

Disputes Resolution Authority

An Córas Eadrána

DRA 13 of 2020: In the matter of an arbitration under the Disputes Resolution Code and the Arbitration Act 2010

Between:

KILLOE EMMET ÓG

Claimant

v.

COISTE ÉISTEACHTA LAIGHEAN - (LEINSTER HC)

First Named Respondent

And

COISTE ÉISTEACHTA LONGFOIRT - (LONGFORT HC)

Second Named Respondent

And

COISTE CEANNAIS NA GCOMORTAISÍ LONGFOIRT - (LONGFORD CCC)

Third Named Respondent

And

**COISTE CEANNAIS NA GCOMORTAISÍ LONGFOIRT - (LONGFORD
MANAGEMENT AND FINANCE COMMITTEE)**

Interested Party

Hearing: 4th September 2020, Remotely

Tribunal: Mr. Jarlath Fitzsimons SC, Mr. Eamonn Denieffe, Mr Con Hogan

Secretary to the DRA, Rory Hanniffy BL

VERDICT: The claim succeeds.

KEYWORDS: *Disqualification – failure to fulfil a championship game – R6.24 TO 2019.*

Fines – Power/jurisdiction to impose – sanction for non-payment – R7.3 TO 2019.

Interrelationship as between R6.24 and R7.3 TO 2019.

Procedure for imposing sanctions for non-payment of a fine – whether a decision-maker is entitled to impose a sanction in advance of a consideration as to whether the pre-condition precedent for the sanction has been satisfied.

LIST OF REMOTE ATTENDEES:

Claimant

Feargal Logan – Solicitor
Gerry Hagan – Chairperson
Declan Rowley – Vice-Chairperson

First Respondent – Leinster Hearings Committee

Michael Delaney – Chairperson

Second Respondent – Longford Hearings Committee

Michelle Dolan – Chairperson
James Clarke – Secretary
Seamus Maher

Third Respondent – Longford CCC

Peter O'Reilly – Secretary
Ciarán Walsh – Chairperson

Interested Party – Longford Management & Finance Committee

Albert Cooney – Chairperson

FACTUAL BACKGROUND

1. The dispute which forms the subject-matter of the Claim submitted to the Disputes Resolution Authority arises from the failure of Cilleo Óg to fulfil a championship fixture, i.e., the Longford U-16 Football Championship Final between Cilleo Óg and Naomh Colmcille/Naomh Prionsias.
2. The factual background to the failure of Cilleo Óg to fulfil this championship fixture is complex with certain aspects still pending before decision-making bodies of the Association. Accordingly, it is neither necessary nor appropriate for this Tribunal to consider those matters in the context of its determination of the Claim submitted.
3. Resulting from the failure of Cilleo Óg to fulfil the championship fixture, a meeting of Longford CCC held on 27 January 2020 considered the Referee's Report of the U-16 Championship Final. The CCC decided that:
 - the email received from CLG Eiméid Óg Cill Eo ("the Club") dated 2 January 2020 was sufficient to comply with the provisions of Rule 6.24(d) of the Official Guide (requiring two clear days' notice of an intention not to fulfil a championship game); and
 - penalties were imposed in accordance with Rules 6.24 (a) and (c).
4. Subsequently, on 29 January 2020, Notice of Disciplinary Action/Confirmation of Penalty was sent by Longford CCC notifying the Club of the following proposed penalties:
 - Disqualification and Award of the game to Naomh Colmcille/Naomh Prionsias; and
 - €500 fine payable by 1 March 2020.

5. The Club was notified that it was entitled to either: (a) accept the proposed penalties; or (b) request a hearing before the Hearings Committee. On 31 January 2020, the Club notified Longford CCC of its choice to request a hearing arising from the Notice of Disciplinary Action dated 29 January 2020.
6. A hearing was convened by Longford HC and opened on 7 February 2020 and adjourned to 19 February 2020, when the hearing was concluded. Longford HC sent Notice of Decision on a Hearing to the Club dated 20 February 2020, which contained the following determination:
 - that Cilleo Óg be disqualified from the U-16 Football Championship and that the U-16 Championship Final be awarded to Naomh Colmcille/Naomh Prionsias in accordance with the mandatory provisions of Rule 6.24(a) T.O. 2019;
 - that Emmet Óg (the parent club of Cilleo Óg) be compelled to pay a fine of €750 representing the estimated loss of revenue by the Committee-in-Charge (150 adults @ €5 each) in accordance with the mandatory provisions of Rule 6.24(c) T.O. 2019; and
 - that the fine referred to shall be paid no later than 31 July 2020 in accordance with Rule 7.7 T.O. 2019. In the event that the fine is not paid by the date stipulated, a Suspension as provided for in Rule 6.24(c) T.O. 2019 shall apply with effect from 1 August 2020.
7. On 23 February 2020, the Club submitted a request for an appeal to Leinster HC. Due to the non-availability of certain parties and the intervention of restrictions imposed in relation to the Covid-19 Crisis, it is the Tribunal's understanding that the hearing on this appeal still has not been held as at the date of the Tribunal's Decision.
8. By email sent on 11 August 2020, the Secretary of Longford GAA stated that the Longford CCC was notified on 7 August 2020 that the Club had failed to pay the

fine of €750 imposed by Longford HC before 31 July 2020. As a result, Longford CCC notified the Club that a suspension as provided for in Rule 6.24(c) (i.e., a 48-week suspension) shall apply from 1 August 2020. It was stated that the effect of the suspension is that defined in Rule 7.5(e) and applies to all members, subject to the exception provided in Rule 7.5(n) 2020 Official Guide.

9. It appears that, on 10 August 2020, the Club forwarded by post a cheque paying the fine.
10. On 13 August 2020, the Club submitted an appeal to Leinster HC against the decision made by Longford CCC to suspend the Club for 48 weeks from 1 August 2020. Leinster HC convened a hearing on the appeal on 25 August 2020. On 26 August 2020, Leinster HC decided, pursuant to Rule 7.11(o), that there was no clear infringement or misapplication of any rules by “Coiste Eisteachta Longfoirt” (Longford HC). It was also noted that the Club had two other appeals before Leinster HC, in respect of which it was agreed to seek guidance in light of the decision made. Whilst it is not entirely clear, this Tribunal considers that the decision made by Leinster HC on 26 August 2020 determined only the appeal submitted by the Club on 13 August 2020 and not the appeal submitted on 23 February 2020.¹
11. The Club submitted a Request for Arbitration to the Disputes Resolution Authority on 28 August 2020. It is this Claim which falls for consideration and determination by the Tribunal.

¹ In this respect, it is noted that the August 2020 correspondence in relation to hearing an appeal (singular) by Leinster HC commences with a letter from Leinster HC to the Club acknowledging receipt of an appeal at 1.23 a.m. on 14 August 2020 and informing the Club that Leinster HC was unable to hear “the Appeal” (singular) until 24 August 2020 at the earliest. There is no reference in the correspondence prior to the hearing or in the minutes of Leinster HC in respect of its meeting on 25 August 2020 that the earlier appeal (submitted on 23 February 2020) was considered or determined.

DISCUSSION

12. The grounds of appeal, comprising 8 no. paragraphs, are set out in the Request for Arbitration. The grounds set out at paragraphs 1 to 5 inclusive (with the exception of the ground asserting that the sanction imposed under Rule 6.24(c) is wrong, not in accordance with the rule, irrational, disproportionate and unfair) relate to other disciplinary proceedings before a number of decision-making bodies of the Association. In circumstances where those other proceedings are pending before other decision-makers, it is neither necessary nor appropriate for this Tribunal to address those grounds of appeal which relate to those proceedings and decisions.

13. In addition to the ground of appeal asserting that the sanction imposed under Rule 6.24(c) is wrong, not in accordance with the rule, irrational, disproportionate and unfair, the Club asserts that the penalty for not fielding is not accepted, not in accordance with the rule and the imposition of a 48-week suspension is not keeping with the rule. It is also asserted on behalf of the Club that the failure to pay a fine should not operate as an automatic default to a 48-week suspension, the decision is in conflict with Rule 7.7 and a fresh process is required to invoke such or any suspension and the decision-maker should consider the sanctions applicable under section 7.7. Finally, it is asserted that Longford CCC was not quorate at its meeting on 27 January 2020 when the penalty was imposed.

14. In relation to this latter ground, namely, that Longford CCC did not have a quorum when the decision was taken to impose the penalties, the Tribunal notes that this ground of appeal has also been asserted in the Club's appeal to Leinster HC against the decision made by Longford HC on 20 February 2020: see paragraph 3 of the Schedule to the Appeal dated 23 February 2020.

15. In circumstances where many of the grounds of appeal advanced by the Club on its Claim before this Tribunal are identical in substance and/or form to the grounds of objection/appeal brought before a number of decision-making bodies of the Association, which proceedings are still pending, the Tribunal concludes that it must only consider and determine those grounds of appeal which relate specifically to the decision of Longford CCC made on 11 August 2020, which was appealed to Leinster HC and which, ultimately, was referred to the Tribunal. However, in determining that dispute, which concerns the decision made by Longford CCC on 11 August 2020 to give effect to the suspension identified in the decision made by Longford HC on 20 February 2020, consideration of the merits of that decision made by Longford HC to apply that sanction of suspension under Rule 6.24(c) is unavoidable. The Tribunal is conscious that its decision on this dispute may have ramifications for other proceedings currently pending before other decision-makers of the Association and, accordingly, has limited its consideration of the Longford HC decision to paragraph c(III) of the decision made on 20 February 2020.
16. In the submissions made on its behalf at the remote hearing convened on 4 September 2020, Leinster HC noted that 4 no. grounds of appeal made before it related to matters considered and dealt with prior to the decision made by Longford CCC on 20 February 2020. In relation to the remaining 3 no. grounds of appeal, it was submitted that Leinster HC was guided by Rule 7.11(o) and the limited nature of the appeal and the limited jurisdiction of the Hearings Committee, which it was contended had been exercised correctly in this instance.
17. Longford CCC, in its Response to Request for Arbitration, and in submissions made on its behalf at the remote hearing held on 4 September 2020, confirmed that it made a decision on foot of a request for a Hearing by the Claimant under Rule 7.3 of the Official Guide and imposed penalties as set out in that decision. Longford CCC denied that it breached any Rules of the Official Guide. It was also asserted that the majority of the Claim refers to matters not raised at the hearings before either Longford HC or before Leinster HC. Longford CCC has

also asserted that the Club failed to comply with the Longford HC decision and failed to pursue its appeal against that decision in a timely manner.

18. In relation to the substantive issue which falls for consideration by this Tribunal, Longford HC has contended that a committee has the jurisdiction to impose a fine and stipulate a period within which a fine must be paid and to apply a sanction if the fine is not paid. It was submitted that the provisions of Rule 26.4(c) are non-discretionary and that the inter-relationship between Rules 7.7 and Rule 26.4(c) is as set out in Longford HC's decision. Longford HC rejected the contention that another process was required in order to apply the sanction specified in Rule 26.4(c). The position adopted by Longford HC was that Rules 6.24(e) and 7.7(c) are not in conflict.
19. Longford Management and Finance Committee appeared, and was represented at the remote hearing on 4 September 2020, as an interested party.

DECISION

Interpretation

20. The principal rules of the Official Guide - Part 1 which fall for consideration by the Tribunal in determining this matter are Rules 6.24(c) and 7.7(c).
21. Rule 7.7 falls within "Chapter 7 - Enforcement of Rules/Arbitration" and regulates Fines in that context. The provisions of paragraphs (a) and (b) are uncontroversial and state that: (a) fines shall be imposed in the amounts set out in Rules, Bye-Laws and Regulations and, where not specified, the amount shall be at the discretion of the decision-maker but not less than €200; and (b) fines shall be imposed on Units only.
22. It is apparent from the provisions of Rule 7.7(c) that, in the event of a failure to pay a fine "within such period as may be stipulated", then the Unit concerned

and/or its Officers shall be liable to such sanctions as the Council or Committee-in-Charge shall deem appropriate.

23. Accordingly, Rule 7.7 is a self-contained procedure in relation to the amount of fines, the imposition of fines on Units rather than Members, the stipulation of a period within which a fine is to be paid and, ultimately, in the event of failure to pay a fine within the stipulated period, the imposition of sanctions as the decision-maker shall deem appropriate.
24. In contradistinction to Rule 7.7, Rule 6.24 is contained in “Chapter 6 - Games and Competitions” governs Disqualification.
25. In the first instance, Rule 6.24 (a) and (b) specifies the penalties – disqualification and awarding the game to the opposing team – for failure to fulfil a Championship Game, with different penalties depending on whether the game was in a “Knock-Out” or “League Stage” of the Championship.
26. Thereafter, Rule 6.24(c) provides, first, that a Club/Unit shall be compelled to pay any fine imposed for loss of revenue by the Committee-in-Charge and all vouched expenses incurred and, second, failure to pay such a fine/vouched expenses “shall involve a Suspension of forty eight weeks”.
27. The Tribunal concludes that, it is significant that, in contradistinction to the provisions of Rule 7.7(c), Rule 6.24(c) does not state that “failure to pay any Fine imposed for loss of revenue by the Committee-in-Charge within the period as may be stipulated shall involve a Suspension of forty eight weeks”. Rather, Rule 6.24(c) requires a 48-week suspension in circumstances where there is failure *simpliciter* to pay a fine imposed for loss of revenue. In circumstances where the suspension prescribed by Rule 6.24(c) is both mandatory and draconian, the Tribunal finds that the words “within the period as may be stipulated” cannot be “read in” to Rule 6.24. The conclusion must consequently be drawn that, if Congress had intended the mandatory 48-week suspension to apply automatically in circumstances where a fine imposed for loss of revenue was not

paid within the period as may be stipulated, then Congress would have expressly legislated for that outcome.

Longford HC Decision

28. The Tribunal has considered the decision of Longford HC, made on 20 February 2020, in the light of the correct interpretation of Rules 7.7 and 6.24(c). However, in circumstances where the Tribunal understands that the appeal submitted by the Club on 23 February 2020 in respect of that decision is still pending before the Leinster HC, the Tribunal has limited its consideration to the last sentence of paragraph (c)(III) of that decision, namely:

“In the event that the fine is not paid by the date stipulated, a Suspension as provided for in Rule 6.24(c) T.O. 2019 shall apply with effect from 1 Lunasa 2020.”

29. The correct interpretation of the provisions of Rule 6.24(c) in the context of this Referral is that, whilst Rule 6.24(c) expressly refers to a fine imposed for loss of revenue (as well as vouched expenses), the jurisdiction to impose a fine arises from Rule 7.7. Indeed, it is noted that in subsequently deciding to stipulate a time period within which the fine was to be paid, Longford HC itself made express reference to Rule 7.7(c).
30. Further, in circumstances where a fine imposed for loss of revenue is not paid at all, then there is no discretion to depart from the mandatory requirement that the Club/Unit shall be suspended for 48 weeks.
31. Thus, it is the conclusion of the Tribunal that, whilst the jurisdiction to disqualify clubs and award games arises from the provisions of Rule 6.24(a), the jurisdiction to impose fines arises from the general jurisdiction under Rule 7.7,

notwithstanding the reference to “any Fine imposed for loss of revenue” in Rule 6.24(c).

32. Longford HC decided that “[i]n the event that the fine is not paid by the date stipulated, a Suspension as provided for in Rule 6.24(c) T.O. 2019 shall apply with effect from 1 Lunasa 2020.” In so deciding, for the reasons set out below, the Tribunal has concluded that Longford HC erred both in its application and interpretation of Rule 6.24(c).
33. Firstly, Longford HC acted prematurely in purporting to apply the provisions of Rule 6.24(c) when making its decision on 20 February 2020. Given the draconian nature of the sanction to be applied in circumstances where the precondition legislated for in Rule 6.24(c) is satisfied, the decision-maker was not entitled to impose that sanction in advance of a consideration as to whether the precondition – namely, non-payment of the fine – had actually been satisfied.
34. Secondly, the Tribunal concludes that, in the event of failure to pay a fine within the stipulated period, the sanction to be imposed is the sanction deemed appropriate under Rule 7.7. It may well be the case that, in different circumstances (for example, where a fine imposed for loss of revenue arising from a failure to fulfil a Championship game is never paid), then it would be appropriate for the decision-maker to deem the 48-week suspension as the sanction under Rule 7.7. Indeed, in such circumstances, it may well be the case that the decision-maker would have no discretion in the matter. However, Longford HC erred in purporting to pre-emptively apply the sanction referenced in Rule 6.24 rather than considering the sanction deemed appropriate under Rule 7.7 if and when the fine remained unpaid at the expiration of the period stipulated for payment.
35. Thirdly, in circumstances where, in any event, the draconian sanction for non-payment of a fine under Rule 6.24(c) can only be invoked where there is a failure to pay the fine at all – as opposed to a failure to pay within the period of time

stipulated – the applicability of the pre-condition in Rule 26.4(c) cannot be pre-determined by a decision-maker when imposing a fine under Rule 7.7.

36. The Tribunal has concluded that, in the circumstances of this case, given the draconian nature of the suspension mandated under Rule 6.24(c), Longford HC erred in pre-emptively deeming the 48-week sanction under Rule 6.24(c) as appropriate at the same time as imposing the fine of €750 for loss of revenue.
37. It may well be that, in other circumstances, a Council or Committee-in-Charge may simultaneously impose a fine and determine the appropriate sanction in default of payment, particularly if the sanction is minor in nature. However, the Tribunal has concluded that the Longford HC erred in deeming that the mandatory and draconian sanction under Rule 6.24(c) was applicable or appropriate in advance, in particular, of a date when it could be considered whether the fine had been paid at all.
38. Moreover, had Emmet Óg not paid the fine on 11 August 2020, then it may well have been the case that the Tribunal would have come to a different conclusion in relation to applicability of Rule 6.24(c) because, in that scenario, the Club would have failed to pay the fine at all, a default which would have involved a 48-week suspension. However, by the time of hearing before Leinster HC and the hearing before this Tribunal, the fine had been paid and, accordingly, the precondition required for the imposition of the mandatory default sanction did not arise.

Longford CCC Decision

39. The Tribunal has also considered the decision made by Longford CCC on 11 August 2020, whereby it was decided that Emmet Óg failed to pay the €750 fine imposed by Longford HC before the requested deadline of 31 July 2020 and that, as a result, a suspension as provided for in Rule 6.24(c) applied.

40. For the reasons set out above, Longford CCC erred in its interpretation of Rule 6.24(c) insofar as it purported to give effect to a suspension under Rule 6.24(c) on the basis that a fine had not been paid within the period of time stipulated by Longford HC. The Tribunal concludes that this decision made by Longford CCC resulted from a clear misapplication of Rule 6.24(c).

Leinster HC Decision

41. Ultimately, the Tribunal has also considered the circumstances which pertained when Leinster HC made its decision, on 26 August 2020.
42. The appeal to Leinster HC was taken by the Club against Longford CCC's decision, made on 11 August 2020, that Emmet Óg failed to pay the €750 fine imposed by Longford HC before the requested deadline of 31 July 2020 and that, as a result, a suspension as provided for in Rule 6.24(c) shall apply.
43. For the reasons set out above, the Tribunal has concluded that Longford CCC erred in its interpretation of Rule 6.24(c) insofar as it purported to give effect to a suspension under Rule 6.24(c) on the basis that a fine had not been paid within the period of time stipulated by Longford HC. Moreover, in circumstances where the Tribunal has also concluded that this decision made by Longford CCC resulted from a clear misapplication of Rule 6.24(c), then Leinster HC erred in deciding that there had not been a clear infringement or misapplication of Rules 6.24(c).
44. Moreover, the Tribunal notes that by the date the appeal was made to Leinster HC, i.e., 13 August 2020, the €750 had, in fact, been paid by the Club. Accordingly, as at the date of the Leinster HC hearing, the precondition for imposing the mandatory sanction of 48-weeks suspension, namely, the failure to pay the fine for loss of revenue, did not apply.

45. Accordingly, in all the circumstances, Leinster HC erred in failing to uphold the appeal made to it by the Club.

CONCLUSION AND DETERMINATION

46. Longford HC did not have the jurisdiction to decide, at the time of imposing a fine on a Unit that, in the event of failure to pay any fine imposed for loss of revenue within such period as may be stipulated, a suspension as provided for in Rule 6.24(c) T.O. 2019 shall apply.
47. Subsequently, Longford CCC erred in its decision to invoke Rule 6.24(c) to suspend the Club for 48 weeks on the basis that the Club had not paid the fine imposed for loss of revenue “before the requested deadline”.
48. Leinster HC erred in upholding the decision of Longford CCC for the reasons outlined above and, in addition, erred in upholding the decision to impose a 48-week suspension in circumstances where, by the time Leinster HC heard and determined the appeal made to it, the fine had, in fact, been paid by the Club.
49. In all the circumstances, the decision made by Longford HC on 20 February 2020 is quashed insofar as it purported to decide that:

“In the event that the fine is not paid by the date stipulated, a Suspension as provided for in Rule 6.24(c) T.O. 2019 shall apply with effect from 1 Lunasa 2020.”

50. For the avoidance of doubt, in circumstances where it is the understanding of the Tribunal that the appeal submitted by the Club on 23 February 2020 is still

pending before the Leinster HC, the Tribunal makes no further order in respect of the decision made by Longford HC on 20 February 2020.

51. The decisions made by Longford CCC on 11 August 2020 and Leinster HC on 26 August 2020 are hereby quashed. Accordingly, the suspension referenced in the decision made by Longford HC on 20 February 2020 is null and void.
52. Pursuant to Rule 11.3 of the Disputes Resolution Code, the Tribunal directs Leinster HC to hear the appeal made by the Club on 23 February 2020 as a matter of priority, with the following directions as to the proper procedures to be applied:
 - (1) The case be dealt with by a differently constituted Committee and, as necessary, temporary members are appointed to Leinster HC pursuant to Rule 7.14 to facilitate the case being dealt with; and
 - (2) The case be considered by Leinster HC in light of the Tribunal's conclusions set out in this Decision.

COSTS AND EXPENSES

53. The Tribunal directs that the DRA's expenses be discharged jointly by Longford HC and Longford CCC. The Tribunal further directs that the deposit lodged by the Claimant be reimbursed by the Secretary.

Date of Oral Hearing: 4th September 2020

Date of Agreed Award: 6th September 2020

By email agreement on agreed date above.

Jarlath Fitzsimons SC

Eamonn Denieffe

Con Hogan