

Case number: NST-E23-188033

Case Title: Tom Lambert v David Birchell (with Boxing Australia)

Determination

National Sports Tribunal General Division

sitting in the following composition:

Panel Member

Craig Green

in the arbitration between

Tom Lambert

(Applicant)

Represented by Mr Dean Groth

And

David Birchell

(Respondent)

Represented by Mr Bradley Hayward

And

Boxing Australia Limited

(Applicant Sporting Body)

Represented by Ms Dinah Glykidis



PARTIES

1. The Applicant, Mr Lambert, and the Respondent, Mr Birchell, are members of the Applicant Sporting Body, Boxing Australia Limited (Boxing Australia).

INTRODUCTION

2. Mr Lambert submitted a formal complaint to Boxing Australia New South Wales regarding two incidents set out below. Boxing Australia New South Wales referred the complaint to Boxing Australia.
3. Boxing Australia felt that mediation as set out in Part 2 of the Member Participation Protection Regulations would be inappropriate and that an independent tribunal would be an appropriate forum to determine what should be done in relation to the two incidents.

NST JURISDICTION

4. The jurisdiction of the National Sports Tribunal (NST) is engaged by section 24 of the *National Sports Tribunal Act 2019* and Clause 3.4(d) of Boxing Australia's *Regulations for the Determination of Complaints and Disputes and the Investigation or matters by Commission of Inquiry*.

FACTUAL BACKGROUND

5. The matter before the Tribunal relates to two interactions between Mr Lambert and Mr Birchell which took place at Boxing Australia sanctioned boxing tournaments.
6. The first incident took place on 19 August 2022 at the annual Golden Gloves tournament in Queensland (**the Golden Gloves Incident**).
7. The second incident took place on 30 October 2022 at a junior development day at the Australian Institute of Sport (**AIS**) in Canberra (**the AIS Canberra Incident**).
8. In the Golden Gloves Incident, Mr Lambert was acting as a volunteer, assisting the event organisers to register and weigh-in competitors. Mr Lambert was asked by the event organisers to restrict non-competitors from entering the weigh-in room. Mr Lambert said that Mr Birchell approached him and spoke to him in an aggressive manner.
9. Mr Birchell denied that he attempted to enter the weigh-in room or that he spoke to Mr Lambert on 19 August 2022.
10. In relation to the AIS Canberra Incident, Mr Lambert said that Mr Birchell approached him and spoke to him in an aggressive manner.
11. Both parties agreed that the conversation between Mr Birchell and Mr Lambert at the AIS was related to what Mr Birchell said had occurred at the Golden Gloves Tournament. That being, that Mr Birchell asked Mr Lambert to confirm what he (Mr Lambert) had said to parents at the Golden Gloves Tournament about their children sparring with Mr Birchell's son.



12. Mr Birchell acknowledged that he was frustrated when he was speaking to Mr Lambert, but he denied that he was aggressive towards Mr Lambert.
13. While the Member has considered all the facts, allegations, legal arguments and evidence submitted by the parties, he refers in his Determination only to the submissions and evidence he considers necessary to explain his reasoning.

PROCEEDINGS BEFORE THE NST

14. Mr Lambert was to file with the NST Registry and serve on the other Parties any witness statement(s), evidence, and all other documents he wishes to rely on by 5:00pm (AEST) Tuesday 15 August 2023.
15. Mr Birchell was to file with the NST Registry and serve on the other Parties any witness statement(s), evidence, and all other documents he wishes to rely on by 5:00pm (AEST) Tuesday 5 September 2023.
16. Mr Lambert was to file with the NST Registry and serve on the other Parties any witness statement(s), evidence, and all other documents he wishes to rely on in reply by 5:00pm (AEST) Friday 8 September 2023.
17. Boxing Australia was to file any witness statement(s), evidence, and other documents it wishes to rely on by 5:00pm (AEST) Friday 8 September 2023.
18. The hearing took place on Monday, 18 September 2023.
19. No objection was made at the outset of the hearing to the composition of the Panel, and at its conclusion the parties confirmed that their procedural rights had been fully respected.

APPLICABLE RULES

20. Boxing Australia - Participant Protection Regulations.

MAIN SUBMISSIONS OF THE PARTIES

21. Mr Lambert submitted that he is entitled to a workplace that is free from bullying, harassment and intimidation.
22. Mr Birchell took no issue with the submissions of Mr Lambert regarding the expectation that attendees at boxing events have as to the safety and well-being of themselves and others at any event.
23. Mr Birchell accepted that he is subject to the *Boxing Australia Participant Protection Regulations* and Code of Behaviour.
24. Mr Birchell also took no issue with the submissions relating to Mr Lambert's participation in Boxing Australia events. Mr Birchell agreed that Mr Lambert is entitled to a workplace that is free from bullying, harassment and intimidation.



25. Boxing Australia indicated in the application filed that there was “*Ongoing verbal and abusive behaviour towards Mr Lambert from Mr Birchell.*”
26. Boxing Australia also noted in the application filed that “*Boxing Australia previously had several hearings of Mr Birchell from other parties complaints.*”
27. Mr Birchell indicated in the materials that he filed that he was not aware of any hearings being held due to any complaints being made against him.
28. Boxing Australia indicated in the application filed that it sought appropriate disciplinary action to be taken against Mr Birchell, so that a safe environment is provided to officials. Boxing Australia did not file any materials as provided by the directions issued by the Registry.

MERITS

29. In relation to the Golden Gloves Incident, at the hearing Mr Lambert reiterated the information contained in the written submissions and material filed. When questioned about the time that the alleged conversation occurred, Mr Lambert said the conversation took place at around 10:30-11am. Mr Lambert confirmed in his evidence that he had not spoken with Mr Birchell prior to 19 August 2022.
30. Mr Birchell reiterated the contents of his statement in reply. Mr Birchell said that he attended the weigh-in at approximately 7am. Mr Birchell said that he left the area where the weigh-ins were being conducted at approximately 10am. Mr Birchell also gave evidence that he was aware that only athletes were permitted to enter the weigh-in room.
31. Mr Lambert’s materials that were filed included a statement by Julia Felton, Director of Boxing Australia, dated 1 August 2023. Ms Felton indicated in her statement that she heard some yelling at the door of the weigh-in room and looked up to see Mr Birchell walking away. Ms Felton says that she was later told by others that Mr Birchell had become aggressive towards Mr Lambert.
32. Ms Felton noted in her statement that weigh-ins were to be conducted between 7am and 8am and approximately 250 competitors had to be weighed-in.
33. Ms Felton also noted in her statement that other persons who reported to her about later interactions with Mr Birchell said that there were no issues or concerns about Mr Birchell.
34. Mr Lambert also provided a statement from Marco Romero, who attended the Golden Gloves tournament. Mr Romero noted that he saw Mr Birchell approach Mr Lambert and that another coach had to intervene and pull Mr Birchell away from Mr Lambert.
35. Mr Lambert noted in his affidavit concerning the Golden Gloves Incident that another coach, Khalil Saab, positioned himself in front of Mr Birchell and then pulled Mr Birchell away from Mr Lambert, preventing any further escalation of the incident. Mr Saab did not provide a statement.

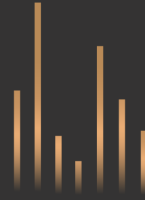


36. Mr Birchell denied that he had a conversation with Mr Lambert on 19 August 2022. In a written statement, dated 7 September 2023, Mr Birchell indicated that whilst he was waiting outside of the weigh-in room, parents of other fighters had told him what Mr Lambert had said to them in relation to the children sparring with Mr Birchell's son.
37. Mr Birchell's material included a statement from Mr Fidel Turkel dated 7 September 2023 in which he referred to a discussion that he had with Mr Lambert about comments Mr Lambert had made regarding Mr Birchell and also about Mr Turkel's gym.
38. Mr Turkel noted that this conversation with Mr Lambert took place on 20 August 2022. Mr Birchell was some 20 metres away from Mr Lambert and himself during that conversation, and Mr Birchell did not speak to Mr Lambert at that time.
39. There is clearly a strong dispute between Mr Lambert and Mr Birchell as to whether there was a conversation between them at the Golden Gloves tournament. Some of the evidence, such as Mr Lambert and Mr Romero's statements, indicates that there was a conversation between Mr Birchell and Mr Lambert. Ms Felton's statement suggests that Mr Birchell was in close proximity to Mr Lambert at some point.
40. However, as Ms Felton made clear in her statement and as Mr Birchell noted in his evidence, there was no need for Mr Birchell to attempt to enter the weigh-in room on 19 August 2022.
41. As Ms Felton noted in her statement, it was clearly communicated to coaches and parents that only fighters were permitted in the weigh-in room. Therefore, Mr Birchell did not need to enter or to attempt to enter the weigh-in room.
42. It is important to note also that Mr Lambert said that the conversation with Mr Birchell took place around 10:30am-11am, whereas Mr Birchell said that he was at the venue around 7am. This timing accords with the time that Ms Felton noted in her statement that athletes were required to attend to weigh-in.
43. It is also noted that no action was taken by Ms Felton in relation any concerns about Mr Birchell arising from the Golden Gloves Incident.
44. In relation to the AIS Canberra Incident, Mr Birchell agrees that he approached Mr Lambert to discuss what Mr Lambert had told parents at the Golden Gloves tournament. Both Mr Lambert and Mr Birchell agree that there was a conversation between them.
45. Mr Lambert noted in his affidavit dated 9 August 2023 that Mr Birchell made reference to his son and the comments that Mr Lambert had made to other parents at the Golden Gloves tournament.
46. Mr Lambert gave evidence that he had been supportive of Mr Birchell's son's participation and involvement in a New South Wales under 14 team and he had attempted to explain this to Mr Birchell.
47. Mr Lambert filed a statement from Justin Oag, dated 9 November 2022. Mr Oag's statement confirmed that he had observed Mr Birchell speaking with Mr Lambert in what he described as



a heated tone. Mr Oag said in his statement that he could not hear details of the conversation although he could hear Mr Lambert asking Mr Birchell to leave him alone a number of times.

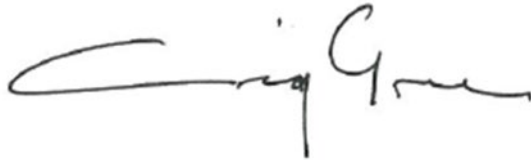
48. Mr Oag said at the end of the conversation between Mr Birchell and Mr Lambert, Mr Birchell pointed at Mr Lambert and said, “I will fuck you up, just wait.” Mr Birchell acknowledged that he was frustrated when speaking to Mr Lambert and agreed that he made a comment under his breath about Mr Lambert as he was walking away but denied that he was aggressive towards Mr Lambert.
49. From Mr Birchell’s perspective, there was a rational basis for him to speak to Mr Lambert in relation to the comment that Mr Lambert had made to parents at the Golden Gloves tournament.
50. It is unfortunate that Mr Birchell chose to engage with Mr Lambert at the AIS Canberra event, rather than using an alternative means to communicate his concerns. This could have included contact with Boxing Australia, albeit from the materials filed in this matter, Mr Birchell may not have considered that Boxing Australia would have been prepared to assist him.
51. Mr Birchell should have approached the matter differently and not in a public forum.
52. The interactions between Mr Birchell and Mr Lambert are, on Mr Lambert’s evidence, two altercations, and, on Mr Birchell’s evidence, one discussion. Mr Lambert noted that he had not spoken to Mr Birchell prior to 19 August 2022 and he was unaware of any other issues between Mr Birchell and Boxing Australia.
53. As such, issues between Mr Birchell and Mr Lambert are limited in scope, to issues between Mr Birchell and Mr Lambert.
54. Given that Mr Lambert acknowledged that he had made comments, which came to be known by Mr Birchell, and then Mr Birchell sought to discuss such comments with Mr Lambert, there was an opportunity for Boxing Australia, under the Member Protection Policy or Participant Protection Regulations, to arrange a mediation between Mr Lambert and Mr Birchell to address the underlying reasons for Mr Birchell’s concerns. This would also have provided an opportunity for Mr Lambert to express his concerns.
55. The Tribunal considers that this would have provided the parties with a practical way to address the concerns held by Mr Birchell about Mr Lambert’s views and also for Mr Lambert to express his concerns to Mr Birchell about their interactions in the past and how they would interact in the future.
56. Given that Mr Birchell has acknowledged that all persons, including Mr Lambert, are entitled to a workplace that is free from bullying, harassment and intimidation, the Tribunal considers that the parties should be encouraged to address their concerns by way of a mediation.



THE TRIBUNAL THEREFORE DETERMINES:

1. The application is dismissed.

Date: 18 October 2023



Craig Green