Disputes Resolution Authority
An Córas Eadrána

DRA 04 of 2017: In the matter of an arbitration under the Disputes Resolution Code and the Arbitration Act 2010

Between:

PADRAIG NUGENT

Claimant

v.

COISTE BAINISTI AONTROMA
(Antrim Management Committee)

First Named Respondent

COISTE EISTEACHTA AONTROMA
(Antrim HC)

Second Named Respondent

COISTE EISTEACHTA ULADH
(Ulster HC)

Third Named Respondent

Hearing: Carrickdale Hotel, Carrickcarnon, Ravensdale, Dundalk at 7.30pm on 25 April 2018

Tribunal: Aaron Shearer BL, Ferga McGloughlin BL and Jarlath Burns

Secretary to the DRA, Rory Hanniffy BL

VERDICT: The claim is dismissed.

KEYWORDS: *Misconduct considered to have discredited the Association - Official Guide, Rules 7(2)(e)*

Disparate sanctions - Disparity between sanctions imposed on two parties arising from incident – whether same amounted to gross disparity.

Mitigating factors – whether afforded sufficient weight in imposing sanction.

Whether decision to propose sanction is reviewable before the DRA – Official Guide, Rules 7.11(e)(4), 7.13(a)

LIST OF ATTENDEES:

Padraig Nugent

Padraig Nugent
Joe Brolly
Kevin Gough (St John's Treasurer)
Gerry McCann (St John's Chairman)

Coiste Bainisti Aontroma

Joe Edwards
Paul O'Brien
Frankie Quinn
Terry Reilly
Frank Fitzsimons Jnr
Gerry O'Hare – Solicitor – G O'Hare & Co Solicitors

Coiste Eisteachta Aontroma

Pat O'Hagan
Danny Simpson

Coiste Eisteachta Uladh

Declan Woods
Seán McKenna
Claire Curran

FACTUAL BACKGROUND

1. The matters in dispute arise out of an incident in the St John's GAA Club, Belfast in the early morning of 16th day of October 2017. It is common case that the incident which gave rise to disciplinary proceedings took place circa 4.30am/5.00am in a function room in the clubhouse.

2. Also agreed by the parties is that a sectarian song was being sung by some, if not all, of the few persons remaining in the bar at that hour. The specific song includes the refrain that "*Billy Wright, your wife's a widow, Billy Wright, your wife's a widow*". Billy Wright was a well-known loyalist gunman.

3. The Claimant in this application was one of the persons in the bar at the relevant time. He acknowledges that he sang the aforementioned sectarian song and also admits that on a number of occasions he substituted the name "Billy Wright" with the name "Eddie Fitz" as he was singing the song in question. Eddie Fitz is Eddie Fitzsimons, a well-known Antrim GAA Official who, very sadly, died by suicide some three years previous.

4. Some video footage of the early morning sing-song was taken, and the footage was distributed to a wide local audience. A complaint was made by the Fitzsimons family and a disciplinary investigation of the incident was commenced by the Antrim County Board.

5. An earlier investigation of the incident was also carried out by the St John's club. Two persons involved in the early-morning sing-song were identified by the club investigation. The Claimant was one of those two persons. In fact, it is accepted by the parties that the Claimant made himself known to the club as having been one of those involved and admitted both singing the sectarian refrain and substituting the name "Eddie Fitz" for the name "Billy Wright".

6. The second person identified by the club investigation and the other person disciplined by the first Respondent did not attend at the hearing (nor was he

asked to). In the circumstances the Tribunal has taken the view that it is not for us to identify him in the context of this decision and where reference to him is made the Tribunal has referred to him (rather unoriginally) as Mr X.

7. The three Respondents to the application are the Antrim Management Committee, the Antrim Hearings Committee and the Ulster Hearings Committee. Their respective functions were to

    a. Investigate the matter and propose, if appropriate, a penalty
    b. If so requested, to conduct a hearing and impose, if appropriate, a sanction
    c. If so requested, to conduct an appeal pursuant to Rule 7.11 of the Official Guide

8. The Antrim Management Committee duly conducted an investigation and it is noted that no issue is made by the Claimant about either the conduct of that investigation or the initiation of disciplinary action against the Claimant.

9. The specific complaint made by the Claimant against the first Respondent is that it proposed grossly disparate penalties (the Claimant's phraseology) to the Claimant and Mr X, for what the Claimant argues, were the same offence. In the case of Mr X, the proposed penalty was a 12-week suspension pursuant to Rule 7(2)(e) of the Official Guide. That penalty was accepted by Mr X. In the case of the Claimant, the proposed penalty was a 36-week suspension pursuant to Rule 7(2)(e) of the Official Guide. The Claimant refused to accept the proposed sanction. He contends that he would have accepted a sanction of twelve weeks had same been proposed. The essence of the challenge to the decision of the Antrim Management Committee is that the sanction proposed by it involved such a gross disparity as to be unfair and/or irrational and/or unreasonable.

10. Having declined to accept the proposed penalty of 36 weeks, the Claimant requested a hearing with the Antrim Hearings Committee. A hearing took place on the 20th day of February 2018 and by decision dated 21st February 2018 the Antrim Hearings Committee imposed a penalty of a 48-week suspension on the Claimant, as per Rule 7(2)(e) of the Official Guide. The Claimant contends that the Hearings Committee failed to give any or any adequate weight to the various mitigating factors in the case. Had it done so, the Claimant contends, it could not have imposed a 48-week suspension.

11. The Ulster Hearings Committee heard an appeal of the case on the 22nd March 2018 and by a decision of the same date denied the appeal and the 48-week suspension was ratified. The Claimant contends that the Ulster Hearings Committee decision is flawed on the basis that it failed to strike down either of the earlier decisions and failed to acknowledge the unfairness and/or unreasonableness and/or irrationality of those earlier decisions.

DISCUSSION

12. In the general context of a challenge to the "decision" of a CCC (in this instance the Antrim Management Committee), two distinct issues arise. First is whether the penalty proposed by a CCC is a decision capable of being reviewed or challenged before the DRA. In particular, the provisions of Section 7.11(e)(4) of the Official Guide provide that no appeal lies "*…against a decision of any Competition Control Committee in the course of the commencement, investigation and preparation of disciplinary action*".

13. Secondly, if a penalty proposed by a CCC is a decision capable of being reviewed, the question then arises as to whether or not the "decision" is one which ought to be impugned.

14. The Claimant contended that the decision of the Antrim Management Committee was reviewable on the basis that definite repercussions flowed from the disparity in the sanctions proposed by it. The Claimant further maintained that the disparity of proposed sanctions was unreasonable and/or irrational given that both the Claimant and Mr X were guilty of much the same offence.

15. The parties were asked to make further submissions in respect of the "reviewability" question and they are thanked by the Tribunal members for having taken the time to do so.

16. The Tribunal finds that as a general premise, penalties proposed by a CCC are not reviewable by the DRA - for largely the same reasons that they are not appealable. The situation contended by the Claimant to pertain in this case is, however, atypical. The Claimant says he would have accepted a 12-week suspension but got no opportunity to do so. Where such marked consequences flow from the proposal of two markedly different sanctions, the Tribunal takes the view that such a decision is capable of review.

17. However, whilst the Tribunal acknowledges the force of the general contention made by the Claimant, in the particular circumstances of this case, the Tribunal finds that the argument is moot. The Antrim Management Committee, in its evidence to the Tribunal, was quite clear that it was proposing a stiffer sanction for the Claimant because it felt, after a full investigation, that the Claimant was guilty of two "offences" whilst Mr X was only guilty of one.

18. The Management Committee's evidence to the Tribunal is that it took a much graver view of the Claimant's conduct than it did of Mr X's and specifically found that the Claimant, of the two accused, was the only one who sang the name of the deceased GAA referee/member. Mr X at all times denied having sung the name "Eddie Fitz" and the Committee's evidence was that it accepted that this was the case. The Claimant argues that it is clear that

everyone in the video of the incident was singing the same song – and singing the name of "Eddie Fitz" – but a finding of fact made by the Antrim Management Committee, after careful investigation, to the effect that Mr X had not sung the name "Eddie Fitz", is not one this Tribunal can upset.

19. The Tribunal finds that the contention that grossly disparate sanctions were proposed by the Management Committee for what was in essence the same offence, is not a contention which is supported by the evidence before the Tribunal.

20. In terms of the Claimant's challenge to the decision made by the Antrim Hearings Committee, the case made in respect of this decision is that given the mitigating factors in the case, the decision to increase the sanction was perverse and/or irrational.

21. It is contended that a proper consideration of the mitigating factors – admission of the offence (most particularly because there was no other evidence against the Claimant), that the Claimant offered himself up to the initial club investigation, that the Claimant apologised to the Fitzsimons family – could only have prompted a reduction, rather than an increase, to the proposed penalty.

22. However, in evidence to the Tribunal, the Hearings Committee was quite clear that it had considered carefully the mitigating factors made out to it and was clear that the impressive plea of mitigation made by Mr Brolly to the Tribunal was not reflective of the plea of mitigation made to the Committee at the hearing. The Hearings Committee gave additional evidence that some of its number favoured a longer suspension than the one eventually imposed. The Hearings Committee insisted that it was satisfied that the conduct of the Claimant was such as to justify the sanction proposed.

23. The Tribunal finds that the due consideration was given to the mitigation pleaded by the Claimant at the hearing and can find no basis for the

contention that the imposition of a 48 week ban was irrational or flew in the face of reason.

24. The challenge to the findings of the Ulster Hearings Committee had a single premise - that since the earlier decisions in the disciplinary process had been flawed, and since the Ulster Hearings Committee had not so found, that its decision in turn must be impugned. In circumstances where the Tribunal does not find a basis to set aside either the decision of the Antrim Management Committee or the Antrim Hearings Committee, it finds no basis to impugn the decision of the Ulster Hearings Committee.

CONCLUSION AND DETERMINATION

25. The Tribunal finds no basis to impugn the decisions of any of the Antrim Management Committee or the Antrim Hearings Committee or the Ulster Hearings Committee.

26. The Claim is dismissed.

This is the unanimous decision of the Tribunal

COSTS AND EXPENSES

27. Section 11.2 of the Code sets out that save in exceptional circumstances, which must be set out in writing, the Party deemed by the Tribunal to have been successful in the disputes resolution proceedings shall, on application, be entitled to its reasonable costs.

28. In submissions dated 1st May 2018, Mr O'Hare argues that there are no exceptional circumstances such as to warrant a departure from the established

principle of "costs follow the event". Indeed, he submits that there was no merit whatsoever in Claimants case.

29. The Claimant did not address the issue of costs in their additional submissions.

30. The Tribunal finds that the Claimant has failed to establish the existence of any "exceptional circumstances" and therefore directs [that the Claimant discharge the Respondents costs.

31. If the parties are unable to agree the level of costs, pursuant to Section 11.2 of the Code, either party may request the Tribunal to measure same.

32. The Tribunal directs that the DRA's expenses be discharged from the Claimant's deposit and further directs that any surplus be reimbursed to the Claimant by the Secretary.

Date of Oral Hearing: 25 April 2018

Date of Agreed Award: 20th day of June 2018

By email agreement on agreed date above.

Aaron Shearer BL

Ferga McGloughlin BL

Jarlath Burns