

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

NO: SDRCC 17-0333
(ORDINARY TRIBUNAL)

RAKESH KAPILA (FALCONS SOCCER INC.)
(Claimant)

- AND -

SASKATCHEWAN SOCCER ASSOCIATION
INCORPORATED
(Respondent)

Before:

Charmaine Panko (Arbitrator)

Appearances and Attendances:

On behalf of the Claimant: Rakesh Kapila and Jim Kroczyński

On behalf of the Respondent: Doug Pederson and Mark Mulatz

Hearing on Jurisdictional Issue: 22 August 2017 (by telephone conference)

AWARD ON JURISDICTIONAL ISSUE

25/08/2017

SUMMARY

1. The Claimant, Rakesh Kapila, has filed a request on behalf of Falcons Soccer Inc. [the “Falcons”], to initiate proceedings offered by the SDRCC [a “Request”].
2. The Falcons have been denied membership with Saskatchewan Soccer Association Incorporated [“SSA”] and allege the following:
 - a. SSA’s decision was arbitrary;
 - b. The Board of Directors and the Executive Director for SSA violated the SSA Code of Conduct & Ethics; and
 - c. The Board breached its fiduciary duty in respect of its decision making related to the Falcons’ application for membership.

3. The Respondent, SSA, challenges the SDRCC's jurisdiction to act in this matter on a number of grounds, namely that:
 - a. The Claimant is outside of the thirty day time limit to file a Request;
 - b. The SDRCC does not have jurisdiction to resolve disputes at the provincial level;
 - c. The SSA Bylaws apply only to members and the Falcons is not a member;
 - d. A denial of membership is not appealable;
 - e. The Appeals Policy of SSA is available only to members;
 - f. The Formal Complaint Policy of SSA does not apply to membership status; and
 - g. The Request is framed as an ethics complaint and constitutes a circumvention of the membership denial.
4. The sole issue before me at this time is whether or not to accept jurisdiction in this matter and as such my review of the facts at this time is limited to those facts that are relevant to the issue of jurisdiction.
5. Having considered the submissions of the parties, and upon review of the relevant materials, I find that SDRCC does have jurisdiction and the Request for arbitration of the substantive issues shall proceed on Monday, September 11, 2017, in Regina, Saskatchewan (time and location to be confirmed).

LIMITATION PERIOD

6. The Respondent states the Claimant is outside of the thirty day time limit to file a Request.
7. Section 3.5 of the Canadian Sport Dispute Resolution Code sets out the time limit to file a Request as thirty (30) days following the later of:
 - a. The date on which the Claimant becomes aware of the existence of the dispute;
 - b. The date on which the Claimant becomes aware of the decision being appealed; and
 - c. The date on which the last step in attempting to resolve the dispute occurred, as determined by the SDRCC.
8. On January 31, 2017, the Falcons applied to SSA for membership. It was not until June 23, 2017 that the application was denied and that it can be said the Claimant became aware of the existence of a dispute and/or a decision to be appealed.
9. On the same day the application was denied, the Claimant sent a follow up request for particulars and an inquiry as to what could be done to meet the

relevant criteria and gain membership with SSA. On June 27, 2017 SSA referred the Claimant to the membership related policies on the SSA website.

10. On July 5, 2017, there was a Formal Complaint filed with SSA in accordance with Article 1.6.1 of the SSA Formal Complaints Policy with a request that SSA consider a joint submission to the SDRCC to proceed by way of a Mediation/Arbitration process. On July 14, 2017 SAS provided notice that it would not accept the Formal Complaint.
11. Finally, the last noted step in attempting to resolve the dispute occurred when an email was sent to SSA on July 17, 2017, containing within a second request to engage in a mediation/arbitration process and a re-consideration of the Falcons' membership application with a deadline for response identified as July 21, 2017. I have determined this was the last step taken in attempting to resolve the dispute
12. The Request was then subsequently filed on July 24, 2017, well within thirty (30) days of the last step in attempting to resolve the dispute as required in Section 3.5.

The SDRCC MISSION AND POWERS

13. The Respondent has raised the question as to whether the SDRCC has jurisdiction to resolve disputes at the provincial level.
14. The SDRCC is constituted by the *Physical Activity and Sport Act (S.C. 2003, c. 2)* [the "Act"] and its Mission as set out in Section 10 is:
 - [...] to provide to the sport community
 - (a) a national alternative dispute resolution service for sport disputes [...].
15. A sport dispute is defined at subsection 2, to include:
 - [...] disputes between a sport organization and persons affiliated with it, including its members.
16. Section 11 of the Act sets out the powers of the SDRCC to include the power to "[...] (d) do any other things that are conducive to the fulfilment of its mission [...]."
17. The Act does not restrict the SDRCC to only provide services to national sports organizations. In fact the SDRCC recognizes that disputes arise at all levels of the sport system and as such, extends the delivery of its services to all members of the sport community. [Fee for Service Program (August 25, 2017). Retrieved from <http://www.crdsc-sdrcc.ca/eng/fee-for-service-program>].
18. However, this extension of services to the sports community at large does not create a corresponding obligation on provincial sports organizations to utilize

these services, except as otherwise provided by the Canadian Sport Dispute Resolution Code.

THE CANADIAN SPORT DISPUTE RESOLUTION CODE

19. The SDRCC administers the Canadian Sport Dispute Resolution Code [the “Code”] to resolve Sports-Related Disputes.
20. The Code defines a Sports-Related Dispute at Section 1.1 (mm) as “a dispute affecting participation of a Person in a sport program or a sport organization [...]” The definition further sets out four examples of such disputes but notes that disputes are “not limited to” these examples.
21. The Claimant refers to *Doug Smerek v. National Karate Association* 09-0106 [“*Smerek*”], as a case on point, where a refusal of membership was found to be a decision “affecting participation” and an admissible Sports-Related Dispute at the SDRCC.
22. The Respondent suggests that *Smerek* can be distinguished on its facts as having involved a national sport organization with a sense of urgency more in line with the types of serious matters intended to be dealt with under the Code.
23. However, the language of the Code does not suggest in any way that it only applies to “serious” sports related disputes of a particular gravity. As such there is no rationale to support the Respondent’s submission that the Code would not or should not apply to the matter between the Claimant and the Respondent.
24. Section 2.1 of the Code states that the Code applies to any Sports-Related Dispute where in essence there is either:
 - a. an agreement between the Parties to bring the dispute to the SDRCC or between the Parties and the SDRCC to have the dispute resolved using the Code; or
 - b. where the Parties are required to resolve their dispute through the SDRCC.
25. As there is no agreement between the Parties to bring the dispute to the SDRCC, the question is simply, are the Parties required to do so?
26. Article 22.2.2 of the SSA’s Bylaws states that “[...] a dispute [...] among SSA and its Members [...] **shall** be submitted to the Sport Dispute Resolution Centre of Canada.” [emphasis added] This article clearly places a requirement to submit a dispute involving SSA and its Members to the SDRCC.
27. However, is the Claimant a “Member” as defined by the SSA Bylaws? The Respondent submits that it is not.

28. Under Article V of the SSA Bylaws, there are five classes of membership all of which are to be considered "Members". Once such class is that of "Participant Members", which may include but is not limited to players, coaches, managers, team personnel and referees.
29. The Claimant submits that the Falcons' principals are Participant Members by virtue of the registration of their children with a Member Organization, and in one instance by virtue of registration as a Coach with a Member Organization, and that therefore Article 22.2.2 applies, placing a requirement on the Parties to submit their dispute to the SDRCC.
30. Though the Respondent has raised concerns that the principal Mr. Kroczyński cannot act as both advocate and witness, it has not disputed that Mr. Kapila is a Participant Member. The Respondent however submits that the Request has been submitted by the Falcons as an organization and not by the individual, Mr. Kapila; that the Falcons does not fall within any of the SSA's five membership categories and therefore is not a Member; and that therefore Article 22.2.2 of SSA's bylaws does not apply and the Request must fail for lack of jurisdiction.
31. I do not agree that the Request has been submitted solely by the Falcons as an organization. Mr. Kapila is listed as the Claimant in the Identification of the Parties section of the Request form, as is the Falcons identified in the section of the form asking for the name of the organization.
32. As it is not disputed that Mr. Kapila is a Participant Member and that Participant Member falls within the definition of "Member", Article 22.2.2 applies and the Parties are therefore required to resolve their dispute through the SDRCC as per Article 22.2.2 of the Respondent's Bylaws.

CONCLUSION

33. The Respondent's other concerns pertain to the substantive issues to be addressed through the arbitration process.
34. For the foregoing reasons, I conclude that the SDRCC has jurisdiction in this matter and this matter shall proceed to arbitration.

COSTS

35. There shall be no costs awarded at this time.

Charmaine Panko
Arbitrator