

ARBITRATOR'S DECISION

BETWEEN

BMW CLUB TRILLIUM

Claimant

and

BMW CLUBS CANADA

Respondent

ARBITRATOR'S DECISION

INTRODUCTION

1. Claimant is one of seventeen registered Regional Clubs or Chapters of the Respondent and it declared a dispute in terms of paragraph 9.02 ("Dispute Resolution Mechanism") of Respondent's By-Law No. 1.
 - a. Claimant was represented by one of its members, Kaizer Poonawalla, who was assisted by a fellow Club member, Isidore Papadopoulos.
 - b. Respondent was represented by one of its members, Chris Pawlowicz, who was assisted by a fellow Club member, Roger Harmston.
2. I was informed by the parties that they had agreed that the dispute should be resolved by Arbitration and that I should be approached to accept appointment as the Arbitrator. I was so approached and accepted the appointment as Arbitrator.
3. Before the Arbitration commenced, both parties agreed that the outcome of the Arbitration would be final.
4. The matter was heard before me in Toronto on 21 January 2017.
5. I allowed each party's representative to present to me their principal's case. The Claimant's representative Kaizer Poonawalla, addressed me first and when he had completed his argument the Respondent's case was argued by Chris Pawlowicz.

6. The Claimant and Respondent both addressed oral argument to me and referred to the documents which had previously been given to me.
7. The arguments of the Claimant and Respondent were comprehensive, and I allowed the representatives every opportunity to present them fully to me. I am satisfied that the representatives submitted everything they wished to submit to me and that they were satisfied that I had given them every opportunity to do so.
8. In the course of his reply, Kaizer Poonawalla referred to matter which it was clear to me was irrelevant to the issues which I had been asked to arbitrate. This matter related to the misappropriation of funds by the previous treasurer of the Respondent. The Respondent's representative submitted that the argument in point was irrelevant and I told that parties that I agreed with him. I told both parties' representatives that I agreed with the Respondent's representative, but said that both of them could continue to discuss the point which the Claimant had raised. I further stated that I would not take account of the point in coming to my decision in due course. They both understood and accepted my point of view and I record that I have not considered the matter in arriving at my decision.
9. I was asked by the parties to deal with the following matters in the Arbitration:
 - Proportional Voting
 - Programs and Services Offered by the Respondent
 - Removal of Respondent's Board's ability to waive the 100km requirement for co-location of a club

and having carefully considered the points above, I set out hereafter my decision and my reasons therefor.

BACKGROUND

10. Claimant's case contains three issues for consideration, as referred to in Point 9 above, namely:
 - a. **Proportional Voting**

The Claimant requested a proportional voting system where each individual member of the constituent clubs of Respondent would be entitled to one vote, i.e. a "one member, one vote" system as opposed to the current system of "one club, one vote". (Underlining mine)
 - b. **Programs and Services Offered by the Respondent**

The Claimant requests that certain services be provided nationally by the Respondent to every member of its constituent clubs and that the provision of these services be funded by way of a levy upon each individual member of the constituent clubs.

c. Removal of Board's ability to waive the 100km requirement for co-location of a club

The Claimant alleged that the Respondent had changed paragraph 3.01 (b) (iv) of By-Law No 1 without its knowledge or approval, this having been done by adding to the Rule the words "... provided that the Board will have the discretion to waive this requirement."

11. When the parties' representatives addressed argument to me, much time was spent by both of them arguing points (a) ('Proportional Voting') and (b) ('Programs and Services'). Less time was spent dealing with point (c) ('Removal of the Board's ability to waive the 100km requirement').
12. In the course of their argument, both parties' representatives confirmed to me that before the Respondent had been established, there had been a national body to which individuals personally belonged and who each paid a membership fee (which fees were used to fund its activities) and voting was on a "one member, one vote" basis.
13. The national body later changed to a decentralised system where instead of individual members making up its membership, clubs such as the Claimant were formed and each such club became a single member of the new body (the Respondent) with one vote attaching to each member of the Respondent.
14. Both parties argued to me as to why the current system should or should not be changed and much reference was made to the current system and whether it is or is not fair to individual members of constituent clubs.
15. The Claimant continued to remain a member of the Respondent and has abided by the latter's By-Laws notwithstanding its strong objections to the current system of voting; the absence of certain programs and services offered by the Respondent; and the Board's ability to waive the 100km radius requirement.
16. The Claimant had chosen not to send a representative to the Respondent's AGM which was held in Toronto in 2016 as a form of protest against what it saw as an unfair and biased voting system of "one club, one vote".
17. The Claimant stated that communication between it and the Respondent had broken down, and that it was unable to discuss the important matters which had been submitted to me for arbitration. It is my task to attend to these matters and issue a final and binding decision regarding the issues set out in paragraph 10 above.

COMMENT

18. After the parties' representatives had completed their arguments, I reserved my decision to enable me to carefully research and consider this whole matter.

In considering the three issues raised by the Claimant I studied the By-Laws of the Respondent; all the documentation concerning the matter which had been placed before me; and other material which I felt might be helpful to me in reaching a final decision. Naturally I also considered very carefully all the submissions which had been made to me by the parties' representatives in argument.

19.

- By-Law No. 1, Section 1.01 lists the definitions in the By-Laws and subparagraph (j) reads as follows:
“(j) “Member Clubs” or “members”, means a BMW Club that is a member of the Corporation as described in Section 3.0 of the By-Law, and “Member Clubs” or “member” means any one of the Member Clubs or members. These terms are used interchangeably in this By-Law.”
- It is clear to me on a reading of Section 1.01 (j) of the Respondent's By-Law No. 1 that membership of Respondent can only be held by a BMW Club and not by a natural person. Furthermore, it is stated in Section 3.01 (b) of the Respondent's By-Law No. 1, in respect of new membership of Respondent, that such membership is only available to BMW Clubs in Canada. I have been unable to find anything in the By-Laws which permits a natural person to be accepted into membership of the Respondent.
- The role of the Respondent is set out in Section 2 of its By-Law No 1.
- Section 2 (Role of the Corporation) makes it clear that the Respondent is the umbrella organisation for regional BMW Clubs in Canada and that it serves as an interface between BMW Clubs International Council and regional BMW Clubs and between BMW Group Canada and Canadian regional BMW Clubs.
- I also noted that Section 2.03 deals with the role of the Corporation and outlines what the Respondent does. There is a list of roles from (a) to (q) and from that list it is clear to me that essentially the role of the Respondent is to promote the establishment of new BMW Clubs, assist existing regional clubs or Chapters in maintaining and growing their membership base, and fostering communication and cooperation between its member clubs.

20. As regards proportional voting, the Claimant alleged that the current system of “one club, one vote”, is unfair, inequitable and an unjust system. It further presented argument and evidence in the form of Minutes of various AGM's of the Respondent and email trails to show that it had on many occasions tried to get this system of voting changed to one which it felt would better represent its individual members.

21. As to the Claimant's argument for the adoption of Proportional Voting, I agree that in a club of which the members are natural persons, the concept of "one member one vote" makes sense and that this is a fair way for each member to have a say in the running of the club. However, in the case of Respondent, membership of it is not open to natural persons but only to BMW Clubs. In this connection, it will be seen that Section 3.02 deals with Meetings and Voting. Specifically, it states that "Each member club that is a full member shall be entitled to receive notice of, attend and vote at all meetings of the members of the Respondent."

It is, therefore, clear to me that membership of the Respondent is limited to BMW Clubs; and that the current voting system is "one club, one vote". Accordingly, I am not convinced that the current system of voting is undesirable. One must at all times remember that the Respondent is, as it were, a club of clubs (i.e. other clubs) and not a club whose members are natural persons.

22. In respect of the Claimant's contention that the needs of its members are not being met due to the "one club, one vote" system, insufficient argument was addressed to me for this contention to be persuasive. The Claimant contended that the current system, where each member club of the Respondent has only one vote, alleged that a collection of smaller clubs was effectively imposing their needs on clubs with a larger membership base due to a distorted voting process. Whilst I accept that, based on the structure of the Respondent, this may be possible, I believe that that would be highly unlikely and the Claimant did not provide any evidence of this having happened in the past.

In support of its argument for a "one member, one vote" system and the membership management system that would, of necessity, need to accompany such a system, the Claimant presented what I can only describe as a convoluted and in my opinion unnecessarily complicated membership model which would be both impractical and expensive to administer, particularly when compared to the existing "one club, one vote" model.

23. In respect of the Claimant's argument for the provision by the Respondent of Programs and Services, the Claimant contended that the provision of such services should be done by contracted paid staff who would be funded by the collection of membership fees from individual members of all the Respondent's constituent clubs. The Claimant submitted to me that economies of scale would be achieved if natural persons were to be levied with an appropriate amount to cover the cost of such services and that, accordingly, the cost of providing the services would become cheaper than at present and that, accordingly, this program would be sustainable. The Claimant's representative told me that it currently produces a magazine for its members, who bear the cost thereof. I was further informed that the physical work involved in producing the magazine is performed by volunteers who are members of the Claimant, but that this level of engagement is taxing on them and is unsustainable on a long-term basis. The Claimant's representative further informed me that the Claimant's members demanded programs and

services from it such as, for instance, a magazine but that the Claimant believes a stage will be reached where it will be unable to continue production of the magazine. It is for this reason that the Claimant wants such a service to be performed by the Respondent.

The Respondent, however, argued that the provision of such services at national level would be all but impossible as the demands would discourage volunteers from continuing to provide their present voluntary services. As to these services being funded by the collection of a subscription or other levy, the Respondent's representative pointed out that although its bylaws permit the levying of subscriptions by its members the need to do so has never arisen as currently the Respondent receives an annual grant from BMW Group Canada, which is sufficient to cover its operating costs. The Respondent contended that implementing a membership fee purely to pay for services to be offered by it would in all likelihood reduce overall membership of regional clubs as some of their members might well resign their membership and this would have an impact on the Respondent in terms of declining regional constituent club membership numbers.

24. I am not persuaded by the Claimant's argument that a centralised services model is sustainable in an organisation run by volunteers or paid staff being partly funded by membership fees or otherwise. In fact, in the Claimant's own documented submission, it submitted that it is currently straining its own resources and volunteer base in providing programs and services to its membership base and that it will not be able to do so in the long term.
25. As I have indicated in Paragraph 19 above, the role of the Respondent is to promote the establishment of new BMW Clubs and nowhere is it a requirement that the Respondent must provide centralised programs and services to its member clubs. It seems to me that in all the circumstances programs and services should be offered at local club level thereby ensuring that the members of regional clubs receive relevant services tailored specifically for them in their region.
26. In respect of the Claimant's request for the removal of the Respondent's Board's ability to waive the 100km requirement for co-location of a club, it was in fact established at the Arbitration that a representative of the Claimant had been present at a general meeting of the Respondent's members at which Paragraph 3.01 (b) (iv) of By-Law No 1 was changed and that the Claimant's contention that the change had been made without necessary approvals or knowledge was simply incorrect.

27. For all the reasons I have set out herein, my decisions in relation to the issues in Paragraph 10 which have been before me for consideration are as follows:

I. Proportional Voting:

THE CLAIMANT'S CLAIM IS DISMISSED

II. Programs and Services Offered by Respondent


THE CLAIMANT'S CLAIM IS DISMISSED

III. Removal of the ability Respondent's Board's ability to waive the 100km requirement for co-location of a club

THE CLAIMANT'S CLAIM IS DISMISSED

IV. NOTWITHSTANDING THE DISMISSAL OF THE CLAIMANT'S THREE CLAIMS, EACH PARTY IS – AS HAD BEEN AGREED BY THEM PRIOR TO COMMENCEMENT OF THE ARBITRATION - TO PAY ONE-HALF OF ALL THE COSTS, DIRECT OR INDIRECT, THEREOF.

DATED AT CAPE TOWN ON 14 FEBRUARY 2017



IM VERHULP
[ARBITRATOR]