

Disputes Resolution Authority

An Córas Eadrána

DRA 04 of 2016

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

Richard Coady, Carlow v Leinster HC & CAC

Hearing: Lucan Spa Hotel at 8pm on 10 March 2016

Tribunal: Mr Colm MacGeehin and Ms Dara Byrne and Mr Eugene McKenna

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

Verdict: Claim fails

Keywords: Threatening language or abusive conduct to a referee; Rule 7.2(b) Category (V) (iii) of the Official Guide (2015); obligation on a CCC, where disciplinary action is commenced, to investigate the manner expediently; Rule 7.3(h) of the Official Guide (2015); CCC members' possible conflict of interest; Rule 7.3(v) of the Official Guide (2015).

List of Attendees:

Claimant:

Richard Coady, Claimant
Sean Campion, Chair, Carlow GAA
Brendan O'Flaherty, O'Flaherty & Brown Solicitors, Carlow

Respondents

Michael Reynolds, Secretary Leinster CCC

Dick Butler, Chair, Leinster HC
John Byrnes, Secretary, Leinster HC
Tom Jones, Leinster HC

Mel Clarke, Acting Chair, CAC
Bernard Smith, Secretary, CAC

Factual Background

1. The claimant was sent off on a straight red card during a Walsh Cup game v Wexford, held on Sunday 17th January 2016. On 19th January, the Secretary of the Leinster CCC emailed the Secretary of Carlow GAA seeking confirmation on whether the claimant had been sent off in the previous 48 week period. The mail also contained a copy of the referee's report explaining that the claimant had been sent off for verbal abuse of the referee pursuant to Rule 5.38 (Playing Rules of Hurling, Aggressive Fouls) of the Official Guide (2015).
2. Notice of Disciplinary Action was issued by the Leinster CCC on 11 February 2016. The following day, 12th February, the claimant replied requesting a personal hearing and stating in that reply that he would prefer the hearing to be held on "any of the following dates Friday 12th, Saturday 13th, Monday 15th or Tuesday 16th February 2016."
3. The Leinster Hearings Committee replied immediately to the claimant's request and fixed the hearing for the 16th February 2016. At the hearing they sought and received clarification of his report from the referee as per Rule 7.3(aa) (1) (viii) of the Official Guide (2015). The Leinster HC decided that the claimant should serve the minimum 12 weeks Suspension in all Codes and at all Levels pursuant to Rule 7.2(b) Category (V) (iii) of the Official Guide (2015).
4. The claimant then appealed, on various grounds, to the CAC and on the 19th February 2016, the CAC, pursuant to its jurisdiction under Rules 7.11(o) of the Official Guide (2015) dismissed the appeal. The claimant then requested arbitration pursuant to the Disputes Resolution Code.

Submissions

5. The Tribunal considered all the written submissions, evidence, oral submissions and legal arguments made by the parties in the present proceedings. This award refers only to the submissions and evidence the Tribunal consider necessary to explain its reasoning.
6. The claimant's principal submissions were threefold in nature; i) that there was a misapplication of Rule in respect of the appropriate infraction by both the Leinster CCC and HC; ii) that there was undue delay in investigating the infraction principally by the Leinster CCC; iii) that there was a perception of bias in the manner in which the Leinster CCC initially dealt with the matter.

The Tribunal addressed each of these submissions as follows:

Inappropriate infraction

7. The claimant argued that the remarks made by him were directed at an opposing player and not the referee. In any event, he argued, the more appropriate infraction would, in the circumstances, have been under Rule 7.2(b) Category III (vii): Abusive language toward a Referee, Umpire, Linesman or Sideline Official, which carried a minimum suspension of one match in the same Code and at the same Level (i.e., Carlow's next Walsh Cup game in 2016). In this, and in a proportionality-based argument, the claimant highlighted to the Tribunal that the 12-week suspension imposed upon him, and running until 10 April 2016, ruled him out of all of Carlow's National Hurling League matches for 2016.
8. In light of the above, the claimant argued that the Leinster HC should have sought more precise clarification from the referee as to the extent the claimant's conduct on the day in question was "threatening or abusive conduct" (Cat V) or simply "abusive language" (Cat III), given the marked disparity in the accompanying sanction.
9. In reply, Leinster HC stated that they did in fact seek clarification at the hearing of the matter by speaking to the referee as per Rule 7.3(aa)(1)(viii) and that the referee clarified his report to them after which the Leinster HC deemed the Cat V offence the more appropriate infraction. Leinster HC also noted that the claimant had the right prior to the hearing to submit a written request for clarification of any aspect of the referee's report (Rule 7.3(s) of the Official Guide (2015)) but did not do so.
10. The CAC noted that this argument i.e. Leinster HC should have considered imposing a suspension for the lesser infraction – had not been canvassed or argued in the course of the appeal by the claimant to them.
11. On the first point – inappropriate infraction; the Tribunal notes that a decision-maker such as the Leinster HC has an implied duty when exercising its disciplinary remit to reasonably comply with the relevant parts of the GAA's Official Guide, principally Rule 7.3. Once a hearings committee properly briefs itself on all the facts and evidence relevant to the case, abides by the detailed rules of evidence contained in Rule 7.3, and considers whether the infraction alleged is more likely to have occurred than not, then that hearings committee is as per Rule 7.3 (cc) "...entitled to impose such penalties as it deems fit, subject to Rule..."
12. This Tribunal is satisfied that Leinster HC, had been subjected to a thorough procedural check by the CAC under Rule 7.11(o), and had properly discharged its investigatory duty in this matter. Further, and applying the judicial review type jurisdiction exercised by the DRA to the actions of the primary decision-maker (see DRA15/2015, *Diarmuid Connolly v CHC & CAC* at para 15), the Tribunal is satisfied that the sanction imposed upon the claimant for the infraction so found were neither irrational nor unreasonable.

Perception of bias

13. On 14 February 2016, Carlow were fixed to play Kildare in the first round of the NHL (Roinn 2A). The claimant received his Notice of Disciplinary Action from the Leinster CCC on 11 February 2016. In this context he argued that, as per Rule 7.3(v) any member of the CCC with Kildare connections should have stood down from the CCC's processing of the case but that two members of the Leinster CCC with Kildare connections had not done so and thus Rule 7.3(v) had been breached to his disadvantage.
14. The Secretary of the Leinster CCC informed the Tribunal that the CCC members with Kildare "connections" had not been privy to the processing of this case. Both the Leinster HC and the CAC dismissed this allegation of a breach of Rule 7.3(v) and deemed that the claimant's right to a fair hearing had not been comprised by conflict of interest at the initial CCC stage of the process as there was not in fact any conflict of interest.
15. Allegations of bias (actual or perceived) must be taken seriously - but must not be made lightly - because they put into question the impartiality and bona fides of those who adjudicate upon breaches of GAA rules. Furthermore, impartiality is linked to the trust and confidence that GAA members can have in the overall fairness of the Association's disciplinary forums and those who serve on them. As per *Good Concrete v CRH Plc, Roadstone Wood Ltd & Anor* [2015] IESC 70 at paras 54-55, "the test to be applied when considering the issue of perceived bias is objective. It is whether a reasonable person, in all the circumstances of the case, would have a reasonable apprehension that there would not be a fair trial from an impartial judge. As it is an objective test, it does not invoke the apprehension of a judge, or any party; it invokes the reasonable apprehension of a reasonable person, who is in possession of all the relevant facts."
16. Applying the *Good Concrete* test to the submissions and evidence adduced at this hearing, the Tribunal rejects the claimant's argument that Rule 7.3(v) was breached.

Undue delay

17. The claimant's argument in this respect was based on an alleged breach of the Leinster CCC's duty to investigate a disciplinary matter in an "expedient" manner as per Rule 7.3(h) of the Official Guide (2015). The claimant claimed that, although he was sent off on 17 January, he did not receive official notification of disciplinary action until 11 February and was therefore prejudiced. The Secretary of the Leinster CCC pointed out that Carlow had received an email on 19 January from him seeking confirmation on whether the claimant had been sent off in the previous 48 week period. The mail also contained a copy of the referee's report and explained briefly that the claimant had been sent off for verbal abuse of the referee in line with Rule 5.38 (Playing Rules of Hurling, Aggressive Fouls) Part of the Official Guide (2015).

In this context, the Secretary of Leinster CCC argued that at any stage between mid-January and 11 February, the claimant could have (but did not) activated his right under Rule 7.3(j) of the Official Guide (2015) for urgent clarification of his disciplinary status in light of the serious infraction in the referee's report.

18. In addition, the claimant also argued that when he made a personal request for a hearing to the Leinster HC on Friday 12 February, they should have facilitated same prior to the Carlow v Kildare NHL match due two days later on Sunday 14 February. The Leinster HC noted that the claimant's request for a personal hearing (in the form of a reply to the official notification of disciplinary action) was received relatively late on Friday 12 Feb and that a hearing was arranged for Tuesday 16th Feb, being one of the dates that the claimant had himself suggested in his request for a hearing. In his request for the 12th February, he wrote that his preference was for a hearing to be held on "any of the following dates Friday 12th, Saturday 13th, Monday 15th or Tuesday 16th February 2016."
19. The Tribunal having considered the matter and the evidence adduced, hold that the claimant's right to a fair hearing was not compromised or prejudiced by undue delay. In this regard, the Tribunal notes both the Leinster CCC's highlighting of the unexercised right in Rule 7.3 and also, the manner in which the Leinster HC dealt with the matter in line with the claimant's own written demand on scheduling which cannot be faulted as it fixed the hearing for one of the dates suggested by the claimant.

Award & Costs

20. The Tribunal awards in final and binding determination of this dispute and with particular reference to the reasons given in paragraphs 12, 16 and 19 above, that the application is dismissed and the reliefs sought are refused.
21. The Tribunal directs that all parties bear their own legal costs and expenses and that the claimant's deposit be returned less the balance of the costs associated with the arbitral hearing, as calculated by the Secretary of the DRA.

Date of Oral Hearing: 10 Mar 2016

Date of Agreed Award: 1 April 2016

Signed: or by email agreement on 1 April 2016

Colm MacGeehin

Dara Byrne

Eugene McKenna