



# Civil Resolution Tribunal

Date Issued: June 13, 2019

File: SC-2019-000607

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kerami v. Guildford Athletic Club*, 2019 BCCRT 722

**B E T W E E N :**

ZUBAIR KERAMI

**APPLICANT**

**A N D :**

GUILDFORD ATHLETIC CLUB

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Trisha Apland

### **INTRODUCTION**

1. The applicant, Zubair Kerami claims a refund for \$500 in soccer registration fees he says he paid the respondent, Guildford Athletic Club (GAC). The applicant says GAC held fewer practices than they had expected, cancelled games and that the coaching was poor.

2. The respondent says the applicant paid only \$440 in soccer fees and is not entitled to any refund based on the terms and conditions of its refund policy.
3. The applicant is self-represented. GAC is represented by Tony Rebelo, who is GAC's president.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act*. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.

## **PRELIMINARY MATTER**

8. The applicant originally commenced this dispute against GAC and “Tony Portugal”. The Dispute Response for “Tony Portugal” says Portugal is not the correct last name of the GAC’s president, whom the applicant intended to name. The name of the club president is Tony Rebelo. The parties agreed at the intake stage of this proceeding that Mr. Rebelo (aka Portugal) was incorrectly named.
9. The parties agreed to amend the Dispute Notice and the Dispute Response to name GAC as the only responding party. However, for whatever reason, only the Dispute Notice was amended. The Dispute Response that is before me is the response of “Tony Portugal”. I have reviewed the content of the Dispute Response and find it clearly and substantively contains the response of GAC.
10. Under section 61 of the Act, the tribunal on its own initiative, may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In keeping with the parties’ intentions, I order the respondent’s name as it appears in the Dispute Response amended to Guildford Athletic Club.

## **ISSUE**

11. The issue in this dispute is whether the applicant is entitled to a refund from GAC for soccer registration fees.

## **EVIDENCE AND ANALYSIS**

12. In a civil claim such as this, the applicant bears the burden of proving his claims on a balance of probabilities. While I have read all of the parties’ evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
13. In September 2018, the applicant registered his son who was about 16 years old, to play U17 fall seasonal soccer at GAC. The invoice in evidence shows the applicant

paid a registration fee of \$440. The season typically runs from mid-September to the beginning of March.

14. Due to a lack of player enrollment, GAC decided to merge the U17 and U18 teams. GAC offered refunds for players that did not want to continue to play on the merged team. The applicant agreed his son would play on the merged U18 team.
15. By mid-October, parents had complained to GAC of certain issues with the U18 team. The specifics of the complaints made at that time are not before me. To address the complaints, GAC said it assigned its staff coaches, including the Director of Player Development, to assist the U18 coach by attending and helping at practices and games. GAC says its staff coaches supported the U18 team from mid-October until the end of season.
16. The applicant provided his email communication with GAC. The emails show that on October 19, 2019, after a game was canceled due to lack of player attendance, the applicant wrote to GAC asking it to transfer his son to a U17 team with another club. The applicant said his son did not want to continue playing for the GAC team. He claimed the team had issues related to discipline, programming and cancellations.
17. On November 1, 2018, the applicant emailed GAC informing it that he was transferring his son to another club. He requested a refund. GAC's Director of Player Development responded that same day. He said they were working to rectify any problems the U18 may have been having. He said GAC was committed to the players, including the applicant's son. GAC had established a plan of action to call up players from other teams to ensure their roster size was manageable. He said he would ensure there would be enough players for the upcoming weekend game.
18. On November 8, 2018, the applicant emailed GAC telling it that another club would be in contact about his son's transfer to its U17 team. He asked GAC to remove the applicant's email from its list and that he would return his son's jersey.

19. The applicant emailed again on November 29, 2018, asking for a refund. The applicant stated that he was unable to register his son on a U17 team in any other club because his son was not permitted to play on a U17 team and he had no support from GAC. The evidence shows that players are not permitted to play in an age division down from the division in which they are registered. Having joined the merged U18 team, the league considered the applicant's son to be a U18 player for the fall season, even though he was about 16-years-old at the time.
20. In the November 29, 2018 email the applicant also mentioned he was concerned about a cancelled practice, the behaviour and language used by some of the players, and unfair play. He did not provide any further specifics of his concerns in this email.
21. On November 29, 2018, GAC emailed the applicant and refused to issue the applicant a refund based on the terms and conditions in its policy, which it quoted in its email. In this proceeding, GAC provided an active weblink to its current terms and conditions, which mirror those quoted in its November email. GAC says these were the applicable terms and conditions that the applicant had agreed to when he registered his son in September. Though I find he would have had the opportunity in reply, the applicant does not dispute that these were the relevant terms and conditions or that he acknowledged them on registration.
22. Despite the policy, the applicant claims he is entitled to a refund because he says games were cancelled, the coaching was poor and lacked discipline, the number of practices was reduced, and he was unable to transfer his son to another club due to lack of support and GAC merging the U17 and U18 teams.
23. GAC says the team played all of its scheduled games, except a "couple" that were cancelled due to weather and 1 game in October that was cancelled due to lack of players. GAC says it held practices at minimum once a week as required, but the applicant's son did not regularly attend. It says the applicant's son was not at those practices where GAC provided support and assisted the coach. GAC says its staff supported and monitored the U18 team, and the season was a success. While the

applicant pointed to the 1 cancelled October game, he provided no evidence of other game cancellations. The applicant has also not demonstrated that GAC reduced practices to less than a required number. The applicant's Dispute Notice states that out of frustration, his son did not go to practices. As a result, I prefer the evidence of GAC over that of the applicant.

24. The applicant, who carries the burden of proof, has also not established that GAC's coaching fell below an acceptable standard. The applicant did not submit any evidence about his allegations of poor coaching. While there might have been some problems with the team initially, I accept GAC's evidence that it provided additional coaches and support to the team throughout the season. If the initial problems related to poor coaching, which is not established, the applicant failed to prove the coaching remained poor after the added support.
25. It is undisputed that once the applicant's son joined the U18 team he was considered a U18 player despite his age, and the rules did not permit him to play for a U17 team. I find the applicant agreed to play his son on the U18 team and that GAC is not responsible if the applicant's son was not able to transfer to a different U17 team for this reason.
26. It is undisputed that when the applicant registered his son online he acknowledged the refund policy on the registration page. I find the terms and conditions stated in the refund policy in evidence applied to the applicant's registration fee.
27. GAC's terms and conditions provide circumstances where it will not issue refunds. I find the circumstances relevant to this dispute include: after a player has been placed on a team, where a player quits on their own accord, where a player leaves GAC to join another club, and where the refund was not requested before the deadline, which according to GAC's policy, is August 1, 2018 for the fall season. According to GAC's policy, if one of these circumstances exist, the applicant is not entitled to a refund.

28. Based on its terms and conditions, I find GAC is not required to refund the fee. The cancellation request was made after the deadline and after the applicant's son was placed on the team. I also find the applicant's son quit on his own accord, and as such, he would also not be entitled to a refund under the policy.

29. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. The respondent is the successful party but has incurred no tribunal fees and, while it said it incurred dispute-related expenses it did not claim any. Therefore, I make no award for tribunal fees or expenses.

## **ORDER**

30. I dismiss the applicant's claims and this dispute.

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Trisha Apland, Tribunal Member