

**BETWEEN**

**KL**

**Appellant**

**AND**

**TABLE TENNIS NEW ZEALAND**

**Respondent**

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**DECISION ON COSTS APPLICATION**  
**17 January 2020**

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**For Appellant** Paul David QC

**For Respondent** Warren Pyke

**For Tribunal** Dr James Farmer QC (Deputy Chairman)  
Georgina Earl

**Registrar** Mike Selwyn

## Introduction

1. On 1 July 2019, the Tribunal issued a Decision on an appeal by a 12-year-old table tennis player who had originally been selected in a national team to compete in the Oceania Junior Table Tennis Championships in Tonga. For confidentiality reasons, both in respect of herself and officials who were involved, she was identified in this Decision as “KL”.
2. The Tribunal, after conducting an oral hearing at which KL was represented by Senior Counsel and supported by her grandmother in particular, allowed the appeal and ordered Table Tennis New Zealand (TTNZ) to restore her to the team. This order was complied with, though there was a need for a Supplementary Decision (dated 31 July 2019) to clarify certain matters raised by TTNZ (considered below) and KL duly competed in the Championships.
3. After the Decision had been given, KL’s grandmother did raise the question of the appeal filing fee and inter-party costs at an early stage with the Registrar of the Tribunal who advised her that a formal application would be required but that it would be highly unlikely that costs would be awarded. The filing fee was however refunded at that time.
4. Subsequently, an application was made by KL’s grandmother to the Disputes Tribunal to recover costs of the Sports Tribunal proceeding but that Tribunal declined jurisdiction on the ground that the Sports Tribunal was the appropriate forum. That led to an application being made on 22 November 2019 for an award of costs by this Tribunal. In these circumstances, we do not think that delay in making an application to the Tribunal is a factor to be taken into account.
5. The facts leading to the removal of the Appellant from the team and the reasons for the Tribunal’s findings are fully set out in the Decision and we don’t repeat them here beyond saying that we did find that TTNZ had failed to follow a fair process in dealing with issues that had arisen. We expressed concern that a constructive suggestion made by the High Performance Convenor of a meeting to try and resolve difficulties at that time was not acted upon by higher management of TTNZ when the matter was elevated to them.
6. In our Decision of 1 July 2019, we expressed the view that, irrespective of the outcome of the appeal, it would be beneficial to endeavor to arrange a meeting between KL, and her grandmother, and the relevant officials of TTNZ with a view to restoring relationships given the probability of KL continuing in table tennis competition.
7. Arrangements to this effect were made but a degree of apparent confusion arose as to whether the purpose of such a meeting was to include a mediation of the costs application. There being no clear agreement on this issue, we think it appropriate to continue to deal with the costs application that was made. In so doing, we have received the benefit of written submissions from Warren Pyke, barrister, on behalf of TTNZ and, in reply, from Paul David QC on behalf of the Appellant.

## Decision on Costs

8. The traditional position in the Tribunal has been that costs normally lie where they fall. That was the stated position in the 2003 Rules. However, the current rule – Rule 29 – is more enabling. Nevertheless, in a decision under the current Rules – *Andrew Roy v. Canoe Racing New Zealand* ST 05/15, 21 May 2015 – the Tribunal reiterated that in general its practice is one of reluctance to award costs and where they are awarded to do so at a modest level. In that case, the Tribunal awarded \$4,000 including the \$500 filing fee.
9. In the present case, Mr Pyke takes two jurisdictional points. The first relies on an interpretation of Rule 24 which permits a minor to be a party to a proceeding and also to be represented by any person. In the latter case, however, it is said: “The Minor shall be responsible for any costs incurred as a result of such representation”. Mr Pyke says that this means that there is no power to award costs in favour of a minor. Mr David responds to that submission by saying that such an interpretation “makes no sense”.
10. Our more restrained formulation is that Rule 24 is enabling and it would undermine the benefits intended to facilitate access to the Tribunal for a minor if it could not recover the party and party costs that adult parties are entitled to seek. We think that rule 24 is addressing the sort of situation that arises in the ordinary courts where a minor is represented by a guardian ad litem and is intended to ensure that remuneration for the “guardian” (in this case KL’s grandmother) is not passed on to the other party. Legal representation by counsel is, in our view, a different matter.
11. Mr Pyke’s second jurisdictional point is that the Tribunal is now *functus officio* because the question of costs was not dealt with in the Tribunal’s Decision of 1 July 2019 or expressly reserved. We do not agree. We certainly think that costs applications should be made promptly and that a failure to do so may in itself entitle the Tribunal to exercise its discretion against an award of costs. As stated above, we do not think this is such a case.
12. In the present case, following our Decision of 1 July, TTNZ corresponded extensively with the Registrar of the Tribunal, initially indicating an intention either to appeal or to apply for a rehearing. Neither event occurred. TTNZ then raised the fact that the player who we had been advised had been selected expressly to replace KL was now said (for the first time to the Tribunal) to have been selected in her own right to compete in a doubles event. This led to the Tribunal issuing a Supplementary Judgment. Contrary to Mr Pyke’s submission, the Decision of 1 July 2019 proved to be anything but “final”, a fact which TTNZ itself caused.
13. As recorded above, KL’s grandmother had also (promptly) sought the recovery of costs incurred in prosecuting the appeal before the Disputes Tribunal which however said that this was more properly a matter for this Tribunal which is where ultimately she has now ended up.
14. In all the circumstances, we are prepared to consider the costs application on its merits

15. The legal costs incurred by or on behalf of KL were \$4000 plus GST for Mr David's fee. Disbursements for KL and her grandmother were \$375.85. We think that TTNZ should make a modest contribution to what are in themselves very modest costs and we so order TTNZ to pay the sum of \$2,000.

Dated: 17 January 2020

A handwritten signature in blue ink, appearing to read 'JAF', followed by a long horizontal flourish.

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**Dr James Farmer QC**  
**Deputy Chairman**