

**IN THE MATTER OF AN ARBITRATION UNDER ARTICLE 3 OF THE ARTICLES OF
ASSOCIATION OF THE IRISH FOOTBALL ASSOCIATION**

Before: Nicholas Randall QC

B E T W E E N:



Introduction

1. In my Partial Award dated 10th June 2016 I held that I have jurisdiction to consider a discrete issue regarding the proper construction of Article 23.1 of the IFA Disciplinary Code. Further to that Partial Award I granted Carrick Rangers Football Club ('Carrick'), as an interested party, permission to make submissions on this discrete issue.

2. I am grateful to the parties for their co-operation since I delivered my Partial Award. I have subsequently received written submissions from all three parties on the discrete issue which remains in dispute. I am once again indebted to the parties for the assistance that I have derived from their submissions.
3. In view of the discrete nature of the issue that I have to resolve I shall not repeat the facts at length here but refer to the passages in my Partial Award in which I set out the relevant background.

Nature of my Jurisdiction

4. In light of the contents of the written submissions of the IFA in particular I think it is relevant to make some further observations on the nature of my jurisdiction. My jurisdiction is not akin to “an appeal by the back door” as suggested. It is qualitatively different. There is a clear distinction to be drawn between an “appeal” on the one hand and an action to enforce the terms of a contract on the other. My jurisdiction falls squarely within the latter category.
5. It follows that the only issue before me is whether or not, as a matter of contract, the Disciplinary Committee had the discretion available to them which they purported to exercise in this case. As I have already found this is not an “appeal” and, as such, my decision is unrelated to the way in which that discretion was exercised. The only issue is whether or not that discretion existed or whether the sanction was mandatory and permitted of no exceptions. This is a question of construction and is therefore a matter of law.
6. Although not directly relevant to the issue I have to determine, I set out at the end of this Final Award some comments on jurisdiction which I hope will be of assistance to the parties either if my conclusions are to be subject to appeal to CAS, or if some review of the Rules is to be undertaken by the IFA. I take this course because I am concerned that, if correct, the position maintained by the IFA on jurisdiction, namely that there can be no challenge at all brought by a third party against a decision of a Disciplinary Committee, puts the IFA in breach of both the FIFA and UEFA Statutes and thereby exposes it to disciplinary action.

The Issue for determination

7. As set out above the issue for determination is whether or not the Disciplinary Committee had any jurisdiction to override the apparently mandatory provisions of Article 23.1 of the Disciplinary Code. I repeat that this is a pure question of construction and is therefore a matter of law. The approach to construction is well established: I have to determine the objective meaning of the relevant documents in light of the relevant factual matrix known (or reasonably known) to the parties.

Discussion

8. I agree with Carrick that the starting point is the Articles of Association of the IFA ('AoA').
9. Article 2(f) of the AoA states as follows: *Where there is a conflict between the statutes of FIFA and UEFA and these Articles, the statutes of FIFA and UEFA shall prevail.* I consider the relevant provisions of FIFA and UEFA further below. As will be apparent I consider them to be central to my conclusions in this dispute.
10. Article 3(2) confirms that the IFA is a member of FIFA and UEFA. It goes on to state as follows: *(d) [the IFA shall respect] the statutes, regulations and decisions of FIFA and UEFA; (e) Recognise the jurisdiction of the Court of Arbitration for Sport (CAS) in Lausanne (Switzerland), as specified in the relevant provisions of the FIFA and UEFA Statutes.*
11. My conclusion on the above provisions is that it is clear that the intention of the AoA, objectively determined through the process of construction, is to comply with all relevant obligations imposed by FIFA and UEFA.
12. Before moving on to consider the FIFA and UEFA provisions that are relevant to this case I need to set out Article 13 of the AoA. It states as follows: *The Disciplinary Committee will have full powers to deal with all disciplinary matters contained within terms of reference determined for it by the Football Committee*

together with those matters delegated to it by the Board....including the publication of a Disciplinary Code.

13. At this stage of the discussion I should state that I consider it tolerably clear that Article 13 does provide a wide discretion to the Disciplinary Committee. However, I do not consider that, under the legitimate processes of construction, this discretion could extend to acting outside of the AoA which has, itself, expressly bound the parties to follow and comply with the relevant FIFA and UEFA provisions.
14. The relevant provisions of the Disciplinary Code are set out below.
15. Article 1.6 provides as follows: *The overriding objective of the Code is to maintain and promote fair play, protect the health and welfare of Players (and others involved in the Game), ensure that acts of indiscipline (on and off the field of play) or breaches of this code are dealt with expeditiously and fairly and that the image and reputation of association football and the Irish Football Association are not adversely affected.*
16. Article 1.7 provides as follows: *Disciplinary Hearings shall be conducted in a fair and just manner and in accordance with the fundamental principles of natural justice. Procedural and technical considerations shall take second place to the overriding objective of being just and fair to the parties. Proceedings, findings or decisions of the Committee shall not be invalidated by reason of any procedural defect, irregularity, omission or technicality unless such defect, irregularity, omission or technicality raises a material doubt as to the reliability of the proceedings, findings or decisions.*
17. Article 23.1 provides as follows: *Any player or official who participates in a match whilst being suspended or breaches the terms of his suspension will be sanctioned with a minimum fine of £350 imposed on the club for which he is participating. Additionally, the Club will forfeit the match by the score 3-0.*

18. It is of relevance to record at this stage of the discussion that in this case we are dealing with the breach of the terms of a suspension of an *official* and not a *player*. This is of significance for reasons which follow.
19. Article 37 is headed "*Procedures for the Conducting of Hearings*". Article 37.1 states as follows: *Hearings before the Committee are disciplinary proceedings; the Committee is not a court of law. The Committee shall endeavour, where possible, to abide by the provisions under this Article; however, it shall retain an overriding discretion to act in accordance with the overriding objective.*
20. The remaining provisions of Article 37 (as the heading suggests) deal with procedural issues. I note that at no stage does Article 37 deal with substantive issues.
21. At this stage of the discussion it is convenient to deal with Article 37.1 and Article 1.7 of the Disciplinary Code. Both the IFA and Carrick place weight on these provisions as providing the relevant discretion to the Disciplinary Committee. I reject these submissions. In my view they are provisions which are directed at the procedure to be followed rather than the substance of any decision which is reached. As such I consider that they are irrelevant to the question that I have to decide.
22. In my view the real battleground in this case lies between the interaction between Articles 1.6 and 23.1 of the Disciplinary Code and the position under the relevant FIFA and UEFA provisions. In view of the global nature of Association Football it is unsurprising that FIFA and UEFA have set down minimum standards of conduct which need to be observed by participants in the game and relevant associations. This includes the IFA, the Applicant and Carrick.
23. The relevant provisions of the FIFA Disciplinary Code apply (Article 3). They are as follows.
24. Article 31 deals with forfeit. It provides that a team sanctioned with a forfeit *is considered to have lost the match by 3-0*. It further provides that *if the goal*

difference at the end of the match is greater than three, the result on the pitch is upheld.

25. Article 39 sets out a General Rule regarding determining the sanction. It provides that *the body [determining the sanction] shall take account of all relevant factors in the case and the degree of the offender's guilt when imposing the sanction*. The starting point is therefore that the disciplining body has a discretion as to sanction.
26. However, the Code then goes on to provide mandatory punishments for certain offences. Article 55 deals with ineligibility. It provides that *if a player takes part in an official match despite being ineligible, his team will be sanctioned by forfeiting the match (cf. art. 31) and paying a minimum fine.....*
27. It is clear from Article 3 that the term *player* is distinct from the term *official*. It follows that Article 55 does not apply to Managers.
28. Unsurprisingly the relevant UEFA provisions regarding Discipline follow the same structure as FIFA. They are contained in the UEFA Disciplinary Regulations 2016. I shall not repeat them at length here but the following is of note: Article 3 extends the Regulations to all players and Clubs; Article 17 repeats the general principle that the disciplining body takes into account all the facts of the case; Article 21 deals with forfeit and follows the FIFA structure. In particular the obligatory forfeit applies to cases where a *player* takes part in a match. There is no reference to a Manager.

Decision

29. As a matter of initial impression it appears that the wording of Article 23.1 of the Disciplinary Code is mandatory: it permits of no exceptions. Furthermore, although Article 1.6 places a general duty on the Disciplinary Committee to act fairly there are numerous other provisions in the Disciplinary Code to which Article 1.6 could apply. It follows that if I was construing the Disciplinary Code without reference to the provisions of FIFA and UEFA, I would be more attracted to the Applicant's submissions. The mandatory nature of Article 23.1 can be maintained whilst still

giving effect to Article 1.6. By way of contrast the construction advanced by the IFA and Carrick undermines the mandatory nature of Article 23.1.

30. However, I am not construing the Disciplinary Code in a vacuum. As the AoA make clear I have to construe the Disciplinary Code in light of the clear requirement to observe the relevant provisions of FIFA and UEFA.
31. It seems to me that the relevant disciplinary provisions of FIFA and UEFA impose 3 separate requirements that are relevant to this case. The first is that the disciplining body must consider all relevant facts and circumstances before imposing any sanction. The second is that where a *player* breaches a suspension the match must be forfeit 3-0 but there is no similar provision for a *manager*. The third is that where the goal difference is more than 3 the original result must stand.
32. In view of the above I am driven to the conclusion that, if interpreted in isolation, Article 23.1 fails to satisfy the requirements of both FIFA and UEFA. That is a finding that is not open to me under the AoA.
33. In the final analysis it seems to me that the crucial question is the extent to which I can construe Article 1.6 as a provision that can override the mandatory language of Article 23.1 in an appropriate case. After careful and anxious consideration I am driven to the view that I must construe the Disciplinary Code and the AoA in such a way to give effect to the relevant disciplinary provisions adopted by FIFA and UEFA. It follows that I find that Article 23.1 cannot be mandatory in the terms necessary for the Applicant to succeed in this case. This is for the following reasons.
34. The strict wording of Article 23.1 must be capable of being overridden by Article 1.6 in the case in which a team lost a match by more than 3-0. This not only accords with justice and fair play but also with the requirement for the IFA to comply with the relevant provisions of FIFA and UEFA. It follows that there must be, at least, some level of discretion available to the Disciplinary Committee to depart from the strict terms of Article 23.1. If there was no such discretion the IFA

would be in breach of the FIFA and UEFA provisions and open to sanction. That is a result on construction that I should only reach if I am forced to do so. I consider there is sufficient elasticity in the terms of Article 1.6 to enable me to find that such a discretion is present in the Disciplinary Code.

35. However, it also follows that the discretion is not open ended. If FIFA and UEFA have imposed an obligatory sanction the discretion cannot extend to undermining that obligatory sanction. The obvious way in which the discretion I have found to exist is to be controlled is by reference to the relevant provisions of FIFA and UEFA. It is not simply in the gift of the Disciplinary Committee.
36. However, the crucial point in this case is that although both FIFA and UEFA have provided for an obligatory sanction where a *player* breaches the terms of their suspension it does not do so in the case of a *manager*. Furthermore both FIFA and UEFA require that the fall-back position is for each individual disciplinary decision to be made on the facts and circumstances of the relevant case. Once again it seems to me that the requirements of FIFA and UEFA are given effect by construing Articles 23.1 and 1.6 of the Disciplinary Code as meaning that there is a discretion available to the Disciplinary Committee but it can only be exercised in a manner consistent with the relevant requirements of FIFA and UEFA. This is in line with the appropriate construction of the AoA.
37. It follows that I consider that Article 23.1 of the Disciplinary Code when construed in the light of Article 1.6 gives a discretion to the Disciplinary Committee in cases in which the offence is committed by an *official* rather than by a *player*. It follows that I consider that if the offence had been committed by a *player* the discretion would be excluded by the AoA and the relevant provisions of FIFA and UEFA.
38. It follows that I conclude that Article 1.6 provides a discretion to the Disciplinary Committee to depart from the strict terms of Article 23.1 of the Disciplinary Code to the extent that it deems necessary to do so to achieve justice in the individual case provided that it remains within the limits set down by FIFA and UEFA. It follows that I consider that in Carrick's case the Disciplinary Committee did have a discretion.

39. As I have indicated in my Partial Award I do not consider that, even if I had the jurisdiction to do so, that I would feel able to categorise the Disciplinary Committee's decision as perverse. In the final analysis they were persuaded that the errors were genuine and honest and there was no attempt to manipulate the situation. That seems to me to be a paradigm example of a field of decision making that is for the Disciplinary Committee that hears the case and not for an Arbitrator on a contractual challenge by a third party.
40. In the circumstances I must dismiss the Applicant's claim.
41. As set out above I consider it appropriate in view of the arguments raised in the IFA's submissions subsequent to my Partial Award to make some further comments on the jurisdiction issue.
42. In my view the overall position advanced by the IFA, namely that there can be no challenge *at all* to a decision of the Disciplinary Committee, is untenable. It would be an extraordinary state of affairs if a party to a contract was prevented from enforcing the terms of that contract. Although the AoA prevail that does not prevent the Disciplinary Code from being contractual in nature. Indeed it seems to me that the Code plainly is contractual not least because it is necessary to implement the obligation within the AoA themselves to comply with the relevant provisions of FIFA and UEFA. Since both FIFA and UEFA have considered disciplinary matters in depth and provided universal rules it would be surprising to say the least if those universal rules could not be enforced by parties to the contract of membership. Indeed it seems to me clear that the IFA's position in this case would put it in breach of the relevant provisions of FIFA and UEFA which oblige the IFA to comply with their disciplinary provisions.
43. Indeed the position can simply be illustrated by the example of a case in which a player rather than a manager breached the terms of a suspension. In such a case it would not be open to the Disciplinary Committee to refuse to sanction the Club with a forfeit. If it did so, its decision must be capable of being subject to legal challenge by a third party.

44. I should also perhaps add that I consider that the arguments advanced by the Applicant in favour of a broader basis for challenge (including perversity) are stronger than those advanced by the IFA in favour of no challenge at all. In this regard I would refer to *Bradley v The Jockey Club [2005] EWCA Civ 1056* which supports the wider view. However, I was persuaded by Mr Shaw QC in this case that since the Applicant was relying on the contractual route, the contractual documentation did not permit me to imply any wider basis for challenge.
45. I hope that the above comments are of some assistance either if this matter was to go to CAS or if the IFA and its members were considering some amendments to the Disciplinary Code to avoid confusion in the future.

Conclusion

46. In conclusion I dismiss the Applicant's claim.
47. I understand that the parties have consented to the costs of the Arbitration being paid by the losing party and I have no discretion to divide the costs between the issue of jurisdiction and construction. As such I order that the Applicant should pay the reasonable costs of the Respondent and the Interested Party.
48. I hope the parties can agree the amount of costs payable. If there is any dispute the parties will no doubt make the relevant application.

NICHOLAS RANDALL Q.C.

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