

CANADIAN LACROSSE ASSOCIATION APPEALS COMMITTEE

IN THE MATTER OF AN APPEAL BY DARYL VELTMAN AND THE WESTERN
LACROSSE ASSOCIATION FROM A DECISION OF THE CLA TRANSFER
REVIEW COMMITTEE

BETWEEN:

DARYL VELTMAN AND WESTERN LACROSSE ASSOCIATION

APPELLANTS

AND

ONTARIO LACROSSE ASSOCIATION

RESPONDENT

Memorandum of Decision

Panel:

Tom Engel (Chair) – President Alberta Lacrosse Association

Glen Henkewich – President Manitoba Lacrosse Association

Bruce Logan – President Lacrosse New Brunswick

Appearances:

OLA – Doug Luey

Daryl Veltman – For himself

Western Lacrosse Association – Toby Baker

Coquim Adanacs – Les Wingrove

PRELIMINARY MATTERS

Parties

By request, Coquim Adanacs were granted party status since that is the team which is trying to secure the playing rights for Daryl Veltman. Barrie Lakeshores, to whom Daryl Veltman's playing rights belong too, was also offered party status but it was declined.

Tape Recording of Hearing

There was a request that the hearing be tape recorded and the Committee found that that was a reasonable request and would also recommend that all Appeals be tape recorded, with the exception of deliberations.

Unfortunately, due to a misunderstanding by the Chair about how to key in the code for recording, the hearing was not tape recorded. The Committee and all parties believed that it was being tape recorded.

While this is unfortunate, this does not affect the validity of the hearing.

Evidence

The Committee was provided with a package of materials under cover of a letter from Toby Baker dated May 29, 2007, and this package was read in advance of the hearing.

In addition, the Committee had some other information which was disclosed to all parties in advance of the hearing, by email.

There were requests for information made by the Chair of the Committee to Mr. Baker and Mr. Veltman which both parties refused to provide in advance of the hearing. The parties were advised, in advance of the hearing, that they should be prepared to deal with the question as to whether an adverse inference should be drawn because of that refusal. As will be seen, it was unnecessary to deal with that issue.

A question arose as to what happened at the hearing before the Transfer Review Committee (TRC) in relation to Mr. Veltman not being present. The Chair of the TRC, Ahmed Jomha, advised as follows:

“As the matter was between the MAs we took it to mean that it would be up the BCLA to bring forward Mr. Veltman if they wanted to have him speak. We asked if he was attending and we were told that he was not.”

That information was provided to the parties in advance of the hearing.

During the hearing, the Committee asked the parties to advise as to their understanding of what happened in relation to Mr. Veltman's nonattendance.

Mr. Veltman said that he put up the first \$500.00 deposit for the application to the Transfer Review Committee and then never heard anything further. Mr. Luey said that Sohen Gill, who was representing the BCLA, advised that he was at school so he would not be attending.

In relation to the substantive issue, the Committee heard evidence and/or submissions from Toby Baker, Daryl Veltman, Doug Luey and Les Wingrove.

Toby Baker

As Toby Baker did not have any first hand information, he only made submissions.

Darryl Veltman

Mr. Veltman advised the Committee that he has had uncles living in British Columbia and had made trips back and forth between Ontario and British Columbia ever since he was a child, visiting them. He said that his uncle Jim Veltman played in B.C. He had heard nothing but good things about living in B.C., not only about lacrosse but how wonderful it is to play in British Columbia and to live there. He said that it was always in the back of his mind to move out to British Columbia and play lacrosse.

Mr. Veltman said he would have moved sooner, but he was the captain of the Orangeville Junior A team and wanted to fulfill his commitment.

He said that he would be returning to school in the off season at Hobart University and intends to return to British Columbia once he graduates.

Mr. Veltman stated that if his main intent was to play lacrosse, he would have stayed and played for Barrie, which has a good team.

He said that he wanted to move to British Columbia to live there and to experience British Columbia, whether he plays lacrosse or not.

Mr. Luey was then provided an opportunity to question Darryl Veltman. He asked him how many days he spent in British Columbia in 2006 and the answer was that he had spent about 2 weeks and then made his decision to move.

Mr. Luey then asked whether, during 2006, he informed the OLA or CLA of his intentions. Mr. Veltman responded that, in October 2006, he informed the CLA by email before the OLA draft. Mr. Luey asked whether he told Lindsay Sanderson, the head coach of both the Orangeville Junior A team and the Barrie Lakeshores of his intentions and Mr. Veltman said that he had and that he was supportive.

Mr. Engel then asked questions of Mr. Veltman and was informed that Mr. Veltman was living in a basement type suite. Pat Coyle also lived in the same house, as a renter. Both Mr. Veltman and Mr. Coyle rented from the owner. He said that his father made \$300.00 a month cash payments for the rental accommodation, even though he was not living in the house, because this was what was required to secure the accommodation. As far as he knew there were no receipts for that.

He said that he arrived in British Columbia about 3 ½ weeks ago. He said that he went home first and picked up some things and then went to B.C.

Mr. Veltman said that no one with the Adanacs helped him in relation to any of the paper work that he presented. His brother did not help him or suggest what documents should be obtained to evidence a change in residence.

Mr. Logan then asked questions of Toby Baker in order to clarify the grounds of appeal. Mr. Baker elaborated on the issue about Mr. Veltman not having an opportunity to be present at the TRC hearing and also stated that there was a concern about the “dual involvement” of Chuck Miller who Mr. Baker said was still with the OLA. This was quickly clarified by Mr. Luey and others that, once Mr. Miller took an executive position with the CLA, he no longer held a position with the OLA.

Mr. Logan asked Darryl Veltman whether he ever got a response to his email of May 21, 2007 to the CLA and Mr. Veltman advised that he had not.

Mr. Henkewich then asked Mr. Veltman questions and was told that his October 2006 email to the CLA also had no response and that he did not notify the OLA of his intention to move because he thought that the CLA was the decision maker.

Les Wingrove

Mr. Wingrove advised that last year he had directed Mr. Veltman to the employment opportunity with the City of Coquim. That is the job that Mr. Veltman currently holds for the summer of 2007.

Submissions of the Parties

The Appellants advanced 3 arguments as follows:

- a) The hearing before the TRC was flawed because Mr. Veltman was not provided an opportunity to be present and so the Committee should consider the matter as if the hearing before the TRC had not taken place;
- b) Mr. Veltman did change his residence and on a permanent basis;
- c) The primary reason for the move was not to play lacrosse.

Respondent

1. There was not a change in residence because Mr. Veltman was still referring to Ontario as “home”;
2. The primary purpose of the move was to play lacrosse.

Reasons for Decision

The Committee was unanimously of the view that the appeal must be dismissed.

Unfair TRC Hearing

The Committee is of the opinion that Mr. Veltman should have been directly and specifically provided an opportunity to be present at the hearing. It appears that there was a miscommunication or non-communication between Mr. Gill and Mr. Veltman as to whether Mr. Veltman would be participating in the hearing. In the future it will be accepted that the TRC will seek direct confirmation from the player as to whether he or she wishes to participate in the hearing.

Because of this, the Committee is of the opinion that it must consider the case anew or *de novo* as if the Transfer Review Committee hearing had not taken place.

The Role of Chuck Miller

The Committee is of the view that there is no merit to the argument that there was bias or the appearance of bias because Chuck Miller had a role with the OLA. This appears to be an argument based on a misunderstanding of Mr. Miller’s status with the OLA at the time of the hearing. The fact is that he no longer held a position with the OLA and only held an executive position with the CLA.

Standard of Review

But for the fact that there was an unfair hearing before the TRC as explained above, the burden would have been on the Appellant to show that the decision of the TRC was unreasonable, however, because of the unfair hearing there is no such burden.

Burden of Proof

CLA 17.3.4.6 (iv) provides as follows:

“A participant may move from one MA/AMA’s jurisdiction to another and be eligible to play under the following circumstances:

(iv) the player moves from one MA/AMA to another where the primary purpose is not to play lacrosse.”

The Committee is of the view that the burden of proof to prove that the player has moved and that primary purpose is not play lacrosse is on the player. After all, it is the player who is most familiar with both of those issues.

Did Daryl Veltman Move from one MA to another?

The answer to this question is yes. Mr. Veltman did move from Ontario to British Columbia. The policy does not define what “move” means but it is obvious that it must mean that there must be a change in residence. The policy does not say that there must be a permanent change in residence. The Committee believes that it will be sufficient to show that, at the material times, the player has given up his residence in the original jurisdiction and established a residence in the second jurisdiction. The Committee does not view the fact that Mr. Veltman referred to Ontario as “home” as being significant because it is a common place for people who have been away from where they were raised for years to refer to that as “home.”

Was the primary purpose of the move not to play lacrosse?

Committee is of the view that Mr. Veltman has not proven that his primary purpose for the move was not to play lacrosse. The Committee is of the view that the evidence given by Mr. Veltman shows that the primary purpose of the move was to play lacrosse.

In addition to the evidence referred to above, the Committee refers to Mr. Veltman’s letter which is found at page 39 of his materials which contains the following statement:

“I have talked about moving to B.C. and playing lacrosse with my brother for a very long time and after he had been given the chance to move, the desire to move grew.”

Conclusion

Since Mr. Veltman has failed to prove that the primary purpose of his move was not to play lacrosse, the appeal is dismissed.

The Committee has some sympathy for Mr. Veltman and feels it would be in the best interest of everyone for the Barrie Lakeshores to make a *bona fide* effort to negotiate a transfer. The Committee has no jurisdiction to direct that that occur and can only recommend this. Presumably, if Mr. Sanderson does support Mr. Veltman’s move to British Columbia, there is a reasonable prospect that that negotiations will be successful.

The Committee has some concerns that Mr. Veltman paid \$500.00 for a Transfer Review Committee hearing which was held to be unfair. CLA 17.3.4.10.3 provides that, if Mr. Veltman had been successful at the TRC level he would have received a refund of \$250.00.

Mr. Veltman had to pay another \$500.00 pursuant to CLA 4.6.3 for this appeal.

There is no way to determining whether the result would have been different at the level of the TRC if Mr. Veltman had been present or, if Mr. Veltman had been present and the decision of the TRC had been against him, he would have appealed to this Committee. However, given that the evidence heard by this Committee is essentially what was presented at the level of TRC, it is likely that the result would have been the same if Mr. Veltman had been present and, we think, Mr. Veltman would have appealed to this Committee.

So, it is likely that there would have been an expense to Mr. Veltman of \$1,000.00 even if the hearing at the TRC had been valid. Having said that, because of the error, we think that Mr. Veltman should have \$500.00 of his fees returned to him and we so direct.

Dated June 14, 2007 at Edmonton, Alberta.

CLA APPEALS COMMITTEE

Per: _____
Tom Engel, Chair