

**IRISH FOOTBALL ASSOCIATION
APPEALS COMMITTEE**

In the matter of an appeal by Portadown Football Club against a decision of the Competitions Committee of the Northern Ireland Football League ('NIFL')

Appeals Committee:

Mr. M. Wolfe KC (Chair)

Mr. I. Beggs

Mr. S. Keenan

DECISION

This is a decision of the IFA Appeals Committee which was reached following a hearing which took place at IFA Headquarters on Monday 16 January 2023.

It concerns an appeal brought by Portadown FC ('the Appellant') by letter dated 13 December 2022 against a decision reached by the Competitions Committee of NIFL ('the Respondent') following a meeting on 9 December 2022.

Having regard to the reasons set out below, the unanimous decision of the Appeals Committee is that the appeal shall be dismissed so that the decision of the Respondent is upheld to the effect that the Appellant, during their Danske Bank Premiership game against Newry AFC which took place on the 4 December 2022, fielded a player who was an 'ineligible' player within the meaning of NIFL Premiership Rule 37. Accordingly, the sanction available under NIFL Premiership Rule 38 was properly applied and has effect.

Attendees

1. The Appellant was represented at the hearing by Mr. Douglas Stevenson BL who was instructed by Carson McDowell Solicitors (who were not in attendance). Mr Stevenson was accompanied by the following officials of the Appellant: Bill Emerson (Secretary); Peter Hunniford (Director of Football); and Jim Nesbitt (Physio).
2. The Respondent was jointly represented at the hearing by Stephen Mills (Chief Operating Officer) and David Begley (Chair, Competition Committee).

3. The Appeals Committee wishes to express their gratitude for the constructive way in which the parties conducted themselves during the hearing and for their helpful written and oral submissions.

Preliminary Application

4. At the commencement of the hearing, following enquiry by the Chair, it was indicated that the Appellant wished to advance a preliminary application.
5. Article 14(3) of the IFA Articles of Association provides that an appeal before the Appeals Committee shall not be conducted as a re-hearing so that the appeal must proceed on the basis of the evidence adduced to the body which heard the case in the first instance. If a party wishes to rely upon evidence which was not previously adduced it must satisfy the Appeals Committee that there was “good reason” for not making that evidence available at first instance. If that test can be satisfied it is the duty of the Appeals Committee to refer the case back to the first instance body, in this case, the Competitions Committee of NIFL.
6. The Appeals Committee was told that the Appellant wished to be able to rely upon two areas of new evidence which were not adduced before the Respondent when it considered the case on the 9 December 2022. Broadly, those two areas of new evidence can be summarised in the following terms: first, that the player concerned had to stop to be sick whilst travelling to the fixture; second, that as a result of being sick the player had informed the Appellant that he would arrive late for the game and was unfit to start the game.
7. When asked to explain to the Committee whether for the purposes of Article 14(3) there was any “good reason” why this evidence was not made available in the first instance it was argued that cases at first instance proceed on the basis of a “*slightly casual approach*” so that the Appellant didn’t appreciate the need to provide this evidence, and/or that the Respondent did not adequately explain what was required when it sought observations from the Club.
8. The Respondent opposed the Appellant’s application. The Appellant’s suggestion that a casual approach was adopted by NIFL was rejected and it was contended that it was

a matter for the Club involved in the dispute to understand the Rules and to bring forward all relevant and appropriate evidence.

9. The Committee took some time to reflect upon the submissions which had been made in respect of the preliminary application, before reaching a decision. In reaching its decision the Committee noted that Mr. Mills (on behalf of the Respondent) had contacted the Appellant by email on the 5 December 2022 and properly explained the issue which was of concern to NIFL and which was under investigation at that time. The Appellant was asked to provide its "*observations in relation to the late change to yesterday's team sheet*" and they were told to have regard to Premiership Rule 20(h) when making their observations. The Appellant was given two days to provide a reply.
10. The Appellant provided its reply at shortly after 11.00am the next day. The facts which were contained in the reply concerned matters which were entirely germane to the issue raised by Mr Mills and reflected the fact that the correspondent on behalf of the Appellant (Mr Emerson) had been briefed as to what had transpired between the player and management on the day of the game. The reply contained the following facts: when the Appellant's management team made contact with the player he said that he had been unwell during the night; he had gone back to bed to get some rest but had overslept; he was wrongly of the belief that the game had a scheduled 3pm kick-off; the Appellant's medical team could not assess his fitness so management removed him from the starting eleven and placed him on the substitutes bench.
11. The Committee concluded that the Appellant's application to adduce further evidence must be rejected. The Appellant has failed to demonstrate good reason to explain why this evidence was not made available in the first instance.
12. By way of example only, a good reason might include evidence of circumstances where the information was not available to the Appellant because it was concealed, or because a witness had not come forward or was unknown. That was not the situation here. In the Committee's view the source(s) for the two areas of new evidence which the Appellant wished to adduce was well known to them and was likely to have been the same player or the same member(s) of the management team which had provided the information which was sent to the Respondent's Mr Mills on the 5 December 2022. It appeared to the Committee that there was no good reason why all elements of the

account could not have been extracted at that point and communicated to the Respondent for consideration. There was no impediment to the full account emerging at that stage, and the Appellant was unable to provide any coherent explanation for its failure to supply the full account which it now wished to rely on.

13. The seriousness with which the Respondent was pursuing this matter would have been obvious to the Appellant from the nature of the email which it had received on the 5 December from NIFL seeking its observations. The response furnished by Mr Emerson on behalf of the Appellant indicated that the club was taking the matter seriously and co-operating with the request for observations. In the Committee's view this was not a casual exercise and was not treated as such by either participant. Indeed the seriousness of the exercise would likely have been reinforced for the Appellant by the fact that Mr Mills returned to Mr Emerson by email on the 7 December to seek clarification in respect of a material issue. The Appellant had ample opportunity to provide all relevant information knowing that the issues were important and what was at stake, but failed to do so.

14. In the circumstances the Committee is satisfied that the Appellant has failed to establish good reason for not making the two areas of evidence available to the Respondent in the first instance and therefore it is appropriate that the appeal should proceed on the basis of the evidence adduced originally, without the need to refer the case back to the first instance body.

The Rule at Issue

15. This appeal concerns the interpretation and application of Rule 20(h) of the NIFL Premiership Rules which provides as follows:

Should any nominated player or substitute sustain an injury or become otherwise incapacitated after the submission of the team sheet to the referee and before the kick-off he may be replaced provided that the referee and the opposing club are informed prior to kick-off.

Facts

16. The Appeals Committee found that the following facts emerge from the material which was available to the Respondent at first instance.

17. The Danske Bank Premiership game between Newry City AFC v Portadown FC took place on 4 December 2022 at Newry Showgrounds. The match kicked off at 2pm and was refereed by Mr Jamie Robinson. The Appellant's team-sheet was submitted via the Comet System at 12.27pm. This team-sheet indicated that player number 7 Alberto Balde Almanzar would be in the starting eleven and that player number 8 Leo Donnellan would start the game as a substitute.
18. Before kick-off and probably at or about 1.15pm, an official from the Appellant spoke to the referee in the officials changing room to inform him of the change to the team-sheet. The referee provided his observations to the Respondent upon request and he commented that the officials weren't provided with any reason for the change. The Committee considers that nothing turns on whether or not the referee was advised of the reasons for the change.
19. The information before the Respondent at first instance as provided by the Appellant in its observations, was that the Appellant's physio, Mr Jim Nesbitt, proceeded to the Newry changing room after informing the referee of the change to the team-sheet. Those observations went on to explain that he spoke to a person who has been described as "a Newry official who was standing outside the changing room door..." This person was asked by Mr. Nesbitt if he would inform the Newry management team of the changes in the Appellant's team-sheet and he agreed to do so. The Appellant did not name or further describe the "Newry official" other than to explain that he was wearing a navy coat and a Newry City tie.
20. On the other hand, the Respondent received observations from a Newry official which unequivocally stated that "at no point did Portadown inform Newry City" of the changes to their team-sheet. Newry pointed out that the managers of the respective Clubs had a conversation before the match but the change to the team-sheet was not mentioned in this discussion.
21. Following an injury to Leo Donnellan in the 28th minute of the game, Alberto Balde entered the field of play as a substitute for Donnellan. The fixture was won by Portadown FC by a scoreline of 3-1.

22. Following the game the Respondent was made aware of concerns regarding the change which had been made to the Appellant's team-sheet, and as noted above, observations were sought and received from the two Clubs as well as from the referee. The issue for the Respondent at their meeting on the 9 December 2022 was whether the Appellant made the change to their team-sheet in accordance with the requirements of Rule 20(h).

Original Decision:

23. It is unnecessary to rehearse the entirety of the Respondent's decision. It suffices to note that the decision contained the following key components:

- a. Contrary to Rule 20h, the Appellant did not replace a player that was injured or otherwise incapacitated but in fact swapped the 'function' of a Player to a Substitute and by virtue of swapping the Player to a Substitute did not replace the Player who may have been injured or otherwise incapacitated after the submission of the team sheet: **(paragraph 5)**
- b. Furthermore, the Committee were not satisfied on review of observations and the process followed in relation to deeming the Player incapacitated. The club noted the Player did not arrive to the game at the agreed meeting time and in fact confirmed the Player thought the game was at 3pm, not 2pm. Regardless, the Player was inputted into the Team Line UP (starting 11) at 12.27pm, in line with Rule 22(a). Subsequently the Player arrived at approximately 1.50pm (ten minutes before kick-off) and when assessed by the Club's medical team was deemed incapacitated: **(paragraph 6)**
- c. Rule 20(h) is offered to ensure clubs are not unfairly penalised in the event of injury or incapacitation but by allowing clubs to swap the 'function' of the Player to Substitute after Team Line Ups are confirmed would result in clear sporting integrity concerns: **(paragraph 6)**
- d. The Appellant did not adequately inform the opposing team prior to kick-off and it is expected in such a circumstance a named or known opposition club official is to be notified: **(paragraph 7)**
- e. The Player was not replaced within the relevant Rules and should not have been named as a Substitute: **(paragraph 8)**

- f. Having regard to the failure to comply with Rule 20(h), the entry on to the field of play by the Player (Mr. Balde) rendered him an 'ineligible' player within the meaning of Rule 37: **(paragraph 8)**
- g. Rule 38a applied so that the Appellant was fined £500, a 3-0 win awarded to Newry AFC and 3 points awarded to Newry AFC: **(paragraph 9)**.

The Appellant's Submissions

24. It is unnecessary to refer to each aspect of the written and oral submissions put forward by the parties. All of the respective contentions have been taken into account by the Committee even if they have not all been set out.
25. The Appellant's written and oral submissions to the Appeals Committee focussed on the following main issues. Firstly, it was argued that it was wrong for the Respondent to place any emphasis on the fact that the Player was not medically examined when the change was made to the team-sheet. It was argued that the question which had to be asked was simply whether the player was incapacitated or not, and if he was sick, then he was incapacitated in accordance with the Rules.
26. Secondly, it was asserted that the language of Rule 20(h) was capable of meaning that an injured or incapacitated Player can be removed from the starting line-up and placed on the substitutes bench, and in doing so he would (to use the language of the Rule) be 'replacing' a substitute. Furthermore, it was submitted that it is entirely permissible to use the facility provided by the Rule in this way, particularly where a player originally named in the starting line-up may have a temporary incapacity, and may be fit to play at some point during the game. In his submissions counsel for the Appellant referred to the FAI rules which have been drafted so as expressly state that "the replaced player must be removed from the team-sheet and should not be available for selection for this fixture." He emphasised that the absence of such a condition in the NIFL Premiership Rules suggests that there was not requirement to remove the Player from the team-sheet. He argued that the Rule was understood by the football community in Northern Ireland as being capable of being interpreted and used in this way, and that the Appellant's actions were consistent with the approach adopted in a game in 2019 between Ards v Institute, when a Player (Thomas McBride) was apparently moved from the starting line-up to the substitutes bench (before later entering the field of play) without sanction.

27. Thirdly, it was argued that the Respondent was wrong to find that the Appellant had failed to inform Newry of the change to their team-sheet. It was contended that after telling the referee of the change, Mr Nesbitt notified a gentleman who was clearly acting as a Newry official having regard to what he was wearing and his presence in the vicinity of the Newry dressing room, an area of the ground where only officials or players can occupy, and which would not generally be accessible to the public.

Respondent's Submissions

28. The Respondent's submissions made it clear that they accepted that the NIFL Premiership Rules do not require a medical assessment to be conducted before a Player can be replaced on the team-sheet. Nevertheless, it was argued that until the Player (Balde) arrived at the ground (10 minutes before kick-off), the Appellant was unable to take a view on whether he had sufficient capacity to start the game. In their written submissions, the Respondent points to the observations provided by the Appellant which contained the clear admission that at the point in time when they made the change to the team-sheet, "the club's medical team could not assess [the Player's] fitness [and therefore] our management team made the decision to place [the Player] on the subs bench...." Accordingly, when they sought to trigger Rule 20(h) the criteria of incapacitation had not been met.

29. The Respondent's second point focussed on the meaning of the word 'replace'. It was argued that the Rule is clear that a player who is injured or incapacitated may be replaced, but he "cannot in turn be placed as a substitute and ultimately play in the game."

30. Thirdly, the Respondent focussed on the requirement to "inform" the opposition Club of the change to the team-sheet. The thrust of the submission was that the Appellant had failed to provide satisfactory evidence that Newry had been informed. It was argued that telling an unknown gentleman wearing a Newry club tie about the change to the team-sheet is not a satisfactory basis for proving that the opposition Club was so informed, particularly in light of the observations received from Newry.

31. The Respondent also addressed the argument advanced by the Appellant that the interpretation which had now been placed on Rule 20(h) by NIFL was inconsistent with

an earlier decision involving a 2019 game between Ards v Institute and concerning the Player Thomas McBride. The Respondent's representatives argued that they have not had sight of any decision in relation to that game, and that each case turns on its particular facts. It was accepted by both parties that this Committee is not bound by any previous decision or interpretation of Rule 20(h), although the Appellant argued that fairness dictated that a consistent approach would be adopted to the interpretation of such rules.

Findings

32. The Appeals Committee concluded that the only proper interpretation of Rule 20(h) was the one contended for by the Respondent and which underpinned its decision at first instance.

33. The Rule 20(h) refers to a Player suffering injury or otherwise becoming incapacitated prior to kick-off and after the team-sheet has been submitted. There is no reference to a player suffering a temporary injury or becoming temporarily incapacitated. The Rule is designed to provide a remedy for a club who has lost a player due to injury prior to kick off. It is proper to consider that the Rule proceeds on the basis that an injured or incapacitated player will not be fit or able to play in the game, hence the need to make the change, and it thereby addresses the mischief that the Club would otherwise suffer a reduction in the number of starting players available if it could not "replace" the injured/incapacitated Player. It does so by providing a facility which permits the injured player to be 'replaced' in the sense that another player can take his place. The Rule does not permit the injured player to be removed from the line up and placed on the substitutes bench in the hope that he might make a recovery and thereby play some part in the game.

34. To take a different approach, such as by supporting the the interpretation contended for by the Appellant, would place sporting integrity at risk. The finely balanced Rule is of benefit to all clubs who suffer an injury to a player close to kick-off, but the benefit conferred by the Rule of enabling a late change to be made must come at the 'cost' of removing the injured player from any further involvement in the fixture. The application of the Rule must be carefully policed in accordance with that interpretation. To do otherwise would enable clubs to use the Rule, for example, to change their starting line-up to support late tactical changes in the absence of any injury.

35. It is not suggested that the Appellant engaged in any such behaviour. Nevertheless, the Committee expresses the same misgivings as were articulated by the Respondent at first instance. The change was made to the Appellant's team-sheet at a time when they knew that their Player would be late arriving for the game because he had overslept. It was also the case that he appears to have informed management that he had been unwell during the night, so there might well have been a concern about his fitness. But in respect of that point in time - when the change to the team-sheet was made - there was no evidence before the Respondent at first instance that anyone had taken the view that the Player was incapacitated. Instead the evidence was that "as the Club's medical team could not assess his fitness, our management team made the decision to place Alberto on the subs bench and replace him with Leo Donnellan..." For the reasons already described, that was an impermissible approach.
36. While NIFL might well consider that it would be prudent to avoid future controversy by revising its Rule so as to adopt the kind of explicit language to be found in the FAI rule, for example, it is the Committee's view the absence of such language does not lend support to the construction placed on Rule 20(h) by the Appellant.
37. Some time was spent during submissions focussing on the decision which might have been reached in connection with the game between Ards v Institute in 2019 (concerning Player Mr Thomas McBride). The Committee did not receive a copy of any written decision arising out of that fixture, although documentary material in the form of a team sheet and observations from an official were received. It may be that no written decision was ever disseminated. The material received would tend to suggest that the Institute Player was removed from the starting line-up, placed on the substitutes bench and then played a part in the game. The Committee was told by the Appellant that no sanction was applied to Institute. However, the full circumstances of that game and the reasoning of any decision were not available to us. The Committee would not have been bound by any decision in any event, and the Appellant's reliance upon its understanding of an interpretation and a decision which we haven't seen does not advance matters.
38. Finally, the Committee concluded that it could not be satisfied that the Appellant informed Newry of the change to their team sheet before the kick-off as is required by

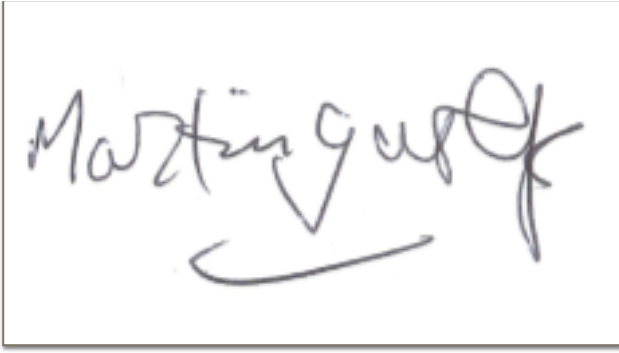
Rule 20h. In the circumstances the Committee agreed with the conclusion reached by the Respondent at first instance that the Appellant had not adequately informed the opposing team. The absence of any evidence of the name and role of the Newry official, or of any corroborating evidence that an official from Newry had been informed, when weighed against Newry's denial, was an entirely proper basis for rejecting the Appellant's position on this point. The gentleman in the blue coat and Newry club tie could have been a security guard, a sponsor, a relative of a player, or some member of the Club unconnected with the playing side. The limited description provided by the Appellant did not establish that Newry was "informed" for the purposes of the Rule.

39. In matters such as this, the Appellant ought to have taken care to establish the name and role of the person who they say was informed of the change, so that they could be satisfied that they were complying with the Rule, and to afford proof that they had done so. A prudent approach would have been to have printed off or written up a new team sheet exhibiting the change and passed it to a known official such as the team manager, club secretary or physio. Again, the Committee considers that in order to avoid a similar scenario from occurring in future, NIFL might consider supplementing its Rule with further particulars of a standard process or a protocol to be followed when informing the referee and opposing club

Summary:

Having regard to the reasons set out above, the unanimous decision of the Appeals Committee is that the appeal shall be dismissed. The consequence of this decision is that Rule 38a shall have effect in respect of the Newry AFC versus Portadown FC - Danske Bank Premiership fixture which took place at Newry Showgrounds on the 4 December 2022: a 3-0 win shall be awarded to Newry AFC, 3 points shall be awarded to Newry AFC, and the Appellant is liable to a fine of £500.00.

Dated: 20 January 2023

A handwritten signature in black ink, enclosed in a thin black rectangular border. The signature is written in a cursive style and appears to read "Martin Wolfe". Below the main signature, there is a separate, curved line that looks like a flourish or a checkmark.

Martin Wolfe KC

On Behalf of the Appeals Committee