

Disputes Resolution Authority

An Córas Eadrána

DRA 13 of 2017: In the matter of the an arbitration under the Disputes Resolution Code and the Arbitration Act 2010

Rian O'Broin v. An Lár Choiste Achomhairc and An Lár Choiste Eisteachta

Hearing: Louis Fitzgerald Hotel, Naas Road, Newlands Cross, Dublin 22, Ireland at 7.30pm on 26 July 2017

Tribunal: Rory Mulcahy SC, Eamonn Denieffe, Mr Con Hogan

Secretary to the DRA, Rory Hanniffy

Verdict: The claim is dismissed.

Keywords: *7.2(b) Cat V (i) TO – minor physical interference, whether CHC manifestly incorrect, video evidence.*

Whether DRA can ratify a suspension less than minimum period provided under rule, where parties agree such a compromise.

List of Attendees:

Claimant – Rian O'Broin:

Ryan Burns / Rian O'Broin

Frank Kieran

Feargal Logan

Respondent 1 - Lár Choiste Achomhairc (CAC):

Bernard Smith

Seamus Walsh

Respondent 2 - An Lár Choiste Eisteachta (CHC):

Emmet Haughian

Declan Hallissey

Liam Keane

FACTUAL BACKGROUND

1. In a Championship Match between Louth and Longford on 17 June 2017, the Claimant was given a red card. The referee's report recorded that the Claimant had been dismissed for "minor physical interference with an umpire", an offence contrary to Rule 7.2(b), Cat V (i) of the Official Guide.
2. He was served with a Notice of Disciplinary Action by An Lár Choiste Cheannais gComórtaisí (CCCC) on 20 June 2017 which proposed the imposition of the minimum penalty, a 12 week suspension.
3. By email dated 21 June 2017, the Claimant sought clarification of the Referee's Report pursuant to Rule 7.3(s) of the Official Guide. In particular, clarification was sought as whether the referee had seen the incident or had it reported to him and also whether the umpire who struck the ball was of the view that it was deliberate or an accident.
4. The Referee confirmed by email of the same date that the incident was reported to him by the umpire who had reviewed the video footage and considered the incident to be deliberate.
5. The Claimant requested an oral hearing before the CHC which took place on 26 June 2017. The CHC decided on the basis of the evidence adduced, including the video evidence and the referee's report as clarified that the Claimant had committed the alleged infraction and imposed a 12 week suspension.
6. The Claimant appealed this decision to the CAC, which hearing took place on 4 July 2017. The appeal was based on a number of grounds including that the decision of the CHC was manifestly incorrect because the incident was not intentional and that it could not be concluded on the basis of the video evidence that the incident was intentional or accidental.

7. The CAC determined that there had been no misapplication of the Rule; the evidence did not support a contention that the decision of the CHC was manifestly incorrect and it was agreed that there was no breach of fair procedures before the CHC to the extent that a clear injustice had occurred. The appeal was therefore lost.

8. The Claimant submitted a request for arbitration to the DRA on 12 July 2017.

REQUEST FOR ARBITRATION

9. The request for arbitration set out four reasons for contending that the Respondents were in breach of the Rules/Laws/Entitlements. These included that the incident was unintentional, that this would be shown by the video and that it was not “reasonable” for any Committee to see the Claimant’s actions as intentional. He requested that the Tribunal review the video evidence.

10. The Claimant sought that the decision of the CCCC be set aside and his suspension quashed.

RESPONSE TO THE REQUEST

11. The Respondents contend that the question of whether the incident was intentional was a question of fact to be determined by the CHC and not open to review by the DRA. It was contended that an allegation that the decision of the CHC was unreasonable was not a legitimate basis for disturbing the CHC’s decision, rather it had to be shown to be irrational, a claim not advanced by the Claimant in his request for arbitration.

12. It was also noted that the Claimant was in error in the relief sought. The CCCC had not imposed any penalty, rather the penalty was imposed by the CHC.

THE HEARING

13. The first issue which arose at the hearing was whether the Tribunal should review the video. For this purpose, there was some dispute about the claim made by the Claimant. In this regard, it was noted that no claim that the decision of the CHC was irrational had been advanced by the Claimant. However, when put to the CHC that the claim that the decision of the CHC was unreasonable echoed a claim that an administrative decision was unreasonable and/or irrational, it was accepted that the claim in the request for arbitration could be treated as a claim that the decision was irrational.

14. A claim as to irrationality is, in essence, a claim that the decision maker had no evidence before it which could have supported its decision. In order to determine such a claim, it was considered necessary to review the evidence before the decision-maker. For that reason, the Tribunal agreed to review the video evidence.

THE ARGUMENTS

15. The Claimant's case, in essence, boiled down to a claim that the video evidence was incapable of supporting the finding by the CHC that the Claimant had committed the offence. It was argued that the video evidence, when reviewed in the context of the game and having regard to the relative positions of the player, the goalkeeper and the umpire, made clear that the referee's report was in error and that the only rational conclusion available on the evidence was that the incident was accidental and therefore there was no breach of the Rules.

16. The Respondents accepted that were the incident accidental, the offence would not have been made out. However, they contended that there was evidence available to the CHC which was capable of supporting its conclusion that there had been an infraction of the Rules. In this regard, it was argued that the Referee's Report must be taken to be correct unless there is compelling evidence to contradict it. The Referee's Report (as clarified) indicated that there had been minor interference with an umpire which was considered to be deliberate. This was a sufficient evidential basis to conclude that there had been an infraction. It was open to the CHC to find that the video evidence was not compelling evidence to contradict the Referee's Report and therefore to find that the infraction had been committed. It was likewise open to the CAC to conclude that the findings of fact made by the CHC were not manifestly incorrect. Even had they concluded that the CHC was 'incorrect', *i.e.* if they had reached a different conclusion, this would not have been sufficient to justify the CAC setting aside the CHC's findings as to fact. In the circumstances, the decisions at issue were not irrational

DISCUSSION

17. It is a fundamental principle of most if not all sport that the referee or umpire's decision made on the field of play is final. That principle is reflected in Rule 7.3(aa)(vi) of the Official Guide which provides that the Referee's Report, including any Clarification thereto, shall be presumed to be correct in all factual matters.

18. The absolute nature of the Rule is mitigated somewhat by the provision within the Rule which provides that the presumption can be "rebutted where unedited video evidence or other compelling evidence contradicts it." This exception allows for egregious mistakes to be corrected, without leaving open for review every judgment call made by a referee during the course of

play. The reference to “other compelling evidence” as an alternative to “unedited video evidence” suggests that unedited video evidence is inherently capable of being compelling. The categories of other evidence which may meet this threshold are open but likely to be limited.

19. Having regard to the context of the Rule, its purpose and the reference to “compelling evidence” the reference to “contradicting” the Referee’s Report such as to upset the presumption that it is factually correct must be taken as meaning more than providing a reasonable alternative interpretation. Otherwise the presumption would be robbed of all effect. Rather it must be something considerably more, contradicting the Referee’s Report to the point of compelling a conclusion that the Referee’s Report was *not* factually accurate.

20. When presented with a Referee’s Report (whether clarified or not) which sets out that there has been an infraction of the Rules, the CHC sole task therefore is to consider whether the evidence available, be it unedited video evidence or some other form of evidence, is compelling evidence that the Referee’s Report is wrong. If it is not so compelling, the CHC is bound to accept the Referee’s Report as factually correct and to conclude that the offence is made out.

21. The role of the CAC is even more restricted. By Rule 7.11(o), the CAC may only interfere with a finding of fact made by the CHC if satisfied that it is “manifestly incorrect”. Moreover, it could only uphold an appeal where satisfied that there had been a clear infringement or misinterpretation of the Rules by the CHC, or where an appellant’s right to a fair hearing had been compromised to such extent that a clear injustice had been done.

22. Of course, the role of the DRA is more restricted still. The Tribunal, as made clear from the jurisprudence of this body, is limited to reviewing the

lawfulness of the decision-making process. In this case, the only legal error claimed is that the decisions made were irrational.

23. In the present case, the CHC were presented with a Referee's Report which had been clarified. It was not contested that on the basis of the Report as clarified, there was evidence that the Claimant had infringed the relevant Rule. In those circumstances, the Claimant faced a formidable hurdle in seeking to establish that the decision of the CHC was irrational. It was necessary for the Claimant to establish that no reasonable person could consider that the video evidence relied on was not compelling evidence which contradicted the Referee's Report. Put another way, the video evidence would have to be so compelling that not only should we disagree with the CHC's assessment of it, we should conclude that there was no basis upon which the CHC could conclude that it wasn't sufficiently compelling.

24. In the Tribunal's view, the video evidence relied on, though expertly and evocatively placed in the context of the match by the Claimant's representative, fell far short of meeting that threshold. The video evidence clearly showed the Claimant striking the umpire with the football. There was nothing about the incident which made it clear, still less certain, that the incident was accidental.

25. In the circumstances, we conclude that the CHC was entitled to reach the decision which it did. It follows that the CAC were further entitled to conclude that the CHC's conclusions as to fact were not manifestly incorrect.

FURTHER ISSUE

26. One further issue which arose was the suggestion by the Claimant's representative that, having regard to the harshness of the outcome for the Claimant (the minimum suspension for the infraction was imposed, but this

was a 12 week ban), the parties could seek to agree a shorter ban in resolution of the dispute and the Tribunal could ratify that resolution pursuant to Rule 11.5 of the Disputes Resolution Code.

27. Although there was, in fact, no agreement in relation to the imposition of a shorter ban, the Claimant asked the Tribunal to rule on whether it could ratify such a resolution in the event that agreement could be reached. Having considered the matter, the Tribunal formed the view that it would not have been open to it to ratify such an agreement. The powers of the Tribunal to so ratify a resolution of a dispute referred to arbitration is limited to proposed resolutions which are “within the Rules of the Association”. We were not pointed to any mechanism within the Rules which would permit the imposition of a ban for a lesser period than the minimum provided under the Rules and we therefore concluded that any such proposed resolution would not have been within the Rules of the Association.

DECISION

28. For the foregoing reasons, the Claimant’s claim is dismissed and the reliefs sought refused.

29. The Respondents generously did not seek the costs of the arbitration and therefore no order is made in respect of costs. The expenses of the arbitration shall be paid by the Claimant.

Date of Oral Hearing: 26 July 2017

Date of Agreed Award: 24 August 2017

By email agreement on agreed date above.

Rory Mulcahy SC,

Eamonn Denieffe

Con Hogan