

AMERICAN ARBITRATION ASSOCIATION

COMMERCIAL ARBITRATION TRIBUNAL

In the Matter of the Arbitration between

Debbie Keller
and
United States Soccer Federation and Tony DiCicco
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- Chicago, Illinois

AWARD OF ARBITRATORS

We, the undersigned arbitrators, having been designated in accordance with applicable law and the agreement of the parties, being duly sworn, and having fully considered the pleadings, evidence and arguments of the parties, hereby find and award as follows:

The arbitrators note that, as urged by claimant, they elected to follow the burden of proof shifting framework established by the United States Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981) and St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993); see also Wallace v. SMC Pneumatics, Inc., 103 F. 3d 1394 (7th Cir. 1997). Under this approach, the plaintiff (here claimant) bears the burden of establishing a prima facie case of discrimination or retaliation. The burden then shifts to the defendant (here respondent) to produce evidence that the actions complained of were taken for legitimate, non-discriminatory and non-retaliatory reasons. If respondent produces such evidence, the burden again shifts to claimant to prove that the reason(s) proffered are not the actual reason(s) for the action(s) complained of, but are a pretext or pretexts. The ultimate burden of proving that respondent's conduct was discriminatory or retaliatory remains with claimant.

Findings of fact and conclusions of law with respect to dismissal of respondent Tony DiCicco:

The arbitrators found, as conceded by all parties, that respondent Tony DiCicco ("DiCicco") is not a party to any pre-dispute arbitration agreement which would require him to arbitrate the claims of claimant Debbie Keller against him, nor has he otherwise agreed to the arbitration of those claims. The arbitrators further determined that DiCicco is not required to arbitrate Keller's claims by the Ted Stevens Olympic and Amateur Sports Act, the constitution and by-laws of the United States Olympic Committee, or the constitution and by-laws of the United States Soccer Federation. Accordingly, prior to the hearing in this matter, DiCicco was dismissed as a respondent.

Findings of fact:

1. Respondent, the United States Soccer Federation, ("Federation") is the national governing body for the sport of soccer in the United States, recognition as such having been accorded it by the United States Olympic Committee pursuant to the Ted Stevens Olympic and Amateur Sports Act.
2. As one of its activities as the national governing body for soccer, the Federation funds, manages and supports the United States Women's National Soccer Team ("Women's National Team").
3. The coaching staff of the Women's National Team maintains a player pool comprised of outstanding women soccer players, which pool is the principal source of invitees to the team's residency and training camps and, consequently, of team members selected for international competitions such as the Olympic Games and the FIFA Women's World Cup ("World Cup"), and for other tournament and non-tournament games.
4. Claimant Keller participated in the 1995 World Cup as a member of the Women's National Team and was a regular member of the team in 1997 and 1998. In 1998 claimant played in twenty-three games for the team, starting in seven of them. During all of 1998 and during 1999 through the conclusion of the hearing in this matter, she was a member of the team's player pool.
5. On August 25, 1998 claimant and another woman filed a sexual harassment lawsuit against their former soccer coach at the University of North Carolina, Anson Dorrance, and others. Dorrance, a former coach of the Women's National Team, is a highly successful, respected and influential figure in the world of women's soccer.
6. The Women's National Team held a five-month residency camp ("residency camp") beginning in January, 1999 to prepare for the 1999 World Cup and to enable the coaching staff to select a team roster of twenty players, the maximum number permitted for the World Cup team. Twenty-six women were invited as full-time participants in the residency camp. The names of the women invited were released in three groups, the first on October 29, 1998 and the last on December 23, 1998. Claimant was not included among the invited full-time participants. A number of other women, including claimant, were invited to the camp for brief periods as "floaters". Claimant was not named to the roster for the World Cup team.
7. Claimant successfully established a prima facie case that her failure to be included among the full-time invitees to the residency camp preparatory to the 1999 World Cup and her failure to be included on the team roster finally selected for that event were, at least in part, retaliatory for her filing of a sexual harassment lawsuit against Anson Dorrance.
8. Respondent Federation produced evidence that its decisions not to include claimant among the women invited to be full-time participants in the residency camp, or among those finally selected for the World Cup team, were a result of the coaching staff's evaluation of all players, including claimant, considered for those positions. That evaluation was based on the coaching staff's judgment as to each woman's soccer-playing skills, the extent to which such skills complemented those of other players under consideration, and the contribution that each candidate's play was

likely to make to the success of the team, taking into account the level of competition expected to be encountered in World Cup play.

9. Claimant failed to prove that the reasons proffered by respondent Federation for its decisions not to invite her as a full-time participant in the residency camp and not to include her as a member of the 1999 World Cup team were pretextual.

10. Respondent Federation's failure to invite claimant to be a full-time participant in the residency camp and its failure to name her as a member of the U.S. women's team which will compete for the 1999 World Cup were not discriminatory or retaliatory, but were legitimate soccer-based decisions by the coaching staff.

Conclusions of law:

Respondent Federation's failure to invite claimant as a full-time participant in the residency camp or to name claimant to the 1999 World Cup team did not deny or threaten to deny claimant an opportunity to compete in amateur athletic competition or protected competition in violation of the Ted Stevens Olympic and Amateur Sports Act, the constitution and by-laws of the United States Olympic Committee, or the constitution and by-laws of the United States Soccer Federation. Nor did respondent's conduct violate Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, or the Illinois Human Rights Act.

The Statement of Claim is dismissed with prejudice.

American Arbitration Association fees and expenses:

The administrative fees and expenses of the American Arbitration Association ("the Association") totaling THREE THOUSAND THIRTY-FIVE DOLLARS AND SEVENTY-EIGHT CENTS (\$3,035.78) shall be borne equally by the parties. Therefore, the UNITED STATES SOCCER FEDERATION shall pay to DEBBIE KELLER the sum of NINE HUNDRED SIXTY-EIGHT DOLLARS AND THIRTY-SEVEN CENTS (\$968.37) representing that portion of fees and expenses previously advanced by DEBBIE KELLER to the Association. Additionally, UNITED STATES SOCCER FEDERATION shall pay to the Association the sum of FIVE HUNDRED FORTY-NINE DOLLARS AND FIFTY-TWO CENTS (\$549.52) for fees and expenses still due the Association.

Arbitrator compensation and expenses:

The compensation of the arbitrators attributable to preparation of this award, totaling FIVE THOUSAND SEVEN HUNDRED FORTY-TWO DOLLARS AND NINETY-TWO CENTS (\$5,742.92) shall be borne by the UNITED STATES SOCCER FEDERATION. Therefore, the UNITED STATES SOCCER FEDERATION shall pay to the Association the sum of FIVE THOUSAND SEVEN HUNDRED FORTY-TWO DOLLARS AND NINETY-TWO CENTS (\$5,742.92) representing compensation of the arbitrators attributable to preparation of this Award.

All other compensation and expenses of the arbitrators, totaling THIRTY-FOUR THOUSAND THREE HUNDRED NINETY-TWO DOLLARS AND ONE CENT (\$34,392.01) shall be borne equally by claimant Keller and respondent the United States Soccer Federation. Therefore, DEBBIE KELLER shall pay to the Association the sum of ONE THOUSAND FIVE HUNDRED NINETY-SIX DOLLARS AND ONE CENT (\$1,596.01) and the UNITED STATES SOCCER FEDERATION shall pay to the Association the sum of ELEVEN THOUSAND THREE HUNDRED NINETY-SIX DOLLARS AND NO CENTS (\$11,396.00) representing that portion of compensation and expenses, other than compensation attributable to preparation of this Award, still due the arbitrators.

The above sums are to be paid on or before thirty (30) days from the transmittal of this Award to the parties.

This Award is in full settlement of all claims submitted to this arbitration. All claims not expressly granted herein are hereby denied.

Mark Crane
Mark Crane, Chairman

June 25, 1999

Daniel T. Burns
Daniel T. Burns, Arbitrator

June 25, 1999

Herbert S. Channick
Herbert S. Channick, Arbitrator

June 23, 1999