

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)

ORDER AS TO COSTS AWARD

16/11/2017

Introduction

1. These proceedings were brought by the Falcons to obtain full disclosure of the reasons for denial of membership and to provide a response to those reasons. The Falcons then further asked that SSA's decision to deny membership to them be overturned.
2. The Falcons were successful in using the SDRCC process to obtain the disclosure they sought and to provide a response to same. However, my conclusion after reviewing the parties' submissions and the documents properly before me, was that SSA's decision to deny membership to the Falcons was reasonable and that decision was therefore upheld.
3. The Falcons' position is that they incurred unnecessary costs to achieve their stated goal of obtaining disclosure and to provide a response. They point to attempts to engage SSA in processes that would have provided the information they sought, including but not limited to a request that there be a joint submission of the dispute to the SDRCC with a sharing of costs and a subsequent request that the dispute be resolved by way of Mediation/Arbitration. The Falcons characterize SSA as resisting "every step of the way" and themselves as having "displayed a conciliatory nature throughout." As such the Falcons request an order of the costs of the arbitration and their counsel fees.

4. SSA's position is that it was reasonable in refusing to mediate or enter into settlement proposals as the end goal of the Falcons was actually the awarding of membership and that SSA could not, in all good conscience, have agreed to grant membership, probationary or otherwise, in the circumstances as it would have resulted in "total capitulation by SSA".
5. SSA further submits that it was largely successful in that it was found to have acted reasonably in reaching its decision and as such, costs should be awarded to them. SSA proposes the Falcons be ordered to pay two-thirds of the Arbitrator's costs and two-thirds of SSA legal costs, leaving one-third of the Arbitrator's costs to be borne by SSA, along with the balance of its legal account.
6. For the reasons set out herein, I find that it is appropriate in the present matter and circumstances that the Claimant and Respondent share the costs of the fee-for-service arbitration equally and otherwise each bear their own legal costs.

Analysis

7. The applicable rules of the SDRCC Code pertaining to costs are found in section 6.22:
 - (a) [...] each Party shall be responsible for its own expenses and that of its witnesses.
[...]
 - (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.
[...]
 - (f) The Panel does not have jurisdiction to award damages, compensatory, punitive or otherwise, to any Party.
8. However, as in *Montreal Wanderers Rugby Club and Federation de Rugby du Quebec*, SDRCC 14-0222, Order as to Costs [*Montreal*], this was "not a 'usual' arbitration before the Sport Dispute Resolution Centre of Canada (SDRCC) as it falls outside the normal range of cases in which arbitration or mediation is funded through Sport Canada and is provided at no cost to the parties."
9. This matter has proceeded on what is known as a "fee-for-service" basis, which, as outlined in *Montreal*:

[...] [is] quite different from the "normal" arbitrations that occur under the SDRCC umbrella, in which the services are provided at no cost to the

parties, as part of the federally-funded services made available to the sport community. The services provided at no cost to the parties include all of the SDRCC administrative and case management services, as well as the fees of the arbitrators involved. Modest fees for instituting proceedings are charged to a claimant, mainly to discourage the institution of frivolous proceedings. The parties are generally responsible thereafter for their own costs [...], unless an arbitrator believes that some contribution toward those costs is appropriate in the particular circumstances. Normally, as in litigation generally, costs, if awarded, tend to be awarded against a losing party [...].

The dynamic in fee-for-service arbitrations is quite different, in the sense that parties in such circumstances are, broadly speaking, “renting” an existing structure for which they have not paid.

10. Arbitrator Pound went on to acknowledge that, as sport is not immune to the increasingly litigious nature of society today, if parties have availed themselves of a forum to resolve a dispute, the issue of principle that must be considered is whether a successful party should be entitled to recover all of its costs from the losing party. He concluded that in a fee-for-service model, such a principle would also extend to whether the losing party should also be responsible for the costs of the arbitration itself.
11. There has been a mixed result in the outcome of the matter before me, with no clear winner or loser. The evidence demonstrated that the Falcons made numerous overtures to SSA, before, during, and after engaging SDRCC in the arbitration process. The evidence also demonstrated that though SSA did indeed “resist every step of the way”, it did so not with a malevolent intent but rather out of apparent frustration and inability to envision an end to the history of perpetual conflict between the parties.
12. The Falcons are to be commended for their efforts; and at the same time, SSA cannot be condemned for their reluctance.
13. Each party has incurred exceptionally high costs for counsel. That is not to say the quality of representation was lacking in any way, but it is rather a reflection on choices made by each party that contributed to the expenditure of financial resources.
14. In consideration of the reasons sets out above, I find that it is appropriate in the present matter and circumstances that the Claimant and Respondent share the costs of the fee-for-service arbitration equally and otherwise each bear their own legal costs.

ORDER

15. It is therefore ordered that:

- a. SDRCC shall calculate the costs of the arbitration [the "Total Costs"] and advise the parties of the Total Costs within 15 days from the date of this Order.
- b. The Respondent shall pay one half of the Total Costs to the Claimant within 15 days of receipt of the calculation of those costs as per above.



Charmaine Panko
Arbitrator