



Arbitration CAS 2017/A/4979 Rochell G D Woodson v. Liberia Football Association (LFA), award of 7 August 2017

Panel: Mr Murray Rosen QC (United Kingdom), Sole Arbitrator

Football

Expulsion of a member from the Executive Committee of a national federation

CAS jurisdiction

Appropriate legal basis for the expulsion

1. According to the LFA Statutes, any appeal against a final and binding LFA decision shall be heard by the CAS. Although a decision by the LFA Congress to expel a member from the Executive Committee (EC) is a decision of the supreme body of the LFA, the argument to the effect that its decision cannot or should not be challenged before CAS because it is an exercise of a sovereign power for the benefit of its members, is directly contrary to its own Statutes as it is nothing else than a “final and binding LFA decision” capable of being heard by the CAS, since the LFA Statutes do not provide any other appeal.
2. Article 47.2 of the LFA Statutes providing that the position of an EC member will be considered vacant if that member does not participate in 4 consecutive regular meetings cannot be used as the legal basis to expel an EC member who has been granted maternity leave for an unspecified time by the President of the LFA, if the LFA did not revoke or terminate her leave or give her any notice of an expiry date, and in absence of any evidence or even submission that any EC meetings have been held between the time she was granted maternity leave and the time the LFA Congress took the decision to expel her from the EC.

I. PARTIES

1. Mrs Rochell G D Woodson (“Mrs Woodson” or the “Appellant”) is a Liberian citizen who has been involved in football and its management for a number of years.
2. The Liberia Football Association (the “LFA” or “Respondent”) is the governing body for football in Liberia and is affiliated to the world governing body, Fédération Internationale de Football Association (“FIFA”).

II. FACTUAL BACKGROUND

3. The Sole Arbitrator has considered all the allegations, evidence and arguments submitted by the parties. The following summary is background to his reasoning but additional facts may also be referred to (if and where necessary) in the legal discussion below.
4. Mrs Woodson was first elected to the Executive Committee of the LFA (the “EC”) in March 2010. She thereafter sat as chair or co-chair on a number of its sub-committees. Since 2011 she has also been a member of the FIFA standing committee on women’s football and since 2014 she has served as a match commissioner for the Confederation Africaine de Football (“CAF”).
5. On 5 August 2016, Mrs. Woodson wrote to the Acting Secretary General of the LFA as follows

“... I write to inform you, the President and the Members of the Executive Committee that I am schedule[d] to travel in August 2016, to give birth.... This communication serves as my official absence from Congress, Executive Committee...”
6. In such correspondence, she added that she would remain available for LFA matters if needed and provided two email addresses and an American mobile telephone number.
7. The President of the LFA granted Mrs. Woodson’s maternity leave and throughout September 2016, Mrs. Woodson continued to participate in LFA matters from the United States.
8. On 30 September 2016, the President of the LFA sent an email to Mrs Woodson asking her to stay “out of function” during her maternity leave (which he again approved) saying that

“... As far as the LFA is concerned you are on leave and therefore cannot actively participate in LFA matters. The fact that emails are copied to u is not a reason for such action. I will assume that you will appreciate those emails as a mean of keeping yourself abreast of happenings in the LFA. But I see that you are using this as an excuse. Therefore I’m asking that this too will stop. This is not acceptable.... I hope all EC members will take note of this and act accordingly. When you return as per your request you will duly resume your responsibilities as EC member...”
9. On 7 October 2016, Mrs Woodson gave birth to a son in the United States.
10. On 24 December 2016, the General Secretary of the LFA circulated by email proposals submitted by the LFA member clubs to the EC in advance of the 21st LFA Congress fixed for 27 December 2016.
11. Mrs. Woodson received this email and learned that a member club was petitioning the EC to discuss her absence and to request Congress to take action. Believing that there might be an attempt to expel her from the EC, she emailed the LFA’s General Secretary on the same day to the effect that she had been granted maternity leave and that there were no grounds for such an expulsion.

12. According to Mrs Woodson, the President did not call an EC meeting before the Congress (and indeed the EC had not met at all during Mrs Woodson's leave, despite members' requests to the LFA's President).
13. On 27 December 2016, the president of the club proposing that the LFA Congress discuss Mrs. Woodson's absence, wrote to her saying that

“As a member who submitted the proposal, I believe it is my responsibility to provide you clarity given your assertions.... The LFA Executive Committee has failed on its part to state to us your position: working remotely or excused. The LFA through the President has informed us that you haven't been granted any excuse which is a violation of the Statute by an EC member missing 4 consecutive meetings. As an EC member, you have also failed to revert to your constituents to notify them on your activities (absence from Liberia). We at no point in time receive[d] any communication from your office.... The EC has failed to give us a clear picture on the matter...”

14. The LFA Congress took place on 27 December 2017 but Mrs Woodson was not informed of what transpired and says that she has never received a copy of the Minutes.
15. On 25 January 2016, Mrs Woodson wrote to the Secretary General of the LFA to announce her return from maternity leave and her wish to resume her role as an active EC member.
16. On 26 January 2017, the LFA responded to Mrs Woodson by an email from its General Secretary attaching a letter (the “Appealed Decision”) as follows:

“Dear Madam Woodson: I present you compliments on behalf of the President, Vice President, Executive Committee and Secretariat of the Liberia Football Association (LFA), and herein wish to inform you that at the LFA 21' Ordinary Congress, resolutions were brought to have you expelled from the Executive Committee in conformity with Article 47.2 of the LFA Statutes with a vote of 35 to 3 which is more than 2/3 majority of congress attendant. This decision was reached at the just ended 21st Ordinary Congress of the LFA which was held on Tuesday, December 27, 2016 at the P.A's Rib House in Monrovia”.

III. THE PROCEEDINGS BEFORE CAS

17. On 4 February 2017 Mrs Woodson filed her statement of appeal and appeal brief before the Court of Arbitration for Sport (“CAS”) in accordance with Articles R47 et seq. of the Code of Sports-related Arbitration (the “Code”) against the Appealed Decision. In her statement of appeal, the Appellant requested that this procedure be referred to a Sole Arbitrator.
18. On 10 February 2017, Mrs Woodson filed her appeal brief in accordance with Article R51 of the Code.
19. On 20 February 2017, the Respondent objected to the Appellant's request to submit this appeal to a Sole Arbitrator and instead suggested that a three-member Panel decide this procedure.

20. On 3 March 2017, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the parties that this procedure would be referred to a Sole Arbitrator in accordance with Article R50 of the Code.
21. On 18 April 2017, the CAS Court Office informed the parties that Mr Murray Rosen QC, Barrister in London, United Kingdom, had been appointed as Sole Arbitrator by the President of the CAS Appeal Arbitration Division in accordance with Article R54 of the Code.
22. On 24 April 2017, the LFA filed its answer in accordance in accordance with Article R55 of the Code, including an objection to jurisdiction.
23. On 1 May 2017, the CAS Court Office, on behalf of the Sole Arbitrator, invited the Appellant to file a second round of submissions including a response to the LFA's objection to jurisdiction.
24. On 15 May 2017, Mrs Woodson filed her response submission.
25. On 16 May 2017, the CAS Court Office, on behalf of the Sole Arbitrator, invited the LFA to file its response submission, which was to be limited to the merits of the dispute, not in reply/support of their objection to jurisdiction.
26. On 7 June 2017, the LFA filed its response submission and included therein a reply in support of their objection to jurisdiction in contravention to the CAS Court Office letter dated 16 May 2017.
27. On 19 June 2017, both parties commented on the admissibility of the Respondent's jurisdictional comments raised in the LFA's 7 June 2017 submission (i.e. the Respondent's reply). In addition, both parties stated that they did not deem a hearing necessary.
28. On 18 July 2017, the CAS Court Office informed the parties that the Sole Arbitrator deem himself sufficiently well informed to render a decision in this procedure based solely on the parties' written submissions, and without a hearing.
29. On 19 and 24 July 2017, the Appellant and Respondent, respectively, signed and returned the Order of Procedure in this appeal.

IV. THE PARTIES' SUBMISSIONS

30. The Sole Arbitrator has carefully considered all the parties' submissions, and the following is a summary to assist in the reasoning of the decision that follows. It is not intended to be – nor does it need to be – a comprehensive summary of the parties' submissions.

A. The Appellant's Submissions

31. Mrs Woodson's main submissions are as follows:

- (a) CAS has jurisdiction by reason of the FIFA-approved Statutes of the LFA, Chapter 31 Articles 87 and 88 and R47 of the Code;
- (b) Mrs Woodson did not fail to participate in 4 or any “consecutive regular meetings” of the EC under Article 47.2 of the LFA Statutes and in any event was excused by reason of her approved maternity leave;
- (c) Any motion for her dismissal before the LFA Congress was unjustified for the purpose of Article 54 of the LFA Statutes; and
- (d) The Appealed Decision was therefore in breach of the LFA Statutes and invalid.

32. Mrs Woodson requested by way of relief that CAS:

- “(1) declare that the LFA Congress Decision of 27 December 2016 expelling Mrs. Woodson from the Executive Committee of the LFA violates the LFA Statutes*
- (2) cancel the LFA Congress Decision of 27 December 2016 expelling Mrs Woodson from the Executive Committee of the LFA*
- (3) declare that Mrs Woodson remains a valid member of the Executive Committee of the LFA subject to any subsequent decision by the LFA Congress in accordance with the LFA Statutes*
- (4) award Mrs Woodson all costs incurred in relation to these proceedings*
- (5) grant Mrs Woodson any other or additional relief deemed appropriate”.*

B. The Respondent’s Submissions

33. The LFA’s main submissions (including its Response, if admissible) were, in summary:

- (a) The Congress was the supreme body of the LFA and its decisions could not be challenged because of its sovereign power, from which Article 87 of the LFA Statutes could not detract and would negatively impact on the LFA;
- (b) Mrs Woodson, an officer elected only under that authority and not a member to whom duties were owed, had been in breach of contract in not attending all meetings of the EC, leading to the normal termination of the relationship; and
- (c) Mrs Woodson had been absent for an unreasonable length of time, some 20 weeks by the time of the Congress, whereas Liberia employment law (the Decent Work Act of 2015) – although she was an elected volunteer not an employee - provided for maternity leave of only 14 weeks.

34. The LFA requested by way of relief that CAS should deny the appeal:

“... for lack of jurisdiction [or] for lawful dismissal from the [EC] based on ... absence...”.

V. JURISDICTION

35. Article R47 of the Code states:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.

36. The LFA Statutes, Chapter 31, Articles 87 and 88 headed “COURT OF ARBITRATION FOR SPORTS” state that

“In accordance with the relevant FIFA Statutes provisions, any appeal against a final and binding LFA decision shall be heard by the Court of Arbitration for Sports (CAS) in Lausanne, Switzerland.... The LFA shall ensure its full compliance and that of its Members, Players, Officials and match and Players’ agents with any final decision passed by a FIFA/CAF body or CAS”.

37. The LFA’s arguments to the effect that because the LFA Congress is the supreme body of the LFA, the LFA’s main object is to serve its members and not its officers, and the Appealed Decision cannot or should not be challenged before CAS because it is an exercise of a sovereign power for the benefit of its members, is directly contrary to its own Statutes and the basis for FIFA approval and is without any legal or rational basis.

38. The immunity of sovereign states and kindred doctrines such as the non-justiciability of act of state are wholly irrelevant to the private law framework and context of this matter. On the contrary, in the present matter, the decision challenged is nothing else than a “final and binding LFA decision”, since the LFA Statutes do not provide any other appeal. Furthermore, since the Appellant was an officer of the LFA at the time of the dispute, she has standing to refer this matter to CAS.

39. In consideration of the foregoing, the Sole Arbitrator determines that the CAS has jurisdiction to decide this appeal.

VI. ADMISSIBILITY

40. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

41. The Appealed Decision was notified to Mrs Woodson on 26 January 2017. She filed her Statement of Appeal on 7 February 2017 and therefore, was within the 21-day deadline set forth in Article R49 of the Code. The Appeal filed by the Appellant is accordingly admissible.

42. The Sole Arbitrator further adds, for the avoidance of doubt, that Mrs Woodson's response submission dated 15 May 2017 accorded with the Sole Arbitrator's direction, which did not limit it to but invited submissions on the LFA's objection to jurisdiction, and was therefore admissible.
43. On the other hand, the LFA's responses thereto was contrary to the Sole Arbitrator's directions as set forth in the CAS Court Office letter dated 16 May in that the Respondent filed what amounts to a reply submission on jurisdiction. Reply submissions are not envisaged under the Code without leave of the Sole Arbitrator and no such leave was requested or granted. Such reply submission is therefore in contravention of Article R37 and R44.3 of the Code and inadmissible.

VII. APPLICABLE LAW

44. Article R58 of the Code states:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

45. In the present case the applicable regulations are the LFA Statutes. The LFA has not put forward any relevant Liberian law, other than its reference to the Decent Work Act which it concedes not directly to apply to Mrs Woodson.

VIII. MERITS

46. Article 47.2 of the LFA Statutes on which the LFA relies as the basis for the Appealed Decision, provides that:

"The positions of the Vice-presidents and other members of the Executive Committee will be considered vacant in case of death, resignation, of permanent disability or if the Vice-presidents and other members of the Executive Committee do not participate in 4 consecutive regular meetings".

47. It is to be seriously doubted that this can be equated to a contractual provision as regards to the dismissal of an employee for breach of contract. The language, that the office "*will be considered vacant in case of ... or if members of the Executive Committee do not participate in ...*"; and the concepts are at least very different from such a provision.
48. In any event, in the present case, Mrs. Woodson had sought and been granted maternity leave, explaining why, and continued to seek to participate in the EC until the LFA President told her not to, until her return. The LFA did not revoke or terminate her leave or give her any notice of an expiry date. If as it claims, it was continuing for "*far more than the time envisaged for a maternity leave in Liberia*" by reference to the usual employee's 14-week maternity leave or

otherwise, it should have said so.

49. Moreover:

- (a) Mrs Woodson was not an employee or to be compared with one – she was an EC member granted approval at the presidential level to travel abroad to have her baby and told not to participate until her unspecified return;
- (b) the LFA Statutes appear not to address the issue of maternity leave, and no relevant by-laws or other regulations have been adduced;
- (c) there is no evidence to support a submission that the LFA President or EC members expected Mrs Woodson to return earlier or that 14 as opposed to 20 weeks would be reasonable; and
- (d) indeed, the LFA President’s approval for maternity leave did not stipulate or even question duration or other conditions of the approved maternity leave abroad.

50. As Mrs Woodson’s submissions point out, even if her approved leave had expired after 14 weeks, that is by about mid-November 2016 and she would have missed, by 27 December 2016, at most one or two Executive Committee meetings, if any were called. In simple math this does not evidence her missing “*four consecutive meetings*”. and therefore, she did not violate Article 47.2 of the LFA Statutes. Regardless, Mrs Woodson’s case is that there were no EC meetings between August and December 2016 and the LFA’s submissions do not identify any meetings or otherwise dispute that point.

51. Mrs Woodson’s submissions also emphasise Article 54 of the LFA Statutes (in the Chapter entitled “Dismissal of a person or body” which provides:

“... The motion for dismissal must be justified. It will be sent to the Members of Congress along with the agenda...”.

52. In the present case, as submitted on behalf of Mrs Woodson and not contradicted by the LFA, the motion submitted to the Congress was based on inaccurate information, as regards to her approved maternity leave, her availability to the EC while abroad, and the lack of any EC meetings during her absence from Liberia.

53. Furthermore (albeit perhaps a less significant point), Article 55 of the LFA Statutes provides that for a motion for dismissal of a person or body to be passed, “*a majority of two-thirds of the valid votes is required*” and in the absence of the Minutes of the Congress of 27 December 2016, or any comment in submissions on behalf of the LFA, it cannot be assumed that this requirement was met.

54. Finally, it is impossible to assess or attach any importance in these proceedings to the vague allegations in the LFA’s answer regarding matters allegedly “*still under investigation*” and this must be treated as of no relevance to this Award.

55. The Sole Arbitrator, therefore, has no alternative but to conclude that
- (a) Mrs Woodson was excused from her EC duties for the entire duration of her maternity leave, did not miss any Executive Committee meetings during that time and was not liable to be expelled under Article 47.2 of the LFA Statutes; and
 - (b) the LFA was not justified in making the Appealed Decision, which did not accord with the process provided for in its Statutes
 - (c) the Appealed Decision should therefore be cancelled at the direction of CAS, the specified appellate body according to the LFA Statutes.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mrs Rochell G D Woodson against the Liberia Football Association concerning the decision rendered by the 21st Ordinary Congress of the Liberian Football Association on 27 December 2016 is upheld.
2. The decision rendered by the 21st Ordinary Congress of the Liberian Football Association on 27 December 2016 is set aside.
3. Mrs Rochell G D Woodson shall be reinstated as a valid member of the Executive Committee of the Liberia Football Association.
4. (...).
5. (...).
6. All and any other and further prayers and requests for relief are dismissed.