

SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)

No.: SDRCC 22-0616

IN THE MATTER OF AN ARBITRATION HEARING BETWEEN

ASSOCIATION DE SOCCER DE BROSSARD

(Claimant)

AND

CANADA SOCCER

(Respondent)

AND

SOCCER QUEBEC

(Affected Party)

DECISION WITH REASONS

Corrected

ARBITRATOR: Robert Néron, LL.B., LL.M., C.Arb.

APPEARING:

For Claimant: Vincent Dubuc-Cusick, Simon De Andrade and Rosalie Caillé-Lévesque

For Respondent: Sean Bawden and Michael Leaver

For Affected Party: Andrée-Anne McInnes

[1] This Request for Arbitration (the “appeal”) has been made pursuant to the Canadian Sport Dispute Resolution Code (the “Code”) against the decision of CS, Canada Soccer

("CS"), rejecting the Application of the Association de Soccer de Brossard (ASB) for the Canada Soccer National Youth Club Licence, dated December 12, 2022.

[2] On January 2, 2023, I was appointed arbitrator to adjudicate this appeal. The appeal proceeded in writing, and I issued a short form decision on January 3 regarding the jurisdiction question, and I am rendering my award on the merits. These are my reasons for both decisions.

[3] Pursuant to Section 6.11(a) of the Code dated January 1, 2021, I have the authority to substitute my decision for the decision of CS or to substitute such reasons and grant such remedies or relief that I consider just and equitable in the circumstances. In addition, I have the authority to conduct the appeal as a *de novo* hearing.

Role of the Arbitrator

[4] Arbitrators are guided by two general principles. The first is that deference is owed to the sporting authority's experience and expertise.¹ It is neither the role nor the duty of an arbitrator to substitute his own appreciation of the appropriate solution unless there are valid grounds to do so.

[5] The second principle is that the standard to be applied in determining what constitutes a valid ground is the reasonableness of the decision. In sports arbitration, where deference to the experience and expertise of sports authorities is a starting point, the test is whether the outcome falls within a range of possible and acceptable outcomes, which are defensible with respect to the facts and the policies at issue.

Facts and Issues

[6] On August 31, 2021, ASB expressed its interest in obtaining a National Youth Licence under Canada Soccer's National Club Licensing Program and sent documentation to support its application. According to ASB, Soccer Quebec received its application on behalf of CS on October 15, 2021.

[7] ASB added that it submitted additional documentation to meet the second set of criteria for the National Youth Licence on March 31, 2022. In addition, ASB submitted its financial statement for 2021 at a later date, due to an auditing process.

[8] During the summer of 2022, the review process followed its course with visits from Soccer Quebec and CS's personnel to ASB's technical centre and facilities. On August 22, 2022, ASB submitted its 2021 financial statement to Soccer Quebec through its online platform and by email.

¹ *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190.

[9] On December 12, 2022, CS informed ASB that the National Youth Licence would not be issued to them. The refusal letter reads as follows:

[...] Canada Soccer, with support from Soccer Quebec, has completed the review of your application. Based on this review, we are not in position to recognize AS Brossard with the National Youth Club Licence. Soccer Quebec will follow up with regards to the category in which you will be recognized for this cycle. [...]

(Translation by the Arbitrator)

[10] On January 3, 2023, a Preliminary Hearing was held in this matter. The parties and I agreed that they would provide me with their submissions and documentary evidence regarding the jurisdictional issue raised in this case.

[11] In short, ASB takes the position that the SDRCC has jurisdiction to hear this case when, in contrast, CS is of the view that ASB has not exhausted all appeal avenues, and, therefore, the SDRCC has no jurisdiction to hear this appeal.

PART I - Jurisdictional Issue

[12] This is my analysis and finding regarding the only preliminary issue raised in this matter, namely the SDRCC's jurisdiction to hear this appeal.

ASB's Position

[13] It is not necessary for me to repeat verbatim all the submission and the evidence filed by ASB in support of its position that the SDRCC has jurisdiction to hear this appeal. Suffice it to say that ASB submits that CS's internal dispute resolution procedure is deemed exhausted, since its decision is considered final within the meaning of Article 3.1(b)(i) of the Code.

[14] In addition, the right of appeal provided for in paragraph 5 of Article 10 of the CS National Club Licensing Regulations is *ultra vires* and void, as it was adopted in contravention of the Canada Soccer By-Laws and the Canada Soccer Disciplinary Code.

[15] Furthermore, if I were to find that I do not have jurisdiction to hear this appeal because ASB has not exhausted the internal process, the SDRCC would still retain jurisdiction until the appeal process is deemed exhausted pursuant to Article 3.1(b)(ii) of the Code.

CS's Position

[16] In contrast, CS submits that the SDRCC does not have the requisite jurisdiction to hear this appeal, because the appeal is premature, and it does not seek to address a Sports-Related Dispute.

[17] According to CS, it has the sole jurisdiction to administer its club licensing program pursuant to its guidelines and regulations. To that effect, CS has developed and produced for this matter the Club Licensing Program Regulations, in which the rights, duties and responsibilities of all parties involved are spelled out.

[18] As previously mentioned, on December 12, 2022, ASB's application for a National Youth Licence was rejected. CS added that ASB contacted CS and asked about the appeal options available to ASB.

[19] According to CS, ASB was directed to paragraph 5 of Article 10 of the Regulations² that reads as follows:

10. The Club Licensing Decision-Making Bodies

...

5. Canada Soccer Appeals Committee shall decide on appeals submitted in writing and make a final and binding decision on whether a National Youth Licence shall be granted.

[20] Therefore, CS mentioned that ASB has not yet availed itself of CS's appeal process.

[21] In essence, CS takes the position that ASB's request is premature, because it must first seek to appeal the decision of CS to CS's Appeals Committee.

[22] Moreover, in its general timetable and deadlines for the Club licensing program, it is mentioned at page 2 that prior to 29.06.2023 or ten (10) business days following the receipt of a decision, written appeals should be submitted by applicants to CS based on the decision of the CS Club Licensing Committee, which ASB failed to do.

[23] CS also submits that this appeal does not raise a Sports-Related Dispute and the parties are, therefore, not "required" to resolve the dispute through the SDRCC nor have they agreed to resolve their dispute through the SDRCC.

[24] In closing, given that Canada Soccer has yet to render a final decision on ASB's application, CS submits that the SDRCC lacks the necessary jurisdiction to hear this appeal and, therefore, should decline to hear ASB's appeal.

² Canada Soccer Club Licensing Regulations National Youth Club Licence – March 2018.

Analysis

[25] There is, in fact, an appeal process as mentioned by CS pursuant to paragraph 5 of Article 10 of the National Club Regulations as previously mentioned.

[26] Now, ASB is stating that the appeal process before the Appeal Committee is *ultra vires* and void. To support its position, ASB referred to subparagraph 11, x., c) of the By-Laws, which states that the Appeal Committee is responsible for hearing appeals against decisions of the Disciplinary Committee, the Ethics Committee and the appeal bodies of the Member Association.

[27] Therefore, ASB takes the position that, based on the CS By-Laws³, the venue offered to bring its internal appeal is void and moot, CS having no jurisdiction to hear its appeal.

[28] I agree that, based on its own By-Laws, the Appeal Committee does not have the required authority to hear appeals from the Club Licensing Committee. I also agree with ASB that, pursuant to paragraphs 1 and 2 of Section XXIV of the Appeal Committee, the Committee has the jurisdiction to hear an appeal regarding the CS Disciplinary Committee, the Ethics Committee or the Player's Status Committee.

[29] In addition, a complainant and/or respondent may apply to Canada Soccer for leave to appeal a decision rendered via a Member Association's appeal process, and none of these committees are involved in the decision-making conducted in the Club Licensing Program.

[30] Based on the above, I conclude that the jurisdiction of the Appeal Committee is limited to decisions that fall within the purview of the Disciplinary Committee, Ethics Committee, Players' Status Committee or a decision rendered by a Member Association.

[31] While ASB has an internal appeal right, the internal appeal right must exist and must be meaningful. Thus, based on its own By-Laws, the Appeal Committee does not have the right to hear this appeal, rendering it moot and void.

[32] Based on the entirety of the evidence before me, I must conclude that, in fact, the decision rendered by CS was final and does not have other tangible internal appeal or review. It is not sufficient to only mention that there is an internal review; the review must be real and tangible, and one should be able to exhaust it. In the present case, it is not available for ASB to file an appeal with the Appeal Committee, which in fact does not have jurisdiction whatsoever to adjudicate it.

³ By-Laws relating generally to the conduct of the affairs of the Canadian Soccer Association Incorporated (May 7, 2022).

[33] That being said, I must now determine whether the SDRCC has jurisdiction to hear this appeal on its merits. First, CS said that this matter raised a not Sports-Related Dispute. As submitted by CS, ASB is not a natural person, a Member, a player, or an individual.

[34] Section 12 of CS's By-Laws states:

12.01 Mediation and Arbitration

iii.

In the event of a dispute between Canada Soccer and any of its Members, or any players, officials, individuals or entities that are bound to comply with the Articles, By-laws, Rules and Regulations, the Code of Conduct and Ethics, the Disciplinary Code or policies of Canada Soccer, and where such dispute is not resolved between the parties, the dispute shall not be submitted to the ordinary courts of law and the parties agree that the dispute will be heard by the SDRCC.

[35] In the present appeal, I agree with ASB that the decision was rendered by the Club Licensing Committee under the Club Licensing Program regarding the application from ASB, which is a legal entity bound by the Articles, By-Laws, Rules and Regulations.

[36] Also, in the present appeal, if there was an effective a tangible internal appeal process and, in case of a negative response, ultimately the SDRCC will be the final forum to hear an appeal, not a court of law or any other tribunal.

[37] In addition, the Code defined a Sports-Related Dispute as “a dispute affecting participation of a Person in a sport program or a Sport Organization [a “SO”] arising from, but not limited to: [...] (iii) a decision of an SO board of directors, a committee or an individual delegated to make a decision on behalf of an SO or its board of directors, which affects any Member of the SO. Therefore I find that the matter before me is definitely a Sports-Related Dispute and, by its own By-Laws, as stated, CS agreed to have the SDRCC hear matters raised by entities such as ASB.

Preliminary Finding

[38] Based on the above reasons and in light of the absence of an internal process available to ASB, I find that CS has rendered its final decision with respect to ASB's application for a National Youth Licence under Soccer Canada's National Club Licensing Program.

[39] In addition, as previously mentioned in the above reasons, the SDRCC has jurisdiction to hear this appeal filed by ASB, that ASB is a legal entity and, furthermore, as confirmed by CS's By-Laws, it is agreed that the dispute be heard by the SDRCC.

For all these reasons, I find that the appeal falls within the jurisdiction of the SDRCC.

PART II - SUBSTANTIVE ISSUES

Position of the Claimant

[40] As mentioned, this appeal relates to Canada Soccer's Club Licensing Program. This program seeks to recognize Canadian soccer clubs based on their organizational development. There are four different categories of licence for clubs. ASB applied for a National Licence.

[41] ASB submits that CS's decision fails to meet the requisite standard of justification, transparency and intelligibility, as it lacks internally coherent reasoning in the absence of a clear, coherent and predictable analytical framework and assessment standards.

[42] In its analysis grid used to assess the licensing applications submitted under the Club Licensing Program, CS has identified 142 criteria as detailed in the Canada Soccer National Youth Club Licence Standards (National Standards) and Support Manual. In its Decision, CS concluded that ASB met 112 criteria with a rating of "excellence," while the other 30 criteria were qualified as "partially met" or "not met."

[43] However, ASB submits that these guidelines⁴ defining the Club Licensing Program's assessment framework fail to establish clear, objective, coherent and predictable standards that ought to be used by CS in its decision-making process under the National Licence assessment.

[44] Therefore, ASB argues that CS's Decision is unreasonable, as it is based on an analysis conducted in the absence of a coherent, predefined and clear analytical framework that sets out objective and predetermined standards of assessment. Without an analytical framework to support an objective assessment, CS's Decision lacks an internally coherent reasoning that is rational and logical and a justification in relation to the facts and law that constrain CS.

[45] More specifically, ASB asserts that CS's assessment framework fails to establish and provide:

⁴ Canada Soccer Club Licensing Regulations National Youth Club Licence, March 2018; Canada Soccer Club Licensing Program Information Manual and the Canada Soccer National Youth Club Licence Support Manual.

- i) *The weight to be given to each criterion/standard and the absence of a clear threshold in the overall evaluation of the criteria assessed in the National Licensing process;*
- ii) *The existence of an eliminatory character of each criterion assessed;*
- iii) *The circumstances/conditions under which it is possible for a club to adhere to an Action Plan to receive a National Licence, when it has failed to comply with criteria;*
- iv) *The level of evidence/supporting documents sufficient to demonstrate compliance with each criterion.*

[46] Therefore, ASB challenged CS's Decision on the basis that it is unintelligible, unjustified, not sufficiently transparent, and not based on a clear and objective evaluation framework that includes the weight given to each of the criteria and the eliminatory nature of certain factors.

[47] In addition, on page 4 of the Support Manual 2022, it is stated:

IV. Responsibilities of the Member Organization

To obtain a Canada Soccer National Youth Club Licence, the member organization must meet all criteria for the Canada Soccer National Youth Club or have an Action Plan in place that has been developed in consultation with an approved by Canada Soccer. [...] If the member organization fails to meet ANY of the criteria listed in the tables below and/or develop and adhere to an acceptable Action Plan, the organization must not be granted a National Youth Club Licence for 2023 and 2024.

[48] Thus, in its Decision Criteria, CS noted that ASB had not met 30 criteria on the National Standards but did not offer ASB the opportunity to develop and to adhere to an Action Plan as specified in the Support Manual.

[49] ASB mentioned that some clubs in Ontario have obtained their National Licence on a provisional basis pending the development of an Action Plan. According to ASB, of the 30 clubs in Ontario that have received a National Licence, 14 had the opportunity to develop an Action Plan. On that point, CS replied that these clubs were Quality Soccer Providers (QSP) not National Youth Club Licences, and no financial measures are associated with QSP.

Position of the Respondent

[50] CS submits that it has the sole jurisdiction to administer its club licensing program pursuant to its guidelines and regulations. CS's submissions reiterate:

To obtain a Canada Soccer National Youth Club Licence, the member Organization must meet all criteria for the Canada Soccer National Youth Club Licence ...

If the member organization fails to meet ANY of the criteria listed in the tables below and/or develop and adhere to an acceptable Action Plan, the organization may not be granted a National Youth Club Licence for 2023 and 2024.

[51] CS also submits that its Licensing Committee reached a reasonable and defensible decision based on clearly established rules and guidelines of which ASB had full knowledge. Therefore, there is no reason or basis for this tribunal to interfere with or set aside the Committee's decision.

[52] In its submission, CS narrated all the processes followed and the assessment completed of ASB's application. At the end of the assessment process, all relevant staff and committee members of CS and Soccer Quebec reviewed ASB's application and were unanimous that it did not meet the standard of the National Youth Club Licence.

[53] CS asserted that ASB has provided no evidence nor argument that it sought to have an Action Plan developed, nor any argument that it had the right to have such an Action Plan put in place.

[54] CS mentioned that finances must be in order for a club to receive recognition with the National Youth Club Licence, which cannot be done once the licence is obtained.

[55] In closing, CS said that ASB has not earned a new category of recognition and should not be granted a National Youth Club Licence.

Reply

[56] ASB replied that CS is attempting in its submission to add reasons to the Decision to overcome the deficiencies in its reasoning and to justify its Decision after the fact.

[57] In addition, even though CS alleges throughout its submissions that it relied on a clear and precise framework to make its Decision, CS does not offer any explanation, nor examples, as to how this framework is effectively clear and precise.

[58] ASB reiterates that, although an Action Plan is clearly provided for in the Support Manual, ASB has never been offered or even discussed an Action Plan.

[59] Finally, the Review of Soccer Québec cannot be integrated into CS' decision, since it is another decision-maker, while attempting to offer sufficient reasoning for the Decision that is in dispute before me.

Analysis

[60] As the arbitrator, I must ultimately decide, after all the facts have been put into evidence, including new facts, and after all the arguments have been pleaded, whether the requisite standard of justification, transparency and intelligibility of the reasons given CS to deny ASB's application for a National Youth Club Licence were provided.

[61] In practical terms, therefore, the focus on the arbitration is on the original decision made by CS and not on justification of the decision subject to the arbitration at the hearing.

[62] In my view, arbitrators are guided by two general principles. The first is that deference is owed to the sporting authority's experience and expertise. It is not the duty of an arbitrator to substitute his own appreciation of the appropriate decision unless there are valid grounds to do so.

[63] The second is that the standard to be applied in determining what constitutes a valid ground to intervene is if the reasons given by a sport authority contravene their own procedure and, therefore, are unreasonable.

[64] In this regard, it is helpful to compare the process of judicial review and seek guidance in judicial decisions, which have defined the general grounds that entitle a reviewing body to intervene with the original decision and replace it with its own.

[65] Simply put, in sports arbitration, where deference to the experience and expertise of sports authorities is a starting point, the test is whether their reasons for decision are reasonable because they are justified, transparent and intelligible.

[66] However, arbitrators are at liberty to use whatever methods necessary in a given case to reach their decision, subject only to their duty to be deferential to sporting authorities, to apply the proper standard of review, and, of course, to follow the relevant rules of procedural equity and fairness.

[67] With respect to the standard of review, the Canadian Sport Dispute Resolution Code stipulates that the scope of the panel's review is:

6.11 Scope of Panel's Review

(a) The Panel, once appointed, shall have full power to review the facts and apply the law. In particular, the Panel may substitute its decision for the decision that gave rise to the dispute or may substitute such measures and grant such remedies or relief that the Panel deems just and equitable in the circumstances.

(b) The Panel shall have the full power to conduct a hearing de novo. The hearing must be de novo where:

(i) The SO did not conduct its internal appeal process or denied the Claimant a right of appeal without having heard the case on its merits; or

(ii) If the case is deemed urgent, the Panel determines that errors occurred such that the internal appeal policy was not followed or there was a breach of natural justice.

(c) No deference need be given by the Panel to any discretion exercised by the Person whose decision is being appealed, unless the Party seeking such deference can demonstrate that Person's relevant expertise.

[68] The facts of this case support ASB's position and arguments. For instance, it is paramount for any applicant to know and to be made aware of each criterion that it is used to make a decision to be able to address them specifically.

[69] In the present case, I notice that, based on the Canada Soccer National Youth Club Licence Review, ASB received the highest score (a score of 4) for the majority of the requirements, namely 112. ASB also received a score of 3 for 12 requirements, a score of 2 for 7 requirements and a score of 1 for 11 requirements.

[70] Although ASB completely met more than 78 % of the criteria, CS concluded that ASB failed the assessment without providing any explanation of how the evaluation was conducted and on the analytical framework used to reach a refusal conclusion, including the eliminatory threshold.

[71] I understand that CS is attempting to justify its decision at the hearing by, among other things, also using Soccer Quebec's review. I agree with ASB that CS cannot integrate in its own decision the reasoning of another decision-maker. This is not only inappropriate but also against the principles of natural justice. Only the CS decision and its reasons stand before me, not the reasons from any other sports authority.

[72] In the present case, I find that the assessment to which ASB was subjected was solely a series of checklist items without clear criteria that were predictable and available for ASB to address. On that point, it was imperative for ASB to be afforded the opportunity to submit documentation and/or comments for the criteria used to assess its application, which was not the case.

[73] Also troublesome in this case is the opportunity for ASB to be granted a Soccer National Youth Club Licence subject to an Action Plan. This was not offered to ASB despite being an opportunity spelled out clearly in Canada Soccer's Support Manual.

[74] Based on the evidence before me, CS limited its assessment only to the first part of the requirement to grant a National Youth Club Licence, namely that the applying

organization meets all 142 criteria, while there was an opportunity to approve an application provided that the applicant adheres to an Action Plan.

[75] It may be very difficult and onerous for any soccer organization to meet all 142 criteria, which is why there is an alternative in the form of an Action Plan to achieve them.

[76] To justify that oversight, namely that no Action Plan was considered nor offered to ASB, CS takes the position that it was not offered to ASB, because ASB never asked for it. Not only is that comment inappropriate, but CS had a positive duty to consider a possible Action Plan in this case, which it clearly failed to do.

[77] In other words, it was not ASB's responsibility to have and submit an Action Plan; CS had the duty to consider if it was a possibility or not, as clearly stated in its Support Manual.

[78] In addition, CS rejected ASB's application, because its finances were very weak and did not allow for recognition at the national level, and, until the financial position can be stabilized and improved, more advanced recognition will be a challenge.

[79] However, I find that CS should have explained to ASB in what aspects of its finances any improvement was needed to advance its recognition status. It was not sufficient to say that ASB's finances were weak. CS should have told ASB why it was so and what needed to be done to be granted a National Youth Club Licence, which CS did not do.

[80] Overall and based on the above, I find that there are enough flaws in the CS decision that warrant this tribunal to intervene and to substitute its own decision. I reach this conclusion, because, as rightly mentioned by ASB, the absence of clarity and precision about the assessment system used to conduct the licensing process in this case and the threshold that must be applied resulted in an arbitrary decision which failed the requisite standard of justification, transparency and intelligibility, as referred by the Supreme Court of Canada in the case of *Vavilov*⁵.

[81] Moreover, based on CS' failure to ask for and consider an Action Plan from ASB, I find this oversight rendered CS decision unreasonable, because it does not meet the requisite standard of justification and transparency. CS was obligated by its own policy to consider this, but has not done so.

[82] Finally, I do not find it appropriate in this case to refer the matter back to CS for redetermination in light of the above reasons. There are strict deadlines to follow and

⁵ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

strict time constraints to respect, and I am confident that, in light of the overall evidence before me, I should substitute my own decision, which I deem just and equitable in the circumstances.

[83] Therefore, I find it appropriate for CS to issue to ASB a National Youth Club Licence. However, if CS deems it appropriate, it should also develop an Action Plan to address any concerns it may have with ASB's original application.

FOR THESE REASONS, THE TRIBUNAL:

ALLOWS the Claimant's appeal;

SETS ASIDE Canada Soccer's Decision dated December 12, 2022, denying the Claimant's Application for a National Youth Club Licence; and

ORDERS Canada Soccer to issue to Association de soccer de Brossard a National Youth Club Licence for 2023 and 2024.

Ottawa, this 7th day of January, 2023.



Robert Néron, Arbitrator