

DISPUTE BETWEEN **ANON**

Applicant

AND **NEW ZEALAND CANOE POLO ASSOCIATION**

Respondent

**DECISION ON COSTS APPLICATION
5 DECEMBER 2023**

Tribunal John Macdonald (Chair)
Ruth Aitken DNZM
Paula Tesoriero MNZM

Representation Kathryn Lydiard, counsel for the Applicant
Michael Smyth, counsel for the Respondent

Registrar Helen Gould

1. On 24 November 2023, the Tribunal issued a decision on an appeal between the applicant and New Zealand Canoe Polo Association (NZCPA).
2. The Tribunal upheld the applicant's appeal on the basis that there had been a denial of natural justice and the sanction imposed had been excessive.
3. The decision was made on the evidence and written submissions filed by both parties. Neither party raised the issue of costs.
4. On 28 November 2023 counsel for the applicant filed a memorandum seeking an order under Rule 29(a) of the Tribunal Rules for the NZCPA to pay costs of \$500 to the applicant.
5. Rule 29(a) of the Tribunal Rules provides for a discretion to award costs to any party.
6. Counsel for the respondent subsequently filed submissions arguing against an award of costs. He submits that in the majority of cases before the Tribunal costs are rarely sought or awarded and the Tribunal has made it clear that awards of cost will only be made in exceptional cases.
7. The submission is correct in that cost awards are not often sought or made. The inference that this case is not exceptional is also correct. The submission, though, relies on the premise that awards of costs are only made in exceptional circumstances without recognising that such premise relates to 'substantial' awards of costs.¹ An award of \$500 would not be a substantial award.
8. The Tribunal also notes that the costs decision in *Curr*² discussed cases where modest awards were made to successful appellants to the value of the filing fee. At [53] the decision makes the point that the Tribunal generally lets costs lie where they fall or, if costs are to be awarded, the payment is limited to a 'symbolic' amount. Further the decision says that in determining a cost award the Tribunal will take into account whether the appellant was completely successful in their appeal, whether there had been deficiencies in the NSO process and whether there had been breaches of natural justice.³

¹ *Curr v Motorcycling New Zealand* ST 01/08 at [56].

² As at n 1.

³ As at n 1 at [57].

9. Counsel for the respondent submits that it would not be just to make an award of costs to the applicant because of his poor behaviour at the Development Camp. In its appeal decision the Tribunal was at pains to point out that the appeal was not an appeal against a finding relating to the applicant's behaviour but was an appeal about the procedure that was put in place by NZCPA to deal with the poor behaviour. The Tribunal can only make determinations on the matters before it.
10. It is the Tribunal's view that had the Association Disputes Tribunal's process adhered to all the principles of natural justice then the matter would not have been brought to the Tribunal and the applicant would not have had to pay the \$500 filing fee. The Tribunal is of the view that the modest amount sought by the applicant is fair in the circumstances given he was successful at two appeals and that the issues were of procedure and natural justice.


ORDERS

11. The Tribunal orders the NZCPA to pay \$500 to the applicant to cover the costs of the filing fee.

Dated: 5 December 2023



John Macdonald
Chair



Ruth Aitken DNZM
Member



Paula Tesoriero MNZM
Member