

**SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA
(CRDSC)**

NO: SDRCC 24-0704

BETWEEN:

B.R.

(CLAIMANT)

AND

HOCKEY CANADA (HC)

(RESPONDENT)

DECISION

Appearances:

On behalf of the Claimant: Peter A. Abrametz, Counsel

On behalf of the Respondent: Adam Klevinas, Counsel

1. On March 6, 2024, I was appointed under Subsection 5.3(b) of the *Canadian Sport Dispute Resolution Code* (the “Code”) to hear B.R.’s (the “Claimant”) appeal of a decision issued on February 23, 2024, under section 6.7 of the *Code*.
2. On April 15, 2024, I denied the Claimant’s application for the disclosure of documents.
3. This decision is based on written submissions of the parties. Although the Claimant sought an oral hearing, after reviewing the submissions, I determined that an oral hearing was unnecessary.
4. This dispute is a review of a decision of an Adjudicator. There is no witness evidence to be presented. Upon a review of the submissions, it is apparent that

the dispute is confined to a disagreement about the content of that decision. To conduct an oral hearing would not, in my view, assist me in deciding this question. As the arguments can be made fully by way of written submissions, an oral hearing is, in my view, an unnecessary use of resources, both of the parties and of the SDRCC services.

OVERVIEW

5. I set out the facts leading to this dispute in my decision on the Claimant's application for the production of documents. For ease of reading, I have reproduced them here in full.
6. Hockey Canada ("HC") is the national governing body for amateur hockey in Canada. Maltreatment complaints made to HC are managed by an Independent Third Party ("ITP") in accordance with HC's *Maltreatment Complaint Management Policy*. (the "Policy")
7. The Claimant, or B.R., is a 13-year-old hockey player with the [REDACTED] hockey team (the "Team").
8. On February 7, 2023, the Team submitted a complaint (the "Original Complaint") to the ITP alleging misconduct by T.C., a member of the Team, against another Team member.
9. During the investigation and adjudication of the misconduct allegations, the Claimant, who was a witness in the Original Complaint, asserted that T.C. had taken a nude photograph of him in a dressing room following a game on October 9, 2022. The ITP appointed an Investigator ("Investigator Gee") who, following an investigation, prepared a confidential report concluding that the allegations against T.C. had not been substantiated. Investigator Gee interviewed the Claimant and determined that no inappropriate photos had been taken. Investigator Gee dismissed the complaint against T.C. In arriving at that conclusion, Investigator Gee made a finding that the Claimant had lodged a false report.
10. The ITP provided a redacted version of Investigator Gee's report to the parties to the Original Complaint (that is, T.C. and HC) and assigned an adjudicative panel. ("Adjudicator Smith")
11. The *Policy* establishes a rebuttable presumption that an investigation report is determinative of the facts related to the complaint. Adjudicator Smith accepted the facts as found by the Investigator and dismissed the complaint against T.C.
12. Following Adjudicator Smith's decision, T.C. filed a complaint against the Claimant, asserting that B.R. had made false allegations against him to cause T.C.

to be suspended from playing hockey or to cause him reputational harm, contrary to Article 12 of Schedule A of the *Policy*. Article 12 provides that a participant "...who submits allegations that an investigator finds to be malicious, false, not made in good faith, or made for the purpose of retribution, retaliation or vengeance may be subject to a Complaint under the terms of the Policy..."

13. The adjudicative panel assigned to address T.C.'s complaint (Adjudicator Jebreen) found that, because the Claimant was a witness, rather than a party during Investigator Gee's investigation, he had not been given the opportunity to rebut the facts as found by the Investigator. Adjudicator Jebreen ordered that B.R. be given a redacted copy of the Investigation Report and the Original Complaint, and directed T.C. and B.R. to provide submissions on the following issues:
 - (a) Was there a significant flaw in the process followed by the Investigator?;
 - (b) Did the redacted report contain conclusions that are not consistent with the facts found by the Investigator?;
 - (c) Has [B.R.] submitted allegations that the Investigator determined to be malicious, false, not made in good faith, or made for the purpose of retribution, retaliation or vengeance?; and
 - (d) In the event that the answer to (c) is affirmative, what are the appropriate sanctions?
14. Both the Claimant (who was represented by counsel) and T.C. made submissions to Adjudicator Jebreen. The Claimant's submissions included an email from Mr. Abrametz as well as an affidavit from the Claimant's father (S.R.).
15. Adjudicator Jebreen noted that in his affidavit, S.R. referred to some photographs in his possession. Adjudicator Jebreen's decision states that the Claimant's counsel submitted two redacted photographs, which he viewed in the process of deciding the matter.
16. Adjudicator Jebreen considered the Investigator's summary of the Claimant's evidence of the October 9, 2022 incident, which was that T.C. pointed his phone towards him when he was coming out of the shower and threatened to send the photo he had taken to other people, that the Claimant could not confirm whether a photo was actually taken, and that no other persons could confirm seeing a photo of the Claimant naked coming out of the shower. Adjudicator Jebreen also noted that the Investigator did not find the Claimant's version of events completely credible. In particular, Adjudicator Jebreen noted that the Claimant did not have any corroborating evidence that an actual photograph had been

taken and that he only made the allegation against T.C. after a fight in which he threatened to have T.C. and others removed from the Team.

17. Adjudicator Jebreen considered the Investigator's reasons for finding that T.C. had not taken a nude photograph, including that there was no evidence of a photo; no other person admitted to either taking a photo or seeing one being taken; no other person heard any discourse between the players or saw the photo on a phone or posted on a social media account; and that the Claimant's description of the phone allegedly used by T.C. did not match the phone that T.C. owned.
18. Adjudicator Jebreen considered the Investigator's findings that the Claimant threatened to have T.C. suspended on February 5, 2023, fabricated the October 2022 incident, and then used that incident to penalize T.C. by getting him suspended.
19. Adjudicator Jebreen then considered whether the Claimant had successfully rebutted the presumption of those findings. Adjudicator Jebreen considered S.R.'s affidavit, including his assertion that he told Investigator Gee that he had a copy of the photograph taken in the dressing room and that he could provide it to the Investigator. Adjudicator Jebreen also noted S.R.'s sworn statement that the photographs "depict naked boys in the dressing room" and that they were "screen shots saved from Instagram...."
20. Adjudicator Jebreen found S.R.'s affidavit to contain "glaring omissions," specifically, at no point did S.R. state that the photographs were either taken by T.C., posted to Instagram by T.C., or that they were taken on October 9, 2022. Adjudicator Jebreen noted (para. 54 of the decision) that "the two photographs have no dates on them and there is no indication that T.C. took them."
21. Adjudicator Jebreen further noted (para. 55) that in his affidavit, S.R.:

simply states "the boys that were taking these photos and posting them." [sic] He does not allege that T.C. took either of the two photographs or that they were taken on October 9, 2022 as B.R. alleged. These omissions are especially concerning given that this proceeding is about whether B.R.'s allegations were determined to be false.
22. Adjudicator Jebreen noted (para. 56) that while the photographs "do show nudity of boys in a dressing room" that was not at issue before him; rather, the issue was whether B.R. falsely alleged that T.C. took "the Photograph".
23. Adjudicator Jebreen further considered that S.R.'s affidavit raised credibility issues as S.R. swore that the two photographs were "screenshots from Instagram" when the initial complaint against T.C. was that T.C. had taken a nude

photograph, not that the photo was posted to Instagram or any other social media platform. Adjudicator Jebreen further considered B.R.'s evidence that he was not aware of any nude photograph of him being posted to social media:

The Affidavit is silent on how or when B.R.'s Father obtained screenshots from Instagram given that the Photograph was not posted. This inconsistency suggests that the two photographs are likely not taken by T.C. as alleged by B.R. [reproduced as written] (paragraph 57)

24. Finally, Adjudicator Jebreen considered S.R.'s allegation that Investigator Gee failed to obtain the two photographs even after he offered to provide them and concluded:

Even accepting that these photographs were offered to the Investigator, such a flaw would not be significant here because, for the reasons noted above, the photographs would not undermine the Investigator's conclusions relating to B.R. (para. 58)

25. Adjudicator Jebreen concluded that T.C.'s complaint that B.R. had made false allegations against him had been substantiated and that the Claimant had breached the policy. Adjudicator Jebreen ordered that the Claimant be suspended from playing hockey until March 31, 2024, and ordered him to pay half of the investigation costs of the Original Complaint.
26. The Claimant's present appeal is against Adjudicator Jebreen's conclusion that he made a malicious complaint.

Argument

27. The Claimant argues that Adjudicator Jebreen denied him the opportunity to argue that Investigator Gee's report contained significant flaws, including that the Investigator ignored a "generalized complaint of phones in the dressing room taking inappropriate photos and posting them on social media" and instead focused on a specific event from October 2022, and the Investigator's failure to indicate that B.R. was a reluctant complainant.
28. The Claimant also argues that Adjudicator Jebreen failed to follow his own process by informing the Claimant that he had until January 24, 2024, to provide submissions following which there was a possibility of further oral submissions before a written hearing. The Claimant submitted an affidavit on January 22, 2024, and asked that if the matter was to proceed to a hearing, he sought access to recorded interviews between B.R. and S.R. and Investigator Gee. Adjudicator Jebreen then issued a final decision on February 23, 2024, which was labelled (erroneously) an "interim decision." Counsel contends that this procedural irregularity, which denied B.R.'s legitimate expectation that he would have

written submissions prior to a final hearing, necessitates a new hearing before a new adjudicator.

29. HC contends that the Adjudicator's decision is reasonable and should not be interfered with. HC contends that the Claimant has not demonstrated any flaws in the Investigator's report, nor has he demonstrated that the Adjudicator's procedures were flawed. HC submits that the Claimant has not established that the Adjudicator's decision was tainted by any serious shortcomings that would warrant the Panel's intervention.
30. In a reply submission, the Claimant argues that the question to be answered is whether the Claimant made a malicious complaint for the purpose of retribution, and that, to answer that, he requires the Original Complaint, which he does not have.

Analysis

The Code

31. Section 6.11 of the *Code* provides that the Panel has the power to conduct a hearing *de novo*, and that the hearing must be *de novo* where the sport organization did not conduct its internal appeal process.
32. As Hockey Canada conducted its own internal appeal process, I am not required to conduct this arbitration as a *de novo* hearing. Whether I do so is a matter of discretion. I am not persuaded, considering the procedure below, that a *de novo* hearing is required. In addition, as Counsel for the Claimant seeks a new hearing before a different adjudicator, a remedy that is common in judicial review applications, I infer that he is also not seeking a hearing *de novo*.
33. Consequently, this appeal will proceed as a review of the decision of Adjudicator Jebreen, applying a reasonableness, or deferential, standard. (see also *Barch v. Hockey Canada*, SDRCC 23-0680)
34. A reasonableness review is a "robust form of review" of Adjudicator Jebreen's decision, according to the guidance in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

Flaws in the Investigation Report

35. This appeal is not a review of Investigator Gee's report regarding T.C.'s complaint against B.R. Rather, it is an appeal against a decision made by Adjudicator Jebreen.
36. Adjudicator Jebreen provided the Claimant with a copy of Investigator Gee's report, and noted that the *Policy* provided for a rebuttable presumption that the

investigative report was determinative of the facts. In his December 12, 2023, Procedural Order, Adjudicator Jebreen considered that, because the Claimant was not a party to the Original Complaint and did not have the opportunity to rebut the presumption, he ought to be afforded that opportunity. Adjudicator Jebreen then specifically directed the parties to make submissions on four specific issues including whether there was “a significant flaw in the process followed by the Investigator.”

37. Despite being expressly invited by Adjudicator Jebreen to make submissions relating to the question of whether or not there were significant flaws in the process followed by Investigator Gee, counsel for the Claimant instead submitted an affidavit from S.R. and made arguments regarding “mistakes” made by Investigator Gee.
38. Adjudicator Jebreen considered the Claimant’s submissions in response to his December 12, 2023, Procedural Order.
39. The Claimant was represented by counsel through the entirety of this process. While I might have considered the Claimant’s arguments if he was not represented by counsel, given that Adjudicator Jebreen expressly invited the Claimant, through his counsel, to make submissions on the question of whether there were procedural flaws in the process followed by Investigator Gee, I decline to consider the arguments regarding alleged flaws in the investigation now being made on appeal. It is not now open to the Claimant to make arguments that were not advanced before Adjudicator Jebreen.

Did Adjudicator Jebreen fail to follow a promised process?

40. The Claimant contends that Adjudicator Jebreen informed him that he had until January 24, 2024, to provide submissions following which there was a possibility of further oral submissions before a written hearing. Adjudicator Jebreen’s December 12, 2023, Procedural Order did not, in fact, inform the Claimant that there was a possibility of further oral submissions. In his Order, Adjudicator Jebreen stated that the purpose of the Order was to “address the next steps leading to the hearing.” (Paragraph 3). The Order specified that the Respondent (that is, B.R.) was to be given the opportunity to rebut the presumption in the *Policy* that the investigation report was determinative of the facts. (Paragraph 15)
41. After setting out the issues to be addressed by the Claimant in his submissions (at paragraph 17), Adjudicator Jebreen set a deadline of December 22, 2023 (which was later extended to January 22, 2024) for the parties to provide their submissions. Adjudicator Jebreen then stated (at para. 23):

The ITP shall provide me with all submissions forthwith after they are received from the parties. I will review the submissions upon receipt and determine whether other steps are warranted prior to setting this matter down for a written hearing. The ITP shall communicate my decision in that regard to the parties.

42. Although the Claimant contends that he understood that there would be “an interim decision to tell him whether or not there would be some interviews scheduled for an upcoming oral hearing, or, at a minimum, that the matter would be set down for a written hearing,” it is difficult to understand how the Claimant came to this understanding in the face of what appears to be an unambiguous Order. The Adjudicator stated that he would “determine whether other steps [were] warranted prior to setting down the matter for a written hearing.” (my emphasis)
43. There is no evidence the Claimant sought clarification of what steps were to be followed by the Adjudicator as set out in paragraph 23 of his Order. It is also difficult to understand how, in the absence of any attempt at clarification, the Claimant believed, or had a legitimate expectation, that a particular procedure would be followed.
44. Although Adjudicator Jebreen’s February 23, 2024, decision was identified as an ‘Interim Decision,’ the fact that it contained conclusions on his findings and ordered sanctions, makes it abundantly clear that it was indeed a final decision. In that decision, Adjudicator Jebreen set out the procedural history, that the Claimant was offered the opportunity to rebut factual presumptions, and the Claimant’s response to the issues identified by the Adjudicator, including the factual findings of the Investigator. Adjudicator Jebreen noted that the question for him to decide was whether the Claimant had

demonstrated that there was a significant flaw in the process followed by the investigator or [had] established that the Redacted Report [contained] conclusions which [were] not consistent with the facts as found by the investigator.
45. After noting that there were “some glaring omissions in [S. R.’s’] affidavit;” that the submissions touched on matters that were not at issue before the Adjudicator; and expressing concerns regarding the credibility of the affiant, Adjudicator Jebreen determined that the Claimant had not rebutted the presumption that the facts found by the Investigator were determinative.
46. I find no basis for the Claimant’s argument that the “promised procedure” was not adhered to. I find that the Claimant was afforded an opportunity to be heard,

by way of written submissions, regarding factual findings by an investigator. There is nothing in Hockey Canada's *Maltreatment Complaint Management Policy* that affords the Claimant an oral hearing.

47. I therefore conclude that the Claimant was not denied natural justice or an opportunity to be heard and that Adjudicator Jebreen's decision was reasonable.

CONCLUSION

48. The appeal is denied.

DATED: September 4, 2024, Vancouver, British Columbia

A handwritten signature in black ink, appearing to read "Carol Roberts", written in a cursive style.

Carol Roberts, Arbitrator