

UNITED STATES SOCCER FEDERATION, INC.

In the Matter of the Arbitration between:

Razor City Renegades, United
States
Club Soccer, Claimant

AWARD OF THE ARBITRATOR

And

Issued: September 25, 2015

Wyoming Youth Soccer,
United States
Youth Soccer Association,
Respondent

This matter comes before the undersigned by Grievance Complaint filed by Razor City Renegades (hereinafter “RCR”) against Wyoming Youth Soccer (hereinafter “WYS”). A grievance hearing was held on August 25, 2015 in Casper, Wyoming. The undersigned arbitrator, having duly considered the evidence and arguments submitted by the parties, enters this award.

BACKGROUND FACTS

RCR, a member of United States Club Soccer (hereinafter “USCS”) filed a Grievance on April 23, 2015. The Grievance Filing contains allegations that: (1) WYS and its members conspired against RCR, with the intent of monopolizing the soccer talent in Wyoming and preventing the existence of USCS clubs; specifically, it is alleged that WYS denied RCR affiliation on three occasions; and (2) collaborated to restrict USCS teams from WYS events and conversely WYS teams from USCS events. The allegation is that WYS does this in disregard of USSF Bylaws pertaining to “open” opportunities for all organizations, members and players and regularly engages in discriminatory decision making and policies changes.

WYS in turn filed its answer on June 20, 2015 denying all allegations contained in RCR’s Grievance. The Answer alleges that Wyoming is unique in that it is a large state yet with a very

small population. If WYS were to allow more than one club within the boundaries of a city/town entity it would dilute the volunteer, administration and player base to a point of not having clubs, but just fractured teams. WYS also believes that USSF policy allows it to use geographical boundaries and that it has consistently used this policy over the years.

RCR was formed in 2011 in Gillette, Wyoming which has a population of approximately 30,000. It is the second youth soccer club in Gillette. Gillette Soccer Club (hereinafter “GSC”), a member of WYS, has existed and continues to exist as the other soccer club in Gillette. There is disagreement about the growth potential of Gillette but RCR argues it could grow to 60,000 by approximately 2025. WYS’ President believes that Gillette’s population may be stagnating if not reducing.

(1) **RCR Affiliation**

RCR refers to USSF Bylaw 213 – Section 1.a.1 which provides in relevant part “the membership of Organization Member and its member organizations shall be open to any individual ...”

Further, RCR refers to USSF Policy 212-1, Section 4.b. which provides that an Organization Member must allow a group of Participants from any Affiliated Organization to participate in its programs if that group of Participants complies with all reasonable policies, rules, regulations, and requirements of the Organization Member. For purposes of this section, “reasonable policies, rules, regulations, and requirements” may include but are not limited to the following:

A requirement that the group of Participants

- (i) be of a minimum size...
- (ii) includes a minimum percentage or number of recreational players...
- (iii) follows all team formation rules;
- (iv) follows all competition rules...
- (vi) observes rationally supportable geographic rules of the Organization Member

USSF Policy 212-1, Section 4(c) requires that an Organization Member must apply its requirements consistently for purposes of Section 4.

The President of RCR testified that in 2014-15, there were 320 competitive players (not including recreational players) total registered in Gillette, though this number was disputed by WYS and no specific evidence was presented regarding the number of players in Gillette by either party.

RCR applied to become a member of WYS (the Organization Member) which application was distributed to the WYS board by email dated May 16, 2011 acknowledging that membership application requirements had been fulfilled by RCR as a prospective club and calling a special meeting to vote on the application on May 28, 2011. This notice also included a provision from the WYS Rules and Procedures, Section 1.4 “WYS reserves the right to accept or reject any applying club if WYS, at its sole discretion, determines that the acceptance of that club would be either advantageous or detrimental to WYS or its mission and goals.” The minutes of the WYS Board of Directors meeting of July 30, 2011 reflect that there was not a quorum at the May meeting, but that the membership of WYS was not in favor of an additional club in the Gillette community so the “subject of the Renegades [was] tabled indefinitely.” The matter was brought up again at the WYS meeting of October 22, 2011 by an attending guest. The minutes of that meeting reflect that the matter remained “tabled indefinitely, meaning an indirect rejection” of the application. A motion to consider a new revised application was considered at the WYS meeting of January 22, 2012 and voted down after discussion in executive session. No reasons were given. Effective September 1, 2012, WYS adopted “WYS Club Affiliation Policy & Procedure” with the following requirement: “If located in a Wyoming town with a WYS affiliated club in good standing, the applying club must provide appreciably different player opportunities, participation goals, and/or training”.

RCR seeks to have WYS approve RCR’s 2011 and/or its 2012 affiliation request.

In answer, WYS contends that the state law pursuant to which it is incorporated allows it to choose its members and define its criteria to do so. WYS believes it is also operating within the USSF bylaws and rules. WYS’ president also testified that Gillette is not growing, but rather the population is stagnating or reducing because of a lack of jobs, which results in people leaving. Based on this, the Board of Directors of WYS, in accordance with its bylaws and

policies at the time (which have changed), made a decision not against RCR but against a situation where two clubs would have to coexist in a town with a finite number of players.

WYS presented no policy against which the RCR affiliation application was judged, but rather the testimony of the president of WYS that because Wyoming is unique, their membership base is the lowest in the country (except maybe Alaska), their communities are very small, it was felt reasonable to restrict this community to one member of WYS. His position is that GSC could be a healthier club and their player base is watered down by RCR.

The director of coaching for the GSC testified that their biggest challenge is finding practice space for their teams. Because of football, there is lots of demand for the available fields. He also stated that the coal mining industry in Gillette is in a downturn. He does not believe Gillette will grow its population.

WYS showed the different philosophical approaches of the GSC and RCR. GSC's philosophy as a competitive soccer club is to have seasonal evaluations which allow the kids to grow and move up onto the "gold team". The RCR philosophy is to keep the same kids together with the same coach as they age.

Both parties referred to the previous Grievance filed by the J-Hawk Soccer Club against the Iowa Soccer Association, and each argued regarding its applicability to this situation. WYS distinguishes the Gillette market size and its isolation (as opposed to the situation with J-Hawk which was in a suburb near a bigger city).

DISCUSSION

The Minutes of the Board of Directors of WYS do not elucidate the policy under which the vote was taken to deny RCR's application. The notice of the meeting called to vote on the application states the standard to be used: "WYS, at its sole discretion, determines that the acceptance of that club would be either advantageous or detrimental to WYS or its mission and goals". The reason identified in the minutes was that the board was not in favor of an additional club in the Gillette community. No geographic rules of WYS were cited, nor did any exist at the

time. The USSF bylaws, to which WYS is subject while also required to comply with state law, provide that that an Organization Member must allow a group of Participants from any Affiliated Organization to participate in its programs if that group of Participants “complies with all reasonable policies, rules, regulations, and requirements of the Organization Member”. The decision to deny affiliation was not made based on any policies, rules, regulations or requirements of WYS.

When WYS points to state law as superseding the requirements of USSF, a permissive statute such as that stated which “allows WYS to choose its members” does not contradict or in any way violate the USSF Bylaws to which WYS is subject by its membership in USSF. Thus, though WYS is allowed under state law to choose its members, that process of choosing its members is defined by the policies to which WYS has agreed as a member of USSF. The USSF Bylaws thus are the applicable guidelines for WYS. In considering the RCR application, WYS did not apply any “reasonable policies, rules, regulations, and requirements”. Rather, it used its discretion in denying the RCR application. Thus, the original and subsequent denials were in violation of USSF Policy 212-1, Section 4.b. The fact that WYS later adopted policies which may have been used in evaluating the RCR application does not change the fact that RCR was not evaluated against those policies in the 2011 and 2012 denials.¹

The J-Hawk grievance is not used in this analysis as there were policies in place which the Arbitrator found to be unreasonable. In the current situation, there were no such policies.

Thus, the Arbitrator orders that WYS shall grant RCR membership in WYS based on the original application, as updated in 2012.

¹ Though WYS introduced no evidence with respect to those current procedures and how RCR’s application would be evaluated if submitted currently, their Club Affiliation Policy & Procedure effective September 1, 2012 provides: the membership committee can grant conditional affiliation and require adherence to ...:

- a. If located in a Wyoming town with a WYS affiliated club in good standing, the applying club must provide appreciably different player opportunities, participation goals, and/or training; i.e. the new club could be a TOPSoccer club if the existing club is a competitive club.

Thus, there is currently a policy granting WYS’ membership committee the right to evaluate a second application in Gillette based on these standards. There was some evidence about the different approaches the GSC and RCR clubs take, but it is unclear whether the differences would meet these criteria.

(2) Interplay

RCR further alleges that WYS violated USSF Bylaw 603 – Section 2 and Policy 601-7 Section 1 (B) which provides:

Bylaw 603-Section 2 “An Organization Member... shall not discriminate against the participation of players, teams, coaches or clubs on the basis of that player, coach, team, or club’s membership in, or affiliation with, another organization.”

Policy 601-7 Section 1(B) “No Organization Member or member of an Organization Member shall interfere with the opportunity of a player, coach or team to travel to compete in a competition, including a game, scrimmage, tournament or league ... and shall not deny permission to travel unless that player, coach or team has been prohibited from doing so for disciplinary reason...”

RCR’s argument is based on WYS members’ tournaments from 2012-2014 being restricted, which it was stated during the hearing was a “knee jerk reaction” of the WYS clubs based on the creation of a second club in one of their markets.

The WYS has limited restricted tournaments for this year, just in the Wyoming Cup qualifying rules, and changed its policies so that this restricted requirement will be eliminated for next year. This was done because of member clubs wanting to hold unrestricted events and because previous rules were causing many teams not to be able to qualify. WYS said the reason the Wyoming Cup had been restricted last year was to have qualifying teams show they had participated in a Wyoming tournament.

DISCUSSION

WYS in its answer at the hearing advised that RCR could have appealed internally within WYS the decision to restrict Wyoming Cup qualifying tournaments, in accordance with its grievance procedures in its Bylaws, Part 7. WYS did not introduce these Bylaws as an exhibit or submit any evidence about such procedures so there was no opportunity for RCR to cross examine or to show how this might have worked in practice. The Bylaws do provide for Exhaustion of Remedies before going to court, and one of the referenced remedies is appeal to

USSF as set forth in Bylaw 701. Thus, this argument does not affect the outcome of this proceeding.

The remedy sought by RCR for the alleged discrimination is to have WYS and its members overturn discriminatory interplay policies and allow all organizations to attend historically unrestricted tournaments. USSF Policy 601-7 Section 2(A) specifically permits members of an Organization Member such as WYS to hold Restricted Tournaments according to reasonable requirements they establish as long as done in a fair and timely manner. There is no restriction that the tournaments be historically restricted or unrestricted. There was no evidence at the hearing or in the submissions of RCR that proved the discriminatory intent attributed to the sole currently in force new Restricted Tournament of a member of WYS, which is the Casper Soccer Club's 2015 Spring Jamboree. The Executive Director of the Casper Soccer Club testified that the Casper Fall Classic has traditionally been restricted, but the Jamboree was traditionally unrestricted. The Board of Directors decided to restrict the Spring Jamboree in 2015 which has the effect of limiting the number of eligible teams, as the tournament is always full. Though this explanation was not terribly logical, RCR did not show that it was discriminatory.

In addition, the GSC recently adopted a policy restricting its teams from playing in any non-USCS or WYS events. GSC's position is that this new rule was indeed caused by RCR hosting a tournament without using certified USSF referees which they felt opened their board members to potential liability. Thus, GSC decided to restrict their teams in order to minimize the GSC board exposure to liability. GSC and the Casper Soccer Club are not parties to this proceeding and it is not clear what effect their membership in WYS has on the ability of the arbitrator to grant relief against them. That issue does not need to be decided.

There was no evidence with respect to either the decision of the GSC or of the Casper Soccer Club that the requirements are not reasonable or that they were not established in a fair and timely manner. Nor was there any evidence of discrimination directed at RCR. GSC made the decision to allow its board to make decisions based on the risk to the board when its teams attend tournaments not run in accordance with applicable rule. How this decision is

implemented may show it to be discriminatory, but that is not yet the case. Casper Soccer Club's decision was made by a vote of its board knowing it needs to restrict the number of teams in the tournament. There was no evidence of discrimination. It seems these decisions are in compliance with USSF Policy 601-7 Section 2(A), i.e. they are reasonable (i.e. based on rational reasoning) and were established in a fair and timely manner. Though each decision does affect RCR negatively, the evidence did not demonstrate discriminatory intent. With respect to WYS, the restriction is no longer in place, so the appeal is moot.

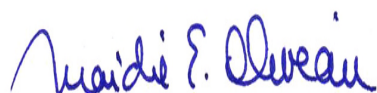
RELIEF AWARDED

(1) With respect to RCR's affiliation application to WYS, the original 2011 and subsequent denials by WYS were in violation of USSF Policy 212-1, Section 4.b. WYS shall grant RCR membership in WYS based on the original application, as updated in 2012, as soon as practicable after the date of this Award.

(2) With respect to the argument that WYS and its members violated USSF Bylaw 603 – Section 2 by discriminating based on a team's membership in, or affiliation with, another organization, no relief is awarded to RCR.

(3) RCR's request that this arbitrator order immediate WYS leadership changes, a public apology posted on the WYS website, annual WYS discriminatory reporting to USYS Region IV, and a grievance synopsis posted under the Legal Resource Center on the USSF website, these are remedies that are not based on any USSF Bylaws or Policies, and are thus unavailable as part of this Grievance. Relief is denied.

Costs for this proceeding shall be equally split among WYS, RCR and USSF.



Maidie E. Oliveau
Arbitrator