

SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)

NO: SDRCC-21-0529

ALBERTA TABLE TENNIS ASSOCIATION (ATTA)

(Claimant)

AND

TABLE TENNIS CANADA (TTCAN)

(Respondent)

**JANICE JOHNSTON
(Arbitrator)**

REPRESENTATIVES:

FOR THE CLAIMANT:

Michelle Kropp – Counsel
Kim Law – ATTA Representative
Kelly Law – ATTA Representative

FOR THE RESPONDENT:

Timothy Cullen – Counsel
Jeremiah Kopp – Counsel
Adham Sharara – TTCAN Representative

JURISDICTIONAL AWARD

Background

1. On November 23, 2021 the Alberta Table Tennis Association (**ATTA**) filed a Request for Arbitration with the SDRCC appealing the September 9, 2021, decision of the Respondent, Table Tennis Canada (**TTCAN**) to designate ATTA as a member not in good standing. The Respondent has raised a challenge to the jurisdiction of the SDRCC to hear the request filed by ATTA. It has not been asserted that this matter is **not** a sports-related dispute as defined in the SDRCC's Canadian Sport Dispute Resolution Code (the **SDRCC Code**). There is no challenge raised on this basis.
2. On November 29, 2021 I directed the parties to file written submissions to the SDRCC on the jurisdictional issue. They both did so and I am prepared to decide the issue based on these submissions.
3. TTCAN has challenged the jurisdiction of a SDRCC Tribunal to consider the appeal of the ATTA, on the basis that the ATTA did not commence an internal appeal with TTCAN before filing the request for arbitration with the SDRCC. It is asserted that TTCAN has an appeal policy that establishes an internal appeal process and SDRCC Code Subsection 3.1 (b) requires the Claimant to exhaust TTCAN's internal appeal process first. It is suggested that in this case the Claimant never availed itself of the TTCAN appeal process and did not file an appeal. Counsel for TTCAN argues that all correspondence from the Claimant following the decision they seek to appeal is plainly and obviously not a notice of appeal or any sort of request to overturn or reconsider the decision. Accordingly, there was no basis for TTCAN to commence its internal process.
4. I do not propose to set out in any detail all of the events which form the background in this case but to merely provide a brief summary. It appears that in the fall of 2020 there were internal clashes between various

stakeholders in the ATTA. The president at the time, Peter Vuong, called a Special General Meeting (a **SGM**), on or about September 27, 2020. Shortly thereafter, Peter Vuong submitted his written resignation on September 30, 2020 and withdrew his club from ATTA membership. Several other board members submitted their resignations at the same time. The remaining directors elected Kim Law as interim president.

5. In June 2021, the ATTA held an Annual General Meeting (an **AGM**). ATTA invited all who were members in good standing as of April 2021 to attend. TTCAN, upon being notified of ATTA's planned AGM in June 2021, took the position that the ATTA should invite everyone who was a member in good standing as of September 1, 2020 to attend. The ATTA did not do so and TTCAN does not accept that the ATTA properly conducted its AGM and elections. TTCAN has taken the position that the ATTA must hold another AGM or a SGM so that those members who resigned in September 2020 can attend and vote.

6. In June 2021, the Respondent advised the Claimant that at the next meeting of the TTCAN Board a decision would be made as to whether or not the ATTA was in good standing with TTCAN. On September 9, 2021, the TTCAN Board decided to make the ATTA a member not in good standing and notified the ATTA of this decision on September 14, 2021. On September 20, 2021, the Claimant responded to this decision and sent a letter to Mr. Adham Sharara and the TTCAN Board. Counsel for the ATTA takes the position that this letter should have been taken as the ATTA notice of intention to appeal the decision which had been made by TTCAN. The Respondent disputes this assertion and is of the view that the letter does not constitute a request to appeal.

7. The Table Tennis Canada Appeals Policy (the **Appeals Policy**) is a two-page document. I have appended it as Appendix A to this award for ease of reference.

Submissions of the Respondent

8. In support of the assertion that the letter sent by the ATTA on September 20, 2021 cannot be considered to be an appeal pursuant to the Appeals Policy, counsel for TTCAN points to paragraph one of the Appeals Policy, which provides that:

Any member of Table Tennis Canada who is affected by a decision of the Board, of any Committee of the Board, or any body or individual who has been delegated authority to make decisions on behalf of the Board shall have the right to appeal that decision. To launch an appeal the appellant must deposit a \$200 appeals fee, which is refundable only if the eventual outcome of the appeal is in favour of the appellant.

At no time has the ATTA paid or enquired about paying the \$200 fee.

9. Counsel also points to paragraph three of the Appeals Policy which states:

Members who wish to appeal a decision shall have 10 days from the date on which they received notice of the decision, to submit written notice of their intention to appeal, along with detailed reasons for the appeal, to the President of the Association.

It is asserted that at no time did the Claimant submit a written notice of an intention to appeal or provide written reasons for an appeal on the enumerated grounds in the Appeals Policy.

10. It is asserted by counsel for TTCAN that the Claimant's letter lacks all of the Appeals Policy's requirements for an appeal. The letter does not provide any written reasons for requesting an appeal or make reference to any enumerated grounds of appeal. Even accounting for the fact that non-lawyer

volunteer ATTA members prepared the letter, it does not use the word appeal or even request in some way that the TTCAN Board reconsider or reverse the decision to declare the ATTA a member not in good standing. The letter does not suggest any further action will be taken or an appeal or reconsideration request is forthcoming. It merely advises that the Claimant is open to having a virtual meeting, if needed, should the Respondent require additional information. Moreover, the fact that the Claimant also failed to make the requisite \$200 appeals deposit further evidences that the letter was never intended to serve as a notice of intention to appeal.

11. The Respondent submits that the Appeals Policy provides for an appeal to be commenced within 10 days from the date on which the Claimant received notice of the decision. The Claimant received notice of the Respondent's decision on September 14, 2021. Therefore, under the Appeals Policy, an appeal needed to be commenced by September 24, 2021. Section 6.2 of the SDRCC Code provides that:

- (a) Unless set by agreement, statute, regulations or other applicable rules of the relevant SO, the time limit to file a Request shall be thirty (30) days following the later of the date on which:
 - (i) the Claimant becomes aware of the existence of the dispute;
 - (ii) the Claimant becomes aware of the contested decision; and
 - (iii) the last step in attempting to resolve the dispute occurred, as determined by the SDRCC. The SDRCC may, in its discretion, refer this issue to a Panel.
- (b) Notwithstanding Section 3.5(c), the time limit may be waived with respect to a Request [...] under exceptional circumstances. [...]

12. Counsel for TTCAN points out that the Claimant made no request for an extension of time and has not suggested there were any exceptional circumstances that prevented them from preparing a written notice of appeal. In fact, Counsel suggests that the Claimant's lengthy emails and letter to the Respondent on September 20, 2021, indicates that the Claimant had the time to consider and respond to the Respondent's decision within 10 days of receiving notice of it. Moreover, the Claimant now alleges the letter of

September 20, 2021 was a written notice of appeal, an acknowledgement that they were required to file a notice of appeal within 10 days under the Appeals Policy.

13. On November 2, 2021, TTCAN received a letter from counsel for the Claimant that (mistakenly) asserts the TTCAN Board's decision to place the ATTA as a member not in good standing was communicated on September 15, 2021. The letter also asserts "*a proper Notice of Appeal pursuant to TTCAN's appeal policy*" was received at TTCAN by "*email from Kelly Law, program coordinator of ATTA, on September 23, 2021 [...] yet [TTCAN has] not taken any steps to properly administer TTCAN's own appeal policy...*" On November 11, 2021, TTCAN responded to Counsel for the Claimant advising that no email or letter was received from Kelly Law on September 23, 2021, only correspondence on September 14 and September 20, 2021, and that neither constituted a Notice of Appeal or even an actual appeal. It should be noted that the Claimant did not file a September 23 email with the Request for Arbitration.
14. The Claimant's Request for Arbitration states that November 11, 2021, was the date of the last attempt to resolve the dispute. Counsel for the Claimant indicated to TTCAN, that the response on November 11 was taken to be TTCAN's final refusal to review its decision and because TTCAN had not elected to proceed with its appeal process, the Claimant would proceed to the SDRCC. The Respondent argues that counsel for the Claimant has attempted, out of necessity, to manufacture circumstances by which it can allege the Request for Arbitration has been filed within 30 days of the last attempt to resolve the dispute in accordance with SDRCC Code Subsection 6.2(a)(iii). At best, the Claimant's last attempt to resolve the dispute was by its letter on September 20, 2021. Nothing happened for 43 days after that until the November 2, 2021 letter from Claimant's counsel alleging that TTCAN had received a proper notice of appeal on September 23, 2021.

15. Counsel for TTCAN asserts that this failure to file an internal appeal in a timely fashion constitutes a failure to exhaust the TTCAN internal dispute resolution procedures and that the SDRCC should decline jurisdiction.

Submissions of the Claimant

16. Counsel for the ATTA relies upon Section 3.1 of the SDRCC Code which provides:

3.1 Availability of Dispute Resolution Processes

- (a) The Dispute Resolution Processes are available to any Person for the resolution of a Sports-Related Dispute, subject to Subsections 3.1(b) and 3.1(c).
- (b) Unless otherwise agreed or set out in this Code, before a Person applies for the resolution of a Sports-Related Dispute, the Person must first have exhausted all internal dispute resolution procedures provided by the rules of the applicable SO. An SO internal dispute resolution procedure is deemed exhausted when:
- (i) the SO or its internal appeal panel has rendered a final decision;
 - (ii) the SO has failed to apply its internal appeal policy within reasonable time limits or on reasonable grounds; or
 - (iii) the SO has waived the requirement to exhaust its internal appeal process.

[Emphasis mine]

17. Counsel for the ATTA takes the position that TTCAN has wilfully refused to complete their internal appeal process. Therefore TTCAN failed to apply their internal appeal process. ATTA was notified of TTCAN's decision to designate the organization as a member not in good standing on or about September 14, 2021. At this time, ATTA was not represented by counsel. After receiving this notification from TTCAN, ATTA contacted TTCAN to address this designation on or about September 20, 2021. In a letter sent to Mr. Sharara and the TTCAN Board, ATTA set out their position regarding TTCAN's egregious behaviour, highlighting five key issues with TTCAN's conduct. This should have been taken as ATTA notice of intention to appeal (the "Notice").

18. Counsel for ATTA states that TTCAN did not notify ATTA that the Notice may have been deficient nor indicate what steps were needed to finalize an appeal. Rather than acknowledge this Notice and engage their internal appeal process, TTCAN failed to take any steps to follow their own process.
19. In support of her position, counsel referred to *Adhihetty v. Cricket Canada* (SDRCC 19-0491) a decision which in counsel's view involved similar jurisdictional issues. In that case, the claimant had sent a document he considered a request for an appeal which Cricket Canada did not consider to be an appeal within the meaning of the Cricket Canada Appeal Policy. Arbitrator Décary found that the claimant did file what he considered to be an appeal and was not informed by Cricket Canada that his request was not considered an appeal. It was found that this was a rejection of the claimant's internal appeal within the meaning of the Code. The claimant was deemed to have exhausted the internal appeal procedure and was therefore able to access the dispute resolution procedures under the SDRCC Code.
20. On November 2, 2021, counsel for ATTA contacted TTCAN. In this letter, ATTA repeatedly raised the failure of TTCAN to initiate their internal appeal process and identified that their only option was to submit a request to the SDRCC to have their membership reinstated. According to counsel, at this time, TTCAN could have initiated their internal appeal policy, but again, refused to do so. TTCAN responded on November 11, 2021, in part by stating that the information provided by ATTA did "*not change the decision of the TTCAN Board.*"
21. The Claimant asserts that the only reasonable interpretation of this correspondence is that this letter was the final decision of TTCAN regarding the status of ATTA and a clear refusal to engage TTCAN's internal appeal process. It adds that it is unreasonable to suggest that ATTA has not

exhausted their right of appeal within the procedures of the Respondent in face of this definitive statement from the President of TTCAN. Following this decision, ATTA notified TTCAN that as TTCAN had refused to initiate their internal appeal process, ATTA had no choice but to file a Request with the SDRCC to remedy the situation.

22. In the alternative, should it be determined that TTCAN's internal appeal process was not exhausted, it was submitted by ATTA counsel that TTCAN's Appeals Policy is not exclusive or a mandatory process. It is not specifically mandated what decisions are exclusively subject to TTCAN's Appeals Policy. The Appeals Policy states, at paragraph 1, that "[a]ny member of Table Tennis Canada who is affected by a decision of the Board [...] shall have the right to appeal that decision." This Appeals Policy does not state where a member shall bring its appeal, only that members have the right to appeal the decisions set out. Nowhere is it stated that decisions of the Board of Directors can only be appealed under TTCAN's Appeals Policy, or that the Appeals Policy must be exhausted.

23. Reference was made to *Numainville v. Cycling Canada* (SDRCC 16-0317), where Arbitrator Pound stated at page 7:

There has been nothing drawn to my attention that would compel me to conclude that the route of an internal appeal was compulsory or a condition precedent to any such appeal to the SDRCC...The terms of the Appeal Policy itself simply provide that it presents an opportunity to have an internal appeal...the appeal process is expressed as "a" process, not as "the" (only) process.

Arbitrator Pound went on to say that the Appeal Policy in that case would require much more specific language to conclude that a participant must use the internal appeal process as a precondition to the exercise of any further rights of appeal.

24. In the Claimant's submission, the Request was filed on November 23, 2021, well within the 30-day limit to file a request as established by section 6.2 of the SDRCC Code.
25. Counsel for the ATTA asserted that should the SDRCC uphold the jurisdictional challenge that this would work as an unfairness to the ATTA. If the SDRCC does not hear this request, according to counsel, "*ATTA will be left with no means to address their membership status other than to follow the illegitimate and capricious demands of TTCAN*". It is also asserted that TTCAN had several opportunities to address any deficiencies with ATTA's Notice. Instead, they simply ignored ATTA's correspondence. TTCAN should not benefit from any technical deficiencies with ATTA's documentation, should I find that the internal appeal process was not and should have been exhausted. At the time that the ATTA filed its objection which should have been taken as its Notice, the ATTA was not represented by counsel.
26. In conclusion counsel for the ATTA argued that TTCAN has completely failed to follow its own policies to date and indeed has indicated that it will continue to do so, absent intervention from an SDRCC Tribunal. If the SDRCC does not hear this request the ATTA "*will continue to be subject to the unilateral whims and imposition of arbitrary requirements of TTCAN.*" ATTA counsel stressed that a national sports organization "*should not be allowed to interfere with the affairs of one of its long standing and important members, and to neglect to follow its own policies.*"

Decision

27. I have carefully reviewed the correspondence dated September 20, 2021, which the Claimant asserts constitutes a notice of intention, on the part of the

ATTA, to appeal the decision of TTCAN to designate ATTA a member not in good standing, which was communicated on September 14, 2021. As noted by counsel for the Respondent, nowhere in this letter does the ATTA indicate it wishes to appeal the decision made by TTCAN. I agree that the Claimant's letter does not comply with the Appeals Policy's requirements for an appeal. The letter does not provide any written reasons for requesting an appeal nor make reference to any enumerated grounds of appeal. Nowhere in the letter is the word "appeal" used nor is there a request that the TTCAN Board reconsider or reverse the decision to declare the ATTA a member not in good standing. No reference is made to the payment of the \$200.00 fee, nor was it paid.

28. I am satisfied that the September 20, 2021 letter does not constitute an appeal nor is it sufficient to constitute a notice of intention to appeal on the part of the ATTA. As a result, there was no reason for TTCAN to commence its internal process. Counsel for the ATTA takes the position that TTCAN has wilfully refused to complete their internal appeal process. I disagree. The internal process was never triggered as an appeal was never filed. I conclude therefore that TTCAN's internal appeal process was not exhausted prior to this application being made to the SDRCC.

29. ATTA counsel argued in the alternative that should I determine that TTCAN's internal appeal process was not exhausted, that TTCAN's Appeals Policy is not an exclusive or a mandatory process. The Appeals Policy states, at paragraph 1, that *"[a]ny member of Table Tennis Canada who is affected by a decision of the Board [...] shall have the right to appeal that decision."* According to counsel, this Appeals Policy states that members have the right to appeal the decisions set out. Nowhere is it stated that decisions of the Board of Directors can only be appealed under TTCAN's Appeals Policy, or

that the Appeals Policy must be exhausted prior to recourse to the SDRCC being sought.

30. Counsel for the Claimant relied upon *Numainville v. Cycling Canada* (SDRCC 16-0317), and the conclusions reached by Arbitrator Pound with regard to the internal appeal process at issue in that case. After reviewing the language in the policy, Arbitrator Pound concluded that the Appeal Policy in that case would require much more specific language to conclude that a participant must use the internal appeal process as a precondition to the exercise of any further rights of appeal.


31. Every case by necessity must turn on its own specific facts. I have carefully reviewed the Appeals Policy in this case. In my view it is very clear and sets out what someone seeking to appeal a decision must do. It is also clear that appealing pursuant to the Appeals Policy is not discretionary. For example it states: *“To launch an appeal the appellant must deposit a \$200 appeals fee”,* and *“Members who wish to appeal a decision shall have 10 days from the date on which they received notice of the decision, to submit written notice of their intention to appeal, along with detailed reasons for the appeal”* [emphasis mine]. The choice of words such as “must” and “shall have” make it clear that compliance with the Appeals Policy is mandatory.

32. I think it would send the wrong message and be a grave error were the SDRCC to decide that even though an internal appeals policy exists, it can be simply bypassed and recourse to the SDRCC be sought. Subsection 3.1(b) of the SDRCC Code makes it clear that a person must first have exhausted all internal dispute resolution procedures provided by the rules of the applicable sport organization before a person can apply for the dispute resolution processes available at the SDRCC.

33. It is clear in this case that the Claimant has not exhausted the TTCAN internal dispute resolution or Appeals Policy. The ATTA did not commence an internal appeal with TTCAN in a timely fashion before filing the Request for Arbitration with the SDRCC. The TTCAN Appeals Policy is clear and unambiguous and provides for a mandatory process.

34. Accordingly, the jurisdictional challenge is upheld and this matter is dismissed.

Dated in Toronto this 7th day of December, 2021

A handwritten signature in cursive script that reads "Janice Johnston". The signature is written in black ink and is positioned above a horizontal line.

Janice Johnston

Arbitrator

APPENDIX A



Table Tennis Canada APPEALS POLICY

Note: In this policy “member” refers to any director, employee (including contract personnel) coach, athlete, official, manager, committee member, volunteer or any affiliate association of Table Tennis Canada; “appellant” refers to the member appealing a decision; and “respondent” refers to the body whose decision is being appealed.

1. Any member of Table Tennis Canada who is affected by a decision of the Board, of any Committee of the Board, or any body or individual who has been delegated authority to make decisions on behalf of the Board shall have the right to appeal that decision. To launch an appeal the appellant must deposit a \$200 appeals fee, which is refundable only if the eventual outcome of the appeal is in favour of the appellant.
2. This policy shall not apply to matters relating to the Rules of the Game, which may not be appealed.
3. Members who wish to appeal a decision shall have 10 days from the date on which they received notice of the decision, to submit written notice of their intention to appeal, along with detailed reasons for the appeal, to the President of the Association
4. An appeal may only be heard if there are sufficient grounds for the appeal. Sufficient grounds include the respondent:
 - a) making a decision for which it did not have authority or jurisdiction as set out in governing documents;
 - b) failing to follow procedures as laid out in the bylaws or approved policies of the Association;
 - c) making a decision which was influenced by bias;
 - d) failing to consider relevant information or taking into account irrelevant information in making the decision;
 - e) exercising its discretion for an improper purpose; and/or
 - f) making a decision which was unreasonable.
5. Within 14 days of receiving notice of an appeal the President (or designate) shall appoint three persons to constitute a Tribunal, in accordance with the following:
 - a) The Tribunal shall be comprised of members in good standing of the Association who shall have no significant relationship with the appellant, shall have had no

- involvement with the decision being appealed, and shall be free from actual or perceived bias or conflict.
- b) The chair of the appeal committee shall be a member of the BOD, unless a BOD member is not available to chair an appeal.
 - c) At least one of the Tribunal members shall be from among the appellant's peers (for example, if the appellant is an athlete one Tribunal member shall be an athlete; if the appellant is a coach one Tribunal member shall be a coach, etc.)
 - d) In appointing the Tribunal, consideration shall be given to the geographic location of the appellant, respondent and Tribunal members, in order to minimize the inconvenience and expense to all parties.
 - e) The appellant shall be given an opportunity to recommend one of the Tribunal members, provided the member satisfies criteria a) and c) above.
 - f) Each Tribunal member will be made aware of the duties and expectations of participating in the Tribunal including confidentiality and conflict of interest.
6. Within 15 days of its appointment the Tribunal shall review the notice of appeal and reasons for the appeal and shall decide whether or not there are sufficient grounds for an appeal. This decision is discretionary and may not be appealed.
 7. If the Tribunal is satisfied that there are not sufficient grounds for an appeal, it shall notify the appellant of this decision in writing, stating reasons. If the Tribunal is satisfied that there are sufficient grounds for an appeal, it shall refer the matter to ADR Sport RED <http://www.crdsc-sdrcc.ca/>.
 8. If at any point in the process an internal resolution is reached, the process will be stopped.

Updated July 2016