

**IN THE MATTER OF AN INDEPENDENT ARBITRATION PANEL CONSTITUTED BY
ARBITRATION AGREEMENT**

Before:

Jane Bickerstaff QC (Sole Arbitrator)

BETWEEN:

GLENTORAN FC

Applicant

and

IRISH FOOTBALL ASSOCIATION

Respondent

WRITTEN REASONS ON THE ARBITRATION

1. In this written ruling, Glentoran Football Club will be referred to as “Glentoran”, the Challenge Cup Committee of the Irish Football Association as the “IFA” and the player, Joe Crowe, as “JC”.

FACTUAL BACKGROUND

2. This is an appeal by Glentoran against a decision of the Appeal Board of the IFA on the 31st March 2022.
3. The salient facts are as follows;

- On 14 February 2022, Glentoran player, JC, 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 JC played. Glentoran won 1-0.
- On 7 March 2022 Newry lodged a letter of protest with the Challenge Cup Committee of the Irish Football Association (The Committee) asserting that JC 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.

- On 31 March 2022, the Appeal Board heard oral submissions and dismissed all grounds of appeal.
- 4. Glentoran now appeals that decision by way of Arbitration Agreement, signed 13 April 2022. The Arbitration Rules of Sport Resolutions apply. I have been appointed as sole arbitrator and under Rule 12.4 my decision is final and binding.
- 5. I have received extensive written submissions and accompanying authorities and documentation. I have been addressed by way of oral submissions at a remote hearing held on 21 April 2022, by Mark Orr QC on behalf of Glentoran, and by Steven Shaw QC on behalf of IFA. I am grateful to both for their detailed and helpful submissions both written and oral.
- 6. There are three grounds of appeal, and what may be best described as a point of law (the equity point) to be determined.
- 7. This appeal turns on the eligibility of JC to play in the Intermediate Cup game that took place on 19 February. If he was eligible according to the rules of that competition, it would count towards his 3-match suspension, and therefore he would have become eligible to play (as he did) in the Irish Cup Quarter Final match against Newry. Conversely, if he was ineligible, then that game would not count towards his suspension, and he would have remained suspended for the Irish Cup match. That being the case, it would follow that Glentoran had fielded an ineligible player and they would forfeit their win. 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.”

THE RULE 13 GROUND

- 8. The Intermediate Cup is a competition for clubs of intermediate status, including NIFL Premiership reserve teams. Glentoran is such a team, who field their second team in this Cup Competition. It is specifically designed to be played by those who are not at the elite level of Northern Irish Football. Eligibility to play is governed by Rule 13 of the Intermediate Cup Rules.

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.”*

9. It will immediately be appreciated that other subsections refer to playing **in** a match, whereas 13 (iii) refers to having **played** more than 12 senior matches (my emphasis added).
10. Prior to his participation in the Irish Cup Quarter-final, JC had played in 16 senior games for Glentoran in the current season. He had started 11 of those games. He had played the full 90 minutes in 8 of those games. He had been brought on as a substitute or left the field of play without completing the full match, in the remaining 8 games. It is agreed that a tally is maintained of aggregate minutes played, and JC had played a total of 11.6 x 90 minutes.
11. This primary point of appeal therefore rests upon the interpretation of Rule 13 (iii). Put simply, if, as the Respondent contends, it refers to having been selected for, and taken part in, more than 12 senior matches, then JC was ineligible to play and should still have been suspended for the Irish Cup Quarter Final. However, if, as the Applicant contends, it refers to having played either an aggregate of more than 12 full games (defined as 2 halves of 45 minutes duration each) or having played the full 90 minutes in more than 12

games, then JC would have been eligible to play and would consequently have served his suspension by the time of the Irish Cup Quarter Final.

12. To assist in the statutory interpretation, I am urged by both parties to this arbitration to look at *Wood v Capita Insurance Services Ltd [2017] A.C. 1173*, and in particular at paragraphs 10-15 of the unanimous judgment delivered by Lord Hodge. I am urged to ascertain the objective meaning of the wording of Rule 13 (iii), and to do so by looking at the particular disputed wording within the context of the whole of the document. I am urged to look at the wider purpose of the rule.
13. When I look at the wording of Rule 13 (iii) in this context, I am persuaded by the argument advanced on behalf of the Respondent. Rule 13 has been expressed in the same terms for many years, long before computers calculated aggregate minutes played in total to any given point in a season. If you played in a match, then you played. They amounted to the same thing, and in my view still do. The purpose of the Rule is to maintain an even playing field and prevent the elite clubs, who are fielding their second team in this competition, stacking the team with better players to the hurt of those teams fielding a truly intermediate side. Thus, what amounts to a “senior match” is defined, and it was at some point determined that if a player had been good enough to play more than a certain number of those senior matches, then he could not be described as intermediate, and was too good to be selected for a cup with the profile of the Intermediate Cup. That number was determined as being more than 12. As Mr. Shaw QC put it, a line had to be drawn to protect truly intermediate players and it was decided that 12 matches was a fair and proportionate marker of where the line would be drawn.
14. At the outset of the oral hearing, I asked a number of questions in regard to JC’s participation for Glentoran this season. The purpose was to establish in my own mind, if possible, whether he was more aptly described as “a regular and seasoned starter for the senior side”, or “a young and developing player who had not established himself as a regular in senior competitive football”. My view is that he tends more towards the former than the latter. The season had run from mid-August to mid-February by the time of JC’s suspension. During that time, he had played the games I have already outlined and during November and December was a regular starter for the first team. Interestingly, he was selected to start in the first round of the Irish Cup on 8 January. I agree with Mr. Shaw

QC's analysis, that players are on a spectrum as to ability, and that in recognition of that, there is the "more than 12 senior matches" rule. In my judgment, JC is indeed caught in the crosshairs of Rule 13 (iii).

15. Before the COMET system, each club had to determine the eligibility of their players by reference to the applicable rules, and in the case of the Intermediate Cup, having played, or played in more than 12 senior matches amounted to the same thing. No one was forced to the artificiality of calculating aggregate minutes. In any event, returning to statutory interpretation, had the drafter of the rules intended that it should mean "played an aggregate of minutes amounting to more than 12 games" he or she could easily have said so.
16. If, as the Applicant contends, it was intended to refer only to games where the full 90 minutes had been played, this could easily be open to abuse, by simply removing a player from the pitch minutes, or even seconds from the end of the game, so that it did not qualify for exclusionary purposes.
17. I have been addressed by the Applicant on the principle of doubtful penalisation and referred to passages from *Bennion, Bailey and Norbury on Statutory Interpretation*. It is a principle of legal policy that a person should not be penalised except under clear law. This is a well-established principle, applicable far wider than just the criminal law, which I accept. If it be the case that I found the competing meanings of Rule 3 (iii), contended for in the alternative by each of the parties, to be equally compelling, then this principle may cause me to favour the contention of the party facing penalisation. But for all the reasons outlined above, I do not. I find that to suggest that "Played more than 12 senior matches" must mean either, "played more than 12 lots of 90 minutes" or "played an aggregate of minutes amounting to no more than 12 full games" to be strained and artificial.
18. I therefore find that as JC had played 16 senior games, he was ineligible according to Rule 13 (iii). It follows that this ground of appeal is dismissed.

THE IFA REGULATIONS GROUND

19. I am fortified in my findings in relation to Ground 1 above, by the definition provided by Regulation 27 of the IFA Regulations, which defines the word “play” as “engage in a match or competition in which the number of players aside is more than five”.
20. However, it is somewhat unnecessary for me to determine this ground as it will have no material bearing on the outcome of this appeal. This is because I was able to reach my conclusion on Ground 1 without any reference to this particular definition.
21. Had I been required to rule, I would have agreed with the rationale and conclusion of the IFA Appeal Board. For ease of reference, I include the relevant part of their written ruling of 31 March.

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.

22. To my mind, the Regulations are not a separate document, but are expressly created by, and included within, the Articles of Association.
23. For these reasons this ground of appeal is rejected.

THE COMET GROUND

24. The IFA COMET Football Management System is a software programme that provides a tool to assist football officials in the administration of the game.
25. During the course of the oral hearing, it was established that it is essentially an almanac, in digital, computerised form, that records all the facts and statistics of a football season. This description was not demurred from by the Applicant. It was also agreed that beyond

the recording of information for reference purposes, there is a “help function” whereby a club can seek assistance or clarification on many matters. By inputting their query, they receive a help ticket, which is then responded to as and when the answer is known. The computer does not itself answer queries, that requires human input.

26. Glentoran submits that, as at the time of the Irish Cup Quarter-Final, the system showed that JC had served his 3-match suspension. The Respondent submits that there was no representation anywhere on the system that JC was eligible to play in that Quarter Final match. They submit that the responsibility lies squarely with the Club to determine the eligibility for any particular competition, of any particular player.

27. Article 15.5 of the Irish Disciplinary Code states:

“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.”

28. Additionally, Article 1(h) of the IFA Professional Game Player Registration Regulations 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.”

29. This seems therefore to be a clearly established and fundamental principle, that the Club bears ultimate responsibility in these circumstances and cannot palm the decision off by reference to an entry on the COMET system.

30. It is also clear from the terms and conditions of use of the COMET system, at section 3, “Accuracy and Validity of Information”, that at 3.1, no liability is accepted for errors and omissions, and at 3.2, that onus is placed on the club to seek verification of information.

31. There is a specific disclaimer at paragraph 11.1

*“Whilst the IFA uses all reasonable efforts to ensure that the information contained on the IFA FMS is current, accurate and complete at the date of publication, no representation or warranties are made (express or implied) as to the reliability, accuracy or completeness of such information.....**You must take appropriate steps to verify this information before acting upon it.**” (emphasis added)*

32. All of these provisions together, comprehensively establish that it was for Glentoran to satisfy themselves of JC's eligibility to play in both the Intermediate Cup and the Irish Cup. That responsibility cannot be abrogated by reference to an entry on a computer system that indicated that JC had served his suspension.
33. It follows that this ground of appeal is dismissed.

THE EQUITY RULE

34. This does not seem to me to be a ground of appeal, as it is not any sort of complaint about the propriety of the decision of the original IFA Appeal Board. Rather, I am invited to perform some sort of "sniff test" in relation to the overall decision, to see if "it feels right".
35. I have been referred to the Arbitration decision of *Glentoran FC v IFA 2015*. In that case, the sole arbitrator, Paul Gilroy QC, is submitted by Mr. Orr QC to have introduced an element of equity into his decision.
36. Although the Applicant in that particular matter was Glentoran FC, the club who had faced the penalty was in fact Glenavon FC. The Appeals Committee Board had concluded (as recorded at paragraph 39 of its decision) that "*It would not be fair or just to punish Glenavon for relying on advice given in good faith by the Disciplinary Committee.*"
37. Mr. Orr QC likens that case to this and submits that as Glentoran acted in good faith when they fielded JC as a player in the Irish Cup Quarter-Final, then a win should be a win, and even if strictly speaking, JC was ineligible to play, nonetheless Glentoran should go through to the semi-finals of that Cup.
38. Mr. Shaw QC submits that ultimately the equity point was not the basis of the decision in that case and that the arbitrator did not employ natural justice to drive a coach and horses through the rules, and neither should I in this instant case.
39. Looking at the facts of the two cases, there is a distinct and important difference. In the Glenavon case, an incorrect decision was communicated by or on behalf of the IFA Disciplinary Committee to Glenavon FC that a player was eligible to play in a certain fixture. In the instant case however, that did not happen. Glentoran did not seek guidance

or clarification but claim they relied upon an entry on the COMET system that JC had served his 3-match suspension.

40. For the reasons I have set out in relation to Ground 3 above, I reject those submissions.
41. Ultimately, even if it were right and proper to perform that “sniff test” as a conclusion to the decision making process, in my view this case would pass such a test.
42. For all the reasons here set out, this appeal must fail.

COSTS

43. Paragraph 7 of the Arbitration Agreement states;

As per Article 3.2 of the Irish Football Association Articles of Association and its reference to arbitration costs, the party losing the hearing will pay the full costs of the hearing (including, when appropriate, both parties’ legal costs).

44. Although section 13 of the Arbitration Rules of Sport Resolutions makes provision for costs which differs from the above, it clearly states that it is subject to those which other applicable regulations provide.
45. As both parties have entered a signed agreement to this Arbitration, in my view Article 3.2 takes precedence. This is a mandatory provision which provides that “the party losing the hearing **will** pay the full costs of the hearing.” (emphasis added)
46. I have been provided with the recent decision of Nicholas Stewart QC in the Arbitration of Donaghadee FC v IFA, and I agree with his assessment that the words “when appropriate” as applied to the legal costs, means “where applicable”, i.e., when there are legal costs to be paid, as opposed to conferring some form of discretion in relation to costs.
47. I order that the Applicant, Glentoran FC, is to pay the full costs of this Arbitration, including the legal costs of the Respondent, IFA.



Jane Bickerstaff QC

Sole Arbitrator

London

26 April 2022



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