

Disputes Resolution Authority

An Córas Eadrána

DRA 01 of 2016

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

Liam McKenna, Laragh Utd v Cavan HC & Ulster HC

Hearing: Slieve Russell Hotel, Cavan at 8pm on 12 Feb 2016

Tribunal: Brian Rennick, Niall Cunningham and Seamus Woods

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

Verdict: claim fails; application dismissed

Keywords: Clarification of a Referee's Report pursuant to Rule.7.3(s) of the Official Guide (2015); An Appeal shall be limited to the matters raised in the Appellant's Appeal as originally lodged pursuant to Rule 7.11(o) of the Official Guide (2015); Arbitral review of the legality of any decision made or procedure used by any unit of the Association pursuant to Rule 7.13(a) of the Official Guide (2015).

List of Attendees:

Claimant:

Liam McKenna

Michael Walsh, Secretary, Laragh Utd

Feargal Logan, Solicitor

Respondent 1,

Noel McKeown, Chair, Cavan Hearings Committee

Jim Sherry, Member, Cavan Hearings Committee

Respondent 2,

Sean McKenna, Ulster Hearings Committee

Eamonn McMahon, Ulster Hearings Committee

1. Factual Background

On 14 November 2015 Laragh United played Cornafean in an U-21 Division 2 fixture. The Referee's Report recorded that the Claimant had been issued with two yellow cards for the infraction "abusive language towards a Referee,

Umpire, Linesman or Sideline Official, which is classified as a Category III(vii) infraction.” Under Rule 7.2.(b)TO a minimum penalty of a one match suspension in the same code and at the same level, applicable to the next game in the same competition, even if that game occurs in the following years’ competition

2. The Referee’s Report also contained an addendum which detailed not only the incidents of dissent, but also described the aggressive and abusive behaviour of the Claimant towards the Referee once he issued the Claimant with the red card.
3. In a Notice of Disciplinary Action dated the 17 November 2015 and pursuant to its powers under Rule 7.3 TO the CCCC notified the Claimant of the proposed penalties and informed him that he was entitled to either accept the Proposed Penalty or request a hearing before Coiste Éisteachta An Cabhán (“the Hearings Committee”)
4. In a reply dated the 19 November 2015 the Claimant requested a hearing and in accordance with Rule 7.3(s) TO he submitted a request for clarification of the Referee’s Report. This request was submitted by email on the 20th November, 2015.
5. The requested hearing took place on the 21 November 2015. During the course of that hearing it became apparent from the evidence of Mr. Walsh (Laragh United Club Secretary) that the clarification sought from the Referee had not in fact been forwarded to the Referee. The hearing was adjourned in accordance with Rule 7.3(z) TO until such time as “*all appropriate information is available to the Committee and the defending party*”. The Hearings Committee reconvened on the 27 November 2015 having received the clarification to the Referee’s Report. The Hearings Committee decided that a Category III(vii) and Category VI infractions as alleged were proven and that the appropriate penalty per Rule 7.2(b) for the Category III(vii) infraction was “*a two-match suspension in the same code and at the same level applicable to the next games in the same competition even if those games occur in the following years’ competition*” and in respect of the Category VI offence “*a forty-eight week suspension in all codes and at all levels*”.

6. Appeal Hearing before Coiste Éisteachta Uladh

The Claimant appealed the Hearings Committee Decision to Coiste Éisteachta Uladh on a number of grounds.

- a. Rule 7.11(o)(i) - that there has been a clear infringement or mis-application of Rule.
- b. Rule 7.11(o)(ii) - that the Claimants right to a fair hearing has otherwise been compromised to such extent that a clear injustice has occurred.

- c. Rule 1.7(b) – that the signature of any document sent to the Appellant should have been in accordance with Rule 4.6(d) which provides that *“where a Notice or other communication requires a signature, transmission of that Notice or other communication by email shall be deemed duly signed if the sender’s name (in Irish or for fixtures notifications in Irish and/or English) is contained in it and by email messages sufficiently identifiable (by reference to the sender’s email address or otherwise) as having emanated from the person purporting to have sent it.”*
 - d. Rule 7.3 which provides 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”.
7. The Appeal before Coiste Éisteachta Uladh was heard on the 28 November 2015 and the decision was communicated to the Claimant on the 21 December 2015. Coiste Éisteachta Uladh determined that the Appeal failed. The Claimant sought and was granted an extension of time on the 24 December 2015 for the purpose of submitting this Request for Arbitration.
8. The Request for Arbitration was sought on the basis of a single Ground of Claim, namely R.7.11(o) (i) and (ii) namely that there had been a clear infringement or mis-application of Rule and that the Claimants right to a fair hearing has otherwise been compromised to such extent that a clear injustice has occurred.

Claimants Submissions

9. At the outset of the case, Mr. Logan on behalf of the Claimant indicated that there was a net point in the case, and that in fact almost all of the facts of the case were agreed. The net point related to the clarification which was sought in respect of the Referee’s Report in advance of the hearing before the Hearings Committee. He indicated that it was an undisputed fact that clarification had been sought by the Claimant in advance of the hearing before that hearing. The clarification had not been to hand when the hearing commenced. It was the case however, that when the Hearings Committee were made aware of the fact that the clarification sought had not in fact been furnished, the Appellant was afforded the opportunity of proceeding with the hearing in the absence of the clarification or having the meeting adjourned pending receipt of the clarification sought. The Appellant opted for an adjournment of the hearing. What is in issue however, is that the clarification received from the Referee is an almost verbatim recital of his Report with the notable exception that there was no reference to the Claimant being *“aggressive”* and *“slapping”* him on the shoulder. Mr. Logan referred to the email received by the CCC from the Referee which was noteworthy because in the subject heading of the email

it was stated as being “*amended Report Form*”. He submitted that the reference to “*amended Report*” suggested that it was in fact a correction.

10. Mr. Logan submitted that the Hearings Committee could have sought further clarification at the conclusion of the hearing which clarification could have been used for the purpose of exoneration or mitigation. Whilst this option was at the absolute discretion of the Hearings Committee he submitted that it was a well established principle that the more serious the consequences for the Claimant, the greater the onus on the administrative body, in this instance the Hearings Committee, to ensure that fair procedures and natural justice were applied. In this instance, a penalty of 48 weeks is very considerable. Further, considering that the Claimant was captain of the Club U-21 team, played with the County U-21 team and also with his College, DIT, that in this instance the penalty is considerable and that the Hearings Committee should have exercised its discretion given the doubt over the Referee’s Report and the reference to “*amended Report*”.
11. Mr. Logan’s attention was drawn to Rule 7.11(o) which provides that “*an Appeal shall be limited to the matters raised in the Appellant’s Appeal as originally lodged.....*” As it was noted that this ground had not been referenced in the Grounds of Appeal as submitted to Coiste Éisteachta Uladh. Mr. Sean McKenna on behalf of Coiste Éisteachta Uladh confirmed that this point had not been raised in the course of the Appeal Hearing and was not referenced in the Minutes of that Appeal Hearing.
12. The parties were advised by the Tribunal that its role under Rule 7.13(a) is limited to determining disputes regarding the “*legality*” of the decisions reached by the lower bodies, in this instance Coiste Éisteachta Uladh. It is a role that has been recognised in a long line of DRA Decisions that is similar to that of the High Court in Judicial Review proceedings. The Tribunal however, under Clause 7 of the Arbitration Code, have the discretion to conduct proceedings as it considers fit and “*may follow any arbitral proceedings agreed by the parties if it is in the Tribunal’s opinion reasonably practical so to do*”. The Tribunal suggested a short adjournment to see if the parties could come to agreement regarding the admission of the Claimant’s point of claim given that it had not been raised at the Appeal. Following upon a short adjournment the Tribunal was advised that no such consensus had been reached between the parties.

13. **Award and Directions**

The ground of claim advanced by the Claimant is one which had not been canvassed by the Claimant before Coiste Éisteachta Uladh and neither was it included in the Grounds of Appeal submitted in advance of the Appeal hearing. As no such argument was canvassed before Coiste Éisteachta Uladh such that they did not and were not in a position to make a decision

on it, and it was not open therefore to the Claimant to make such an argument *de novo* before the Tribunal.

12. **Costs**

The Tribunal directed that the costs of these proceedings be deducted from the Claimant's deposit with the balance to be remitted to the Claimant.

Date of Oral Hearing: 12 Feb 2016

Date of Agreed Award: 15 June 2016

Signed: or by email agreement on date above

Brian Rennick

Niall Cunningham

Seamus Woods