

CANADIAN LACROSSE ASSOCIATION APPEALS COMMITTEE

IN THE MATTER OF AN APPEAL BY THE EDMONTON ECLISPE JUNIOR A LACROSSE TEAM FROM THE DECISION OF THE TRANSFER REVIEW COMMITTEE RULING ALLOWING MR. SIMON GIOURMETAKIS TO BE TRADED TO COQUITLAM ADANACS.

EDMONTON ECLISPE JUNIOR A LACROSSE TEAM

APPELLANTS

AND

COQUITLAM ADANACS JUNIOR A LACROSSE CLUB AND

SIMON GIOURMETAKIS

RESPONDENTS

REASONS FOR DECISION

CLA APPEALS COMMITTEE:

Terry Rowland, Chair (CLA VP Organizational Development)

Joey Harris (CLA President)

Shawn Williams (President Saskatchewan Lacrosse Association)

Appearances:

Rioth M. Jomha: Edmonton: Eclipse

Roderick C. Payne: Counsel for the Respondent Giourmetakis

Curt Malawsky and Simon Giourmetakis

Part 1: COMPOSITON of the PANEL

1. There was an objection to one of the members sitting on the Appeals Committee by Mr. Payne who submitted that Mr. Harris had a conflict of interest.
2. The argument was that Mr. Harris could not be impartial due to his long time association with another CLA board member, Mr. AJ Jomha, brother of the Appellant, Mr. Rioth Jomha
3. The AC retired to deliberate on this application. Mr. Harris stated that this association would not interfere with his objectivity in this appeal. The AC accepted this and the Appeal proceeded.

Part 2: INTRODUCTION

4. The CLA TRANSFER REVIEW COMMITTEE (TRC) decided to approve the trade between the Eclipse and the Adanacs based on consideration of payment of \$4000.00. The TRC also stated if the money was not paid, there will no trade.
5. They based their decision on there being “unusual circumstances” involved in this transaction, being: (a) The dispute between the club and the former co-coach and the current GM and Coach and the former Co-coach. (b) The disintegration of the relationships between the player and the Club and his family. (c) The disarray evident within the Eclipse Club at the time these issues were going on and (d) Promises made to the player about being free to leave in his 21st year.
6. The Eclipse appealed.

Part 3: THE APPEAL GROUNDS and SUMMARY of ARGUMENTS:

7. The TRC relied on “unusual circumstances” rather than “exceptional circumstances” as stated in the CLA Manual.
8. The suggestion the TRC did not find or state or rely on compassionate grounds is either irrelevant or incorrect.
9. Relevant facts which should have figured in their ruling including that: the TRC noted in its decision that the Eclipse was talking to Coquitlam, pushing for a player in return but then go on to say that inter-provincial transfers are very difficult. They say that in this case Coquitlam did not have a player who would agree to go and cannot force any to go. The TRC ignored the fact that at the time of the TRC hearing they were advised that the Eclipse had forwarded a proposal to Coquitlam (which proposal actually involved the transfer of B.C. players to Edmonton, but which the TRC did not seek to enquire about) which the coach, Curt Malawsky, was pursuing (a three way deal).
10. The TRC overstepped its bounds by forcing the Eclipse to deal with one team only. There is nothing in the Operations Policy enabling the RTC to compel the Eclipse to release a player to one team.
11. Mr. Roderick Payne, acting on behalf of Mr. Simon Giourmetakis, stated in his reply to the appeal ground that the suggestion the TRC did not find or state or rely on compassionate grounds is either irrelevant or incorrect that the TRC found the circumstance were so unusual that it was necessary to allow a transfer of the athlete to the Coquitlam Adanacs. The appellant’s suggestion ignores the clear record that was before the TRC.

12. The Appellant suggests the TRC misquoted or left out relevant facts which should have figured in their ruling. With respect, the TRC had a review request in front of it. The request was put forward with six grounds for review. The TRC's duty was to consider the grounds put forward by the athlete, not the missives of the Edmonton Eclipse Lacrosse Club. After duly considering the grounds advanced by Mr. Giourmetakis the TRC made findings of fact in respect of:

a) The dispute between the club and the former Co-coach and the current GM and Coach and the former Co-coach.

b) The disintegration of the relationship between the player and the Club and the family and the Club.

c) The disarray within the Edmonton Eclipse at the time the issues were going on.

Part 4: DECISION and REASONS

13. The AC's role is not to retry the case based on previous information, rather to examine the decision and to determine whether any errors were made by the TRC. The AC is not to substitute its opinion for that of the TRC unless it has been shown that the TRC was in error or arrived at an unreasonable decision. In other words, even if the AC would have decided differently, unless it can be shown that were such errors, the decision will stand.

14. As for the potential trade that was on the table at the time of the TRC hearing, the evidence was that that was no longer viable so it was reasonable that that would not have affected the outcome.

15. The TRC appears to have found that the fact the player only wanted to go to Coquitlam and rejected all other trades was his right as he had permission from one of the members of the Eclipse management to, as a 21 year old, to respond to inquiries from other teams. He also had a promise of the Eclipse not standing in the way of his release. It is therefore reasonable to say he could chose the team to which he would go. Without that promise, the AC expects that the result of the review by the TRC may well have been different, in terms of whether a player can demand a release or trade to a specific team and then have the TRC approve that when the team owning the rights to the player wants to trade the player to another team. In the view of the AC, that is inconsistent with the words, spirit and intent of the Transfer Policy.

16. The intent of the Transfer Policy is to provide a balance between allowing players a place to play lacrosse and the teams' right to retain an asset or investment in the players.

17. While there is a general rule that all parties are to bargain/negotiate in good faith, when the negotiation breaks down, the team ultimately retains the rights of the player subject to the player attaining a "free agent" status as per the Transfer Policy.

18. The ruling of the AC is that the TRC mentioned "unusual circumstances" in error and meant to say "exceptional circumstances." The ruling of the TRC, which made reference to unusual circumstances being definitely out of the ordinary, should have stated "exceptional", meaning "surpassing what is common or expected".

19. It was reasonable to find, as the TRC did, that these circumstances did come into play as the relationship between the player and team deteriorated so much that to remain with the Eclipse, in the view of the TRC, would not have been in the best interests of either party and there was the promise of free agency in the player's 21st year, facts that the TRC was reasonably entitled to find on the evidence before it. So, based on the CLA Box Sector Policy 18.4.12.1, in the AC's view the TRC did have reason to find exceptional circumstances for their decision to allow the requested transfer of Mr. Giourmetakis.
20. In the view of the AC, the TRC did take into account all relevant evidence and submissions of the Appellant.
21. Therefore the Appeal has been denied.

Dated this ^{^^} day of September, 2010

Terry Rowland

Chair

