

UNITED STATES SOCCER FEDERATION, INC.

In the Matter of the Arbitration between:

North Dakota SAY, a/k/a Fargo Soccer Club,
Claimant

AWARD OF THE ARBITRATOR

and

North Dakota Youth Soccer Association and
Minnesota Youth Soccer Association,
Respondents.

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the Bylaws of the United States Soccer Federation, Inc. (the "USSF"), having been duly sworn, and having duly considered the evidence submitted by North Dakota SAY, a/k/a Fargo Soccer Club ("FSC"), the North Dakota Youth Soccer Association ("NDYSA") and the Minnesota Youth Soccer Association ("MYSA"), and weighing the testimony of the witnesses, and having further reviewed the briefs submitted subsequent to the hearing by the parties subsequent to the hearing, ENTER THIS AWARD ("Award").

INTRODUCTION

This Grievance was initiated by FSC after its teams were refused the opportunity to participate in two recreational youth soccer leagues. One of these leagues, the Tri-City (fall) League (the "FMWFSL"), was formed by two member clubs of NDYSA, Red River Soccer Club and the West Fargo Soccer Club, and one member of MYSA, the Moorhead Soccer Club. The

other league, known as the Northwest (spring) League was formed by MYSA.¹ FSC argues that the exclusion of its teams from these leagues violated USSF Bylaws and Policies.

The parties to this action have arguably spent as much time talking about what this Grievance is not about, as the issues presented by the Grievance. The Arbitrator generally agrees with the parties as to the issues that are not before us. For example, NDYSA correctly points out that this is not a Grievance as to whether or not FSC was improperly denied membership in NDYSA or MYSA. NDYSA also correctly pointed out in its closing argument at the hearing that this Grievance is not about the number of teams that FSC does or does not have. Likewise, when NDYSA argues in its post-hearing brief that there is no evidence that players are being prevented from playing soccer, the point is irrelevant as the Grievance does not state that any “player” has been prevented from playing soccer, but that FSC “teams” are prevented from competing in league games.

There is also significant argument as to the specific provisions of the USSF Bylaws and/or Policies that are alleged to have been violated. Whether or not such claims were clearly articulated in FSC’s initial filing, Respondents have been on notice since early in these proceedings that FSC’s claims are that its teams have been wrongfully denied the opportunity to participate in leagues falling under the jurisdiction of NDYSA and MYSA in violation of USSF Bylaws and Policies. The Arbitrator takes notice that the gist of the Grievance against each of the Respondents is that the following USSF Bylaws and/or Policies were violated²:

¹ As will be noted later in this Award, it makes no difference to this Award whether these leagues were formed by the clubs referenced above, by other clubs within the state associations, or by one or both of the Respondents.

² The Grievance also discusses whether Respondents have violated their own policies. However, the Arbitrator does not have the authority to grant any award based on compliance

- Bylaw 601 (and Policy 601-7) stating that no Organization Member or member of an Organization Member shall interfere with the opportunity of a team to travel to compete in a competition;
- Bylaw 603, Section 2, which prohibits any Organization Member from discriminating against the participation of teams on the basis of that team's membership in, or affiliation with, another organization; and
- Policy 212-1, Section 4b, which requires an Organization Member to allow Participants from any Affiliated Organization to participate in its programs if those Participants register and comply with all of the reasonable policies, rules, regulations, and requirements of the Organization Member.

PROPER PARTIES TO THE GRIEVANCE

As a preliminary matter, one or both of the Respondents have argued that to the extent there has been any discrimination against FSC with respect to its participation in the FMWFSL, it was by the clubs that formed the league, rather than by either Respondent. They argue that they are therefore not proper parties to any Grievance with respect to FSC's participation in the FMWFSL, and that this portion of the Grievance should have been brought against the individual club members.³ Essentially, Respondents argue that they have no responsibility for their members or for the actions of their members. The Arbitrator rejects this argument. The club

or failure to comply with state association bylaws and policies, as the Arbitrator was appointed by USSF to determine whether an Organization Member, in this case, state associations from North Dakota and Minnesota, failed to comply with their membership requirements in the USSF. USSF Bylaw 704 Section 1(a).

³ Since the Grievance with respect to the Northwest (spring) League is only against MYSA, the effect of this argument is that the Grievance would be dismissed against NDYSA.

members of the state associations are not direct members of USSF. If the state members of USSF to which these clubs are members had no responsibility whatsoever for the actions of their members, then many of the USSF Bylaws, including those that have been cited in this case, could be easily circumvented. Clearly, that was not intended by the USSF Bylaws. As a member of USSF, each Respondent is responsible for policing the activities of its members to assure compliance with USSF Bylaws and Policies. While it may be accurate to state that Respondents cannot physically cause any of their members to comply with the USSF Bylaws and Policies, they ultimately have the ability to expel any member who does not comply, and to withhold benefits of membership.

Another preliminary issue raised by Respondents is whether FSC is a proper party to the Grievance. The suggestion was made that only the North Dakota Chapter of Soccer Association for Youth (“SAY”), and not one of its members, can bring a Grievance against them for the activities that are the subject of this Grievance. It is not necessary for the Arbitrator to determine whether or not this assertion is correct, as the undisputed testimony of Sheila Shay-Mole is that for all intents and purposes, FSC is North Dakota SAY (and Minnesota SAY). Thus, FSC, whether in its capacity as North Dakota SAY, as Minnesota SAY, or as a member of North Dakota SAY, is the proper party to bring this Grievance.⁴

ANALYSIS OF FACTS

It is not disputed that FSC attempted to have its teams join the leagues in question and that they were denied the opportunity to do so. It is also not disputed that no league is required

⁴ Another issue raised by one or both Respondents is that to bring this Grievance, FSC would need the approval or authority of SAY, its national organization. Whether or not this is true also need not be determined, because Ms. Shay-Mole testified that SAY has approved the prosecution of the Grievance.

to accept every team that seeks to participate in the league. USSF Policy 212-1, Section 4b states the requirement, as well as the conditions for participation. It provides in relevant part:

“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.”

NDYSA and MYSA are both Organization Members of USSF. FSC, and hence its teams, were groups of participants that are part of SAY, a USSF Affiliated Organization. Thus, NDYSA and MYSA were required to allow FSC teams to participate in their programs, subject to the participants’ compliance with all “reasonable policies, rules, regulations, and requirements”⁵ of Respondents.⁶

USSF Policy 212-1, Section 4b continues with the recitation of the types of rules that are considered reasonable. The recitation of such rules is not intended to be all inclusive. On the other hand, the fact that a rule is established that deals with one of the enumerated provisions does not mean that the rule is automatically considered reasonable, and each policy, rule, regulation or requirement must still meet the test of reasonableness.⁷ The key question for

⁵ For purposes of this Award, the term “policies, rules, regulations, and requirements” is abbreviated as “rules.”

⁶ There was argument whether or not Respondents had any policies, rules, regulations or requirements for participation that FSC must meet, at least with respect to the FMWFSL, since the rules for participation were set by the club members of Respondents that formed the league. However, since the Respondents must take responsibility for the actions of their members for purposes of determining compliance with USSF Bylaws and Policies, for purposes of the determination at hand, the rules of the club members who formed the FMWFSL must be assumed to be the rules Respondents have adopted with respect to participation in this league, FSC must comply with all such reasonable rules.

⁷ To hold otherwise would make it very easy for an Organization Member to establish a rule that clearly discriminated on grounds prohibited by USSF Bylaws. For example, while Organization Members are permitted to establish requirements for team formation, and to

determination in this case is therefore whether the rules established for participation in these leagues were reasonable.⁸

The principal evidence submitted in this case with respect to the rules that were established for play in the FMWFSL was the testimony of Mr. Cook, Mr. Schneweis, and Mr. Noah,⁹ and the “transcript” of a meeting between Mr. Noah and representatives of the FMWFSL.¹⁰

observe rationally supportable geographic rules, it cannot be imagined that anyone would suggest that such rules allow geographic lines to be drawn for the purpose of excluding members of minorities that reside in certain geographic areas.

- ⁸ As opposed to rules for membership in a state association which are published, the leagues do not publish all their criteria for participation. That does not mean, however, that such rules do not exist, and the Arbitrator agrees that, at least with respect to the FMWFSL, these rules do in fact exist, and that they were used as a basis for excluding FSC. However, the nature of the rules must be gleaned from all of the evidence submitted in this proceeding, and the testimony of the parties.
- ⁹ Respondents would object to the characterization of Mr. Noah’s comments at the arbitration as “testimony.” However, at the beginning of the arbitration, Respondents were given the option of having Mr. Noah formally testify under oath, and subject to cross-examination, or to introduce his evidence without being subject to cross-examination. It was clearly explained to Respondents that they could make the choice, that the people representing them in the hearing would have the same opportunity, and that these items would be considered by the Arbitrator as evidence submitted at the hearing. After privately consulting with each other, Respondents chose not to have the evidence submitted under oath or subject to cross-examination, despite the admonition from the Arbitrator that the evidence would be considered in either case. Having made that choice, they cannot now object on the basis that the evidence was submitted by a means they selected, rather than the alternative means that they rejected.
- ¹⁰ The term “transcript” has been objected to by FSC. The use of that term in this Award is not intended to suggest that the document purports to be a verbatim, complete, or even accurate transcription of the meeting. It is simply used to identify the document so that all parties understand the document to which the Arbitrator is referring; since the document was admitted into evidence following the hearing, it was not assigned an exhibit number to which it can be referred.

Unfortunately, much of what Mr. Cook testified to in terms of his discussions regarding the reason FSC teams were not permitted to participate in the FMWFSL was based on hearsay, and specifically, his discussions with Dan Dunn, who attended the November 15, 2007 meeting that is the subject of the so-called transcript admitted into evidence. Mr. Cook therefore could only testify as to what Mr. Dunn told him occurred at that meeting, and Mr. Dunn's recollection of conversations with others who were in attendance at that meeting. Thus, Mr. Cook's testimony in this issue is not particularly helpful. Rather, we have the transcript and can refer to the transcript as the best available evidence as to the reasons FSC teams were excluded from this league.¹¹

The transcript begins by referring to the league as "a collegial, respectful, civic group." Those forming the group thought it "best for the community to respect boundaries within our community." However, the boundaries they were talking about were not geographic boundaries, as enunciated at USSF Policy 212-1, Section 4b, but essentially team boundaries. Thus, to participate, a team or club is required to comply with a rule that either prohibits the recruitment of players that have played, or are playing, on other teams, or obtain the consent of the original team before the player can change teams or play on the additional team. It is hard to imagine that one team would want to "lose" players to another team and give permission for these solicitations. Thus, the effect of such a rule is to impair the ability of players to register with more than one Organization Member, directly contravening the provisions of the second sentence of Policy 212-1, Section 2, which states that a participant may be registered with more

¹¹ As NDYSA noted in its post-hearing brief, it would have been helpful if the member clubs who formed this league had testified at the hearing as to their reasons for denying FSC teams' participation. However, nothing prevented these clubs from testifying and presenting evidence at the hearing. In preparing their case, Respondents could have requested such participation from the member clubs. They either chose not to do so, or their Organization Members declined to participate and assist Respondents in defending against this Grievance.

than one Organization Member. Moreover, such a rule, relying upon the subjective decision of one of the clubs as to whether players can play for another club, could essentially allow the soliciting club to be blocked from playing in a league for any reason whatsoever, including the mere fact that the soliciting club was a member of a different Affiliated Organization.

A further review of the transcript, and the testimony of Mr. Schneweis provides further evidence that FSC was barred from participating in this league for subjective reasons not contemplated by USSF Policy 212-1, Section 4b. Mr. Schneweis talked about the “philosophy” of the league members. Mr. Dunn, in the transcript, makes it very clear that membership is based on philosophies, and similar subjective criteria when he talks about recruitment, and concludes: “here is what it comes down to. It’s been collegial. It’s been respectful. . . .” He states that one must “get along,” to be a member of the league. While it is an admirable goal to have all members be collegial, respectful, and “get along,” that is not a rule that can be legislated, and it is not reasonable to exclude a group of participants from joining a league on the basis that they will not be collegial or “get along.” Such a requirement is reminiscent of the types of requirements for social clubs that were designed to exclude minorities. Such rules have been carefully reviewed in appropriate cases by the courts of the United States, and any similar rule adopted by an Organization Member of USSF would violate USSF Bylaw 105, Section 2.

Another stated ground for exclusion of FSC from one or both of these leagues is that these are recreational leagues, and that FSC acknowledged that its purpose in joining recreational leagues was, in part, to provide experience to its players, such that they could become more competitive, and ultimately move into higher leagues. It is certainly permissible to form leagues for recreational play only. However, there is no provision of USSF Policy 212-1, Section 4b that suggests that players who play in recreational leagues cannot do so for the purpose of gaining

experience so that they might improve in skills, and ultimately join more competitive leagues. To the contrary, one of the purposes of USSF is to provide for the continuing development of soccer players. USSF Bylaw 102. Continuing development certainly includes giving players experience that will help them improve their skills. Thus, the fact that an individual, a team or a club may have that goal is not a reason to preclude them from playing in a recreational league.

USSF Policy 212-1, Section 4b does contemplate that FSC will be required to comply with all reasonable rules of these leagues. One of the reasons given for the exclusion of FSC teams from participation in the FMWFSL was the alleged statement of Mr. Noah that FSC would not follow the policies and rules of the league. To the extent the transcript is accurate, it does show that Mr. Noah initially indicated FSC would not abide by a particular policy. However, when pressed, Mr. Noah said that if the policy was a league rule, then even though it was “not our preference,” and even though he would “probably ask to shape the rules,” he would comply with the rule. Based upon Mr. Noah’s initial statement, and some of the emails that were submitted into evidence, it is not unreasonable for Respondents or their member clubs to question whether FSC teams will, in fact, comply with all reasonable rules for participation in these leagues. However, fear that FSC may not comply with these rules (or might try to change them), is not a reason to prohibit a team from participating in a league in the first place.

There was also quite a bit of testimony concerning attempts by FSC to join NDYSA and MYSA. As Respondents have correctly pointed out, the rejection of FSC’s membership in these associations is not the direct subject of this Grievance. However, the testimony at the hearing on this issue sheds light on at least one of the issues, whether FSC’s teams were discriminated against on the basis of that team’s membership in, or affiliation with, another organization. The testimony showed that members of state associations in Wisconsin and North Dakota are

permitted to play in leagues formed under the jurisdiction of MYSA. However, when pressed further, its participation was permitted only because the organizations to which these clubs belonged had an agreement with MYSA. The evidence further showed that at this time, only clubs affiliated with United States Youth Soccer Association (“USYSA”) had such agreements. Although FSC (whether acting as FSC or as North Dakota SAY or as Minnesota SAY) requested an application, that application was not even sent to them because it was determined, in advance, that it would not be accepted. Thus, FSC had no opportunity to establish, on its own or through its state association, an arrangement that would permit it to play in leagues formed by MYSA, and specifically, the Northwest (spring) League.

APPLICATION OF FACTS TO BYLAWS AND POLICIES

FSC seeks to have some of its teams play in the FMWFSL, a fall league formed by three members of MYSA and NDYSA. The members formed this “friendship league” to pursue their own soccer philosophies. They certainly had the right to do so under the USSF’s grievance decision in Columbia Basin vs. Washington State Youth Soccer Association. However, in this case, the members who formed this league allowed a team from a club outside their membership to participate, without allowing FSC to also join the league. This is a violation of USSF Policy 212-1, Section 4b, unless the exclusion was based upon the excluded clubs’ failure or refusal to comply with the reasonable rules of that league. In this case, the Arbitrator has found that FSC did not fail to comply with the reasonable rules established by the league. Thus, excluding FSC’s participation in the league was improper.

FSC also sought to join the Northwest (spring) League formed by MYSA. MYSA allows clubs affiliated with USYSA to participate in its leagues, when such clubs are not based in Minnesota and therefore are not members of MYSA. However, MYSA has not allowed FSC

teams to participate because FSC is not a member of USYSA, and the national organizations to which FSC is a member do not have an agreement with MYSA. However, MYSA also would not provide an application to FSC, in its role as the state association of one such national organization, that would enable FSC to participate in the league. This combination of facts resulted in a violation of USSF Bylaw 603.

Based upon an analysis of all of the evidence admitted at the hearing, the Arbitrator has found that Respondents have violated certain USSF Bylaws and Policies in this matter.

Specifically:

- (1) MYSA, by establishing rules prohibiting participation in its leagues by persons who are not members of organizations that have agreements with MYSA, and by establishing agreements only with members of USYSA, has violated USSF Bylaw 603.^{12, 13}
- (2) Each of MYSA and NDYSA allowed teams of member clubs to travel to participate in competitions that included teams that were not organized by the clubs that formed the leagues in question. Those clubs would not allow FSC teams to become members, and thus interfered with the ability of those teams to

¹² It appears that MYSA did, at one time, have an agreement with the American Youth Soccer Organization, but it no longer has such an agreement at this time. Even if such an agreement did currently exist, this violation still would have occurred because state members of SAY were not given the opportunity to have a similar agreement with MYSA.

¹³ The Arbitrator has also considered whether NDYSA violated Bylaw 603. That Bylaw deals only with discrimination on the basis of a team's membership in, or affiliation with, another organization. There is not sufficient evidence indicating that NDYSA, or its members, discriminated against FSC on the basis of its membership in SAY.

travel to compete in these leagues, thereby violating USSF Bylaw 601, and USSF Policy 601-7.

- (3) Through its members, MYSA and NDYSA both violated USSF Policy 212-1, Section 4b, by not allowing FSC teams to participate in the FMWFSL. While that league could have had a policy of allowing only teams of the three organizing members to participate, they allowed teams from other clubs to participate, and therefore should have allowed FSC teams to participate under reasonable rules established for such participation. In the instant case, FSC did not fail to comply with any “reasonable” rules established for such participation.


RELIEF AWARDED

So long as FSC is a member of an Organization Member of USSF:

- (1) Teams organized by FSC shall be allowed to participate in the FMWFSL in the fall of 2008. Such participation shall be allowed even if the organizing clubs do not allow participation by members of any other club, since FSC was precluded from participating in this league in previous seasons in which other clubs were allowed to participate. Thereafter, FSC teams may participate in this league only if the clubs forming the league allow teams from other clubs to participate in that league in the same season.
- (2) MYSA must open participation in the MYSA Northwest (spring) League to FSC in 2009 and thereafter, but only if it allows other clubs that are not members of MYSA to participate in MYSA leagues during the particular season.

- (3) FSC shall be required to comply with all reasonable rules established for participation in the foregoing leagues. However, neither NDYSA nor MYSA, nor any of their members, shall establish any arbitrary or unreasonable policies, rules, regulations and requirements for participation in these leagues.
- (4) To the extent NDYSA or MYSA, or their Organization Members form additional or substitute leagues, FSC shall be allowed to participate in such leagues to the same extent as teams that are affiliated with a member of any other USSF Organization Member that is not a member of the respective Respondent.

Dated: August 13, 2008



Charles S. Modell, Arbitrator

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