

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CIVIL DIVISION)**

OA NO.3/2013

IN THE MATTER OF the Declaratory Judgments Act 1994

BETWEEN **TITIKAVEKA RUGBY LEAGUE
CLUB INC.**

Applicant

AND **COOK ISLANDS RUGBY LEAGUE
ASSOCIATION INC.**

Respondent

Hearing: 7 May 2013

Appearances: T Manarangi for Applicant
 H Matysik for Respondent

Reasons: 22 May 2013

**REASONS FOR JUDGMENT OF
THE HONOURABLE JUSTICE DAME JUDITH POTTER**

Introduction

[1] On 7 May 2013 I issued a results judgment in this proceeding. I said my reasons would follow. These are the reasons.

Parties

[2] The applicant (the Club), fields the “Bulldogs” team in the premier grade of the rugby league competition in Rarotonga. The Bulldogs won the 2012 competition.

[3] The respondent (the Association), arranges and oversees the rugby league competition and makes and enforces rules governing the competition.

Background

[4] The 2013 rugby league competition commenced on 9 February 2013. Seven teams are competing, including the Bulldogs. The play-offs among the top four teams commenced on 18 May 2013.

[5] In some of the first three games of the competitions the Bulldogs fielded two players, Josh Tawakedrali and James Tofelau, whom the Club accepts are overseas players in terms of the Cook Islands Competition Rules 2013 (the 2013 Rules).

[6] They also fielded three players whose status is in dispute: Rapo Dakai, Tua Ofisa and Vatu Sika.

[7] The executive committee of the association determined that Messrs Dakai, Ofisa and Sika were overseas players in terms of the 2013 Rules and that in fielding five overseas players, the Club breached rule 5.8. Rule 5.8 limits each Club to three overseas players registered with the Association at any one time. The Association penalised the Bulldogs 12 points for this breach which impacted upon their progress through to the play-offs.

Application

[8] The Club says the Association was wrong to rely on amended rule 5.7(i) to classify Messrs Dakai, Ofisa and Sika as overseas players. The Club maintains the amendment was unauthorised and therefore invalid.

[9] The Club seeks declaratory orders that:

(i) The amendment to rule 5.7(i) and included as part of the Rarotonga rugby league competition rules for the 2013 competition and which defined an overseas player as a non Cook Islanders [sic] who had not continuously resided in the Cook Islands for 12 months prior to the start of the season is of no effect as the amendment was not made in accordance with rule 1;

(ii) The determinations of the Executive Committee of the respondent referred to in paragraph 14 of the statement of claim are of no effect.

(The determinations challenged relate essentially to Messrs Dakai, Ofisa and Sika being classified as overseas players.)

[10] The Club also sought a declaration that the penalty imposed is of no effect because rule 5.7(ii) was not made in accordance with rule 1, but in written submissions conceded that this application was misconceived as rule 5.7(ii) has always been part of the competition rules.

Defence

[11] The Association's position is that:

(a) The 2013 Rules, including rule 5.7(i), were properly amended and adopted and effective as at the commencement of the 2013 season.

(b) The determinations made by the executive committee in relation to the Club's breach of the rules were valid and effective.

(c) The penalty imposed by the executive committee was valid and effective and binding on the Club.

[12] The Association pleads in the alternative that Messrs Dakai, Ofisa and Sika were not “normally resident” in the Cook Islands in terms of the previous rule 5.7(i) in the 2012 Rules.

Issue

[13] The essential issue in this case is whether rule 5.7(i) of the 2013 Rules is valid and effective. It defines overseas players as “... non Cook Islanders who are not resident in the Cook Islands, and have not continuously resided in the Cook Islands for 12 months prior to the start of the season”.

[14] It is not in dispute that Messrs Dakai, Ofisa and Sika are overseas players in terms of this definition, if it is valid and effective.

The Rules

[15] The rules for both the 2012 and 2013 competitions include:

1. GENERAL
- 1.1 These rules governing the rugby league competition (“the Rules”) have been agreed to by the Cook Islands Rugby League Association (“the Association”) as being applicable to the domestic competition and shall continue in full force and effect unless any amendments are made in accordance with Rule 2.¹
- 1.2 The Executive committee may amend the Rules at any time prior to the first game of the competition. Should the competition have already commenced, amendments to the Rules may only be made at a full meeting of the Executive committee, and only for the purpose of clarification of existing rules where there appears to be inconsistency and/or conflict. If any Club, approved to be in the competition for that year, is not formally represented at any such meeting or does not agree to any proposed amendments, no amendments shall be made to the Rules.
- 1.3 All Clubs and teams participating in the main competition or any other competition administered by the Association shall be bound by the Rules.

...

¹ The intended reference is presumably to Rule 1.2 which immediately follows.

[16] Rule 1.2 thus provides authority for the executive committee to amend the Rules prior to the first game of the competition. Any amendment requires the agreement of all competing clubs which may be conveyed through their representatives at the meeting which makes the amendments.

[17] Rule 5 relates to registration and eligibility of players and is at the heart of this case. Rule 5 is set out below with the amendments purportedly made at a meeting of the executive committee on 21 January 2013.

5. REGISTRATION AND ELIGIBILITY OF PLAYERS

5.1 No club shall permit a player to play for that club unless that player is registered with the Association, for that club. Registration of a player is effected by the submission of the player's name to the Association on the team card for the first game the player plays, in the competition for that year, for that club.

5.2 **Where a club fails to field a team for the competition, after the start of the season and in which they may have already played some games, the Executive may exclude that team from the competition for the rest of the season, and penalize that club as it sees fit. Where the Executive excludes a team from the competition at any time during the season, all players registered by that club for that season will immediately be deemed free agents, and may play for any club of their choice for the rest of the season.**

5.3 Where a club registers a player on their team card, but that player did not play in that game, that player is not deemed registered for that club as per Rule 5.1.

Each club must present a team card containing the names of all players, including reserves, participating in that game, to the Referee. At the completion of each game, the Referee shall sign the team card as a true record of the players participating in the game.

5.4 (i) The team card (with Referee's signature) for each team for each game played must be submitted by the club to the Referee officiating that game at the end of the game. **A team that fails to provide a team card to the referee to sign immediately after the game will be subject to disciplinary determination by the Executive which may include forfeiture of match points, monetary fine or as it deems fit.**

(iii) Team cards submitted after this time, **and not acceptable to the Referee**, shall be void and not qualify for the registration of a player.

(iv) **Subject to Rule 5.4(i)**, the non-submission of a team card shall not affect the result of that game, and per the Referee's score which shall

be final. **A team that fails to produce a team card for the Referee to sign shall forfeit all rights to contest the Referee's final score.**

- (v) The team card shall be the sole proof of a player's registration and finals eligibility.
- (vi) An official Referee is defined as being a referee that is a registered member of the Cook Islands Referee's Association. If for some unforeseen reason the scheduled referee for a game is not present, then the Referee's Coordinator, or in his absence, a registered member of the Referee's Association, may nominate a referee for that game, but must be acceptable to both teams' Coaches.
- 5.6 In the event of a default, the team card must still be submitted as set out in Rule 11 and shall count towards a player's eligibility for finals play, but only for the team that wins that game by default.
- 5.7 In order for a player to qualify for registration for a game, he must take the field before the registration is completed. Should the player not take the field, he will be deemed not to have played in the game and that game will not count towards eligibility for finals play, except if it was a default win as per Rule 5.5.
- 5.8
 - (i) Overseas players shall be defined as non Cook Islanders who are not resident in the Cook Islands, **and have not continuously resided in the Cook Islands for 12 months prior to the start of the season.** Overseas players shall be eligible for registration with the Association in accordance with Rule 5.1 provided they have **written** clearance for such registration from their own overseas association or club. They are not permitted to play until such clearance is received by the **President of the Association.**
 - (ii) The penalty for a breach of this Rule shall be the automatic forfeiture of any match played by an overseas player not cleared to play by their overseas association to the satisfaction of the Association.
 - (iii) Clearance can be an email or fax or letter from an **Officer** of that overseas association addressed to the **President of CIRLA.**
 - (iv) Rule 5.7 and Rule 5.8 do not apply to Cook Islands players residing overseas, **except that all overseas Cook Islands players shall provide clearance from their overseas clubs to the President or authorized Officer of the Association for approval prior to playing.**
- 5.9 Each club shall not be permitted more than 3 overseas players registered with the Association at any one time.
- 5.10 Any player that is banned by any sporting code affiliated to CISNOC for more than a year, will not qualify to play in the competition while such ban is in effect.

(Emphasis added to show amendments as at 21 January 2013.)

[18] The amendment to rule 5 in issue in this case is the definition of overseas players. Rule 5.7(i) of the 2012 Rules provided:

Overseas players shall be defined as non Cook Islanders who are not normally resident in the Cook Islands.

[19] The amendment to rule 5.7(i) in the 2013 Rules deletes “normally” and substitutes a definition of the residency requirement, namely continuous residence in the Cook Islands for 12 months prior to the start of the season.

[20] Rule 17 provides:

17. PENALTIES

The penalty for a breach of any of the Rules shall be determined by the Executive Committee at its discretion and may include forfeiture of points gained in any game, monetary penalty or any other such penalty as the Executive Committee deems appropriate.

All clubs hereby agree to submit wholly and without exception, to the final decision of the Executive and/or Judicial Committee on all matters relating to the enforcement of these Rules, and, no proceeding or decision of the Executive and/or Judicial Committee shall be liable to be challenged in any court, except on the ground of lack of jurisdiction.

Applicant’s evidence

[21] Mr Mark Short swore affidavits dated 3 May 2013 and 10 May 2013. He has been the Club’s representative at meetings of the executive committee of the Association together with the president, Mr Robert Matapo. He attended the meeting of the executive committee on 21 January 2013 at which the changes to the 2012 Rules were made for the 2013 season. The Minutes of that meeting are an exhibit to his first affidavit. Relevant to this case, item 5 of the Minutes records:

5. The competition Rules for 2013 was moved and adopted by Albert Nicholas and seconded by Tua Dyer with the following amendments;

- Sec 2 Competition grades – the issue of the junior grades were raised and the U14s, U16s and U19s to remain. An U12 and an U10 to be introduced with the format and time of the game to be discussed. It is suggested that everyone comes to one field and play on the Saturday morning.
- Sec 5.4 Team Cards to be submitted

- Sec 5.7(iv) all overseas players including Cook Islanders must have clearance
- Sec 9 Defaulting of games to be fine minimum of \$100
- Sec 14.1 failure of ref to produce report on time be reprimanded and still produce a report
- Sec 18 Playing ground – all seats for the bench to be on the one side for all grades

[22] Mr Short refers to three other meetings of the executive committee prior to the commencement of the 2013 season, on 14 and 28 January and 4 February 2013 and exhibits available Minutes.²

[23] Mr Short says that apart from the amendments recorded in the Minutes of the 21 January 2013 meeting, he is not aware of any other amendments made to the Rules at any other meeting of the executive committee at which amendments to the Rules were considered. He says he received a copy of the 2013 Rules when they were distributed on 21 February 2013 and that the first complaint alleging breach by the Bulldogs of rule 5.7(i) of the 2013 Rules was on 23 February 2013 by Mr Taua Benioni at Game 3 of the competition.

[24] Mr Short says the Club contended at subsequent meetings of the executive committee that Rule 5.7(i), imposing a residential pre-condition of 12 months continuous residency, is invalid, and therefore none of Messrs Dakai, Ofisa and Sika were overseas players. They arrived in Rarotonga in August, September and October 2012 respectively and continued to reside in Rarotonga. In the Club's view, their eligibility required only registration under rule 5.1 which was done at Game 1.

[25] Mr Robert Matapo swore an affidavit, dated 8 May 2013. He refers to the executive committee meeting he attended on 14 January 2013 when "competition rules review" was on the agenda but, he says, not discussed. He was not at the meeting on 21 January 2013, but confirms the view of the Club that Messrs Dakai,

² Mr Short also refers to Exhibit D to his affidavit as being the written determinations of the executive committee on 12 April 2013 referred to at paragraph 14 of the statement of claim. Exhibit D is headed AGENDA. It has a date of 21 January 2013, but this date is inconsistent with a reference under CORRESPONDENCE to a letter received by the president on 21 March 2013 tabled at a meeting on 25 March 2013. This document may be the Agenda for the meeting on 12 April 2013, but the date of 21 January 2013 is puzzling.

Ofisa and Sika were not overseas players because Rule 5.7(i) was never amended. He denies at a meeting on 30 April 2013, admitting and apologising for a breach by the Club of the competition rules. He says he apologised for the way the dispute had been handled.

[26] Mr Tuaputa Dyer represented the Warriors Club at the 21 January 2013 meeting and is recorded at item 5 of the Minutes as seconding the motion for the adoption of the amended 2013 Rules. He says the amendments to the 2012 Rules for the 2013 competition were those listed in the Minutes and he is not aware of any other amendments adopted by that meeting.

[27] Messrs Dakai, Ofisa and Sika filed affidavits deposing as to their respective periods and purposes of residence in the Cook Islands.

Respondent's evidence

[28] Mr Charles Carlson, president of the Association since 2004, and Mr Navy Epati, vice-president for the last six/seven years, swore affidavits.

[29] Mr Carlson says he was present at both meetings on 14 and 21 January 2013.

[30] He describes the matters discussed at the 14 January meeting, which included a review of the 2012 Rules, with the aim to come up with draft 2013 Rules to be adopted at the Special General Meeting on 21 January 2013. He says that Mr Navy Epati, who has been long involved in the Constitution of the Association and the competition rules, went through the Rules and led discussion at that meeting.

[31] Mr Carlson chaired the Special General Meeting on 21 January. Because Mr Epati was unable to attend he, Mr Carlson, acted as facilitator. He describes that, using an overhead projector, the meeting was taken through the Constitution paragraph by paragraph and amendments were passed.

[32] He says the same process was followed in relation to the draft 2013 competition rules. The amendments were then passed by the meeting.

[33] Exhibit A to Mr Carlson's affidavit is a copy of the draft 2013 Rules which comprise the 2012 Rules with changes marked, including the amendment to Rule 5.7(i)

[34] Mr Carlson says there is "no doubt that the meeting passed and adopted the rules as set out in Exhibit A", although the Minutes do not specifically refer to the amendment to rule 5.7(i). He says the Minutes of the Association's meetings "are not always accurate".

[35] He refers to a complaint by the Avatiu Eels on 22 February 2013 about a "certain club" bringing overseas players. This was prior to Game 3 between the Bulldogs and the Avatiu Eels on 23 February 2013.

[36] This issue was raised at subsequent meetings on 4 March, 18 March, 25 March and 2 April. Mr Carlson describes that at the 2 April meeting, Mr Short for the Bulldogs proposed some amendments to the 2013 Rules, specifically relating to the definition of "overseas players" and the three overseas players limitation. The proposal did not receive support, most representatives being opposed to a change to the Rules mid-season.

[37] At a meeting on 8 April the issue was extensively discussed. The meeting agreed that Mr Carlson and Mr Epati should meet with the Bulldogs' executive. A meeting with the Bulldogs lawyer, Mr Anthony Brown, followed on 9 April.

[38] On 12 April 2013 the Association's executive committee met again. It was decided that the Bulldogs should forfeit all points so far earned in the competition, but their three preferred overseas players, Mr Tofilau, Mr Sika and Mr Ofisa should be permitted to play on certain conditions, including that the Club did not pursue the matter in Court.

[39] Mr Carlson says that at a further meeting on 15 April 2013 the Club advised that an appeal would proceed and questioned the validity of the new rule 5.1.³

³ Presumably a reference to the new rule 5.7(i) which defines "overseas players". There was no change to rule 5.1.

[40] There were further meetings on 29 and 30 April 2013 between representatives from the Association and the Club to try to resolve the matter. Mr Carlson refers to the Bulldogs admitting their executive had made a mistake. Mr Matapo in his affidavit denies that any such admission was made, though the Minutes record that on the basis of the admission, Mr Epati asked the executive committee to reconsider its decision to strip the Bulldogs of their points for the four games to date. However, the meeting confirmed its previous decision as to penalty, which was conveyed to the Club's representatives immediately after the meeting.

[41] Mr Navy Epati has taken responsibility for the competition rules and amendments to them.

[42] He says he arrived at the 14 January 2013 meeting after it started, and at the President's request he went through the 2012 Rules one at a time, noting comments from those present.

[43] Rule 5.7(i) was of concern. Mr Epati says he proposed an amendment to include a 12 months' residence requirement. This was agreed by the meeting. He says there was no disagreement from any of the delegates present, including Mr Matapo and Mr Short.

[44] Mr Epati prepared a copy of the Rules incorporating the agreed amendments for review by the president and Mr Kevin Iro.

[45] He did not attend the 21 January meeting but believes the copy of the amended Rules he prepared was presented by the President and adopted by the meeting. Following the meeting Mr Epati received a copy of the Rules as adopted, which included the new rule 5.7(i). He then prepared a clean copy for distribution.

[46] He says he was unaware of any challenge by the Club to rule 5.7(i) prior to these proceedings being issued.

[47] He infers that the Bulldogs' proposal at the meeting on 2 April 2013 to amend rule 5.7(i) was because they did not like the change adopted in the 2013 Rules.

[48] Further, like Mr Carlson, he believes Mr Matapo apologised for mistakes by the Club's executive and management in the application of rule 5.7(i) (which Mr Matapo denies).

[49] In affidavits sworn by Kevin Iro (Commissioner for the Association), Simi Teiotū (Referees' representative and secretary of the Association), Tina Iro (Treasurer of the Association), Taua Benioni (Competition Coordinator), Maru Willie (Tupapa Maraerenga Club), Tamaiva Tuavera (Sea Eagles Club), and Albert Nicholas (Avatiu Club), all attest to being present at the 21 January 2013 meeting and to the 2013 Rules being passed in the form exhibited to Mr Carlson's affidavit. For the Bears and Sharks Clubs, Simiona Nicholas and Fraser Nooroa respectively confirm in affidavits that they were not present at the 21 January meeting, but their clubs accept the 2013 Rules as exhibited to Mr Carlson's affidavit as the Rules for the 2013 competition.

Is Rule 5.7(i) valid and effective?

[50] Whether the amendments to the 2012 Rules adopted at the executive committee meeting on 21 January 2013 included the amendment to rule 5.7(i) defining "overseas players", is a matter of fact to be determined on the evidence.

[51] The Club relies significantly on item 5 of the Minutes of the meeting which does not refer to rule 5.7(i) in listing the amendments adopted. The Club also relies on the evidence of Mr Short and Mr Dyer, that the only amendments to the 2012 Rules authorised by the meeting were those listed in item 5 of the Minutes.

[52] However, the Minutes are unsatisfactory in a number of respects:

- Item 5 states: "The competition Rules for 2013 was moved and adopted by Albert Nicholas and seconded by Tua Dyer with the following amendments;".

It is clear from the evidence that the process undertaken started from the 2012 Rules with the members discussing, agreeing and finally adopting,

amendments to the 2012 Rules for the 2013 season. The amended Rules then became the competition rules for 2013. The Minutes are incorrect in referring to amendments to the competition rules for **2013**. The amendments were to the **2012** Rules.

- The reference under “Sec 2 Competition grades” in item 5 seems to be a suggestion about U12 and U10 grades (which was pursued at the meeting on 28 January 2013) rather than a reference to the amendments made to rule 2.
- A new rule 5.2 was inserted in the 2013 Rules giving the executive committee discretion to exclude a team from the competition for failure to field a team after playing in the competition. There is no reference to this provision in item 5 of the Minutes. But there is no suggestion in the evidence that there was controversy about this amendment and no suggestion by the Club that it also is invalid and of no effect because it is not an amendment referred to in item 5 of the Minutes.
- Those present at the 21 January 2013 meeting as recorded in the Minutes do not include Albert Nicholas (Avatiu) and Timaiva Tuavera (Sea Eagles) who both depose in their respective affidavits that they were present. Clearly Albert Nicholas was, as he is recorded in item 2 of the Minutes as seconding adoption of the President’s Report and in item 5, as moving the motion to adopt the 2013 Rules.

[53] The Minutes of the 21 January 2013 were not adopted and approved at the 28 January 2013 meeting nor any subsequent meeting, as a true and accurate record of the decisions taken at the 21 January 2013 meeting. This does not seem to be a practice followed by the executive committee. As this case demonstrates, it is a desirable and important practice. It is apparent that, as identified above, in several respects the Minutes of the 21 January 2013 meeting are not a true and accurate record of that meeting and cannot be relied on as such.

[54] Mr Carlson’s evidence is important. As President he chaired the meeting on 21 January 2013 and in the absence of Mr Navy Epati, who had taken responsibility

for the revision of the Rules, he facilitated the process of going through the Constitution⁴ and the draft competition rules for 2013. He had also been present at the 14 January 2013 meeting when the proposed amendments to the 2012 Rules had been discussed and representatives' suggestions considered and debated. Mr Carlson states clearly in his affidavit of 10 May 2013:

... there is no doubt that the meeting passed and adopted the Rules as set out in Exhibit A.

[55] He says that even though the Minutes do not refer specifically to rule 5.7(i) the amendment was accepted by the meeting.

[56] Other deponents for the Association who were present at the 21 January 2013 meeting (confirmed by the Minutes except in the case of Tamaiva Tuavera) depose that the amended Rules for the 2013 competition as set out in Exhibit A to the affidavit of Mr Carlson, were adopted by the meeting. The amended Rules include rule 5.7(i).

[57] Rule 1.2 provides that the competition Rules may be amended by the executive committee at any time prior to the first game of the competition, but all competing clubs must be either represented at the meeting or agree. The Club maintains, on the basis of the 21 January 2013 meeting and Mr Short's and Mr Dyer's affidavit evidence, that this requirement has not been met in respect of rule 5.7(i). However, if rule 5.7(i) was not amended at the 21 January 2013 meeting, there is no reason why Mr Short would have proposed at the 2 April 2013 meeting a further amendment to the definition of "overseas player". The only reasonable and logical explanation is that the Club realised they did not comply with Rule 5.7(i) in fielding the players they had and accordingly were in breach of rule 5.8.

[58] On the basis of the evidence of Mr Carlson and the seven other deponents for the Association who were present at the 21 January 2013 meeting, I accept that the 2013 Rules put to the meeting were those exhibited to Mr Carlson's affidavit, to which neither Mr Short nor Mr Dyer objected or dissented. Rather, I conclude, the

⁴ Certain amendments to the Constitution were adopted at the 21 January 2013 meeting. These are not relevant to this proceeding.

contention that rule 5.7(i) is invalid was raised by the Club after complaint was made at the Game 3 stage, that the Bulldogs were fielding more overseas players than permitted by rule 5.8.

[59] In reaching the above conclusion, I do not place weight on the alleged apology for breach of the 2013 rules by Mr Matapo at the meeting on 30 April 2013. There is a conflict of evidence which I am unable to resolve. The parties may have been confused as to what the apology related.

Retrospectivity

[60] The Club addressed this aspect in submissions, though it was not pleaded. I can deal briefly with this point. The 2013 Rules came into effect when they were adopted on 21 January 2013. The amendments to the 2012 Rules were adopted before the 2013 competition commenced as required by rule 1.2. The 2013 Rules were effective for the future competition season. They do not have retrospective application. While rule 5.7(i) as to the residency requirement may impact variously on players depending on their personal circumstances, it is not a retrospective provision. Any player concerned about playing in the 2013 competition would, or should, have been aware that under rule 1.2 the Rules could be amended by the executive committee at any time prior to the first game of the competition.

Penalty

[61] Rule 17 gives to the executive committee discretion as to the penalty when a breach of a rule is established. The breach in this case, is of rule 5.8. The Courts will not intervene in the exercise of a discretion which member clubs of the Association have agreed to vest in its executive committee. Rule 17 clearly states that decisions of the executive committee as to penalty are not amenable to challenge except for lack of jurisdiction. That does not arise in the circumstances of this case.

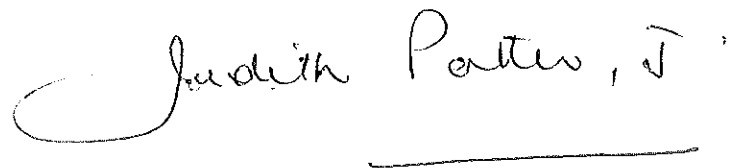
Decision

[62] For these reasons the application was dismissed.

[63] The declaration sought by the Association in its statement of defence are neither necessary or appropriate.

Costs

[64] The Association is entitled to costs. I did not receive submissions as to costs. If costs cannot be agreed by the parties, memoranda may be submitted of no more than one page in length within 14 days.

A handwritten signature in cursive script that reads "Judith Porter, J.". The signature is written in black ink and is positioned above a horizontal line that serves as a separator or underline.