

Disputes Resolution Authority

An Córas Eadrána

DRA 08 of 2013

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

Between

**Brendán Ó'hEarghaill;
Mairtín Ó'hEarghaill;
Pól Mac Taidgh; and
Niall Ó'Maoldúin**

Claimants

And

**Coiste Cheannais na gComortaisí Thír Eoghain ("Tyrone CCC");
Coiste Éisteachta Thír Eoghain ("Tyrone HC"); and
Coiste Éisteacht Uladh ("Ulster Council Hearings Committee")**

Respondents

**Hearing: Carrickdale Hotel, Carrickcarnon, Ravensdale, Dundalk, Co. Louth at
8pm on 9 December 2013**

Tribunal: Jack Anderson (chair); David Curran; and Declan Hallissey

Secretary to the DRA, Mr Matt Shaw, was also in attendance

Factual Background

1. On 10 November 2012 Ardboe lost to Errigal Ciarán in the Tyrone minor football league final. In the aftermath of that game, a complaint was made as to the behaviour of the four-named claimants and one other individual (all members of Ardboe O'Donovan Rossa GFC). Tyrone CCC commenced an investigation and an array of suspensions and sanctions were proposed in the Notice of Disciplinary action. Three of the named claimants faced 48-week suspensions. One of the named claimants faced 96 weeks.

2. The club filed a request for a hearing with Tyrone HC and did so within the requisite 72-hour period. For reasons relating to the usual reconstitution of Tyrone's various disciplinary committees at the end of the calendar year, the Ardboe members did not receive a reply to this request until 18 February 2013. The reply stated that the application for a hearing had been denied to each individual on the ground that they had failed to comply with Rule 7.3 (p) and (s) (TO 2012) - namely that the applications had to be signed by each individual concerned.
3. The Ardboe members appealed to the Ulster Council Hearings Committee on 7 March 2013. The appeal was dismissed but, in notifying the parties of its decision, the Ulster Council Hearings Committee recommended that, on giving due consideration of all the circumstances of the case and the evidence presented, "in the interests of natural justice" it would refer the case back to Tyrone "for reprocessing in accordance with Rial 7.3 (TO 2012) and Lámhleabhar Smachta Part III onwards".
4. In mid-March 2013 the matter of "re-processing" was considered by Tyrone CCC and, on conducting a review, Tyrone CCC was satisfied that it had acted properly in every aspect of the matter and thus it would reaffirm through Tyrone HC that the original approach taken should stand. The Ardboe members then appealed for a second time to the Ulster Council Hearings Committee. That appeal was dismissed and on 19th April 2013 the Claimants sought to refer the matter to the DRA.

Preliminary Matters

5. At the hearing the claimants raised two preliminary matters relating to delay and discovery.

Delay

6. The claimants' argument here can be summarised in the maxim "justice delayed is justice denied." Applying that maxim they were unsure as to what effective arbitral redress they might achieve at the present DRA hearing. The claimants pointed out that the start of these proceedings could be traced as far back as the above mentioned minor football league game on 10 November 2012. Thirteen months later, the matter finally came to be heard by a DRA Tribunal. For 3 out of the 4 claimants, their sanction was, therefore, spent.
7. The DRA tribunal lead by Mr Curran undertook, in cooperation with the claimants, an examination of the timeline of events in this matter:
 - Mid-November to mid-April 2013: matter went from (reconstituted) Tyrone CCC/HC to the Ulster Council Hearings Committee; back for

“reprocessing” to Tyrone CCC; and then onto the Ulster Council Hearings Committee for a second time.

- Mid-April to mid-July 2013: the DRA Secretary intervened personally at this point to admit that, although the initial request for arbitration for the claimants was acknowledged promptly in mid-April 2013, there had been a delay in dealing with the matter for the 3 or so months that followed. The DRA Secretary apologised directly to the claimants for this delay. The apology was accepted reluctantly by the claimants and noted by the Tribunal.
- Mid-July 2013 to early Oct 2013 – various efforts involving the Ardboe members and members of Tyrone County Board to negotiate, mediate or otherwise discuss the matter at hand.
- Late Nov 2013 to present: appointment of DRA Tribunal.

On thus reviewing the nature and extent of the delay, which at first appeared an egregious thirteen months but in reality was much less than that, the claimants agreed to proceed with the present DRA hearing so long as the Tribunal noted the delay point in respect of any remedy that might be forthcoming. This was again noted by the Tribunal. The respondents had nothing to add to this preliminary matter.

Discovery

8. In the request for arbitration, the claimants requested 26 separate documents principally from the first and second named respondents. The claimants claimed that only 7 had been produced and thus sought the remainder. After a brief adjournment facilitating some discussion between the parties, the Tribunal then assisted the parties in ascertaining the relevance and/or availability of each requested document. Ultimately, apart from a dispute over the interpretation of what a “Disciplinary Report” might contain, the claimants were happy to proceed to substantive argument.

The Parties’ Substantive Arguments

9. Although the Tribunal considered all the facts, allegations, legal arguments and evidence submitted by the parties both in writing and at the oral hearing, which lasted nearly 5 hours in total, this written award refers only to the submissions and evidence we, the Tribunal, considered necessary to explain our reasoning.
10. The key point of contention in this matter related to the decision by the Ulster Council Hearings Committee on 7 March 2013. The claimants’ appeal was dismissed but, in notifying the parties of its decision, the Ulster Council

Hearings Committee recommended that, on giving due consideration of all the circumstances of the case and the evidence presented, “in the interests of natural justice” it would refer the case back to Tyrone “for reprocessing in accordance with Rial 7.3 (TO 2012) and Lámhleabhar Smachta Part III onwards”.

11. Put simply, the claimants contended that the reference to “reprocessing” in the “interests of natural justice” should have been interpreted to mean that the matter be heard in full by the Tyrone Hearings Committee. The respondents contended that their interpretation of “reprocessing” (as outlined above in paragraph 4 of this award) sufficed and further that their interpretation was later upheld on (second) appeal to the Ulster Council Hearings Committee in mid-April 2013.

The Tribunal’s Reasoning

12. In short, this Tribunal holds with the claimants’ view of the key substantive matter at hand in this dispute (as outlined in paragraph 11 above). Our reasoning is set out below.
13. Internal GAA disciplinary mechanisms are not courts of law. They are not bound by the strict rules of procedure and evidence that, say, the criminal courts are. Nevertheless, in the interests of justice towards defendants and also in the interest of the efficacy of the administration of disciplinary and related disputes, the GAA has detailed regulations, mainly contained in its Official Guide, on how best to process disputes. These regulations make demand on the parties: for instance, individual or club defendants must make requests for hearings or appeals within a specific time period and in a specific format etc; similarly, those who sit on disciplinary bodies must comply with the GAA’s Official Guide and especially in terms of ensuring fair procedure and lack of bias etc.
14. In the vast majority of disputes, the above works extremely well. Unfortunately, on occasion there has been a tendency in the Association to conflate minor procedural flaws into altogether bigger issues meaning that the substantive matter in dispute is often lost, or sometimes not even heard at all, amid dense technical, legalistic argument and counter argument. Relating that principle to the matter at hand, the claimants did not receive a full hearing in front of the Tyrone Hearings Committee despite requesting to so within the stated 72 hour time. Their request was denied because the relevant forms were not personally signed by the relevant, individual applicants (they forms were submitted individually and in all other aspects correctly but were signed by the club’s assistant secretary).
15. Technically the denial of a hearing on this ground was not incorrect but in the context of the sanctions involved – at the most serious end of those available

in the GAA – it clearly would have been preferable for a full hearing to have been facilitated in early 2013. This, it appears, is what the Ulster Council Hearings Committee was saying in its recommendation to its decision of 7 March 2013.

16. There are two further points of note on that 7 March 2013 decision. The reference in it to “reprocessing” the matter at hand “in the interests of justice” must, logically, we think, refer to a full HC hearing and not merely a CCC-led “re-visiting” of the issue, which is what took place. In the interests of justice is clearly an allusion to natural justice and the two basic elements of natural justice (hear both sides and do so in an unbiased way) by definition demands a full hearing of the matter at issue. It must be stressed here that the Tribunal does not in any way think that the Tyrone authorities deliberately misinterpreted the Ulster Council Hearings Committee’s recommendation so as to carry out the minimum review possible. We are not saying that. The Tyrone authorities (CCC, HC etc) at all times acted in good faith. This Tribunal is merely saying that said Tyrone authorities’ interpretation of the Ulster Council Hearings Committee’s recommendation was incorrect; reprocessing, in our view, meant more than reviewing.
17. The second point on the Ulster Council Hearings Committee’s “re-processing” recommendation of 7 March 2013 is, not only was it vague, and thus caused difficulties of interpretation for Tyrone, it also was most likely outside its powers. In line with Rial 7.11(o) (TO 2013), a recommendation that a matter should be “reprocessed in the interests of justice” (or similar phraseology relating to a recommendation as to procedure) is usually given only in instances where the appeal has been upheld and the matter at hand is being remitted. In this case, the appeal had failed and that could and probably should have ended the matter *but* the recommendation to re-process gave the claimants a legitimate expectation that a full hearing should occur.

Award with Directions

18. The Tribunal awards and determines that the following remedy sought by the claimants be granted: a full hearing by Tyrone HC of the disciplinary matters alleged to have involved the four-named claimants during, at or after the Tyrone minor football league final of 10 November 2012 by the second week of February 2014. The date in question was agreed by the first and second named respondents on the night of the oral hearing.
19. The Tribunal awards and determines that, if appropriate, the time already served by the four claimants be, at a minimum, taken into account at said Tyrone HC hearing of February 2014.

20. The Tribunal awards and determines that until such time as said Tyrone HC hearing of February 2014 takes place a stay be placed on the sanction imposed on the individual claimant under a 96 week suspension.
21. The Tribunal directs that consideration be given in instances where a CCC or other authorised entity recommends a sanction of the utmost gravity (e.g., a 48-week or longer sanction or the sanction of debarment or expulsion) that the person on whom that sanction is proposed is automatically granted a full hearing before a HC or other authorised entity without the need to formally request it.

Costs

22. The Tribunal directs that the claimants' deposit be returned and the costs associated with the arbitral hearing are borne by the respondents.

Dated: 3 January 2014

Signed:

Jack Anderson

David Curran

Declan Hallissey