

BETWEEN HARBOUR RAIDERS VOLLEYBALL CLUB

Appellant

AND VOLLEYBALL NEW ZEALAND

Respondent

AND SOUTH AUCKLAND VOLLEYBALL CLUB

Interested Party

**DECISION OF SPORTS TRIBUNAL
1 August 2013**

Tribunal: Sir Bruce Robertson (Chairperson)
Dr Lynne Coleman
Rob Hart

Hearing: Wednesday 31 July 2013 by teleconference

Present: Baden Meyer, counsel for Harbour Raiders Volleyball
Club
Richard Casutt, Harbour Raiders Volleyball Club
Garth Snell, Volleyball New Zealand
Dave Macpherson, Northern Zone Coordinator for
Volleyball New Zealand
Nico Ngwun, South Auckland Volleyball Club

Registrar: Brent Ellis

Introduction

1. On 24 July 2013, Harbour Raiders Volleyball Club appealed to this Tribunal against a decision of Volleyball New Zealand.
2. The decision appealed against was described as:

"The decision by Volleyball New Zealand ("VNZ") to adopt the recommendation that the transfer of Charlie Stewart granted by the GDM be declared null and void, and that the player be considered a Nelson player throughout the 2013 season; that the Raiders Men be stripped of the 11 points received in the 4 games on 22 June and 29 June, and that the games be awarded to their opposition by the score of 3-0 (25-0, 25-0, 25-0); That the Board consider the actions of the GDM in this matter."
3. The Harbour Raiders Volleyball Club requested the Tribunal hear and decide the appeal urgently as competition potentially affected by the outcome of this appeal was about to start and competition draws may need to be re-done.
4. An initial telephone conference was held on 25 July to discuss how best to progress and resolve the appeal.
5. At the teleconference, South Auckland Volleyball Club was identified as an interested party. The Tribunal invited the club to participate and the club subsequently confirmed they would.
6. Because of the urgency, the hearing of the appeal, by teleconference, was scheduled for Wednesday 31 July 2013.
7. All parties filed written materials prior to the hearing.

Parties attending at the Hearing

8. The hearing took place as scheduled on 31 July. The following represented the parties at the hearing:
- Harbour Raiders Volleyball Club was represented by its counsel Baden Meyer and by Richard Casutt, who is a committee member and coach developer at the club.
 - Volleyball New Zealand was represented by Garth Snell (Vice Chair) and Dave Macpherson (Northern Zone Coordinator).
 - South Auckland Volleyball Club was represented by Nico Ngwun, who is President of the club.

Factual Timeline of Events

9. Mr Meyer set out a factual timeline of events in his letter accompanying the Notice of Appeal. The Tribunal asked the parties to advise if they did not agree with this timeline of events. None of the parties disputed this timeline. The Tribunal therefore adopted Mr Meyer's timeline with some gremlins removed:

"The following is a timeline of events in respect of the transfer

- *17th June 2013: The Raiders position was that several players were either sick, injured or unavailable for training...concerns were discussed about numbers of players for the weekend of 22nd and 29th.*
- *19th June: confirmation the club will not have enough players to cover the two teams on the weekend of the 22nd through to the 29th. Charlie Stewart was then asked at the training whether he would be interested in covering for our team through this period.*
- *20th June: Warren Smith [Game Development Manager VNZ] was notified of the situation, and in accordance with the rules, he was asked whether Charlie Stewart could be transferred.*
- *The transfer was made in accordance with the rules set: "8.2 Players transferring between clubs must complete a Transfer*

Form and lodge with VNZ prior to participation in any Zone qualifying league/tournament”.

- *Extenuating circumstances appears to be a loose term that is open for interpretation based on a subjective basis: “8.12 **Extenuating Circumstances** 8.12.1 If a Club wishes to apply for dispensation from any of the VNZ National Club Championship player eligibility regulations on the ground of extenuating circumstances, such application shall be in writing including detailed supporting material and accompanied by a non-refundable fee of \$50.00. VNZ will deliver a final decision within 5 business days of application. 8.1.12 Under no circumstances will an application be considered for extenuating circumstances, if that application would have the effect of increasing the number of International or Wild Card Players (Reg.8.9).*
- *June 21st an email was received from Warren Smith stating that his interpretation of the rules is that the Transfer of Charlie Stewart to the Harbour Raiders Club is legal.*
- *Subsequently, the Raiders submitted a transfer form through the official process to om@volleyballnz.org.nz. Confirmation of the approval from Warren Smith via email that as per the rules of the VNZ Events Manual, Charlie Stewart can transfer.*
- *June 22nd Charlie was on the Raiders team list and played in matches against both Hamilton and Tauranga.*
- *June 24th VNZ website confirms Charlie Stewart’s Transfer.*
- *June 26th Julie [Carpinter], Warren forwarded email to Raiders regarding conversation with Julie, the OM Manager regarding concerns of transfer back to the Nelson Club.*
- *June 28th Amendment to initial ruling received from Warren Smith saying that the amendment to the ruling of the decision of the transfer is allowed due to extenuating circumstances.*
- *June 29th Charlie plays versus Playas and South Auckland.*

- *July 2nd Tasman submitted a transfer form of Charlie Stewart back to Nelson Pine Volleyball Club this was approved as per Julie's email.*
- *July 3rd VNZ approved the transfer of Charlie Stewart back to Nelson Pine. Transfer approved by Julie at VNZ office.*
- *July 6th Raiders play Maua (top team) and Waitakere – win both games. Nelson played in Southern Zone, and won their match with Charlie Stewart playing.*
- *July 9th Complaint laid by South Auckland Club about the transfer process of Charlie Stewart playing for the Sparta Club at the beginning of Northern Zone, and then Raiders.*
- *July 11th Decisions made from match play committee – communication received from Dave Macpherson. Warren Smith admits fault at process – but still believe decisions made were correct. Raiders position here is that no error or manipulation was made and they believed that they had acted in accordance with the rules and if an error was clear VNZ had ample time to communicate this.*
- *July 13th Harbour Raiders submitted reply to VNZ.*
- *July 14th VNZ Board made Ruling supporting match play committee.*
- *As per the VNZ constitution, any appeals to a VNZ decision need to be made to the NZ Sports Tribunal within 10 days of the decision, hence this instruction.”*

Discussion

10. Sadly this dispute has raised substantial ire and angst within this Sport which is unfortunate.
11. The critical issue is whether Raiders validly made an application for the transfer of Charlie Stewart which was granted and the approval was relied upon by them.

12. We have received a good deal of material about what might have happened if various steps had been taken internally or other information had been sought and obtained.
13. We explained in the course of the hearing that this could only be relevant if there was significant evidence that what occurred had been done in bad faith and with an intent to mislead or distort the true position. Volleyball New Zealand (VNZ) was at pains to assure that such a submission was not being made. Its position was summarised when it said:

"Volleyball New Zealand accepts that the transfer documents were signed off by the transferor and transferee clubs and entered on the VNZ registration records by VNZ office staff and therefore ostensibly the transfer documentary formalities were met and Volleyball New Zealand simply abides the Tribunal's decision as to the consequences of that."

14. Other participants were less direct on this fundamental point but in the absence of specific sustainable allegations in this regard such insinuations cannot be countenanced or given weight.
15. It was argued by Mr Ngwun and Mr Macpherson that the path the Raiders took in making the transfer application differed from the usual practices in the past. Specifically, by first notifying the Game Development Manager, Warren Smith, about the intended transfer and obtaining his opinion rather than applying directly to the Operation Manager as has been usual practice by clubs in the past. The implication was that in the normal practice other VNZ officials were more likely to be involved and object to the transfer. It was suggested that adverse implications could be drawn against the Raiders from that deviation from practice and/or that the club had violated the spirit of "fair play" in that the Raider's path was more likely to result in the transfer being approved, when in their opinion it should not have been. However, as acknowledged by both Mr Ngwun and Mr

Macpherson, nowhere in the Transfer Rules is the "normal" practice and procedure that they refer to specifically set out or required.

16. From the very beginning of the contemporaneous emails a short term transfer was in contemplation.
17. It should be observed that the Rules on transfer for extenuating circumstances or otherwise are not fulsome and it would be in the interests of all involved to have attention given to them to assist in avoiding a repetition of this sort of dispute.
18. Whether the path followed was what had always occurred on other occasions, the simple reality is that a transfer was sought, granted and publicised. Raiders were entitled to rely upon that even if it turns out in retrospect that other people might have been involved who may have asked questions or taken a different view. It is not open to VNZ to find fault with its own internal processes and visit the consequences upon the Raiders. The email traffic leaves no doubt about what was asked for and granted. What Zone Representatives or the Matchplay Committee might have done is not a critical matter. Without their input approval was granted and the Raiders relied upon that approval. The applicable rules did not make their input essential. If there were problems in the internal operation of the transfer regime that does not make the decision "null and void" in all the circumstances.
19. Consequently the decision to strip points from the Raiders and award points to the opposition teams has no foundation.
20. It follows that the appeal must be allowed. The decision of Volleyball New Zealand Inc. of 14 July 2013 to uphold the decision and recommendations of the match play Committee of 11 July is quashed. The Raiders are to be returned to the position they were in prior to these interventions.

21. For the avoidance of doubt we make no comment on the rightness or wrongness of acts or omissions internally at VNZ in the months of June or July 2013. They are not issues which inform or influence the decision before us.

Dated 1 August 2013



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Sir Bruce Robertson (Chair)