Arbitration CAS 2006/A/1051 Pasquale Beldotti v. International Olympic Committee (IOC), award of 7 November 2007

Panel: Mr Dirk-Reiner Martens (Germany), President; Mr David Rivkin (USA); Mr Peter Leaver QC (United Kingdom)

Winter Olympic Games
Exclusion of the Olympic Games for breach of the IOC Code of Ethics
Attempt to obtain an accreditation in exchange of a sum of money
Duties of a Chef de Mission

1. **For a representative of an "Olympic party" and more specifically for a Chef de Mission of an Olympic team, the fact to offer an accreditation in exchange of a sum of money without any express authority to do so in a concealed way and to register the concerned person under false pretences, i.e. falsely under the qualification "Medical Personnel", constitutes a breach of the Code of Ethics.**

2. **A Chef de Mission of an Olympic team, is under a duty to make himself familiar with all of the rules which govern the performance of those duties, including the rules relating to accreditations. The breach of the IOC Code of Ethics committed as a result of one's own carelessness in failing to familiarize with the Accreditation Rules constitutes a serious breach of the Code of Ethics which must be sanctioned.**

Pasquale J. Beldotti ("Mr Beldotti" or the "Appellant") is a US citizen and President of Tri Global Sport. The mission of Tri Global Sport is to promote winter sports in developing countries that do not have the resources, guidance and opportunity to participate in Olympic Winter Games, and to enable athletes to participate in such Games. This mission includes the organisation and the development of partnerships with established winter Olympic training programmes, equipment suppliers and advertisers in order to allow developing countries' athletes to train for the Olympic Winter Games.

The International Olympic Committee (IOC or the "Respondent") is the supreme authority of the Olympic movement and is responsible for the organisation of the Olympic Games in accordance with the Olympic Charter (OC). It has its seat in Lausanne, Switzerland.

Mr Beldotti was appointed by the Ethiopian National Olympic Committee (ENOC) as "Chef de Mission" for the 2006 Olympic Winter Games in Torino. It was the first time that the ENOC had participated in the Olympic Winter Games.

The ENOC team which participated in the 2006 Olympic Winter Games in Torino was composed of one single athlete, namely, Mr Robel Teklemariam.

In his position as "Chef de Mission", Mr Beldotti sought accreditations from the Organising Committee for the Torino Olympic Games ("TOROC") for thirteen (13) people, including the athlete. Mr Beldotti accepted that he had no idea how many accreditations ENOC was entitled to, and that he had taken no steps to find out the permitted number. In fact, in accordance with the IOC Guidance for accreditations, ENOC was not entitled to more than 4 accreditations.

The TOROC activated six accreditations out of the thirteen accreditations of the ENOC delegation; one for the athlete, one for the "Chef de Mission" (that is the Appellant), one for the Secretary General and one for the person delegated by the ENOC President, plus two for accompanying guests of Russian nationality.

In an email dated 10 February 2006, J., who was among the persons listed in the thirteen requested ENOC accreditations under the qualification *"medical personnel"*, wrote the following to the Appellant:

> *"Got your message today. I wanted to let you know that I am here in Torino and if you have a leftover credential for USD 2000 dollars, I am ready. Any type. J.".*

Pursuant to J.'s request, on 14 February 2006, Appellant asked TOROC to provide an accreditation to J. as "medical personnel". There was no dispute that J. was not in fact a "medical personnel" and would not serve in that capacity at the Olympic Games.

On 13 February 2006, this email was accidentally transferred to the TOROC Accreditation Centre by the Appellant's office along with his request that J. be issued with an accreditation.

As soon as TOROC informed the IOC of the above-described facts, the matter was brought to the attention of the IOC President, who ordered an investigation by the IOC Ethics Commission on 14 February 2006. The Appellant explained that the individual concerned was a prospective donor to the ENOC.

The IOC Ethics Commission considered that a breach of the IOC Rules had occurred relating to the issuance of accreditation. In this regard, the Respondent specified that Rule 22 OC provides that the IOC Code of Ethics *"forms an integral part"* of the Olympic Charter. The Respondent considered that there was a violation of section B1 of the IOC Code of Ethics which states that:

> *"Integrity*
>
> *The Olympic Parties or their representatives shall not, directly or indirectly, solicit, accept or offer any concealed remuneration, commission, benefit or service of any nature connected with the organisation of the Olympic Games".*

The Respondent considered that any dealing or trafficking of Olympic identity and accreditation cards, in particular for financial consideration, is totally contrary to the Olympic principles and values and is an intolerable practice.

As a result, on 16 February 2006, the Ethics Commission recommended to the IOC Executive Board that the Appellant be expelled from the Torino Olympic Games and be excluded from all future Olympic Games.

On 17 February 2006 the IOC Executive Board decided to exclude the Appellant from the Olympic Games in Torino and from all future Olympic Games, to have his accreditation withdrawn with immediate effect, and to declare J. *persona non grata* for the current and all future Olympic Games.

On the same day as the decision to exclude him and withdraw his accreditation, the Appellant filed an application with the Court of Arbitration for Sport (CAS) which included a request for a stay of the original directive. The CAS decision granted the Appellant an additional 12 hours in which to leave the Olympic Village.

On 25 February 2006 the Appellant filed with CAS a *"resubmission of application for CAS hearing"* together with several exhibits considered by the CAS Court Office as a statement of appeal.

On 13 March 2006 the CAS Court Office informed the Appellant that the 20th Olympic Winter Games being over, the arbitration rules for the Olympic Games were no longer applicable. The present procedure would be covered by the Code of Sports-related Arbitration (the "Code"), article R47 ff. of such Code.

A hearing was held by video conference on 5 October 2006 with the Panel attending the hearing at Mr Rivkin's office in London (UK). The Appellant attended the hearing from Mr Rivkin's office in New York (USA). The Respondent attended the hearing from the IOC's office in Lausanne (Switzerland).

The Appellant challenged the decision taken by the IOC Executive Board in Torino on 17 February 2006. The Appellant considered that the *"unfounded accusation and the precipitous action taken by the IOC has caused the Appellant to suffer mental anguish, shame, embarrassment, humiliation and damage to his reputation and standing in the community"*. The Appellant sought the full restoration of all his rights and privileges.

The Respondent submitted that the Appellant illegally traded an accreditation contrary to the IOC Accreditation Rules and to Section B1 of the IOC Code of Ethics referred to in Paragraph 2.11 above. The Respondent considered that the case of J. was clear and that Mr Beldotti was prepared to sell an accreditation for USD 2000. The Respondent insisted that accreditation cards issued for the Olympic Games are not for sale or trade. The Respondent submitted that the Appellant's behaviour had to be considered as a gross violation of the IOC Code of Ethics and thus of the Olympic Charter, pursuant to Rule 23.2.OC which states:

> *"2. In the context of the Olympic Games, in the case of any violation of the Olympic Charter … or of any other … applicable regulation issued by the IOC …, including but not limited to IOC Code of Ethics …*
>
> …
>
> *2.2 With regard of officials, managers and other members of any delegation …: temporary or permanent ineligibility or exclusion from the Olympic Games (IOC Executive Board)".*

LAW

Procedural matters

1. The Appellant argues that he was denied due process in connection with the examination of his case by the IOC, in particular, during the "hearing" on 15 February 2006 on the basis of which the contested decision by the IOC Executive Committee was taken. The Appellant argues that contrary to Bye-Law III to Rule 23 of the Olympic Charter he was not given *"the right to be heard by the IOC body competent to apply a measure or sanction … (and) the right to be acquainted with the charges …"*.

2. The Panel is concerned that the Appellant was not informed of the purpose of the meeting or the charges against him prior to this "hearing". The Panel also notes that it must accept Appellant's statements as to what occurred at that meeting, because the representatives of the IOC Ethics Commission refused to provide testimony at the Panel's hearing on 5 October 2006.

3. However, the Panel does not have to discuss these arguments, as R57 of the Code of Sports-related Arbitration (the "Code") provides that it has:

   "full power to review the facts and the law. It may issue a new decision which replaces the decision challenged …".

4. CAS Panels have consistently interpreted this Rule to mean that possible procedural errors committed at the federation level do not invalidate the decision below if the person concerned is given a full opportunity before a CAS Panel to present his or her case and to call his own witnesses and those of the opposing party.

The regulatory framework

5. Rule 22 of the IOC Charter provides:

   "The IOC Ethics Commission is charged with defining and updating a framework of ethical principles, including a Code of Ethics, based upon the values and principles enshrined in the Olympic Charter of which the said Code forms an integral part" (emphasis added).

6. Section B. Integrity, Subsection I of the IOC Code of Ethics provides:

   "The Olympic parties or their representatives shall not, directly or indirectly solicit, accept or offer any concealed remuneration, commission, benefit or service of any nature connected with the organisation of the Olympic Games".

7. With regard to sanctions, Rule 23 of the Olympic Charter provides the following:

   "23. Measures and Sanctions

In the case of any violation of the Olympic Charter …, the measures or sanctions which may be taken by the Session, the IOC Executive Board or the disciplinary commission referred to under 2.4 below are:

…

2. In the context of the Olympic Games, in the case of any violation of the Olympic Charter… or of any other … applicable regulation issued by the IOC …, including but not limited to IOC Code of Ethics …

2.2 With regard of officials, managers and other members of any delegation …: temporary or permanent ineligibility or exclusion from the Olympic Games (IOC Executive Board)".

8. With respect to accreditations Bye-Law II to Rule 39 of the Olympic Charter sets out that:

"The quotas for team officials and other team personnel accommodated in the Olympic village shall be established by the IOC Executive Board".

9. In April 2005 the IOC Executive Committee issued an "Accreditation and Entries at the Olympic Games – Users' Guide" which set out detailed regulations in connection with the granting of accreditations for the Olympic Games. It also listed the quotas for accreditations for the participating NOCs.

Discussion

10. According to the Preamble of the IOC Code of Ethics, the Olympic Parties' referred to in section B1 of the said Code include the National Olympic Committees. As Chef de Mission of the ENOC, the Appellant was a representative of an Olympic party.

11. In order to be liable under the IOC Code of Ethics, in particular Section B1, the Appellant must have, as a representative of an *"Olympic party directly or indirectly, solicited, accepted or offered any concealed remuneration, commission, benefit or service of any nature connected with the organisation of the Olympic Games".*

12. In its 24 April 2006 answer, the IOC argued as follows:

"The Appellant's behaviour … has to be characterised as a gross violation of the IOC Code of Ethics … The sanction taken by the Executive Board is adequate for such violation and must be upheld".

13. The IOC based its arguments primarily on the 10 February 2006 E-mail from J. to Mr. Beldotti:

"Got your message today. I wanted to let you know that I'm here in Torino and if you have a left over credential for USD 2,000 I am ready. Any type. J.".

14. The IOC did not state with any particularity why this message should be considered evidence of a violation of the IOC Code of Ethics, in particular why it constituted evidence of a *"concealed remuneration, commission, benefit or service … connected with the organisation of the Olympic Games"* (B.I of the IOC Code of Ethics). It simply relied on the words used.

15. Faced with J.'s 10 February 2006 E-mail, the Appellant argued that:

- J. was *"a prospective donor to the ENOC"*, and
- that *"although J. used a poor choice of words to express it, the intent of his E-mail was to make jest of the fact that he was donating $ 2,000.00 and for that amount of a donation, he had better have an accreditation available to him, …"*, and
- *"It was always understood that J. was to have an accreditation whether he donated to ENOC or not"*.

16. The Appellant admitted that he attempted to register J. as "Medical Personnel" even though he had no medical training at all and was simply an *"old friend"* of his, who in the past been of *"great assistance in achieving my* (the Appellant's) *goals"*. J., who did not testify before the Panel confirmed Mr. Beldotti's position in an E-mail to him of 6 May 2006 in which he stated:

"Sorry that the IOC has misinterpreted my willingness to donate to your efforts.

In the past I have donated uniforms, equipment and money to help you support athletes from poorer countries.

I have admired your efforts on behalf of these athletes.

I have always seen my contributions to your cause as purely voluntary without connection to me receiving something in return.

I hope you can clear up the misunderstanding and continue your fine efforts".

Analysis

17. The Appellant would be liable under Section B.I of the IOC Code of Ethics, *inter alia*,

- if he *"offered a benefit … connected with the organisation of the Olympic Games"*, and
- if that benefit was offered in a "concealed" way.

18. The Panel has no doubt that the first requirement of Section B.I is met. The Appellant was a representative of an "Olympic party" see above and offered to, and attempted to obtain for, his friend and associate, J., an accreditation for the Torino Olympic Games, which accreditation, *inter alia*, would have provided free access to (at least some of) the venues of the Olympic competitions. This is clearly a *"benefit … connected with the organisation of the Olympic Games"*.

19. The question remains whether this benefit was *"concealed"*.

20. The evidence showed that the 10 February 2006 J.'s e-mail came into the hands of the Torino Organising Committee because, as the Appellant confirmed, it was accidentally sent by his office to the TOROC local office in charge of accreditations. This error does not make the transaction *"unconcealed"*.

21. In addition, four days after J.'s e-mail of 10 February 2006 the Appellant attempted to register J. as "Medical Personnel" despite the fact that, as the Appellant freely admitted at the hearing before the Panel, J. has no medical training at all.

22. Based on the testimony of the witnesses, the Panel is satisfied that in reality:

- the Appellant offered to J. an accreditation in exchange for a sum of money which the Appellant had the intention of using for the cause of his company, i.e. to enable African athletes to participate in the Olympic Games,
- the Appellant may have had the authority from ENOC *"to provide accreditation at his discretion"* (Section 3 of the Appellant's undated "response" received by CAS on 11 May 2006; the Panel notes, though, that the Appellant's Exhibit A to which he makes reference in support of this authority is nothing else but a TOROC list of accreditations and thus does not evidence the Appellant's claim of authority) but he certainly did not have the express authority to channel "donations" to his company rather than to ENOC. However, the Panel does not want to be taken to be suggesting in any way that the Appellant intended to misappropriate the "donations" and use them for any purpose other than to provide funding for the training and education of African athletes;
- the Appellant did not openly disclose his dealings with J. They were discovered by accident. In those circumstances, the Panel is satisfied that the Appellant must be taken to have tried to hide his transaction with J. (and possibly other transactions with other "donors") from the IOC, TOROC and ENOC, and
- the Appellant tried to register J. under false pretences, i.e. that J. was qualified as "Medical Personnel".

23. In the Panel's opinion this set of circumstances meets the requirements of Section B.I of the IOC Code of Ethics in that the Appellant offered to J. a concealed benefit in connection with the Olympic Games.

24. However, the Panel wishes to mention one matter which has caused it concern.

During the 5 October 2006 hearing, the Panel asked the IOC's counsel the following hypothetical question:

If a prospective sponsor of an NOC were to offer to that NOC in connection with forthcoming Olympic Games a sum of money (or value in kind) as a "donation", and if he were to express the "hope" that he would be provided with a guest accreditation for the Games, would this be objectionable under the IOC Code of Ethics?

25. Mr. Carrard who, as a former director of the IOC, is very familiar with the internal workings of the IOC, answered that in his opinion this was proper, provided that the transaction was handled "in a transparent way", i.e. not behind the back of the NOC concerned.

26. This answer seemed to the Panel to be tantamount to an acceptance that if Mr. Beldotti had had available on behalf of ENOC a guest accreditation and offered this accreditation to J. "in connection with" (to avoid the term "as a quid pro quo" which would certainly more accurately reflect reality) a donation of USD 2,000 to be paid to ENOC, such a transaction would not have been objectionable in the eyes of the IOC.

27. This may very well be the proper interpretation of the IOC Code of Ethics but, in the Panel's opinion, it does not produce a very satisfactory result. The Panel therefore suggests that the IOC should reconsider its Rules so that they provide more accurate guidance as to the circumstances in which accreditations may be provided to (prospective) sponsors in return for financial sponsorship. If the IOC does not provide such a clarification of its Rules, it is possible that any NOC that provides any accreditation to one of its sponsors could be found to violate Section B.I of the IOC Code of Ethics.

Sanction

28. The Panel had the advantage of hearing more detailed evidence than was available in Torino. On the basis of that evidence the Panel is satisfied that Mr Beldotti's breach of the IOC Code of Ethics was committed as a result of his own carelessness in failing to familiarise himself with the Accreditation Rules. The Panel is satisfied that Mr Beldotti did not intend to benefit personally from any donation that J. may have made.

29. Nonetheless, Mr Beldotti's breach of the Code was serious, and as Chef de Mission of an Olympic team, albeit a very small team, he was under a duty to make himself familiar with all of the rules which governed the performance of those duties, including the rules relating to accreditations.

30. In the light of its findings and doing the best it can to assess the seriousness of Mr Beldotti's breach, the Panel has come to the conclusion that the sanction imposed against Mr Beldotti is disproportionate. The Panel has concluded that Mr Beldotti should be excluded from the Olympic Summer Games 2008 and the Olympic Winter Games 2010.

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Pasquale J. Beldotti against the decision of the IOC Executive Board is upheld in part and denied in part.

2. Mr. Beldotti shall be excluded from the Olympic Summer Games 2008 and the Olympic Winter Games 2010.

3. (…).