

DISPUTE BETWEEN CENTRAL UNITED FOOTBALL CLUB INCORPORATED

**AND NO 1 DISTRICT FEDERATION OF NEW ZEALAND SOCCER
INCORPORATED (ALSO KNOWN AS NORTHERN REGION
FOOTBALL)**

**DECISION OF SPORTS TRIBUNAL
5 APRIL 2023**

Decision	Hearing held on 4 April 2023
Tribunal	John Macdonald (Chair) Nicholas Davidson KC (Deputy Chair) Pippa Hayward
Representation	Paul Smith, counsel for Central United Football Club Incorporated (Central) Andrew McCormick, counsel for No 1 District Federation of New Zealand Soccer Incorporated (also known as Northern Region Football)
Present	Laura Menzies, CE of Northern Region Football Ben Ruffell, Captain, Central Paul Poser, Coach Central Nicholas Downes, Auckland City Football Club
Registrar	Helen Gould

1. Central United Football Club Incorporated (Central) and Northern Region Football (Northern) agreed to bring their dispute about the non-promotion of Central into the LOTTO NRFL Northern Conference 2023 (LOTTO NRFL) to the Sports Tribunal (the Tribunal) for determination.
2. The dispute began in November 2022 when Central were informed by Northern that, despite having won the NRF League One competition, the team would not be promoted to the LOTTO NRFL Northern competition.
3. Central filed an appeal against Northern's decision on 13 December 2022. The hearing was on 3 February 2023 and Northern affirmed its original decision in their letter to Central on 10 February 2023. Central filed an appeal with New Zealand Football Incorporated (NZF) against that decision on 17 February 2023. A lengthy written discussion followed about jurisdiction and whether Central and Northern had exhausted provisions for trying to resolve the matter themselves, and there was no resolution before the football competition season started on 25 March 2023.
4. The issue for the Tribunal is whether Central should be promoted to the LOTTO NRFL.

The hearing

5. The Tribunal received submissions from Central and Northern, together with the relevant regulations for both the NRFL and NRF competitions, and the Memorandum of Understanding (MOU) between Central and Auckland City Football Club (Auckland City). It was well informed as to the arguments of each party.
6. In short, Central submitted that regulation 8 of the NRFL competition regulations and 11 of the NRF regulations meant that it should have been promoted for the 2023 season. Northern's submission was that Central could not play in the NRFL competitions due to the MOU.
7. In its written submissions, Northern referred to clause 11.1.3 of the NRF regulations, which states that the highest placed team will be promoted provided the club is not already represented in the NRFL or the NRF championship competitions.
8. The Tribunal questioned Northern as to the meaning of this clause and whether it would preclude Central from being promoted if the MOU did not exist. Northern conceded that the clause did not in itself prevent Central from being promoted. Ms Menzies on

behalf of Northern said that there were other things in the regulations that could prevent a team from being promoted but that none of those applied to Central.

9. The regulations allowed Central to be promoted and the hearing focused on two questions: (i) did the MOU prevent or reasonably preclude Central from being promoted? and (ii) if the Tribunal found there is no barrier to Central being promoted, can that practically be achieved?

The Memorandum of Understanding

10. Clause 8 of the MOU reads:

CUFC [Central] will allow ACFC to take its place indefinitely in the NRFL so that ACFC can compete in the NRF's Level One regional and championship phase. CUFC may gain entry into the NRFL if appropriate and agreed between the parties and allowed by NRF and NZF in the future.

This speaks for itself. Central effectively stepped aside for Auckland City, but the door was open for Central to gain entry, with some indistinct reservations to that.

11. Northern submitted that this clause, therefore, prevented Central from being promoted. It submitted that Central had relinquished its place in the NRFL (and not just the top division) to Auckland City and in doing so acknowledged that they would not automatically enter the NRFL.
12. The Tribunal drew attention to the words 'appropriate' and 'allowed' in the second sentence of the clause and asked Northern to clarify when it would be appropriate for Central to gain entry and on what basis Northern and NZF might not allow that. Northern was unable to articulate much beyond promotion being the consideration that would make it appropriate for Central to enter the NRFL and referred again to some of the additional regulations (not clause 11.1.3 but those concerning player numbers and Club Licensing etc) which might have an inhibiting effect.

Practical implications of a decision which favours Central

13. Northern had submitted that, should the decision to promote fall in favour of Central, there would be significant implications for many people and for many clubs across Auckland. Counsel for Central provided an alternative view of the practical implications of Central being promoted to the LOTTO NRFL 2023.

14. Asked to elaborate on their position Central indicated that it would be possible to count their (to date) two missed weeks as 'byes' (of which each team would have two) and that they could make up the other missed match in a midweek game. They submitted that adding Central to the competition would mean the competition would become a nine-team, 16 game competition with everyone playing two rounds, a formation not out of the ordinary. They further submitted that although the competition would need to be redrawn, this would only take a day; the reserve teams would have the same changes.
15. Ms Menzies for Northern conceded that there would be significant challenges, as other teams would be impacted, and they had already had field numbers reduced because they are being used for the Women's FIFA World Cup, but that it would be possible for Central to be inserted into the LOTTO NRFL competition for 2023.

Discussion

MOU

16. Northern conceded, through counsel, the real barrier to Central being promoted was the terms of the MOU, and in particular clause 8. When questioned about the meaning of the clause and what the considerations for it being both appropriate and for Central being allowed to be promoted, there were no concrete reasons or a sound basis to refuse Central to gain entry to the NRFL via promotion. Northern submitted that allowing two entwined clubs to play in the NRFL at the same time would upset other clubs in the region, but there is nothing in the regulations or the MOU itself which allows that to be a relevant consideration.
17. The Northern stance was that Central had put itself in the position it would not be promoted by the MOU, so it was the author of its own misfortune.

Practical implications

18. Central presented a tenable solution to inserting the club into the LOTTO NRFL Northern competition; Northern said that solution would have some practical implications but it could be achieved.

Conclusion

19. There were no rational grounds presented by Northern to inform the Tribunal why Central should not be promoted. To refuse promotion was thus not a reasonable

decision. The two clubs are separate entities and Central should be able to advance on its own merits.

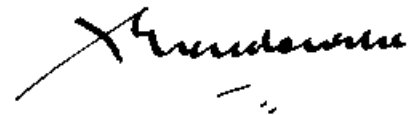
20. The Tribunal is reassured that Central can be inserted into the LOTTO NRFL Northern competition without causing insurmountable disruption to any other team or player.

ORDERS


21. The Tribunal orders as follows:

- 1) Central is promoted to the LOTTO NRFL Northern Conference immediately.
- 2) Costs will lie as they fall.

Dated: 5 April 2023



John Macdonald
Chair



Nicholas Davidson KC
Deputy Chair



Pippa Hayward
Member