

IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

UNIVERSITY OF Otago  
11 JUN 1984  
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IN THE MATTER of Part 1 of the Judicature  
Amendment Act 1972

BETWEEN NEW ZEALAND UNIVERSITIES  
RUGBY FOOTBALL COUNCIL  
INC.

First Applicant

AND VICTORIA UNIVERSITY OF  
WELLINGTON RUGBY FOOTBALL  
CLUB INC.

Second Applicant

AND WELLINGTON RUGBY FOOTBALL  
UNION INC

First Respondent

AND RAYMOND F. ROWSELL of  
Wellington, Secretary  
of the Wellington Rugby  
Football Union

Second Respondent

Hearing: 6 April 1984

Counsel: B W F Brown and M A F Gilkison in support  
D J White and M R Burrowes contra

Judgment: 6 April 1984

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ORAL JUDGMENT OF EICHELBAUM J

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Motion for Interim Order

A rule of the International Rugby Football Board (the Board) provides that the Board may adopt regulations relating to amateurism which shall be binding on all member unions. A resolution of the Board

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(No 9.6) states :

" The name of an advertiser  
as distinct from the manu-  
facturer's logo must not  
appear on jerseys or  
shorts . . . . "

For purposes of the present argument I am prepared to assume that the by-law and resolution of the Board referred to are binding on the Wellington Rugby Football Union Inc. (the Union) the first respondent in these proceedings.

From the papers before me it appears that in the 1983 rugby season the Victoria University of Wellington Rugby Football Club Inc., the second applicant (the Club) played in jerseys bearing a logo that complied with resolution 9.6. From a letter exhibited it can be inferred that in relation to that season the Club accepted that it was not entitled to use jerseys bearing the manufacturer's name. Last weekend however the Club's senior team played a competition game in jerseys that displayed the name. The papers before me do not disclose what if any exchanges occurred preliminary to the Club taking that step. On the face of things it may have been a move that was sprung on the Union. The latter responded by a letter delivered yesterday, 5 April, informing the Club that such step was in contravention of resolution 9.6, and that in future permission would not be granted for it to play

in jerseys so marked. The letter says that this followed oral advice given the previous Sunday (1 April) that the Union would not permit the Club to play in the particular jerseys again but that incident is disputed.

The Club together with the first applicant, the New Zealand Universities Rugby Football Council Inc., have now applied under the Judicature Amendment Act 1972 for a review of the Union's decision on the basis that it had no power to issue such a prohibition. Alternatively the applicants advanced the ground that the exercise of the power was void. Application is now made for an interim order with reference to the game to be played by the Club's first division team tomorrow. The papers have been served on the Union and its secretary, and on their behalf Mr White appeared at short notice and indeed without instructions; but following the conclusion of the argument he was able to inform me that in the meantime instructions had been obtained confirming his authority to make submissions in opposition to the orders sought.

Understandably in the circumstances no authorities have been cited as to the basis for exercise of the jurisdiction to make an interim order. Counsel have informed me that there are decisions in this Court in which to some extent the principles applicable to interim injunctions, particularly those in American Cyanamid v Ethicon<sup>1975</sup> All ER 504, have been followed although as I understand it, it is not suggested they govern the situation absolutely. On the footing however that one should start with the question whether there is an arguable case, I am not wholly convinced that that test is met. On the face of it the resolution

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of the IRB (I refer to resolution No. 9.6) is clear. In the absence of any information to the contrary, for present purposes I would infer that the resolution is binding on the Union and through it, on competitions under its jurisdiction. If so then the decision made by the Union, if that is the right description, seems to follow inevitably from the terms of the IRB resolution and the Union's regulation of competitions in accordance with international rules. However under s 8 the jurisdiction of the Court is to make interim orders if that is necessary for the purpose of preserving the position of the applicant. The argument has been brought on at short notice and I have not had the benefit of submissions on the point but I will proceed on the footing that provided an interim order is within the terms of s 8(1) the jurisdiction to grant the same is not dependent upon an exact application of the principles relevant to interim injunctions. I am for the moment prepared to approach the matter on the basis that I have jurisdiction provided the application to review is not frivolous and further that the balance of convenience favours the making of an order. And while as stated earlier I am doubtful about the extent to which the applicants have made out an arguable case I am certainly not prepared to say that the application is frivolous.

Turning then to the question of balance of convenience, the only point that in my opinion merits consideration as a matter of urgency is the question of the game to be played by the Club's senior team tomorrow. The players are innocent of any involvement in the dispute, at any rate so far as the information before me goes, and should not be deprived of their match nor have their prospects in the champion-

ship retarded. However during the course of argument I was informed from the bar and Mr White has now been able to confirm that the Union has offered to outfit the Club with an alternative set of jerseys, the Club apparently having none available. Mr Brown argued that it was important that a club should be able to play in its own colours, and I have no doubt that this is correct; but I think I can take judicial notice of the fact that on occasions representative and even international teams have played in jerseys other than their normal ones where there has been some clash of colours with an opposing team. Indeed Mr Brown agreed that this was so. On the understanding therefore that the Union will be able to supply jerseys to the Club's team I see no need for an immediate interim order. If that understanding should turn out to be wrong I am prepared to hear the parties again tomorrow morning. As at present advised I would be prepared to make an interim order if in the absence of an order the result would be that the team would be prevented from playing tomorrow.

That aspect aside I see no pressing need for an order and I would prefer not to make one upon the information that has been put before me which necessarily (and I do not say this in any spirit of criticism) is a little sketchy and probably incomplete. I propose therefore to adjourn the application for an interim order until Thursday next 12 April 1984. I understand that there will be a meeting of the Union in the meantime at which the problem is to be discussed. There will be the opportunity for fuller information to be placed before the Court should the matter have to be referred to the Court further and at that stage the question of the necessity for an interim order can

receive better consideration than has been possible this evening. Having said all that it would only be right to add that naturally one would hope that sporting bodies of the kind now before the Court would be able to resolve their differences through their normal internal procedures without requiring the further assistance of the Court.

(Note : Unfortunately the tape on which this judgment was recorded is unclear in parts. On the first pages, down to the passage on p 5 commencing "However, during the course of argument . . . ." it has been necessary to reconstruct much of the detailed language. If there are any passages that do not accord with counsel's notes, and there is any issue of importance, I would be glad to see counsel with a view to agreeing an amended transcript.)

*By the Court*

Solicitors :

Bell Gully Buddle Weir (Wellington) for applicants  
Young Swan Morison McKay (Wellington) for respondent