

# Disputes Resolution Authority

An Córas Eadrána

## **DRA22/2016: In the Matter of Fergal Conway (Celbridge GAC): Leinster HC v CAC**

**Hearing:** City North Hotel, Meath, at 8pm on 15 March 2017

**Tribunal:** David Nohilly, Marguerite Buckley & Orlaith Mannion  
Secretary to the DRA, Jack Anderson, was also in attendance

**Verdict:** The claimant succeeds and the decision of the CAC (December 2016) is rescinded

**Keywords:** *Preliminary matter - standing of provincial Hearing Committee to request an arbitration – Rule 3.32 (iii), 3.49, 7.11 (a) (5), 7.12 T.O. 2016 - matter of “exceptional importance” - written submissions from Central Council per Section 9.3 DRA Code.*

*Scope of powers of CAC – whether decision-maker irrational or manifestly incorrect - video evidence.*

### **List of Attendees:**

#### *Claimant:*

Dick Butler, Chair Coisteachta Eisteachta Laighean  
John Byrne, Secretary

#### *Respondent 1: CAC*

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

### **Factual Background:**

In November 2016 Fergal Conway (Celbridge) was sent off in the semi-final of the Leinster IHC 2016. He sought a personal hearing before Leinster HC. At that hearing, held on the 30<sup>th</sup> November, it was decided that a Rule 7.2 Category III (ii) TO 2016 offence was proven and that Mr. Conway should serve a one match suspension in the same code and at the same level applicable to the next Game in the same Competition etc., At the hearing, video evidence was used as per Rule 7.3(aa)1(iii) TO 2016 but was held not to be compelling enough to rescind the red card per Rule 7.3 (aa)1(vi). Clarification was also sought from the match officials in accordance with Rule 7.3(aa)1(viii).

The matter was appealed to An Lar Choiste Achomhairc (CAC) which heard the appeal in December 2016. The appeal was upheld and the player played in and lost the Leinster IHC 2016. The CAC held that there was a misapplication of rule by the

Leinster Hearings Committee (CCEL) namely, Rule 7.3(aa)1(vi) that is that a Referee's Report shall be presumed to be correct on all factual matters unless compelling evidence e.g. video contradicts it.

Leinster Hearings Committee (CCEL) then requested arbitration at the DRA and a hearing was held on 15 March 2017.

### **Preliminary Matters:**

At the Hearing, the CAC, as the respondent raised a preliminary issue in which they queried the standing of a provincial hearings committee to take a matter, such as in dispute, to the DRA. Submissions were made on both sides to this effect in which reference was made, inter alia, to Rules 3.32(iii), 3.49, 7.11(n), 7.11(a)(3), 7.12 TO 2016 and DRA 9/15. Without Prejudice to those arguments, the Tribunal was of the view that this preliminary issue raised a matter of 'exceptional importance to the Association' and therefore requested written submissions on this point from Central Council per Section 9.3 DRA Code. Submissions were received from the Director General of the Association on the 23<sup>rd</sup> May 2017.

That Submission is annexed hereto and shall form part of this decision. It is, therefore, unnecessary to quote in verbatim what it said and the Rules relied upon but to say, the Tribunal concurs and agrees with the views of Central Council namely, Leinster Hearings (CCEL) has the standing to refer a case to Arbitration under the Rules.

We would say however, that we have some reservations over a decision maker (in this case, Leinster Hearings CCEL) referring a case to Arbitration and suggest that it should be limited to either the 'Prosecutor' (in this case, Leinster CCC) and/or the player/club.

From the majority's viewpoint (DN & OM), it raises a somewhat unusual quandary whereby a decision maker can proceed to Arbitration. As an analogy, it is akin, to take a recent high-profile case, of the Central Hearings Committee filing claims with the DRA where they were over-ruled by the Central Appeals Committee which we believe, was not the intention of the Rule drafters.

### **Claimants' Submissions:**

The Claimant's submissions, broadly speaking, were that the CAC's only function was to examine how Leinster Hearings (CCEL) carried out the Hearing and not to examine the evidence. In other words, they could not consider the matter *ab initio*. Theirs was not a de novo hearing. They said that the CAC should have confined the Appeal to the Rules quoted by the Appellant in his written appeal only and not by implication, create avenues for the Appellant's successful appeal.

### **Respondents' Submissions:**

The Respondent denied any breach of the Rules. They submitted that they were entitled to determine that the video evidence in this instance was 'compelling'. They were entitled to find that there was an 'ambiguity' in the decision of Leinster Hearings Committee (CCEL). It was their view, that they would have come to a different conclusion, that is, that the video evidence was compelling. In other words, the CAC thought the referee was wrong (based on the video evidence) to send Fergal Conway off. It also submitted that Leinster Hearings (CCEL) failed to make a determination of fact which was a prerequisite to the imposition of a penalty. They were, they submitted, absolutely entitled to uphold the appeal. They contended that the decision of Leinster Hearings Committee was incorrect and bad and therefore should be rescinded.

### **Reasoned Decision:**

It may benefit the CAC if we apprise them of the standard required during their Appeal Hearings. The only circumstances in which the CAC can allow an appeal is where the decision of Leinster Hearings Committee was 'irrational' or 'manifestly incorrect' (Rule 7.11(o)) that is, to put simply, it was unsupported by evidence and/or lacked fair procedures. CAC are not entitled to strike down a decision even where they may think it is 'bad' or where they would have come to a different conclusion. The onus of proof that is on an appellant is very high. This is a well-worn principle frequently quoted in DRA decisions.

The decision of CAC that Leinster Hearings (CCEL) were wrong to impose a suspension implies that Leinster Hearings were, 'irrational' and/or 'manifestly incorrect' in their finding. This was not the case. There was a basis for the decision made by Leinster Hearings (both factually and legally). The CAC were not entitled to consider the matter in the way they did.

It is for Leinster Hearings (CCEL) and them alone to determine if the video evidence was 'compelling' to contradict the Referee's Report. Similarly, a determination of fact was made by Leinster Hearings (CCEL).

We also agree with the submission of the Claimant in relation to Rule 7.11(o) TO 2016.

We therefore find for the Claimant.

### **Award and Directions:**

The Tribunal finds that the claimant's claim succeeds and that the decision of the CAC (December 2016) is rescinded. It is noted that both parties agreed no sanction would be revived against Mr. Conway and this is to be welcomed, not least due to the lapse of time since the original sanction. The Tribunal notes that this has been communicated to the Club's Secretary.

We also note that this is the second occasion in which Leinster Hearings Committee (CCEL) have been required to submit a claim before the DRA (the first being DRA 9/2015) as against their Appeal body.

### **Costs**

As the Claimant has succeeded in this Arbitration, we direct that the costs and expenses of same be borne solely by the Respondent under the principle that costs follow the event. Similarly, we direct that the costs and expenses of the DRA be borne solely by the Respondent.

We direct the deposit paid by the Claimant be refunded by the DRA Secretary to the Claimant.

Date of Oral Hearing: 14 March 2017

Date of Agreed Award: 13 June 2017

**By email agreement on agreed date above**

David Nohilly

Orlaith Mannion

Marguerite Buckley

## **APPENDIX I**

### **CENTRAL COUNCIL SUBMISSION**

## **DRA 22/2016 – PRELIMINARY POINT**

### **1. ISSUE**

- 1.1. By letter dated 23 March 2017, the Secretary of the DRA requested that Central Council or its nominee make submissions on a preliminary point arising in the case of DRA 22/2016.
- 1.2. The preliminary point is whether “*a Provincial Hearings Committee have [sic] the standing, under the Official Guide 2016 to request Arbitration as against the CAC?*”
- 1.3. Central Council was not party to the DRA hearing on the 15 March 2017. Accordingly, it is not clear what arguments were advanced on behalf of the parties at that hearing.
- 1.4. However, it appears to Central Council that the issues raised are whether the Provincial Hearings Committee:-
  - 1.4.1. is a unit; or
  - 1.4.2. has authority to refer a dispute to the DRA on behalf of the relevant Provincial Council.

### **2. RELEVANT PROVISIONS OF THE OFFICIAL GUIDE**

- 2.1. The relevant provisions of the Official Guide are set out below in this paragraph 2. Paragraph 3 of this submission deals with the application of the Rules to the particular circumstances.

#### **2.2. Arbitration**

Rule 7.13 of the Official Guide provides:-

*“Arbitration*

*(a) 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 Bye-Laws 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 annexed to these Rules, as initially approved by Congress and from time to time amended by the Disputes Resolution Authority with the approval of Central Council.”*

#### **2.3. Unit**

Rule 1.9 of the Official Guide provides:-

*“The Association is a democratic organisation comprising the following units:*

- (a) Clubs*
- (b) County Committees*

- (c) *Provincial Councils*
- (d) *Central Council*
- (e) *Annual Congress*
- [...]"

## **2.4. Enforcement of Rules/Arbitration**

Rule 7.1(a) of the Official Guide provides

*"[...] Where reference is made in Rule to Central Council, Provincial Councils or County Committees, such reference shall include or be a reference to their Sub-Committees having jurisdiction over Disciplinary Matters."*

## **2.5. Central Appeals Committee Decisions and Arbitration**

Rule 3.4(c) of the Official Guide provides

*"[The Central Appeals Committee's] decisions on appeals shall be final and binding, subject only to a case being taken to Arbitration under the Disciplinary Resolution Code, provided for in these Rules"*

## **3. APPLICATION OF RULES TO CIRCUMSTANCES**

### **3.1. Is the Provincial Hearings Committee a unit?**

- 3.1.1. The Official Guide is clear that a Provincial Hearings Committee is a Sub-Committee of Provincial Council in Rule 3.32(A) (iii). Rule 3.32(A) (iii) of the Official Guide provides that *"A Provincial Council shall appoint the following Sub-Committees: [...] (iii) Hearings Committee"*.
- 3.1.2. As appears from Rule 1.9 quoted above, it is clear that a Provincial Council is a unit.
- 3.1.3. Rule 7.1(a) does not affect this interpretation. Rule 7.1(a) does not change the definition of a unit but merely confirms, that where reference is made to a Provincial Council, that such a reference shall include or be a reference to its Sub-Committees having jurisdiction over Disciplinary Matters. In this case, this refers to the Provincial Hearings Committee.
- 3.1.4. Accordingly, it is clear that a Sub Committee of a unit is not a separate unit of itself.

### **3.2. As a Sub-Committee does a Provincial Hearings Committee have authority to refer a dispute to the DRA on behalf of the relevant Provincial Council?**

- 3.2.1. Rule 7.13 of the Official Guide provides that *"in the event of any dispute or difference between any [...] unit of the Association with any other [...] unit of the Association, as to the legality of any decision made or procedure used by any unit of the Association[...] such a dispute may be referred by either party*



*to Arbitration[...]*”

- 3.2.2. In circumstances where a Provincial Hearings Committee is not a unit, does it, as a Sub Committee, have authority to refer a dispute to Arbitration on behalf of the unit, namely the relevant Provincial Council?
- 3.2.3. The effect of Rule 7.1(a) is that in exercising its jurisdiction over Disciplinary Matters, Provincial Council operates through its Sub-Committee.
- 3.2.4. Accordingly, reading Rule 1.9, 7.1(a) and 7.13 in conjunction with each other makes clear that a Sub-Committee, having jurisdiction over Disciplinary Matters (in this case the Provincial Hearings Committee), has authority on behalf of its unit (in this case the Provincial Council) to refer matters to Arbitration.
- 3.2.5. A similar argument was advanced by the Central Appeals Committee in DRA 9-2015 in relation to the CCEL. The Tribunal held that *“it cannot be the case that as argued that the CCEL were not a unit of the association within the meaning of the rules”*.
- 3.2.6. Central Council’s position is that the Provincial Hearings Committee has authority to refer a dispute to Arbitration. This position is further supported by the Tribunal’s decision in paragraph 5 of DRA9-2015 which provides as follows:-

*“CAC contended as a preliminary point that CCEL lacked the requisite standing and interest to bring the application before the Panel. As a matter of statutory interpretation of the requisite rules of the GAA (and namely Rules 1.9 and 7.1 and 7.13 of the Official Guide (2015)) the Panel did not find that this preliminary point was made out. This initial application which would have had the effect of concluding the Claimant’s case was therefore disallowed. It cannot be the case that as argued that the CCEL were not a unit of the association within the meaning of the rules. The effect of reading all of the relevant rules was such that the argument advanced that the CCEL had no standing to bring the application was not persuasive on the Panel. It was not a question of, as the Panel were implicitly or explicitly invited to do, reading one or two rules on their own but rather an issue wherein the Panel had to look at the body of rules. By following the approach set out the Panel could only but dismiss the preliminary point that the CAC sought to rely on.”*

- 3.2.7. Central Council’s position is that while a Provincial Hearings Committee is not a unit, in Disciplinary Matters it is representative of the Provincial Council and accordingly may refer a dispute to Arbitration, on behalf of the Provincial Council, pursuant to the Rules of the Association.

#### **4. CONCLUSION**

- 4.1. As held by the Tribunal in DRA 09-2015, the relevant Rules must be considered together and not in isolation from one another.

4.2. When considered together, the Rules are clear that the Provincial Hearings Committee as a Sub-Committee of the Provincial Council has the standing to refer a case to Arbitration.