

Disputes Resolution Authority

An C6ras Eadr6ana

DRA 11 of 2018: In the matter of an arbitration under the Disputes Resolution Code and the Arbitration Act 2010

Between:

CATHAL DÚNBARRA

Claimant

v.

COISTE EISTEACHTA LAIGHEAN (Leinster HC)

First Named Respondent

and

COISTE EISTEACHTA LOCH GORMAN (WEXFORD HC)

Second Named Respondent

and

AN LAR CHOISTE CHEANNAIS NA GCOMORTAISÍ SMACHTA (CAC)

Third Named Respondent

Hearing: Louis Fitzgerald Hotel, Naas Road, Newlands Cross, Dublin at 7.30pm on
20 October 2018

Tribunal: Mr. Aaron Shearer BL, Mr Michael Murray BL and Mr Paraic Duffy

Secretary to the DRA, Rory Hanniffy BL

VERDICT: Claimant succeeds in quashing the decision of Coiste Eisteachta Loch Gorman dated 13th October 2018 and the decision of Coiste Eisteachta Laighean dated 19th October 2018.

Following a full hearing, the Tribunal determines that an Infraction is proven, and it imposes a one match suspension on the Claimant.

KEYWORDS: *7.2(b) Cat III (iv) TO – deliberate pulling on or taking hold of a faceguard - whether Wexford HC and Leinster HC misinterpreted rule – whether infraction disclosed in referee’s report – whether to seek clarification of referee’s report*

Necessity to provide reasons for decisions.

Section 11.4 DRA Code – Tribunal to conduct full hearing

LIST OF ATTENDEES:

Claimant – Cathal Dúnbar:

Cathal Dunbar
Frank Crean BL
John O’Leary
Padraig Cronin
Pat Doyle

Leinster HC:

Dick Butler
John Byrne

Wexford HC

Liam Curtis
Joan Furlong

Wexford CCC

Kevin Doyle
Derek Kent

FACTUAL BACKGROUND

1. The within application arises from an incident which happened during the semi-final of the Wexford Senior Hurling Championship on the 7th day of October 2018. The match was between the Claimant's club Naomh Eanna and Oylegate/Glenbrien and took place Innovate Wexford Park.
2. In the second half of the match the Claimant was issued with a red card and was sent from the field of play by the Referee. The Referee prepared his report after the match and the report detailed that one player, the Claimant, had received a red card during the match and that the red card had been issued for the following reason:

"To Pull on Opponent's Faceguard"

3. A Notice of Disciplinary Action dated 12th October 2018 was issued by the Third Named Respondent which proposed a *"1 game suspension in the same Code and at the same level"*. The Claimant chose to contest the proposed sanction and he requested a hearing before the Second Named Respondent.
4. A hearing before the Second Named Respondent was fixed with admirable expedition for the 12th October 2018. Following the hearing, the Second Named Respondent imposed the sanction which had been proposed by the First Named Respondent. Notification of that decision was sent to the Claimant on the day following the hearing.
5. The Claimant exercised his right of appeal to the First Named Respondent by appeal letter dated 15th October 2018. There was once again admirable expedition in the convening of the appeal which took place on the 18th October 2018.
6. The decision of the First Named Respondent was to the effect that it *"failed to find a clear infringement or misapplication of the rules"*. A letter notifying the Claimant of that decision was sent on the 19th October 2018. The said letter

noted that the Appellant had failed to seek clarification from the Referee as he was entitled to – as per the provisions of Rule 7.3 (s).

7. The Claimant's request for arbitration was made on the 19th October 2018 and a hearing was convened on the 20th October.

DISCUSSION

8. A number of grounds of review were proposed by the Claimant.
9. It was common case between the parties that the infraction referred to in the Referee's Report was a Category III infraction set forth at Rule 7(2)(b) of the Official Guide. That rule states that a one match suspension shall be imposed where a player has behaved "*in any way which is dangerous to an opponent, including deliberately pulling on or taking hold of a faceguard or any part of an opponent's helmet (in hurling)*". The Claimant referenced the use of the word deliberately in the rule and cited the decision of the DRA in Tadhg de Burca v CAC and CHC (DRA14/2017) in support of his contention that proof of intent was necessary before the sanction prescribed in the said rule could be imposed. It was argued by the Claimant that in the absence of the word "deliberate" in the Referee's report and by reason of a failure to adduce any other evidence of intent at the hearing before the Second Named Respondent, that the charge could not be, and was not proven.
10. It was further argued that the written decision of the Second Named Defendant failed to provide any or any adequate reasons for its decision and that the determination was so terse as to make it impossible to determine what the reason for the decision was. The absence of reasoning was such as to suggest that there had been no reasonable engagement with the evidence by the Second Named Respondent.
11. The final ground of review advanced was that the First Named Respondent, in drawing negative inferences from the Claimant's failure to seek a

clarification from the Referee (as he was entitled to do), considered matters which were irrelevant to a proper determination of the matter.

12. The Respondents adopted a largely unified approach and their position can be summarised as follows:

13. That the Referee's report established two things. One that the Claimant was sent off. Two that he was sent off for pulling on an opponent's faceguard. The First Respondent, in particular, said it had regard to Part 2 of the Official Guide and Part 5 thereof – Aggressive Fouls. It states therein that

“A Card shall be issued only where the Infraction is deemed by the Referee to have been deliberate and not accidental”.

14. The position advanced is that when one takes the two matters of fact established by the Referee's report, and when one allies them with the provisions of Part 2 / Part 5 of the Official Guide that the necessary element of intent is established.

15. Both the Respondents and the Claimant made reference to the DRA decision in the Tadhg de Burca case. In that case Mr de Burca was also contesting the imposition of a suspension for the above-mentioned Category III Infraction. The following sentence (at Paragraph 29 of the Tribunal's decision) was opened to the Tribunal.

“There is no doubt that “intention” is a necessary element of the offence.”

16. In the context of submissions, the minutes of the disciplinary meeting before the Second Named Respondent were opened to the Tribunal. Those minutes make clear a number of things. One, that the Claimant submitted at the hearing that proof that the Claimant had acted deliberately or intentionally was a necessary element in proving the Infraction had taken place. Two, that the Claimant submitted that there was in fact no proof of that intent and that the only evidence as to intent came from the Claimant himself who

specifically said that he had not intended to grab the faceguard. Thirdly, the minutes reflect a comment from one of the Hearings Committee to the effect that the language of the rule book was for guidance only and that there was no specific requirement to prove intent.

17. When asked by the Tribunal if the Hearings Committee was aware of the decision in de Burca or otherwise knew that intent was a necessary element of the relevant infraction, the representatives of the Second Named Respondent very fairly acknowledged that they had not been aware that this was the position.

CONCLUSION AND DETERMINATION

18. The Tribunal finds that the minutes of the Hearing and Appeal meetings, when taken together with the written decisions provided by both bodies, make clear the basis of the decisions made by both the First and Second Named Respondent. It does not find that the Claimant was unduly prejudiced by what was described as the “terse” nature of the written decisions. The Tribunal notes the acknowledgement by Counsel for the Claimant that jurisprudence in respect of an obligation to provide reasons in matters of public law has only marginal weight or relevance in the realm of private contract law.
19. The Tribunal finds that the Second Named Respondent misdirected itself when determining that proof of intent was not a necessary element of the relevant Category III Infraction. As a consequence, The Tribunal finds that a proper consideration of the relevant matters was not given at the hearings committee stage.
20. The Tribunal therefore awards in final and binding determination of this dispute, and in accordance with its power under Section 11 of the Disputes Resolution Authority Code, that the decision of the Wexford HC dated 13th

October 2018 and (as a necessary consequence) the decision (on appeal) of the Leinster HC dated 19th October 2018 be quashed.

21. Pursuant to Clause 11.4 of the Disputes Resolution Code, all parties agreed that the Tribunal could proceed to conduct a full hearing. The Tribunal did so and it then proceeded to hear evidence from the Claimant. It also heard submissions from both the Claimant and the Third Named Respondent. In relation to the question of intent, application was made by the Third Named Respondent to seek a clarification from the Referee in respect of his match report. The Tribunal deemed this a prudent course. It was not possible to obtain a clarification from the Referee in advance of the Claimant's next match in the competition and in such a circumstance the Tribunal directed that the Claimant should stand not suspended pending receipt of clarification from the Referee and pending the issuing of this written decision. The Referee's report subsequently confirmed that the Claimant had deliberately taken hold of his opponent's face guard. That clarification having been obtained, the Tribunal determines that an Infraction is proven and it imposes a one match suspension on the Claimant. The suspension shall be in respect of the same Code and at the same level and applicable to the next game in the same competition. As per Rule 6.25(a) *"The County, Provincial and All-Ireland Stages of the respective Club Senior, Intermediate and Junior Football and Hurling Championship constitute the one Competition"*.

This is the unanimous decision of the Tribunal

RECOMMENDATION

22. The Tribunal is conscious of the already numerous demands on referees and makes no criticism of the referee in this instance for failing to include the

word “deliberate” in his match report. However, in circumstances like these where a potential ambiguity or lack of clarity arises in a match report, it may be prudent for the relevant CCC or Hearings Committee to utilise the power given to the Committees to seek a clarification from a referee thereby clearing up any ambiguity or lack of clarity which may arise.

COSTS AND EXPENSES

23. The Tribunal directs that the expenses of the DRA be discharged equally by the first and second named Respondents. The Tribunal further directs that the Claimant’s deposit be reimbursed by the Secretary.

Date of Oral Hearing: 20 October 2018

Date of Agreed Award: 1 November 2018

By email agreement on agreed date above.

Mr. Aaron Shearer BL

Mr. Michael Murray BL

Mr Páraic Duffy