



Arbitration CAS ad hoc Division (O.G. Salt Lake City) 02/002 Canadian Olympic Association (COA) / Fédération Internationale de Ski (FIS), award of 8 February 2002

Panel: Mr David W. Rivkin (USA), President; Mr Hans Nater (Switzerland); Mr Olli Rauste (Finland)

Snowboard

Selection criteria for the OG

1. **FIS's failures to have written rules for the re-allocation of quota slots among snowboarding events and its failure to notify its member national federations of eligibility decisions are omissions which do not amount to an abuse of discretion.**
2. **According to the CAS case law, an IF sanction should not be modified *"unless the rules adopted by ... [an IF] ... are contrary to general principles of law, if their application is arbitrary or if the sanctions provided by the rules can be deemed excessive or unfair"*. These standards apply equally to eligibility decision by IFs.**

The qualification and participation criteria for the XIX Olympic Winter Games in Salt Lake City 2002 provide for a limit of 125 athletes to be admitted to the four snowboarding events (XIX Olympic Winter Games in Salt Lake City 2002, Qualification and participation criteria, FIS Snowboarding at www.ORGANISE\DIREKT\OWG2002\OlympicQualification2002.doc). The entry deadline was set to be 28 January 2002.

The women's halfpipe snowboard event originally had a quota of 20 spots.

The Olympic Games selection for women's halfpipe was based on the FIS Points standings as of 1 November 2001. Because the competitors ranked N° 20 and 21 were tied, 21 positions were made available.

On 16 January 2002, the Danish Ski Federation advised FIS that it would not use its quota of one person in snowboarding.

The German Ski Federation also advised that it would not be using one slot of its allocated quota.

No re-allocation process for unused slots had been specified in the qualification system by FIS.

On 17 January 2002, FIS proposed to the International Olympic Committee (IOC), and the IOC agreed, that the unused quota places be reallocated to the event with the smallest number of qualification places, women's halfpipe.

FIS used the FIS ranking list of 1 November 2001 by selecting the next two ranked competitors, Nicola Pederzoli of Austria and Anna Olofsson of Sweden (then ranked N°s 22 and 23) to fill the two re-allocated slots (Sweden subsequently exercised its right to substitute a lower-ranked competitor for Ms. Olofsson).

Maele Ricker of Canada was ranked N° 25 on the FIS 1 November 2001 standings. Another Canadian who was not deemed to meet national selection criteria was ranked N° 24 on that list, so Ms. Ricker was the next potentially eligible competitor in those standings.

As a result of these actions, Ms. Pederzoli, currently ranked N° 1 in the world, was selected to the XIX Olympic Winter Games, while Ms. Ricker, currently ranked N° 3 in the world, was not.

As of 7 February 2002, the official registered athletes' list for snowboarding, as published by SLOC, only lists 120 athletes.

At 05:00 pm on 7 February 2002, COA filed an application before the CAS ad hoc Division of the Olympic Winter Games in Salt Lake City. The application included a brief (which was subsequently amended) and some documentary evidence. COA requested that:

1. FIS be ordered to amend its composition of the Olympic entries to the snowboarding event to include Maele Ricker (Canada), and
2. The decision be effective immediately, in order for the athlete to compete in the event beginning 9 February 2002.

On 7 February 2002, the President of the CAS ad hoc Division appointed as arbitrators Mr. David W. Rivkin (USA), President of the Panel, Mr. Hans Nater (Switzerland) and Mr. Olli Rauste (Finland).

The parties were summoned to appear for a hearing at 09:30 pm on 7 February 2002 at which the representatives of both COA and FIS were present. COA stated that it was also acting on behalf of the Canadian Snowboarding Federation and the Canadian Ski Federation. FIS did not file any written pleadings but submitted some documentary evidence during the hearing.

In light of the need for an immediate decision because of the imminence of the event, at midnight that evening, after the hearing had been concluded and the Panel had deliberated the case, the Panel issued the holding of the award to the parties, which denied COA's application. The reasoning will follow in this final award.

LAW

1. These proceedings are governed by the CAS Arbitration Rules for the XIX Olympic Winter Games in Salt Lake City (the “CAS ad hoc Rules”) enacted by the International Council of Arbitration for Sport (“ICAS”) on 10 April 2001. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 (“PIL Act”). The PIL Act applies to this arbitration as a result of the express choice of law contained in art. 17 of the CAS ad hoc Rules and as the result of the choice of Lausanne, Switzerland as the seat of the ad hoc Division and of its panels of Arbitrators, pursuant to art. 7 of the CAS ad hoc Rules.
2. The jurisdiction of the CAS ad hoc Division arises out of the entry form signed by each and every participant in the Olympic Games as well as out of Rule 74 of the Olympic Charter.
3. Under art. 17 of the CAS ad hoc Rules, the Panel must decide the dispute “*pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate*”.
4. According to art. 16 of the CAS ad hoc Rules, the Panel has “*full power to establish the facts on which the application is based*”.
5. The parties agreed that the decision by an International Federation (IF), such as FIS, as to eligibility was a discretionary one. See Amended Brief of COA, paragraph 15 (“*It is within the discretion of FIS to provide for the reallocation of additional spots within the 125 quota*”); Olympic Charter, Rule 30, paragraph 1.4 (“*The role of the IFs ... is to establish their criteria of eligibility to the competitions of the Olympic Games...*”).
6. Therefore, the applicable standard for our review of FIS’s decision is whether it constituted an abuse of discretion. Under Swiss law, IFs enjoy broad autonomy (see PERRIN, Droit Civil V, Droit de l’association, Fribourg 1992, and Article 72 of the Swiss Civil Code). Consequently, a prior CAS Panel has held that an IF sanction should not be modified unless “*the rules adopted by ... [an IF].. are contrary to general principles of law, if their application is arbitrary, or if the sanctions provided by the rules can be deemed excessive or unfair on their face*” (CAS 96/157 FIN v. FINA, Digest of CAS Awards 1986-1998, Berne 1998, at 351, Paragraph 22). These standards apply equally to eligibility decisions by IFs.
7. COA argues, “*Natural justice demands that discretion be exercised in a fair, non-discriminatory manner consistent with the principles established by the FIS qualification rules*” (Amended Brief, paragraph 12). COA urges that FIS’s failure to open a quota slot for Ms. Ricker violates these principles because in the same circumstance in mid-January FIS re-allocated quota slots to allow for the participation of Ms. Pederzolli and Ms. Olofsson, the two snowboarders ranked just ahead of Ms. Ricker in the 1 November 2001 rankings. Therefore, according to COA, the failure to do so now, when new slots have opened, is discriminatory. COA also questions the failure of FIS to notify its member national federations of the possibility of a re-allocation of slots and of the fact that two competitors were added through a re-allocation on 17 January 2002.

8. The parties are also in agreement, however, that the last date to submit entries to these Olympic Games was 28 January 2002. *See* SLOC Entry Form; SLOC Technical Manual of Snowboarding, p. 10. While COA argued that the IOC Executive Board could waive this date by petition, it presented no evidence that this procedure has been used to avoid this fixed entry date.
9. Because of this entry deadline, we must consider whether FIS abused its discretion not as of today, but as of 28 January 2002, the final date to submit entries. After that date, FIS had no authority to re-allocate quota slots.
10. FIS stated at the hearing that, on 28 January 2002, there were no open quota slots. The only two slots that had opened before that date were given to competitors with higher rankings than Ms. Ricker.
11. Because no slots were open to re-allocate on 28 January 2002, FIS had no ability to create a slot for Ms. Ricker, and it certainly could not have abused its discretion by failing to do so. It was not arbitrary to use the 1 November 2001 standings in the final eligibility determinations.
12. We considered carefully COA's arguments that FIS's failures to have written rules for the re-allocation of quota slots among snowboarding events and its failure to notify its member national federations of eligibility decisions were contrary to general principles of law and constituted arbitrary actions. While we are troubled by these omissions by FIS, we cannot say that they amounted to an abuse of discretion. We hope, however, that FIS will adopt rules governing the potential re-allocation of quota slots among snowboarding events and providing for notification of eligibility decisions to its member federations so that similar problems can be avoided in the future.

The CAS ad hoc Division rules:

The application is denied.