

SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)
CENTRE DE RÉGLEMENT DES DIFFÉRENDS SPORTIF DU CANADA (CRDSC)

July 5, 2019

No: SDRCC 19-0395

JOSIAH TONG
SOLOMON TONG
(Claimants)

AND

BADMINTON ALBERTA
(Respondent)

and

TIMOTHY TONG
(Claimant)

AND

BADMINTON ALBERTA
(Respondent)

Before: J.J. McIntyre (Sole Arbitrator)

Representative for the Claimants: Emmett Scrimshaw

Representative for the Respondent: Paul D. Reid

REASONS FOR AWARD

1. This is an athlete eligibility dispute. On April 10, 2019 the matter involving Josiah Tong and Solomon Tong (the "Athletes") came on for hearing on the singular issue as to the eligibility of the two Athletes to participate in the upcoming provincial championship tournament scheduled for that weekend in Alberta.
2. I rendered under strict time constraints, pursuant to the January 1, 2015 Canadian Sport Dispute Resolution Code (the "SDRCC Code") a short decision that the Athletes had never lost their National Memberships through Badminton Alberta and that the Athletes were thus able to participate in the upcoming Alberta Provincial Championships.

3. The other issues that were the subject of the original complaint were as follows:
 - (2) Whether Josiah and Solomon Tong hold and continue to hold National Memberships in Badminton Alberta, in the absence of Badminton Alberta's proposed conditions being met.
 - (3) Whether there are sufficient grounds for Badminton Alberta to make the continued involvement of Josiah and Solomon Tong in Badminton Alberta activities dependent on the exclusion of their parents.
 - (4) Whether Badminton Alberta incorrectly or improperly categorized the 2018 Yonex AJC Red Deer Tournament in such a way as to deprive Josiah from obtaining national ranking points, and whether the categorization should be changed to permit the awarding of national ranking points.
 - (5) Whether the Athletes should be awarded costs of the arbitration.
4. On May 6, 2019 the parties agreed that issues (2) to (4) above respectively had been conceded, were moot or were not being proceeded with. The only issue remaining was the issue of costs.
5. The Claimant, Timothy Tong, who is the father of the Athletes, on April 9, 2019 had filed a separate request to the SDRCC for Arbitration on the issue of a decision by Badminton Alberta made on April 4, 2019 restricting his ability to act as a coach and participate in Badminton Alberta events and limiting his ability to communicate with Badminton Alberta staff.
6. On May 8, 2019 Badminton Alberta consented to the consolidation of Timothy Tong's complaint with that of the Athletes.
7. On June 6, 2019 Badminton Alberta advised that the Board had rescinded its motions sanctioning Timothy Tong and that his rights to act as a coach were restored.
8. The only issue remaining from Timothy Tong's complaint was the issue of costs.
9. Both parties provided their submissions in writing on the issue of costs by June 19, 2019.
10. On June 26, 2019 I rendered a further short decision that given the relative resources of the parties, there was no reason to depart from the general principle set out in s. 6.22(a) of the SDRCC Code that "[...] each Party shall be responsible for its own expenses and that of its witnesses." In the circumstances, each party was to bear its own costs of this proceeding.
11. I am mindful of the further costs to the parties of providing more fulsome reasons for the above short decisions.

Athletes' Eligibility

12. The Alberta Provincial Tournament is a closed event. Participants are required to meet the eligibility criteria in order to be able to be registered and participate in the tournament. The criteria include the requirement that the Athletes be Alberta residents and have a national membership.
13. The evidence in the documents filed and in the hearing was that both Athletes had national membership through Badminton Alberta bought and paid for in September 2018. The membership is from September 1, 2018 to August 31, 2019.
14. A dispute arose between Timothy Tong, the father of the Athletes (and a registered National Coach), regarding the categorization of the 2018 Yonex AJC Red Deer Tournament from an event in which national ranking points could be obtained to an event without such points. The status of this tournament was clearly disclosed on the Badminton Alberta website. Mr. Tong however felt that the change in the tournament status deprived his son Josiah from obtaining points that he should have earned. This dispute led to Mr. Tong feeling that Badminton Alberta was not supporting the Athletes in a way that they deserved to be supported.
15. Erroneous information as to the benefits and rights associated with the different levels of membership available to athletes was posted on the Badminton Alberta website. The website had stated as one of the benefits of having a provincial membership that such members would be: "Eligible to participate in provincial championships, Alberta Summer Games, interprovincial and national championships".
16. Given the perceived lack of support by Badminton Alberta and relying on the information recorded on the website, Timothy Tong, took out National memberships for the Athletes through Badminton Ontario and asked the Executive Director for Badminton Alberta, Jeff Bell, to have the national membership of the Athletes downgraded from national to provincial in February 2019. Jeff Bell did so.
17. The consequence of this change was that the Athletes were then considered by Badminton Alberta as unable to participate in the provincial championships as they no longer held national memberships through Badminton Alberta.
18. Mr. Tong on being informed of the consequences of the downgrade sought to reverse that action. When Mr. Tong pointed out the errors in the Badminton Alberta website regarding the benefits of provincial membership, Badminton Alberta changed its website. The website was changed to correct the misinformation in relation to the benefits associated with being a Provincial member to read: "Eligible to participate in provincial circuit events (excluding provincial championships, Alberta Games, interprovincial and national championships)".

19. Badminton Alberta refused to recognize they were responsible for the misleading information on its website and refused to re-register the Athletes as national members through Badminton Alberta so that they could participate in the upcoming provincial championships unless the Athletes and their parents met a number of onerous conditions. One of those conditions is that the Athletes resign their national membership through Badminton Ontario before Badminton Alberta would re-register the Athletes as national members. These actions led to the filing of this dispute between the Athletes and Badminton Alberta.
20. In the hearing, it was the position of Badminton Alberta that had Mr. Tong done more research regarding the bylaws and handbook of the association he would have realized what each category of membership in Badminton Alberta provided.
21. I find that it is critical to all potential athletes, recreational or competitive to know what the benefits of the different categories of membership entail. It is not an answer to the issue to tell prospective athletes or their parents that they cannot rely on the information provided by the association on their website regarding such membership and that if the parent or athlete had done more research they would have been able to determine the website was wrong. That is asking too much of the athletes and their parents.
22. The evidence filed in this matter included bylaws stating that the Board directors of Badminton Alberta have a power to impose conditions on membership. There was no evidence however that the Board has the power to change categories of membership once granted. From a natural justice perspective, if an athlete's membership eligibility was to be changed, one would expect there to be an ability for the member to contest the change or have a hearing concerning the same. In the circumstances of this dispute the request for a change came from the parent of the Athletes. He was misled as to the rights associated with membership recorded on the Badminton Alberta website.
23. Jeff Bell testified in the hearing that he was 90% responsible for maintaining the Badminton Alberta website. Given that the website is a living, breathing document, sometimes errors get missed. He further testified that he is the one primarily involved in issuing memberships, even at tournaments. From a practical standpoint, that makes sense. The Board cannot be expected to meet to discuss granting individual memberships to athletes at such times. No bylaws or written policies of the association delegating such power to the Executive Director were in evidence.
24. The Athletes are Alberta citizens and residents. The only impediment to their being able to participate in the provincial championships was the category of their membership. Given that there was no evidence that the Executive Director had any power to change the categories of the memberships of the Athletes, it was my decision that their national memberships through Badminton Alberta had never been lost.

25. It is my understanding that since I issued my short decision in this matter that Badminton Alberta has recognized there may be deficiencies in their bylaws and are looking to correct them. Hence, the resolution of issues (2) to (4) in this dispute.

Costs

26. The general principle relating to Costs is set out in s. 6.22(a) of the SDRCC Code that "[...] each Party shall be responsible for its own expenses and that of its witnesses." Subsection (c) provides as follows:

(c) The Panel shall determine whether there is to be any award of costs and the extent of any such award. When making its determination the Panel shall take into account the outcome of the proceedings, the Conduct of the Parties and their respective financial resources, intent, settlement offers and each Party's willingness in attempting to resolve the dispute prior to or during Arbitration. Success in an Arbitration does not mean that the Party is entitled to be awarded costs.

27. In the case of *Canadian Amateur Diving Association v. Miranda*, SDRCC 05-0030 Arbitrator Ratushny held that cost awards should be reserved for exceptional circumstances, such as an exceptional breach of the principles of fairness or natural justice.
28. In the case of *Nova Scotia Taekwondo Association v. WTF Taekwondo Association of Canada*, SDRCC 12-0175 Arbitrator Pound found that costs do not generally follow the event. The arbitrator will consider a range of factors including the outcome of the dispute, the conduct of the parties throughout the arbitration, the financial resources of the parties, intent, settlement offers and the parties' willingness to settle the dispute.
29. In the further case of *Montreal Wanderers Rugby Club v. Fédération Rugby du Québec*, SDRCC 14-0222, Arbitrator Pound, in a fee-for-service dispute determined that given the limited financial resources of both parties, the parties should share the costs of the fee-for-service arbitration equally.
30. This is a fee-for-service dispute.
31. The evidence before me established that Timothy Tong was and remains an advocate for his children. His advocacy frustrated Badminton Alberta in terms of dealing with his demands regarding his children. The executive of the association felt that they were spending a disproportionate amount of time and their resources answering Mr. Tong's demands on behalf of the Athletes.

32. That frustration led to the extraordinary motions by the Badminton Alberta Board made on April 4, 2019 to deprive Mr. Tong of his rights as a coach without a hearing and to restrict his ability to communicate with Badminton Alberta staff. It also led to the proposal, never actually carried out, to restrict the rights of the Athletes to play badminton for Badminton Alberta being dependent on the good conduct of the Athletes' parents.
33. Following my short decision on the Athletes' eligibility Badminton Alberta has since moved to resolve the remaining issues in an expedited manner. Their submissions regarding costs points out their limited resources and the fact that they have been forced to expend those limited resources in defending these disputes and another dispute with the Claimants. Economics and the costs of expending resources to deal with these complaints before the SDRCC are likely to have been a factor in Badminton Alberta's willingness to resolve the remaining complaints.
34. Included in the evidence before me is an email from Mr. Tong setting out his donating half a million dollars to non-profits annually. He further testified in the hearing as to his ability to provide coaching and tournament opportunities for his sons in other provinces and the United States. The Athletes are lucky to have such a supportive parent and such opportunities.
35. Submissions on costs made on behalf of Mr. Tong indicate he has spent in excess of \$26,000 on all of the disputes among the Tong family and Badminton Alberta.
36. I accept that Mr. Tong on behalf of the Claimants was obliged to commence these arbitrations in order to achieve a just outcome involving the Athletes and his coaching status. Badminton Alberta forced him to take these measures as they refused to recognize prior to the arbitrations the rights of the Claimants to fairness in their actions and in their decision-making.
37. However, given the manner in which the issues have been resolved and especially considering the comparative resources of the parties, I determine that there is no reason to depart from the general principle. In the circumstances, each party is to bear its own costs of this proceeding.

Dated this 5th day of July, 2019.


JJ McIntyre