

BETWEEN SOUTHERN ZONE RUGBY LEAGUE INCORPORATED
Appellant

AND NEW ZEALAND RUGBY LEAGUE INCORPORATED (NZRL)
Respondent

AND COUNTIES MANUKAU ZONE OF NZRL INCORPORATED
Interested Party

REASONS FOR DECISION OF SPORTS TRIBUNAL

16 OCTOBER 2014

Tribunal: Sir Bruce Robertson (Chairperson)
 Rob Hart
 Paula Tesoriero

Hearing: 15 October 2014 by teleconference

Present: Andrew McCormick and Anna Kissick, counsel for Appellant
 John Rooney and Ashton Welsh, counsel for Respondent
 Craig Kerr, GM, Canterbury Rugby League
 Steve Martin, GM, Southern Zone
 Alex Hayton, CFO, NZRL
 Kasey King, GM, Counties Manukau Zone
 Alan Johnson, Deputy Chair, Counties Manukau Zone

Registrar: Brent Ellis

Proceedings before the Sports Tribunal

1. On Friday 10 October our Registrar received preliminary advice that there was likely to be an urgent appeal from a decision of the NZ Rugby League Appeals Committee (NZRLAC) delivered that afternoon but in respect of which reasons were to follow.
2. The formal Notice of Appeal was received on Monday 13 October. It has been common ground at all times that this Tribunal had jurisdiction to consider the appeal under Clause 31 of the Constitution of New Zealand Rugby League Incorporated (NZRL).
3. An initial management telephone conference took place at 4.30 pm that day with participation from the three effected parties. The reasons for the NZRLAC decision became available shortly before that conference. A fixture was granted for a substantive hearing at 3pm on Wednesday 15 October by telephone conference. Various documents relating to the background of the matter and the progress of the challenges were filed.
4. Having heard from all participants we were unanimously of the view that the appeal must succeed.
5. Because the appeal related to participation in a game on Saturday 18th October we issued a decision on the 15th accordingly and now provide the reasons for our decision.

Background

6. We adopt the helpful summary contained in the NZRLAC decision as to the background:

[3] In a match between the Counties Manukau premier team and the Canterbury Bulls from the Southern zone it was subsequently ascertained that a Counties Manukau player, Albert Vete, had not played any club rugby league this season and was not registered with any Auckland Rugby League (ARL) club. He was in fact registered with the New Zealand Warriors as a reserve grade player. He had given his Auckland club as

Managere East, although he had not been registered with that club for at least two years. He was ineligible on this ground.

[4] Regulation 6.4 of the rules governing the national competition states:

All players must be registered members of their zonal district leagues as of 31 July 2014 and must have played enough games to meet their district's final eligibility criteria.

[5] Further, regulation 6.1 of the competition rules provides:

In the presence of regular and meaningful rugby league grade competitions, player selection for zone representatives must be made out of these competitions. Regular and meaningful competitions is defined as a competition consisting of a minimum of four teams completing two full rounds of play within a single district.

[6] 6.6.4:

In the event of a team playing an unregistered player, the competition organisation shall stand the out of order player down from the next competition round including a final series match...and remove from the team and competition points gained in a match for which the unregistered player played.

7. The New Zealand Rugby League Football Committee found there was a breach by Counties Manukau in playing Mr Vete who was ineligible. It deducted two competition points from Counties Manukau and fined them \$750. The deduction of the competition points has potential consequences as to which two teams will qualify for the final being played on 18 October.

Issues and the NZRLAC decision

8. Counties Manukau appealed the decision of the NZRL Football Committee to the NZRLAC and advanced four grounds of appeal:

1) *The appellant acted in good faith in its assumption that Vete was registered with the Mangere East Club.*

2) *The NZRL acted negligently in not bringing Vete's non-registration to the attention of the zone thus avoiding any error made.*

3) *Playing the investigated player did not demonstrably affect the result of the game.*

4) *There was clear evidence linking a member of the board of another zone and ARL official to this complaint and that there were effectively circumstances amounting to an entrapment put in place. The inference we take from this is that there was an attempt made to engineer the outcome as to which teams would be finalists in the competition.*

9. The NZRLAC found there was no legal validity in grounds 1 and 3 and we agree with their reasoning.

10. The NZRLAC then turned to a consideration of evidential material which in its view altered what on its face appeared to be "*a clear cut case of a breach by playing a player not eligible.*"

11. We have had the advantage of more material on the issue but the crux question asked remains:

Had Counties Manukau done everything reasonably possible in the circumstances to satisfy themselves of Mr Vete's eligibility?

12. The NZRLAC concluded in the affirmative and held that "*to deprive Counties Manukau of their points on this occasion would be in its own way a miscarriage of justice...*"

13. The NZRLAC allowed the appeal, quashed the decision of the NZRL Football Committee, reinstated the points deducted from Counties Manukau and waived the fine.

Appeal to the Sports Tribunal

14. Southern Zone Rugby League, whose team Mr Vete had played against, appealed to the Sports Tribunal against the decision of the NZRLAC as follows:

That the NZRLAC acted ultra vires in the making of its decision and accordingly, the decision is wrong in law.

Specifically:

The NZRL appeals committee did not disturb the NZRL competition committee's finding that CMZ had infringed rule 6.4 of the NZRL rules for the national competition by playing an unregistered and ineligible player, Albert Vete, in the fixture against SZ on 27 September, but has seemingly found that CMZ had a reasonable excuse for doing so.

The grounds of appeal submitted by CMZ in its letter of 9 October do not constitute a reasonable excuse for non compliance with rule 6.4 of the competition rules as to why CMZ played an unregistered and ineligible player in the said fixture.

15. Counsel for NZRL told us that the NZRL stood by the decision of the NZRLAC although they were uncomfortable when we suggested that meant accepting the problem was created by their acts or omissions. The representatives appearing for Counties Manukau also indicated their support for the decision of the NZRLAC.

Discussion

16. Although there were a lot of words and slants advanced it was common ground that Counties Manukau wanted assurance that Mr Vete was eligible. Mr Vete told them that he was registered with Mangere East

which was in fact not correct. There was no evidence that there was any enquiry directed to Mr Vete or otherwise as to whether, as well as being registered with a club, he fulfilled the requirements of 2.21 of the applicable Auckland Rugby League eligibility criteria.

17. Counties Manukau made an enquiry of NZRL. They did not get a reply. Nevertheless they included Mr Vete in their team.
18. That was taking a risk and in doing so they acted negligently. It was not reasonable to assume that because there was no response there was no problem. Counties Manukau did not follow up their enquiry with sufficient effort in the circumstances. There was an avenue it could have followed with Auckland Rugby League (ARL). Counties Manukau's absence of access to the LeagueNet website (which reports player registrations in New Zealand) was a simple reality which it had to cope with. Simple and available alternatives were reasonably available.
19. The NZRLAC considered that the substantial fault was the failure of NZRL or ARL to warn Counties Manukau. This they concluded was the critical factor. In a sporting environment we would have anticipated free and open communication and a number of aspects of relationships or lack of them which emerged in the evidential material are disquieting.
20. But the clear obligation was on Counties Manukau to field a team of eligible players and there was significant fault when they failed to follow up on the un-responded to enquiry they had initiated. The NZRLAC effectively took the onus away from Counties Manukau and placed it on others. When dealing with a clear and unambiguous requirement, blaming others does not equate to reasonable attempts to comply by the party with the plain responsibility.
21. At [18] of their decision the NZRLAC said:

We are satisfied that everything manual was done that could have been done and that a brief phone or electronic communication on Friday afternoon could have at least put Counties Manukau on notice and given them the responsibility.

22. We cannot accept that categorisation of the position. The relevant rules put Counties Manukau on notice and the responsibility was theirs from the beginning.
23. We were satisfied that there was not an available evidential basis for the conclusion reached by NZRLAC. It must have been apparent to all involved that Mr Vete had been playing semi-professional sport and there was a need to be careful and cautious as to eligibility.
24. Both before the NZRLAC and us, what was classified by Counties Manukau as entrapment was raised. It was said that because people outside the parties to the appeal knew there was a problem and did not tell Counties Manukau then the failures of Counties Manukau should be excused. The circumstances of this aspect, while perhaps disappointing in a sporting context, bear no relationship to the concept of entrapment in law. This ground of appeal was misconceived.
25. For the above reasons, we decided that the appeal against the decision of the NZRLAC must be allowed and that the decision of the New Zealand Rugby League Football Committee is reinstated.

Dated 16 October 2014



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Sir Bruce Robertson (Chair)