



Arbitration CAS 2007/A/1431 Rangers Association Football Club v. New Zealand Football (NZF), award of 10 March 2008

Panel: Mr Barry Paterson QC (New Zealand), Sole Arbitrator

Football

Eligibility of a player for registration with a national federation

Interpretation of “national association” for the purpose of a player’s registration)

Standard of proof applicable to the evidence of a previous registration of a player

1. In accordance with the applicable national association’s regulations concerning international transfer, a player who has previously been registered with a “national association” cannot register with a new club affiliated to another national association until an International Transfer Certificate (ITC) has been obtained. To interpret the phrase “national association” one should apply the rules governing the interpretation of contracts because the basis upon which clubs and players are bound to the rules of a national association is a contractual one. Moreover, the laws, statutes and rules of FIFA shall be complied with by the national association as part of its membership of FIFA. In this case the natural and ordinary meaning of the words “national association” must extend to all players registered with clubs and affiliated associations which are members of a national association. The meaning shall not be reduced to a national football association recognized as such by and being a member of FIFA. If this were the case there would not be a workable international transfer system in accordance with FIFA obligations.
2. With regard to the evidence of a previous registration of a player in another country, the adjudicating body does not have to be satisfied beyond reasonable doubt, but shall be satisfied to its comfortable satisfaction taking into account the seriousness of the allegations and in particular the consequences. In this regard, if the evidence in favour of a previous registration of the player in another country outweighs overwhelmingly the contrary evidence, then until an ITC has been obtained, a player cannot be registered with a new club affiliated to another national association.

The appellant, the Rangers Association Football Club Incorporated (“Rangers”) is a club which is registered with Mainland Football (“Mainland”) one of the seven Federations established by the respondent, New Zealand Football Incorporated (“NZF”).

NZF is the national body responsible for association football in New Zealand. One of its objects is to advance, promote and control football in New Zealand in every way it thinks proper for the good of the game. Another is to act as the controlling authority for football in New Zealand.

The affected party, the Burnside Association Football Club Incorporated (“Burnside”) is also a club registered with Mainland.

A team from Rangers played in the 2007 Matson’s Mainland Premier League. At the end of that season it participated in a promotion/relegation series with Burnside for the right to participate in the 2008 Matson’s Mainland Premier League.

Mark Pollock joined Rangers in August 2007. He played for the club in the promotion/relegation matches. Prior to those matches Mainland had checked the eligibility of Mr Pollock. It advised both clubs that all their intended players, which included Mr Pollock, were eligible to play in the matches.

As a result of the promotion/relegation series won by Rangers, it was entitled to participate in the 2008 Matson’s Mainland Premier League. Burnside did not gain promotion.

Burnside appealed against Mainland’s decision that Mr Pollock was eligible to play in the series. The appeal was heard by the New Zealand Football Appeals Committee (“NZFAC”).

The NZFAC delivered its decision on 12 November 2007. The notation at the top of the appeal reads *“Appeal by Burnside AFC against a decision by Mainland Football (Federation 6) re player eligibility of Mark Pollock (Rangers AFC)”*.

The decision notes that NZFAC provided Rangers, as a potentially affected club, the opportunity to make submissions to it on the matter of the appeal and that it did so.

Burnside succeeded in its appeal to the NZFAC. The consequence of the appeal decision is that Rangers is deemed to have lost the play-off series because of Mark Pollock’s participation in both games as an ineligible player. The further consequence is that Burnside is deemed to have won the play-off series and will be entitled to play in the Matson’s Mainland Premier League in the next season instead of Rangers.

The relevant facts are set out in the appeal decision of NZFAC. In early August 2007, Mark Pollock joined Rangers and apparently told the club that he had previously played football in England but only at a social level for an “unofficial Sunday League” team called Warbreck and he had no prior formal club affiliation that would require a transfer or an international clearance.

Rangers was unable to contact the Warbreck Club as it did not appear to have any electronic or other address or contact details available. Warbreck fielded two men’s teams in the season in which Mr Pollock played for it. One team played in the Liverpool County FA League and its reserve team played in the 1 Zingari Combination League.

Mr Pollock played four games for Rangers at the end of the 2007 season after Rangers had applied for and obtained Mr Pollock's registration with the Mainland League.

There were two matches in the promotion/relegation series played on 8 and 15 September 2007. Prior to those matches Mainland advised both clubs that it would examine their list of proposed players to ensure that there was no eligibility question by the time the first match was played.

Mainland advised both Burnside and Rangers prior to 8 September 2007 that all the intended players from both clubs were eligible to play in the promotion/relegation series. Burnside then raised an issue about Mr Pollock's eligibility based on the number of games he had played for Rangers. This matter is not an issue in this appeal.

On 10 September, between the two matches, Burnside raised with Mainland the issue of whether Mr Pollock had obtained an overseas clearance to play in New Zealand. Mainland advised that it had received from the Rangers Club an application for a registration of Mr Pollock on the basis he had no previous club affiliation having played only social football previously. Mainland stated that it had advised Rangers, at that time, that it should be absolutely sure that no international clearance was required. It said that Rangers was adamant that Mr Pollock did not need a clearance.

Mainland did take some steps to check Mr Pollock's eligibility. It asked NZF *"to check with the English FA if Mark Pollock born 30 November 1980 whose last known club was "Sunday League at Warbreck" was registered with the English FA and therefore might require an international transfer"*.

NZF made the appropriate request to the English FA on 11 September 2007 but unfortunately this misstated Mr Pollock's birth date. The FA responded later on 11 September 2007, stating *"We have no record of a player by this name on our system"*. The NZFAC accepted evidence that there were several Mark Pollocks registered to play in England at that time.

NZF advised Mainland on 12 September 2007, that FA did not have a record of Mr Pollock as a registered player. A Mainland official evidently identified the mistaken date of birth and notified NZF of this but NZF did not take the position further.

Mainland made further inquiries itself with Liverpool FA. Its request read:

"We have a Mark Pollock (born 30/11/1980) now playing in our competitions here in Christchurch, New Zealand. He has stated that his last Club was Warbreck. Can you please confirm if he was a registered player with the Liverpool FA during/prior to August 2007".

The Liverpool County FA replied to Mainland in the following terms:

"We do not keep records of registration of players who sign for Clubs outside of the professional game. Although I can confirm that we did process disciplinary reports for a Mr Pollock who was registered as you have detailed" (NZFAC's emphasis).

On 13 September 2007, Mainland advised NZF of the response from the Liverpool County FA stating that it was not comfortable that the English FA had *"searched enough to give Mainland Football assurance that he is unknown. Therefore, I am requesting that NZ Football is satisfied with the response from the English FA"*

and can I have assurance that Mark Pollock is eligible to play with Mainland Football competitions since an ITC was not required”.

NZF responded on 14 September 2007 as follows:

“New Zealand Football has received responses from the FA and the Liverpool County FA which indicate that Mr Pollock is not a registered player with either Association.

As the competition he wishes to play for is under the Mainland Federation, the decision of Mr Pollock’s eligibility is for you to make.

With regard to the request for an International Clearance, the FA would be unable to complete this as they do not hold Mr Pollock’s registration”.

The NZFAC noted that it had not seen written communication between Liverpool County FA and NZF which confirmed that the player was not registered with that County’s FA.

Burnside continued to make inquiries with the FA but these inquiries were not completed until after Mr Pollock had played in the second match on 18 September 2007. The result of these inquiries may be summarized as:

- The Gloucestershire FA confirmed that a player registered under the name of Mark Pollock with the same date of birth was registered with Liverpool FA.
- The Manchester FA advised that Mr Pollock was registered with Liverpool FA.
- The Cumberland FA confirmed that Mark Pollock with the relevant date of birth was registered with team called “Warbreck” which was affiliated to the Liverpool County FA.
- Devonshire FA advised that Mr Pollock was registered with the Liverpool FA.
- The NZFAC inferred that the various Counties FAs had access to an electronic database of players. This indicated the likelihood of a registration system.

Burnside also enquired with the 1 Zingari Combination League. On 19 September 2007, a member of that club confirmed that Mark Pollock played for Warbreck *“last year in the Liverpool County Premier League”*. His registration had expired at the end of May 2007 and he was not registered for the subsequent season.

On 24 September 2007, the English FA advised Burnside that it had located Mark Pollock’s details and that he had previously played for a team called Warbreck registered with the Liverpool FA.

It will be necessary to refer in greater detail to the relevant rules and regulations. It is suffice to say at this stage that the NZFAC determined Mr Pollock’s eligibility on the basis of the NZF regulations which provide that a player may not play in New Zealand unless registered under NZF rules. In the case of a player who has previously been registered with another National Association, that player cannot register with a New Zealand club until an International Transfer Certificate (ITC) has been obtained.

The NZFAC determined on the basis of the evidence before it that Mr Pollock had been previously registered with the English FA and was therefore not eligible for registration in New Zealand without obtaining an ITC.

As Mr Pollock was not eligible for registration in New Zealand, he could not be a registered member of Rangers. Rule 3.3 of the rules and regulations of the Matsons Mainland Premier Football League had therefore not been complied with. This rule stated:

“Players of any Club taking part in the play-off are required to be registered players of the Club concerned ...”.

As a result of Mr Pollock not being such a registered player, the promotion/relegation series was, in accordance with the decision of NZFAC, awarded to Burnside.

On 29 November 2007, Rangers filed its statement of appeal. It proposed the Hon B J Paterson QC as preferred arbitrator and NZF agreed to the appointment. The statement of appeal noted that Burnside was an affected party.

Rangers filed an appeal brief with its statement of appeal on 13 December 2007.

On 19 December 2007, the Secretary General of CAS confirmed the appointment of B J Paterson as sole arbitrator. In addition, pursuant to art R64.2 of the Code of Sports-Related Arbitration (Edition 2004) (the “Code”), the CAS Court office notified the parties the amount and method of payment of the advance costs in this matter.

A procedural teleconference was convened on 20 December 2007 attended by counsel for Rangers and a representative of NZF.

By letter of 21 December 2007, NZF advised the CAS Oceania Registry that it would not participate in the appeal but would accept and abide by any decisions that CAS determined based on the information already provided.

NZF declined to pay its portion of the first advance of costs and in accordance with art. R.64.2 of the Code, Rangers paid NZF’s share of the estimated costs as well as its own.

As NZF had originally raised an issue as to jurisdiction, the sole arbitrator invited Rangers to make submissions on CAS’s arbitration, which Rangers did.

In an award on jurisdiction dated the 5th day of February 2008, the sole arbitrator provisionally determined that CAS does have jurisdiction to hear the appeal, but reserved the right to Burnside, which had not been invited at that stage to make submissions, to raise the jurisdiction at a substantive hearing if it wished to do so. It has not done so.

With the consent of Rangers, the appeal brief and other relevant papers were served on Burnside and a procedural teleconference was held on 20 February 2008. Rangers has also consented to Burnside participating in this arbitration as an affected party.

In accordance with the directions given, on 21 February 2008, Burnside filed an answer to the appeal brief. Rangers, in accordance with directions given, filed a reply to this answer on 25 February 2008.

Both Rangers and Burnside have agreed that the sole arbitrator will determine the appeal on the submissions made. The following award is that determination.

LAW

1. The issue on the first ground of appeal is the correct meaning of the phrase *“another National Association”* in regulation 5.5(b) of NZF’s Regulations. Rangers’ position is that the clear and unambiguous meaning of this term, in the circumstances of this case, is the English FA. Burnside submits that the NZFAC finding is correct and the term includes *“bodies affiliated to, or otherwise formally associated with, the English FA”*.

2. The relevant portion of regulation 5.5 of the NZF’s Regulations reads:

“5.5 INTERNATIONAL TRANSFERS

(a) A player may not play in New Zealand unless he is registered under NZS rules.

(b) If a player has previously been registered with another National Association, that player cannot register with a New Zealand club until an International Transfer Certificate (“TTC”) has been obtained by NZS”.

NZS was in those regulations an acronym for NZF. Regulation 5 is now in a different form and reference will be made to this later.

3. In reaching its conclusion the NZFAC took into account the structure of football in England. There, the game is controlled at the local level by 43 County FAs which are affiliated to the English FA. It is the County FAs that have responsibility for organising and running football activities in their areas. There is a hierarchy of leagues each of which takes responsibility for the administration of its own activities such as memberships, fixtures and registrations. The English FA controls disciplinary matters only for the top six leagues in England with County FAs taking responsibility for those matters at lower levels. County FAs are affiliated with the English FA but have their own administrations and rules that must be subject to the English FA’s rules. Players are not registered with the County FAs as such, but with leagues and competitions in which they play. The only players registered with the English FA are “contract players”, those who are commonly called professionals.
4. The operative finding of the NZFAC is in paragraph 47 of its decision which reads:
“47. In our view the phrase “registered with another National Association” in Reg 5.5(b) cannot mean, literally, registration with the English FA. That is because only contract (professional) players are registered with that body. The vast majority of players in England are not so registered but their

registration must have been within the contemplation of the rule makers. Put another way, it could not have been intended that only contract (professional) players from the United Kingdom would require an ITC to play for a club in New Zealand”.

5. Both Rangers and Burnside accept that the National Association in this case is the English FA. Rangers submit, correctly in my view, that the rules governing the interpretation of contracts apply to the interpretation of Regulation 5 because the basis upon which clubs and players are bound to the Rules and Regulations of NZF is a contractual one. Adopting these well-known rules, the meaning of reg 5.5(b) is clear and unambiguous. The relevant registration is with another National Association, in this case the English FA and as Mr Pollock was not one of the players registered with the English FA, the regulation does not apply to him.
6. Rangers also drew support from an amendment made to reg 5 as from 30 September 2007. The new reg 5 contains the following definition:
“1.(c) In the Regulations “National Association” means NZF or, as the context requires, any other national football association recognised as such by and being a member of FIFA”.
7. Rangers’ position is that the definition emphasises that the term “National Association” is the national body for each country. It is reasonable to conclude that if the definition of “National Association” in the previous regulation had been in doubt or in conflict with other provisions of NZF’s Regulations, then that could have been dealt with by a different definition and the extension suggestion by the NZFAC could have been incorporated in the definition. It was submitted on Rangers’ behalf that as this was not done, it is clear beyond doubt that only those players registered with the English FA (or any other relevant “National Association”) require an ITC.
8. In support of the NZFAC decision, Burnside relies upon certain provisions of FIFA’s laws, statutes and rules. Under the Rules of NZF, both NZF and its members are required to observe the laws, statutes and rules as set down and interpreted from time to time by FIFA and all matters relating to football in New Zealand shall be carried out in accordance with those laws, statutes and rules (r 5.2 of NZF’s Rules).
9. The FIFA regulation concerning the transfer of players is contained in its reg 7.1 which is stated to “lay down global and binding rules”. The regulations provide that only a registered player (either a professional or amateur) may participate in organised football. There is an article which requires players registered at one association only to be registered with another association once the latter has received an ITC. In respect of this provision, Annex 3 applies. Annex 3, art 1 (Principles) states:
“Any player who is registered with a club that is affiliated to one Association shall not be eligible to play for a club affiliated to a different Association unless an ITC has been issued”.
10. In the sole arbitrator’s view, the NZFAC was correct in its interpretation of reg 5.5. The starting point of any contractual interpretation is the words and their plain and ordinary meaning. However, this is not the end of the matter. Words must be interpreted in the context of the contract in which they appear and against the background knowledge or matrix of fact that

would have been reasonably available to the parties at the time the regulations were promulgated. The correct meaning *“is what the parties using those words against the relevant background would reasonably have been understood to mean, rather the meaning of the words being a matter of dictionaries and grammar”*.

11. The FIFA rules would have been in the contemplation of the NZF Board when it promulgated reg 5. The NZFAC in interpreting reg 5 in effect put itself in the position of a reasonable person knowing the FIFA transfer requirements and that NZF and its clubs were bound to apply the FIFA laws and rules. The FIFA requirement was that a player whether professional or amateur, registered with a club affiliated to an Association could not transfer to another club in another country without obtaining an ITC.
12. The intent of reg 5 is clear from the other provisions of that regulation. It is specifically stated in Regulation 5.5(e) that *“before requesting an ITC, clubs and District Federations should settle all differences with previous associations and clubs”*. The next sub-regulation provides that *“before signing a player from overseas, clubs and District Federations should contact the previous club and ascertain if the player is free to transfer”*. FIFA, the governing body of World Football, whose laws, statutes and rules apply in New Zealand because of the Rules of NZF has laid down a global system of players’ transfer and registration. This system applies to both professionals and amateurs. NZF is required to ensure that the system operates within New Zealand as part of its membership of FIFA. In this case the natural and ordinary meaning of the words *“another National Association”* must when used in reg 5.5(b) extend to all players registered with clubs and affiliated associations which are members of the National Association. If this were not the case there would not be a workable international transfer system in accordance with FIFA obligations.
13. It is therefore the sole arbitrator’s view that the first ground of appeal cannot succeed. The adoption of the new regulation on 30 September 2007 cannot assist. It is also noted that it was adopted before the NZFAC’s decision.
14. The second ground of appeal can be disposed of quite briefly. The appeal to NZFAC was an arbitration under the provisions of the Act. The provisions of arts 18 and 19 applied as submitted by Burnside. The NZFAC treated the parties with equality and gave them an opportunity to present their case. It advised them of the details that were being requested from NZF and the parties were aware of the reply. While they may not have been invited to make submissions, they would have obviously had the right to do so if they had chosen. The fact that they did not make submissions on the facts is an indication that they did not challenge them.
15. Even at this stage, Rangers has not made any submission that the facts upon which NZFAC obtained from NZF were not correct. Under the procedures in this appeal it could have challenged those facts but has not done so. It has merely said it should have had an opportunity to have made submissions before NZFAC or obtain its own evidence. It has had ample opportunity to do so and has not done so. This ground of appeal cannot succeed.

16. The final ground of appeal is that the NZFAC accepted a standard of proof beyond the standard it reasonably required. The submissions on that point which will be dealt with more particularly below, are set out above.
17. Under the appeal provisions in the Code, Rangers could have sought to adduce further evidence. The sole arbitrator has considered whether its failure to attempt to adduce new evidence to support Mr Pollock's non-registration should lead to an adverse interest. Burnside submitted that if Mr Pollock was not the player identified as having been registered with the Liverpool County FA, Rangers might have been expected to have taken the simple step of obtaining an affidavit from Mr Pollock to that effect. It is noted that in its reply, Rangers did not comment on this submission. In the circumstances the sole arbitrator has decided not to draw an adverse inference from these facts. This is because it is unnecessary to draw such an inference in determining whether this ground of appeal can succeed.
18. Both parties analysed the evidence and made submissions on it. Rangers, in particular, submitted that this was not a question of counting the number of emails or communications which were received, but rather considering their context, the nature and authority of the sender, and the quality of the reply and information provided. It was submitted that in a number of the communications the questions may have been misinterpreted and the issue of "*registration*" was considered differently. The emails were said not to be a reliable source of evidence.
19. It was also submitted on behalf of Rangers that the NZFAC in adopting "*the balance of probabilities*" standard, adopted too low a standard. It was submitted that in the circumstances it should have adopted the standard of proof to reflect the seriousness of the allegations and consequences.
20. The sole arbitrator accepts that the balance of probabilities test is the correct one. However, he also accepts that in coming to the decision, NZFAC, while adopting the civil standard of proof, should take into account the seriousness of the allegations and in particular the consequences.
21. The NZFAC carefully considered and analysed the evidence and came to the conclusion that "*the evidence in favour of previous registration of the player in England outweighs overwhelmingly the contrary evidence*". The sole arbitrator has considered the evidence and is of the view that this was a decision that the NZFAC was perfectly entitled to do so. The NZFAC did not have to be satisfied beyond reasonable doubt, but was required to be satisfied that the relevant ingredients be established to the comfortable satisfaction of NZFAC having in mind the seriousness of the consequences which followed. In the sole arbitrator's view the evidence considered by the NZFAC and summarised above, entitled the NZFAC to come to the view that it arrived at.
22. The sole arbitrator accepts that he is in just as good a position as was the NZFAC to come to this view. Therefore, he would be entitled to come to a different view as this is not a case where the credibility of witnesses is an issue.
23. If the sole arbitrator had determined the issue at first instance he would have placed considerable weight on the notifications from 1 Zingari Combination League and the English

FA notification of 24 September 2007. There was also the supporting evidence referred to above. The sole arbitrator would have come to the same conclusion as the NZFAC. The third ground of appeal cannot succeed.

24. Like the NZFAC, the sole arbitrator is sympathetic to both parties in this case. The circumstances which led to this unfortunate situation were not the fault of either club. However, as the grounds of appeal have not been made out, the appeal will be dismissed.

The Court of Arbitration for Sport rules that:

1. The appeal is dismissed.
2. (...).