

# Disputes Resolution Authority

An C6ras Eadr6ana

**DRA 10 of 2021: In the matter of an arbitration under the Disputes Resolution Code and the Arbitration Act 2010**

*Between:*

**JAMES AUSTIN**

*Claimant*

*v.*

**COISTE 6ISTEACHTA ULADH - (ULSTER HC)**

*First Named Respondent*

*And*

**AN L6R CHOISTE ACHOMHAIRC - (CAC)**

*Second Named Respondent*

*And*

**BORD NA MION6IR ARD MHACHA - (ARMAGH MINOR BOARD)**

*(Interested Party)*

**Hearing:** 5<sup>th</sup> August 2021, Remotely

**Tribunal:** Mr. Michael Murray BL, Mr Mark Curran BL, Ms Orlaith Mannion

Secretary to the DRA, Rory Hanniffy BL

**VERDICT:** The claim is dismissed.

**KEYWORDS:** *Rule 7.2(b) Category V(iii) - threatening or abusive conduct towards a referee, umpire or sideline official – Juvenile Player – whether there was a failure to apply mitigation as per Rule 7.5(m)(i) – whether there was a failure to apply Rule 1.13*

**LIST OF REMOTE ATTENDEES:**

Claimant

James Austin - Claimant

Ronan Austin – Parent

Karl McGuckin BL

Ulster Hearing Committee

George Cartwright (Chairperson)

CAC

Matt Shaw - Chairperson

## FACTUAL BACKGROUND

1. The within application arises from an incident which occurred in an u17 Armagh Club Football match between Crossmaglen Rangers and Clan na Gael on 7 June 2021.
2. In the second half of the match the Claimant was issued with a red card and sent from the field of play by the Referee. The Referee prepared his report after the match and the report detailed that the Claimant had received a red card during the match and that the red card had been issued for the following reason:

*“To use threatening conduct toward a referee (James intentionally kicked the ball forcefully at me. The ball didn’t hit me)”*
3. By way of Referee clarification dated 17 June 2021, the Referee stated *“My Recollection of the said event, was that James was a maximum of 10mtrs from where I was Standing and Ball was kicked with Force towards me”*
4. The Claimant received a Notice of Disciplinary Action and sought a hearing and, in circumstances where the Claimant is a member of the Armagh Minor Football Panel, the hearing was before the First Named Respondent.
5. The hearing before the First Named Respondent took place on 21 June 2021 and its decision was that the infraction was proven and a penalty of 12 weeks suspension in all codes and at all levels was imposed for *“threatening or abusive conduct towards a referee, umpire or sideline official”* pursuant to Rule 7.2(b) Category V(iii).
6. The Claimant submitted his appeal dated 24 June 2021 to the Second Named Respondent and the matter came before the Second Named Respondent on 1 July 2021.

7. The Second Named Respondent dismissed the Claimant's appeal and found that the decision of the First Named Respondent to find the infraction proven against the Claimant was a decision that was open to the First Named Respondent on the evidence. The Second Named Respondent did not accept the Claimant's submission that the decision of First Named Respondent was manifestly incorrect, nor did it accept that there was a misapplication by the First Named Respondent of Rule 7.5(m) or a breach of Rule 7.3 (aa)(vi) and Rule 7.3 (bb).
8. The Claimant's request for arbitration was made on 29 July 2021 and a hearing was convened on 5 August 2021. Due to COVID-19 restrictions, the hearing was convened virtually through video conferencing facilities.

## DISCUSSION

9. A number of grounds of review were proposed by the Claimant.
10. The Claimant claimed that there had been a misapplication of Rule 7.2(b) Category V(iii) in that, while the Referee's Report set out that the ball had been kicked towards him by the Claimant, it did not establish that it was kicked with the intention of hitting the Referee or that the Referee felt threatened, as mandated by Rule 7.2(b) Category V(iii). The Respondents stated that there was no compelling evidence to rebut the Referee Report (as prescribed under Rule 7.3 (aa)(vi)) and furthermore that there was no requirement that a ball be kicked towards a Referee with the intention to hit him, in order for the Referee to be sufficiently "*threatened*".
11. The Claimant also alleged that there had been a failure to apply mitigation as per rule 7.5(m)(i). The Claimant asserted that as he was 15 years old at the time the match was played, he should have been entitled to the benefit of Rule 7.5(m)(i). The Respondents responded to the effect that as the match in question was an u17 match, Rule 7.5(m)(i) did not apply for consideration. It was common cause

between the parties that if the Claimant was entitled to benefit from Rule 7.5(m)(i), he would be entitled to a 50% reduction of his 12 week suspension.

12. The Claimant further claimed that there had been a failure to apply Rule 1.13 (safeguarding of children) by reason of the misapplication Rule 7.5(m)(i). The Claimant submitted evidence from his counsellor of the impact the 12 week suspension has had on his mental health. The Respondents argued that this Ground of Appeal was not raised before the Second Named Respondent and furthermore, that there was no failure to safeguard in respect of this matter and the conduct of the proceedings to date.
13. The Claimant raised a further argument that Rule 7.5(m) was discriminatory and in breach of Article 14 of the ECHR in that it treats those juveniles who are under 16 years of age but limited to playing in u17 competitions less favourably than those juveniles who are under 16 years of age and have the opportunity to play in u16 competitions.
14. The Claimant raised further arguments that the 12 week suspension imposed upon him was disproportionate taking into account his age. The Respondents quite fairly accepted that the penalty was, on the face of it, harsh given the nature of the offence and the age of the Claimant. Notwithstanding this, the Respondents noted that Rule 7.2(b) Category V was clear that a minimum penalty of 12 weeks applied for threatening or abusive conduct towards a referee and the Respondents had no discretion to mitigate/ deviate from same.

## DECISION

15. In respect of the ground that there was a misapplication of Rule 7.2(b), the Tribunal determines that the Referee's Report was clear that a ball was hit towards the Referee by the Claimant and the Referee noted that this was threatening conduct pursuant to Rule 7.2(b). In this regard, the Tribunal notes that it is bound by Rule 7.3(aa)(vi), which states that the Referee's Report "*shall be presumed to be correct in all factual matters and may only be rebutted where unedited*

*video or other compelling evidence contradicts it*". Given the lack of any compelling evidence to contradict the Referee's Report, the Tribunal finds that it stands as is and that Rule 7.2(b) was correctly applied.

16. In respect of the ground that the Respondents should have applied mitigation pursuant to Rule 7.5(m)(i), the Tribunal is satisfied that this does not apply given the match in question was played at u17 level and the discount available to juvenile players does not apply to matches played at that age level. While the Tribunal acknowledges that the Claimant was himself under the age of 16 at the time the incident occurred, the wording of Rule 7.5(v)(m) is clear that the reduction in sanction only applies to "*Juvenile players participating in Under 16 or younger Grade Competitions*".
17. The Tribunal notes that a failure to apply Rule 1.13 was not raised as a ground of appeal when the matter came before the Second Named Respondent and therefore it is not open to the Claimant to raise this issue for the first time before the Tribunal. Notwithstanding that this ground of appeal is procedurally unsustainable, the Tribunal also notes that there was no credible evidence of a failure to comply with Rule 1.13 submitted by the Claimant in circumstances where there was no evidence that the Association had failed to safeguard the health and welfare of the Claimant in the course of the match in question or the subsequent proceedings.
18. The Tribunal accepts that Rule 7.5(m) distinguishes between juvenile players who play in u16 or younger grade competitions and juvenile players who play in u17 grade competitions. However, this is not discriminatory as against players like the Claimant who are under 16 but play in an u17 grade competition; rather the provision acts to mitigate sanctions incurred by players engaged in u16 or younger grade competitions in reflection of their relative inexperience in playing Gaelic Games and the level of competition they are competing at. Therefore, the Tribunal dismisses the claim that Rule 7.5(m) is discriminatory

and in breach of Article 14 of the ECHR and does not uphold this ground of appeal.

19. The Tribunal notes that the 12 week suspension imposed upon the Claimant is the mandatory minimum sanction as stated within Rule 7.2(b) Category V. The Tribunal echoes the sentiments expressed by the Claimant and agreed with by both of the Respondents that the length of the suspension as against the Claimant is harsh given the age of the Claimant and the overall circumstances of the incident. However, it is not within the power or jurisdiction of the Respondents or the Tribunal to deviate from the mandatory minimum as decided upon by Congress and as set out in Rule 7.2(b). Therefore, this ground of appeal is not upheld.

#### **CONCLUSION AND DETERMINATION**

20. The Tribunal refuses the Claimant's application to overturn the decision of the Second Named Respondent.
21. The Tribunal refuses the Claimant's application to apply a deduction of 50% to the Claimant's sanction.
22. This is the unanimous decision of the Tribunal

#### **COSTS AND EXPENSES**

23. No application for costs was made by the Respondents.
24. The balance of the Claimant's deposit to be returned, less the costs associated with the Tribunal hearing

**Date of Hearing:** 5<sup>th</sup> August 2021

**Date of Agreed Award:** 31<sup>st</sup> August 2021

**By email agreement.**

**Michael Murray BL**

**Mark Curran BL**

**Orlaith Mannion**