



Civil Resolution Tribunal

Date Issued: June 20, 2019

File: SC-2018-008230

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hobenshield v. West Coast Auto Group Football Club*, 2019 BCCRT 754

B E T W E E N :

Ryan Hobenshield

APPLICANT

A N D :

West Coast Auto Group Football Club

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The respondent, West Coast Auto Group Football Club, is a soccer club that offers, among other things, soccer programs for youths. The applicant, Ryan Hobenshield, signed his daughter up for one of the respondent's teams. However, the applicant later withdrew his daughter because he did not think she would get adequate

coaching. The applicant seeks a refund of the \$610 registration fee he paid to the respondent.

2. The respondent says that its refund policy says that it only gives refunds in the event of an injury, which the applicant knew when he registered his daughter. The respondent also says that it offers high-level goalkeeping coaching. The respondent asks that I dismiss the claim.
3. The applicant is self-represented. The respondent is represented by a person whom I infer is a director or employee.

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.

ISSUES

8. The issues in this dispute are:
 - a. Is the refund policy unconscionable?
 - b. Did the respondent fail to provide an adequate level of coaching for the applicant's daughter?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove his case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
10. The applicant's daughter is a soccer goalkeeper. She played on the respondent's clubs for several years before the 2018-2019 season. The respondent's teams are rep teams, so players must be invited to join. The 2018-2019 season started August 1, 2018, but the respondent's practice was to invite players for an upcoming season during the spring. The respondent also collected registration fees in the spring.
11. The respondent invited her to participate in the 2018-2019 season in the spring of 2018. Even though the applicant was unhappy with the level of goalkeeper-specific training that the respondent had provided in the 2017-2018 season, he registered his daughter and paid the \$610 registration fee in April 2018.
12. The respondent has a refund policy, which says that there are no refunds once a player accepts a position on a team unless there is an injury or illness. The respondent says that the applicant knew about the policy when he registered his

daughter for the 2018-19 season, which the applicant does not deny. As discussed below, the applicant says that the respondent's refund policy is unreasonable.

13. The applicant first approached the respondent about a refund on August 9, 2018. By this time, an elite club had offered her a spot on their team, which included a higher level of training, albeit at a higher cost. At this point, the applicant's daughter had participated in a tournament and other team events. The applicant officially "resigned" from the club on behalf of his daughter August 12, 2018.
14. On August 28, 2018, the applicant asked the respondent how to formally leave the club and get a refund. The respondent replied that its policy was not to provide refunds, but that the Board of Directors did consider them on a case-by-case basis. The respondent did not offer a full refund.
15. The applicant argues that the respondent should not collect non-refundable registration fees 4 months before the season starts. The applicant says that because the registration deadline occurs in the middle of the playoffs, it is impractical for a player to try to join another team. Therefore, players have no choice but to accept a position with a team to avoid the risk of being left without one when the season starts. The applicant says that the refund policy is therefore "unreasonable and predatory".
16. The respondent argues that there are good reasons for its refund policy. The respondent says that accepting a spot on a club team is a 2-way commitment. Once the applicant accepted the spot on behalf of his daughter, the respondent stopped looking for a goalkeeper. In addition, the respondent relies on advanced registration to commit to fielding a team in a given age and gender category, which in turn requires the respondent to commit to coaches, field rentals and other costs.
17. The respondent also relies on the refund policies of neighbouring clubs, which are generally the same as the respondent's. The applicant says that just because all of the other clubs are imposing a similar policy, does not make it fair or reasonable.

18. It is undisputed that the parties entered into a contract when the respondent signed his daughter up for the club in April 2018 and paid the registration fee. It is also undisputed that the refund policy formed part of that contract.
19. While the applicant does not use these exact words, his arguments raise the legal issue of unconscionability. A contract is not enforceable if it is unconscionable. A contract is unconscionable when it results from an inequality in bargaining power and results in a substantially unfair bargain. See *Loychuk v. Cougar Mountain Adventures Ltd.*, 2012 BCCA 122. In effect, the applicant argues that when the respondent requires a non-refundable registration fee at a time when its players have no choice but to accept, it uses its stronger bargaining position to force a substantially unfair deal.
20. I find that the parties' contract is not unconscionable. First, I find that there is no inequality in power as the applicant suggests. I find that the early registration date has a similar impact on both player and club. The player wants to make sure she has a team to play on and the team wants to make sure it has enough players to field a team. The early registration date provides certainty to both parties in exchange for fewer opportunities for recruitment and less player mobility.
21. Second, I find that the contract is not substantially unfair. I am persuaded by the respondent's arguments that there are good reasons why it needs to solidify its rosters and collect registration fees well in advance of the start of the season. I agree that a strict refund policy provides necessary certainty for the respondent to commit to fielding teams. In fact, this dispute provides an illustration of why the respondent needs certainty. The withdrawal of the applicant's daughter created a significant disruption to her team, which had to find a replacement goalkeeper after the season started. Finally, I agree with the respondent that the refund policies of its competitors are relevant because they are evidence of an industry standard.
22. For these reasons, I find that the refund policy is not unconscionable and is enforceable as part of the parties' contract.

23. As for the applicant's arguments that the respondent breached the contract by failing to provide adequate training, I agree with the respondent that there the parties' contract did not include a commitment to provide goalkeeper-specific instruction. Many of the applicant's complaints relate to the level of instruction in the 2017-2018 season, which is not relevant to the question of whether the respondent breached the parties' contract for the 2018-2019 season. In addition, the fact that the applicant signed his daughter up for the 2018-2019 season raises the question of how serious his complaints were about the 2017-2018 season. For its part, the respondent says that the applicant's argument that the respondent was going to provide insufficient training for the 2018-2019 season was speculative at the time the applicant removed his daughter from the team. In the absence of a specific agreement about the level of instruction, I find that the respondent did not breach the parties' contract.

24. Therefore, I find that the applicant is not entitled to any refund.

25. 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. The applicant has not been successful so I dismiss his claim for reimbursement of tribunal fees and dispute-related expenses. The respondent did not claim any dispute-related expenses.

ORDER

26. I dismiss the applicant's claims, and this dispute.

Eric Regehr, Tribunal Member