



Arbitration CAS 2006/A/1020 Miriam Manzano v. Ice Skating Australia (ISA), award of 24 January 2006

Panel: The Hon. Justice Tricia Kavanagh (Australia), President; The Hon. Bob Ellicott QC (Australia); Mrs Eugenie Buckley (Australia)

Ice skating

Validity of the Nomination Criteria and of the information procedure for the 2006 Winter Olympics

Error of law

Appropriate ground of appeal not raised before the National Federation's Appeals Tribunal

- 1. The ISA Appeals Tribunal's decision was wrong in law because it failed to find that no valid Nomination Criteria had been adopted and provided to the relevant athletes in accordance with the Australian Olympic Committee Selection By-law.**
- 2. If this ground was not raised before the ISA Appeals Tribunal, the Appeal Tribunal's decision cannot be overturned.**

Ms Miriam Manzano (the Appellant) appeals the decision of the Appeals Tribunal of the Ice Skating Australia Incorporated (the ISA) published on 12 January 2006. The grounds of appeal before this Court are limited to:

- a) a breach of the rules of natural justice by the Appeals Tribunal; or
- b) the Appeals Tribunal made an error of law.

In accordance with the Australian Olympic Committee (the AOC) Olympic team Selection By-laws section 3, headed "Shadow Team," which states that each National Federation (NF) will:

- 3.1.1 advise the AOC of the athletes within its sport;
- 3.1.2 provide to each athlete and all other individual and organisations with a legitimate interest in the nomination and selection procedures for a particular games:
 - (a) an informative pracie of this by-law;
 - (b) a copy of its nomination criteria (and all amendments thereto adopted in respect of selection to a particular team pursuant to clause 5;
 - (c) a copy of the AOC selection criteria for the support, control by the national federation in respect of selection to a particular team; and
 - (d) upon request by such athlete, individual or organisation, a copy of this by-law.

- 3.1.3 cause such an athlete to sign a written acknowledgement in the form of annexure 1 to this by-law; and
- 3.1.4 provide the AOC with the originals of such signed acknowledgements.
in accordance with the time frames advised by the AOC to each NF from time to time in respect of a particular Games.

The Shadow Team for Ice Skating was selected in August 2004 following the 2004 Australian Championship. On selection, there was no compliance with the section 3.1 requirements.

In February 2005, both the Appellant Ms Manzano and the Affected Party, Ms Carter, competed in an important event entitled “The Four Continents Figure Skating Championship”. On 15 February, a day and a half before the Appellant first competed and a day into the event, all shadow team members were informed of a draft Nomination Criteria applicable to the selection of skaters to compete in the 2006 Winter Olympics.

The Nomination Criteria of which the team was informed was not approved by the AOC until April 2005.

The Nomination Criteria determined that the top ranked Australian skater in the Four Continents Championship, held in February 2005, would represent Australia at the next month’s (then March 2005) World Championships. If that skater was placed within the first 24 places, Australia would be represented by that skater, provided that the skater competed at the 2005 Australian Championship.

Ms Carter was the top ranked skater at the Four Continents Championships and was selected for the World Championship. She achieved a place for Australia in the Olympics and was selected by the ISA for nomination in accordance with the draft Nomination Criteria.

Before the Appeal Tribunal three grounds were relied upon by the Appellant, namely:

- a) the relevant Nomination Criteria were not properly followed and/or implemented;
- b) Ms Manzano was not given a reasonable opportunity to satisfy the Nomination Criteria; and
- c) by reason of (a) or (b) above, or a combination of both, there was no material on which a nomination decision in favour of Ms Joanna Carter could have been based.

Each ground was dismissed by the Appeal Tribunal with reasons.

In our view on the facts before us there was a breach of clause 5 of the AOC Olympic Team Selection Criteria. Clause 5 of that Criteria provides as follows:

5. Nomination Criteria

5.1 In respect of each Team and subject to the prior approval of the AOC, each NF will adopt Nomination Criteria by the latter of:

- (1) 12 months prior to its first nomination event for the relevant Games; or

- (2) such other date as the AOC may in its sole and absolute discretion determine for a particular sport, discipline or event for the relevant Games or categories of sports, disciplines or events for those Games.

AOC approval may be given subject to such conditions as the AOC determines.

- 5.2 Nomination Criteria in respect of a particular Team will be at all times subject to:
 - (1) the applicable Participation Criteria; and
 - (2) the applicable Selection Criteria.

In the event that the Nomination Criteria are inconsistent in any way with the applicable Participation Criteria and the Selection Criteria, the latter will prevail to the extent of that inconsistency.

- 5.3 An NF must not alter or amend any Nomination Criteria without the prior approval of the AOC.
- 5.4 Each NF must apply its Nomination Criteria:
 - (1) fairly so as to ensure that no Athlete is nominated to the AOC where another Athlete is or other Athletes are entitled to be nominated in priority; and
 - (2) to determine which Athletes the NF will nominate to the AOC to participate in disciplines or team events where:
 - (a) under the applicable Participation Criteria for a Games the AOC has qualified to participate in an event and there is a need to determine the Athlete or Athletes who will be nominated to participate in that event; and
 - (b) the number of Athletes who have satisfied the requirements of clause 6.1 exceed the number(s) permitted under clause 6.2.

- 5.5 Each NF must promptly develop and submit to the AOC for its approval its policy or assisting and counselling Athletes seeking nominations and selection and must not alter or amend this policy without the prior written approval of the AOC. The NF's policy in this regard must conform to best practice and, without limiting this in any way, must require the NF to:
 - (1) regularly advise Athletes seeking nomination and selection as to their individual performances and progress against all applicable criteria; and
 - (2) counsel unsuccessful aspirants for nomination and selection; and
 - (3) require the NF to fully co-operate with and assist the Tribunal and CAS in any appeal pursuant to clause 11.

Such a particular ground of appeal was not pursued before the ISA Appeals Tribunal.

The ISA and the AOC procedures followed for the determination of the Nomination Criteria for skaters to compete in its 2006 Winter Olympics did not allow for selected Shadow Team skaters to

be informed of the criteria for the selection to the Olympics in accordance with the procedures of the AOC Selection Clause 3.1.2 as cited above.

LAW

1. In view of the fact that the AOC must nominate to the IOC its skater team by 30 January 2006 we do not propose to deal at length with the issues raised in the Appeal. We state our conclusions having heard and considered argument from the represented parties.
2. We find there has been no breach of the rules of natural justice by the Appeals Tribunal.
3. As to the issue of whether the Appeals Tribunal made an error of law, we are of the view for the reasons stated above, the Tribunal's decision was wrong in law because it failed to find that no valid Nomination Criteria had been adopted and provided to the relevant athletes in accordance with the AOC Selection By-law.
4. However this ground was not raised below on Appeal, and we therefore do not propose to overturn the Appeal Tribunal's decision.
5. Nevertheless we consider the matter is of such importance that the AOC, which is not, it is noted, a party to these proceedings, should in light of our comments and in accordance with its stated discretion, not act on the basis that there was a valid Nomination Criteria.
6. The AOC in going forward with its nomination to the IOC should adopt a Criteria which takes into account the performance of the appellant and the affected party in the three nominated events as recited in the ISA Nomination Criteria document clause 3(a), namely the 2005 ISU Four Continents Figure Skating Championship, the 2005 ISU World Figure Skating Championship and the 2005 Australian Senior Figure Skating Championship. It is noted that when referring to the performance of the athlete in the event, that can only be taken into account if the athlete competed in that event.
7. The Court is of the view both the AOC and the ISA had adopted carefully considered procedures to ensure in the Selection processes there was fairness to all athletes. Neither organisation complied with their own by-laws and policies.

(...).