

Disputes Resolution Authority

An Córas Eadrána

DRA 02 of 2021: In the matter of an arbitration under the Disputes Resolution Code and the Arbitration Act 2010

Between:

RONAN MCCARTHY

Claimant

v.

AN LÁR CHOISTE ACHOMHAIRC - (CAC)

First Named Respondent

And

AN LÁR CHOISTE ÉISTEACHTA - (CHC)

Second Named Respondent

And

COISTE BAINISTÍOCHTA - (MANAGEMENT COMMITTEE)

Third Named Respondent

Hearing: 9th April 2021, Remotely

Tribunal: Mr. Rory Mulcahy SC, Mr Niall Cunningham, Ms Orlaith Mannion

Secretary to the DRA, Rory Hanniffy BL

VERDICT: The claim is **dismissed**.

KEYWORDS: *Closed training periods – R6.45 TO 2020*

Misconduct Considered to have Discredited the Association – R7.2(e) TO 2020 – Whether conduct which gave rise to an infraction under R6.45 could also be conduct capable of bringing discredit to the Association contrary to R7.2 (e) - Whether decision maker was entitled to conclude that the collective training was capable of bringing discredit to the Association

Imposition of penalty - whether a decision maker is required to give reasons for imposing a penalty in excess of a minimum prescribed penalty - Whether the Claimant was compromised in his ability to bring an appeal by the absence of reasons for the choice of sanction.

LIST OF REMOTE ATTENDEES:

Claimant – Ronan McCarthy

Ronan McCarthy
Marc Sheehan – County Chairperson
Kevin O’Donovan – Cork GAA CEO

First Respondent – An Lár Choiste Achomhairc – (CAC)

Julie Galbraith – Acting Chairperson
Niamh McCoy - Secretary

Third Respondent – An Lár Choiste Éisteachta – (CHC)

Brian Rennick – Chairperson
Eoghan Tuohey – Secretary

Second Respondent – Coiste Bainistíochta – (Management Committee)

Simon Moroney – Member
Liam Keane – Former Member
Teresa Rehill – Servicing Officer

FACTUAL BACKGROUND

1. The events the subject of this arbitration have taken place in the context of the public health emergency precipitated in this country by the Covid-19 pandemic. The response to that crisis has affected all sectors in Irish society including the GAA.
2. On 2 January 2021, the Cork Senior Football Team took part in a team building exercise in Youghal, Co. Cork. It was accepted for the purpose of this hearing that this exercise amounted to “collective training” within the meaning of Rule 6.45 of An Treorai Oifigiuil (“the Official Guide”).
3. In this regard, it is important to note that the ban on collective training during certain periods of the year was a feature of the Official Guide prior to the Covid-19 pandemic. However, the periods during which collective training is not permitted were amended in light of the pandemic. Perhaps more pertinently, the perception of the importance of compliance with the Rule arguably has been heightened by the pandemic.
4. On 1 February 2021, the third Respondent (“the Management Committee”) issued a Notice of Disciplinary Action to Cork GAA alleging a breach of Rule 6.45 and proposing a punishment of forfeiture of home venue for its next home game in the National League. Cork GAA accepted the punishment proposed in the Notice.
5. On the same date, the Management Committee issued a Notice of Disciplinary Action to the Claimant, the Manager of the Cork Senior Football Team who had organised the event, alleging a breach of Rule 7.2(e) of the Official Guide, *i.e.* misconduct considered to have discredited the association. It noted that the minimum penalty for this offence was 8 weeks and proposed a penalty of 12 weeks “from the next date on which inter-county panels may return to collective training.” The Claimant did not accept the proposed punishment and requested

a hearing before the second Respondent (“the CHC”). This hearing took place on 18 February 2021.

6. Following the hearing, the CHC found the infraction proven and imposed a penalty of 12 weeks’ suspension from the date of 18 February 2021.
7. The Claimant appealed the decision to the first Respondent (“the CAC”) on 22 February 2021. A hearing took place on 8 March 2021. The Claimant was notified that his appeal had failed by email on 9 March 2021 and a reasoned decision issued on 12 March 2021.
8. The Claimant submitted a Request for Arbitration (the “Request”) to the DRA on 19 March 2021.

GROUNDINGS FOR CLAIM

9. The Claimant raised a large number of issues in his Request which broadly mirrored his grounds of appeal to the CAC. He noted some procedural issues including the proposal by the Management Committee to impose a ‘delayed’ suspension, a proposal which, he correctly pointed out, there was no power to impose. He also raised concerns about the fact that the proposed sanction had been ‘leaked’ and was therefore known to the CHC before it made its decision.
10. At the hearing which took place before the DRA (remotely) on 9 and 10 April 2021, the Claimant identified 5 main issues he wished to pursue (without expressly abandoning any of the other arguments which he had advanced in his appeal). We set out those arguments in brief terms over the following paragraphs.
11. Firstly, he contended that he did not *intend* to discredit the association. The training session followed all relevant public health guidelines and took place on a public beach and in light of medical advice.

12. Secondly, the first official communication from GAA Headquarters which indicated that sanctions might be imposed under the Rule 7.2(e) in the event of a breach of Rule 6.45 occurred on 5 January 2021 (i.e. after the event organised on 2 January 2021). A prior email from a GAA Communications email address had not been widely communicated and had not been made known to him.
13. Thirdly, the prescribed penalty under Rule 6.45 had been imposed. There was no scope within that Rule for a further penalty being imposed on the Team Manager.
14. Fourthly, there was uncertainty regarding the entitlement of elite athletes to engage in group activity and whether inter-county players were to be regarded as elite athletes at the relevant time. It was noted that the 'normal' closed season had been extended because of Covid.
15. And fifthly, the Claimant asserted that he had been denied fair procedures. He very fairly accepted that the matters identified by him would not, in isolation, be a valid basis for setting aside the decisions of the CHC and CAC, but he claimed that, taken together, they breached his rights. He pointed to the following matters:
 - i. As noted above, the Management Committee proposed a punishment which was contrary to the Rules;
 - ii. Public comments by senior GAA officials could have had the effect of influencing members of the CHC and CAC;
 - iii. The membership of the various Respondents changed over the course of the process with the result that members of particular committees at one stage ended up participating in the process as members of different committees at subsequent stages;
 - iv. The penalty proposed by the Management Committee was known to the CHC;

- v. The nature of the submissions made to the CHC and CAC were inappropriate;
 - vi. No reasons had been given for the decision to impose a penalty other than the minimum penalty. He contrasted this with another party who had been sanctioned under the same provision, given the minimum penalty and where detailed reasons were given as to what mitigating factors were taken into account.
16. The Respondents made a single submission and contended that the sanction was correctly imposed by the CHC and correctly upheld by the CAC.

DISCUSSION

17. Having considered the arguments advanced, we have come to the conclusion that the Claimants main contention – that the CHC and CAC erred in sanctioning him under Rule 7.2(e) at all – must fail.
18. It appears to us that the Claimant was labouring under a misapprehension that conduct which gave rise to an infraction under Rule 6.45 could not also be conduct capable of bringing discredit to the association contrary to Rule 7.2(e). There is nothing in the Rules which limits the circumstances in which Rule 7.2(e) applies to cases where no other breach of the Official Guide arises or is proven.
19. There is a further misapprehension in the Claimant’s case insofar as he asserts that he did not intend to discredit the association and that he hadn’t been properly notified that a breach of Rule 6.45 could lead to such a finding. We have no doubt that the Claimant did not intend to discredit the association, but with such an offence, it is the intention to engage in the conduct said to have given rise to the infraction which is relevant, not the intention as to how the conduct might be assessed.

20. In our view, it was open to the CHC to conclude that, in all the circumstances, and in particular in light of the public health situation in the country at that time, the conduct in organising the event on 2 January 2021 was capable of bringing discredit to the Association. It is not our position to comment on the correctness of that view, but rather to confirm the entitlement of the CHC to have reached it.
21. Nor do we think that, in general (or at least in this specific instance) it is necessary for members of the association to be specifically advised that a breach of any particular rule might be regarded as sufficient to trigger disciplinary action under Rule 7.2(e). It is not suggested that there was any change in Rule which was not properly notified.
22. Nor do we think that the Claimant has identified any breach of fair procedures in the finding that the infraction had been proven which would justify our setting it aside.
23. We are, however, concerned with the reasons given for the sanction imposed. In this regard, it will be recalled that a penalty of 12 weeks' suspension was recommended by the Management Committee, longer than the minimum allowed. This proposal was known to the CHC, due to publicity surrounding the matter, in circumstances where the CHC is not supposed to be advised of any proposed sanction. The CHC imposed a sanction of 12 weeks' suspension.
24. Its decision contains no reasons at all for having imposed anything other than the minimum sanction. The minutes of its meeting state that "following lengthy consideration of both aggravating factors in the case and all of the mitigating factors put forward on behalf of" the Claimant, a 12 week suspension was imposed.
25. It was impossible, in our view, for the Claimant to know whether the CHC had properly considered the question of sanction in the absence of any identification of the reasons for the sanction imposed. The reference to lengthy consideration of aggravating and mitigating factors is nothing more than the "administrative

throat clearing” deprecated by the Supreme Court in *Balz v An Bord Pleanala* [2019] IESC 90.

26. The Claimant had a right to appeal the CHC decision, a right which he exercised. He was compromised in his ability to bring that appeal by the absence of reasons for the choice of sanction. It is to be recalled that the Claimant asserted that he had an apprehension that the CHC had been influenced by their knowledge of the Management Committee proposal. How could such a proposition be tested in the absence of any indication of the factors considered by the CHC in imposing the 12-week suspension?
27. Of course, we accept that the obligation on a voluntary body to give reasons for its disciplinary decisions is a very light obligation which ought, in most circumstances, be capable of being met with the briefest of explanations. Moreover, our attention was drawn by the Respondents to a decision of the DRA in Case DRA 16/2008 *Paul Finlay*. In that case, the Tribunal noted that it “*would comment that the process would be improved if Defending Parties were given a reason (even if shortly stated) for the imposition of penalties in excess of the minimum applicable.*” This was relied on to support the proposition that there was never a requirement to give reasons for a decision and that while this may be ‘preferable’ it was not ‘required’.
28. Whatever about other cases, what was identified as preferable in that case was, in our view, required here. Firstly, in order to enable the Claimant to be adequately armed for his appeal. And secondly, in order to enable him to assess whether there was any substance to his complaint that the CHC had been influenced by their knowledge of the sanction proposed by the Management Committee when imposing its sanction. We do not rule out that there may be cases, given the light threshold which will typically apply, in which a failure to give reasons for a particular sanction would not constitute a breach of fair procedures such as to amount to a clear injustice. However, this is not such a case.

29. In those circumstances, the Tribunal would, in the ordinary course, have remitted the matter back to the CHC for a fresh determination on the sanction to be imposed. This would have been problematic having regard to the change in the membership of that Committee since its decision. More importantly, however, it might have been a result which was adverse to the interests of the Claimant. In this regard, he had fairly acknowledged that by the time of the hearing before the DRA, the greater part of his suspension had already run. There was every possibility, therefore, that if the matter were remitted to the CHC for fresh reconsideration of a penalty, the Claimant could have been suspended for a period further in to the forthcoming season than if the suspension imposed by the CHC were allowed to run.
30. In the circumstances, the Claimant was asked whether he would prefer that (i) his claim against the finding of the CHC that the infraction had been proven be dismissed but the decision in relation to penalty be quashed and the matter remitted to it for reconsideration of penalty alone, or (ii) the appeal be dismissed simpliciter with our finding in relation to the absence of reasons for the penalty recorded in this decision. The Claimant elected for the latter option.

DECISION

31. For the foregoing reasons, and on the foregoing basis, the claim is dismissed.

COSTS AND EXPENSES

32. The Tribunal directs that the DRA's expenses be discharged equally as between the Parties (50% by the Claimant and 50% by the Respondents).

Date of Hearing: 9th April 2021

Date of Agreed Award: 25th May 2021

By email agreement.

Rory Mulcahy SC

Niall Cunningham

Orlaith Mannion