

Disputes Resolution Authority

An Córas Eadrána

DRA 17 of 2015

**In the matter of the an arbitration under the Disputes Resolution Code
and the
Arbitration Act 2010**

O'Brien & Dreadnots GFC v Louth Hearings and Leinster Hearings

Hearing: City North Hotel at 8pm on 22 Jan 2016

Tribunal: David Nohilly, Oliver Shanley and John Healy

Secretary to the DRA, Jack Anderson, was also in attendance

Verdict: Claim succeeds, remitted.

Keywords: 12 Match Suspension under Category IV, Rule 7.2 of the Official Guide 2015; Disproportionate sanction; Inconsistent with 7.5(b) of the Official Guide 2015; No term of suspension shall exceed 96 weeks

List of Attendees:

Claimant:

Caroline McGrath BL,
Paul Moore, Solicitor
Aidan Connor, Chairman of Dreadnots GFC
David O'Brien, Claimant

Respondent 1,

Bryan Moroney, Chairman Louth Hearings Committee 2015
David Rogers, Secretary Louth Hearings Committee 2015

Respondent 2,

Dick Butler, Chairman, Leinster Hearings Committee
John Byrne, Secretary, Leinster Hearings Committee

Factual Background

1. The Claimant is a member of the Dreadnots Gaelic Football Club, Louth. During a Senior Football Championship Game on the 26th July 2015, the Claimant committed a serious infraction which resulted in the commencement of a disciplinary process against him in the usual manner.

The Claimant was alleged to have committed a Rule 7.2 Category IV Infraction, Official Guide 2015. The Claimant admitted fault and showed remorse from the outset. There is no issue regarding the Disciplinary Process itself and so it is not necessary to repeat what occurred during that process. The Claimant admitted that the process was fair. The issue for this Tribunal to consider is a net point concerning the penalty imposed by Louth Hearings Committee on the 3rd September 2015 (and through a written decision dated 7th September 2015).

2. The penalty imposed was:- “12 Match Suspension in same code and at the same level, applicable to the next game(s) in the Competition even if one or more occurs in the following year.” This sanction was appealed to Leinster Hearings Committee who dismissed the appeal (16th September 2015) on the ground, inter alia, that no rules were infringed or misapplied.
3. The Claimant on the 22nd September 2015 submitted a Request for Arbitration before this Tribunal and a hearing took place at the City North Hotel, County Meath on the 22nd January 2016.

Claimant’s Submissions

4. The Claimants submissions primarily revolve around the meaning and interpretation of a “twelve match suspension” as imposed by Louth Hearings Committee. It was contended that there were different interpretations to such a ban. If, for example, the Club only played two championship games in any one year, this could result in a championship match ban of up to six years for the Claimant. On the other hand, how could the twelve match ban be read consistently with Rule 7.5(b) of the Official Guide, which provides that no penalty should exceed 96 weeks?
5. Further, it was submitted that the sanction imposed was unclear and prejudicial to the Claimant particularly when it is read in conjunction with the “Alternative Penalty” provisions as set out at page 125 Official Guide 2015.
6. Finally, the Claimant highlighted, by way of argument on disproportionality generally, that in two previous cases that came before Louth Hearings Committee relating to an Infraction of the same Rule, the maximum penalty imposed was a four match ban and that this case clearly demonstrates that a twelve match ban is extraordinary in the circumstances.

Respondent’s Submissions, Louth

7. The first respondent submitted that this was a very serious assault to the head of an opposing player perpetrated by the Claimant. The penalty provision contained within Rule 7.2 Cat IV only contains a match suspension provision and does not include any element of a time based suspension which, for example, might have applied to a Cat V infraction. The respondent admitted that the penalty provision was ambiguous and vague but that they had

sought guidance on the imposition of the sanction and, accordingly, there was no infringement or misapplication of any Rules. This was a very serious assault which deserved a significant penalty, it was accepted that a strict interpretation of the sanction imposed could result in a championship match ban of up to six years.

8. It was the Respondent's view however, that if the twelve match suspension exceeded the 96 weeks set out in Rule 7.5(b) then the "balance" of the suspension was to be served in line with the "alternative penalty" provisions at page 125 of the Official Guide: Where a Penalty of Match Suspensions cannot be applied in full, Alternative Penalty to non-applicable Match Suspensions is applicable i.e. a two weeks suspension for each non-applicable Match Suspension. The Respondents informed the Tribunal that they had received the above advice from Mr Frank Murphy and Mr Pat O 'Doherty by email, though copies of that correspondence were not provided to the Tribunal on the night of the hearing.
9. The Respondent also noted that the penalty imposed was suspension only from Championship games, the Claimant could still participate in other sports and competitions of the Association; it therefore was a lesser penalty to the time based suspension as that would involve suspension from participation at all codes and at all levels.
10. Finally, both respondents noted that the Claimant could make a case to either the "Mercy" committee of the Association or in the alternative, at a later date, Rule 7.5(p) TO 2015 which is a provision where a suspension can be reduced where it is deemed to be unduly harsh.

Respondent's Submissions, Leinster

11. This Respondent highlighted to the Tribunal that their function in this matter was as an Appellate Hearings Committee and thus was restricted to a determination as to whether there was an infringement or misapplication of the rule or rules quoted in the letter of appeal as against the primary decision-maker (in this case Louth Hearings Committee). The also rejected allegations made by the Claimant that there was a lack of fair procedure extended by them to the Claimant.
12. This Tribunal accepts that Leinster Hearings Committee correctly interpreted their limited appellate jurisdiction in this instance and that there was nothing to suggest that the hearing/ decision of 16 September was anything other than fair and in line with the Rules and natural justice.

Reasoned Decision, Award & Directions

13. The basis of Louth Hearings Committee to impose the sanction is set out in Rule 7.2 Cat IV which states:

“Category IV Penalties:

For Infractions (i) to (viii) inclusive-(1)

Minimum: A Two Match Suspension in the same Code and at the same Level, applicable to the next games in the same Competition, even if one or both game(s) occur(s) in the following year’s competition;

14. There is further assistance provided by the Official Guide at page 125 where alternative penalties are set out in the case of non-applicable match suspensions:-

“When a Match Suspension arising from Rules 7.2 or 7.5(h) cannot be applied in full or in part on a player in the specified Competition, arising from such (non exhaustive) circumstances as:

- (i) A player exiting an Under-Age Grade,
- (ii) A Promotion/Relegation Play-Off - having been completed or an inadequate number of games to be played,
- (iii) A Tournament - having been completed or an inadequate number of games to be played,
- (iv) A Challenge Game,

- A two weeks Suspension for each non-applicable One Match Suspension shall be proposed/imposed in the same Code and at the same Level.

In the case of a player exiting a Level (e.g. Second Level Schools, third Level Colleges), the Committee-in-Charge shall refer the case to the relevant Competitions Control Committee at County Committee, Provincial Council or Central Council levels for adjudication. A two weeks Suspension for each non-applicable one Match Suspension shall be proposed/imposed at Club level.”

15. Furthermore, Rule 7.5 (b) TO 2015 is also relevant:-

“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 additional Match Suspension(s) or a longer Term of Suspension. No Term of Suspension shall exceed 96 weeks. However in exceptionally serious cases the penalties of Debarment from playing or Expulsion may be imposed.”

16. The GAA Disciplinary Handbook at page 17 under the section “Decision on Penalty” states:

“Although not required by Rule, it would be good practice, where a penalty greater than the minimum is being imposed, to give a brief reason for the decision to impose the more severe penalty. For example, if the infraction gave rise to a serious injury, the Hearings Committee may be disposed to imposing a greater penalty than the minimum, in which case,

the decision might refer to the fact that the injury had occurred. Reference should also be made, in the case of suspensions, to the Rule governing that aspect (Rule 7.5(b)).”

17. Reflecting on the above, there can be no doubt but that Rule 7.5(b) TO 2015 applies in the case of match suspensions, that is, no term of suspension can exceed 96 weeks. Secondly, the provisions relating to “Alternative Penalty” as set out at page 125 of the Official Guide do not apply as none of the “non-exhaustive” circumstances as set out have occurred. If a non-exhaustive provision did apply, the only guidance from this Rule is that one match suspension could be construed as a two week suspension from games in the same code and at the same level. Thirdly, the best guidance for the Tribunal is that provided by the Disciplinary Handbook 2015 and whilst they do not form part of the Official Guide and are not binding on the members of the Association, its guidance in the absence of specific Rules in the Official Guide is relevant.
18. Applied to these circumstances this means that if, as appears to be the case, the Louth Hearings Committee’s intention was that the twelve match ban should be pegged against the 96 week maximum in Rule 7.5(b) with the “balance” to be served by way of two weeks’ suspension for each non-applicable Match Suspension (the alternative penalty provision on page 125 of the Official Guide), then they ought to have informed the player concerned as to the exact manner in which the sanction would run and end pursuant to the good guidance at page 17 of the GAA Disciplinary Handbook. The lack of clarity as to when the 12 match suspension might end is central to this matter.
19. To reiterate, clearly, Louth Hearings Committee viewed the infraction as very serious, which they were of course entitled to do as the primary decision-maker. They sought, in accordance with the Rules, to impose a twelve match suspension. This was entirely within their remit however, for the reasons explained in paragraph 18 above, the communication and application of the sanction created an uncertain situation for the Claimant. The Claimant is faced therefore with the prospect of either a two year suspension or a six year suspension from such games.
20. It must be noted forcefully here that the above reasoning aside, the “fault” in this instance does not rest in this unusual situation with either the Claimant or Louth Hearings Committee but unfortunately with the Rules themselves i.e., the match only suspensions attaching to this Cat IV offence as read in conjunction with Rule 7.5(b) and the alternative penalty provisions at page 125 of the Official Guide.
21. Moreover, the Claimant in this case has to accept some form of punishment for the very serious assault perpetrated by him but he is entitled to know in clear terms what his punishment is and at the very least if a suspension is for two or six years.

22. As such, it is the unanimous decision of the Tribunal that this matter be referred back to Louth Hearings Committee for rehearing with the following directions:-
- a. That the rehearing panel of Louth Hearings Committee be newly reconstituted and should not include any officials involved in the prior hearing of this case;
 - b. The decision of Louth Hearings Committee should take account of the guidance notes on page 17 of the GAA Disciplinary Handbook 2015 relating to 'Decisions on Penalty' and should in its decision state the specific Rule(s) that apply, reasons for the penalty imposed (if any), together with an indication as to the maximum time limit that should apply to any possible match suspension.
 - c. That the Secretary of the DRA furnish a copy of this decision to Central Council inviting submissions on the following points:-
 - i. The interpretation of Central Council as to the penalty provision contained in Rule 7.2 Category IV and their interpretation of a time limit on a match suspension.
 - ii. The submissions from Central Council are furnished to both parties prior to the rehearing by Louth Hearings Committee.
 - iii. The submissions from Central Council are viewed as guidance only for the parties and in particular for Louth Hearings Committee in reaching its decision as to the most appropriate penalty in this case.
 - d. This decision is without prejudice to the Claimant making an application under Rule 7.5(p) TO 2015 relating to a reduction in penalties or in the alternative an application to the 'Mercy' Committee of the Association.
23. The Tribunal reserves its position in relation to the costs and expenses of the DRA and the costs and expenses of the parties pending written submissions on same within fourteen days from the date of the publication of the award i.e., 8 February 2016.

Addendum of the Decision of the Disputes Resolution Authority 17-2015.

Throughout the course of the hearing an issue arose over sight by members of the Tribunal to the witness statements which were used as part of the original disciplinary process. On an application by Counsel on behalf of the Claimant for a new Tribunal to be appointed owing to a perceived prejudice against the Claimant, the following is the decision of the Tribunal to that preliminary application by the Claimant:-

- This was in respect of an application by Ms. McGrath BL, on behalf of the Claimant, that we should preclude ourselves from the further hearing of this case on the basis that we have had sight of witness statements which were used as part of the investigative stage of the disciplinary process;
- The Claimant has admitted the infraction on the basis, amongst other things of the witness statements made against him. He has, to use the criminal law analogy, pleaded 'guilty'. It now seems to be the case that Counsel on his behalf is seeking to distance them from what is contained in those witness statements;
- The Claimant is perfectly entitled to raise objections to facts contained in witness statements but not after a 'guilty' plea has been entered. He either accepts the facts which led to him admitting his guilt or denies same and seeks then to challenge them. In this case, he had chosen the former. He therefore cannot seek to 'qualify' or vacate his plea (or have a Newton Hearing) before a different forum;
- The Claimant's main submission is a net point concerning the sanction/penalty imposed by Louth Hearings Committee and in particular, its interpretation. What is not in dispute is the fairness of the disciplinary process or the claimants guilt for a very serious incident;
- The fact that this Tribunal has had sight of some of the witness statements does not in any way either hinder or assist us in making a decision on interpretation as to sanction/penalty. The Claimant therefore has not shown a prejudice.

We therefore reject the application by the Claimant.

The Claimant chose to continue with the Hearing of this case without prejudice to his rights relating to this application. This is duly noted.

David Nohilly, Oliver Shanley, John Healy.
City North Hotel, Meath.
22nd January 2016

Date of Oral Hearing: 22 Jan 2016

Date of Agreed Award: 8 Feb 2016

Signed: by email agreement on 8 Feb 2016

David Nohilly

Oliver Shanley

John Healy