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(Disputes Tribunals Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court: Auckland

Case number: CIV-2014-094-000971

APPLICANT New Zealand Dancesport Association Incorporated
PO Box 29 385
Fendalton Mall
Christchurch 8540

2nd APPLICANT New Zealand Federal Association of Teachers of Dance
PO Box 10138
Rotorua Mail centre
Rotorua

1st RESPONDENT New Zealand Federation of Dance Teachers Incorporated
PO Box 301317
Albany
Auckland 0752

SECOND RESPONDENT Society Of Australasian Teachers of Dancing New Zealand Incorporated
PO Box 25518
St Heliers
Auckland 1740

THIRD RESPONDENT D'Artagnan Kennedy
143 Whangaporoa Road
Red Beach
Auckland 0932

FOURTH RESPONDENT Darrell James Crozier
143 Whangaporoa Road
Red Beach
Auckland 0932

FIFTH RESPONDENT Kingsley John Gainsford
287B Beach Road
Campbells Bay
Auckland 0630

SIXTH RESPONDENT New Zealand Dance And Dancesport Council
PO Box 22518
St Heliers
Auckland 1740

SEVENTH RESPONDENT New Zealand Dance And Dancesport Registration Authority
143 Whangaporoa Road
Red Beach
Auckland 0932

**EIGHTH
RESPONDENT** **William Grant Macown
55B Selwyn Avenue
Mission Bay
Auckland 1071**

The Tribunal hereby orders:

New Zealand Dancesport associated Inc claims against all the respondents are dismissed.

New Zealand Federal Association of Teachers of Dance's claims against all of the respondents are dismissed.

Reasons

1. The NZ Dance and Dancesport Council was formed in 1965 and at that time comprised of three dance associations. A couple of years later a fourth dance association joined and over the past few decades all four member associations were incorporated. The Council remained unincorporated. The four member incorporated societies are the NZ Federation of Dance Teachers Inc (NZFDT), the Society of Australasian Teachers of Dancing NZ Inc (SATDNZ), the NZ Federal Association of Teachers of Dancing (NZFATD) and the NZ DanceSport Association Inc (NZDA).
2. NZFDT, SATDNZ, and NZFATD are professional associations and NZDA is an amateur association.
3. In May 2010 these four groups attended a High Court mediation in which they came to some agreements as to the future operation of the Council.
4. In 2011 NZDA and NZFATD resigned from the Council.
5. In January 2012, NZDA, having brought a claim in the Tribunal against a number of respondents, came to an agreed settlement with the NZ Dancesport Council, SATDNZ and NZFDT.
6. NZDA now brings a further claim against the respondents as described in the intituling for breach of contract. The contract it is relying on is "The Rules for Council".
7. In 2013 NZFATD brought a claim against the Council seeking an order for the Council to be disbanded and claiming \$15,000.00 of the Council's funds.
8. On 19 December 2013 Referee Savage struck out that part of the claim relating to disbanding the Council because the Tribunal does not have the jurisdiction to so order. She adjourned that part of the claim relating to the \$15,000.00 claimed. She advised that the Tribunal would be able to hear this part of the claim if it was framed as a breach of contract and the hearing was adjourned to allow NZFATD to adjust its claim accordingly. NZDA was also joined as an applicant.
9. NZFATD then amended its claim to a breach of contract against the respondents described in the intituling. The contracts it is relying on are the High Court mediated agreement and "The Rules for Council".
10. In April 2014 Referee Meyer ordered that NZFATD and NZDA's claims against the same respondents ought to be heard together in the Auckland Disputes Tribunal.

11. At the hearing on 4 July 2014 the issues to be determined were ascertained as being: These were not changed at the 19 September 2014 hearing.

(a) Has NZDA's claim already been decided in the agreed settlement reached at the January 2012 Disputes Tribunal hearing?

(b) Have the respondents breached "The Rules of Council"?

(c) If so, what is the remedy?

(d) Have the respondents breached their HC mediated agreement with NZFATD?

(e) If so, what is the remedy?

Has NZDA's claim already been decided in the agreed settlement reached at the January 2012 Disputes Tribunal hearing?

12. William Joyce, who represented NZDA at the hearing on 4 July 2014, stated that NZDA's only claim in the earlier Tribunal hearing was for disbursements that were outstanding. He stated that the current claim was a different claim and that NZDA was now seeking a proportion of the Council assets as a remedy for what NZDA claimed were further breaches of contract.

13. The respondents, represented by Kingsley Gainsford (rep for the Council and SATDNZ), Darrell Crozier (rep for NZFDT) and Grant Macown (rep for Council and SATDNZ) stated that the January 2012 agreement was in full and final settlement of any claim between the parties and that NZDA cannot now make any further claim against them.

14. The issue is one of interpretation –what did the parties think that they were agreeing to in January 2012.

15. Pre-contractual negotiations may in some instances be used to ascertain the correct interpretation of an agreement.

16. In this case a letter from NZDA to the Council dated 1 May 2011 outlines the disbursements claimed and at the end of the letter states that the recovery of the disbursements claimed would mean that "any obligations ... are severed". A subsequent invoice dated 27 May 2011 makes the same claim for disbursements but the amount is reduced to \$9,609.19. Mr Joyce stated that the dollar value of the claim was reduced by 15% to ensure accuracy as well as to bring it within the Tribunal's jurisdiction which at that time was \$10,000.00. Again the invoice talks about the severing of all financial claims between the parties if that amount was paid.

17. As the applicant in this matter, NZDA is required to show that on the balance of probabilities their interpretation of the agreed settlement is the correct one. In other words, that the agreed settlement made in January 2012 did not preclude NZDA from making any further monetary claims against the respondents.

18. Mr Joyce stated that since the respondents did not pay the amounts invoiced in the first instance and were only settled by agreement after a claim was made in the Tribunal, this means that NZDA is not bound to its representation that upon payment all financial obligations between the parties would be severed.

19. However I find that the agreed settlement reached in the Tribunal meant that all financial claims between the parties were at an end. I say this not only because the agreement states "in full and final settlement" but also because NZDA's second invoice, payment of which would preclude any further financial claims, was made out in contemplation of a Tribunal hearing, as

described in point 16 above. Payment was made as a result of that hearing and therefore all financial obligations between the parties were concluded.

20. I note that NZDA was not represented at the hearing on 19 September 2014.

Have the respondents breached “The Rules of Council”?

21. At the hearing on 4 July 2014 I allowed NZDA to provide evidence regarding its claim that the respondents breached “The Rules of Council”.

22. However, having then made a finding that all financial obligations between NZDA and the respondents ceased once they came to an agreed settlement in the Tribunal, it follows that alleged breaches of contract before the date of that agreement (20 January 2012) cannot now be made out.

23. Further, given that NZDA and the respondents were no longer in a contractual relationship after NZDA resigned from the Council in 2011, I find that NZDA is precluded from claiming any breaches of contract either prior to, or subsequent to, 20 January 2012.

24. I was aware that at the hearing on 4 July 2014 I did not make this finding absolutely clear and in my order dated 7 July 2014 I stated that NZDA would have an opportunity to address this issue at the next hearing if it wished to do. I also stated in that order that if NZDA did not wish to make any further submissions on this point then my order described above would be made final.

25. Since NZDA was not represented at today’s hearing and I have received no further evidence from them, that means that the order is now made final – that is, that the respondents have not breached any contract with NZDA for the reasons described in points 22 and 23 above.

26. This leads me to NZFATD’s claim that the respondents breached “The Rules of Council”. NZFATD were not a party to the agreed settlement reached on 20 January 2012 and are therefore free to make out this claim.

27. NZFATD states that the respondents breached Rule 14 Class A 1 of “The Rules of Council”.

28. This rule provides that “Application to hold any Class A championships should be made in writing to the Council, not later than 30 November of each year and must state whether the event is closes or open. 1.1 The NZD&DC application form for Recognition and Registration of Championships competitions and Festivals is published on the Council website.

29. Mrs Taylor states that NZFATD had registered and paid for running the NZ Juvenile, Junior, Youth and New Vogue National Titles in Labour Weekend in 2012. She stated that the respondents breached Rule 14 by running another national competition during Labour Weekend of 2012 and that the respondents’ breach caused them considerable financial loss.

30. However I find that the respondents have not breached Rule 14. I say this because:

(a) At the time the competitions were held it was accepted between the parties that NZFATD were no longer a part of the Council and that they were running their own competition under NZDA rules.

(b) NZFATD had in fact resigned from Council in June 2011 and had notified the Council that they were going to run their own competitions in affiliation with NZDA and under their own, not Council, rules.

- (c) From 2011 NZFATD ran its own calendar of events and competitions which required entrants to register with NZDA.
 - (d) The above points indicate that at the time of the claimed breach of Rule 14, NZFATD were no longer in a contractual relationship with the Council and the respondents cannot therefore be found to be in breach of a contract they had with NZFATD.
31. Further to this, while NZFATD had applied to run the championship when it was still a member of Council and had paid the required amount of money to the Council to do so, this money was refunded to them once it became clear that NZFATD had resigned from Council and was running its own competition as per point (b) above.
32. Given that I have found that the respondents did not breach a contract with either NZDA or NZFATD in terms of the "Rules of Council", there is no need for me to consider any possible remedy in this regard.

Have the respondents breached their HC mediated agreement with NZFATD?

33. NZFATD also claims that the respondents breached the High Court mediated agreement. In particular they point to clause 7 of that agreement which provides that "All remits ruled on at the 28 February 2010 meeting shall be provisional (as the case may be if passed), and all remits, regardless of whether or not they were passed at that meeting, shall be voted on at the August 2010 meeting. They may be confirmed by $\frac{3}{4}$ majority of members of the Council, failing which they will lapse."
34. Mrs Taylor states that the respondents breached this clause because:
- (a) At the August 2010 meeting not all the remits were voted on as clause 7 required.
 - (b) Item 4 of the minutes of that meeting shows that Mr Gainsford used his casting vote on a motion whereas clause 7 clearly shows that a $\frac{3}{4}$ majority was required.
 - (c) Some of the remits addressed at the August 2010 meeting were not passed and therefore ought to have lapsed as required by clause 7 of that agreement.
35. However I find that the respondents did not breach the HC mediated agreement. I say this because:
- (a) All remits were discussed and voted on at the August 2010 meeting. The minutes of the meeting provided as evidence clearly shows this.
 - (b) While the minutes show that Mr Gainsford did attempt to use his casting vote which was in breach of clause 7, the minutes also show that Mr Gainsford subsequently withdrew that motion and he therefore 'made good' that particular breach.
 - (c) NZFATD provided no evidence to support their position outlined in 34(c) above.
36. Given that I have found that the respondents did not breach their mediated HC agreement with NZFATD, there is no need for me to consider any possible remedy.


Referee: Christina ter Haar
Date: 19 September 2014



Information for Parties

Rehearings

On application of a party to the proceedings, the Disputes Tribunal may order a rehearing of the proceedings, on such terms as it thinks fit.

If you wish to apply for a rehearing, you can obtain an application form from any Tribunal office. The application must be lodged with the Tribunal that made the decision, within 28 days of the decision having been made, or within further time as the Tribunal may, on application, allow.

PLEASE NOTE: Being unhappy or dissatisfied with the decision is not a ground for a rehearing.

Ground for Appeal

You may appeal to the District Court only on the grounds that the proceedings were conducted by the Referee (or an inquiry was carried out by an Investigator) in a manner which was unfair to you and prejudicially affected the result of the proceedings.

If you wish to appeal, the Notice of Appeal may be obtained from any Tribunal office. The Notice must be filed at the office of which the Tribunal that made the decision, within 28 days of the decision having been made, or within such further time as a District Court Judge may, on application, allow.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

Enforcement of Tribunal Decisions

If the Order of the Tribunal or the terms of the Settlement Approved by the Tribunal are not complied with, you should contact the Collections Unit of the District Court for assistance with enforcement.

Help and Further Information

If you would like any help or further information, please contact the Disputes Tribunal office at your nearest District Court. Court staff are there to help.

The Court telephone number may be found at the front of the telephone book, in the blue pages - Government Phone Listings - under "JUSTICE MINISTRY OF".

