Arbitration CAS 94/132 Puerto Rico Amateur Baseball Federation (PRABF) / USA Baseball (USAB), award of 15 March 1996

Panel: Mr. Richard Pound (Canada), President; Mr. Jan Paulsson (France); Mr. Agustin Arroyo (Ecuador)

Dual nationality of a baseball player
"Politcal" citizenship and "sports" citizenship
Single sporting nationality (application of the Olympic Charter)

1. **Each country has the right to determine its own rules as to nationality. No other country may dispute such right. The Olympic Charter recognizes that individuals may possess two or more nationalities.**

2. **In the circumstances of having dual nationality, the choice of the NOC for which an athlete wishes to compete is a matter for election by the athlete, subject to certain variations when an election has been made, either overtly, or by implication, through participation in certain defined competitions. In the event that the athlete has not competed in either such competitions for any of the two countries, he remains free therefore to elect for which of the two countries he wishes to play.**

C. was born on April 19, 1974 in Puerto Rico, as indicated in his Commonwealth of Puerto Rico Birth Certificate and in his USA passport.

The matter before the CAS first arose in connection with the invitation issued by the Respondent to C. in the spring of 1994 to try out for the USA Baseball team. This was in keeping with the Respondent's practice of inviting some 40 athletes, usually from Division I universities, to try out for the team. C. was one such athlete. He attended, at the time, Rice University in Houston, Texas. C. had also participated in a training camp with the Respondent in the fall of 1993.

During the spring of 1994, C. was travelling with the USA Baseball team on its summer tour, then at a roster strength of 24, which was to be cut to the maximum of 22 permitted for the World Championships.

It appears that some time prior to June 8, 1994, the Claimant, through its President made a verbal approach to the Executive Director of the Respondent to request that C. play for Puerto Rico, rather than for the USA. The Respondent then asked C. for which team he wanted to play.

By letter dated June 8, 1994, C. advised the General Manager of the USA Baseball team of his understanding that he had the right to choose the country for which he wished to play and that it was his desire to compete with the 1994 USA Baseball Team in, *inter alia,* international competition, including the World Championships.

On July 11, 1994, the President of PRABF lodged a formal complaint with the International Baseball Association ("IBA") that the Respondent was including C. in its team. The complaint contained, *inter alia*, the statement that C. *"participated with one of our federation teams"* and signed an agreement in which he committed himself to play for Puerto Rico in any international competition for which he was selected.

The President of PRABF also wrote to the President of the United States Olympic Committee ("USOC") protesting against the participation of C. on behalf of the U.S. He stated that C. was both a native and national of Puerto Rico, that his formative years took place in Puerto Rico where he participated in junior-category tournaments, that he was a product of Puerto Rico's baseball programs and that, later on, his father moved to the U.S. and he had played baseball there as a college student. He stated that the Respondent invited C. to its "Tryout Camp" and urged him to represent the U.S. and not Puerto Rico in the upcoming World Series to be held in Managua, Nicaragua in August.

On July 15, 1994, the President of PRABF sent to the President of the IBA, the Birth Certificate and a copy of a contract dated December 30, 1991 between C. and the Claimant. The contract, which was headed up by the words "Juvenile Tournament," was described as "Player's Contract 199- Season" and pertained to exclusive services to be provided by C. *"as a player in the Team which represents the City of Arroyo in the Puerto Rico Baseball Federation Juvenile Tournament"*. The contract describes C. as having been born in and residing in Arroyo, Puerto Rico. It also contemplated baseball play in events other than the particular Tournament, but there does not appear on the face of this contract any suggestion that it was intended to extend beyond the season ending, presumably, not later than December 31, 1992. In the portion of the contract which refers to previous playing experience with teams under the jurisdiction of the Claimant appears the word "None." The only sanction contemplated in the contract, other than in respect of conduct and drugs, appears to be becoming ineligible for the Federation's Tournament, which could occur if C. were to participate in some other tournament during the time period "of this one" without the consent of the Team Leader or President.

On July 20, 1994, C. wrote to the President of the IBA with an explanation of his decision. He stated that Puerto Rico had the first chance to make him part of its national team in 1992 when he graduated from high school; there was talk of him going to Barcelona to compete in the Olympic Games, but *"[o]bviously, nothing came of that"*. He stated that the next year, after his freshman year in college, he practised once with the Puerto Rican baseball team. He said they wanted him to be on their team and to participate internationally. He said he never got that chance because, according to the President of PRABF, there could be no member on his team that did not practice with the team regularly. He went on to say that in the fall of 1993 he was invited to the USA Baseball Team Fall Trials. He participated accordingly and the USA Baseball Team showed great interest in him. In December of 1993, after it was evident that he would have a good chance to participate on the USA

Baseball Team, the Puerto Rican team decided that it would now be all right for him to be on their team. He said it was his decision and his honour to participate with the USA Baseball Team during the 1994 season and at the IBA World Championships. He reiterated his understanding that he had the right to choose the country which he wished to represent. If the IBA were to decide that he was not eligible to play for the U.S. team, he would not participate with the Puerto Rican Team. He asked for the matter to be resolved before the World Championships in Nicaragua.

On July 27, 1994 the IBA issued an Official Call for the Claimant and the Respondent to attend the IBA Executive Committee meeting to be held in Managua on August 2, 1994 to respond to a complaint by the Claimant regarding the eligibility of C. Following such meeting, on August 3, 1994, the IBA advised both parties that its Executive Committee had decided to refer the matter to the IOC and that therefore C. was not eligible to participate in the XXXII World Baseball Championships. On August 24, 1994, the IBA referred the matter to the IOC, which answered that that the IOC Eligibility Commission only intervened in cases which concerned eligibility for the Olympic Games.

On September 2, 1994, the counsel of C. wrote to the IOC President Samaranch to say that the President of PRABF had made a number of misrepresentations regarding C. in his complaint before the IBA. The alleged misrepresentations included the following:

1. C. was born in Puerto Rico, but moved to Houston, Texas, when he was less than a year old;
2. C.'s "formative years" took place in Houston, where he played baseball at Bellaire High School (counsel for the Claimant stated that he had no evidence to controvert this statement; he noted, however, that the contract dated December 30, 1991, signed by C., stated that he was a resident of Arroyo, Puerto Rico. Were the question of fact in this regard to have been critical, the Panel would have concluded, on a balance of probabilities, that C. lived, grew up and played primarily in Houston, Texas, where C. Sr. played professional baseball with the Houston Astros, and that he visited Puerto Rico during vacation periods and played some, but not a great deal of, baseball in Puerto Rico on such occasions);
3. C.'s connection with Puerto Rican baseball has been minimal. While he was in high school, he played in two baseball games during the Christmas holiday with his uncle's team in Arroyo, Puerto Rico in the Puerto Rican 15-19 year-old league;
4. After his senior year in high school, Cruz's father encouraged the Puerto Rican team to consider C. for a tryout for their national team, but the Puerto Rican team refused to consider him;
5. After his freshman year in college, C. practised one time at the Puerto Rican facility, but was not invited to try out for play on the Puerto Rican team;
6. C. never represented Puerto Rico in Olympic, continental or regional competition (This appears to be intended to indicate compliance with the eligibility criterion in the Olympic Charter regarding dual nationality and a change from one NOC to another. The IBA summary of this situation confirms that C. took part *"within a short period of time in a summer holiday youth league that was organized by the [Claimant]"* and that he was *"preselected to participate with the Puerto Rico national team and attended some practices, but never took part in any official nor friendly event with said*

national team". The Panel is satisfied, as a matter of fact, that C. has never represented Puerto Rico in any Olympic, continental or regional competition. Neither party suggested otherwise).

On November 24, 1994, the IOC advised the IBA that the IOC Eligibility Commission only intervened in cases which concerned eligibility for the Olympic Games. The IBA had, therefore, in accordance with a unanimous decision of its Executive Committee, referred the matter to the CAS on December 19, 1994, for final decision. The parties directly involved in the dispute subsequently executed the submission to arbitration.

The matter took a novel turn when C. announced that he would become a professional player after the June, 1995 baseball draft. This was communicated to the Secretary General of the CAS by the President of PRABF in a letter dated March 6, 1995, but even though the specific case had thereby become moot, he nevertheless wanted the principle of the case to be decided by the CAS in order to avoid future problems of a similar nature.

It appears that both the Claimant and the Respondent are content to have the matter of principle settled by way of this proceeding notwithstanding the fact that, insofar as it relates to C., it has become moot. The CAS has agreed to render an award to decide the point of principle.

LAW

The legal arguments advanced on behalf of the Claimant consisted of the following elements:

1. C. is both a native and a national of Puerto Rico. There is no doubt that he was born in Puerto Rico of Puerto Rican parents. The Panel accepts such contention. It is not, however, sufficient, in and of itself, to dispose of the matter before the CAS.
2. Cruz's formative years in baseball took place in Puerto Rico where he participated in the Amateur Baseball Federation and its Juvenile Tournament. There was some considerable factual doubt regarding this assertion, on which the findings of the Panel are described above. As will be noted below, this matter is not, in any event, determinative of the question of law to be decided in this proceeding.
3. The contract of December 31, 1991 obliges C. to participate in any international competition for which he was selected. If called upon to decide this matter on the basis of the interpretation of the contract, the Panel would not have been prepared to give it the extensive application contended for by the Claimant. For the reasons indicated below, the matter of eligibility for Olympic Competition (and, by application of the Olympic Charter to the IBA in such matters) is not one to be settled by this contract.
4. It is a fundamental principle that C. should not be allowed to play against his own "country". This was the crux of the Claimant's argument, which was ably and forcefully presented on its behalf. The principal thesis was that, within sport and, in particular, within the Olympic Movement, Puerto Rico has, since recognition of a separate NOC in 1948, enjoyed full status

as a "sovereign" sports nation and should be so regarded for all purposes within the Olympic Movement. In such circumstances, it is unthinkable that a Puerto Rican national would not compete for Puerto Rico and even more so that he would compete against his compatriots. In support of the argument in favour of recognizing a full international sovereignty for Puerto Rico, counsel noted that notwithstanding the decision taken by the USOC in 1980 to boycott the Moscow Olympic Games, the Puerto Rican NOC voted to participate and did participate in such Games.

5. American citizenship, which is admitted in the case of C., does not confer a double "nationality" upon him. In Olympic terms, Puerto Rico, having its own separate NOC, has the same sovereignty as does the U.S. and is entirely autonomous from it. Citizenship is, in that regard, counsel urged, completely irrelevant to the determination of nationality. Sports citizenship is separate from political citizenship.

6. Nationality and citizenship are not synonymous. The Olympic Charter itself appears to distinguish between nationality and citizenship in Rule 46, implying that they are separate concepts. C. has U.S. citizenship, it was contended, but not U.S. nationality.

The legal arguments of the Respondent consisted of the following elements:

1. Dual "citizenship" and dual "nationality" are intertwined in terms of one's right to elect which country to represent. A "national" is one who owes permanent allegiance to a state or country. Mere birth in a country does not give that country property rights in that athlete. C. has a freedom of choice and this includes election of allegiance to a particular country. He has made such an election. The Olympic Rules should be read as inclusive rather than exclusionary.

2. The December 31, 1991 contract was for a single season and was not renewed. It was for a limited tournament of limited scope and was not in respect of a tournament at a level that could affect the right by C. to elect for purposes of Olympic or World Championship play. Signing such contract did not, therefore, signify any election by C.. Nor did he play in any of the enumerated events (Olympic, continental or regional), which would have been another way of signifying his election to play for Puerto Rico. His election was made by his letters in 1994. The election to compete is one which is available to the athlete, not to the Claimant or the Respondent.

3. Having made a voluntary election as to which country he wished to represent, under the Rules in the Olympic Charter, which are acknowledged by the IBA as governing, that choice should be respected. Athletes should not be treated as property. The reverse of the situation of someone born in the U.S. thereby becoming a "citizen" of Puerto Rico does not apply; such a person does not become a Puerto Rican citizen. Reference was made in the written submission to a U.S. citizen who played for Puerto Rico in the 1976 Olympics, despite having been born in the U.S. and playing in the US as an example of the freedom of choice.

The Panel is satisfied that the proper source of the applicable law in this matter is the *Olympic Charter*.

The *IBA Statutes* provided as follows:

> ***Chapter VI - Pertaining to the Nationality***
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> **Article 52.** *The eligibility of the players representing each affiliated federation, association or organization shall be determined in accordance with the standards used for Olympic athletes as described in the "Organizational Norms for Official Tournaments of the IBA."*

The *Organizational Norms for Official Tournaments of the IBA* provided as follows:

> ***Tournment Administration***
>
> *Eligibility*
>
> ***Nationality of Competitors***
>
> *1) Any competitor in any IBA tournament including the Olympic Games must be a national of the country of the federation or NOC which is entering him.*
>
> *2) All disputes relating to the determination of the country which a competitor may represent in the IBA tournament or Olympic Games shall be resolved by the IBA or IOC Executive Board.*
>
> ***Notes***
>
> *1) A competitor who is a national of two or more countries at the same time may represent either one of them, as he may elect. However, after having represented one country in the Olympic Games, in continental or regional games or in world or regional championships recognized by the relevant IF, he may not represent another country unless he meets the conditions set forth in paragraph 2 below that apply to persons who have changed their nationality or acquired a new nationality.*
>
> *2) A competitor who has represented one country in the Olympic Games, in continental or regional games or in world or regional championships recognized by the relevant IF, and who has changed his nationality or acquired a new nationality, shall not participate in the Olympic Games to represent his new country until three years after such change or acquisition. This period may be reduced or even cancelled with the agreement of the IBA, the National Federation, the NOC and the approval of the IOC Executive Board.*
>
> *3) If an associated State, province or overseas department, a country or colony acquires independence, if a country becomes incorporated within another country by reason of a change of border, or if a new NOC is recognized by the IOC, a competitor may continue to represent the country to which he belongs or belonged. However, he may, if he prefers, choose to represent his country or be entered in the Olympic Games or IBA tournaments by his new federation or NOC if one exists. This particular choice may only be made once.*
>
> *4) In all cases not expressly addressed in this Bye-law, in particular in those cases in which a competitor would be in a position to represent a country other than that of which he is a national or have a choice as to the country which he intends to represent, the IBA or IOC Executive Board may take all decisions of a general or individual nature, and, in particular, issue specific requirements relating to nationality, citizenship, domicile or residence of the competitors, including the duration of any waiting period.*

The applicable Rules in the *Olympic Charter* as it read in 1994 are Rules 45 and 46, together with their Bye-laws, which state:

45. Eligibility Code

To be eligible for participation in the Olympic Games a competitor must comply with the Olympic Charter as well as with the rules of the IF concerned as approved by the IOC, and must be entered by his NOC.

Bye-Law to Rule 45

1. *Each IF establishes its sport's eligibility criteria in accordance with the Olympic Charter. Such criteria must be submitted to the IOC Executive Board for approval.*
2. *The application of the eligibility criteria lies with the IFs, their affiliated national federations and the NOCs in the fields of their respective responsibilities.*
3. *All competitors in the Olympic Games shall:*
   - *3.1 respect the spirit of fair play and non-violence, and behave accordingly on the sports field;*
   - *3.2 refrain from using substances and procedures prohibited by the rules of the IOC or of the IFs;*
   - *3.3 respect and comply in all aspects with the IOC Medical Code.*
4. *No competitor who participates in the Olympic Games may allow his person, name, picture or sports performances to be used for advertising purposes during the Olympic Games.*
5. *The entry or participation of a competitor in the Olympic Games shall not be conditional on any financial consideration.*

46. Nationality of Competitors

1. *Any competitor in the Olympic Games must be a national of the country of the NOC which is entering him.* (Rule 34(1) of the Olympic Charter provides: *"In the Olympic Charter, the expression "country" shall mean any country, state, territory or part of territory which the IOC in its absolute discretion considers as the area of a recognized NOC."*)
2. *All disputes relating to the determination of the country which a competitor may represent in the Olympic Games shall be resolved by the IOC Executive Board.*

Bye-Law to Rule 46

1. *A competitor who is a national of two or more countries at the same time may represent either one of them, as he may elect. However, after having represented one country in the Olympic Games, in continental or regional games or in world or regional championships recognized by the relevant IF, he may not represent another country unless he meets the conditions set forth in paragraph 2 below that apply to persons who have changed their nationality or acquired a new nationality.*
2. *A competitor who has represented one country in the Olympic Games, in continental or regional games or in world or regional championships recognized by the relevant IF, and who has changed his nationality or acquired a new nationality, shall not participate in the Olympic Games to represent his new country until three years after such change or acquisition. This period may be reduced or even cancelled with the agreement of the NOCs and IF concerned and the approval of the IOC Executive Board.*
3. *If an associated State, province or overseas department, a country or colony acquires independence, if a country becomes incorporated within another country by reason of a change of border, or if a new NOC is recognized by the IOC, a competitor may continue to represent the country to which he belongs or*

belonged. However, he may, if he prefers, choose to represent his country or be entered in the Olympic Games by his new NOC if one exists. This particular choice may be made only once.

4. *In all cases not expressly addressed in this Bye-law, in particular in those cases in which a competitor would be in a position to represent a country other than that of which he is a national or to have a choice as to the country which he intends to represent, the IOC Executive Board may take all decisions of a general or individual nature, and in particular issue specific requirements relating to nationality, citizenship, domicile or residence of the competitors, including the duration of any waiting period.*

Before dealing with the application of these Rules to the facts of this case, the Panel wishes to dispose of two issues.

The first is that the Panel does not consider that the matter of eligibility is governed by the December 30, 1991 contract. Even if this contract had the effect and duration contended for by the Claimant, and leaving aside the fact that it was executed by a minor, and even if the election by C. to play for the U.S. may have constituted a breach of that contract, such a contract is not determinative of the question of *eligibility* to participate. The most that could be said is that if an election to play for the U.S. constituted a breach of such contract (and the Panel expressly makes no decision on that point), there may be recourses for breach of contract, but these are completely separate and apart from the matter of the contracting party's eligibility for Olympic (and, by reference, the IBA World Series in 1994) competition. The decision of the Panel, therefore, is expressly not made on the basis of the contract.

The second is that the Panel is aware of and is sensitive to the genuine concern of the Claimant that its status, in the world of sport, is equal to that of any country. The submission was expressed during Argument more at the level of the Puerto Rican NOC than on behalf of the Claimant as a member of that NOC, although the principles flow through the NOC to its member national federations, of which the Claimant is one. It is a matter of great national pride to Puerto Ricans that they have a place, in their own national right, on the stage of world sport and they are most concerned that this status not be diminished in any way. The fact that the present case before the CAS has proceeded this far and has been presented with such passion is eloquent testimony to this pride. The matter of the particular relationship between Puerto Rico and the U.S. has been a national preoccupation for a century. In matters of sport, Puerto Rico has achieved complete autonomy and it desires to assert such autonomy on an equal footing with every other NOC in the world. The Panel understands such position and has concluded, without any difficulty, that the Puerto Rican claim to such autonomy and equal treatment is completely justified. The decision of the Panel is, indeed, based upon such principle. Because the Puerto Rican NOC is equal in status to every other NOC (the same being true of its member national federations), the Panel has been particularly careful not to reach a decision that would suggest in any manner, such as by making an exception to the Rules in the Olympic Charter, that the Puerto Rican NOC does not possess such equal status. The decision on the point of principle before the CAS would have been the same regardless of whatever NOCs might have been the parties.

Each country has the right to determine its own rules as to nationality. No other country may dispute such right. The Panel expressly does not decide that there could be no exceptions to this

principle, which might result from the application of internationally accepted norms. In the present case, however, there is no suggestion that such norms have been exceeded.

C. is, for Puerto Rico, a Puerto Rican national. For the U.S., C. is also a U.S. national. He possesses, therefore, two nationalities. The Olympic Charter recognizes that individuals may possess two or more nationalities. The Panel concludes that the definitions of "nationality" and "citizenship" are, to a certain degree, somewhat circular. One is often defined in terms of the other. The Panel also concludes that it is not necessary for purposes of its decision in this matter, to determine the distinction, if any, between "political" citizenship and "sports" citizenship.

In the circumstances of having dual nationality, the choice of the NOC for which he wishes to compete is a matter for election by the athlete, subject to certain variations when an election has been made, either overtly, or by implication, through participation in certain defined competitions. It is common ground that C. had, in 1994, not competed in any such competitions for Puerto Rico, nor for the U.S. He remained free, therefore, in 1994, to elect for which of the two countries he wished to play. It might have been otherwise, had he played in any such competitions. His election, made twice in writing, was to play for the Respondent. That was a choice which was open for C. to make under Rule 46 (Bye-law 1) of the Olympic Charter as well as the identical provision under the Eligibility section of the IBA Organizational Norms for Official Tournaments.

The Court of Arbitration for Sport:

1. Rejects the request.

2. (...)