

# Disputes Resolution Authority

An Córas Eadrána

**DRA 12 of 2022: In the matter of an arbitration under the Disputes Resolution Code and the Arbitration Act 2010**

*Between:*

*TOMÁS Ó DOINN - TOMAS DUNNE*

*Claimant*

*v.*

*AN LÁR CHOISTE ÉISTEACHTA - CHC*

*First Named Respondent*

*And*

*AN LÁR CHOISTE ACHOMHAIRC - CAC*

*Second Named Respondent*

*And*

*LÁR CHOISTE CHEANNAIS NA GCOMORTAISÍ - CCCC*

*Interested Party*

**Hearing:** 1<sup>st</sup> June 2022, Green Isle Hotel, St John's Dr, Newlands Cross, Dublin 22

**Tribunal:** Mr. Michael Murray BL, Mr. Gerard Meehan BL, Eddie Keher

Secretary to the DRA, Rory Hanniffy BL

**VERDICT:** The claim is dismissed.

**KEYWORDS:** *Cat IVa Misconduct at Games by Team Officials – Threatening language to a referee – R7.2 (c) TO 2021.*

*Referees Report – presumption of correctness in all factual matters – R7.3(aa) 1(vi) TO 2021.*

*Whether video evidence could be considered compelling.*

*Whether language used was threatening – whether test is objective or subjective – whether Referee’s judgment subject to the same rebuttable presumption as other factual matters contained in the referee’s report.*

*Whether the CHC erred in not finding the Claimant had committed a lesser infraction – R7.3(dd) TO 2021*

*Right to legal representation before internal GAA disciplinary hearings and appeals – principles of natural justice and fair procedures – R7.3(x) TO 2021*

**LIST OF REMOTE ATTENDEES:**

Claimant

Paddy Murphy – Solicitor  
Tommy Dunne  
Joe Kennedy – County Chairperson

First Respondent – CHC

Aoife Farrelly BL  
Eoghan Tuohey – Secretary

Second Respondent – CHC

Aoife Farrelly BL

Interested Party – CCCC

Bernard Smith

## FACTUAL BACKGROUND

1. A number of background facts to this matter are not in dispute and are set out in the Claimant's submissions delivered on 20 May 2022 as follows:

(a) The Claimant is the Tipperary Senior Hurling Coach. He received a red card during the Munster Senior Hurling Championship match between Waterford and Tipperary on 17 April 2022.

(b) The CCCC wrote to the Claimant by letter dated 19 April 2022 stating, *inter alia*:

*"1. Arising from the contents of the Referee's Report concerning a game in the Munster GAA Hurling Senior Championship under the Rules of the Association between Port Láirge and Tiobraid Árann at Walsh Park on 17ú Aibreán 2022 a copy of which report is attached, you are hereby notified that you have been reported to have committed the following infraction, that is to say "Threatening language to a Referee" which is classified as a category IVa Misconduct at Games by Team Officials infraction under Riall 7.2 (c) T.O. 2021 and carries the appropriate penalty set down in Riall 7.2 T.O. 2021.*

*2. Under Riall 7.2(c) of An Treoraí Oifigiúil 2021 a minimum penalty of: 12 weeks Suspension is set down for the Infraction alleged."*

(c) By *Reply to Notification of Disciplinary Action* dated 21 April 2022 the Applicant requested a hearing in person. The Claimant requested legal representation because he said the accusations against him are detrimental to his reputation and he asserted a right to be represented properly in such circumstances. In requesting a hearing, the Claimant rejected the 12 week suspension proposed by the CCCC.

(d) An Lár Choiste Éisteachta ("**CHC**") held the hearing on 28 April 2022.

(e) The minutes of that meeting record that the Claimant adduced evidence including his own oral evidence, video footage and the oral evidence of Barry Dunne, the Tipperary Team Masseur.

(f) The CHC concluded as follows:

*“9.0[A] – Decision*

*9.1 Through the course of the Hearing, An Lár Choiste Éisteachta was presented with evidence on behalf of both parties; the Referee’s Report as submitted by An Choiste Cheannais na gComortaisí and the submissions presented on the Defending Party’s behalf. An Lár Choiste Éisteachta considered all submissions and evidence submitted on behalf of the Defending Party and weighted that evidence against the evidence contained in the Referee’s Report.*

*9.1 In relation to the alleged misconduct – “Threatening language to a referee” – which is a Category IV(a) Misconduct at games by Players Infraction under Riail 7.2 (c) T.O. 2021, it is the decision of An Lár Choiste Éisteachta that the evidence presented by the Defending Party does not contradict the referee’s report and therefore An Lár Choiste Éisteachta find the infraction proven and impose the following penalty –*

*10.0 A twelve week suspension to begin from the date of the hearing – April 28<sup>th</sup>, 2022.”*

(g) The CHC decision was communicated to the Claimant by way of letter dated 29 April 2022.

(h) The Claimant appealed the CHC decision. An Lár Choiste Achomhairc (“CAC”) held the appeal hearing on 10 May 2022.

(i) The CAC dismissed the appeal. The reasons for the decision of the CAC are set out in a detailed letter dated 17 May 2022 and in draft minutes provided

to the Tribunal. It is not intended to repeat them in full here, however the reasons provided include:

- (i) The CAC did not accept that the Hearings Committee misapplied or misinterpreted the meaning of the word "*threatening*" with reference to Rule 7.2(c) category IV(a). The Hearings Committee submitted that absent an irrational interpretation of the word "*threatening*", the T.O. had vested the interpretation of "*threatening*" in the referee in the manner in which the Rule is recited. The CAC accepted this submission from the Central Hearings Committee.
- (ii) The CAC rejected the submission that disproportionate weight was given by the Hearings Committee to the referee's evidence. The CAC reviewed the evidence that was adduced before the Hearings Committee and were satisfied that the decision made by the Hearings Committee was one that was open to it on the evidence before it.
- (iii) The CAC rejected the submission that the Hearings Committee had erred by refusing to allow the Claimant to be legally represented. The CAC also rejected the Claimant's request to be legally represented.
- (iv) The CAC rejected the Claimant's argument that the Hearing Committee should have found that a lesser infraction had been committed. The CAC found that there was no error on the part of the CHC in dealing with this matter. The CAC stated that the ground of appeal was an argument that the Rule Book is unfair in that Rule 7.3(aa)(vi) reverses the burden of proof on the defending parties. The CAC stated that it must apply the Rules as they are.

## The Referee's Report and Clarification

2. The Referee's Report is a typed form populated by the Referee. The Referee is requested to complete the form and return it within three days of the match. Any report that contains a disciplinary issue must be emailed no later than midday the following day. Part of the form is entitled "*Cúrsaí Araíonachta / Disciplinary Matters – Details of players and team officials ordered off the field (state the infraction(s) and use the language of the Rule Book)*". The Referee is required to record the name, team and infraction of any player or team official ordered off the field. In this part of the form, the referee recorded that "*Tommy Dunne, Tipperary Selector*" had been ordered off the field for the infraction; "*threatening language to referee*".
3. Separately, it was recorded that Tommy Dunne, Tipperary Selector had been issued a yellow card for a cautionable or cynical behaviour infraction, namely "*challenging the authority of the referee*". At the end of the form, there is a separate box to be populated by the referee entitled "*Tuairimí Breise / Additional Comments – including brief comments on the stewarding, encroachment onto the pitch by officials, or any other matter which you feel should be highlighted*". Under this heading the referee stated as follows:

*"Prior to the start of the start of the second half, I waited for Tipperary Selector Tommy Dunne to issue him with a yellow card for challenging the authority of the referee. As I issued him with the yellow card, he said "You will get your comeuppance the next time we meet". I then issued him with a straight red card and he roared at me "The next time we meet you will get what's fucking coming to you".*

4. On 25 May 2022, the Games Administration Officer emailed the Referee as follows:

*"A Chara,  
Tomás Ó Doinn has requested the following clarification from your referee's report from the Munster Senior Hurling Championship game between Port Láirge & Tiobraid Árann on the 17th of April.*

*Can you please reply at your earliest convenience*

*Tomás Ó Doinn requests a clarification of the referee's report from the Waterford -v- Tipperary match of 17 April 2022 ("Referee's Report") pursuant to Rule 7.3(s), as follows:*

- 1. Describe the incident which led to the first yellow card issued to Tomás Ó Doinn.*
- 2. Describe how Tomás Ó Doinn "challenged the authority of the referee", which led to the first yellow card according to the Referee's Report.*
- 3. Confirm whether Tomás Ó Doinn spoke to the referee at any stage prior to issuing the first yellow card.*
- 4. Confirm whether the incident resulting in the first yellow card was related to the incident resulting in the red card.*
- 5. Confirm whether the referee issued a second yellow card before issuing the red card to Tomás Ó Doinn."*

5. The Referee replied on the same date as follows:

*"1... informed by linesman Paud O Dwyer to issue yellow car to Tommy Dunne for constantly questioning and roaring at every discission (sic) i made*

*2 Question every discission (sic) i made*

*3 i didnt hear him.... but linesman Paud O Dwyer did hear him on numerous occasions*

*4 No*

*5 No"*

### **The Relevant Rules**

6. Chapter 7 of the GAA Official Guide Part 1 is entitled "*Enforcement of Rules / Arbitration*". Rule 7.2 provides:

*"7.2 Infractions*

*The following shall constitute infractions to which the disciplinary jurisdiction of the association applies:*

(a) ...

(c) *Misconduct at Games by Team Officials consists of five Categories of Infractions which occur on or in the vicinity of the Field of Play, and which occur immediately before, during or after a Game:*

***Category Ia...***

***Category IIa***

(i) *Abusive language, towards a Referee, Umpire, Linesman or Sideline Official*

(ii) *Disruptive Conduct.*

***Penalties - Notwithstanding provisions in other Rules:***

(1) *Minimum - A One Match Suspension in the same Code and at the same Level, applicable to the next game in the same Competition, even if that game occurs in the following year's competition.*

(2) *Minimum on Repeat Infraction - A Two Match Suspension in the same Code and at the same Level, applicable to the next games in the same Competition in which the Repeat Infraction occurred, even if one or both games occur(s) in the following year's competition.*

*Exceptions to (1) and (2) above:*

*Arising from the National League, the Inter County Senior Championship or from a combination of both Competitions (all in the same Code), the above Penalties shall be substituted by:*

(1) *Minimum: A One Match Suspension in the same Code and at the same Level applicable to the next game in the combination of the National*



*League/Inter-County Senior Championship, even if the game occurs in the following year.*

- (2) *Minimum on Repeat Infraction: A Two Match Suspension in the same Code and at the same Level applicable to the next games in the combination of the National League/ Inter-County Senior Championship, even if one or both games occur(s) in the following year.*

**Category IIIa ...**

**Category IVa**

*Minor physical interference with (e.g. laying a hand on, pushing, pulling or jostling), threatening or abusive conduct towards, or threatening language to, a Referee, Umpire, Linesman or Sideline Official.*

*Penalties:*

- (1) *Minimum: 12 weeks Suspension together with a Two-Match Suspension in the same Code and at the same Level, applicable to the next games in the same Competition, even if one or both games occur(s) in the following year's competition;*
- (2) *Minimum on Repeat Infraction: 24 weeks Suspension together with a Three-Match Suspension in the same Code and at the same Level, applicable to the next games in the same Competition, even if one or more of the games occur(s) in the following year's competition.*

**Category Va... "**

7. Rule 7.2 therefore, identifies five separate classifications of Infractions ((a) to (e)) and the applicable penalties for each classification. Classification (c) relates to misconduct at games by team officials (as distinct from players) and is subdivided into five categories of Infractions. Each category attracts a different penalty or penalties.

8. Rule 7.3 sets out the procedure for disciplinary action and for the application of penalties including suspensions. Rule 7.3 provides as follows:

***“Procedures for Disciplinary and Related Hearings Initiation of Disciplinary Action***

(a) *The investigation and processing of matters relating to the Enforcement of Rules shall be dealt with by:*

(1) *In the case of matters arising from Competitions or Games, the Competitions Control Committee of the Council or Committee-in-Charge, and*

(2) ...

***Disciplinary Action.***

(b) ...

(c) *The Hearings Committee shall adjudicate in all instances where a Hearing is requested relating to the Enforcement of Rules, other than Objections and Counter-Objections.*

(d) *Disciplinary Action shall commence where:*

(1) *a Referees Report discloses an alleged Infraction,*

(2)...  
...

(e) *The Competitions Control Committee may make a written Request for Clarification from a Referee:*

(1) *where there is any ambiguity in his Report, or*

(2) *where the Competitions Control Committee is in the course of investigating a possible Infraction not stated in his Report (even if the incident itself is disclosed).*

(f) *Disciplinary Action alleging an Infraction as having occurred on or in the vicinity of the Field of Play, immediately before, during or after a game may only be commenced by the Competitions Control Committee where:*

(i) *The Referee's Report discloses the alleged Infraction; or*

(ii) *...*

...

### ***Preparation of Charge***

(h) *Where Disciplinary Action is commenced, the Competitions Control Committee shall investigate the matter in such manner as is expedient, interview such persons (including Match Officials) as they deem appropriate, accumulate such relevant evidence as is made available to it (whether suggestive of the commission of an Infraction or exonerative of the Members or Units concerned), and prepare a Report ("the Disciplinary Report").*

*A formal Disciplinary Report is not necessary where sufficient detail is contained in a Referee's Report and a copy of the Referee's Report or the applicable part thereof is supplied to the Defending Party, with a covering letter stating the Rule(s) concerned.*

*In the event that the Competitions Control Committee omits from the Disciplinary Report evidence that is subsequently shown to be relevant, this shall not of itself affect the validity of the Disciplinary Action.*

(i) *The Disciplinary Report shall contain:*

...

### ***Notice of Disciplinary Action***

- (l) *Where Disciplinary Action is commenced, Notice shall be given to the Defending Party. Central Council shall prescribe Forms of Notice for the assistance of Competitions Control Committees.*

### ***Reply***

- (p) *The Defending Party shall reply within two days from the date and time of receipt by him/it of the Notice and may:*

- (1) *accept the Proposed Penalty, or*
- (2) *request a Hearing, by sending a written Reply.*

*Central Council shall prescribe Reply Forms for the assistance of Members and Units.*

...

### ***Hearings***

...

- (aa) *The following Rules of Evidence shall apply:*

- (1) *In general, evidence at a Hearing shall be oral, except that:*
  - (i) *Agreed matters of fact may be stated in writing;*
  - (ii) *The Hearings Committee shall attach to documentary evidence (including video evidence) such level of reliability as befits it in the circumstances of the Hearing;*
  - (iii) ...
  - (vi) *A Referee's Report, including any Clarification thereto, shall be presumed to be correct in all factual matters and may only be rebutted where unedited video or other compelling evidence contradicts it;*

*(vii) A Referee or other Official shall not be required to give oral evidence or to appear for cross-examination;*

*(viii) After the Hearing, the Hearings Committee may, in its sole discretion, seek Clarification in writing of any matters in the Referee's Report. Any written Clarification or comment by the Referee shall have the same status as the Referee's Report itself, but may only be used for the purposes of exoneration of the Defending Party or mitigation of any allegations made against him. Such Clarification may not be challenged in any way or made the subject matter of any further Hearing.*

### **Decision**

*(bb) The Hearings Committee has the final power to determine all matters of fact and all sources of evidence submitted to the Hearing shall be considered. An Infraction shall be treated as proved if, in the opinion of the Hearings Committee, the Infraction alleged is more likely to have occurred than not to have occurred,*

*(cc) Where the Infraction alleged is proven to the satisfaction of a Hearings Committee, the Hearings Committee shall be entitled to impose such penalties as it deems fit, subject to Rule, and with due regard, where appropriate, to Rules 7.2(b) and (c) (as these relate to 'Repeat Infraction') and/or 7.5(b), and without being bound in any respect by the terms of the Proposed Penalty.*

*(dd) Subject to the Rules of Evidence above, the Hearings Committee may make a finding that the facts proven disclose an infraction but either:*

*(i) One less serious than that alleged in the Notice of Disciplinary Action or*

*(ii) One that differs from that alleged in the Notice of Disciplinary Action but is in the same Category of Infraction.*

*and may make a decision accordingly."*

## DISCUSSION

### The Grounds of Appeal

9. The Claimant has advanced four grounds of appeal which the Tribunal will now deal with individually:
10. The first ground advanced by the Claimant:

**The CHC erred in finding that the evidence presented by and on behalf of the Claimant did not rebut the presumption in favour of Referee's Report, and the CAC erred in finding that there had not been a clear infringement or misapplication of Rule 7.5(aa)(1)(vi) and Rule 7.2(c) Category IV(a) by the CHC in that regard.**

11. The Claimant denies he used the words attributed to him in the Referee's Report. The Claimant told the Tribunal that what he actually said was: "You know what Johnny, you and I will have a chat another time" (see paragraph 4.3 of the Claimant's submissions). The Claimant submits that this is also what he told the CHC.
12. The Claimant submits that the evidence of the Claimant, the evidence of Mr Barry Dunne and the video evidence considered together are compelling evidence that rebuts the presumption in favour of the Referee's Report (paragraph 4.7).
13. DRA decision number 14 of 2017 *De Burca v CAC and CHC* was opened to the Tribunal. In considering the status of the Referee's Report, that decision states as follows:

*"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.”*
14. This reasoning is an echo of another decision of the DRA delivered a few weeks earlier in DRA decision 13 of 2017; *O’Broin v CHC and CAC*. The *O’Broin* decision

was also opened to us at the hearing. In considering the status of the Referee's Report in the O'Broin decision, the DRA said:

*"19. Having regard to the context of the Rule, its purpose and the reference to "compelling evidence" the reference to "contradicting" the Referee's Report such as to upset the presumption that it is factually correct must be taken as meaning more than providing a reasonable alternative interpretation. Otherwise the presumption would be robbed of all effect. Rather it must be something considerably more, contradicting the Referee's Report to the point of compelling a conclusion that the Referee's Report was not factually accurate.*

*20. When presented with a Referee's Report (whether clarified or not) which sets out that there has been an infraction of the Rules, the CHC sole task therefore is to consider whether the evidence available, be it unedited video evidence or some other form of evidence, is compelling evidence that the Referee's Report is wrong. **If it is not so compelling, the CHC is bound to accept the Referee's Report as factually correct and to conclude that the offence is made out.**"*

15. The Claimant submitted that the CHC applied disproportionate weight to the Referee's Report and erred in not finding that the evidence of Tommy Dunne (the Claimant), Barry Dunne (the Tipperary team masseur) and the video evidence, taken together to be compelling evidence which rebutted the presumption that factual matters in the Referee's Report were correct.
16. The Claimant presented the video evidence that had been presented to the CHC and the CAC to the Tribunal. The video evidence was an extract from the RTE coverage of the match. It commenced with the referee putting the red card back in his pocket after having issued the red card to the Claimant. There was no audio recording of any conversation between the Claimant and the referee. Given that the substance of the Infraction alleged in this case is the language used by the Claimant, the fact that the video commences after he had been sent off and does not include any relevant audio renders the video irrelevant. It is hard to see how the video could constitute compelling evidence (or any



evidence) to rebut the presumption that the Referee's Report is correct, either on its own or taken together with other pieces of evidence.

17. The Claimant's submissions (paragraph 4.5) states in relation to the CHC hearing:

*"Barry Dunne gave evidence where he set out that he was a few yards behind the Claimant when he saw him receiving a yellow card and that he heard the Claimant say to the referee "about having a chat another time". This confirmed the corroborated the evidence of the Claimant."*

18. The Claimant submits that in finding that this evidence did not contradict the Referee's Report, the CHC placed improper weight on the factual assertions in the Referee's Report as against the contradictory compelling evidence, especially when it was entirely possible that the referee misheard the Claimant. The Claimant submits:

*"This is even more compelling when it is considered that the incident took place just after the teams came out before the start of the second half when the crowd was cheering at its loudest point."*

19. This submission could equally apply to the evidence of Mr Barry Dunne who, on his own account (as set out in the Claimant's submissions), was a few yards behind the Claimant. In any event, Mr Dunne may or may not have heard the entire exchange.
20. As submitted by Mr Murphy during the hearing, the dispute of fact essentially comes down to a "he said / she said" dispute of fact between the Claimant and the referee. It is not for this Tribunal to prefer one version over the other. However, it was certainly open to the CHC to find that there was no compelling evidence that the offence had not been committed.
21. For these reasons, the Tribunal does not accept the submission of the Claimant (4.11) that the CAC erred in not finding that there had not been a clear

infringement or misapplication of the Rule by the CHC in respect of Rule 7.3(aa)(1)(vi) and Rule 7.2(c) Category IV(a) after the facts and arguments set out above where presented at the CAC hearing.

22. The second ground advanced by the Claimant:

**The CHC misapplied and misinterpreted the meaning of the word “threatening” from Rule 7.2(c) Category IV(a) and the CAC erred in finding that there had not been a clear infringement or misapplication of this Rule by the CHC in that regard.**

23. The Claimant submits (paragraph 5.5) that the CHC misapplied Rule 7.2(c) Category IV(a) by applying a subjective test when it considered whether the referee was threatened. The CHC had submitted to the CAC that the GAA guide had “*vested the interpretation of “threatening” in the referee in the manner in which the Rule is recited*”.
24. Rule 7.2 (c) IVa applies where there has been “physical interference with”, “threatening or abusive conduct towards” or “threatening language to” a referee. In this case, it is only the last of these that is alleged in the Referees Report.
25. There was some discussion at the hearing over whether the test for establishing whether language is threatening is an objective test or a subjective test. Various dictionary definitions of the word “threatening” were opened to the Tribunal.
26. However, the most helpful guide for the Tribunal is the O’Broin decision (DRA 13 of 2017). In that case, the appellant argued that the decision of the CHC decision was manifestly incorrect because the incident was not intentional and that it could not be concluded on the basis of the video evidence that the incident was intentional or accidental. The Respondent in O’Broin contended that the question of whether the incident was intentional was a question of fact to be determined by the CHC and not open to review by the DRA.

27. The CHC had accepted the clarification from the referee of the Referee's Report that *"the incident was reported to him by the umpire who had reviewed the video footage and considered the incident to be deliberate"*.

28. The DRA in reaching its conclusion on this point stated (para. 23):

*"...the CHC were presented with a Referee's Report which had been clarified. It was not contested that on the basis of the Report as clarified, there was evidence that the Claimant had infringed the relevant Rule. In those circumstances, the Claimant faced a formidable hurdle in seeking to establish the decision of the CHC was irrational. It was necessary for the Claimant to establish that no reasonable person could consider the video evidence relied on was not compelling evidence which contradicted the Referee's Report. Put another way, the video evidence would have to be so compelling that not only should we disagree with the CHC's assessment of it, we should conclude that there was no basis upon which the CHC could conclude that it wasn't sufficiently compelling.*

*24. In the Tribunal's view, the video evidence relied on, though expertly and evocatively placed in the context of the match by the Claimant's representative, fell far short of meeting that threshold. The video evidence clearly showed the Claimant striking the umpire with the football. There was nothing about the evidence which made it clear, still less certain that the incident was accidental."*

29. In *O'Broin*, therefore the question of whether an act was "deliberate" was treated as a matter of fact which enjoyed the presumption contained in Rule 7.3(aa)(vi). Obviously, assessing whether a ball striking an umpire was deliberate or not required some judgment on the part of the referee. The point is that this was a factual matter contained in a Referee's Report, including any Clarification thereto.

30. This is similar to assessing whether words used were "threatening language" or not in the current case. It is clear from the Referee's Report that the referee considered the words addressed to him by the Claimant to be *"threatening language"*.

31. The Claimant submits that the test is whether the language used by the Claimant to the referee was threatening or not, judged objectively. But it seems that establishing whether the language used here was “threatening” involves the same process as establishing whether the act in *O’Broin* was “deliberate”. In the first instance, the relevant judgment is that of the Referee.
32. Irrespective of whether the test for establishing whether language is “threatening” or not is an objective one or a subjective one, factual matter contained in the Referee’s Report and may only be rebutted where the is unedited or other compelling evidence to contradict it.
33. In the circumstances, we conclude that the CHC was entitled to conclude as it did. It follows that the CAC were further entitled to conclude that the CHC’s conclusions as to fact were not manifestly incorrect.
34. The third ground advanced by the Claimant:
- The CHC erred by not replacing its finding that the Claimant breached Rule 7.2(c) Category IVa) with a finding that the Claimant had in fact breached Rule 7.2(c) Category II(a) and the CAC erred in finding that there had not been a clear infringement or misapplication of these Rules by the CHC in that regard.**
35. The Claimant relies on Rule 7.3(dd) which grants the CHC power to replace the infraction in the notice of disciplinary action with either a less serious infraction or one that differs from that alleged but in the same category of infraction.
36. This discretion, however, is expressly “*subject to the rules of evidence above*”. The Claimant submits that the “*rules of evidence*” referred to (Rule 7.3(aa)) include the presumption that the referee is “*correct in all factual matters*” (Rule 7.3 (aa)(1)(vi)). Again the Claimant submits that there is compelling evidence rebutting the Referee’s Report.

37. In circumstances where the referee set out the precise wording of the threatening language and described it as such, it was not open to the CHC to exercise the discretion set out in Rule 7.3(dd). That discretion is expressly limited by the words "*subject to the rules of evidence*". Those rules of evidence include the deference to the Referee's Report which is set out elsewhere in this decision. In circumstances where the Referee's Report expressly stated that threatening language had been used then the only infraction that could be considered was Rule 7.2(c) Category IV(a) which includes threatening language to a referee.
38. Given the express content of the Referee's Report and in particular his use of the word "*threatening*" it was open to the CHC to find that the Hearings Committee was unable to consider the infraction under category II(a). It follows that the CAC did not err in finding that there had not been a clear infringement or misapplication of the Rule by the CHC in this regard.
39. The fourth and final ground advanced by the Claimant:

**The CHC and the CAC did not apply principles of natural justice and fair procedure to the Claimant's case when it refused to allow him to be legally represented at the CHC and CAC hearings respectively.**

40. The Claimant submits that the seriousness of the charge, the points of law that were likely to arise and the consequence of a finding of an adverse decision and the seriousness of the sanction imposed were key factors that required legal representation to be afforded to him.
41. The CHC submitted that it did not refuse to allow the Claimant to be legally represented because he could have been accompanied by a full member of his Unit that was also a lawyer. However a right to legal representation must include a right to be represented by a lawyer of one's own choosing. In practical terms, the Claimant was not permitted to bring a legal representative to either the CHC hearing or the CAC hearing.

42. The Respondents' position is that legal representation is not provided for in the Rules. The Association is amateur in nature and disciplinary proceedings rarely have serious consequences, beyond the penalties imposed internally. In general therefore, lawyers cannot attend disciplinary hearings, unless by coincidence a full member of the defending party's unit happens to be a lawyer.
43. The Claimant submits that this is a misinterpretation of Rule 7.3(x) of the Official Guide in that the Rule is silent on whether a member may be accompanied by a legal representative. Rule 7.3(x) provides:
- "Save as provided in Rule 6.7, a club, committee or council shall be represented at any hearing by a maximum of two of its full members. A member shall attend personally and may be accompanied by one full member of his club / unit. In addition to the foregoing, youth members may be accompanied by their parent(s) or guardian(s)."*
44. Rule 6.7 relates to representation at transfer / attachment hearings. It is irrelevant to this decision.
45. Rule 7.3, by permitting a member to be accompanied by a specified number (one) of people from a restricted category of people (members of his Club/Unit) implicitly prohibits the member from being accompanied by any other person or persons. The Tribunal accepts the Respondents' submission that the rules governing disciplinary procedures are the same in relation to all infractions, from the most minor of infractions up to the most serious of infractions. It is not open to either the CHC or CAC to change the rules in any particular case. CHC and CAC acted appropriately in denying the Claimant a right to be represented by his solicitors, in circumstances where that solicitor was not a member of the Claimant's own unit or a full member of his County Board.

## **CONCLUSION AND DETERMINATION**

46. For the foregoing reasons the Claimant's claim is dismissed and the reliefs sought are refused.

## **COSTS AND EXPENSES**

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

**Date of Hearing:** 1<sup>st</sup> June 2022

**Date of Agreed Award:** 30<sup>th</sup> June 2022

**By email agreement on agreed date above.**

**Michael Murray BL**

**Gerard Meehan BL**

**Eddie Keher**