
Carolina Velocity Futbol Club, Inc.

Claimant

v.

North Carolina Youth Soccer Association

Respondent

Goldsboro Strike Eagles FC

Claimant

v.

North Carolina Youth Soccer Association

Respondent

Final Decision and Order

September 6, 2022

To: Andy Thompson
Carolina Velocity FC
5600 Hillsborough St.
Raleigh, NC 27606
Director of Soccer

Yacouba IDE Niandou
Goldsboro Strike Eagles FC
209 Linwood Avenue
Goldsboro, NC 27530
Director of Coaching

Marvin Bishop
North Carolina Youth Soccer Association
136 Manley Avenue
Greensboro, NC 27407
President

cc: Leah Holt
Staff Attorney
United States Soccer Federation, Inc.
1801 South Prairie Avenue
Chicago, Illinois 60616

FINAL DECISION AND ORDER

1. This is a consolidated action, involving two applicants for Competition level (III) membership in the North Carolina Youth Soccer Association. Applicant/Complainant Velocity Futbol Club, Inc. (“Velocity”) filed its complaint on March 17, 2022, and Applicant/Complainant Goldsboro Strike Eagles FC (“Golbsboro”) filed its complaint on July 1, 2022.
2. The complaints are grievances within the meaning of United States Soccer Federation (“USSF”) Bylaws either 703 or 213 (set out in pertinent part below). Velocity specifically cited to By-law 703 and Goldsboro did not specify the section under which filed its grievance. Both grievances assert a claim of failure by NCYSA to provide for open enrollment of members as required by USSF Bylaw 212, and the specific section is here deemed not pertinent.
3. The USSF Bylaws state in pertinent part:

Bylaw 212. GENERAL RESPONSIBILITIES

Section 1. As a condition for obtaining and maintaining membership in the Federation, each Organization Member shall satisfy all of the following requirements:

- (1) ... *comply with all Bylaws, policies and requirements of the Federation*¹, and all statutes, regulations, directives and decisions of FIFA and Concacaf, each as they may be amended or modified from time-to-time to the extent application to that classification of Organization Member.

* * *

- (6) *comply with the Sports Act*².

Section 3³.

¹ The USSF

² The Ted Stevens Amateur Sports Act, 36 USC 2205.

³ The Sports Act, which also governs the actions and administration of members of National Governing Bodies, has a similar provision (36 USC 220522):

- (a) GENERAL. – An amateur sports organization is eligible to be recognized or to continue to be recognized, as a national governing body only if it –

(a) (1) ... the membership of the Organization Member and its organizations shall be open to any individual who is an amateur athlete, coach, trainer, manager, administrator, or official active in the sport of soccer...; and ... *the membership of the Organization Member and its member organizations shall be open to any amateur soccer organization in its territory.*

(2) The Articles of Incorporation of the Federation, its rules and policies, and these Bylaws ... shall take precedence over and supersede the organizational and governing documents of the Organization Member

Bylaw 213. COMPLAINT AGAINST STATE ASSOCIATION

Section 1. Complaint Against State Association. An organization may file a complaint against a State Association alleging: (a) the State Association is not adequately carrying out its responsibilities to the Federation as a State Association.

* * *

Section 8. Hearing: Procedures and Standard of Proof. The hearing panel may adopt reasonable procedures to conduct a hearing that provides the complainant and the State Association with opportunity to present evidence and testimony addressing the allegations of the complaint. The complainant bears the burden of proof, based on the preponderance of the evidence, to establish the allegations of the complaint.

Bylaw 703. GRIEVANCES BY OR AMONG ORGANIZATION MEMBERS OR WITH THE FEDERATION

Section 1.(a) A grievance may be filed by an Organization Member against another Organization Member or by a person or Organization Member that alleges that (a) an Organization Member has failed to comply with its membership requirements in the Federation, or (b) the Federation has failed to comply with its membership requirements in the USOPC.

Section 3. The President shall annually appoint, subject to the approval of the Board, a panel of arbitrators consisting of persons certified by the American Arbitration Association ("AAA") or approved by the Court of Arbitration for Sport ("CAS"). * * * After a grievance is filed, the President... shall appoint an arbitrator from the panel of arbitrators and an athlete selected by the Athlete's Council Chairperson to serve as a two-person panel. * * *

(7) *demonstrates that its membership is open to any individual who is an amateur athlete, coach, trainer, manager, administrator, or official active in the sport for which recognition is sought, or any amateur sports organization that conducts programs in the sport for which recognition is sought, or both;*

Section 6. The arbitrator shall draft written findings and a decision within twenty (20) days after the hearing on the grievance and send to the athlete for approval, In order to grant the grievance, both the arbitrator and the athlete on the panel must agree. If the arbitrator and athlete do not agree, then the grievance must be denied. The arbitrator shall issue the final written findings and a decision within thirty (30) days after the hearing on the grievance.

4. The Federation held a mediation on May 17, 2022, for the Velocity grievance as provided under By-law 213 (4), by agreement of the Parties. Both 213 and 703 grievances provide for hearings to resolve grievances and Bylaw 213 of the USSF provides that the nature of the hearing may be adopted by the hearing panel so long as reasonable and give the parties an opportunity to present evidence and argument.

5. The Parties have stipulated to the current procedure that the dispute is properly before the arbitrator appointed by the USSF. In addition, as required under the procedures of Bylaw 703, Sean Boyle was appointed as the athlete member of the hearing panel.

6. The Parties have also stipulated that each complaining party has met all substantive requirements for admission to NCYSA membership under NCYSA Bylaw 203 §1 and Bylaw 103 §3, and that each complaining party also has met all substantive requirements for admission to Level III (Competitive) membership in Respondent NCYSA, but were denied admission. There is no allegation that either complainant has failed to meet any requirements under NCYSA Bylaw 203.

7. The Parties have also stipulated that in each case, the denial of admission to the NCYSA for Level III competitive play was based solely on the failure of the existing membership to approve admission under NCYSA By-Law 221 §6, by a majority vote of those members present and voting. The Parties have not raised any issue regarding the presence or absence of a quorum at the meeting during which the vote was held, nor in the counting of the votes. No Party has provided any information regarding the reasons for nor the basis of the vote against granting the requested level of Membership to either Complainant.

8. NCYSA Bylaw 221. Section 6, provides:

Section 6. Approval

Approval of membership shall be by majority vote of the NCYSA Directors present at a regular or special meeting of the NCYSA Board of Directors.

9. The dispute, therefore, is limited to the issue as to whether an Organization Member (state level) By-Law which requires that a majority of registered teams present and voting at a national or special meeting approve the admission of a new applicant is a reasonable restriction on Membership, or is a violation of the Rules and By-Laws of US Soccer, the National Governing Body of soccer in the United States, which require open membership to organizations

and athletes. It is widely evident in the USSF Bylaws, and the Amateur Sports Act that all the sports organizations governed by those Bylaws be open and available to any person or organization meeting the membership standards.

10. The concept of a “reasonable restriction” on the rights or privileges of a person, whether an individual or organization, is founded on the principle of reasonableness which is an essential facet of constitutional law and one of the structural principles of the US Constitution. That is, if a restriction invades and infringes on a right or privilege in an excessive manner, such a restriction cannot be treated as having passed the test of reasonableness. An action which is arbitrary or capricious, that is not based on an acceptable standard but undertaken without reference to such a standard cannot be considered reasonable. That standard has been described in a number of ways. In Nevada, for example, a decision is considered arbitrary or capricious when it is “‘baseless’ or ‘despotic’ and ‘a sudden turn of mind without apparent motive; a freak, whim, mere fancy.’” *City of Reno v. Estate of Wells*, 110 Nev. 1218, 1222, 885 P.2d 545, 548 (1994). In other words, if there is an absence of a rational connection between the facts presented and the choice made then a decision may be found to have been arbitrary or capricious. The determination whether an action is arbitrary or capricious is fact specific in most cases and while this is largely a judicially defined and applied term, at least one state (Florida) has adopted a statutory definition (Fla.Stat.120.57 (2009) (1) (d)):

“...A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational;”

In the present dispute the question is whether a decision not to admit an applicant to a position within an organization is based on a logical or reasonable restriction, such as corporate status, financial soundness, non-discriminatory rules or competency, or is based on the whim of the organization or its governing body. Put another way, does the NCYSA have the *unrestrained* discretion to deny membership to the complaining parties? Or must its discretion be bounded by principles of law or the requirements of its organic documents, such as its charter or its Bylaws, and its actions not be arbitrary or capricious. For the reasons set out herein, the Hearing Panel concludes that NCYSA ability to deny membership to an applicant is restrained by its own Bylaws, as well as the Bylaws of the National Governing Body for the sport of soccer to which it has bound itself to follow.

11. The NCYSA Bylaws specifically provide as follows:

Bylaw 103. USSF Compliance

To the extent permissible under Bylaw 103, Section 1 the NCYSA will comply with USSF Bylaw 213, and all statutes, regulations, directives and decisions of FIFA and CONCACAF, as follows:

- a) The membership of the NCYSA and that of its member associations shall be open to any ... amateur youth soccer organization in its territory; and except for a National Association, *the membership of the NCYSA and its member organizations shall be open to any amateur soccer organization in its territory.*

* * *

e) The USSF ...Bylaws ..take precedence over and supersede the governing documents and decisions of the NCYSA... and the NCYSA ... will abide by those ...Bylaws....

f) The NCYSA will comply with the Amateur Sports Act.

12. The obligation to admit members is not without some limitations, which must be honored if they are reasonable. As previously noted, the parties have stipulated that the applicants (Velocity and Goldsboro) meet all *objective standards* for membership and for membership in Competition level III as specified by NCYSA for applicants. The sole issue was whether a vote of the Board of NCYSA to deny membership admission was reasonable or if it was capricious.

13. The Parties have stipulated that there were no reasons given for the negative votes, merely that the affirmative approval of the required number of voters was not obtained. That is, the votes denying admission were not based on a failure of the applicants to satisfy the objective standards but were based on what appears to be an impression by the voting members that the vote was within the absolute unfettered discretion of the voter.

14. In some circumstances reasons need not be given for a vote on any subject, nor is the voter constrained by the requirements of anything other than personal choice. Voting for elected officials is one such circumstance and no one may have his or her vote challenged as “wrong.” However, in circumstances where there is an impact on others with a right to participate, then the ability to deny that right is limited to reasonable bases.

15. While USSF Bylaw 703 provides no structure as to the party bearing any burden of proof, USSF Bylaw 213 provides that the complaining parties must carry the burden of proving that the denial of membership was arbitrary and capricious, or in direct conflict with the governing documents of NCYSA. In addition, it is the standard in civil disputes generally that a party complaining that another has breached a duty or obligation to another must bear the burden of proof by a preponderance of the evidence. That burden has been met in this dispute.

16. The stipulations entered into the record that all requirements of admission to membership in the Competition division of NCYSA have been met, meets that burden and shifts the burden of proving reasonableness back onto the NCYSA. However, given the stipulations previously mentioned, NCYSA has offered no evidence that the applications were in any way deficient, the burden of proof has been carried.

17. A requirement that an application be reviewed and voted on by a governing body or an appointed representative of that body is certainly in and of itself not a violation of its own governing documents or that of its National Governing Body. However, that body must base its decision on recognizable, reviewable requirements and not the whim of the body members. That is, if the application had been denied because the applicant did not have the proper corporate structure, or adequate training and medical abilities, or was itself discriminatory, then the accuracy of such a decision can be reviewed. In the circumstances of this dispute there is no reason given at all, and so it must be concluded that the denial of membership was “... without thought or reason or is irrational....”

18. It is, therefore, hereby ordered that NCYSA admit the complaining parties, both Velocity and Goldsboro, to Membership in Competition level III immediately and that they be permitted all rights and privileges of such membership, including competitions for the immediate upcoming season. It is further ordered that Velocity and Goldsboro be treated in the same manner and held to the same rules and Bylaws as other registered Competition Level III Members.

19. Further, it is the recommendation of the Panel that NCYSA consider amending its Bylaw 221 Section 6, to clarify that a Membership Vote is not discretionary but must be based on objective criteria in order to safeguard the rights of individuals and organizations to participate in the Sport of Soccer. It is the obligation of the organization members of NCYSA to act in an open manner in admitting qualified candidate teams which, if meeting the criteria, have a right to such membership.



Date: September 6, 2022

Edward T. Colbert
Hunton Andrews Kurth LLP
2200 Pennsylvania Ave., N.W.
Washington, DC 20037

Sean Boyle
Athlete Representative
