

N°. SDRCC 20-0453

SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)

CENTRE DE REGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)

ALEXANDER MOORE

CLAIMANT

AND

WRESTLING CANADA LUTTE (WCL)

RESPONDENT

AND

ALEX BROWN-THERIAULT

CLAYTON PYE

AFFECTED PARTIES

**COSTS AWARD**

(Hearing in Writing)

**Arbitrator:** Larry Banack

1. My Reasons for Award dated August 21, 2020 made no reference to the matter of costs.
2. Notwithstanding, the Claimant delivered a Request for Award of Costs dated August 26, 2020.
3. As a result, a timetable was established for responding and reply submissions.
4. No submissions were received from either affected party.
5. The parties' costs submissions made no reference to my jurisdiction to award costs nor any authorities to inform my determination.
6. However, I do note that in the case of *Tulk v WCL*, SDRCC 19-0394 heavily relied upon by the Claimant for other purposes, Arbitrator Lawless noted that no party had made a request for costs and declined to make any such Order, leaving each Party to bear their own costs.
7. For the reasons set out below, I conclude that no Order of costs is appropriate in this case and accordingly dismiss the Claimant's request for costs.

#### **CLAIMANT'S SUBMISSIONS**

8. The Claimant was well represented throughout these proceedings by his father Robert Moore, "an unpaid volunteer, who works full time as an administrator in a school".

9. Robert Moore has sought costs of \$500. for the arbitration filing fee plus “well over 100 hours of preparation of the case from April 29 to August 7, 2020 @ \$50/hour = \$5,000” to reflect the significant time and energy to prepare the case. He as well highlighted the frustration of the Claimant throughout. Robert Moore points out the disparity between his situation and WCL which has full time staff and “all the resources of a multi-million dollar NSO at their disposal.”
10. Robert Moore maintains that WCL misconducted itself by failing to voluntarily exercise its discretion by ordering a wrestle off in the exceptional circumstance of a pandemic resulting in the cancellation of the Tokyo Olympic Games and rendering the INP to be out of date.
11. More broadly Robert Moore maintains that WCL has systematically failed to carry out its mandate/mission in a fair, reasonable, transparent and efficient manner.
12. In particular, Robert Moore highlights that the Claimant was successful in the arbitration which was completely avoidable but for “WCL’s intractable position” and “lack of willingness to resolve the dispute”. As well, the Claimant is critical that WCL did not “bump up” the decision making to a “higher committee or WCL level of governance”.
13. Robert Moore concludes his principle submission asserting that “the vast amount of time spent in pursuing justice in this case should be compensated in a fair and reasonable manner.”

## **RESPONDENT'S SUBMISSIONS**

14. WCL asserts that it advanced the dispute in the most efficient manner possible by consenting to proceed directly to the cost effective, timely SDRCC arbitration to secure a final and binding resolution as the matter involved others apart from the Claimant.
15. WCL maintains that it had followed its predetermined INP and was unable to agree upon a prehearing resolution as that may have impacted others.
16. WCL highlights that its limited budget for high performance athletes is prioritized to programming and athlete support including by way of example medical and recovery costs for the Claimant and his surgery. As well, WCL does not have funding for legal counsel in every instance and was self represented in this matter.
17. It is also pointed out that the arbitration determination to grant a wrestle off arose from the unprecedented pandemic consequences and not as a result of any finding of bias or misconduct by WCL or its staff.

## **ANALYSIS**

18. My jurisdiction to consider an award of costs is found in the Canadian Sport Dispute Resolution Code which provides:

### Section 6.22 Costs

- (a) Except for the costs outlined in Subsection 3.9(e) and Section 3.10 hereof and subject to Subsection 6.22(c) hereof, each Party shall be responsible for its own expenses and that of its witnesses.
- (b) Parties wishing to seek costs in an Arbitration shall inform the Panel and the other Parties no more than seven (7) days after the award being rendered.
- (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.

(d) The filing fee retained by the SDRCC can be taken into account by a Panel if any costs are awarded.

(e) The decisions on costs shall be communicated to the Parties within seven (7) days of the last submission pertaining to costs.

(f) The Panel does not have jurisdiction to award damages, compensatory, punitive or otherwise, to any Party.

19. The presumption of the Code is that each party "shall be responsible for its own expenses." As well, I find that costs should be awarded in only exceptional circumstances so that sport funds can be spent for athletes rather than disputes. I reject the Claimant's submission that costs are appropriate in light of the WCL decision making or conduct which was neither frivolous, egregious nor made in bad faith or with malice.

20. Although the underlying dispute arose as a result of the exceptional circumstance of a global pandemic, there was nothing exceptional about the matter itself. It was basically about WCL's exercise of discretion arising from a predetermined published policy and the Claimant's view that a different outcome was appropriate. This is a common type of disagreement between an NSO and athlete.

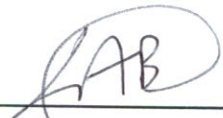
21. To consider whether costs are appropriate I must take into account the factors set out above in Section 6.22(c).

22. I have considered each of the enumerated factors.

23. Outcome – The Claimant achieved the desired outcome of a wrestle off. However my determination discounted some of the grounds advanced and did not allow all of the relief sought. I conclude there was a degree of mixed success for each party. As well, the Code provides that even success does not entitle a Party to costs.
24. Conduct of the parties – The Claimant asserts that the prehearing conduct of WCL was reprehensible and he made serious allegations of a personal nature. My determination was not based on any improper pre-hearing conduct and explicitly found that the WCL position was not rooted in bias. I have considered the conduct of the parties in the context of this arbitration and find that there was no improper procedural or substantive conduct to warrant a cost sanction.
25. Respective financial resources – It is well understood by me that all participants in high performance athletics undoubtedly have limited resources. The Claimant was well represented by his father, a school administrator, on a volunteer basis. WCL, which may have a significant annual budget, was represented by a staff member to conserve resources that are best used to support athlete performance. I do not find there to be a significant disparity between the parties of unallocated financial resources to justify a cost award as claimed.
26. Intent – Each party advocated strenuously for their respective positions. However, there is no basis to find any improper motive or intent by any party to justify a cost award.
27. Settlement offers and each Party's willingness in attempting to resolve the dispute prior to or during Arbitration – I am not aware of any settlement offers, however I do understand that a prehearing settlement effort was not successful. In the circumstances of this case involving a predetermined written policy that affected other athletes I can understand that a consensual settlement between the Claimant and WCL was not possible. That factor does not justify a cost award.

28. I have carefully considered the written submissions and my limited jurisdiction to determine that this is not an instance to award costs to the Claimant.
29. Having concluded that it is not appropriate to award costs, I do not take into account nor award filing fees as set out above in Section 6.22(d).
30. It is therefore ordered that the Claimant and WCL each bear their own costs.

Toronto, September 11, 2020



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Larry Banack  
Arbitrator