Disputes Resolution Authority
An Córas Eadrána

No.: DRA14 of 2017: In the matter of the an arbitration under the Disputes Resolution Code and the Arbitration Act 2010

BETWEEN:-

TADHG DE BURCA

Claimant

-and-

AN LAR CHOISTE ACHOMHAIRC (CAC)

and

AN LAR CHOISTE EISTEACHTA (CHC)

Respondents

Verdict: The claim is dismissed.

Keywords: *7.2(b) Cat III (iv) TO – deliberate pulling on or taking hold of a faceguard - whether CHC and CAC misinterpreted rule - whether CHC decision ultra vires - breach of natural and constitutional justice – video evidence – irrationality / unreasonableness – strict liability - manifestly incorrect.*

7.3 (aa)(1)(iv) TO – compelling evidence - DRA08/2016 Declan O'Mahony v. CHC and CAC - Interim Ruling – whether evidence of opposing player can amount to "compelling evidence".

DECISION OF TRIBUNAL AND STATEMENT OF REASONS

FACTUAL BACKGROUND

1. In a Championship Match between Waterford and Wexford on 23 July 2017, the Claimant was given a red card. The referee's report recorded

that the Claimant had been dismissed for "deliberately pulling faceguard". Deliberately pulling faceguard is an offence contrary to Rule 7.2(b), Cat III(iv) of the Official Guide.

2. He was served with a Notice of Disciplinary Action by An Lar Choiste Cheannais gComortaisi (CCCC) on 25 July 2017 which proposed the imposition of the minimum penalty, a one-match suspension in the same Code and at the same level, applicable to the next game in the combination of National League/Inter-County Senior Championship even if that game occurs in the following year.

3. The Claimant did not accept the proposed penalty and requested an oral hearing before the CHC which took place on 31 July 2017. The CHC decided that the incident was more likely to have occurred than not to have occurred and therefore must be treated as proven and imposed the same minimum penalty proposed by the CCCC.

4. The Claimant appealed this decision to the CAC. A hearing took place on 3 August 2017. The appeal was lost.

5. The Claimant submitted a request for arbitration to the DRA on 7 August 2017.

REQUEST FOR ARBITRATION

6. The request for arbitration set out a large number of grounds for challenging each of the decisions of the CHC and the CAC under headings including that the decision of the CHC was *ultra vires*; that the CAC and CHC had misinterpreted the relevant rule (7.2(b) Category

III(iv)); that the decisions breached natural and constitutional justice; and that the determination of the CHC was an "unreasonable adjudication".

7. The Claimant sought that the decision of the CCCC, CHC and CAC be quashed. The Request was accompanied by a written legal submission.

8. The Respondents' Response to the Request for arbitration was submitted on 9 August 2017. The Respondent contended that the CAC was correct to conclude that the appeal should be dismissed on the grounds that there was no clear infringement or misapplication of the Rule by the CHC, that the right to a fair hearing had not been compromised to the extent that a clear injustice had been done and no determination of fact by the CHC had been shown to be manifestly incorrect. In the circumstances, the Respondents submitted that the claim to the DRA should be dismissed. The Response was also accompanied by a written legal submission.

THE HEARING

9. The hearing took place on the evening of 10 August 2017. The first issue which arose at the hearing was whether the Tribunal should review the video and hear the evidence heard by both the CHC and the CAC. In this regard, it is noted that there was no formal record of the evidence adduced at either hearing. Although notes had been taken of the evidence adduced before the CHC and CAC, these notes were not prepared on the basis that they would form a true record of the hearing before those bodies. In the circumstances, the only way for this Tribunal to consider the evidence before those bodies was to hear that evidence itself.

10. The Claimant's claim included claims that the decision of the CHC was irrational and that decision of the CAC amounted to an "unreasonable adjudication" because it erred in law and/or in fact in failing to find that the decision of the CHC was unreasonable or irrational. The Claimant, therefore, was claiming that the decisions of both the CAC and the CHC were irrational.

11. 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 and hear from the two players who had given evidence to the CHC and CAC. The parties were advised that the evidence should be limited to that given before the CHC and CAC.

THE EVIDENCE

12. The Tribunal viewed the video a number of times and heard from both Mr Tadhg de Burca and Mr Harry Kehoe, the opposing player.

13. Mr de Burca explained that he had been seeking to make a run from defence, which Mr Kehoe was trying to block. He stated that he had put his hand on Mr Kehoe in order to push past him. He could not be sure where he had placed his hands on Mr Kehoe but his only intention was to push past a defending player who was trying to block his run.

14. The Tribunal then heard from Mr Kehoe. On the video, Mr Kehoe can be seen appealing to the linesman after this incident and appears to be indicating that his face guard has been pulled or grabbed. In evidence, Mr

Kehoe frankly admitted that he had exaggerated the situation to the linesman in order to try and get Mr de Burca sent off. He described the position in the game at that time – Wexford were well behind – and that he knew that "pulling a faceguard was a red card. He stated that he was certain that Mr de Burca had not intended to grab his face guard and that he believed that the linesman had not seen the incident at all and had only acted as he did (in advising the referee of the incident) because of what Mr Kehoe had told him.

THE ARGUMENTS

15. The Claimant's made somewhat different complaints in respect of each of the decisions. In respect of the decision of the CHC, the Claimant argued that the CHC had misapplied the relevant rule in applying a "strict liability" approach to the Rule. The Claimant claimed that only where a pull on a faceguard was "dangerous" would it involve a contravention of the Rule and that there was no evidence that the pull in this case was "dangerous".

16. The Claimant also argued that the CHC had failed to take account of relevant considerations, in particular the evidence of the players, and had acted in breach of natural and constitutional justice in failing to give adequate reasons for discounting the evidence of the two players and/or for finding that their evidence was not compelling. As noted above, the Claimant also claimed that the decision was irrational, in particular, having regard to the findings made by the CHC.

17. As regards the decision of the CAC, the Claimant claimed that it erred in law and/or fact in refusing to find that the decision of the CHC was

"manifestly incorrect" and in refusing to find that the decision of the CHC had been reached in breach of the rules of natural and constitutional justice. In addition to the claim of irrationality referred to above, the Claimant also claimed that the CAC had misapplied the Rules in excluding the evidence of the players when arriving at its conclusions.

18. The Respondents claim that there has been no misinterpretation of the Rules and that the pulling of a faceguard is necessarily to be regarded as 'dangerous' within the meaning of Rule 7(2)(b) Category III(iv). It claims that there was no breach of fair procedures and sufficient reasons were given for the decisions. It states that there was evidence before the CHC which was capable of supporting its decision and it was therefore not irrational. It claims that there was no misinterpretation of the Rules by which evidence of the players was improperly excluded.

RELEVANT STANDARDS

19. Rule 7.3(aa)(1)(vi) of the Official Guide provides that the Referee's Report, including any Clarification thereto, shall be presumed to be correct in all factual matters. The presumption can be "rebutted where unedited video evidence or other compelling evidence contradicts it." In the event, therefore that a Referee's Report sets out that an offence contrary to the Rules has been committed, the role of the CHC, in determining whether as a matter of *fact*, that offence has been committed, will be limited to considering whether there is "compelling evidence" to rebut the presumption that the Referee's Report is correct. Having regard to the ordinary meaning of the word "compelling", evidence to rebut the presumption must go some way beyond being merely an 'alternative' or 'reasonable' explanation of what has occurred, but rather must be so

convincing as to "compel" the conclusion that the Referee's Report is factually wrong.

20. In this regard, the reference to "unedited video evidence" as a form of "compelling evidence" illustrates the strength of evidence which might be required to compel a conclusion that the Referee's Report was in error. Whilst there may be other types of evidence which could meet the threshold, it is likely that that will arise only in the most limited of circumstances.

21. It is, of course, the case that the presumption only extends to questions of fact. If the Referee's Report is based on a misinterpretation of the Rules, then the CHC would be free to determine that the Referee had erred and to refuse to impose any sanction imposed by the CCCC on foot of such a report.

22. The role of the CAC is more limited than that of the CHC. It 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.

23. The role of this Tribunal 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.

MISINTERPRETATION OF RULE 7(2)(b) Category III(iv)

24. As noted above, the Referee's Report cites the infraction for which the Claimant was dismissed as being "deliberately pulling faceguard". There was no reference to whether this was considered dangerous or not, nor, it would appear, was any such evidence adduced before the CHC. The Claimant claims that the offence of which he has been found guilty is that of "behaving in a way which is dangerous to the opponent" and that it is a necessary ingredient of that offence that the behaviour in question is proved to be "dangerous". In circumstances where the Referee's Report makes no such claim, the Claimant asserts that a necessary ingredient of the offence is absent and therefore there is no basis for having imposed the penalty. Insofar as the CHC found that the offence was more likely to have occurred than not, the Claimant says, therefore, that the CHC misinterpreted the Rule.

25. The Respondents contend that the Rule, properly construed, should be read in such a way that a deliberate pull on a faceguard must always be regarded as dangerous and that the reference to this type of conduct is simply an example of dangerous play. The Respondent contends, therefore, that where there is evidence of a deliberate pull on a faceguard – such as a Referee's Report – then that is all that is necessary to evidence the infraction.

26. In our view, the Respondent's interpretation is the correct one. The plain reading of the Rule is that *any* type of conduct which is dangerous to an opposing player is in breach of the Rule and that deliberately pulling of a faceguard is an example of the type of behaviour that <u>does</u> infringe the Rule, *i.e.* is dangerous, rather than <u>could</u> infringe the Rule.

27. Not only is this the correct interpretation of the Rule given its literal meaning, it is also the common-sense interpretation of the Rule. The giving of a single example of a type of conduct which could *in principle* be dangerous would serve little purpose if even that type of conduct needed to be shown or proven *in fact* to be dangerous. The example would add nothing to the Rule. By contrast, if the pulling of a faceguard is *deemed* to be dangerous by the Rule, then it would serve the purpose of obviating the necessity to prove that it is dangerous. It is not for this Tribunal to comment on why the rules makers should have considered this particular type of conduct to be worthy of being singled out in this way, but it is certainly not absurd to suppose that "strict liability" was considered necessary to ensure the protection of players against this type of offending conduct.

28. It is noted that the Claimant also pursued an argument that it was a necessary ingredient of the offence that the action was "deliberate" and that the Respondent had misconstrued the Rule in failing to find that any alleged contact between the Claimant and Mr Kehoe's faceguard was deliberate. The Claimant points to the absence of evidence that it was deliberate and the contradictory evidence of the players and, in particular, Mr Kehoe.

29. There is no doubt that "intention" is a necessary element of the offence. But there is no basis, in our view, for suggesting that it must be intended to pull on a faceguard in a "dangerous" manner. Moreover, it must be recalled that there was clear evidence before the CHC that the action was deliberate, the Referee's Report. Nor is there any indication that the CHC

or CAC misinterpreted the Rule by failing to understand a requirement for "intention".

30. In the circumstances, we do not accept that Claimant's argument that there has been a misinterpretation of the relevant Rule.

FAILURE TO HAVE REGARD TO RELEVANT CONSIDERATIONS

31. It is contended by the Claimant that the CHC failed to have regard to the evidence of the players. In the Tribunal's view, there is no basis for such a claim. The CHC's decision clearly sets out that the players evidence was heard and assessed. It seems to the Tribunal that the Claimant's complaint in this regard is in substance a complaint either that the CHC's decision was irrational – because in light of the players' evidence, no reasonable decision-maker could have formed the view that the offence was made out – or that the CHC has failed to give adequate reasons for its decision. Those claims are considered below.

IRRATIONALITY/UNREASONABLENESS

32. The claim that the decisions of the CHC and CAC were irrational and/or unreasonable were at the heart of the Claimant's case. On the Claimant's case, even if, as the CHC found, the video evidence was not conclusive evidence that the referee had erred (as the Claimant claimed it was), the evidence of the players was "other compelling evidence" that the Referee's Report was not factually correct.

33. On the Respondent's case, the only evidence which purported to contradict that of the Referee's Report was that of Mr Kehoe and that as Mr Kehoe had admitted trying to deceive the linesman, it did not amount to compelling evidence that the Referee's Report was not factually correct. A separate issue arose, considered below under the heading of "Misapplication of Rules by CAC", as to whether the evidence of an opposition player could ever amount to compelling evidence for the purpose of Rule 7.3.(aa)(vi).

34. Insofar as the Claimant's claim was that the decisions of the Respondents were irrational, it must be borne in mind that there clearly *was* evidence before the decision makers that the Claimant had committed the relevant infraction, *i.e.* the Referee's Report. The Claimant's claim must, therefore, be understood as a claim that no rational decision maker could have concluded that the evidence adduced at the hearing was not compelling evidence that the Referee's Report was incorrect. This is exceptionally high threshold indeed and one which, in the Tribunal's view, the Claimant has not met.

35. The evidence relied on by the Claimant was the video evidence and that of the players. It is noted that his manager, Mr Derek McGrath gave excellent character testimony on behalf of Mr de Burca before the CHC and CAC which was not disputed, but it was not contended by the Claimant in this hearing that this could have been regarded as compelling evidence that the offence was not committed.

36. The video evidence was regarded by the CHC as "unclear". The Claimant made no real argument that the video evidence could be regarded as compelling evidence that the offence had not been committed, still less

that it would be irrational to conclude otherwise. Having reviewed that evidence, any such argument would have been unsustainable. Although "unclear", the video evidence certainly was, in our view, not capable of being considered compelling evidence that the Referee's Report was incorrect.

37. Nor, in our view, could the evidence of Mr de Burca be regarded as such "compelling evidence". Leaving aside any question as to whether the evidence of an accused player could ever be regarded as "compelling evidence" that a Referee's Report was factually incorrect – which might have the potential to undermine the presumption contained in Rule 7(3)(aa)(1)(vi) – Mr de Burca's evidence did not unambiguously contradict the allegation made. He described the play in which he was involved, the attempt to advance past the player and the placing of his hand upon him for this purpose, but was not clear as to where he placed his hands.

38. For this reason, the focus of attention in the course of the hearing and in submissions was on the evidence of Mr Kehoe. As described above, Mr Kehoe admitted that he had reacted to the clash with Mr de Burca by trying to get him sent off in the knowledge that deliberately pulling a faceguard was a sending off offence. He noted that his chin strap was pulled loose in the contact and that he had pointed this out to the linesman, claiming that his faceguard had been pulled.

39. Mr Kehoe stated that it was his belief that the linesman had then alerted the referee to the incident but that neither the referee or the linesman had seen the incident and had only reacted to his claims that his faceguard had been pulled. He stated his firm view that, contrary to what he

claimed to the linesman on the day, Mr de Burca had not "deliberately" pulled his faceguard.

40. The Claimant claims that this evidence was not merely compelling evidence that the Referee's Report was wrong but that no reasonable decision maker could have concluded otherwise. We cannot agree. It seems to us that Mr Kehoe's evidence, even if accepted as truthful, was in large part, evidence of his opinion or belief as to why the linesman and referee had acted as they had. It is difficult to see how such evidence, an opinion as to why a referee chose to impose a sanction, could ever be regarded as such "compelling" evidence that the Referee's Report was incorrect that a decision maker would be bound to accept it.

41. In this regard, two matters should be highlighted. Firstly, it would, it seems to us, be wholly improper for a referee to impose a sanction on the field of play in respect of something which neither he nor his linesmen (nor umpires) had seen or witnessed, simply on the say so of an allegedly fouled player.

42. Secondly, if the Claimant was correct and neither the referee or linesman had seen the offence and only imposed a penalty because they had been deceived by Mr Kehoe, then there was a mechanism for the Claimant to establish this fact. The Rules provide that a player can seek clarification of the Referee's Report. No such clarification was sought.

43. In the circumstances, we don't accept that the CHC (or CAC) were bound to conclude that Mr Kehoe's evidence was compelling evidence that the offence had not been committed, far from it. The Referee's Report contained evidence that Mr de Burca had committed the infraction

alleged. In our view, the evidence adduced on behalf of the Claimant was not such that the CHC were forced to conclude that the Referee was wrong.

44. It is not necessary, in our view, to have regard, as the Respondent urged us to do, that Mr Kehoe's evidence was that of an "admitted liar" since his evidence, even taken at its height, did not meet the high threshold required for relief to be granted on the basis of alleged irrationality.

FAILURE TO GIVE REASONS BY CHC

45. The Claimant claims that it was not apparent from the decision of the CHC what were the reasons for that decision and, in particular, what was the reason for not finding the evidence to be compelling. Although the reasons given by the CHC were not particularly discursive, we are not of the view that the decision is so lacking in reasons as to give rise to a claim for relief.

46. The decision of the CHC deals separately and in detail with both the video evidence and the oral evidence adduced. In terms of the video evidence, it is clearly set out that the video evidence is "reliable and unedited" but "unclear". The oral evidence is described as "very plausible".

47. The decision then states that "when the Committee considered the evidence as presented", it did not contradict the Referee's Report and that "that being the case…. the infraction is more likely to have occurred than not…"

48. We have already concluded that it is our view that there was evidence before the Committee such that it was not bound to conclude that there was compelling evidence that the Referee's Report was incorrect. It must be borne in mind that only if the Committee had so concluded could it lawfully have interfered with the factual matters in the Referee's Report. In the circumstances, we are of the view that it is sufficiently clear from the CHC's decision that its conclusion that the evidence did not contradict the Referee's Report should be understood as a conclusion that the evidence did not amount to compelling evidence that the Referee's Report was factually incorrect.

49. Insofar as the Claimant complains that it is not possible to understand from the reasons given *why* the evidence was not considered compelling, the Claimant is, in a sense, looking for reasons for the reasons. We are not satisfied that, in the context of a hearing before the CHC, it is necessary for the decision-maker to explain in detail every aspect of the decision which it has reached. In particular, it is not necessary to explain in detail how it has weighed the evidence so long as it is clear from the decision that that is what has occurred, *i.e.* that the evidence has been weighed and a decision made on foot of that assessment. It is noted that the jurisdiction of the CAC on an appeal is limited to overturning a finding of the CHC where the CAC is satisfied that there has been such an absence of fair procedures as that a "clear injustice" has been done. We do not consider that any paucity of reasoning in the CHC's decision could be said to have given rise to a clear injustice such as would have entitled the CAC to interfere on this ground.

50. In the circumstances, we do not consider that the Claimant's complaint on this ground is made out.

DECISION OF THE CAC

51. It follows, in our view, from the analysis above that, subject to considering the argument regarding an alleged misinterpretation of the law by the CAC, there are no grounds to interfere with the CAC's decision on the basis that it erred in failing to find that the decision of the CHC was "manifestly incorrect". Nor, as we have already made clear, should the decision be set aside on the basis that the CAC erred in failing to find that due to an absence of fair procedures, a clear injustice had been done.

52. The focus of the Claimant's complaint in relation to the decision of the CAC was in the manner in which it was contended that the evidence of the Claimant and Mr Kehoe was treated. The Claimant's claimed that the CAC erred in law in regarding the evidence as inadmissible. Support for this plea was found in Reason 3 of the Reasons for the Decision (of the CAC). That reason stated that it the CAC was satisfied that the decision of fact by the CHC was that the oral evidence presented by the Claimant did not constitute compelling evidence for the purposes of Rule 7.3(aa)(1)(vi). Reference was then made to paragraph 24 of DRA Decision 08/2016.

53. The decision referred was an interim ruling by the DRA Secretary in the case of *Declan O'Mahony v CHC and CAC*. In that case, the Secretary had considered video evidence and heard the evidence of the accused player. He stated in his decision that having heard that evidence including the player's own explanation of the events, he held "nevertheless" that the decision of the CHC was not irrational.

54. The decision went on to note that the applicant had sought to rely on written and video evidence from an opposition player "suggesting that the referee erred in his account of the incident". The Secretary found as follows (at paragraph 24):

> *"An opposing player's account or interpretation of a referee's decision to send off another player may be of some weight in the mitigation of a sanction but it has no evidential weight as regards the imposition of sanction, which in this instance was the minimum for the alleged infraction."*

55. This paragraph was interpreted by the Claimant as suggesting a *rule* that the evidence of an opposing player could not be regarded as "compelling evidence" that a Referee's Report was incorrect. In this regard, it was noted by both parties that the GAA Disciplinary Handbook – which does not form part of the Rules – contains, at page 13, guidance on what might constitute "other compelling evidence" within the meaning of Rule 7.3(aa)(1)(vi). Having set out that it would not be helpful to define exhaustively what amounted to "compelling evidence" and noted that the question of what is compelling is a question of fact to be decided by the CHC, it states the following:

> *"[I]t is suggested that the following are some examples of what – taken on their own – would not be "compelling":*
>
> - *the opinions of spectators at the game;*
> - *the opinions of County Committee officials present at the game;*
> - *an admission by another player that it was he who committed the infraction (as that would tend to invite false admissions from weaker team members to exonerate the "star" player.*

Note, however, that the above matters may, combined with other evidence, demonstrate that the Referee's Report contains an error."

56. The Claimant contends that there is no 'rule' such that the evidence of the players in this case should have been disregarded and that insofar as it was stated otherwise in Decision 08/2016, that decision was incorrect. The Claimant states that guidance in the Disciplinary Guidelines is no more than that and cannot have the effect of creating an absolute exclusionary rule on evidence where none such exists. It is claimed that the clear import of the reference in the CAC's decision to Paragraph 24 of Decision 08/2016 is that the CAC had excluded the evidence of Mr de Burca and Mr Kehoe in arriving at its conclusions.

57. The Respondents referred to both Decision 08/2016 and the Disciplinary Guidelines in their written submissions. When pressed, the Respondent expressed the view that the correct position was that evidence of an opposing player would require corroboration before it could be accepted as compelling evidence for the purpose of Rule 7(3)(aa)(1)(vi).

58. In the view of this Tribunal, there is nothing in the Rules which would warrant imposing an *absolute* rule that the evidence of an opposing player would was not capable of amounting to compelling evidence that a referee's report contained matters which were not factually correct. Insofar as the *dicta* in Decision 08/2016 suggest otherwise, then we would respectfully disagree.

59. It is noted that the Guidelines take a slightly more nuanced view and accept that such evidence may be admissible, but will require more. Even this more nuanced view is, in our view, unhelpful and its justification -

the likelihood that a player will be motivated to give dishonest evidence if permitted so to do - belongs to a bygone age when rules of evidence were formulated according to an archaic set of values. The evidence should not be excluded on the basis that a player is likely to be dishonest in such circumstances. That said, insofar as the Claimant suggests in their submissions that an opposing player's evidence should have *more* weight because, in effect, that player has nothing to gain by lying, that must be rejected. The weight to be afforded to the evidence is a matter for the CHC and absent a rule to the contrary, which exists in the case of the Referee's Report, it should not be fettered in weighing that evidence by any arbitrary rules as to which evidence is capable of being considered compelling.

60. There is no reason in principle why the evidence of an opposing player could not be compelling evidence for the purpose of the Rule. We accept that, in practice, there may be very few cases where such evidence could, suffice to contradict an otherwise uncontroverted Referee's Report. If a case turns on differing interpretations of what occurred between a referee and a player – even the player alleged to be the 'victim' of an infraction – we expect that it will rarely if ever be the case that that player's evidence could warrant a conclusion that there was compelling evidence that the referee had erred.

61. In the circumstances, if, as alleged by the Claimant, the CAC completely excluded the evidence of Mr de Burca and Mr Kehoe on the basis of such a purported rule, it would have erred in so doing.

62. It is not clear to us that the CAC did, in fact, exclude the evidence on this basis. Firstly, it is clear that the CAC did hear the evidence of both Mr de

Burca and Mr Kehoe. If the evidence was to be excluded *in limine*, then little purpose would have been served in hearing that evidence. The fact that the evidence was admitted suggests that some weight was attached to it. Secondly, there is nothing in Paragraph 24 of Decision 08/2016 (or indeed in the Disciplinary Handbook) which would suggest that the evidence of Mr de Burca should not be considered. There is no basis, therefore, for the suggestion that Mr de Burca's evidence was excluded. Thirdly, the case made by the Claimant before the CAC was that *there was* corroborative evidence for Mr Kehoe's evidence; that of Mr de Burca and also the video evidence which the Claimant contended could only be interpreted as supporting the Claimant's case. And fourthly, in light of the case being made by the Claimant before the CAC, it seems to us that it may be placing too much weight on a reference to a passage from an interim ruling to conclude that Mr Kehoe's evidence was completely excluded in circumstances where there is no other indication that his evidence was given no weight at all.

63. Be that as it may, insofar as the Claimant posits an interpretation of the CAC's decision such that it completely excluded Mr Kehoe's evidence, which interpretation would suggest an error by the CAC, it is helpful to consider what were the consequences of such an error.

64. As set out above, the CAC only had jurisdiction to interfere with the CHC's decision where satisfied that it was "manifestly incorrect". We have already concluded that, having regard to *all* the evidence, there was no basis for complaining that the decision of the CHC was irrational. Although the threshold of "irrationality and/or unreasonableness" and "manifestly incorrect" are not in all cases co-terminous, it is difficult to see how any appellate body could lawfully conclude that the CHC's

decision was manifestly incorrect in circumstances where it was, in our view, clearly not irrational. In those circumstances, it seems to us that it would not have been open to the CAC to determine that the decision of the CHC was manifestly incorrect.

65. In the circumstances, we are of the view, that even if the CAC erred in considering that the evidence of Mr Kehoe could not by itself be compelling evidence that the Referee's Report was incorrect, that error could not have had the effect of rendering the Claimant's appeal unsuccessful where it might otherwise have succeeded.

66. For this reason, the Claimant's claim on this ground also fails.

67. One final point to note is that the Claimant sought to assert in argument that the CHC had also excluded the evidence of the Claimant and Mr Kehoe. In our view, there is nothing at all in the decision of the CHC which is capable of grounding such a claim.

DECISION

68. For the foregoing reasons, the Claimant's claim is dismissed and the reliefs sought refused.

69. The Tribunal reserves its position in relation to costs pending written submissions from the parties within 3 weeks of the date hereof.

Date of Oral Hearing: 10 August 2017

Date of Agreed Award: 6 October 2017

By email agreement on agreed date above.

Rory Mulcahy SC

Niall Cunningham

Orlaith Mannion