

Procedural justice as a critical element in managing disputes

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Abstract 371

If an over whelming number of sport disputes going to arbitration are found in favor of the sport organization why do athletes keep taking their grievances as far as they can? Statistics suggest sport organizations have largely been fair at law in how they have dealt with issues but complainants nonetheless do not feel they had been treated fairly (ADRSpportRED Jurisprudential Database, 2007). The answer may be that complainants don't feel as though they have been treated fairly through out the organization's dispute resolution process.

Procedural justice refers peoples' perceptions of fairness. It is well established that the perception of justice is an important factor in assessing the effectiveness of dispute resolution systems (Howeison, 2005). Perceptions of fairness have been shown to have strong effects on attitudes about institutions and the authorities representing them. High levels of perceptions of fairness dramatically affect factors such as trust, degree of citizenship and compliance with sanctions (Konovsky, 2000). Such levels have also been shown to mitigate the effects of a negative outcome, that is, the more severe the negative outcome of a decision, the more important the perception of procedural justice. Conversely, good outcomes can mitigate the negative effects of low, or poor, perceptions of procedural justice (Tyler & Lind, 2000).

Such evidence points to the importance of incorporating aspects of procedural justice as legitimate elements of any dispute resolution process. That said, by and large, research into systems of dispute resolution within sport has focused on the structural elements of such systems. Five structural elements have received particular attention in the sport literature: procedural elements of due process, the nature of the dispute resolution process, who controls the design of the dispute resolution system, the mandatory versus consensual nature of the process and, characteristics of the third-party neutral. This presentation takes each of these elements and addresses it from the perspective of procedural justice. Results suggest many of the structural elements of contemporary dispute management systems are less than optimally designed. It is argued that consideration of aspects of procedural justice in the choice of structural design elements may do much to enhance the efficacy of the dispute resolution process.

A procedural justice lens was put to an analysis of disputes within one sport organization. The study investigates three key aspects of the dispute resolution system of one provincial sport organization and a number of its local club affiliates: the type of disputes arising at the provincial and local levels; parties' perceptions of what they feel was fair, or not fair, about the process; and, causes underlying disputes at the provincial, but more particularly, at the local club level.

Methods: The research was carried out by means of a qualitative, case study of one nonprofit sport governing body with approximately 400,000 participants. Its corporate structure consists of a single governing entity, 21 district associations and over 1,000 clubs at the community level. The study involved an analysis of selected governing documents (by-laws, dispute management policies & procedures) of the organization, district associations and selected clubs, as well as a review of the outcomes of all the formal disputes (hearings) of these bodies. Semi-structured interviews with a selected sample of those responsible for the conflict management functions of the bodies as well as parties to specific disputes within all levels of the organization were completed. Documents and interview transcripts were coded and analyzed for patterns and trends.

Results & Discussion: Initial document and case analysis reflects a dichotomy in the nature of disputes, which can be described as inter-club (or corporate) disputes and intra-club (or local level) disputes. Corporate disputes relate primarily to issues of policy interpretation and compliance (i.e., rule driven) and local level disputes are individual and personality driven (i.e., interest driven). At the club level, complainants' views of the 'legitimacy' of the dispute resolution process directly related to their subjective perceptions of fairness particularly as it related to the conduct of club officials.

These results demonstrate and confirm a difference in the fundamental nature of disputes at each level within the sport hierarchy. This suggests a different approach to structuring the dispute resolution process may be necessary to achieve optimal effectiveness and satisfaction among disputants. Indeed, the use of a rights-based dispute mechanism (e.g., arbitration) on club level disputes (which are typically interest-based) may inflame the perceived dissatisfaction even though there is a resolution, albeit imposed, to the dispute thus undermining the entire process (Tyler & Lind, 2000). Further, regardless of the type of dispute resolution process used, or the organizational level, complainants typically perceived inherent organizational bias against them, which is consistent with research on one-party designed systems (Bingham, 2002; Hayes, 2004). Such results speak

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strongly to the need for independence in the system of dispute resolution but, at the same time, consideration of a more integrated organization-wide conflict management system (Lynch, 2001).

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