

IN THE MATTER OF SALFORD RED DEVILS AND DR MARWAN KOUKASH

AND AN APPEAL AGAINST A JUDGMENT OF AN OPERATIONAL RULES TRIBUNAL OF THE
RUGBY FOOTBALL LEAGUE

SALFORD RED DEVILS and DR MARWAN KOUKASH

Appellants

-v-

THE RUGBY FOOTBALL LEAGUE

Respondent

WRITTEN DECISION OF THE OPERATIONAL RULES APPEAL TRIBUNAL

1. The final hearing of this appeal came before the Operational Rules Appeal Tribunal ("the Appeal Tribunal") on 6 July 2016. The Appeal Tribunal consisted of David Casement QC (Chairman), Janice Shardlow and Desmond Smith. The Appeal Tribunal had to determine two appeals from the decision of the Operational Rules Tribunal ("the Tribunal") dated 6 May 2016 ("the Decision"): one by The Rugby Football League ("RFL") and one by Salford Red Devils and Dr Marwan Koukash (referred to herein collectively as "the Club").
2. We do not propose to repeat herein the background and regulatory framework which are sufficiently set out in the Decision. The Tribunal found that the Club

committed breaches of the RFL Operational Rules and the RFL Salary Cap Regulations. In particular the Tribunal found as follows:

- 2.1 Payments were made to Mr Tony Puletua pursuant to a contract between Mr Puletua and a Dubai based company which is owned and/or controlled by Dr Koukash namely EuroMaTech. The contract was dated 19 June 2013. The contract with EuroMaTech and with the Club were co-terminous, they had the same dates for commencing and finishing. The contract was purportedly an agreement whereby Mr Puletua would receive £48,000 in return for his provision of leadership training services. That contract was not declared to the RFL. The Tribunal found the contract with EuroMaTech was “a device to avoid the Salary Cap Regulations.” The account given by Dr Koukash was rejected by the Tribunal and it held “Until 23 December 2014 Mr Puletua was never asked to carry out any leadership training when by which point the player’s relationship with the club had clearly deteriorated. The payment made during 2014 were then said for the first time in September 2015 to be for work carried out in relation to recruiting other players. The Panel do not accept that the payments made had any relation to player recruitment.” There is no challenge to the Tribunal’s conclusion or findings in respect of Mr Puletua.
- 2.2 In relation to Mr Francis Meli it had been argued before the Tribunal by the RFL that this was the same as with Mr Puletua. It was argued there was a contract for £22,000 in respect of Mr Meli which was not declared. There was no evidence directly from Mr Meli, unlike with Mr Puletua whose employment tribunal claim provided the relevant evidence, but the RFL relied upon a conversation between the investigating officer, Mr Dearden, and Mr Meli and an email sent by Mr Dearden to Mr Meli recording that conversation. Importantly Mr Meli did not respond to that email at all let alone to confirm its contents. The Tribunal was not prepared to make a finding of breach on that basis. RFL contended in this appeal that the Tribunal was wrong to do so and invited the Appeal Panel to find the Club in breach in this respect.

- 2.3 In the case of Mr Lama Tasi it was admitted before the Tribunal by the Club that it paid his rent of £900 per month for the 2014 season. This was not declared to the RFL. It was a clear case of breach and there is no appeal in respect of the Tribunal's conclusion or findings in this regard.
- 2.4 In respect of Mr Theo Fages again the player's rent had been paid and this had been confirmed in an email by the club to Mr Fages to the value of £7500 per annum. There is no appeal in respect of the Tribunal's conclusion or findings.
- 2.5 In relation to Mr Niall Evalds the Tribunal found that the gift of a Maserati car valued at £16,000, being a reward for the player winning the Club's player of the year, could have been an oversight which was subsequently rectified. For that reason the Tribunal did not find there was a breach.
3. The Tribunal therefore found there were clear breaches of rule C1.1.7 of the Operational Rules regarding the contracts for Mr Pulueta, Mr Fages and Mr Tasi as their contracts did not accurately record all financial benefits or benefits in kind. In addition it found breaches of C1.1.15 of the Operational Rules in that clubs or club officials should not issue any payments or provide any benefits unless they are accurately recorded in the player's contract. The Tribunal also found there was a breach of the Super League Salary Cap Regulations in that the £1,825,000 aggregate liability limit was exceeded during the 2014 season. The Tribunal was satisfied that the Club had a total aggregate liability of £1,919,200 for a period of 109 days. The Tribunal found there was also a breach of section 3.1.3 of the Salary Cap Regulations in that any information provided must be accurate and complete which it was not. In addition Operational Rule C1.1.18 provided that any payments or benefits in kind should be recorded in the player's contract. The Tribunal also found that Dr Koukash himself was in breach of Rule C1.1.7 in the 2014 season and C1.1.15, as well as sections 3.1.3 and 3.1.6 of the Salary Cap Regulations in both 2014 and 2015.

Appeal by way of Review

4. Directions were given by the Chairman for the parties to submit written submissions regarding whether the appeal should proceed by way of a rehearing de novo or a rehearing by way of review. The RFL argued for a rehearing de novo and also sought to introduce evidence which was not before the Tribunal and also to introduce fresh charges against the Club. The Club argued that the hearing of the appeal should be by way of a review only. The Appeal Tribunal were unanimous that the hearing should be by way of review. It would be unusual if rules allowed any party the automatic right to simply request a de novo rehearing of a case which has been determined by the first instance tribunal without more. Of course it is open to rules to provide just that but it would in our view require clear wording. The wording which needs to be considered is not just D1:67 but the other rules relating to appeals. In particular D1:61(b) requires the appealing party to provide grounds of appeal. If the appeal is a de novo hearing there would be no point in an appellant setting out grounds. Likewise in D1:69 the Rules require that each party shall have an adequate opportunity to know in advance "the issues in the appeal." Such wording is more indicative of a review where specific grounds of appeal have been identified than a de novo hearing. For this reason the RFL was refused permission to adduce further evidence which would have been available at first instance and was also refused permission to adduce further charges at the appeal stage.
5. The Appeal Tribunal in conducting an appeal by way of review is limited to deciding if there were procedural irregularities, errors of law, the decisions of fact were unreasonable in the Wednesbury sense or if the Tribunal took into account matters which it ought not to have taken into account or failed to take into account matters which it ought to have taken into account. The purpose of an appeal by way of review is not for the Appeal Tribunal to replace the decision of the Tribunal with what it considers it would have concluded had it been dealing with the matter at first instance. That would be to usurp the function of the Tribunal.

The RFL Appeal

6. The RFL Appeal focused on two matters namely the Meli and Evalds decisions.
7. The decision of the Tribunal in respect of Mr Meli is unimpeachable. The Tribunal was not prepared to draw serious adverse conclusions against the Club in circumstances where the only evidence was not directly confirmed by someone with direct, first hand knowledge of the matter namely Mr Meli himself. The decision of the Tribunal was well within the range of decisions it was entitled to make and it cannot be faulted.
8. In respect of Mr Evalds the Appeal Tribunal concludes that the Tribunal reached the correct conclusion but for the wrong reasons. The offences are offences of strict liability. The question of oversight is not relevant to whether or not there was a breach although it would be highly relevant to mitigation and sanction. The Appeal Tribunal however is not satisfied that there was an obligation to declare the gift which was a matter voted on by the team to determine who was the player of the year. It was a gesture by Dr Koukash at the end of the season which could not have impacted upon the efficacy of the Regulations and the Rules. Mr Barrow submitted that the prize comes within 5.7.2 of the Salary Cap Regulations and we agree. Even if we were wrong in that regard we are satisfied that any breach would not have impacted on the level of sanction.
9. The RFL also challenged the leniency of the sanction imposed by the Tribunal. The RFL argued for an increase of the sanction from six points in respect of the regular season to eight points spread across into the Super Eights qualifiers. The RFL quite rightly also addressed the relevant principles that it said applied in respect of the appeal by the Club on the basis that the sanction was too severe. It cited a number of authorities including Bradley v Jockey Club [2004] EWHC 2164, Flaherty v NGRD [2004] EWHC 2838, and Sheffield v FAPL [2007] ISLR, SLR 77. The principles are well known. The issue is whether the sanction was outside of the limits of the Tribunal's discretionary area of judgment.

10. In the present case the Tribunal addressed its mind to the question of whether to spread the points deduction over the two phases and indeed how many points to deduct. The conclusion reached by the Tribunal was entirely within its area of discretion. It cannot be said to be unduly lenient in the circumstances where the Tribunal was impressed with the changes made by the Club to ensure compliance going forward.

11. It therefore follows that the RFL Appeal is dismissed.

The Club's Appeal

12. The Appeal by the Club challenged the sanction imposed but on a number of bases. Some of those bases included challenges to the basis upon which the Tribunal concluded that there was any breach of the salary cap of £1.825 million. Both Mr Barrow and Dr Koukash made submissions to the effect that Dr Koukash was not aware of the details of salary cap regulations when he took over the Club and that he has made substantial investments in the Club to the benefit of the game generally and he has changed procedures since these events so that the same cannot happen again. They also submitted that Dr Koukash at no time sought to hide or conceal payments to players and that there was nothing intentional in the breaches found by the Tribunal.

13. In the written submissions filed on behalf of the Club there was substantial analysis of the inclusion and in particular timing of many of the entries in the salary log. The outcome, as submitted by the Club, was that that there was no breach of the ultimate salary cap in the season 2014 and that in fact there was headroom below this even taking into account the additional payments found by the Tribunal.

14. It was accepted on behalf of the Club that the vast bulk of the points being made were not advanced before the Tribunal. Points which are not raised before the Tribunal, absent good explanation, cannot be raised in an appeal proceeding by way of review. It is obviously because the majority of these issues were not raised before the Tribunal that there is no analysis in the Decision as to how the Tribunal reached its conclusion regarding the Club exceeding the ultimate cap.

15. Because this appeal proceeds by way of review we consider it would be inappropriate to open up the issue again. Further evidence might have been required to fully establish the position. Furthermore the position is that the Tribunal found that the Club exceeded the cap by an amount which "although still significant was not a relatively large amount." It is clear that the gravamen of this case is not the breach of the cap but the Club's conduct which was described by the Tribunal as amounting to serious breaches in particular in respect of Mr Puletua:
"The Panel state they have concluded that the charges, in particular those relating to Mr Puletua were a deliberate and contrived attempt to circumnavigate the Salary Cap. Since then it appears attempts have been made to cover up these payments in an attempt to justify them."

16. There can be no serious challenge to the findings made by the Tribunal in respect of the Club's conduct. Even without the breach of the salary cap, the penalties imposed fall within the range which could have been reasonably imposed for the other breaches. It is essential that accurate information is given to the RFL and set out clearly in the contracts. These were serious breaches irrespective of the cap being breached. If the Tribunal had "read down" the regulatory provisions regarding salary cap so that failures to disclose expenditure or include the same in players' contracts were treated as being of no real importance provided the overall cap was adhered to, it would have driven a coach and horses through the various objectives of those provisions including protecting the players' welfare. There is no justification in "reading down" the provisions in such a way: transparency and full disclosure are required.

17. The Club submitted that the sanction is disproportionate when consideration is given to other penalties imposed for breach of salary cap regulations over the years. It is correct that the sanction of six points appears to be significantly greater than most of those cases referred to from around 2006/7. However it is clear that the regulatory provisions have changed and the penalties for non-compliance have increased. The first point to make is that the Tribunal was not bound by precedents, each case will turn on its own facts in the light of the regulatory provisions then in play. The second point is that those authorities cited by the RFL and which led to their appeal in this regard being rejected are equally applicable in respect of the Club's appeal. This Appeal Tribunal cannot interfere with the Tribunal's decision just because it might consider that a lesser points reduction would have been more appropriate.
18. The penalty would have been more severe but for the fact that the Tribunal was obviously impressed with Dr Koukash and the fact that he has learned much from this experience. He has to his credit, the Tribunal found, set the Club on the right road and implemented procedures to avoid this happening again. That mitigation has been correctly taken into account. The Appeal Tribunal is satisfied that the sanction imposed is not unduly severe or disproportionate.
19. The decision of the Tribunal regarding sanction will therefore stand and the appeal by the Club and Dr Koukash is dismissed.

Conclusion

20. The Appeal Tribunal are grateful to Mr Barrow, Dr Koukash, Mr Sarjeant and Mr Hardman for their assistance. The submissions made both in writing and orally were very clear and concise. The Appeal Tribunal have been greatly assisted by the parties.

21. The appeals of both the RFL and the Club are dismissed. The decision of the Tribunal therefore stands. The parties have agreed that there will be no order as to costs irrespective of the outcome of the appeals.



DAVID CASEMENT QC (Chairman)

JANICE SHARDLOW

DESMOND SMITH

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Sport Resolutions (UK)
1 Salisbury Square
London EC4Y 8AE

T: +44 (0)20 7036 1966
F: +44 (0)20 7936 2602

Email: resolve@sportresolutions.co.uk
Website: www.sportresolutions.co.uk

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