

Glentoran FC v The Challenge Cup Committee

Before the IFA Appeal Board on 31 March 2022

Carley Shields (Chair), Ciara McReynolds & Carla Dallas

This is an appeal by Glentoran FC ('Glentoran') against the decision of the Challenge Cup Committee ('the Committee') to uphold a protest lodged by Newry City AFC ('Newry') with respect to the eligibility of Joe Crowe of Glentoran to play in the Irish Cup quarter final which took place on Saturday 5 March 2022.

The salient facts are as follows:

- On 14 February 2022 Joe Crowe was given a suspension for three matches having been sent off whilst playing for Glentoran II's in a match against Linfield Swifts.
- The three matches following that date for Glentoran II's were:
 - 19/02/22 – McCombs Intermediate Cup against Lisburn Distillery;
 - 21/02/22 – NIFL U20 Premiership Development League against Larne Olympic; and
 - 28/02/22 – NIFL U20 Premiership Development League against Glenavon Reserves.
- On 5 March 2022 the Irish Cup Quarter Final took place between Glentoran and Newry, in which Joe Crowe played. Glentoran won 1-0.
- On 7 March 2022 Newry lodged a letter of protest with the Committee asserting that Joe Crowe was not eligible to have played in the quarter final as he had not yet served the full three game suspension imposed upon him, due to the fact that he was ineligible to play in the Intermediate Cup match against Lisburn Distillery, whether suspended or not, due to the number of senior matches he had played, meaning he still had one more suspension to serve.
- The Committee considered the protest on 10 March 2022 having the benefit of submissions from both Newry and Glentoran. The Committee decided that the protest should be upheld and accordingly Newry were reinstated to the Irish Cup.
- On 11 March 2022 the Committee communicated its decision to Glentoran.
- On 15 March 2022 Glentoran issued their appeal against the Committee's decision in accordance with Article 14 of the IFA's Articles of Association.

The Committee's Decision:

Newry's protest was upheld by the Committee on the following grounds:

- Article 15.12 of the IFA Disciplinary Code states: "A player who is not eligible to participate in a particular match due to the competition rules may not use that match to serve the suspension or part thereof."
- Rule 13(iii) of the Intermediate Cup states that an ineligible player shall be a player who has "Played more than 12 senior matches (a senior match being a match in one of the recognised 'senior' competitions – i.e. NIFL Premiership and Championship, Irish Challenge Cup, NIFL League Cup, Co. Antrim Shield, Mid Ulster Cup, North West Challenge Cup) during the current season except if player has taken part in such senior match/es as a player for an Intermediate club."

- IFA Regulation 27 states: “The word ‘play’ shall be understood to mean engage in a match or competition in which the number of players a side is more than five.”
- At the time of Joe Crowe’s dismissal for Glentoran II’s on 14 February 2022, he had played 16 senior matches and was therefore not eligible to participate in the Intermediate Cup tie against Lisburn Distillery on 19 February 2022.
- Article 15.5 of the IFA Disciplinary Code states that “Clubs shall be wholly responsible for ensuring that suspensions are served. It is each club’s responsibility to ensure the eligibility of their players for any match.”
- The Committee determined that Newry should be reinstated to the Competition to play Ballymena United in the semi-finals in accordance with Rule 2 of the Challenge Cup Rules.

Glentoran’s grounds of appeal are as follows:

1. That the Committee misdirected itself regarding the application and/or interpretation of the Intermediate Cup Rules, specifically Rule 13(iii);
2. The IFA Football Regulations do not apply in general and Regulation 27 does not apply specifically to the Intermediate Cup Rules;
3. The decision does not deal with, either adequately or at all, the observations made by Glentoran regarding the COMET system;
4. The decision does not take into account the impact the decision will have on Glentoran.

Appeal hearing

The Appeal Board has read the detailed written submissions provided on behalf of both parties to the appeal and heard from the parties’ representatives at the virtual hearing which took place via zoom.

Considering each ground of appeal in turn.

Firstly, that the Committee misdirected itself regarding the application and/or interpretation of the Intermediate Cup Rules, specifically Rule 13(iii).

Rule 13 states:

“An ineligible player shall be a player who has:

- (i) Played in the current or previous 3 seasons in a senior International Match
- (ii) Played in a Senior Inter League Match during the current season
- (iii) Played more than 12 Senior Matches (a senior match being a match in one of the recognised ‘senior’ competitions – i.e. NIFL Premiership and Championship, Irish Challenge Cup, NIFL League Cup, Co. Antrim Shield, Mid Ulster Cup, North West Challenge Cup) during the current season except if player has taken part in such senior match/es as a player for an Intermediate club.**
- (iv) Competed in a National Association Cup Tie Match for an English, Scottish or Welsh club during the current season;
- (v) Played in the winning team in the final tie of a National Association Senior Cup competition during the current or previous season, except for a player who has played in a winning team which had qualified from an Intermediate Competition.”

Glentoran contends that the wording of Rule 13(iii) refers to a player having played full matches, i.e. not matches in which they have only appeared as a substitute or have been substituted before the end of the match, and rely on Law 7 of the Laws of the Game in this regard which provides that a match lasts for two equal halves of forty five minutes.

On Glentoran's reading of Rule 13(iii), a senior match in which a player did not complete ninety minutes, whether by reason of a dismissal or substitution (either for tactical or injury reasons), would therefore not be included as one of the 12 or more senior matches played by a particular player which would potentially deem them ineligible for the Intermediate Cup.

The Committee argues that such an interpretation of the wording of Rule 13(iii) is not tenable, and that hypothetically speaking, would therefore mean that a player could play fifty senior matches but providing that no more than 12 of those appearances were for the full match, the player would still be eligible to play in the Intermediate Cup.

Glentoran's Counsel argues that the principle against doubtful penalisation should apply, in that a person should not be penalised except under clear law, and therefore where an enactment provides for relief from detriment in certain circumstances, the presumption against doubtful penalisation may point towards construing the exception liberally, i.e. in favour of the subject.

The Committee contends that the presumption against doubtful penalisation is capable of being outweighed by other interpretive factors, and the weight to be given to the presumption will depend upon the circumstances of the particular case.

As Sales J explained in *Bogdanic v Secretary of State for the Home Department* it is not an absolute principle:

"...The overarching requirement is that a court should give effect to the intention of the legislator, as objectively determined having regard to all relevant indicators and aids to construction. The principle of strict interpretation of penal legislation is one among many indicators of the meaning to be given to a legislative provision. It is capable of being outweighed by other objective indications of legislative intention, albeit it is itself an indicator of great weight."

Having considered the arguments put forward by both parties and Rule 13 itself, the Appeal Board, is satisfied that Rule 13(iii) cannot only mean that a player is ineligible if they have played more than 12 **full** matches (our emphasis added).

That would have the result, as helpfully pointed out by the Committee in its submissions and referenced above, that a player could play **in** (our emphasis added) fifty games at senior level but providing that no more than 12 of these appearances were for the full length of the match then they would still be able to play in the Intermediate Cup. This cannot be right and cannot have been the intention of the draftsman of the Rule.

It is also helpful to consider the other provisions of Rule 13.

Rules 13(i), (ii) (iv) and (v) all refer to scenarios where only one game must have been played by a player in order to render them ineligible to play in the Intermediate Cup, compared with Rule 13(iii), where a player is ineligible only if they have played more than 12 Senior Matches. This may well be

the reason why the word 'in' is omitted from the beginning of Rule 13(iii), however, the Appeal Board is satisfied that the omission of the word 'in' from the beginning of Rule 13(iii), as compared with the other provisions of the Rule, is in no way meant to be of significance. The ordinary and plain meaning of Rule 13(iii) is clear.

In any event, Counsel for the Committee sought to highlight that the word 'in' does in fact appear in Rule 13(iii), albeit not at the beginning as per the other provisions of Rule 13. Excluding the wording in brackets Rule 13(iii) states: "Played more than 12 Senior Matches (...) during the current season except if player has taken part **in** (our emphasis added) such senior match/es as a player for an Intermediate Club."

The Appeal Board is of the opinion that if a player has played 12 or more senior matches, whether full matches, or by way of substitution for whatever reason, then they are ineligible to play in the Intermediate Cup, in the same way as if a player had played in the current or previous 3 seasons in a senior International Match, a Senior Inter League Match during the current season, competed in a National Association Cup Tie Match for an English, Scottish or Welsh Club during the current season, or played in the winning team in the final tie of a National Association Senior Cup Competition during the current or previous season, except for a player who has played in a winning team which had qualified from an Intermediate Competition, regardless of the length of their involvement in said matches.

In their response to the Committee's submissions Glentoran acknowledge that Mr Crowe had played in 16 senior matches. As previously stated, the omission of the word 'in' at the beginning of Rule 13(iii) is not significant in the opinion of the Appeal Board. The intent behind Rule 13(iii) is clear.

Given the above, the Appeal Board does not accept that the Committee misdirected itself regarding the interpretation of Rule 13(iii) and accordingly dismisses this ground of appeal.

Secondly, that the IFA Regulations do not apply in general and Regulation 27 does not apply specifically to the Intermediate Cup Rules.

The Appeal Board do not accept this ground of appeal for the following reasons.

Rule 2 of the Intermediate Cup states inter alia: "The Competition shall be conducted under the Articles of Association ('the Articles'), the Laws of the Game and these Rules."

Article 11.5 of the Articles states: "The Association in general meeting may make regulations governing the organisation and playing of Association Football which, when published, shall be binding on Members, players registered with Members, and referees registered with the Association."

The Regulations were made under the Articles and therefore do apply to the Intermediate Cup.

Regulation 27 helpfully sets out the interpretation of the word 'play, where it states: "The word 'play' shall be understood to mean, engage in a match or competition in which the number of players aside is more than five."

This definition being consistent with the interpretation of Rule 13(iii) applied by the Committee and accepted by the Appeal Board.

This ground of appeal is dismissed.

Thirdly, that the decision does not deal with, either adequately or at all, the observations made by Glentoran regarding the COMET system.

The Appeal Board understands that COMET is a platform designed to help with the administration of Association Football in this jurisdiction, it is by no means the gate keeper of a player's eligibility. That is a matter that lies squarely with each club and is clearly set out in Article 15.5 of the IFA Disciplinary Code where it is stated: "Clubs shall be **wholly responsible** for ensuring that suspensions are served. **It is each club's responsibility to ensure the eligibility of their players for any match.**" (Our emphasis added.)

In addition, the Appeal Board would highlight Article 1(h) of the IFA Professional Game Player Registration Regulations which states: "It shall be the responsibility of clubs playing in any match to be played under the jurisdiction of the Association to ensure that its players are eligible to play in such a match."

Clubs cannot and should not use COMET as a scapegoat for their decisions concerning a player's eligibility.

The case cited by the Committee in its submissions of *The Football Association of Wales v Connah's Quay Nomads Football Club* delivered on 7 March 2022 is of particular relevance. In that case the Applicant complained of, inter alia, that the COMET system and the FA of Wales did not warn that the player was ineligible, however the sole arbitrator stated at paragraph 61 of his decision that 'there is nothing in this contention. As I have said, I agree with the submission on behalf of the FAW that it is the Club's responsibility to ensure its compliance with the obligations of registration.'

Glentoran have made allegations against the IFA of breach of contract and breach of duty of care. This is not the forum within which to deal with such issues and therefore the Appeal Board does not intend to make any further comment in that regard.

This ground of appeal is dismissed.

Finally, that the decision does not take into account the impact the decision will have on Glentoran.

The Appeal Board acknowledges the importance of the Competition for all clubs concerned, however the impact a decision will have on a club is not a consideration for the Committee when arriving at its decision.

It is the Committee's role to ensure that rules are followed, and in the event that they are not, the Committee must impose the appropriate sanction upon the Club in question.

The potential impact of the outcome of a match on a club only serves to highlight the care and due diligence that should be taken by the individual clubs to ensure the eligibility of their players when selecting them for particular matches.

The Appeal Board therefore also dismisses this ground of appeal.

Conclusion:

The Appeal Board dismisses all grounds of appeal.

The Committee has asked that costs be awarded against Glentoran, however the Appeal Board are refusing this request.

The Appeal Board is satisfied that the appeal was not of a frivolous or vexatious nature and therefore a costs sanction is not appropriate in the circumstances.

The Appeal Board would like to thank the parties for their helpful and detailed submissions, as well as for their attendance at the virtual hearing.

End.