Disputes Resolution Authority
An Córas Eadrána

DRA 15, 16 and 17 of 2019: In the matter of an arbitration under the Disputes Resolution Code and the Arbitration Act 2010

Between:

TURLOUGH O'BRIEN – BRENDAN MURPHY – STEVEN POACHER

Claimants

v.

CENTRAL APPEALS COMMITTEE – (CAC)

First Named Respondent

And

CENTRAL HEARINGS COMMITTEE – (CHC)

Second Named Respondent

And

CENTRAL COMPETITIONS CONTROL COMMITTEE – (CCCC)

Notice Party

Hearing: Louis Fitzgerald Hotel, Naas Road, Newlands Cross, Dublin at 7.30pm on 14 May 2019

Tribunal: Michael Murray BL, John Shortt SC and Paraic Duffy

Secretary to the DRA, Rory Hanniffy BL

VERDICT: Claimants succeed. Matter remitted to CAC for hearing.

KEYWORDS: *Notice of Appeal – whether Grounds of Appeal adequately set out – 7.11(g)(1) and 7.11(h)(2) T.O. 2018.*

Whether decision to rule Appeal out of order taken in accordance with rule – whether decision taken by a quorate committee – 7.3(u) T.O 2018 – whether teleconference availed of - 4.7 T.O. 2018.

Whether secretary of CAC a member of the committee – 3.49(a) T.O. 2018.

LIST OF ATTENDEES:

Claimants:

Fergal Logan
Turlough O'Brien
Brendan Murphy
Steven Poacher

CAC:

Brian Rennick

CHC:

Matt Shaw

FACTUAL BACKGROUND

1. The First Named Claimant is the manager of the Carlow Senior Football team since 2015. The Second Named Claimant is a distinguished member of the Carlow Senior Football team since 2010 and has represented Ireland in the International Rules Series against Australia in both 2010 and 2011. The Third Named Claimant is a coach and member of the Carlow Senior Football management team since 2017.

2. The within application arises following a series of incidents following the conclusion of a game in the Allianz Football League Division 3 between Carlow and Down played on the 16th of March 2019 at Netwatch Cullen Park, Carlow.

3. A Notice of Disciplinary Action was forwarded to each of the Claimants by the Notice Party on the 20th of March 2019 containing particulars of infractions reported to have been committed by each of the Claimants, including, *inter alia*, infractions under Riail 7.2(c) of T.O. 2018 (Threatening Conduct Towards a Referee by Team Officials) by the First and Third Named Claimants and an infraction under Riail 7.2(b) of T.O. 2018 (Threatening Conduct Towards a Referee by a Player) by the Second Named Claimant. Said Notices proposed a suspension of 16 weeks for the First Named Claimant, a suspension of 12 weeks for the Second Named Claimant and a suspension of 12 weeks for the Third Named Claimant in respect of the said infractions.

4. Following the submission of a request for a personal hearing in respect of each notice, the Second Named Respondent conducted a hearing in respect of each Claimant on the 8th of April 2019. The Claimants were notified by way of letter dated the 10th of April 2019 that the said infractions were deemed to be proven and other alleged infractions were deemed to be not proven. A 20 week suspension was imposed upon the First Named Claimant by the Second Named Respondent having regard to the deemed gravity of the infraction. A 12 week suspension was imposed upon the Second Named Claimant and a 12 week suspension was also imposed upon the Third Named Claimant.

5. The Claimants each requested appeals to the First Named Respondent by way of the prescribed written notice form within what was accepted to be the prescribed time frame by email on the 12th of April 2019 (though it is noted that the prescribed form for such an appeal does not require it to be dated.) Each Claimant cited 'misapplication' of Riail 7.2 (c) of the T.O. 2018 as one of three Grounds of Appeal contained in the written requests for appeal that were submitted together with alleged 'misapplication of rule' of Riail 7.10 T.O. 2018 and 'Breach of Rule' of Riail 7.3 T.O. 2018. No further elaboration or particularisation of the Grounds of Appeal were contained in the Notices of Appeal submitted by the Claimants to the First Named Respondent, notwithstanding the provisions of Riail 7.11(g)(1) of T.O. 2018 which provides that "...[a notice of appeal shall] set out the grounds of appeal including (i) the specific Rule(s) claimed to have been infringed or misapplied, and (ii) the facts alleged in support of the grounds."

6. By Email sent to the Secretary of Carlow County Board on or before the 16th of April 2019, the Secretary of the First Named Respondent informed the Claimants that *"...the Central Appeals Committee have ruled all three Appeals out of order on the following grounds:*

1. Rule 7.11(g)(1)(ii) provides that the Appeal ***shall****; (1) set out the grounds of appeal including (i) the specific Rule(s) claimed to have been infringed or misapplied, and (ii) the facts alleged in support of the grounds;*

The Appeals as lodge do not set out any facts in support of the Appeals as required.

In considering the matter the CAC have also considered Rule 7.11(h)(2) which provides that the CAC have no jurisdiction to allow amendments to the Appeal as lodged other than to allow compliance with Rule 1.7 ***"Other than securing compliance with Rule 1.7, no other alterations shall be made to the Appeal."*** (the email writer's emphasis.)

7. A request for arbitration to the Tribunal was completed by each of the Claimants on the 21st of April 2019 and a hearing was convened for the evening of the 14th of May 2019.

8. Amongst other grounds of appeal cited in their respective submissions to the Tribunal, all three Claimants sought to rely upon the precedent of a previous appeal by the First Named Claimant in April 2015 in which a similar, but not identical, form of appeal was deemed to be in order where the rules and facts underpinning them were set out in a similar fashion. The Claimants also filed a supplemental written submission with the Tribunal addressing this issue and the other grounds of their application to the Tribunal which, for completeness, is recited as follows:-

"...We simply followed [the 2015 Turlough O'Brien appeal] as a template for making our appeals. This is a completely unfair and inconsistent ruling.

The CAC did not follow fair procedures by not giving sufficient weight to the video evidence provided in response to the serious allegations made by the referee in his report or sufficient weight to the letter from the Chief Steward.

In view of the serious conflicting evidence, the CHC should have sought clarification from the referee. A substantial portion of the evidence provided by the referee was not supported by the video evidence provided and the CHC failed in their duty to be fair to the appellants. In particular, the claim by the referee that the Carlow Bainisteoir had kicked in the door of the referee's dressing room was completely refuted by video and witness evidence, yet the claim was allowed stand. The reputation of the Bainisteoir was gravely damaged by failing to acknowledge this claim was false. The members of the [Notice Party] had not seen this video and are under the impression that the incident happened as recorded in the referees report.

The CHC is not following fair procedures in 'attempting to set an example' in this case as described in page 17 of the Disciplinary Handbook. A similar case held the previous week resulted in a reduced suspension for a prominent inter county manager. The charge should have been reduced as in the previous case, for [the Second and Third Named

Claimants] and the penalty for the [First Named Claimant] should not have been increased given the extreme discrepancies and incorrect allegations by the referee which were disproved by video evidence..."

9. The Respondents also filed written submissions with the Tribunal in advance of the hearing setting out their grounds of opposition to the application. The Second Named Respondent denied that the precedent of the First Named Claimant's previous appeal to the First Named Respondent in April 2015 was applicable in the circumstances and was sufficiently distinguished in form and otherwise not binding upon the Second Named Respondent. The written submissions filed by the First Named Respondent submitted that the written Grounds of Appeal submitted by the Claimants in this particular instance with it were completely lacking in requisite detail and similarly submitted that it was not bound by a previous decision of the First Named Respondent that deemed the 2015 appeal to be in order. The First Named Respondent submitted that the only matter upon which the Claimants had exhausted all other available remedies to them, and was accordingly properly before the Tribunal, was the adjudication of the Claimant's appeals to be out of order by the First Named Respondent.

10. The Claimants sought, amongst other reliefs, reductions in the penalties applied and declarations to the effect of ruling the 'charges' out of order.

DISCUSSION

11. The issue of the adequacy or otherwise of the Grounds of Appeal contained in the Notices of Appeal filed by the respective Claimants was the subject of lengthy oral submissions by the Claimants and by the Respondents. During the course of these submissions, it emerged that the decision of the First Named Respondent to deem the Claimants' Appeals out of order, communicated to them by email on the 16th of April 2019 as hereinbefore set out, and purportedly made by the First Named Respondent, had in fact been made by the Chair of

the First Named Respondent together with the Secretary of the First Named Respondent sitting alone and not by a quorate sitting of the First Named Respondent. This decision was defended on the grounds of it being a legitimate administrative decision that did not necessitate a quorate sitting of the First Named Respondent. The First Named Respondent confirmed that it had not availed of the facility to convene a quorate meeting (of not less than three members) in person or by way of teleconference (pursuant to Riail 4.7 T.O. 2018 or otherwise.) In this context it was also noted that the secretary of the First Named Respondent was not and is not a member of the First Named Respondent under Riail 3.49(a) T.O. 2018. Furthermore, no evidence of any designated or assigned authority from the First Named Respondent to the Chairperson sitting alone and/or with the Secretary of the First Named Respondent to adjudicate on the administrative adequacy or substantive merits of an appeal was adduced before the Tribunal.

CONCLUSION AND DETERMINATION

12. The Tribunal did not concern itself with the merits of the decisions taken by the Notice Party or the Respondents or with the adequacy or otherwise of the particularisation of the Claimants' Grounds of Appeal. The Tribunal adopts in full and reiterates the *raison d'etre* of the Tribunal as stated in *Donal Molony -v- CHC & CAC* (DRA 08/2018) and *"...of course accepts that it is not its role to trespass into the fact-finding jurisdiction of the CHC or of the supervisory appellate jurisdiction of the CAC. Its jurisdiction in accordance with TO Rule 7.13 relates to the legality of decisions made or the procedures used."*

13. No evidence of the infractions was put before the Tribunal nor was the referee's report considered by it. In the circumstances the Tribunal confined itself to a consideration of the legitimacy or otherwise of the purported decision of the First Named Respondent to deem the Claimants' Appeals out of order communicated by email on the 16th of April 2019.

14. It is clearly well established that disciplinary action by a trade union, professional body or club cannot be conducted on a summary, *ex parte* basis and the Courts have set aside disciplinary actions either because the rules of natural justice have not been observed or because the association's own constitution or rules had not been complied with. This has been extended to suspension from a sporting organisation provided that it "...involv[ed] the imposition of a substantial sanction." In *Quirke -v- Bord Luthcleas na hEireann* [1988] IR 83, Barr J. stated "*...a suspension may be imposed... as a penalty by way of punishment of a member who has been found guilty of misconduct or breach of rules...[W]here a suspension is imposed by way of punishment, it follows that the body in question has found its member guilty of significant misconduct or breach of rules. The gravity of that finding is proportionate to the length of the suspension imposed and the effect of it on the person suspended. There can be no doubt that an international athlete who is suspended by way of punishment from all major competition for as long as eighteen months, which includes a particular Olympic Games, has had a substantial penalty imposed on him. Furthermore, even after the period of suspension expires, the moral implications of its imposition remain.*

> *The second factor which is crucial to this case is that* ***it is fundamental to the concept of natural justice that no man shall be condemned unheard.*** *Subject to special exceptions with which we are not concerned, that principle must be observed by all persons and bodies having the duty to act judicially. That duty rests upon, inter alia, committees of clubs and other voluntary organizations exercising functions of a disciplinary nature involving the imposition of a substantial sanction. This proposition is well settled...*" (our emphasis)

15. In this particular instance, the suspensions ultimately imposed upon the Claimants by the Second Named Respondent, of 20, 12 and 12 weeks respectively cannot be said to be minor or inconsequential in any circumstances. In the context of a senior inter county championship season, the suspensions effectively bring to an end the involvement of the Claimants in their county's fortunes for a championship season before it has effectively commenced and could scarcely be more consequential.

16. In the circumstances, as a decision of an inquorate meeting of the First Named Respondent, the Tribunal has no hesitation in quashing the purported decision of the First Named Respondent deeming the appeals of the Claimants to be out of order communicated by email on the 16th of April 2016.

17. The Tribunal further directs that the matter be remitted to the First Named Respondent for hearing and in order to obviate any potential designation of the appeals of the Claimants to be out of order pursuant to Riail 7.11(g)(1) of T.O. 2018, in the particular circumstances of this case, the Tribunal directs that that written submissions to the Tribunal advanced by the Claimants in respect of the substantive matter be considered in conjunction with the written Grounds of Appeal filed by the Claimants with the First Named Respondent.

This is the unanimous decision of the Tribunal

COSTS AND EXPENSES

The Tribunal directs that the DRA's expenses be discharged by the First Named Respondent and further directs that the Claimant's deposit be reimbursed by the Secretary.

Date of Oral Hearing: 14 May 2019

Date of Agreed Award: 5 December 2019

By email agreement on agreed date above.

Mr. Michael Murray BL

Mr. John Shortt SC

Mr Paraic Duffy