised in the Claimant's case, on the grounds that those points were not stateable. We will give our reasons below for each point raised, stateable or not, for that reason and having regard to the overlapping nature of a number of the grounds, we will address the various points raised in the Claim in a slightly different and more logical sequence than they were laid out in the Claim Form. By doing so, we are neither criticising the Claimant for the manner in which the grounds were laid out, nor are we necessarily concluding that the grounds thus re-sequenced were adequately pleaded (that is an issue in relation to some of the points raised) and, insofar as issues about whether matters were properly raised in the claim Form are concerned, we will address those matters as they arise below.

Evidence

12. Most of the evidence was agreed. The only evidence led at the hearing before the Tribunal arose in the context of what had been said on behalf of the Claimant at the hearing before the CAC. Minutes, which have not yet be ratified, of the CAC meeting were adduced on behalf of the CAC, and subject to the additional evidence given by Mr. Sheldon Norton,

there was no dispute about the content of the minutes. At a very late stage in the hearing, the Claimant sought to adduce further evidence regarding what Mr. Norton had said at the appeal hearing.

13. The Respondents objected to further evidence being introduced and, in view of the lateness of the request and the fact that the submissions were virtually complete at that stage, further evidence was not allowed. For reasons explained later in this decision, we do not consider that the evidence could have been material.

Point (c): Compliance with the directions of the DRA

14. One of the first items we need to address is the directions given by the DRA in its previous decision. The previous Tribunal of the DRA, invoking its power under section 11.3 of the Disputes Resolution Code, directed *inter alia*:

> *"that Leinster CCC in presenting their evidence to Leinster Hearings Committee have regard to the earlier decision of Leinster Hearings Committee and of this Tribunal that "the letter from injured player's father cannot be used as evidence by any party in the case."*
>
> *The said re-hearing should be conducted in accordance with the Disciplinary Handbook and the rules in the T.O. regarding the type of evidence that can be adduced at a disciplinary hearing must be adhered to."*

15. The full reasoning in the previous decision of the DRA is not apparent but it seems that the problems arose as a result of (a) the letter from the injured player's father being taken into account, (b) the Leinster CCC obtaining clarification of the Referee's report when the circumstances of the case "*did not meet either of the criteria permitted under rule for the seeking of clarification from a Referee*" and (c) the CAC considering evidence which it had itself considered to be inadmissible before the Hearings Committee. Those findings are binding on the parties and quite correctly were not re-argued before us.

16. We have not seen the clarification of the Referee's Report or the letter from the injured player's father, but it seems to be agreed (certainly no evidence was offered to the contrary) that neither of these was adduced in the re-hearings before Leinster Hearings Committee and the CAC in 2011. As regards the third point mentioned above, since this was a re-hearing at Leinster Hearings Committee, what the CAC was entitled to consider as evidence on the last occasion in light of their findings on the appeal is no longer germane.

17. In that context, and in the absence of a specific factual allegation in the Claim Form, the Claimant's representative was asked to indicate what specific breach occurred of the direction of the DRA. The Claimant's representative submitted that he was referring to the direction that the rehearing be carried out in accordance with the Official Guide and the Disciplinary Handbook. With respect, the obligation to comply with the Official Guide exists irrespective of any determination or direction of the DRA. Insofar as it is said that

there is a direction that the rehearing be carried out in accordance with the Disciplinary Handbook, an question arises as to whether this imports requirements additional to those in the Official Guide. The Claimant's representative selected certain passages from the Disciplinary Handbook, which he argued were breached. All of the areas identified were matters governed by other points in the Claim Form, so it is evident that Point (c) of the Claim Form is not in fact distinct complaint but a rather an additional basis for making some of the complaints made under other headings.

18. But before we leave this point, it is necessary to address a point of fundamental importance to the operation of the DRA and the disciplinary system. It is this. The Claimant contended that the Disciplinary Handbook forms part of the Rules and is enforceable as if it were part of the Official Guide.

19. In support of this argument, our attention was drawn to Appendix 1 of the Official Guide (at page 138 of the 2010 version) where a definition of "*Rule*" was set out as follows:

> *""Rule" shall include, where the context requires, any of the Association's Rules, Bye-Laws and Regulations, the Club Constitution and Rules as well as Central Council Guidelines, Directives and Codes, all of which shall be enforceable in all respects as if their provisions were embodied in the Official Guide provided however that should any conflict arise between such provisions and the text of the Official Guide, the text of the Official Guide shall prevail".*
>
> (emphasis added)

20. Our attention was also drawn to the introduction to the Disciplinary Handbook (page 3) which provides *inter alia* as follows:

> *"This Disciplinary Handbook suggests best-practice Guidelines which will help to ensure that the Association's Disciplinary Code is clear, workable, fair and efficient".*
>
> (emphasis added)

21. Before continuing, however, we should also set out the following provisions of the Disciplinary Handbook, not adverted to by the Claimant's representative, which referred to its scope and effect:

> *"The Handbook is intended to assist in the implementation of the Rules and is not a substitute in any form, for the Rules of the Official Guide."*
>
> (at page 3, emphasis added)

> "*MEANING AND EFFECT OF THIS HANDBOOK*
>
> *Disciplinary Procedures are governed by the Enforcement of Rules portion of the Official Guide. They are not governed by this Handbook, which has been prepared to assist in understanding the Rules concerning and putting them into practice.*

Sometimes this Handbook will give an opinion as to the manner in which compliance with the Official Guide might be achieved in some circumstances, and it may be useful to consider that view. However, once you are operating within the bounds of the Rules, you should allow enough flexibility to be both efficient and fair."

(at page 4, emphasis added)

22. It was said that, as the Disciplinary Handbook is "*Guideline*" published by the Association, it forms part of the Rules as if it were part of the Official Guide. No decision of the DRA was advanced in support of this argument. This is not surprising because in our view the argument is wholly misconceived. The reasons for this are many. First, the Disciplinary Handbook itself (as cited above) makes it clear that it is not a substitute for the Rules and that it is, in effect, a textbook discussing how the Rules ought to be dealt with, a series of "opinions" on how the Rules shall be complied with. Secondly, the Appendix to the Official Guide to which we were referred expressly provides that *inter alia* "*Guidelines*" were to be treated as if they were Rules "*where the context requires*"; the context does not at all require it in the case of the Disciplinary Handbook. Moreover, there is an express proviso in the definition of "*Rule*" so that "*should any conflict arise between such provisions and the text of the Official Guide, the text of the Official Guide shall prevail*". Fourthly, plain logic dictates that a discursive document dealing with the meaning of words in another document should not be taken as having the force and effect of the other document: otherwise it ceases to be what it sets out to be i.e. an assistant to interpretation. Finally, the Rules in the Official Guide have been the subject of a ratification procedure at Congress. The Disciplinary Handbook has not. Therefore, if the Disciplinary Handbook were interpreted to have added to or varied or limited the meaning or scope of and Rule in the Official Guide, it would be *ultra vires* the Rule Book Task Force. However, as we have said, neither the Official Guide nor the Disciplinary Handbook itself requires that conclusion to be drawn.

23. In summary therefore, save insofar as the Referee's clarification and letter from the father of the injured party were to be excluded from consideration (for reasons that were not the subject of debate here: we have occasion to discuss the status of letters generally in disciplinary procedures in this decision and that will be addressed separately), there was no specific direction in the previous decision of the DRA to do anything other than what the Official Guide already required.

Point (a): Disciplinary Jurisdiction

24. Point (a) of the grounds advanced on behalf of the Claimant is in very general terms. There is a reference to Rule 1.9 of the Official Guide which provides as follows:

"Units/Jurisdiction
The Association is a democratic organisation comprising the following units:
(a) Clubs
(b) County Committees

(c) Provincial Councils
(d) Central Council
(e) Annual Congress

Members of the Association shall, by virtue of their membership, be subject to the jurisdiction of the Association's Rules, Bye-Laws and Regulations, which shall govern the relationship between the various units, between members, and between members and units. Members and units shall be bound to resolve any and all disputes that arise, within the framework of the existing procedures, the Appeals System, and the Dispute Resolution Provisions as set out in these Rules.

Members shall not resort to court proceedings in disregard of these procedures, the Appeal System and the Dispute Resolution provisions."

25. There is no specific fact alleged in support of the contention that this Rule has been breached, and in light of the general terms of the rule itself, no allegation can be inferred from the circumstances of the case. As such, Point (a) does not give rise to a self-standing ground of challenge, although we will of course have regard to Rule 1.9 in the general analysis of all of the grounds concerned.

Points (b) and (g): Evidence additional to the Referee's Report

26. The arguments arising under Points (b) and (g) of the grounds advanced by the Claimant need to be treated together as they essentially cover the same issue. It is said that the Leinster Hearings Committee ought to have, and did not, accept that the Referee's report was correct in all factual matters as required under Rule 7.3(aa)(1)(vi) of the Official Guide. In addition, it is said under Point (g) that "*by imposing a penalty greater than the minimum prescribed despite the unambiguous description of the infraction of the Referee's report which is clear, concise and in accordance with the specific description of the Infraction described in Rule 7.2 Category III and the fact that it was not a repeat Infraction*" the Leinster Hearing Committee and the CAC were in breach of Rule 7.2 of the Official Guide.

27. It became clear at the hearing that both points rested on the central proposition that any evidence put forward by the Leinster CCC with regard to the injury suffered by the injured player would be inadmissible and could not be considered unless it amounted to "other compelling evidence" as contemplated by Rule 7.3(1)(aa)(vi) of the Official Guide. This Rule needs to be set out in full:

"A Referee's Report, including any Clarification thereto, shall be presumed to be correct in all factual matters and may only be rebutted where unedited video or other compelling evidence contradicts it"

28. It is clear that the need for evidence to be "*compelling*" in nature only arises where it is used to "*contradict*" the contents of the Referee's Report. The Claimant maintains that there is a contradiction between what is in the Referee's report in this case (quoted earlier

in this decision) and the evidence that was put forward on behalf of the Leinster CCC. But if the Referee's report stated (as it did) that a player was injured, then how did evidence of the extent or the consequences of that injury contradict it? The Claimant's representative insisted that there was a contradiction. He stated that medical evidence of injury could never be introduced other than by way of clarification of the Referee's report. When asked how a Referee was expected to diagnose medical conditions that might not even emerge until well after the game had concluded, the Claimant's representative maintained that the word "*gravity*" in the context of Rule 7.5(b) of the Official Guide concerned the circumstances of the commission of the infraction and not the consequences of that infraction.

29. We rejected these submissions as unstateable on the evening of the hearing: we consider them to be a misinterpretation of both Rule 7.3(aa)(1)(vi) and Rule 7.5(b). There is no contradiction whatever between, on the one hand, a Referee's report stating that a player had struck another player with a hurley and caused injury, and on the other hand, medical evidence relating to that injury arising independently of the Referee and after the termination of the game. Indeed, even if the Referee had made no reference whatever to injury, medical reports would be perfectly admissible and would not be in contradiction with the Referee's report. Oral evidence from the injured player as to his injury and its impact on his life would likewise be perfectly consistent with a Referee's Report either confirming injury or being silent about injury.

30. If, for some reason, the Referee had stated that injury had *not* occurred (an unlikely event since no formal description of any Infraction in the Official Guide requires the Referee to rule out the occurrence of injury), a contradiction might be considered to exist. In that case, a CCC would have to show "*compelling evidence*" of the existence of an injury, or, if the circumstances required, to obtain clarification from the Referee under Rule 7.3(f)(iii)(2) to confirm that he was unable to confirm that no injury had occurred and that the Report ought not to have stated that there was no injury.

31. So there is no contradiction: therefore Rule 7.3(aa)(vi) has no application to this case. However in light of the wider submission of the Claimant about medical reports, we must consider the general question whether a medical report of injuries is (a) admissible at all and (b) "*compelling*" (i.e. in a case where the Referee's report had stated that that there was no injury).

32. It is clear from Rule 7.3(aa)(1)(ii) that documents (of which a medical report is one) are admissible, the only issue being what weight the Hearings Committee should attach to them. The Claimant's representative suggested that subparagraph (ii) was not an exception to the general rule in Rule 7.3(aa)(1) that evidence should be oral, contending that subparagraph (i) was the only exception. It is plain from the words of the Rule that that submission is wholly incorrect.

33. The Rules do not prescribe what is or is not "*compelling*": that is a matter for the Hearings Committee (acting reasonably of course) to decide, on the facts of the case before it. There is little benefit in Tribunals of the DRA trying to define or restate the meaning of the word

"*compelling*": such attempts merely risk distorting the word. The furthest one can probably go is to say that evidence that merely seems to be more correct than a Referee's report is not enough: more is required. The issue of weight and in particular the question of evidence being compelling are discussed briefly in the Disciplinary Handbook (see page 14), to which we were referred.

34. On the question of documents generally, some factors are discussed in the Disciplinary Handbook. It is said there that "*Letters and documents should not be treated as conclusive evidences of what they say if their contents are going to be the subject of a major dispute….Essentially the Hearings Committee should assess each item of evidence and where it is coming from, and attach weight or importance to it accordingly. Thus a letter from the Defending Party's brother, stating that the Defending Party "has never been in a fight in his life", would obviously be of little value to the Hearing.*"

35. A medical report is, of course, of a very different order to a letter from a Defending Party's brother. If the issue of whether injury had occurred at all or whether it was significant was disputed, then a medical report ought not to be taken as conclusive of the matter. But saying that a document is not conclusive is an entirely different thing from saying it is inadmissible. Indeed if a medical report (for example) is the only evidence one way or another on the question of injury, it might settle the issue. But if a Defending Party were to seek an opportunity to test the medical report through e.g. having the subject of the report (i.e. the injured player) examined either medically or by way of cross-examination at the hearing, and that request is refused, then the report will carry less weight and might even be rejected. Of course in the absence of a medical report, the injured player's own oral evidence of his injury will always be admissible.

36. It is plain to see that none of those hypotheses arise in the present case. While the Claimant has expressed dissatisfaction at the manner in which the medical and oral evidence was adduced (a point we will deal with separately below), he has never suggested that the injured player did not suffer an injury. The medical evidence only goes to the severity of that injury. Moreover, and more importantly, the Claimant has never suggested that he was denied an opportunity to challenge the substance of that report. There was no evidence that the idea of having the injured player medically examined was even mentioned, and we know that the injured player was not cross-examined on any matter at the hearing.

37. The Claimant's representative cited paragraph 21 of the decision of the DRA in Case 17/2009 *O Maolcathail v Coiste Eisteachta Laighean and others* wherein it was said that "*a document recording hearsay is not acceptable proof on a hotly contested matter of fact arising from eyewitness testimony.*" That is an entirely distinguishable position to the present: first, the document here did not record hearsay, it recorded the Doctor's own clinical findings; secondly, the allegation that the player from St Peregrin's had suffered injury was never contested at all; thirdly, the subject matter of the report was not a split second event on the field of play but careful examinations by a medical professional, presumably in the calm surrounds of his surgery.

38. On the issue specifically addressed under Point (g), to interpret Rule 7.2 as prohibiting the

imposition of a penalty in excess of the minimum unless there is some ambiguity in the Referee's report is to suggest that the minimum is in fact a maximum. This is not, of course, the case. The range of penalties for the infraction arising in this case is generally from 8 weeks to 96 weeks. Rule 7.5(b) provides:

> *"Where a minimum Suspension is prescribed in relation to an Infraction, the Council or Committee-in-Charge shall have due regard for the gravity of Infraction in each case, and, where appropriate, shall impose a longer term of Suspension. No Suspension shall exceed 96 weeks. However in exceptionally serious cases the penalties of Debarment from playing or Expulsion may be imposed."*

39. As we mentioned earlier, an assessment of gravity is not confined to the circumstances of the commission of the infraction, but may deal with its consequences.

40. Our attention was drawn to the Disciplinary Handbook, which (at page 18) makes certain points about the imposition of penalty. In summary, the Handbook recommends that cases should be dealt with on their own merits, that the proposed penalty should not be used as a basis for fixing a penalty, and that, although not required by Rule, it would be good practice where a penalty greater than the minimum is being imposed, for the decision-maker to give a brief reason for the decision to impose a more severe penalty. There is nothing in the Disciplinary Handbook that prevents, could prevent, the Hearings Committee in this or any other case from imposing more than the minimum penalty for any particular infraction. In view of the severity of the penalty imposed, it certainly would have been better had reasons been given, and that would accord with best practice as advised by the Handbook (see also the recommendations of the DRA in Case DRA/15/2008 *Ó Gealbhán v Lár Choiste Cheannais na gComortaisí and others*). However (as noted in that case) it is not an obligation under Rule. In some cases, a penalty might be so aberrant that fair procedures requires reasons independently of the Rules, but there was no evidence of the Claimant ever simply asking either of the Committees concerned for reasons for the length of the suspension. Nor did Leinster Hearing Committee's failure to give an adequate reason for the penalty form a ground of appeal to the CAC. Nor was the failure to give reasons ever advanced as a ground of claim in this arbitration. Consequently, we cannot grant any relief to the Claimant on the grounds of failure to give adequate reasons.

Point (i): Allegation of bias/prejudgment

41. At Point (i) of the grounds advanced, it is suggested that the Claimant's right to a fair hearing was compromised by the composition of the Leinster CCC, the Leinster Hearings Committee and the CAC. Two factual allegations are made. The first is that the Chairman of the CAC advocated on behalf of all Respondents at the first DRA hearing. The second is that the Leinster CCC, the Leinster Hearings Committee and the CAC met together following the last DRA Hearing for the purpose of attempting to agree a proposal with regard to the DRA re-hearing the substance of the matter under Section 11.4 of the Code.

42. It was accepted by the Claimant's representative that there was no evidence that the discussions between the three parties in relation to a re-hearing under Section 11.4 of the Code included any discussion on agreement regarding any re-hearings of the disciplinary matter by those bodies themselves. Moreover, no request was ever made to the DRA for a direction that the matters be determined by newly-composed committees (which would have been open to the DRA Tribunal). The Claimant's representative maintained that such a direction would have been sought in August 2010 but that the chance was lost due to the matter being stayed while an agreement regarding a rehearing by the DRA was sought to be reached. But there was nothing to stop the Claimant from notifying the DRA of its concerns in the period between the breakdown of negotiations for a hearing under Section 11.4 and the DRA issuing its written decision. Nor was there anything to stop the issue being raised before the rehearing of 12 April 2011. The only evidence or submissions made by the Claimant at the rehearing before Leinster Hearings Committee on 12 April 2011 is embodied in a two-page document, which he read out at the time (this is an agreed document). This document contains no request or objection relating to the composition of the Leinster Hearings Committee. The Notice of Appeal against the decision of Leinster Hearings Committee made a reference to the fact that a member of the Leinster CCC and two other members of the Leinster Hearings Committee were present at the previous DRA hearing. While it is not entirely clear, there is certainly enough to say that that was something of a complaint about the composition of the Leinster Hearings Committee. However, at that stage, the Claimant had already allowed the Leinster Hearings Committee to proceed without objection. In turn, that Notice of Appeal itself contained no request that the CAC exclude from the hearing any of its members who appeared in the DRA proceedings. As such, it appears that the Claimant made objections sequentially but never on time, always one step late. Each complaint about the composition of any committee came after that committee had completed its hearing.

43. It appears that at the CAC hearing, a comment was made about the composition of that Committee (as evidenced by Mr. Sheldon Norton); however Mr. Norton conceded that, on being asked whether he had an objection to the matter proceeding on the grounds of the composition of the CAC, he replied that he did not. Indeed, a written document he read out in full to the CAC confirms that there was "*no objection to any member of the panel*" merely stating that the situation was "*not ideal*". In those circumstances, complaints about the composition of the CAC cannot now be raised before the DRA. Complaints made in the Claim Form about the composition about the Leinster CCC are not relevant. The Leinster CCC was not a decision-making body and therefore issues of bias or prejudgement do not come into any consideration of its conduct (we might also add that the Leinster CCC is not a party to the claim).

44. The decision of the High Court in the case of *DPP v Judge Haugh* (Unreported, High Court Carroll J) 3 November 2000) was cited to us on behalf of the Claimant. With respect, that was a case about unfair pre-trial publicity in a jury action, and is of limited relevance here. At any rate, for the reasons stated above, the matters considered above defeat any complaint of objective bias here.

Points (d), (e) and (f): Prior notice of evidence given at the hearing

45. Points (d), (e) and (f) largely concern the same issues. The evidence additional to the Referee's report in the hearing before Leinster Hearings Committee consisted of the oral evidence of six witnesses (or five, if the minutes are correct) together with the medical reports. In essence, it is complained that there was no list of witnesses in the original Notice of Disciplinary Action (we do not know whether the second Notice of Disciplinary Action of July 2010 contained a list of witnesses but it was not put before us). In addition, there was no indication in the Notice of Disciplinary Action or in any communications with the Claimant prior to the hearing of 12 April, 2010 that medical documentation would be submitted in support of the matter.

46. The Claimant had argued that this evidence was simply inadmissible on the grounds that it was not "*compelling evidence*" within the meaning of Rule 7.3(aa)(vi) but we have rejected that ground (for reasons set out above). However, the Claimant also objects on a separate basis. Rule 7.3(i) sets out what is required to be contained in the Disciplinary Report. This includes, among other things "*copies of all relevant documents available to the Competitions Control Committee*" and "*a list of witnesses, if any, who will be required to attend the Hearing on behalf of the Competition Control Committee*." It is stated in relation to the latter requirement that "*this list may be updated at any stage up to 24 hours before any Hearing*". The Claimant contends that, unless a Notice of Disciplinary Action includes a list of witnesses and documents, neither witnesses nor documents may be put up by a CCC at a hearing arising from that Notice, and that the right to update a list requires that there be a list of witnesses in the first place.

47. At the hearing, we asked the Claimant's representative how that squared with the provisions of Rule 7.3(h) of the Official Guide, which provide *inter alia* that:

> "*In the event that the Competition Control Committee omits from the Disciplinary Report evidence that is subsequently shown to be relevant, this shall not of itself affect the validity of the Disciplinary Action.*"

48. The representative for the Claimant argued that this provision related only to disciplinary action arising otherwise than from infractions on the field of play. There is no support in the terms of Rule 7.3(h) or anywhere else in the Official Guide for such a proposition. On the contrary, the provisions of Rule 7.3(h) expressly include reference to "on-pitch" infractions, since there is discussion therein of Referee's reports. It is entirely logical that the Rules might provide a safeguard for evidence excluded from the Notice of Disciplinary Action/Disciplinary Report: first, such evidence might not exist at that date; secondly it might exist but not be known to the CCC at that date; thirdly the significance of the evidence might not be appreciated until after that date. Consequently, we consider that the specific provisions for the requirements of the Disciplinary Report do not preclude either the admission of documents not listed in the Disciplinary Report, nor the putting up of witnesses in circumstances where no list was provided with the Disciplinary Report. This is, of course, subject to the requirement, in the case of witnesses, that a final updated list to be provided not later than 24 hours before the hearing; however in our view, such a list can

be updated from scratch, so to speak.

49. There is, of course, an underlying issue of fair procedures. The provisions of Rule 7.3(h) cannot be relied upon to generate a clear injustice where documents and witnesses are heaped upon a Defending Party late in the day without an adequate opportunity to deal with them. In this case, Leinster CCC could and should have made a greater effort to ensure that a greater degree of notice of both the documents and the witnesses was given to the Claimant. Although it was not raised on the claim or in argument and only came to our attention when deliberating on the matter, the Leinster CCC and the Leinster Hearings Committee appear to have confused their rules regarding notification of witnesses. The CCC should have communicated directly with the Claimant and the Hearings Committee should not have played any role in that process save to receive copies of the letters (we make no further comment on that since it was not raised or argued at the hearing). If the Claimant had requested an adjournment of the hearing of 12 April 2011 in order to consider and address the medical reports, it is difficult to conceive of any circumstances in which the adjournment might properly have been refused.

50. However what happened suggests that the Leinster CCC's conduct in giving the list of witnesses and the medical reports so late did not actually prejudice the Claimant at all. First, it will be recalled that on 30 March 2011 the Claimant was asked for a list of his witnesses and was informed that a list of CCC's witnesses would be supplied. So he was informed that witnesses would appear. Rather than to insist on sight of the CCC's witnesses before supplying his own list, the Claimant simply stated that he did not intend to call any witnesses, and he exhibited no interest in getting the CCC's list any earlier than it came to him. Secondly, when the hearing proceeded on 12 April 2011, no objection was raised that the late supply of the list of witnesses and documents was unfair, whether by reference to any Rule in the Official Guide or basic notions of fairness. Instead, as revealed in the document read out by the Claimant, the only objections were the technical objections we have found to be invalid. Thirdly, the Claimant never catered for the possibility that his technical submission might be incorrect by asking any questions of the witnesses. He never contended as a manner of fact that the injured player was not injured in the matter suggested by the medical reports. The Claimant was well aware that this was being treated as a very serious matter indeed and cannot have been unaware of the fact that evidence of gravity, and specifically injury, would feature. It was said that the Claimant was inexperienced at such hearings but he was entitled to be assisted by a Club member and more importantly it is clear that he had expert assistance in the preparation of his statement to the Hearings Committee. As such – whatever about the medical reports – he had 24 hours to consult that expertise if he wished regarding the list of witnesses.

51. In this context, the Respondents' representative referred us to the terms of Rule 7.11(e) of the Official Guide which provides *inter alia* that:

> "*An Appeal should be signed by the Appellant… and shall …set out the grounds of appeal including (i) the specific Rule(s) claimed to have been infringed or misapplied, and (ii) the facts alleged in support of the grounds…*"

52. When we come to consider the Notice of Appeal here, we see no reference whatsoever to Rule 7.3(i) of the Official Guide. The nearest we get to this issue is Grounds 4 to 6 of the Notice of Appeal which alleged a breach of Rules 7.3(aa) and 7.3(u) of the Official Guide, in very general terms. These grounds draw no connection between the inadmissibility argument with the content of the Notice of Disciplinary Action or Disciplinary Report. The nearest one gets to that is Ground 6 wherein it is pleaded that there was a breach of Rule 7.3(aa) (in general) because the evidence in question "*available only on foot of an investigation carried out by Leinster CCC subsequent to the issue of the Notice of Disciplinary Action dated 18 May 2010 and which has already been deemed inadmissible by the Central Appeals Committee and the DRA.*" To deal with the second issue first, it is not stated in the previous decision of the DRA that no witnesses could give evidence at the re-hearing of 12 April 2011, nor that medical reports could not be considered. While it was held that the CAC should not have taken the witness evidence into account on the last occasion, that finding was made was in the specific context where the CAC itself had come to the conclusion that the evidence was inadmissible. It was not said that that or any other evidence (save for the Referee's clarification and the letter from the injured player's father) was condemned for ever more. Committees of the Association are not prevented from processing disciplinary action in a proper way merely because they blundered on their first attempt. Attempts to hogtie them in this way bring the Association into disrepute.

53. At the heart of this ground of claim seems to be a belief that CCCs are to be monitored in how the go about their investigations. While clarifications are monitored because of the special evidential force that clarifications have at a hearing, in general, CCCs are free to investigate alleged infractions in such manner as they wish. A CCC is not conducting a quasi-judicial or adjudicative function in this context (see by analogy comments at paragraphs 46-49 of the decision in DRA/16/2008 *Ó Fionnalaigh v Lár Choiste Cheannais na gComortaisí and others*). It is simply preparing a case to be adjudicated upon by a Hearings Committee. Ideally, the CCC should complete its investigation prior to the issuance of a Notice of Disciplinary Action, but that is not always possible, and it is clear from Rule 7.3(h) that they are not prohibited from adducing evidence that is not identified in the Notice of Disciplinary Action. As we have said, fair procedures require that a Defending Party is given a reasonable opportunity to defend himself and not to be taken by surprise. However a Defending Party cannot sit back, allow evidence to be adduced, neglect to seek an adjournment, and then seek to undo the whole process at a later stage.

54. In summary, while we do have a concern about the lateness of the delivery of the list of witnesses and the medical reports, we find that the Claimant's complaint on this ground is not well-founded for the following reasons:

    (a) Provided a list of witnesses is given at least 24 hours in advance of a hearing, there is no prohibition on witnesses being heard by virtue of any absence of any list of witnesses in the Notice of Disciplinary Action;

    (b) There is no prohibition in the Official Guide on documents being produced at a Disciplinary Hearing, notwithstanding that they might not have been listed in a Notice of Disciplinary Action;

(c) While fair procedures dictate that a Defending Party should not be taken by surprise in disciplinary proceedings, the Defendant party must require and avail of such facilities as might be afforded to him to remedy the prejudice caused by late notification of evidence, whether by seeking an adjournment or otherwise: in this case, the Claimant did not seek an adjournment, he did not choose to cross-examine the injured party as to the nature and extent of his injuries and his objection to the witnesses and documents was not made on the grounds of fairness, but on technical legalistic grounds (which we have rejected);

(d) The Claimant failed to identify in his Notice of Appeal to the CAC either the specific rules alleged to be breached or the facts upon which that allegation was made and consequently did not exhaust his remedies in the manner contemplated by Rule 7.13(d) of the Official Guide.

Point (h): Delay

55. In the context of Point (h) of the grounds of claim, the Claimant has identified a number of factors which he contents entitle him at this stage to have the suspension quashed and all or any further disciplinary proceedings prohibited. It is said that he was formally suspended from 5 April 2010 to 12 August 2010 (a total of 19 weeks); that there were no games between 24 September 2010 and 27 February 2011 (a period of some 22 weeks) and then no games from the latter date until the date of the re-hearing before Leinster Hearings Committee (12 April 2011); and that he has been suspended from 12 April 2011 to the date of the hearing. It has been said to us that, in effect, he has been suspended for 48 weeks. This is a false analysis. It is clear that 19 weeks of a suspension was served in 2010 and that from 12 April 2011 to date, the Claimant has been suspended. However that amounts to a total of approximately 28 weeks and not 48. Whether games arise during a period of suspension or non-suspension is not relevant.

56. It is said that, inasmuch as the incident the subject matter of the disciplinary action occurred well over a year ago, the delay is unacceptable. No precedent from the DRA or elsewhere was produced to support that contention, but it was said that very little of the delay can be laid at the Claimant's door.

57. We have examined the chronology and find that a delay of a few weeks here and a few weeks there between hearings is insufficient of itself to prohibit the continuation of disciplinary action. In this case, the periods between service of the Notice of Disciplinary action and the first appeal to CAC and the notification of the re-hearing and the hearing of the appeal to CAC are not such as to warrant criticism. The longest period of delay to consider is that occurring between 12 August 2010 and 30 March 2011 when notification of the new hearing was given. This is, indeed, a long period of time. However, in all of that period the Claimant was entitled to play and did indeed play one game. Moreover, no evidence was adduced to suggest that any actual prejudice was caused as a result of this delay. It is to be recalled that the Claimant has never contended that he was wrongly ordered off the field of play: consequently, this is not within the category of cases where

eyewitness evidence might be impaired by passage of time. No evidence of any other prejudice was adduced, save that we were encouraged to infer prejudice from the mere length of time that has passed since the incident.

58. We understand that the Claimant did not at any point between 12 August 2010 and 30 March 2011 write to the Respondents or any of them (or indeed the Leinster CCC or the DRA) to inform them that he wanted to move matters along (i.e. by rehearing if the terms for a hearing under Section 11.4 of the Code could not be agreed). His representative stated that the Claimant believed that the matter might "go away". The Claimant may well sit back and do nothing on that hope or expectation, and indeed we accept that there had been cases where decisions having been quashed, the matters did indeed "go away". However, having stayed silent on the matter, he cannot complain that the disciplinary action did not "go away" and that it was re-heard in accordance with the directions of the DRA.

59. For the foregoing reasons, we do not consider that the delay is such in this case so to warrant any particular direction by this Tribunal.

Point (j): Substituted decision of the CAC on penalty

60. The final ground raised by the Claimant related to single ground upon which it succeeded in its appeal to the CAC from the re-heard disciplinary action. We have set out in full the terms of the decision of CAC on that issue. Two complaints are made: first, that the suspension identified is of indeterminate duration; and secondly, that the CAC fixed a penalty (i.e. by setting the commencement date of the suspension at 5 April 2010) without having heard any evidence to justify the imposition of any suspension. Our attention was drawn to the provisions of Rule 7.11(n) of the Official Guide which provides as follows:

> *"(n) A decision shall be made by the appellate Hearings Committee on foot of the Appeal and such decision shall be notified to the Appellant, the Decision-Maker and any other relevant party. In the event of an appeal being upheld, the appellate 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 matters for re-hearing or re-processing (with or without recommendations as to procedure), or*
>
> *(iii) substitute its own decision on the matter."*

61. Our attention was also drawn to the provisions of the Disciplinary Handbook which suggest that "*Option (iii)* [i.e. Rule 7.11(n)(iii) above] *should generally only be taken if the Appeal Committee has heard all of the evidence that was put before the Hearings Committee and is in a position to come to a firm view that – on the facts of the case – the Infraction is proved or not proved as the case may be.*"

62. We note that there is no specific reference to the length of the suspension in paragraph 13

of the decision of the CAC in this case. However it defies all logic and common sense to suggest that the CAC was not referring to the 96-week suspension imposed by Leinster Hearings Committee. The CCC was well and properly aware that a 96-week penalty had been imposed by the Leinster Hearings Committee and the Claimant knew that. In that context, the reference to "*the suspension*" is clearly a reference to the 96-week suspension.

63. The second complaint, i.e that the evidence was not heard by the CAC, turns on similar considerations. In our view, changing the start date of the suspension – in response to a specific complaint about the incorrect start date and running period having been fixed – clearly did not require a rehearing on the merits of the length of the suspension, and it was therefore open to the CAC in this case to engage the provisions of Rule 7.11(n)(iii). The comments from the Disciplinary Handbook cited above are not stated in absolute terms but are qualified by the use of the word "*generally*". There are circumstances where Rule 7.11(n)(iii) is not appropriate, such as where the appeal is upheld on issues relating to evidence and the CAC has knowledge of some but not all of the evidence heard at first instance. Here, however, the appeal was upheld on specific grounds entirely independent of the facts found by the Leinster Hearings Committee. To test the logic of the Claimant's position in relation to Rule 7.11(n), we asked his representative whether he considered that a full rehearing would be necessary if, say, the only defect in the decision was that the decision issued with the signatory's name in English rather than in Irish as required. He contended that a full re-hearing was necessary in those circumstances. That, if anything not only demonstrates that the Claimant's submission on this point is misconceived but also exposes the recusant and uncooperative attitude of the Claimant toward the disciplinary processes of the Association, a point we will revisit below.

64. On one view, the CAC might, in this case, have engaged the provisions of Rule 7.11(n)(ii) and sent it back to Leinster Hearings Committee, not to re-hear the matter but to re-issue their decision identifying 5 April 2010 as the proper commencement date of the suspension and with no break in the running of the suspension. That would have achieved precisely the same thing by means of a slightly more awkward mechanism. But even if that were the only correct approach, we would nevertheless exercise our discretion against quashing the decision or any part of it on this ground, because the consequences would be identical: if we did quash the decision on this ground it would only be for the purposes of directing CAC to engage Rule 7.11(n)(ii) instead of Rule 7.11(n)(iii).

65. For the avoidance of doubt, we should not be taken to express any view on the correct commencement date or running of suspensions (i.e. whether CAC was correct or not to uphold Point 13 of the Appeal). That substantive issue was not raised or argued before us.

The Claimant's approach to the disciplinary process

66. We feel compelled to comment that the Claimant has done himself no favours by his approach to the disciplinary action in this case from start to finish.

67. The Rules relating to disciplinary matters ratified in 2007 place an increased emphasis on giving detailed and specific guidance for Committees and indeed Defending Parties in

dealing with disciplinary proceedings. Detailed rules mean that the scope for error and injustice is reduced. It can hardly be argued with a straight face that the inclusion of these detailed guidelines in the Official Guide, and the publication of a Disciplinary Handbook, were intended to put obstacles in the way of any party involved in disciplinary action. This should not be what the disciplinary process of the Association is about: if it were, then it would rightly stand in disrepute. But in fact, any fair reading of the Rules reveals that the opposite emphasis exists.

68. It is apparent that the Claimant never sought to put up any evidence on his own behalf in relation to the matter. Nor has he sought to engage in any substantive way with the evidence being offered on behalf of the Leinster CCC. Instead, he has sought to rely on technical arguments to place obstacles in the way of a thorough examination of the facts by the committees concerned. The conduct of the Claimant of his defence to the Disciplinary Action in this case can best be described as "cagey," and the distinct impression arises from the chronology of the matter that he chose to raise his complaints, not at a time when they might have been remedied, but always one stage later. The DRA is not established to facilitate this type of conduct: a Claimant who fails to engage in the disciplinary process in a meaningful way cannot expect his own conduct to be overlooked.

69. There is no doubt that the penalty imposed here is of the most severe kind. While we rejected newspaper articles showing what the Claimant contended was inconsistent treatment of a different player in a similar context, we appreciate that 96-week suspensions should rarely arise. However this Tribunal knows little or nothing about the events that took place at the game on 5 April 2010 and we are not in a position to say whether or not it was excessively harsh in the circumstances. Regrettably, because of the Claimant deciding to approach the process by means of attempting to score "knockout" points and to hogtie the committees involved, instead of meeting the charge head on and pleading in mitigation, he has foregone the opportunity before the CAC and the DRA to address this fundamental concern he is entitled to have.

70. To be specific, the Claimant could have mitigated his position by ascertaining the condition of the injured player, by countering any evidence he considered to overstate the injury or the role his actions had in it, by seeking adjournments to deal with any evidence that took him by surprise, by giving evidence of his previous good conduct before the Leinster Hearings Committee (assuming he had a reasonably clean record), by apologising to the injured player (in this regard, it is to be recalled that the Claimant never denied the Infraction), by seeking to make amends and earn the forgiveness of the injured player if possible. There was no evidence before us that the Claimant took any steps of that sort, even though he could have done so while maintaining arguments against the admission of documents and other damaging evidence that was genuinely inadmissible. The Claimant has always had and still has the opportunity of seeking redress from the Leinster Hearings Committee by means of the "mercy plea" provisions under Rule 7.12, but that is not a matter for this Tribunal.

Award

71. In conclusion, we dismiss the Claim in its entirety. This is an interim award inasmuch as costs remain to be determined.

Dated this 1st day of July, 2011.

_____
Brendan Ward

_____
David Murphy

_____
Micheál O'Connell