DRA Uimhir Taifid 7/8/9/10/11/2008

AN CORÁS EADRÁNA
(Disputes Resolution Authority)

DECISION DATED THE 30TH OF MAY 2008

AT MULLINGAR

Between

NIALL MacTHAIDHG, BRENDÁN Ó MURCHÚ, NIGEL MAC CRÁBHAGÁIN, SÉAMUS Ó CIONNAITH, SEAN MAC AIRCHINNIGH

Gearánaí

-agus-

TREASA NI RAGHAILL (MAR IONADAÍ AR SON AN LÁR CHOISTE CHEANNAIS NA Gcomortaisi) agus SEÁN O LAOIRE (MAR IONADAÍ AR SON AN LÁR CHOISTE ÉISTEACHTA) agus PÁRAIC Ó DUFAIGH (MAR IONADAÍ AR SON AN LÁR CHOISTE ACHOMHAIRC)

Cosantóirí

Mr Murray Johnson, B.L., instructed by Seamus Downes, Solicitor, appeared on behalf of the Claimants. Mr Lawrence Fenelon, Solicitor of Lemann, Solicitors, appeared on behalf of the First-named Respondent, the Second-named Respondent and the Third-named Respondent.

DECISION

Background:

1. This is an application for arbitration brought by Niall McKeigue, Brendan Murphy, Nigel Crawford, Seamus Kenny and Shane McAnarney (hereinafter referred to as "the Claimants") against the investigation of the Central Competitions Control Committee, against the decision of the Central Hearings Committee and against the decision of the Central Appeals Committee.

2. Pursuant to the powers conferred upon it on the 21st of April 2008 the Central Competitions Control Committee investigated matters arising out of the Gaelic football National League match played between Meath and Dublin on the 20th of April 2008. The Central Competitions Control Committee recommended a suspension of eight weeks for the five Claimants. The Claimants decided to have their case adjudicated before the Central Hearings Committee on the 29th of April 2008 and ultimately the said Central Hearings Committee imposed an eight-week suspension of the five Claimants. The Claimants appealed the decision of the Central Hearings Committee to the Central Appeals Committee and ultimately the eight weeks was upheld on the 13th of May 2008.

3. The Claimants applied for arbitration, *inter alia,* for breach of fair procedures and natural justice on the following grounds;

i. That there was a breach of Rule 144(u) (Hearing) of the Cumann Lúthchleas Gael Official Guide of 2007,
ii. That there was a breach of Rule 152(m) (Scope and Hearing of Appeal),
iii. That there was a breach of Rule 144 regarding the proposed penalty set out in the Rule Book Task Force Interim Report.

4. These grounds crystallised as follows:

A. By virtue of a Wexford official sitting on the Central Competitions Control Committee on the 21st of April 2008 there may have been a general perception of bias against the Meath players about the constitution and operation of the Central Competitions Control Committee and he should have invoked the provisions of Rule 144(u) by standing down from investigating the Claimants case on the Central Competitions Control Committee;
B. The Claimants argued that there was inconsistency in the implementation of the suspensions relative to the Dublin football players;
C. Where pursuant to guidelines issued by the Rules Book Task Force of the G.A.A., the rules should be interpreted as requiring that in the absence of any "extraordinary or aggravating factors" that the sanction to be imposed should be the minimum sanction of 4 weeks. The Claimants submitted in this case there were no such aggravating circumstances and in the circumstances the sanctions imposed were unduly harsh. The Claimants further suggested that pursuant to the Rules and the recommended practice of the Rules Book Task Force the 8 week ban recommended by the CCC should not have been presented to the appellate body who should have conducted the matters "de novo" without being aware of the Central Competitions Control Committee`s decision.

5. The Respondents (being the Central Competitions Control Committee, the Central Hearings Committee and the Central Appeals Committee) cited in their Reply compliance with Rule 82(g), Rule 89, Rule 142, Rule 143(b), Rule 144(u), Rule 146(m) and Rule 152(m).

Preliminary Issues:

6. Prior to the commencement of the plenary hearing the Respondents indicated that they had two preliminary points, which they wished to canvass before the Tribunal whereas the Claimants indicated that they had one plenary point, which they also wished to raise.

A; Respondents Preliminary Issues: Rule 89(c)&(d) and Rule 154

7. The Respondents cited Rule 154(a), which reads as follows:

"In the event of any dispute or difference between any member or unit of the Association with any other member or unit of the Association as to the legality of any decision made or procedure used by any unit of the Association in pursuance of the Rules and By-laws

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of the Association which cannot be settled by amicable means within the Rules of the Association such dispute may be referred by either party to arbitration under the Disputes Resolution Code ...”

8. Drawing particular reference to the phrase *“legality of any decision made or procedure used...”* the Respondent argued that no decision had been made by the Central Competitions Control Committee. The Respondent noted that Rule 89(c) and (d) provide that the Central Competitions Control Committee shall *“investigate and process matters relating to the enforcement of rules and match regulations arising from competitions and games under the jurisdiction of the Central Council ... or match regulations arising from Provincial inter-county senior championship games*”.

9. The Respondents suggested that the only powers conferred on the Central Competitions Control Committee was to “investigate and process matters” as opposed to being imbued with any decision making power.

10. Therefore, it was argued that considering Rule 154(a) deals with “*... the legality of any decision made or procedure used by any unit of the Association”* the Central Competitions Control Committee was not a decision making body and therefore the Claimants did not have a right to invoke the arbitration procedure under Rule 154.

11. The Claimants responded by suggesting that the Central Competitions Control Committee was an integral part of the disciplinary process and that they were obliged to go through the Central Competitions Control Committee before having recourse to the Central Hearings Committee and ultimately the Central Appeals Committee. The Claimants further argued that the Central Competitions Control Committee could not be dealt with in the absence of the other committees.

B; Respondents Preliminary Issues: Rule 154(d) and Rule 146(m)

12. The Respondent’s second preliminary issue arose as to the interpretation of Rule 154(d), which states *“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”.*

13. They also invoked the provisions of Rule 146(m) (Reduction of Suspensions and Other Penalties) which reads as follows:

> *“The Council or Committee which imposes a suspension or other penalty which is more than a minimum provided for shall have the power on one subsequent occasion to reduce the penalty imposed on application of the unit or member affected subject as follows:*
>
> *(1) it is demonstrated to the satisfaction of the said Council or Committee that the penalty imposed is unduly harsh;*
>
> *(2) the Council or Committee may reduce the penalty below the minimum provided for in the Rule or Bye-law; and*

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(3) *this rule shall not authorise any Council or Committee to exonerate the penalised unit or member or treat it or him as having committed any different infraction;*

(4) *if there is a suspension or other penalty was varied on appeal the review application must be made to the appellate committee concerned.*

14. The Respondent, invoking Rule 154(d), said that *"all avenues of appeal"* were not exercised by the Claimants before invoking the Arbitration provision of the Rules pursuant to Rule 154 insofar as what could be described as a "clemency plea" pursuant to Rule 146(m), was not exhausted by the Claimants. The Respondents indicated that after their appeal to the Central Appeals Committee had been upheld the Claimants could have returned to the Central Hearings Committee pursuant to Rule 146(m) and sought to reduce the suspensions imposed on the application.

15. The Tribunal queried whether this was an appeal within the meaning of Rule 154(d) but the Respondents suggested that all avenues had not been exhausted by the Claimants and before invoking Rule 154 the Claimants should have exhausted Rule 146(m).

16. The Claimants suggested that all avenues of appeal had been exhausted, that the right to invoke Rule 146(m) was not mandatory and in all the circumstances this section was a "review" as opposed to an "appeal" as the Claimants would be moving from a committee of higher authority to a committee of lower authority to have the decision of the higher authority reduced.

Claimants Preliminary Issues

17. The Claimants suggested in their preliminary issued that by virtue of a Wexford official sitting on the Central Competitions Control Committee on the 21st of April 2008 there may have been a general perception of bias against the Meath players about the constitution and operation of the Central Competitions Control Committee and they further suggested that he should have invoked the provisions of Rule 144(u) by standing down from investigating the Claimants case on the Central Competitions Control Committee.

18. The Claimants suggested that in the decision of **Pádraig O Brolcháin (Paddy Bradley) –v- Danny Scullion and Dónal O Murchú DRA/12/2007** it was suggested that the decision making process had been impugned from the beginning and therefore the decision should be set aside forthwith.

19. The Respondents replied that that this issue was a matter more suitable to plenary hearing.

Decision in respect of Preliminary Hearing:

20. In respect of the Respondents' first preliminary issue the Tribunal was of the view that the Central Competitions Control Committee was an integral part of the entire

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disciplinary process and while accepting that the Central Competitions Control Committee's only power was to "investigate and process matters" its powers could not be viewed in isolation of Rule 90 which regulates up the Central Hearings Committee and Rule 91 which regulates the Central Appeals Committee. In any event the Tribunal was of the view that the Central Hearings Committee came to a decision within the meaning of Rule 154(a) and ultimately the Claimants were perfectly entitled to invoke the provisions of the Disputes Resolution Code.

21. In respect of the second preliminary issue the Tribunal had to engage in an interpretation of the word "appeal". The Respondents were of the view that the Claimants should have invoked the provision under Rule 146(m), namely that they should have returned to the Central Hearings Committee and sought a reduction of their eight weeks suspension after it was upheld by the Central Appeals Committee, or if it had been varied on appeal by the Central Appeals Committee returned to the Central Appeals Committee to seek a further reduction.

22. The Tribunal was of the view that an appeal was the transference of the case from an inferior tribunal to a higher tribunal in the hope of reversing or modifying the decision of the former as set out in the case of ***Edleston v. LCC (1918) 1 KB 81***. While there was a power to return to an inferior committee or ultimately to the same committee pursuant to the Rules there was no transference to a higher authority, there was no adjudication of the merits of the case and in those circumstances invoking the provisions of Rule 146(m) was not an appeal but rather a review.

23. Furthermore, Rule 152(a) entitled "Right of Appeal" provides, inter alia:

"…a member or unit directly involved in any decision made by council or committee in charge shall have a right of one appeal ...... in respect of a decision of the Central Council Subcommittee to the Central Appeals Committee".

24. If Rule 152 is to be interpreted correctly the Claimants engaged in one right of appeal, namely from the Central Hearings Committee to the Central Appeals Committee and if what is suggested by the Respondents that the Claimants had another right of appeal pursuant to Rule 146(m) then it would seem that the Claimants would be contravening Rule 152.

25. Furthermore Rule 152 nowhere refers to such right of Appeal as arising under Rule 146 (m) and such lack of reference lends itself, of necessity, to uncertainty in determining if such procedure, as provided for under Rule 146(m), is tantamount to an Appeal as envisaged under Rule 154(d).

26. While the Tribunal was of the view that the tenor of Rule 154 infers the invocation of the Disputes Resolution Code was that of last resort the Tribunal was also of the view that if there were ambiguities, inconsistencies or uncertainties between the Rules then any ambiguities, inconsistencies or uncertainties should be exercised in favour of the Claimants. Having all the relevant rules considered and ascertained the Tribunal concluded that the Claimants were entitled to invoke the Disputes Resolution Code pursuant to Rule 154 and had exhausted all avenues of appeal.

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27. The Claimants' preliminary issue was determined by the Tribunal to be a matter more suitable for plenary hearing.

The Hearing:

28. While casting no aspersions as to the integrity or honesty of the Wexford official the Claimants suggested that by virtue of him sitting on the Central Competitions Control Committee and that Meath footballers were likely to face Wexford footballers in the Leinster championship on the 1st of June 2008 there could be a perception of bias as to the constitution and operation of the Central Competitions Control Committee. The Claimants further asserted that the Wexford official should have abided by Rule 144(u) and stood down from the Central Competitions Control Committee.

29. Rule 144(u) reads as follows;

> "*A member of the Competitions Control Committee or Hearings Committee who is a member of any unit or has a role in relation to any member, team or unit involved in the proceedings shall stand down from prosecuting or adjudicating the case*."

30. The Claimants cited the decision of **Pádraig O Brolcháin (Paddy Bradley) –v- Danny Scullion and Dónal O Murchú, DRA/12/2007.** In this case Mr. Bradley was sent off on the 14th of April 2007 in a Derry Senior Football League game for what was described as a Category II Infraction. The Competitions Control Committee of the Derry County Committee, having considered the Report of the Referee, decided to serve a Notice of Disciplinary Action on Mr Bradley and it was proposed by the Central Competitions Committee to suspend Mr Bradley for four weeks and twelve weeks for the Category II offence and Category 4 offence respectively. Mr Bradley requested a hearing before the County Derry Hearings Committee and this took place on the 30th of April 2007 and the Hearings Committee imposed a twelve-week suspension on the Claimant. The Claimant appealed under the Ulster Council and that appeal was heard on the 10th of May 2007.

31. The Claimants drew particular reference to the fact that in Mr Bradley's case the principles of natural and constitutional justice had been violated by reason of the appointment, in Mr Bradley's case, to the Hearings Committee of a Mr Kevin Toner. It was common case in Mr Bradley's case that Mr Toner was a fellow clubman of Mr Cassidy, the Referee that officiated in Mr Bradley's football match. Furthermore it was accepted that Mr Toner was a regular member of Mr Cassidy's umpiring team and officiated with him on unspecified number of occasions. In Mr Bradley's case he argued that in view of the close personal relationship between Mr Toner and Mr Cassidy and in view of the nature of the charges levied against Mr Bradley, that it was improper that Mr Toner should have been a member of the Hearings Committee that suspended Mr Bradley.

32. In that case the Tribunal did not believe that there was a breach of Rule 144(u) in appointing Mr Toner to the Hearings Committee, and noted that Rule 144(u) requires any person that has a role in relation to any member, team or unit involved in the proceedings to stand down. The Tribunal in that case found that Mr Cassidy was not a

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party to the proceedings involving Mr Bradley. However, the Tribunal did find that the nature of the relationship between Mr Cassidy and Mr Toner was such that the personal nature of the verbal and physical interference alleged by Mr Bradley was such to render inappropriate and improper Mr Toner's involvement in the Hearing Committee. The Tribunal was of the view that "*there may and could have been a perception of bias"* by the constitution and operation of the Hearings Committee in the Claimant's case and found that this perception served to taint the decision of the Hearing Committee.

33. Drawing on the facts of the **Pádraig O Brolcháin (Paddy Bradley)** case the Claimants suggested that equally there "may or could" have been a perception of bias about the constitution and operation of the Central Competitions Control Committee in the Claimant's case and believed it's decision offended the principles of natural and constitutional justice and ought therefore to be set aside.

34. The Respondents were of the view that the **Pádraig O Brolcháin (Paddy Bradley)** case was clearly distinguishable from the within case as in Bradley there was a close personal relationship between Mr Toner and Mr Cassidy, whereas the Wexford official in question in the within proceedings had no relationship whatsoever with any member, team or unit and was not involved in any proceedings.

35. Furthermore, the Respondents were of the view that the possibility that Meath footballers may have played Wexford footballers at some future date in the Leinster football championship was too remote and that the Wexford official would have had to engage in arithmetical juggling to have ensured that Meath football players would have been suspended for the Leinster championship match against Wexford on the 1st of June 2008.

36. The Respondents also suggested that the appropriate standard of proof is not that of "may or could" have been a perception of bias but a higher standard as set out by Brian Harris, Q.C., in Disciplinary and Regulatory Proceedings, 4th Edition, at page 115 wherein he quotes the case of **Porter v. McGill (2002) 1 AER 464,** which provides;

'The question is whether a fair minded and informed observer having considered the facts would conclude that there was a real possibility that the Tribunal was biased".

37. The second point, which the Claimants raised, was in respect of the Category II infraction under Rule 143(b). The Claimants argued that by virtue of having a Category II penalty, an eight-week suspension for "contributing to a melee", imposed upon them, there was inconsistency in the implementation of the suspensions relative to the Dublin players who were also handed down an eight week suspension by the Disciplinary process of the GAA. The Claimants held this view insofar as the Dublin players, notwithstanding that they received an eight week suspension, in effect only suffered a one match ban whereas the Claimants by having an eight week suspension imposed upon them suffered a two match ban. The Claimants argued that this was an inconsistent application of suspension.

38. The Claimants further suggested that they were given no explanation as to the reason why they received a two-match ban as opposed to a one-match ban as handed down to the comparable Dublin players.

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39. The Respondents responded by noting that the Claimants had been given a Notice of Intention of Disciplinary Action on the 22nd of April 2008 and that in respect of the comparison between a one match ban and a two match ban that this was an erroneous comparison as the Rules spoke in terms of weeks as opposed to in terms of match bans regarding suspensions.

40. The third point, which the Claimants raised, suggested that the guidelines issued by the Rules Book Task Force of the G.A.A. should be interpreted as requiring that in the absence of any "extraordinary or aggravating factors" that the sanction to be imposed should be the minimum sanction of four-weeks. The Claimants submitted in this case there was no such aggravating circumstances and in the circumstances the sanctions imposed were unduly harsh. The Claimants further suggested that pursuant to the Rules and the recommended practice of the Rules Book Task Force the eight-week ban recommended by the Central Competitions Control Committee should not have been presented to the appellate body who should have conducted the matters *"de novo"* without being aware of the Central Competitions Control Committee`s decision.

41. The Claimants did, however, accept, when suggested by the Tribunal, that the Respondent Committees were not acting ultra vires in imposing above the minimum suspension as they were generally entitled to impose suspensions above the minimum suspension.

<u>**Decision:**</u>

The Tribunal rejected the Claimants' cases on all grounds for the following reasons:

42. The required standard proof in respect of a perception of bias was not that as espoused in the **Pádraig O Brolcháin (Paddy Bradley)** case but as set out in the case of **Porter v. McGill (2002) 1 AER 464** and also in the High Court decisions of **Bula Limited v. Tara Mines Limited, Supreme Court, 3rd July 2000** wherein it was held by the Supreme Court that it is not necessary to show that there would be a real danger of bias only that an ordinary reasonable member of the public would have a reasonable apprehension that the applicants would not have a fair hearing from an impartial judge. This test was also upheld in the case of **Orange Communications v. The Director of Telecommunications Regulation and Meteor Mobile Communications Limited**, **Supreme Court, 18th of May 2000** wherein it was stated:

"Bias is the existence of some factors that constitute a set of circumstances from which a reasonable observer might conclude that there was a real possibility that such a factor would cause a decision maker to seek a particular decision or might inhibit it from making its decision impartially or independently without regard to such factor. The nature of objective bias is that Courts set aside decisions where there is a reasonable apprehension of bias. "

43. The Tribunal was of the view that that the Wexford official on the Central Competitions Control Committee was not personally involved with any members, units or committees and not involved in the proceedings. Indeed, neither the Claimants nor Respondents submitted evidence as to the identity of the gentleman in question or as to whether he

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was connected with the Wexford football team. The Tribunal was not of the view that a reasonable observer might conclude that there was a real possibility that such a factor would cause a decision maker to seek a particular decision or might inhibit it from making its decision impartially or independently. In the circumstances the Tribunal concluded there was no reasonable apprehension of bias and distinguished the **Pádraig O Brolcháin (Paddy Bradley)** case on the facts. The Wexford official's role did not offend the principles of natural and constitutional justice.

44. The Tribunal was of the view that there was no inconsistency in the implementation of the suspensions insofar as there was an eight-week suspension for the Claimants and also for four Dublin football players. The Tribunal did not accept that there was inconsistency in the suspensions insofar as the Meath players received a two-match ban whereas the four Dublin players received a one-match ban. The Tribunal was of the view that these suspensions were independent of the match fixtures and were measured in weeks and not match bans.

45. Thirdly, the Tribunal determined that the Respondents did not act *ultra vires* in imposing a greater suspension than the minimum suspension and were perfectly within their powers so to do. Furthermore, the Tribunal could not accept the suggestion that imposing a suspension in excess of the minimum penalty as provided for in Rule 143(b) the Respondents acted unreasonably or irrationally as set in the case of **O'Keeffe –v- An Bord Plenala [1992] 1 IR 39.**

46. The Tribunal held there was no breach of natural or constitutional justice and that the Claimants obtained a fair and impartial hearing from all the Respondent Committees. In the circumstances the Tribunal upheld the decisions of the Respondents and rejected the Claimants' application for arbitration.

<u>Costs:</u>

47. The Tribunal acknowledges the rule that costs follow the event, but also note that in exceptional circumstances they are entitled to depart from this rules. The Tribunal is of the view that that the Respondents are not entitled to their costs on the grounds that the Claimant's were successful with regard to two preliminary matters raised by the Respondents that go to the very heart of the Arbitration process, insofar as the rulings on the Respondents preliminary issues would have been of relevance not only in the instant case, but also would have knock on effects for procedure for all Players subject to disciplinary measures in the future, and indeed may have had the effect of making certain previous decisions of the Dispute Resolution Authority null and void for breaches of procedure.

48. In the circumstances the Tribunal makes no order as to costs.

Delivered on the 30th of May 2008

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Emmett J. O'Brien	**Niall Cunningham**	**Phelim Murphy**

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