

Disputes Resolution Authority

An Córas Eadrána

DRA 26 of 2022: In the matter of an arbitration under the Disputes Resolution Code and the Arbitration Act 2010

Between:

ST FINBARS GAC

Claimant

v.

CENTRAL APPEALS COMMITTEE

First Named Respondent

And

BRITISH PROVINCIAL COUNCIL HEARINGS COMMITTEE

Second Named Respondent

And

BRITISH PROVINCIAL COUNCIL

Third Named Respondent

And

WARWICKSHIRE CCC

Fourth Named Respondent

Hearing: 18 November 2022 - Virtual Hearing

Heard by Secretary to the DRA, Rory Hanniffy BL

VERDICT: The application for interim relief is refused.

KEYWORDS: *Interim Relief Application - Section 8 DRA Code*

Whether CAC correct in rejecting Appeal against rejection of appeal for non-compliance with formalities - R 7.11 (a) TO 2022

Appeal limited to matters raised in Appellant's Appeal as originally lodged - 7.11 (O) TO 2022

LIST OF REMOTE ATTENDEES:

Claimant - St Finbars GAC

John Hughes
Tony Joyce

First Respondent - CAC

Matt Shaw

*British Provincial Council Hearings Committee and
British Provincial Council*

Frank Dylan

Warwickshire CCC

Tara Tolan

BACKGROUND:

1. The hearing tonight concerned an application for interim relief by the Claimant in which it sought an order directing *“Subsequent games in the British Provincial Championship be postponed pending outcome of Arbitration”*.
2. The application was facilitated at short notice and in fairness to all concerned, each of the parties were represented.
3. At its inception, this dispute related to a decision by Warwickshire CCC to impose various penalties including the awarding of a game (Warwickshire Senior Hurling Championship Final played on 9 October 2022) to the Claimant’s opposition, on foot of a proven Objection relating to the playing of an illegal player.
4. Within the Form 1, the Claimant identified the disputed decisions as those dated 10 October 2022, 12 October 2022, 14 October 2022, 24 October 2022 and 8 November 2022. At the outset of the hearing, the Claimant conceded that there were no decisions dated 10 October 2022 or 12 October 2022 and that the remaining three decisions related to those of Warwickshire CCC, British Provincial Council Hearings Committee and the CAC respectively.
5. A short chronology of the decisions handed down in this matter thus far is as follows:

Warwickshire CCC	24 October 2022	Imposed Penalty including the awarding of a game
British Provincial Council Hearings Committee	24 October 2022	Reject Claimant’s appeal for non-compliance with formalities
CAC	8 November 2022	Reject Claimant’s Appeal

6. The Claimant had identified a number of rules in the Form 1 which it is alleged the various decision-makers breached, including 7.11 (O), 7.3 (U), 3.32 (a) (III), 7.11 (a) (2), 7.3 (I) to (O), 7.10 (O), 7.10 (C), 6.8.
7. Whilst Mr Hughes, on behalf of the Claimant, initially made brief submissions in respect of the decision of Warwickshire CCC, following a submission by Mr Shaw, the Claimant accepted that in order to establish an entitlement to interim relief, it was necessary in the first instance for the Claimant to identify an infirmity in the decision of the CAC. Thereafter, Mr Hughes confined his submissions to the decisions of the CAC and the Provincial Council Hearings Committee (hereinafter referred to as the "Hearings Committee"), insofar as it related to the decision of the CAC.
8. In addition to a consideration of the submissions contained within the Form 1 and accompanying documentation and the contents of the Form 2 submitted by the CAC, oral submissions were received from Mr Hughes on behalf of the Claimant, Mr Shaw on behalf of the CAC and Mr Dylan on behalf of the Hearings Committee, all of which said submissions were considered in detail. Ms Tolan did not make oral submissions.
9. In addressing the decision of the CAC, Mr Hughes referenced arguments advanced in the Form 1 and specifically points 5 and 6 contained within Section 7.
10. Point 5 alleged a breach of Rule 7.11 (a) (2) and Rule 7.3 (u). 7.11 (a) (2) sets out that appeals of decisions of a County Committee or their Subcommittee shall be to the Provincial Hearings Committee. Rule 7.3 (u) sets out that a hearings committee shall preside over any hearing and furthermore that a hearing shall require a quorum of 3 members of the hearings committee.
11. Point 6 alleged a breach of Rule 7.3 (l) to (o) which relates to procedures to be followed when issuing a Notice of Disciplinary Action.

12. Mr Shaw submitted that as is set out in their written decision, the CAC had held that the decision by the Hearings Committee to rule the appeal out of order was on the basis that there had been a failure to comply with Rule 7.11 (f) T.O.2022 and that the Claimant had failed in its appeal to the CAC to allege any breach by the Hearings Committee of 7.11 (f). Mr Shaw further submitted that the CAC was bound by Rule 7.11 (o) and that the appeal must be limited to the matters raised in the appeal as originally lodged.
13. Mr Shaw accepted that the fifth ground of appeal (whether a hearings committee could nullify an appeal hearing having advised an appellant of the date and time of the said hearing) did amount to a fair procedures argument and that same had been considered by the CAC but found to be without basis in circumstances where an appeal can be ruled out of order prior to or indeed during a hearing.
14. Mr Dillon briefly submitted that the appeal had been ruled out of order by the Hearings Committee on the basis that the requisite fee for the appeal had not been submitted and secondly that the Notice of Appeal had been submitted outside the prescribed time. Later, Mr Dillon stated that the decision had been made by the Chairperson.
15. In addressing the issue of the balance of convenience, Mr Dillon impressed upon me the significant delays that had already been inflicted upon the championship by virtue of the various hearings and appeals in respect of this matter and furthermore that the provincial final was scheduled to take place this Sunday with the winners facing the Ulster Champions in the next stage of the championship in two weeks' time. Mr Dillon emphasised the logistical difficulties and associated costs of arranging for a team to travel from the United Kingdom to participate in the next round of the championship. He

submitted that any further delay in the championship would most likely result in no team representing the province in two weeks' time.

DISCUSSION:

16. Claimants face a significant burden in establishing an entitlement to interim relief. I am required to consider whether a Claimant has established the existence of a serious/fair issue to be tried and whether the balance of convenience lies in favour of the granting of the relief.
17. It seems to me that I must first satisfy myself that the Claimant can establish the existence of a serious/fair issue to be tried or in essence a reasonable prospect of establishing before a Tribunal that the decision of the CAC was infirmed, either by reason of misapplication of rule or a breach of fair procedures. If I am so satisfied, I should then move to a consideration of the balance of convenience.
18. I am satisfied the Hearings Committee, or some of its officers, made a decision to reject the appeal for non-compliance with formalities (both 7.11 (g) (3) and 7.11 (f)) which was communicated to the Claimant by way of two emails dated 24 October 2022.
19. I am satisfied the appeal to the CAC could only have been an appeal against the rejection of an appeal for non-compliance with formalities as the Claimant had no other entitlement to appeal to the CAC.
20. An examination of the Request for Appeal document reveals that the Claimant identified five grounds of appeal. I am satisfied that the first three grounds of appeal related to the decision of Warwickshire CCC and as such could not be for the consideration of the CAC in the context of an appeal against the rejection of an appeal for non-compliance with formalities.

21. I note the fourth ground of appeal to the CAC related to the submission by the Claimant of the Notice of appeal to the Hearings Committee and specifically to whom the Notice had been furnished. As such, it was potentially relevant to the issue of whether the Hearings Committee had acted correctly in rejecting the appeal for non-compliance with formalities.
22. However, the Claimant did not specify, as is required under rule, what rule had been breached by the Hearings Committee and how it had been breached. I would add in respect of this issue, that it is difficult to ignore the fact that the Notice of Appeal was not received by the secretary of the Provincial Council of Britain until 22.38 on 17 October 2022, which was outside the three-day time limit.
23. I note in the fifth ground of appeal to the CAC, the Claimant submitted that where an appellant had been notified of a date and time for an appeal, there was no provision for a “nullification” of the appeal hearing. Again, it is noteworthy that the Claimant did not identify what rule had been breached.
24. I note the CAC held that the decision by the Hearings Committee to rule the appeal out of order was on the basis that there had been a failure to comply with Rule 7.11 (f) T.O. 2022 and that the Claimant had failed in its appeal to the CAC to allege any breach by the Hearings Committee of 7.11 (f). Mr Shaw submitted that the CAC was bound by rule 7.11 (o) and that the appeal must be limited to the matters raised in the appeal as originally lodged.
25. I note in the CAC’s reasoned decision, it is stated that *“The secretary of the Provincial Council sent 2 emails to the Appellant regarding the appeal. The first email set up the hearing date for the appeal and the second email notified the appellant that the appeal was out of order for failure to comply with Rule 7.11 (F) T.O. 2022”*.

26. While I am satisfied the CAC were incorrect insofar as there were in fact three emails sent by the secretary of the Provincial Council, the first setting up the hearing date for the appeal, the second ruling the appeal out of order for breach of Rule 7.11 (G) (3) and the third ruling the appeal out of order for failure to comply with Rule 7.11 (F) T.O. 2022, I am equally satisfied that the Claimant also failed to allege in the grounds of appeal submitted to the CAC that there had been any breach by the Hearings Committee of Rule 7.11 (G) (3).
27. As previously mentioned, in addressing the correctness or otherwise of the CAC decision, the Claimant has included a submission to the DRA as to whether the Hearings Committee was quorate when making the decision to rule the appeal out of order. I am satisfied the issue of whether the Hearings Committee was quorate was not included as a ground of appeal to the CAC and as such was not before them for their consideration. Therefore, the CAC cannot be criticised for failing to either adjudicate on the matter or find that the Hearings Committee was not quorate. Although irrelevant to my consideration of this matter, I am of the view that had this issue been raised before the CAC, the outcome may well have been different.
28. Insofar as the Claimant has advanced an alleged breach of Rule 7.3 (l) to (o) in support of the application for interim relief, I am satisfied the said Rule was not included as a ground of appeal to the CAC and again they cannot be criticised for failing to adjudicate upon same.
29. In summary therefore, I am satisfied there were only two relevant grounds of appeal before the CAC. The first related to whom the appeal had been lodged but did not address whether same had been lodged in time and did not specify any rule which had been breached. The second related to whether an appeal could be nullified after the Appellant had been notified of the arrangements for the appeal. This second ground of appeal did not include submissions regarding whether there was a quorum for the decision but

simply whether an appeals committee could rule a matter out of order having arranged a hearing.

DECISION:

30. Having taken all of the above into consideration, I am not satisfied there exists a serious/fair issue to be tried such as to merit the granting of the interim relief.

31. In light of the above finding, it is not necessary to embark upon a detailed written consideration of the Balance of Convenience test, however, I would say that I am satisfied that were the interim relief to have been granted, there is a very significant chance that the Provincial Council of Britain would not be in a position to send a team to compete in the next stage of the championship against the Ulster Champions, which said fixture is scheduled for two weeks' time, and that such a scenario would weigh heavily against the Claimant in any consideration of the balance of convenience.

Date of Hearing regarding Interim Relief: 18 November 2022

Date of Decision regarding Interim Relief: 18 November 2022