



**Arbitration CAS 2012/A/2737 New Zealand Wheelchair Rugby Association Incorporated (NZWRA) v. International Wheelchair Rugby Federation (IWRF), award of 3 July 2012**

Panel: Mrs Tricia Kavanagh (Australia), Sole Arbitrator

*Wheelchair Rugby*

*Classification procedure for international championship*

*Intervention*

*Decision (definition/notion)*

*Time limit for appeal*

*Prevalence of international classification procedure over classification procedures for continental championships*

*Authority to correct errors made in the conduct of international competitions*

1. **An Intervention Application should be granted where the applicant will be significantly affected by a possible decision, where the parties do not object to the application and where the applicant is a party to the Arbitration Agreement.**
2. **In summary (i) what constitutes a decision is a question of substance not form, (ii) a decision must be intended to affect and affect the legal rights of a person, usually, if not always, the addressee, (iii) a decision is to be distinguished from the mere provision of information. By reference to the test elaborated by the CAS case law, a letter sent by an International Federation (IF) to a national federation stating that the implementation of the IF classification rules were within the authority of the organization, considering the results of the continental championship to be final and determining the World Ranking List according to these results is indisputably a decision which could be appealed.**
3. **Article R32 of the CAS Code provides no discretion to extend the time limit for appeals. The time limit “*is absolute and strict*”.**
4. **For an international championship, the international rules are paramount. In this respect, where the tournament classification procedures for a continental championship are in breach of the IF Rules, the latter must prevail.**
5. **According to the applicable IF Statutes and By-laws the President and Secretary General are empowered to manage the affairs of the IF which includes the authority to note the errors made in the conduct of an international competition and to direct that those errors be corrected in accordance with the appropriate rule.**

New Zealand Wheelchair Rugby Association Incorporated (“NZWRA” or the “Appellant”) a duly incorporated society having its registered office in Auckland, New Zealand, is the national governing body for the sport of wheelchair rugby in New Zealand.

International Wheelchair Rugby Federation (“IWRf” or the “Respondent”) a duly incorporated sports federation having its registered address in Lausanne, Switzerland, is the international governing body for the sport of wheelchair rugby.

The Appellant is a member of the Respondent Federation.

On 8 November 2011, a dispute arose between the NZWRA and the IWRf in relation to the process of classification and the implementation of a change of sports class at the Asia-Oceania Tournament of a wheelchair rugby athlete, Cameron Leslie, one of the New Zealand athletes (“the Athlete” or “Mr Leslie”).

The Athlete was classified to a higher class before the semi-final match of the Asia-Oceania Championships, held from 2 November 2011 - 10 November 2011. New Zealand lost the semi-final to Japan. The winner of the match, Japan, went through to the final and was guaranteed a place in the London 2012 Paralympic Games. The loser, New Zealand, can only play for the Bronze. Further, the result of the tournament affected the World Ranking List published at the end of the tournament on 10 November 2012.

On 10 February 2012, the IWRf sent the NZWRA a letter stating that all disputes related to the results of the Championship were final (the “IWRf Decision”). It is that “Decision” which is appealed.

To determine this appeal it is necessary to recite the background and effect of the IWRf Classification Manual which outlines the applicable international rules for the classification of athletes in wheelchair rugby.

In September 2010, the IWRf General Assembly adopted revisions to the IWRf Classification Rules. Those revisions related to the assessment of eligibility and trunk function of the athletes. No changes were made regarding the timing of classification decisions.

The IWRf Classification Manual is a significant and detailed document (some 104 pages) which outlines the procedures which would be followed for classification and reclassification of athletes.

Relevantly, after the adoption of the new rules for classification, correspondence from the Secretary General IWRf of 15 May 2011, was sent to all IWRf members including NZWRA:

*15 May 2011*

*IWRf Member Nations*

*IMPLEMENTATION OF CHANGES TO THE IWRf CLASSIFICATION SYSTEM*

*At the 2010 IWRf General Assembly, the membership voted to approve changes to the IWRf Classification System in the areas of eligibility assessment and trunk assessment.*

*These changes took effect at the conclusion of the General Assembly, and are now being implemented. **Classification conducted at the 2011 IWRF Zone Championship will incorporate these changes** (emphasis added).*

*Please find attached an information circular from the IWRF Classification Committee explaining in more detail the changes to the system and the way these changes will be implemented in 2011.*

*Please ensure that this information is distributed to all wheelchair rugby stakeholders in your country, including athletes, officials, coaches, and clubs.*

*Best regards,*

*Eron Main*

*Secretary General*

*International Wheelchair Rugby Federation*

*CC: IWRF Board*

*IWRF Classification Committee*

*IPC Classification Committee*

The information circular attached also noted:

***Impact on current athletes***

*The new classification system will be implemented for all IWRF classifications starting in 2011. **The first use of the new tests and assessments will be during the three 2011 Zone Championships** (emphasis added).*

It is necessary to explain the classification classes to determine one element of this dispute.

In the classification of wheelchair rugby athletes into classes, Permanent (“P”) status athletes are those who have a confirmed international sport class. These athletes are no longer subject to classification and cannot protest their own classification or have their classification protested by another team.

P status requires that an athlete be classified and receive the same sport class in three consecutive classifications. These athletes are still subject to a Chief Classifier protest, under exceptional circumstances, in accordance with section 7.4 of the IWRF Classification Manual.

Following the adoption of revisions by the 2010 General Assembly, a number of Permanent status athletes were identified for Chief Classifier protest as the sport class allocation criteria had changed since their most recent evaluation. These athletes were notified that they would be classified at the next available opportunity. If these athletes received a different sport class at the end of the classification process, they would no longer be P status. If they received the same sport class, they would retain their P status.

Review (“R”) status athletes are those who have been assigned a sport class that is under review. This status is usually assigned to athletes following a classification evaluation, pending observation in competition to confirm their sport class. In the typical case, an athlete being classified at a tournament

will receive an R status prior to the start of competition. The R will be removed once the panel has made a final decision on the athlete's sport class. (In some cases, usually when a protest has been filed but not completed during a tournament, an athlete will retain the R status at the end of the competition as a final determination has not yet been made).

## **Rules and Procedures for Zone Championship**

In or about 3 October 2011 the Chief Classifier for the 2011 Asia-Oceania Championship (the relevant Championship), sent an email to the Organizing Committee of the Championship containing classification documents to be distributed to the various countries that might attend the tournament. These documents included:

- Tournament Classification Procedures document;
- Classification Schedule; and
- List of athletes to be classified.

The email was sent to:

- the Zone Chief Classifier;
- the Zone Technical Commissioner and Head Referee for the Championship; and
- the Zone President and IWRP Technical Delegate for the Championship.

The Organizing Committee of the Championship then distributed these documents to the participating countries, namely: Australia; Japan; Korea; and New Zealand. The Head Classifier for the Championships notified the participants of the Asia-Oceania Classification Schedule; the Tournament Classification Procedures; and Athlete list Asia-Oceania Zonals with classes/the Athletes List. No objection was made by any party.

There are two relevant documents to this dispute. The first is the Tournament Classification Procedures document for the Asia-Oceania Championship. It states:

### ***Tournament Classification Procedures***

#### ***1. Classification Process***

*The classification process will be conducted in accordance with the 4<sup>th</sup> edition of the IWRP Classification Manual, June 2011. It is divided into three phases:*

- 1. Physical Assessment*
- 2. Functional movement tests*
- 3. Observation on court*

*Physical assessments, also referred to as the Bench Test, including manual muscle tests, trunk tests and hand function tests will take place 3<sup>rd</sup> and 4<sup>th</sup> November, in the classification room at the **Korean Sports Training Center for Disabled.***

...

*A registered team member may accompany athletes. Translators must also be present if required and must be provided by the team.*

### **1.1 When Classification Decisions Take Effect**

*Only once an athlete has had meaningful court time, will a decision be made and an international class allocated. For all new athletes and athletes who are still under review from a previous tournament, the class changes will be implemented with immediate effect until one hour after the end of the round robin phase. Any changes after this time will be implemented at the end of the tournament. This includes ineligibility decisions. For athletes who have a previous international class, but do not yet have their permanent status, any class changes will only be implemented at the end of the tournament. This also includes ineligibility decisions (emphasis not added)*

### **2. Athlete Status**

- *Athletes with an IWRF Permanent Status do not need to be classified, unless a review of trunk function is required - see below.*
- *Athletes with an IWRF International Class, but who have not yet achieved a Permanent status, will be assessed and observed to the satisfaction of the Classification panel. The Classification Panel may request to assess the athlete at any time. ...*

## **The Zone Championship**

The 2011 IWRF Asia-Oceanic Zone Championship for Wheelchair Rugby was held between 2 November 2011 and 10 November 2011 in Seoul, Korea (“*Tournament*”).

On Thursday, 3 November 2011 the Classification Evaluation Period for the 2011 Asia-Oceania Championship began.

In accordance with the Classification Schedule and Procedures, Cameron Leslie, the New Zealand athlete, was reclassified. Mr Leslie had an International Sports Class of 2.5 on entering the Tournament, as acknowledged in the Athlete List. After attending a classification evaluation on 4 November 2011, he was advised he was classified to 3.0 Sports Class “*effective immediately*”.

The New Zealand coach lodged an objection on the grounds of the “*effective immediately*” ruling of the classification contending it was in breach of 1.1 of the Tournament Classification Procedures where it was stated “*any class changes will only be implemented at the end of the Tournament*”.

This was the first time it was pointed out that the IWRF Classification Manual, as to its “*effective immediately*” ruling, was in conflict with the published Tournament Classification Procedures.

Relevantly, the IWRF Classification Manual, the second relevant document, which Manual contained the new international rules for classification of athletes, stated:

## ***IWRF Classification Manual***

1.1 ...

### ***6.4 Sport Class Allocation Timeline***

...

*If an athlete has a previous IWRF sport class and enters the tournament under review (sport class status R) from a previous competition, or is allocated a R sport class status after physical and technical assessment in the classification evaluation period; the athlete may have his/her sport class changed at any time **and this change will take effect immediately in accordance with the competition rules of play.***

... (emphasis added).

On a reading of this clause there is an ambiguity. It presumes the competition rules of play will respect the General Assembly decision that any change “*will take effect immediately*”. The discrepancy, therefore, can be clearly identified. The IWRF Rules stated after classification, if the sports class of the athlete changed, the change was “*effective immediately*” not after “*the end of the Tournament*”. New Zealand clearly knew the International Rule and therefore challenged the procedure for the timing of its athlete’s change of sport’s class.

The New Zealand objection was upheld by the Zone President who notified the New Zealand Coach that Mr Leslie would remain a 2.5 athlete for the duration of the Tournament in accordance not with the IWRF Rules and Classification Manual, but the Tournament Classification Procedures.

The classification period for the Tournament ended on 4 November 2011. The Tournament itself was to have two round robins played over 3 days. New Zealand, on 5 November 2011, played Japan in the first round robin. That evening the official classification results indicated Mr Leslie’s Sports Class was 2.5.

On 6 November, New Zealand played Japan in the second round robin. It was that evening the official Tournament Classification Results were published. Mr Leslie’s Sports Class was published as 3.0 but with an asterisk noting:

*this change will only be implemented at the end of the tournament as per the classification procedures document given out prior to the tournament.*

On 7 November 2011, play completed the round robin phase of the Tournament. The official Tournament Classification results were published. Mr Leslie’s Sports Class was 3.0 and similarly asterisked.

At the 8 November 2011, semi finals, New Zealand was to play Japan at 11 am. At 8.30 am New Zealand was advised the IWRF President had advised and the IWRF Technical Commissioner had determined Mr Leslie’s Sports Class would be changed “*immediately*” to his 3.0 classification.

The New Zealand Coach objected to this determination on the grounds it was made by non-tournament officials and in breach of the published Tournament Classification Procedures. He was informed the period for protest for the classification of athletes had expired. The New Zealand

Coach's protest therefore was not heard. The New Zealand Coach did not, however, protest the classification itself, rather the ruling that the higher classification 3.0 would take effect "immediately" not, as had been the case through the Tournament, at the end of the Tournament.

New Zealand lost the semi-final 47 - 45. They were therefore out of the final; according to the World Ranking list, both finalists would be eligible for the London 2012 Paralympic Games, whereas the teams that lost the semi-final match would only compete in the bronze medal match of the Tournament and would not qualify for the Paralympics. This World Ranking list was then published reflecting the championship result.

The New Zealand Coach continued his objections, both as to the procedures for classification and the effect it would have on the World Ranking List. He asked for reasons and wrote his objections. There was various email correspondence between the Coach and the Zone President.

Finally, the Zone Officials referred all correspondence to the IWRF. Emails suggest the IWRF was fully aware of the correspondence between the Zone officials and the New Zealand Coach. On 17 November 2011, the IWRF Secretary General wrote to Mr Martin, the New Zealand Coach, regarding the actions taken by IWRF at the Tournament. The Secretary General referred to section 6.4 of the Classification Manual as recited above.

The letter of 17 November 2011 then stated:

*The Tournament Classification Procedures document was published solely for the information of participants in the Championship. It was not an official rules document, it was not intended to vary the rules detailed in the IWRF Classification Manual, and IWRF did not authorize any such variation. IWRF regrets that there was an error in the statement regarding the timing of classification decision.*

*It is my understanding that the New Zealand athlete Cameron Leslie entered the tournament with a previous IWRF sport class of 2.5. Following the classification evaluation period, the panel assessing Cameron assigned him a sport class of 3.0R. At that time, the classifiers were made aware of the inconsistency between the IWRF Classification Manual and the Tournament Classification Procedures document. The IWRF Technical Delegate, Ken Sowden, decided at that time the procedures in the Tournament Classification Procedures document would be followed and that Cameron's sport class would remain 2.5 for the duration of the tournament.*

*Cameron was subsequently observed in competition and the panel confirmed that his sport class would change to 3.0. This decision was communicated to Cameron and to New Zealand. They were also advised that this change would take effect at the end of the tournament.*

*At the same time, IWRF President John Bishop, IWRF Classification Committee Chair Greg Ungerer, and I were advised of the inconsistency between the IWRF Classification Manual and the Tournament Classification Procedures. This inconsistency had affected other classification decisions at the tournament beyond Cameron's. We consulted with Ken and with the IWRF classifiers at the tournament. Following that consultation, it was agreed that fairness required that the procedures detailed in the IWRF Classification Manual should govern the tournament, and that any inconsistency with published tournament documents would be decided in favour of the Manual. Ken, as the IWRF Technical Delegate, agreed to ensure that these procedures, including the timing of classification changes, took effect immediately. This decision was made under the authority of IWRF, as the international governing body for the sport of wheelchair rugby, to regulate sanctioned international competitions and championships.*

*In this situation, IWRF representatives made two errors regarding the classification process. The first error was in the procedures detailed in the Tournament Classification Procedures document. The second error was in the decision that the Tournament Classification Procedures should take priority over the IWRF Classification Manual document. As a result of these errors, Cameron began the competition and participated in several matches with the incorrect sport class. As soon as these errors were recognised, IWRF corrected them, which included requiring Cameron to participate with the correct sport class.*

The NZWRA was sent a copy of this correspondence by the Secretary General of IWRF. The Secretary General in emails to his officials stated he was concerned he was corresponding with the New Zealand Coach. The New Zealand Coach then challenged some of the interpretations of the circumstances in the letter of 17 November 2011 which explained the circumstances from the viewpoint of the Secretary General.

The letter of 17 November contains no indication that the issues identified, which were: the procedures followed at the Asia-Oceanic Championship and the settling of the World Ranking List; were being reconsidered. There is no reference to the Board making any review of the issues. There is no reconsideration of the procedure followed nor any reference to a consideration being taken by the IWRF Board.

When the letter from the Secretary General was forwarded to NZWRA, NZWRA instructed solicitors who wrote to the IWRF Board c/- the Secretary General on 26 January 2012 regarding the dispute. The letter of 26 January 2012 recorded NZWRA disputed the outcome of the Tournament as it related to the final world rankings of Japan and New Zealand. The letter contended the actions of the President and Secretary General were *ultra vires* in intervening in the actions of the Tournament Officials and breached the requirements of natural justice. It challenged the procedures that were followed for the classification. Lawyers expressed the intention to make further legal submissions on the issues. Some suggestions for resolving the dispute were offered, otherwise IWRF were informed it was the view of NZWRA that matter should be urgently referred to the Court of Arbitration for Sport in Lausanne, Switzerland, for a binding decision.

On 10 February 2012, the IWRF responded by way of letter to the NZWRA solicitor (received on 14 February 2012) as follows:

*John Wiltshire*

*Beattie Rickman Legal*

*February 10, 2012*

*I am writing in response to your letter of January 26, 2012 regarding a dispute affecting the World Ranking List for the London 2012 Paralympic Games, sent on behalf of the New Zealand Wheelchair Rugby Association.*

*As we understand it, the decision in dispute in this case is not (about) the decision to change Cameron Leslie's sport class from 2.5 to 3.0R. Rather, it is the decision with respect to the timing of the implementation of this change.*

*At issue is the status of the Tournament Classification Procedures document distributed by Claire Tucak, Chief Classifier for the 2011 Asia-Oceania Zone Championship. The rules and regulations governing classification in*



*wheelchair rugby are detailed in the IWRF Classification Manual, 3<sup>rd</sup> Edition (revised 2011), issued in June 2011. The purpose of Tournament Classification Procedures document was to provide specific information detailing the conduct of classification at the Championship, such as dates, timings, etc. Anything in this document regarding the rules and regulations pertaining to classification was there for information purposes only.*

*The document was not intended to replace or supersede the classification rules detailed in the Manual. IWRF did not approve any variation to these rules for the Asia-Oceania Zone Championship. IWRF acknowledges that the document erred in its description of the rules regarding the implementation of classification changes that would apply to the Championship, but it is the position of the IWRF that this error was not subsequently binding on IWRF.*

*... IWRF officials present at the tournament decided at that point to follow the incorrect procedures detailed in the TCP document regarding the timing of implementation of classification changes. This decision regarding the timing of implementation did not alter the decision of the classification panel to change Cameron's sport class.*

*Upon being advised of the situation, the IWRF President John Bishop and Secretary General Eron Main did not "determine that Cameron's classification should be altered." The only direction from the IWRF President and Secretary General was that the rules detailed in the IWRF Classification Manual should be implemented, rather than the incorrect procedure detailed in the TCP documents. This was a procedural ruling that was within the authority of the officers of IWRF to make. As officers of IWRF, the President and Secretary General are responsible for the day to day management of the affairs of IWRF. It is entirely appropriate for them to intervene when it is apparent that the rules and regulations of IWRF are being violated during a sanctioned competition, and to direct that the violation of the rules be corrected.*

*It is the position of IWRF that the actions taken by IWRF and its officers regarding the implementation of the IWRF classification rules were appropriate and were within the authority of the organisation, its President, and its Secretary General. IWRF considers the results of the Championship to be final. The IWRF World Ranking List has been determined according to these results.*

*IWRF considers this matter to be resolved, and will be proceeding to confirm the qualification of teams for the London 2012 Paralympic Games in accordance with the published qualification rules.*

It is the letter of 10 February 2012 to which the appeal relates. The NZWRA contended it contains a "Decision" capable of being appealed.

## **Procedural Background**

On 5 March 2012 the Appellant filed a Statement of Appeal in the Court of Arbitration for Sport in Lausanne, Switzerland ("CAS").

On 16 March 2012 the Appellant filed its Appeal Brief.

On 22 March 2012 the Japan Wheelchair Rugby Federation filed an Intervention Application, which is dealt with below.

On 2 April 2012 the IWRF filed its Answer Brief.

On 13 April 2012 the parties were advised that the Hon. Justice Tricia Kavanagh in Sydney, Australia had been appointed Sole Arbitrator to decide the above-referenced case. Neither party objected to the constitution of the Panel.

On 18 April 2012, on behalf of the Sole Arbitrator and pursuant to Article R 44.3 of the CAS Code, the parties were granted time to comment on the time limit to appeal in light of the decision in CAS 2010/A/2315. The parties filed their respective comments within the time limit granted.

On 1 June 2012 the parties were advised that having considered the file, together with the parties' respective positions, and pursuant to Article R57 of the CAS Code, the Sole Arbitrator considered herself sufficiently well informed to decide this matter without the need to hold a hearing.

### **The Relief Sought**

The Appellant's relief sought is:

- 1 New Zealand and Japan's world rankings are to be immediately considered provisional only;
- 2 The IWRF be instructed to organise a replay of the Championships semi-final match between New Zealand and Japan at the next available opportunity after consultation with the parties;
- 3 The IPC be immediately notified of the decision;
- 4 Such other orders as the CAS may consider appropriate including any order for compensation and damages; and
- 5 An order for costs.

The IWRF submits that the Appeal must fail both as being out of time and on its merits with all costs of the Appeal to be borne by the NZWRA.

### **Provisional Relief Application**

The Appellant sought provisional relief in the following form:

*A direction of the CAS that the IWRF notify the IPC of the present dispute affecting the World Ranking List and either requests an extension of the date from 12 March 2012 or advises that the allocation of qualification slots for the London 2012 Paralympic Games should be considered provisional only until this dispute is resolved.*

On 4 May 2012, the Deputy President of the Appeal Division dismissed the application for provisional relief and published reasons. The Panel notes the relief sought by the NZWRA (as recited above). Therefore 1.1 and 1.3 of the relief claimed in the appeal have been dealt with.

## LAW

### Intervention

1. Japan's Wheelchair Rugby Federation makes application as an intervenor in accordance with Article Rules (AR) 41.3 and 41.4 of the CAS Code of Arbitration for Sport (the Code). Those provisions relevantly state:

#### *R41.3 Intervention*

*If a third party intends to participate as a party to the arbitration, it shall file with the CAS an application to this effect, together with the reasons therefore within 10 days after the arbitration has become known to the intervenor but before the hearing or before the closing of the evidentiary proceedings if no hearing is held. The CAS Court Office shall communicate a copy of this application to the parties and set a time limit for them to express their position on the participation of the third party and to file, to the extent applicable, an answer pursuant to Article R39.*

#### *R41.4 Joint Provisions on Joinder and Intervention*

*A third party may only participate in the arbitration if it is bound by the arbitration agreement or if itself and the other parties agree in writing. Upon expiration of the time limit set in Articles R41.2 and R41.3, the President of the Division or the Panel, if it has already been appointed, shall decide on the participation of the third party, taking into account, in particular, the prima facie existence of an arbitration agreement as referred to in Article R39 above. The decision of the President of the Division shall be without prejudice to the decision of the Panel on the same matter. If the President of the Division accepts the participation of the third party, the CAS shall proceed with the formation of the Panel in accordance with the number of arbitrators and the method of appointment agreed by all parties. ... After consultation with the parties, the Panel shall determine the status of the third party and its rights in the procedure. After consultation with the parties, the Panel may allow the filing of amicus curiae briefs.*

2. Neither the NZWRA nor the IWRF objects to the intervention application. Both parties concede the JWRF is directly affected by any outcome of the appeal other than dismissal. Further, the JWRF is a party to the Arbitration Agreement. By letter dated 11 April 2012, the parties were advised that having considered the JWRF's Intervention Application, in light of the parties' non-objection to JWRF's intervention in this matter and in particular in light of the Appellant's comment that JWRF is a party to the arbitration agreement, the Deputy Division President had decided to allow JWRF to intervene. JWRF was also granted time to file an Answer, which it duly did. Lest there be any doubt, the Panel confirms/endorses the decision of the Deputy President of the Appeal Division as to the intervenor status of the JWRF. The Panel accepts JWRF will be significantly affected by a possible decision. JWRF has filed an answer to the appeal which answer addresses the issues. These submissions are given consideration by the Panel. Generally, they adopt the submission of IWRF.

## Jurisdiction of the CAS

3. The Appellant relies on clause 20 of the IWRP Statutes and By-laws as granting it a right of appeal to CAS. Clause 20 provides:  
*In view of the international composition of the IWRP and the resultant difficulties in settling disputes judicially where problems arise between members or between members and the IWRP, members waive the right to take such disputes to law, and agreed that such disputes shall be subject to the binding decision of the Board of Directors, the General Assembly, or the Court of Arbitration for Sport in Lausanne, Switzerland.*
4. The Respondent does not dispute that CAS has jurisdiction to hear this matter. The Deputy Division President was satisfied on a *prima facie* basis that CAS had jurisdiction to hear an interlocutory application for Orders of a Provisional and Conservatory nature. The intervenor also accepts the CAS has jurisdiction.
5. The Panel is satisfied that it has jurisdiction to hear this dispute. The parties have agreed to the appointment of a Sole Arbitrator as the Panel.

## Applicable Law

6. Article R58 of the Code provides as follows:  
*The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*
7. All parties have agreed to the dispute being determined under the Court of Arbitration Code. Under the Statute and By-laws of IWRP:  
*1.2 The IWRP is constituted as a separate legal person in Switzerland, with limited liability under Articles 52-59 and 60-79 of the Swiss Civil Code. Its registered address shall be in Lausanne, Switzerland, or as determined by the Board of Directors. ...*
8. Relevantly, there is reference to a Statute and By-laws of the IWRP and its Classification Manual and as well the Asia-Oceania Tournament Classification Procedures Rules.

## Admissibility of Appeal

9. The IWRP raised a preliminary issue, namely the letter of 10 February does not constitute a “decision” over which an appeal could be brought to the CAS. The Appeal, if it is submitted, is “out of time”. The IWRP contended the 10 February 2012 letter from IWRP restated its earlier decision to refuse to make changes to the World Rankings List published on 10 November 2011. This decision of 10 November was, it is contended, a relevant decision and an appeal of it would be out of time. The IWRP submitted the 10 February 2012 letter to NZWRA simply

restated the IWRF's position on the matter as it had done in response to the various communications from the New Zealand Coach since the 2011 Asia-Oceanic Championship. It is asserted by the IWRF, therefore, the decision is not a "decision" capable of being appealed.

10. Generally, the IWRF contended the 10 February 2012 letter was not a decision but a restatement of its prior decision that it would not amend, change, re-visit or in any way shape or form re-open the question of Mr Leslie's classification or any consequences of that classification. The IWRF submitted there were three acts which were capable of being "decisions appealed against", namely:
  - The 8 November 2011 enforcement of the IWRF Classification Rules as against Mr Leslie;
  - The 8 November 2011 loss of the semi-final match to Japan; or
  - The publication of the IWRF World Ranking List on 10 November 2011.
  
11. The IWRF submitted further the New Zealand Federation did not formally protest the outcome of the 8 November 2011 enforcement of the IWRF Classification Rules against Mr Leslie; did not formally protest the 8 November 2011 loss of the semi-final match to Japan; nor appeal the determination of the IWRF World Ranking List as established by letter dated 10 November 2011. Therefore, it contended all such appeals are out-of-time. Generally IWRF reiterated the 10 February 2012 letter was simply a restatement of the above decisions.
  
12. The relevant Articles of the CAS Code are Article R47 entitled "Appeal" which provides:
 

*An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.*

*An appeal may be filed with the CAS against an award rendered by the CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules applicable to the procedure of first instance.*

 and Article R49 entitled "Time Limit for Appeal" which provides:
 

*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.*
  
13. Rule 32 of the CAS Code provides no discretion to extend the time limit for appeals. The time limit "is absolute and strict" (see CAS 2011/A/2327 (at 7.7 - 7.9)).
  
14. It is necessary first to consider what is a "decision" for the purposes of Article R47, then to consider, after that determination is made, as to whether the letter constitutes a "decision" and whether that "decision" is out of time.

15. The characteristic features of a “decision” stated in the relevant CAS jurisprudence are collated in the following passages of a recent CAS case re CAS 2010/A/2315 at [7.3]:
- *“the form of the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitute a decision subject to appeal”* (CAS 2005/A/899 para. 63; CAS 2004/A/748 para. 90; CAS 2008/A/1633 para. 31).
  - *“In principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties”* (CAS 2005/A/899 para. 61; CAS 2004/A/748 para. 89; CAS 2008/A/1633 para. 31).
  - *“A decision is thus a unilateral act, sent to one or more determined recipients and is intended to produce legal effects”* (CAS 2004/A/659 para 36; CAS 2004/A/748 para. 89; CAS 2008/A/1633 para. 31).
  - *“an appealable decision of a sport association or federation “is normally a communication of the association directed to a party and based on an ‘animus decidendi’, i.e. an intention of a body of the association to decide on a matter [...]. A simple information, which does not contain any ‘ruling’, cannot be considered a decision”* (BERNASCONI M., “When is a “decision” an appealable decision?” in: *The Proceedings before the CAS*, ed. by RIGOZZI/BERNASCONI, Bern 2007, p 273; CAS 2008/A/1633 par 32).
16. The Panel in consideration of the above criteria then held:
- In short (i) what constitutes a decision is a question of substance not form (ii) a decision must be intended to affect and affect the legal rights of a person, usually, if not always, the addressee (iii) a decision is to be distinguished from the mere provision of information.*
17. The Panel held further at [7.5]
- there may be a number of decisions made each of which is appealable.*
18. As in CAS 2010/A/2315, the issue before the Panel in this case focuses on when a decision was taken for the purposes of Article R49 not only on what constitutes a decision for the purposes of Article R47 (see provision stated above).
19. Some reliance was placed by the IWRP on the view expressed in CAS 2008/A/1697 as follows:
- 4.2.5 *The Panel has, in reaching the above decision, also rejected the argument made by the Appellant that the letter of the IPC dated 17 October 2008 should constitute a “decision” within the meaning of R 27 of the CAS rules. The Panel believes that the letter of 17 October 2008 from the IPC cannot, even under the broadest interpretation of the term “decision”, be consider as such, simply because the letter does not in any way give an impression that the matter has been scrutinized or examined by the IPC in some form of appeal procedure. The Panel considers the letter mainly as a report over the occurrence of events, which took place on 12 September 2009 as well as an apology for the unfortunate situation, which the reclaiming of the medals quite understandably had resulted in.*

20. The letter of 10 February 2012, the impugned “*decision*”, in its content clearly acknowledges the IWRF considered all the issues raised in the January correspondence from the NZWRA. The letter was in reply to NZWRA’s first formal contact with the IWRF. The letter, in its content, stated the actions taken by the IWRF and its officers: were appropriate; were within authority; the results of the Championship were final; the World Ranking list was determined and confirmed; the matter was resolved. The letter stated these were “*positions of the IWRF*” and that the actions taken during the Championship “*were within the authority of the organisation, its President and its Secretary General*”.
21. There was no indication the Board had considered, before this letter, any appeal of these decisions; there had been no determination the actions of the IWRF officers were appropriate; there had before been no determination the matter was resolved. This was the first formal communication from the IWRF to its New Zealand member (it had before only sent a copy of a letter from the Secretary General to the Coach).
22. The Panel accepts the decision on 10 February 2012 was in direct response to Counsel’s letter to the IWRF on 26 January 2012. That letter was written to the Board of the IWRF. Unfortunately, no Board Minutes are produced. I accept an inference can be cast by the above terms of the 10 February letter it communicated a decision of the IWRF Board.
23. The letter from NZWRA to the IWRF put each issue into clear context and proffered legal arguments in support of the defined issues in dispute. New matters were clearly placed before this first decision of the controlling body of the Sports Board of the IWRF. Relevantly, the NZWRF communication was made ahead of the crucial 31 January 2012 deadline for nominations to be sent by the IWRF. The letter required consideration by the Board. The letter was addressed to the Board. The letter asked for a consideration by the Board of the dispute or a reference to the CAS.
24. The CAS Panel in CAS 2010/A/2315, in addressing a similar circumstance, stated at [7.9]:  
*... if the aggrieved person advances a substantially different case or, even the same case in a substantially different way, one with fresh evidence or legal argument with which the body with power to decide deliberately and conscientiously re-engages, any further adverse decision then reached may itself be an appealable decision.*
25. Further, the IWRF Classification Manual provides for Appeals in Chapter 8. The provision reads as follows:  
*Explanatory Note: As of 2010, the International Federation for wheelchair rugby is the International Wheelchair Rugby Federation (IWRF). The IWRF has procedures that include timelines for submission and resolution of appeals. To obtain the procedures for an appeal contact - IWRF Secretariat, International Wheelchair Rugby Federation.*
26. The New Zealand Coach had expressed a protest and objection on a number of occasions. He was never provided with any information as to an appeal procedure. The Secretary General was in direct contact with the Coach. The Panel stated in CAS 2010/A/2315 at [7.9]:

*The Panel recognises, as indeed does Article 47, that where the regulations of the decision maker specify a process of reconsideration by a first instance body or appeal to a second instance one, it is necessary for an aggrieved person to exhaust those domestic remedies; and it follows that time does not run against him until he has done so. ...*

and of relevance is the Panel's further comment at [7.6]:

*Swiss law, the lex fori, provides that in administrative law, time does not run for the purposes of a limitation period for an appeal to be launched, until the person who is the addressee of the decision, is sufficiently apprised of the basis for it in order sensibly to be in position to evaluate whether or not to exercise any right of appeal.*

27. Until a copy of the letter to the NZWRA Coach was forwarded to the NZWRA by the IWRf there was no involvement of the New Zealand organising body. On receipt of that correspondence given questions were raised as to its content, NZWRA immediately became active and sought Counsel's advice and contacted the IWRf through its letter of January 2012 directed to the Board of the IWRf making clear it wished to appeal the tournament procedures that were followed and the publication of the World Ranking List. These matters were appealable. To suggest because the NZWRA did not appeal the classification of its athlete, that the time for appeals on other issues had expired, is rejected. For anyone to rule that after the classification time to appeal was over and NZWRA had no right to appeal the application of the Tournament Rules and the Listing was incorrect. To suggest that the explanatory letter of 10 November 2011 of the Secretary General to a coach was an appeal decision of the Board is also rejected.
28. The IWRf, through its officers, informed the coach, incorrectly, there was no right of appeal on the issues. The IWRf gained an advantage in so ruling. No decision on these issues on appeal was considered until at a Board meeting and communicated to the NZWRA by the 10 February 2011 letter. That letter is a "decision" which "decision" is appealable.
29. In the Panel's view, by reference to the test elaborated in the CAS decisions cited in the above authorities, the decision taken by IWRf on 10 February 2012 and received in the letter of 14 February 2012, was indisputably a decision which could be appealed. This was the first communication containing a ruling whereby the IWRf issued a decision that affected the legal situation between the parties. Further, it ruled this decision was final and did not refer to the appeal provisions under its By-laws. It was on notice the NZWRF wanted the matter referred to the CAS. That decision is appealable.
30. Further, as conceded by the IWRf, if the letter of 10 February is a "decision", it has been filed in time under the CAS Rules for appeal. The appeal is therefore within time.



## Merits

31. The relief sought by NZWRA is for the CAS to order a re-match of the New Zealand v Japan semi-final held in the Asia-Oceania Tournament with the classification of their athlete, Mr Leslie, being recognised as in the 2.5 class.
32. From the background facts as outlined, the following conclusions are relevantly drawn.
33. The Tournament Classification Procedures were in breach of the IWRP Rules and Classification Manual. The IWRP officers, when they had their attention drawn to this issue, instructed the Tournament Classification officers to abide by the IWRP Classification Rules as cited in the classification manual. The Panel accepts for an international championship, the international Rules are paramount. The Panel finds the NZWRA knew the International Rules for Classification.
34. Mr Leslie, the New Zealand athlete, had been classified by the classification team from a 2.5 class athlete to a 3.0 class athlete and that has not been objected to.
35. From correspondence, the athlete was permitted to play, and was played as a 2.5 class athlete, at least in some of the six games in the round robin where NZWRA competed successfully up to the semi-finals.
36. Before the semi-finals, the New Zealand athlete and coach were advised the tournament procedure - which allowed his classification to be deferred until after the Tournament - was in conflict with the International Classification Rules as cited in the Classification Manual and the athletes championship classification would be "*effective immediately*" in accordance with the IWRP Classification Rule 1-1.
37. The IWRP have conceded the error in the Tournament Classification Procedure document and the "*unfortunate*" acts of the Tournament officials, the Head Classifier and the IWRP Technical Delegate in allowing the athlete to compete as a 2.5 class athlete. The Tournament Classification Procedure document and the ruling of the Tournament officials in allowing the athlete to play at his lower class were both errors and in breach of the IWRP Rules for classification.
38. The NZWRA thereby had the advantage of a more highly graded athlete competing up to the semi-finals in breach of the IWRP Rules.
39. The Panel is asked to order a replay between New Zealand and Japan under the Tournament Classification procedure which would allow Mr Leslie to compete as a 2.5 class athlete. NZWRA therefore asks the Panel to order a match replay under Rules which are in breach of the IWRP Rules.
40. The Rules regarding the timing of implementation of classification decisions were explicitly covered in the Classification Manual. The IWRP Rule 1.1 clearly stated the classification of the athletes in competition, as was Mr Leslie, was effective immediately. The decisions of the

Technical Delegate or any other person or body to change this Rule was without authority. New Zealand knew of the IWRF Rule.

41. Also of relevance is the IWRF Competition Regulation which states:

*For all sanctioned events, the IWRF shall appoint a Technical Delegate. The role of the Technical Delegate is to advise the Organizing Committee and to ensure that the event takes place in accordance with IWRF regulations. The Technical Delegate has the authority, on behalf of the IWRF, to rule on any technical situation not explicitly covered in regulations, or to refer issues to IWRF as required.*

42. The IWRF Statutes and By-laws empower the President and Secretary General to manage the affairs of the IWRF. This includes the supervision of IWRF personnel including Committee Chairs and Technical Delegates. It was, the Panel accepts, within the authority of the IWRF Secretary General and President to note when errors were made in the conduct of an international competition and to direct that those errors be corrected in accordance with the appropriate Rule.

43. The Panel rejects the proposition the President and Secretary General acted *ultra vires* IWRF Rules and reject the claim they acted outside their authority in advising the Chief Classifier and the Tournament Delegate of the appropriate Rule and requiring its application.

44. The Panel accepts, to the extent that any officers of the IWRF interfered with the classification of Mr Leslie, the only interference was for the immediate and fair implementation of the explicit rules that governed the Asia-Oceania Championship.

45. For the Panel to allow Mr Leslie to play in an incorrect sports class would require it to endorse the advantage that had been given to New Zealand who played an athlete classified as a 3.0 through a number of matches to the semi-finals playing as a 2.5 class. NZWRA was advantaged. The Panel if it so ruled would continue the unfair advantage New Zealand enjoyed in the round robins. To so order would also be unfair and prejudicial to Japan and require the Panel to give orders to allow a game to be played in breach of the IWRF Rules.

46. One other issue needs to be addressed. The deadline for the protest on an athlete's own classification or that of another (under the Tournament Classification Procedures) was 6 November 2011 at 3pm. In submissions, the NZWRA submitted:

*The New Zealand team attempted to protest the sports class of the Japanese player, Shin Nakazato, prior to the 3.00pm deadline however, at approximately 5.00 pm before the second round robin match between New Zealand and Japan the NZ Coach was advised that Shin Nakazato's sports class could not be protested as he had a permanent status.*

47. The Appellant contended that the decision not to allow a protest of the Japanese athlete was also incorrect and the involvement of the Japanese in the Subsequent Classification Decision against its interests needs to be understood and explained.

48. The Panel does not accept in the application of the IWRA Rules the protest by New Zealand against the Japanese athlete was not correctly dealt with. From email correspondence of 21 November 2011, the officials explained the procedure followed:

*... The athlete came into the tournament with a permanent international class (P status). He was subject to a head classifier's protest under exceptional circumstances (change of classification system). The allocation of the R sports class status indicates an incomplete classification process, and therefore does not represent an opportunity for protest, as the final determination on class has not been made.*

*In this case, the classification outcome was consistent with his previous permanent international class, so the P sports class status was immediately reinstated. A protest would only have been possible if the classification outcome was different from his previous permanent class, thereby resetting his classification count.*

and the New Zealand Coach was so informed in an email of 22 November 2011 as follows:

*The Japanese player underwent a single classification process with a single final outcome. The fact that he temporarily went to a 3.0 is immaterial. The outcome of the full classification process was that his class did not change and therefore his permanent status did not change. The classifiers followed the correct procedures.*

49. The athlete came into the tournament with a permanent international class. He was subject to a head classifier's protest under exceptional circumstances (change of classification system). The allocation of the R sports class status indicated an incomplete classification process and, therefore, did not represent an opportunity for protest as the final determination had not been made. The classification outcome was consistent with the athlete's previous permanent international class, so the P sports class status was immediately reinstated. A protest would only have been possible if the classification outcome was different from his previous permanent class, thereby resetting his classification count.
50. This ground of appeal is rejected.
51. The Panel has found the letter of 10 February 2012 constitutes a Decision of the IWRP which Decision is appealable. The appeal is within time.
52. In a consideration of the merits of the appeal, for all the above reasons, the appeal is dismissed.
53. NZWRA have placed some reliance on the need to have the International Paralympics Committee (IPC) to be notified of the appeal so the World Ranking List - given its impact on the allocation of team qualifying slots, may be affected by this Decision. That has been done. Therefore, the IPC should be notified the Appeal is dismissed.

**The Court of Arbitration for Sport rules:**

1. The appeal filed by New Zealand Wheelchair Rugby Association Incorporated of 5 March 2012 is dismissed.

(...)

4. All other or further claims are dismissed.