



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

**Abby Wambach and Players on National Teams Participating in the FIFA
Women's World Cup Canada 2015 Listed on Schedule "A"**

Applicants

-and-

**Canadian Soccer Association and
Fédération Internationale de Football Association**

Respondents

INTERIM DECISION

Adjudicator: Jo-Anne Pickel
Date: November 7, 2014
File Number: 2014-18923-I
Citation: 2014 HRTO 1635
Indexed as: **Wambach v. Canadian Soccer Association**

WRITTEN SUBMISSIONS

Abby Wambach and Players on National Teams Participating in the FIFA Women's World Cup Canada 2015 Listed on Schedule "A", Applicants))))))	David Wright, Counsel
Canadian Soccer Association, Respondent))))	Joseph Arvay and Sean Hern, Counsel
Fédération Internationale de Football Association, Respondent))))	Jérôme Valcke, Representative

[1] This Interim Decision addresses the applicants' Request to Expedite Proceedings in this matter.

BACKGROUND TO THE APPLICATION

[2] By Application filed on October 1, 2014, the applicants alleged that the respondents discriminated against them because of sex contrary to the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the "*Code*"). In particular, the applicants alleged that the respondents have taken, and continue to take, actions that will force women players to play games on artificial turf during the FIFA Women's World Cup Canada 2015. The applicants allege that artificial turf is dangerous to athletes and considered sub-standard for international play. The applicants allege that the respondents' actions discriminate against them based on sex because, according to the applicants, neither respondent requires men's soccer players to play World Cup games on artificial turf. The applicants seek remedial orders that will require the FIFA Women's World Cup Canada 2015 to be played on natural grass fields. The Application was delivered to the named respondents by the Tribunal on October 3, 2014, in accordance with its normal practices.

[3] The Canadian Soccer Association ("CSA") has denied any discrimination.

[4] The Fédération Internationale de Football Association ("FIFA") has refused acceptance of the Application on the basis that the procedure for delivery provided for by relevant international treaties had not been complied with in the present case.

REQUEST TO EXPEDITE APPLICATION

Parties' Positions

[5] At the same time that they filed their Application, the applicants filed a Request to Expedite Proceedings ("Request"). The applicants requested that the Tribunal deal with the Application on an expedited basis. The applicants submitted that it is necessary for the Tribunal to expedite this proceeding in order for the applicants to obtain an effective

remedy in this case. They noted that tournament games will take place between June 6, 2015 and July 5, 2015. According to the applicants, preparation would need to begin by early 2015 in order to permit grass playing fields to be in place for the start of the tournament. The applicants proposed a highly expedited schedule that would see the Application heard by November 26, 2014.

[6] The Canadian Soccer Association opposed the applicants' Request for three main reasons. First, the CSA submitted that the Request should be denied due to the applicants' failure to bring forward their Application to the Tribunal in a timely way. According to the CSA, it submitted its bid for the tournament to FIFA in 2011 and FIFA accepted the bid in March of 2011. The official host cities for the tournament were announced in May 2012. The match schedule for the tournament was announced in March 2013. This schedule indicated the stadiums that would be used for the tournament. According to the CSA, anyone familiar with Canada's sports facilities would have known by March 2011 or May 2012 that at least some of the tournament's games would be played on artificial turf. In any event, the CSA submitted that by March 2013 there could have been no confusion that the tournament, including the final championship game, would be played on artificial turf. The CSA argued that the applicants waited over 18 months to file their Application and it would not be appropriate for the Tribunal to expedite the proceeding in these circumstances.

[7] Second, the CSA submitted that the respondents will suffer prejudice if the proceeding is expedited. The CSA noted that there are significant preliminary and jurisdictional issues to be addressed in this case. It submitted that the case is also legally complex and factually contentious. As such, the case likely will require extensive expert evidence. The CSA argued that imposing an expedited time frame on the respondents would impede their ability to gather and present evidence in an orderly and comprehensive manner.

[8] Third, the CSA submitted that the applicants have provided no evidence that there is a meaningful remedy available to them now that will not be available if the proceeding is not expedited. The CSA's argument on this point appears to be that it is

not possible for the Tribunal to render a decision in such a factually and legally complicated case by early 2015, which is when the applicants indicated that preparation would need to begin in order to permit grass playing fields to be in place for the start of the tournament.

[9] FIFA did not take a position on the applicants' Request. As noted above, FIFA has taken the position that it has yet to be properly served with any materials related to this proceeding. As a result, FIFA has advised the Tribunal that it does not recognize the Tribunal's jurisdiction with respect to this matter.

APPLICABLE LAW

[10] Rule 21.1 of the Tribunal's Rules of Procedure provides that an applicant may request that the Tribunal deal with an application on an expedited basis in circumstances which require an urgent resolution of the issues in dispute.

[11] In *Weerawardane v. 2152458 Ontario Ltd.*, 2008 HRTO 53 at para. 9, the Tribunal held that, for a request to expedite to be granted, the applicant must demonstrate that the circumstances are truly urgent. Applicants must show that the circumstances require the resolution of the dispute in a particularly rapid manner as compared with the time required to complete the Tribunal's regular process.

[12] In *Ebrahimi v. Durham District School Board*, 2009 HRTO 1062, the Tribunal noted that applications may be expedited where a requested (and arguably appropriate) remedy will be moot, or unavailable, without expediting an application.

[13] However, the Tribunal has found that, except in the rarest of circumstances, a party who has delayed in filing his or her Application without explanation will not be given the priority over Tribunal resources that is associated with an expedited proceeding. See, for example, *Kearney v. Ontario Hockey Federation*, 2010 HRTO 522.

ANALYSIS

[14] There are factors in this case that weigh both in favour and against granting the applicant's Request. On one hand, I am mindful of the fact that the dates for the FIFA Women's World Cup Canada 2015 are fast approaching. I am also mindful of the applicants' claim that preparation would need to begin by early 2015 in order to permit grass playing fields to be in place for the start of the tournament. These factors weigh in favour of granting the applicants' Request.

[15] On the other hand, given the jurisdictional complexity of this case, I am far from certain that it would be possible to deal with all the likely preliminary issues in this case and render a decision on the merits within a few months, as requested by the applicants. Therefore, it may well be that even an expedited proceeding would not provide the applicants with the main remedy they are seeking if they are successful in this case. The Tribunal has held that a Request to Expedite should be denied when an expedited proceeding could not assist in making the requested remedy available: *Spooner v. Northumberland County Community and Social Service*, 2010 HRTO 928. Therefore this factor weighs against granting the applicant's Request to Expedite.

[16] Another key factor weighing against the applicants' Request is their failure to proceed expeditiously in filing their Application once they became aware of the alleged breach of the *Code*. An expedited hearing results in tightened timelines and exceptionally quick hearing dates, which may lead to inconvenience and costs for other parties to the Application. Moreover, it must be remembered that an expedited application is given priority for Tribunal resources over all other matters currently before the Tribunal. What the applicants are in effect requesting is that the Tribunal give their Application priority over all the many other applications that have been filed with the Tribunal alleging violations of the *Code*.

[17] As significant as this case may be for the applicants, I do not find it appropriate to expedite an application where the applicants have not themselves acted expeditiously. I do not find it appropriate to expedite an Application where the applicants did not file

their Application until 18 months or more after they reasonably would have been aware of the facts that gave rise to the Application. Given this passage of time, I do not find it appropriate to grant the applicants' Request that the Tribunal deal with their Application on a highly expedited schedule and render a decision in just a few months. In my view, granting the applicants' Request in such circumstances would not be fair to all of the other applicants whose applications would be delayed while the Tribunal gave priority to this Application.

[18] For the reasons set out above, the applicants' Request to Expedite the hearing of their Application is denied. However, I find it appropriate in the circumstances of this case for the Tribunal to schedule an early mediation to provide the parties with the opportunity to resolve the matter in a timely way.

[19] The parties are directed to advise the Tribunal whether they are interested in participating in an early mediation of this matter. I am aware that FIFA does not wish to attorn to the Tribunal's jurisdiction and that it is taking the position that it is not a proper respondent in this matter. However, the Tribunal regularly includes in its proceedings parties, referred to as "affected parties", that are neither an applicant nor a respondent. The applicants and the CSA indicated in their Application and Response, respectively, that they agree to take part in a mediation. All parties are directed to confirm with the Tribunal in writing within seven days of the date of this Interim Decision whether they are willing to participate in an early mediation with respect to this Application.

NEXT STEPS

[20] A key issue that must be determined in this case is whether FIFA has received effective legal notice of this Application or whether the applicants must serve FIFA in accordance with the requirements set out in the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*. By Case Assessment Direction dated October 23, 2014, the Tribunal directed the parties to make submissions on this issue ("the legal notice issue"). The Tribunal will issue an interim decision addressing the legal notice issue in the coming weeks.

[21] Also, the applicants have filed a Request to amend their Application and a Request for an Interim Remedy. The Tribunal will also issue an interim decision with respect to these Requests in the coming weeks.

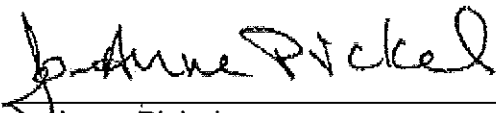
ORDER/DIRECTIONS

[22] For the reasons set out above, the applicants' Request to Expedite the hearing is denied. However, the Tribunal is prepared to offer the parties an early mediation in this matter.

[23] All parties are directed to advise the Tribunal in writing within seven days of the date of this Interim Decision whether they are willing to participate in an early mediation with respect to this Application.

[24] As FIFA is affected by this Interim Decision, the Tribunal Registrar will forward a copy of it to FIFA even though the legal notice issue has yet to be determined by the Tribunal. It may indicate in writing within seven days of the date of this Interim Decision whether it is willing to participate in an early mediation with respect to this Application.

Dated at Toronto, this 7th day of November, 2014.



Jo-Anne Pickel
Vice-chair

Schedule A

Jackie Acevedo

Katherine Alvarado

Nadine Angerer

Verónica Boquete

Fabiana Da Silva Simões

Abby Erceg

Caitlin Foord

So-Yun Ji

Samantha Kerr

Alexandra Morgan

Yuki Ogimi

Heather O'Reilly

Diana Saenz

Abby Wambach

Hannah Wilkinson