

Introduction

1. By Decision dated 25 October 2019, the Tribunal upheld an appeal by the members of the governing committee of the Central Rugby League Club brought in the name of the Club against the decision of Bay of Plenty District Rugby League [BOPDRL] to suspend them. The Tribunal did so on the basis that the suspension decision was made in breach of natural justice and that in any event BOPDRL had no power to suspend individual members of the committee (as opposed to a power that it had to suspend a club). We also held that, as a logical consequence, the subsequent holding of an AGM for the Club by BOPDRL and the election of a new committee had no lawful effect.
2. The appellant Club has now sought an order for costs against BOPDRL. In its application dated 31 October, it is acknowledged, by reference to *Tim Carr v. Motorcycling New Zealand Inc.* (ST 01/08) that the Tribunal is only likely to award substantial costs in exceptional cases. The Tribunal in that case listed as relevant factors: the outcome of the case, whether the proceeding was without merit, the conduct of the parties in the proceeding; and a catch-all “any other factors that the Tribunal thought ‘just’”. (A recent decision of the Tribunal in which it took account of the losing party’s conduct (that led to the need for the appeal) is *KL v. Table Tennis New Zealand* (ST 05/19; 17 January 2020)).
3. The appellant Club argues that this is an exceptional case, justifying a substantial award of costs. It lists in considerable detail the costs incurred and says that its counsel expended 117 hours since the filing of the Notice of Appeal on 1 March 2019. It seeks full indemnity costs of \$24,016.21 (exclusive of GST) including the \$500 appeal filing fee.
4. The exceptional circumstances relied on the appellant can be summarized as follows:
 - (1) The successful outcome of the appeal and in particular the grounds found by the Tribunal which included a finding that BOPDRL, in suspending the Club’s committee members, had not only acted beyond its powers but had committed what the Tribunal described as “an egregious breach of natural justice”.
 - (2) BOPDRL had taken steps to have a new committee elected, which the appellant described as “a hostile take over of the club”.
 - (3) BOPDRL suspended the committee members at a time when they were taking steps to hold an SGM to remedy BOPDRL’s original complaint regarding a change to the Club’s Rules that had been made without seeking BOPDRL’s approval.
5. By memorandum dated 14 November 2019, BOPDRL responded in detail to the appellant’s costs application. It also referred to the *Tim Carr* case and, fairly and responsibly, also referred to *Glen Williams v. Triathlon New Zealand* (ST 06/07) in which, while affirming that the Tribunal does not normally award costs and where it does so awards modest costs only, the Tribunal did say that “in exceptional circumstances, [the Tribunal may] order reimbursement of all costs met by a party”. BOPDRL says that this is an unexceptional case and opposes the award of any costs. It says that it “has displayed no cruel intent, no malice and at all times has attempted to constructively work with the appellant throughout the dispute”. It

describes the case as “a reasonable difference of opinion between a club and regional sporting authority as to a complicated constitution, where the Tribunal has found against the Respondent’s view of the constitution and related actions”.

6. BOPDRL, by reference to a Minute of the Deputy Chairman of the Tribunal dated 22 August 2019 prior to the hearing, also submits that it was recognised that the key and only issue before the Tribunal was the lawfulness of the suspension of the Committee members because of the failure to obtain approval of BOPDRL before amending the Club’s Rules.
7. It is correct to say that in that Minute the issue was so stated and the parties were directed to restrict their evidence and submissions to the lawfulness of the suspension and not to agitate a number of other grievances and issues, many of them historical, going beyond the scope of the appeal.
8. BOPDRL also refers to the fact that the Deputy Chairman’s Minute was critical of the fact that the Appellant was seeking to traverse events that occurred after the suspension – namely the holding of the AGM by BOPDRL and election of the new committee, as noted above described as a “hostile take over”. Again, it is correct that the Tribunal directed that the hearing before it and the evidence and submissions presented be confined to the key issue to which the Appeal had been directed, namely the lawfulness of the suspension of the committee members.
9. BOPDRL attached to its response submission a separate submission from Mr Graeme Hill, its chairman, and several other written statements in the nature of opinions as to historical events or of personalities involved in the matter. Also included were emails that have been exchanged since the time the Tribunal’s Decision was handed down. With the exception of Mr Hill’s submission, we do not consider it appropriate to have regard to this material and we do not. Having said that, there was enough evidence before the Tribunal to indicate that in the period leading up to the suspension there was dissension within the Club and it would be fair to say that BOPDRL was right to take the view that some intervention might be necessary on its part. In the event, the Tribunal has found that the mode of its intervention was unlawful and, while it must now bear the consequences of that finding, in considering the application for costs we do so in a context where both sides have contributed to the unsatisfactory nature of a dispute which goes beyond the narrow legal issue that we have had to determine.
10. We return to the Club’s application. Mr Sandford, counsel for the Club, includes in his recitation of the work that he has performed dealing with “all associated matters arising out of the appeal, including but not limited to the attempted take over of the club and the actions of BOPDRL and the non-members”. It is our assessment, based on correspondence to the Registrar of the Tribunal throughout 2019 leading up to the hearing that sought to agitate the actions of the new committee, on the one hand, and the alleged misdemeanors of the original committee and its predecessors, that a significant proportion of Mr Sandford’s time (and costs) must have been expended on these matters. The intervention of Mr Clemens, a solicitor assisting the new committee members and their allies, formed a large part of this action of allegation and counter-allegation of matters that ultimately the Tribunal did not and would not consider. In effect a whole new dispute was generated which has now culminated in a claim by email of 1 November 2019, following the Tribunal’s

Decision, by the Club that Mr Clemens' clients should pay damages to the Club or face recovery action through the courts.

11. It is not our role to comment or make any findings on any of the numerous allegations made by or on behalf of the original or the new committees. But we do say that we think it likely that a large part of Mr Sandford's legal bills relate to those matters and are not within the scope of what the Tribunal dealt with in its Decision. We are not prepared therefore to make any order for costs that would amount to a reimbursement the Club's costs as reflected in Mr Sandford's accounts.
12. On the other hand, we do not think that, in the light of our findings, we cannot simply ignore the serious nature of the unlawfulness of BOPDRL's actions in suspending the Club Committee members at a time when they were actively taking steps to remedy BOPDRL's original complaint. It was, to us, indicative of BOPDRL's attitude that, even though in April 2019 an SGM had been held when an Administrator was in control of the Club and the amendments to the Club rules reversed, Mr Hill, Chairman of BOPDRL told the Tribunal at the hearing that the suspensions should remain in place "because there may be other matters to address".
13. In all the circumstances and taking account of the Tribunal's normal reluctance to award costs, we order that BOPDRL pay to the appellant Club the sum of \$4,000 and also to reimburse it for the \$500 appeal filing fee incurred.
14. We note in this respect that Mr Clemens' clients appeared through him as counsel and participated in the hearing. They were not however a party to the proceeding and, unlike the High Court which may order costs against non-parties, we do not think that we have power to order them to pay costs, despite the fact that they clearly added to the costs incurred in this entire matter. The power to order costs, as stated in Rule 29(a) is explicit: "The Tribunal may order any *party* to a Proceeding...."

23 January 2020



.....
Dr James Farmer QC

Chair