

SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)

NO: SDRCC 15-0278

HILARY STELLINGWERFF

(CLAIMANT)

AND

ATHLETICS CANADA

(RESPONDENT)

AND

NOELLE MONTCALM

(AFFECTED PARTY)

DECISION REGARDING COSTS

Submissions:

On behalf of the Claimant: Hilary Stellingwerff

BACKGROUND

1. In a decision dated December 29, 2015, I allowed Ms. Stellingwerff's appeal against a policy of Athletics Canada ("AC"). I concluded that AC's policy preventing female athletes who have been pregnant from subsequently obtaining a medical card was discriminatory and directed that AC re-consider Ms. Stellingwerff's application in light of my decision. I retained jurisdiction to determine the issue of costs pending the submissions of the parties.
2. Ms. Stellingwerff sought reimbursement of \$500, representing \$250 paid to AC for her internal appeal and \$250 paid to the SDRCC to initiate her appeal of AC's decision.
3. Athletics Canada did not make any submissions.

RELEVANT PROVISIONS

4. Section 6.22 of the Canadian Sport Dispute Resolution Code provides that, as a general rule, each Party is responsible for its own expenses.
5. The Panel has the discretion to determine whether there is to be any award of costs, and if so, the amount. Where costs are considered, "...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 the Arbitration. Success in an Arbitration does not mean that the Party is entitled to be awarded costs." (Section 6.22(c))
6. In considering an award of costs, the Panel is able to take into account the filing fee retained by the SDRCC. (Section 6.22(d))

ANALYSIS AND DECISION

7. As Section 6.22(c) makes clear, a successful party is not automatically entitled to an award of costs. I have a broad discretion to decide whether costs should be awarded, and if so, the amount of such an award. (see also *Hyacinthe v. Athletics Canada*, SDRCC 06-0047)
8. Factors that I can consider in exercising this discretion include the financial resources of the parties, their conduct, and their attempts to settle the dispute prior to the Arbitration.

9. As the Arbitrator in this matter, I am not privy to any settlement offers, if any, from either of the parties. However, I am aware from updates to the SDRCC Case Management Portal that the parties met with a Resolution Facilitator on two occasions. Therefore, although I have no knowledge of those discussions, I infer that they both made good faith efforts to settle the dispute before the Arbitration.
10. The issue before me related to whether or not Ms. Stellingwerff was eligible for carding, or athlete funding. As a high-level competitive athlete, I infer that her financial resources are limited, which is why the issue was so important to her.
11. Ms. Stellingwerff's appeal raised an important issue that had the potential to affect all female athletes subject to AC's policies. Furthermore, AC acknowledged that the issue Ms. Stellingwerff raised was important and would need to be addressed by AC in the upcoming year.
12. In view of all these factors, and in the absence of any submissions from AC, I find it appropriate that Ms. Stellingwerff be awarded \$250, which represents the cost of filing her appeal with the SDRCC. As I have jurisdiction over costs related to the SDRCC appeal, not AC's internal appeal, I make no award with respect to those costs.

CONCLUSION

13. Having considered the criteria set out in Section 6.22 of the Code, I direct that AC pay Ms. Stellingwerff the amount of \$250, being the cost of filing the appeal with the SDRCC.

January 22, 2016, Vancouver, BC



Carol Roberts, Arbitrator