

Jim Sturman QC,
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Tuesday 21st May 2013

Dear Sir

I write on behalf of Ocean City Nor'Easters, who as you know, have been denied the right to host their third-round match in the U.S. Open Cup against Philadelphia Union. In asking you to reconsider your decision, I would invite you to keep in mind the following factors:

1. Ocean City's pitch is in fact compliant with the Cup Handbook requirements (as well as those of FIFA);
2. Even if the Committee were to have found that the dimensions were not in fact compliant, it has the authority, in its discretion – such discretion obviously to be exercised reasonably and in accordance with sporting principles of fairness and equity as well as “for the good of the game” - to rule that the club's ground is still appropriate to host the tie;
3. The unfair disadvantage that a revocation of the right to host would have on Ocean City; and
4. To refuse Ocean City the right to play at home is wrong in principle and contrary to the good of the game; and
5. The decision of the Committee is manifestly unfair and fails to take into account the interests of the people of Ocean City, a community still striving to repair the damage suffered as a result of Hurricane Sandy. Playing this fixture – on a ground that is capable of hosting the match – would be a huge morale boost to a community that suffered such damage last fall, whereas the current decision amounts to an unnecessary and unfair blow to the image of the community.

1. The dimensions of the pitch are compliant with the Cup Handbook and FIFA Requirements

Firstly, and in terms of the regulations of the sporting competition, most importantly, it is untrue to say that the Ocean City pitch does not comply with the US Open Cup requirements. Page 22 of the US Open Cup Handbook clearly states that a playing surface must be “at least 68 yds by 110 yds”. The width of the Ocean City pitch is 71 yards. An administrative error meant that the pitch width was stated on the Venue Declaration Form as being 65 yards wide, but since the first Cup tie the pitch has in fact been 71 yards wide and is therefore compliant with the requirements under the handbook. This has been brought to the attention of Cup officials on the occasion of previous games and, at that stage, the club was told that no action would be taken. No harm or

loss has been suffered to any player or team, nor has any other ill, the like of which the rules regarding playing surfaces were designed to prevent, arisen.

Further, the FIFA pitch rules (See FIFA's statutes and Laws of the game) state that the minimum required width of a pitch is 50 yards and the maximum is 100 yards¹. The width of Ocean City's pitch has, therefore, at all times fallen well within the FIFA regulations, as well as being within the Cup's requirements at all material times.

2. The Committee's Discretion

Nowhere in the Cup tournament's rules does it say that any failure to meet the Cup's requirements on a single ground will be fatal to a Club's right to host games. Likewise, nowhere in the Cup's rules does it say that the decision as to whether the ground is suitable is based wholly and exclusively on the information provided in the form. Indeed, the specific wording of the rules (at p. 9) reads as follows:

“After receiving the list of possible venues, the Open Cup Commissioner makes a determination on the ability for venues to meet the requirements”

Furthermore, the Rules themselves specifically make provision for each case to be dealt with individually. For example, at p. 26 it states that “proposed stadiums [sic] with an artificial surface will be reviewed on a case-by-case basis” despite the very first requirement listed being “... any level playing surface *with natural grass*” (emphasis added). One might think that failing to have natural grass in place at a stadium would be a much more serious violation of the criteria than having a pitch which is the right width, but is not stated as being so on the original form submitted. A further example of the Commission's ability to exercise its discretion concerning violations of the criteria for stadia is found at p. 22 of the Rules, which reads:

“The US Open Cup Commissioner shall have the authority to waive or modify the stadium requirements for a good cause, or may place additional conditions or requirements for hosting an Open Cup game.”

It is quite clear, therefore, that even if the Commission takes the strict view that the pitch in question does not meet the Cup's criteria by virtue of an error in the filling in of a form, the Commission has, and should exercise, the discretion to overlook the error. It is respectfully submitted that there is clearly good cause to ignore a form that contains an inaccurate description of the width of a pitch.

3. Unfair Disadvantage

Ocean City has been permitted to play their first- and second-round games at home on their own pitch. At no stage prior to this decision had they been led to believe that the width of their pitch would prohibit them from hosting Cup games; indeed, on two occasions they have been assured that it would not. It would be unfair in the extreme, not to mention without any identifiable

¹ <http://www.fifa.com/aboutfifa/footballdevelopment/technicalsupport/refereeing/laws-of-the-game/law/newsid=1285960.html>

merit or benefit, to prevent Ocean City from being able to play their games at home having won the right to do so in the coin toss.

Not only is the decision to deny Ocean City the right to play at home wrong in principle, and unfairly disadvantageous to Ocean City; in this particular instance it would be especially damaging. It goes without saying that, should Ocean City progress to the third round of the Cup to face Philadelphia Union, the former will be the underdogs by some margin. In denying Ocean City the opportunity to host and awarding the right to Philadelphia Union, the Committee has created an unnecessary, unwarranted, and undeserved advantage for a team who already begin the match as favourites. The Cup committee relatively recently removed the right for a Club to “sell” home advantage no doubt to preserve the sporting dignity and integrity of the Cup competition, the decision in this case wrongly distorts the competition by awarding home advantage to a team that already enjoys a huge advantage in terms of its League status as an MLS team. The current decision damages the romance of Cup competition and is contrary to the best interests of the game.

4. The Good of The Game

Applying the Committee’s own test under s. 306 (b), to deny Ocean City the opportunity to host is, quite simply, contrary to the good of the game. The purpose of the Cup, like all open Cups around the world, is to allow teams from lower leagues to compete, openly and fairly, against the best in the country. It provides inspiration to small clubs and their dedicated local following, who are given the chance not only to witness some of the greatest players in the world compete against their local heroes, from their own home stands, but also to entertain, if only for a moment, the dream of felling Goliath. It is this spirit of equality – of sport at its gladiatorial purest – that draws audiences to open Cups around the world every year. To deny Ocean City the right to host this tie takes home advantage, not to mention financial resources, from a team that may draw inspiration from the moment and the support of a home crowd. Those two factors may prove to be instrumental in a Cup “upset”. Instead the decision gives that additional “advantage” to a club who will neither need nor notice either.

Finally, not only is it contrary to the good of the game in general, or even of this game in particular, it is contrary to the good of the game’s image. The reason that the coin toss was introduced in place of the sealed-bid process is to ensure fairness. This is, presumably, the same reason that the provision that existed to allow a team to sell their hosting rights has also been abolished in this year’s rules. As Brian Straus wrote in an article in Sporting News critiquing the sealed-bid system in 2011:

“[the sealed bid system] allows wealthy clubs to buy a bigger chance at the title and flies in the face of the ethos of a cup tournament, where teams from all levels of the soccer pyramid should have a relatively equal opportunity for success.

...

The confidentiality of the bids also has led to criticism of a system that might be doing more harm than good. It doesn’t serve anyone’s interest to crown a champion whose

legitimacy people question, especially with the country's oldest soccer trophy and a berth in the CONCACAF Champions League on the line.

The chorus has been heard, and change apparently is on the way”².

It would be tragic for the image of the game if, so soon after such admirable efforts to increase transparency and fairness, the oldest trophy in US soccer were to be blighted by such blatant, unwarranted and avoidable unfairness to a club asking for nothing more than to begin its next game on an equal footing with the right to stage a tie at home that has been “earned” by the coin toss.

It is not hard to imagine what the reaction would be to a decision of the English FA to overrule a draw that gave a non League team a home draw in the 3rd round of the FA Cup against Manchester United on the grounds of a form being filled in erroneously, when a pitch in fact satisfied the rules. Likewise a decision on similar grounds that denied a non league German Club the right to play Bayern Munich at home would be greeted with derision and screams of “foul”.

I sincerely hope that we are able to work together to find a solution that would ensure fairness for all parties and look forward to your response. We would respectfully suggest that this matter can be dealt with under either section 306 (protests) or Section 104 “adjudications” and that the matter should be dealt with via a telephone conference call to hear submissions made orally. Obviously for the good of the game (and in accordance with FIFA's Statutes and Regulations) we accept entirely that this dispute should be dealt with within the rules of Football, however we wish to strongly urge the Committee to bear in mind the interests of the people of Ocean City who will be given an enormous boost by having the fixture played just before the summer season gets underway after a terrible and devastating winter.

Yours faithfully

Jim Sturman QC

² <http://www.sportingnews.com/soccer/story/2011-10-05/us-open-cup-should-be-revamped-for-12>