

SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)

SDRCC 13-0194

CANADIAN SOCCER LEAGUE (CSL)
(CLAIMANT)

AND

CANADIAN SOCCER ASSOCIATION (CSA)
(RESPONDENT)

BEFORE
HUGH L. FRASER
ARBITRATOR

JURISDICTIONAL ORDER

BACKGROUND

In 2009, the Canadian Soccer League (CSL) applied for membership with the Canadian Soccer Association (CSA).

At its Annual General Meeting held in May, 2009, the Canadian Soccer Association passed a motion approving in principle the application for membership from the Canadian Soccer League for the year 2010, provided:

- 1) the League meets the criteria for Professional Leagues as established by the CSA;
- 2) the application gets approval from the Professional Soccer and Technical Committees.

Since 2010, the Canadian Soccer League has operated as a sanctioned CSA member.

By letter dated, February 13, 2013, the President of the CSA advised the Chairman of the CSL that the CSA's Board of Directors had passed a motion which included a recommendation that the CSA no longer sanction the CSL as a League, effective immediately.

The CSL has protested the decision of the CSA Board of Directors to de-sanction it, maintaining that such decision was unfair, and in contravention of the CSA by-laws.

In a letter dated February 26, 2013, the CSL advised the CSA that it was protesting the decision to de-sanction and demanding an immediate rescission of the decision. The CSL also sought assistance from FÉDÉRATION INTERNATIONALE de FOOTBALL ASSOCIATION (FIFA), the world governing body for soccer and were advised by FIFA that they considered this dispute to be an internal one.

Following this response from FIFA the CSL determined that the SDRCC was the appropriate forum to deal with this dispute and has filed a claim for arbitration with the SDRCC.

The CSA maintains that the SDRCC does not have the jurisdiction to arbitrate this dispute.

ISSUE

At this stage of the proceeding the one issue to be determined is whether the SDRCC has the jurisdiction to arbitrate the dispute between the CSL and the CSA.

POSITION OF THE PARTIES

CSA:

The CSA submits that jurisdiction for this dispute rests with the CONFEDERATION OF NORTH, CENTRAL AMERICAN AND CARIBBEAN ASSOCIATION FOOTBALL (CONCACAF) or FIFA pursuant to By-Law 15.1 of the CSA By-Laws. The CSA also maintains that there is no "national dispute" at issue over which the SDRCC would have jurisdiction, and further that the CSL has not exhausted their internal dispute resolution alternatives.

The CSA points to By-law 41 of its By-Laws which provides as follows:

41.1 The Sport Dispute Resolution Centre (SDRC) shall deal with all internal national disputes between the CSA, its Members, players, officials and match and players' agents that do not fall under the jurisdiction of its Judicial Bodies. The Board of Directors shall draw up regulations regarding the jurisdiction of this Arbitration Tribunal.

The CSA submits that this dispute is a dispute with the CSL, which is an Ontario only league since the only Quebec team is no longer operating, and is therefore not a national dispute. The CSA also submits that its Board of Directors has not drawn up regulations regarding the jurisdiction "of this Arbitration Tribunal", namely SDRC.

The CSA also submits that the CSL has agreed to refer any dispute requiring arbitration to CONCACAF or FIFA, pursuant to a contractual obligation that the CSL agreed to when it became a member of the CSA.

A further submission of the CSA is that the CSL has contacted both CONCACAF and FIFA seeking their assistance and in so doing has attorned to their jurisdiction. The CSA maintains that if CONCACAF and FIFA have determined that they will not deal with the matter, there is no further appeal from that decision to the SDRC.

CSA submits in the alternative that if it is determined that the CSL does not have to engage CONCACAF or FIFA to the exclusion of other bodies, the SDRC still does not have jurisdiction to consider this dispute because By-Law 42.1 of the CSA By-laws which provides for a SDRCC involvement only deals with disagreements and not disputes requiring arbitration.

By-Law 42.1 reads as follows:

The CSA, its Members, players, officials and match and players' agents will not take any dispute to the Ordinary Courts unless specifically provided for in these by-laws and FIFA regulations. Any disagreement shall be submitted to the jurisdiction of FIFA, CONCACAF or SDRCC".

The CSA also makes reference to By-Law 42.2 which reads as follows:

The CSA shall have jurisdiction on internal national disputes, i.e. disputes between parties belonging to the CSA. FIFA shall have jurisdiction on international disputes, i.e. disputes between parties belonging to different Associations and or Confederations.

The CSA submits therefore that based on their reading of By-Law 42.2, the jurisdiction of the SDRC is limited to those cases of "national disputes" and between parties "belonging to the CSA," and not between members of the CSA and the CSA itself. The CSA submits that a dispute between a member of the CSA such as the CSL, and the CSA itself, is to be submitted to CONCACAF and FIFA.

It is further submitted by the CSA that pursuant to paragraph 10 of the Rules and Regulations of the CSA, there is a provision in subparagraph b) (v), which provides that "in the event of a league being refused sanction, the applicants shall have the right to appeal to the next level of jurisdiction" which the CSA maintains is first CONCACAF and then FIFA.

The final submission of the CSA on the jurisdiction issue is that this dispute is not a national one but a private dispute between the CSA and the CSL, and this is therefore not a dispute that the parties are required to resolve through the SDRCC.

CSL:

The essence of the CSL submission is that the SDRCC is the appropriate forum to deal with this dispute as it is an internal national dispute as referenced in CSA By-Law 41.

The CSL maintains that there are no applicable CSA "internal dispute resolution alternatives" which would apply to the decision to de-sanction the CSL. Furthermore the CSL argues that the CONCACAF and FIFA arbitration mechanisms are designed to resolve international disputes pursuant to section 42.1 and 42.2 of the CSA By-Laws.

The CSL submits that it has been a member of the CSA since 2010 and if the dispute with the CSA over the decision to de-sanction is determined to be an internal national dispute between the CSA and a Member that does not fall under the jurisdiction of the CSA's Judicial Bodies, such dispute is governed by CSA By-Law 41.

To counter the CSA argument that the CSL is not a national league and that the dispute over de-sanctioning is not a national dispute, the CSL makes the following submissions:

1. The CSL's mandate is regional expansion of soccer throughout Canada.
2. In 2010, the CSL was admitted to membership in the CSA as a "League Member" because its mandate is national in scope.
3. That although the majority of the CSL teams are based in Ontario, the league has a presence in two provinces by virtue of the Quebec based Montreal Impact Academy team.
4. The CSA Rules and Regulations, section 2 (e)(ii) states that "Any League in Membership shall consist of teams based in a minimum of two (2) Provincial Associations (or one (1) Provincial Association and (1) U.S. State)".
5. The CSA Board of Directors' resolution is national in scope in that it de-sanctioned the CSL in order to alter/change the manner in which professional soccer is operated throughout Canada.

DECISION

After considering the submissions of both parties on the issue of jurisdiction, I find that the correspondence sent to CONCACAF and FIFA by the CSL were simply letters requesting assistance or direction. The response from FIFA's legal department suggesting that the dispute is an internal matter should not be interpreted as the Canadian Soccer League attorning to the jurisdiction of FIFA.

I am satisfied that By-Laws 41 and 42 of the CSA govern the issue of whether the SDRCC has jurisdiction to deal with the CSA Board of Directors decision to de-sanction the CSL as a League.

The language contained in these two By-Laws is subject to some interpretation. Is the decision to de-sanction the CSL an internal national dispute between the CSA and one of its members? If that question is answered in the affirmative, then the SDRCC is the appropriate forum to arbitrate this issue.

There is no international element to the dispute between the CSL and the CSA. In my opinion this dispute should be categorized as a national dispute. The CSA suggests that the word national used in this context should refer to a league that operates nationwide and not primarily in one province with an academy operating in a second province. I respectfully disagree that the term national should be so narrowly defined in this context.

The fact that "internal national disputes" is defined in By-Law 42.2 as "disputes between parties belonging to the CSA", does not mean that such disputes can only involve issues arising between two members of the CSA.

Although that definition is listed under the heading of Jurisdiction in the CSA By-Laws, the previous By-Law 41 which is listed under the heading of Arbitration also deals with Jurisdiction. The CSA Arbitration By-Law makes specific reference to internal national disputes between the CSA and its members that do not fall under the jurisdiction of its Judicial Bodies.

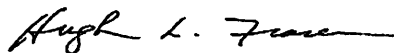
The Judicial Bodies of the CSA are:

- A) The Disciplinary Committee;
- B) The Appeal Committee;
- C) The Players' Status Committee.

There is no suggestion by either party that this dispute falls under the jurisdiction of any of the aforementioned Judicial Bodies. I find that the term internal national disputes can be applied to disagreements between two members of the CSA as well as disputes between the CSA and one of its members.

I find therefore that the CSL decision to challenge its de-sanctioning by the CSA Board of Directors is an internal national dispute and as such the Sport Dispute Resolution Centre of Canada has the jurisdiction to deal with such dispute by virtue of the CSA's By-laws.

Dated at Ottawa this 2nd day of April, 2013.



Hugh L. Fraser

Arbitrator