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

Nº: SDRCC 23-0619

CLUB DE SOCCER MONT-ROYAL OUTREMONT
(CLAIMANT)

AND

CANADA SOCCER
(RESPONDENT)

AND

SOCCER QUEBEC
(AFFECTED PARTY)

Before: Richard W. Pound, K.C. (Arbitrator).

Representatives:

For the Claimant:	Rosalie Caillé-Lévesque	Counsel
	Vincent Dubuc-Cusick	Counsel
	Simon De Andrade	Counsel
For the Respondent:	Danesh Rana	Counsel

Reasoned Decision on Costs

1. Within the delays specified in section 5.14 of the Canadian Sport Dispute Resolution Code in force as of January 1, 2021 (amended June 20, 2022) (the "Code"), Canada Soccer ("CS") formally requested that costs be awarded in its favour in respect of the proceedings.

2. CS was successful in defending against the dispute brought by the Club de Soccer Mont-Royal Outremont (CSMRO) seeking a Decision granting it a National Youth Club ("NYC") licence.

3. The formal request followed unsuccessful attempts between the Parties to agree on costs. Soccer Quebec was not involved in those negotiations and takes no position in the application for costs.

4. When considering the appropriateness of awarding costs in the context of proceedings brought before the Sport Dispute Resolution Centre of Canada ("SDRCC"), there are two principal contexts to be considered: first, the purpose for the creation of the SDRCC and second, the applicable provisions of the Code.

5. Section 5.14(a) of the Code provides that, except for certain costs for interpretation and translation identified in sections 3.7(e) and 3.8, each Party to a dispute brought before an SDRCC Panel is responsible for its own expenses and those of its witnesses.

6. The noted section 3 exceptions are not engaged in this matter.

7. Notwithstanding section 5.14(a) of the Code, section 6.13 of the Code also addresses the matter of costs in the following terms:

> 6.13 Costs
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> (a) The Panel shall determine whether there is to be any award of costs, including but not limited to legal fees, expert fees, and reasonable disbursements, and the amount of any such award. In making its determination, the Panel shall consider the outcome of the proceeding, the conduct of the Parties and abuse of process, their respective financial resources, settlement offers and each Party's good faith efforts in attempting to resolve the dispute prior to or during Arbitration. Success in an Arbitration does not mean that the Party is entitled to costs.
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> (b) A Party may raise with the Panel any alleged breach of this Code by any other Party. The Panel may take such allegation into account in respect of any cost award.
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> (c) Any filing fee charged by the SDRCC can be taken into account by a Panel if any costs are awarded.

8. The latter provision (section 6.13) is a derogation from the principle expressed in section 5.14(a) of the Code, should a Panel determine that an award of costs is appropriate in the circumstances.

9. In addition, unlike the general court system in civil matters, in which a successful party may be awarded costs as a contribution to the expenses incurred by reason of the litigation (in rare cases, on a solicitor-client basis) and, depending on the nature of the litigation, possible damages, punitive or otherwise, pursuant to section 5.14(d) of the Code, an SDRCC Panel has no power to award damages, whether compensatory, punitive or otherwise to any Party.

10. It is useful to recall some of the background leading to the creation of the SDRCC and some of the underlying objectives sought to be achieved through its existence and activities.

11. The SDRCC was created by the Physical Activity and Sport Act (S.C. 2003, c. 2). The statutory mission of the SDRCC is to provide to the sport community "(a) a national alternative dispute resolution service for sport disputes; and (b) expertise and assistance regarding alternative dispute resolution" (s. 10).

12. The Executive Summary of the Working Group appointed by the Secretary of State for Amateur Sport provided (in part) the following background:

> There is an urgent need for policy reform within the amateur sport community in Canada. Due to a lack of fair and consistent policies, or to the improper administration of those policies, athletes and other participants in sport are being disciplined, harassed and denied opportunities without proper recourse to a hearing or appeal. Sometimes, even with policies in place and properly administered, the participants to a dispute need recourse to an impartial third party.
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> These problems are widely acknowledged within the amateur sport community in Canada. They stem primarily from systemic difficulties and not the intentions of the thousands of Canadians whose volunteer and professional efforts constitute the administrative foundation of Canadian amateur sport.
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> The Secretary of State (Amateur Sport) is well aware of the need for an alternative to the courts to resolve these disputes. In January 2000, he created a Work Group made up of members of the sport community and charged them with developing a model for alternative dispute resolution (ADR) which could be applied to the amateur sport community on a national level.
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> The Work Group solicited and received input from a wide array of groups and individuals involved in sport and ADR today. The overwhelming consensus of the sport community is that a permanent national ADR program would make an immensely positive impact on the culture of sport in Canada.

13. Simply put, the objective was to make available a mechanism to achieve simple, rapid and inexpensive resolution of sport-related disputes in Canada through mediators and

arbitrators possessing knowledge of sport issues. The general court system was regarded as too expensive, too cumbersome, too slow and generally unresponsive to the need for quick resolution of sport disputes.

14. Using the matrix of considerations regarding costs specified in section 6.13(a), beginning with the outcome of the proceeding, CS was entirely successful. I am mindful, however, of the admonition in section 6.13(a) of the Code that a successful outcome by a Party in an Arbitration does not, in and of itself, lead to an entitlement to costs.

15. With respect to the conduct of the Parties, I found them to have been professional in their conduct and did not find any evidence of abuse of process. The CSRMO complained about delays on the part of CS at various stages of the proceedings, including time required for the outcome of a related case before the civil courts, delays relating to fixing a date for the hearing and the demand for witness statements and the calling of witnesses. On the other hand, CS noted that the dispute by the CSMRO was spare to a fault in its articulation of the nature and details of the claim and insisted on knowing the case it had to meet. It required two procedural Orders for CS to obtain sufficient particulars of the claim and particulars of the evidence to be submitted. I also specifically refused to follow the decision of another SDRCC decision involving CS and the request for a NYC licence. In the circumstances, I do not regard the litigious choice of CS to request the particulars and to proceed with the calling and examining of witnesses in the course of the hearing of the matter as an abuse of process.

16. The respective financial resources of the Parties can hardly be in doubt. CS, as the national governing body for soccer, clearly has significantly greater financial resources than those of a single youth club. I am troubled by the "message" that might be sent if costs are awarded to CS, given the massive size and power of CS in relation to a single club. While I concluded, on the merits of the proceedings, that the CSMRO was clearly wrong in its understanding of an entitlement to the NYC licence it sought, its action, borne of its frustration with the process, was neither frivolous nor whimsical. I do not wish to encourage frivolous actions, but nor do I wish to send a signal that appeals are to be discouraged because of exposure to additional expenses if a claim is not successful.

17. Regarding settlement offers, there were several efforts, including mediations and negotiations to settle the case. While I was not a party to such efforts, they obviously occurred. The efforts were unsuccessful. I note as well that unsuccessful negotiations were also conducted with respect to costs prior to the formal request now before me.

18. As to good faith efforts to settle the matter before and during the Arbitration, prior to the Arbitration there were such efforts. There is no evidence before me that such efforts were tainted by bad faith on the part of either of the Parties. Once the Arbitration was in process, each Party put its best foot forward and was bound to accept the eventual outcome. While there may well be compelling reasons why settlement was not possible, I have seen no evidence of anything that smacks of a lack of good faith on the part of either the CSMRO or CS with respect to a failure to reach a settlement. Both Parties had strong views

regarding the merits of their respective positions and were entitled to proceed with a hearing on the merits.

19. Arbitration before an SDRCC Panel is an acceptable recourse when Parties, despite settlement efforts, are unable to agree. That is why the SDRCC was established, and the Code was adopted.

20. In the circumstances and on balance, I think the proper outcome in this matter is not to award costs.

MONTREAL, this 27th day of September 2023.

Richard W. Pound, K.C.
Arbitrator