



Arbitration CAS 2008/A/1530 FSV Kroppach v. European Table Tennis Union (ETTU), award of 19 November 2008

Panel: Mr Patrick Lafranchi (Switzerland), Sole arbitrator

Table tennis

Game played under protest

Reasons to file, or not, a protest

If both teams have agreed to waive the application of a rule of the competition regulations, the non-compliance with this particular rule is not a valid reason for filing a protest. On the other hand, the fact that the conditions of the match did not comply with the applicable regulations – irrespective of whether they were equal for both teams – is a valid reason for filing a protest.

The Appellant, FSV Kroppach 1919 e.V. (FSVK), is a German sports club with a table tennis department. The table tennis department disposes of a woman's team in the German premier league.

The Respondent, European Table Tennis Union a.s.b.l. (ETTU), is the authority recognized by the ITTF (International Table Tennis Federation) for governing and developing the table tennis sport in Europe.

The 1st European Women's Tennis Table Champions League Final match (the "First Final") between FSVK and the Dutch club MS Services Heerlen (MSSH) took place on Friday March 7, 2008 in Kroppach.

International Umpires, coming from an association other than those of the clubs, have to supervise the matches. The umpires, nominated by the ETTU, did not appear in the playing hall.

The officials of both competitors made an official protest before the beginning of the match due to the fact that the nominated umpires were not present for the final match. By accident two German international Umpires were among the spectators, who accepted to act in the match. One international umpire acted as referee and one as an umpire.

The final match was played without the official umpires and ended with a 3 to 1 victory for the FSVK. On March 7, 2008 the FSVK withdrew its protest.

On March 11, 2008 the ETTU also dismissed the protest of the MSSH and approved the validity of the result of the final match.

Afterwards the MSSH contacted the Board of Justice of the ETTU and requested a repetition of the match due to the raised protest. On March 21, 2008 the board of justice of the ETTU decided that the match between both teams has to be repeated.

The FSVK challenged this decision against the Board of Appeal of the ETTU. On April 2, 2008 the Board of Appeal of the ETTU approved the decision of the Board of Justice of the ETTU from March 21, 2008 and requested from the secretary general of the ETTU a new date for the First Final between the FSVK and the MSSH. Due to temporal problems the First Final was not repeated till today.

On April 7, 2008, FSVK filed a Statement of Appeal and claimed for provisional measures to the CAS. Furthermore FSVK wished the brief to be accepted as a combined statement of appeal and appeal brief. FSVK requested that the CAS had to rule that:

- “1. *The decrees of the Re’s “Board of Justice” (BoJ) and “Board of Appeal” (BoA) are revoked.*
2. *The result of the first final of ECL 2007-08 from March 7th, 2008 between the Ap and MS Services Heerlen remains valid and will be scored according to the result as it is documented in the official ETTU match report.*
3. *The respondent bears the costs of the arbitration procedures”.*

Furthermore the FSVK requested, due to the urgency of the case, the use of a single arbitrator and applied that the lawsuit will be treated in the English language.

With decision of April 10, 2008 the Deputy President of the Appeals Arbitration Division of CAS dismissed the request for a stay of the ETTU Appeal Board decision of April 2, 2008 filed by the FSVK on April 7, 2008.

With the letter of April 14, 2008 both parties were asked by the CAS if they were willing to continue with the arbitration in light of the decree of the April 10, 2008. With the letter of April 15, 2008 the FSVK informed that it wishes to progress with the arbitration. On the same day the ETTU informed that it wishes not to continue with the arbitration.

With the letter from April 15, 2008 the CAS informed both teams that the arbitration will continue.

With the letter from April 18, 2008 the ETTU informed the CAS that it will resign handing in an official respond of complaint.

On April 22, 2008 the FSVK transmitted a not demanded letter to the CAS including further proof and commented once more the case.

On the 16th of June 2008 both teams were informed about the intention of the Sole Arbitrator: he does not deem necessary a hearing but finds it important to have more correspondence. On June 18, 2008 the ETTU agreed on the intention of the Sole Arbitrator.

On June 25, 2008 the FSVK handed to the CAS an additional letter, approving and reasoning its legal petition of April 7, 2007.

The ETTU comments the application of the FSVK with a letter on July 16, 2008 and closes on dismissal of the complaint on April 7, 2008.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS in the present procedure is based on article R57 of the Code of Sports-related Arbitration (the “Code”) together with rule A.5.8 para. 2 of the ETTU Constitution of August 1, 2007: *“If the final decision of the Juridical Boards in a case of dispute does not satisfy any party involved in the case concerned, this party may forward the case concerned to the IOC Court of Arbitration for Sports’ (‘CAS’) in Lausanne (Switzerland)”*.
2. Under article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law.

Admissibility and Applicable law

3. Based on rule A.5.8 para. 2 of the ETTU Constitution of August 1, 2007, the FSVK had standing to file an appeal before the CAS against the final decision of the “Juridical Boards” of ETTU. The appeal, in the absence of a time limit set in the statutes or regulations of ETTU, was filed within the deadline provided by article R49 of the Code. Furthermore, it complies with all other requirements of article R48 of the Code.
4. Filed on April 7, 2008, the appeal of FSVK is thus admissible.
5. Rule A.5.2 of the ETTU Constitution of August 1, 2007 provides:
“The provisions and rules governing the jurisdiction and proceedings of the Juridical Boards are specified in the Annexes AA, AB and AC to the Constitution as follows:
 - *Annex AA: Rules governing the legal procedure of the Board of Justice*
 - *Annex AB: Rules governing the legal procedure of the Board of Appeal*
 - *Annex AC: Catalogue of disciplinary measures and sanctions**The Annexes AA, AB, and AC are to be considered as an integral part of the Constitution”*.
6. Article R58 of the Code provides:

“The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

7. In the present matter, there was no agreement among the parties regarding the application of any particular law. As a result, the law of Luxembourg shall apply complementarily.

Discussion

8. The only issue of the case is the question of validity of the result of the First Final played on March 7, 2008. For this purpose first of all ECL-Rule K 14.1 has to be analyzed and later the course of the match and the conditions according to ECL-Rules. The wording of ECL-Rule K 14.1 is as follows:

“For every match of the ECL the General Secretary, in co-operation with the Umpires and Referees Committee, shall arrange for two International Umpires coming from an Association other than those of the clubs concerned, whereof one has to fulfil the duties of the Referee. The home Association shall provide umpires to perform the duties of assistant umpires”.

9. Concerning the aspect of ECL-Rule K 14.1 according to which the international umpires have to be of a different association as the one of the involved teams, the majority of the members of the prior instance considered the following: *“Especially the procedure of nomination of match officials (K-14) must be considered as a rule of „public law” so even no any common agreement between the opponents can infringe the spirit of the rule since the officials of such a match have several important subject to decide for. The absence of match officials for any reason comes with the result to consider the character of the specific match more as friendly than as official”.*
10. The minority opinion of one member of the prior instance in comparison detained that the result of the First Final between the two parties has to be declared valid because: *“... the general circumstances and conditions of the respective match did not derange the principle of the „equal usage”. The IU who officiated in the respective match referred that the playing conditions in the hall were according to regulations. The facts, which were mentioned, are very usual in T.T. matches and according to the existed rules a referee has not the right to interfere into an umpire’s judgment. The spirit of the regulation that in those matches IU have to act in order to ensure the correct implementation of the existed rules was fulfilled due to the fact that the match was officiated by an International Referee and one IU as well as one German Umpire”.*
11. The Sole Arbitrator might not consider the opinion of the majority of the prior instance if they argue that the aspect in ECL-Rule K 14.1, concerning the nationality of the international umpires, has to be seen as a “public law”. Rather, the Sole Arbitrator agrees to the minority of the prior instance saying that derivations of this regulation in the reality of the table tennis sport and many other sports do quite often happen and therefore are common practice. The legal qualification of ECL-Rule K 14.1 – obligatory or optional – finally can be left open. The relevant question for the decision of validity of the result of the First Final is only the actual course and the conditions of the match of March 7, 2008.

12. According to the record of the event both teams played the First Final under protest. With this, according to the Sole Arbitrator, both teams voiced to agree to the completion of the match but – in case of any irregularities in the course of the match, namely referring to the performance of the umpires and referees – both teams also reserved the right to challenge the result. As a consequence of the victory in the First Final the FSVK withdrew its protest. The MSSH on the other hand kept its protest and challenged the result of the First Final. The reasons of the MSSH for keeping the protest are of vital importance for the Sole Arbitrator. If the MSSH would only keep the protest for the clear reason that the result of the match was negative for them then such a behaviour would be – considering the approval of both teams to forego adherence to ECL-Rule K 14.1 – illegal and not worthy of being protected.
13. The reasons of protest stated by the MSSH concerning the delayed beginning of the match and the apparently not performed control of the sports hall, namely the control of the quality of light (ECL-Rule K.11.3) for the Sole Arbitrator appear to be circumstances which have to be analyzed in terms of their fundamentality. The other reasons of protest stated by the MSSH, especially the absence of neutral umpires do not fall under consideration of the Sole Arbitrator as the MSSH – as mentioned – agreed with the fact to play with referees and umpires which were not according to ECL-Rule K 14.1.
14. Regarding the conditions of the match on the day of the Final the ETTU Club Competition Official states in its decree of protest of March 11, 2008, that those were equal for both teams and compliant with the ECL-Rules. It might be that the conditions were equal for both teams, but this is of no interest in this case as this would not mean that both teams, or one of them, accepted all the parameters of this match day as compliant to the rules. Obviously the MSSH did not do so as they kept their protest.
15. The second allegation of the ETTU Club Competition Official according to which the ECL-Rules were kept is indefensible as the umpires and referees – according to not contradicted statements of the parties – did not control if the match hall of the FSVK was conform to the requirements of the ETTU. Irrespective of the fact that the umpires were under a pressure of time this control would have been essential. In this context the MSSH takes the view that especially the conditions of light in the hall were not according to the regulations. The MSSH emphasises this allegation with the statement that several bulbs in the hall were broken.
16. For that reason the Sole Arbitrator declares that due to the description of the event the conditions of the match in the hall of the FSVK – irrespective of the nationality of the umpires and referees – did not comply with the ECL-Rules, and that the conformity with the rules was not approved by the umpires or referees. Hence the protest of the MSSH is to be approved.
17. Therefore the decree of the prior instances is approved – for different reasons – and the appeal of the FSVK is dismissed.

The Court of Arbitration for Sport rules:

1. The appeal filed by FSV Kroppach on 7 April, 2008 is admissible.
2. The appeal filed by FSV Kroppach on 7 April 2008 is dismissed.
3. The decision by the ETTU Board of Appeal dated 2 April, 2008 is confirmed.
4. (...).
5. (...).
6. All other prayers for relief are dismissed.