



Arbitration CAS ad hoc Division (O.G. Salt Lake City) 02/003 Bassani-Antivari / International Olympic Committee (IOC), award of 12 February 2002

Panel: Mr. Yves Fortier (Canada), President; Mr. Dirk-Reiner Martens (Germany); Mrs. Maidie Oliveau (USA)

Alpine skiing

Right to enter an athlete in the Olympic Games

Jurisdiction of the CAS ad hoc Division

- 1. The Entry Form for the Olympic Games which is not endorsed by the competitor's NOC is a unilateral document which has no binding legal effect. In particular it cannot trigger the applicability of the arbitration clause found therein.**
- 2. Therefore, the Applicant has no standing to assert before CAS that he/she has a dispute covered by Rule 74 of the Olympic Charter and by the arbitration clause in the Entry Form. Without this standing, CAS has no jurisdiction to initiate an arbitration.**
- 3. Pursuant to the first sentence of Rule 49(1) of the Olympic Charter, the NOCs have exclusive authority to enter competitors in the Games. There is no room for any other interpretation. According to its own rules, the IOC does not have the discretion to overrule the NOC and to enter a competitor on an individual basis. By the same reasoning, CAS does not have this authority.**

The Applicant is a 23-year-old Grenada national who has represented Grenada in international ski competition since 1998. She has competed under the auspices of the Grenada International Sports Foundation ("GISF"), which had applied in 1997 for affiliation with the Grenada Olympic Association ("GOA"), the Grenada National Olympic Committee ("NOC"). The GISF was accepted by the Fédération Internationale de Ski ("FIS") as a FIS member during its 41st Congress on 22 May 1998.

Though an Italian native and also an Italian national, the Applicant has never represented another country in the Olympic Games and is ranked 474 on the 2001 FIS Point List in the Slalom and fulfilled the FIS qualification criteria for participation in the XIX Olympic Winter Games in Salt Lake City ("the Games"). The Applicant has never been sanctioned for any rule violation.

In August 2001, the President of the GISF submitted to the GOA the documentation necessary for the GOA to enter the Applicant to compete in the Games. The GOA did not send an entry form for the Applicant to the Salt Lake Organizing Committee ("SLOC").

On 18 December 2001, the President of GOA advised SLOC that Grenada would not be participating in the Games.

On 25 January 2002, the GOA informed the GISF that it was unable to sanction the participation of the Applicant because the GISF was not an affiliate of the GOA. To date, the GOA has not accepted the GISF application for affiliation.

In an effort to resolve any outstanding issues regarding her eligibility to compete in the Games, the Applicant procured from a friend and submitted both her and her coach's entry forms dated 1 February 2002 directly to the SLOC on the SLOC form used by NOCs for this purpose (the "Entry Form").

On 4 February 2002, the Applicant flew to Salt Lake City, Utah, expecting to represent Grenada in the Games and also to march in the Opening Ceremonies of the Games under the Grenada flag. However, upon arriving in Salt Lake City, the Applicant was told by Mr. Toulson of the International Olympic Committee ("IOC") that the GOA never filed an Entry Form on her behalf to SLOC. The Applicant immediately attempted to contact the GOA in order to find out why she was unable to participate in the Games.

On 7 February 2002, the Applicant spoke with Ms. Veda Bruno-Victor, Secretary General for the GOA, who stated that the GOA would not change its decision and would not submit an Entry Form to SLOC for the Applicant.

On 7 February 2002, the Applicant filed an appeal to the IOC, requesting that the IOC overturn the GOA's decision not to enter the Applicant in the Games and declare the Applicant eligible to participate in the Games.

On 10 February 2002, the IOC rendered its decision denying the Applicant's request to compete in the Games citing Rule 49(1) of the Olympic Charter (the "Charter") which requires the NOCs to enter competitors into the Games and Rule 41(2) of the Charter which assigns responsibility to the Chef de Mission of an NOC to supervise its delegation. The decision further states that it is undesirable for individual competitors to be allowed to participate in the Olympic Games in the absence of an NOC to take responsibility for them and that GOA is not obligated to send competitors to the Olympic Winter Games.

LAW

1. At 06:05pm on 11 February, the Applicant filed an application before the CAS ad hoc Division of the Olympic Winter Games in Salt Lake City. The application included a legal brief and some documentary evidence. The Applicant requested that CAS allow the Applicant's entry to the Games and declare her eligible to compete therein.
2. On 11 February 2002, the President of the CAS ad hoc Division appointed as arbitrators Mr. Yves Fortier (Canada), President of the Panel, Mr. Dirk-Reiner Martens (Germany) and Mrs. Maidie Oliveau (USA).
3. The parties were summoned to appear for a hearing at 10:30am on 12 February 2002 at which the Applicant, her counsel and the representatives of the IOC were present. The IOC did not file any written pleadings but submitted some documentary evidence during the hearing.
4. These proceedings are governed by the CAS Arbitration Rules for the Games (the "CAS ad hoc Rules") enacted by the International Council of Arbitration for Sport ("ICAS") on 5 November 2001. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 ("PIL Act"). The PIL Act applies to this arbitration as a result of the express choice of law contained in art. 17 of the CAS ad hoc Rules and as the result of the choice of Lausanne, Switzerland as the seat of the ad hoc Division and of its panels of Arbitrators, pursuant to art. 7 of the CAS ad hoc Rules.
5. The jurisdiction of the CAS ad hoc Division arises out of art. 1 of the CAS ad hoc Rules read in conjunction with Rule 74 of the Charter.
6. Under art. 17 of the CAS ad hoc Rules, the Panel must decide the dispute "pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate".
7. According to art. 16 of the CAS ad hoc Rules, the Panel has "full power to establish the facts on which the application is based".
8. The Applicant contends that the Panel does have jurisdiction to decide the merits of her application on the basis of either Rule 74 of the Charter or the Entry Form signed by the Applicant and delivered to the SLOC, even though this Entry Form was not submitted by her NOC.
9. The Applicant argues that if the Panel were to require a valid Entry Form to be submitted on behalf of a competitor seeking entry to the Games, the CAS ad hoc Division would not have jurisdiction to hear the appeal of any eligibility decisions.

10. The Applicant contends that she was improperly denied entry to the Games by virtue of the GOA's determination not to enter the Applicant as a representative of Grenada for the following reasons :
 - a. Pursuant to its Constitution, the GOA has the obligation to accept the application for affiliation by GISF and upon the completion of the paperwork for such application, which is merely a bureaucratic technicality, the Applicant should be eligible to compete in the Games for Grenada.
 - b. She should be granted the right to compete in the Games since it is no fault of hers that she is caught up in the bureaucratic misunderstanding between GISF and GOA, she is eligible by virtue of the FIS standards and has paid her own way to be available to compete on behalf of Grenada in the Games.
 - c. Pursuant to Rule 49(1) of the Charter, the IOC has the discretion to enter a competitor into the Games regardless of the NOC's decision not to enter him/her.
11. The Applicant requests that the Panel take into account the special circumstances under which she proceeded in good faith believing she would be entered in the Games. She asks that the Panel find that she is the representative of the GOA in the Games.
12. The Respondent argues that the Panel does not have jurisdiction to decide the Applicant's request on the basis of art. 1 of the CAS ad hoc Rules which provides that the ad hoc Division resolve by arbitration any disputes covered by Rule 74 of the Olympic Charter and by the arbitration clause in the Entry Form. Since there is no accepted Entry Form in this instance, the Respondent argues that the Panel does not have jurisdiction to grant the relief requested.
13. The Respondent however did not wish to prevent the Applicant from submitting to the Panel the merits of her case.
14. In addition, the Respondent argues that the GOA is not entering a delegation to these Games, and that even if it were to do so at this time, the application would be submitted after the deadline.
15. The Respondent also argues that the Olympic Charter sets forth the responsibilities of the NOC with respect to the entry and supervision of its delegation at the Olympic Games pursuant to Rules 31 and 32 of the Charter but does not allow for the direct entry by competitors.
16. In addition, avers the Respondent, on the basis of the GOA Constitution, the NOC has the right to conclude that it is not required to affiliate the GISF as a competent national association since the GISF is not within Grenada.
17. The Respondent also argues that the IOC does not have the right to enter competitors in the Olympic Games pursuant to the provisions of Rule 49(1) of the Charter, but rather that the IOC can review an entry form only after it has been submitted by the NOC.

18. Initially, the Panel must determine whether it has jurisdiction to hear the present application. It is well established that CAS panels have the power to determine the scope of their jurisdiction.
19. Rule 74 of the Charter provides as follows:

“Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-related Arbitration”.
20. The CAS ad hoc Rules were adopted by the ICAS on 5 November 2001. They form an integral part of the Code of Sports-related Arbitration. Art. 1 of the CAS ad hoc Rules stipulates that:

*“The purpose of the present Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes **covered by Rule 74 of the Olympic Charter and by the arbitration clause inserted in the entry form for the Olympic Games** (the “OG”), insofar as they arise in the host country of the OG between 1 February 2002, and 24 February 2002.”*
(emphasis added).
21. The Panel must find the legal basis for its jurisdiction within the parameters of these two provisions.
22. The debate before the Panel on this issue of jurisdiction centers on the word “and” in art. 1 of the CAS ad hoc Rules. Is the word used in a disjunctive or conjunctive sense? If the word is used in a disjunctive sense, it is not necessary for the Panel even to consider the necessity of a valid entry form since, argues the Applicant, Rule 74 by itself confers jurisdiction on the ad hoc Division of CAS. If, on the other hand, the word is used in a conjunctive sense, the jurisdiction of the Panel is founded both on the provisions of Rule 74 and on the arbitration clause contained in a validly submitted entry form.
23. The Panel has no difficulty, in the context of the Olympic Games, in finding that the word “and” is used in the conjunctive sense. The Panel finds support for its conclusion in the use of words “ainsi que” in the French text of the Article. It would be illogical to confer jurisdiction for a competitor on the CAS ad hoc Division (as opposed to the regular CAS procedure) to resolve any dispute arising on the occasion of, or in connection with, the Olympic Games only on the basis of Rule 74 without a link to these Games, such as the arbitration clause contained in a validly endorsed entry form. Consequently, the Applicant’s first argument in respect of this issue must fail.
24. However, this finding by the Panel does not put an end to the jurisdictional question. Subsidiarily, the Applicant argues that the Panel has jurisdiction to hear her application even if art. 1 was read to require both Rule 74 and the arbitration clause contained in the entry form since the Applicant’s Entry Form was, in all respects, valid.

25. The Panel recalls that the Applicant has attempted to submit directly to SLOC an Entry Form to the Games unendorsed by her NOC. The Panel heard evidence from Ms. Vida Bruno-Victor, the Secretary General of the GOA, that the GOA had positively refused to endorse the Applicant's Entry Form. In fact, it is abundantly clear that the GOA, in the exercise of its authority, declined to send any delegation to the Games.
26. In the opinion of the Panel, the Entry Form at issue in the present case is, in the words of counsel for Respondent, an "inchoate document". An Entry Form which is not endorsed by the competitor's NOC is a unilateral document which has no binding legal effect. In particular, it cannot trigger the applicability of the arbitration clause found therein.
27. Therefore, the Applicant has no standing to assert before this Panel that she has a dispute covered by Rule 74 of the Charter and by the arbitration clause in the Entry Form. Without this standing, this Panel has no jurisdiction to entertain the present application and the Panel so finds.
28. Furthermore, even if the Panel has so concluded, in the event that the CAS ad hoc Division had jurisdiction, it would still reject the Applicant's request for the following reason.
29. The 10 February 2002 IOC Executive Board decision relies on Rule 49(1) of the Charter which provides:
 - 1 *Only NOCs recognized by the IOC may enter competitors in the Olympic Games. The right of final acceptance of entries rests with the IOC Executive Board.*
 - 2 *An NOC shall only exercise such attributions upon the recommendations for entries given by national federations. If the NOC approves thereof, it shall transmit such entries to the OCOG. The OCOG must acknowledge their receipt. NOCs must investigate the validity of the entries proposed by the national federations and ensure that no one has been excluded for racial, religious or political reasons or by reason of other forms of discrimination.*
 - 3 *The NOCs shall send to the Olympic Games only those competitors adequately prepared for high level international competition. Through its IF, a national federation may appeal to the IOC Executive Board against a decision by a NOC on the matter of entries.*
30. The Applicant has submitted both in her brief and in her oral arguments that the second sentence of Rule 49(1) gave the IOC "the right of final acceptance" and that this Rule included a right for the IOC, and hence this Panel, to accept a competitor in the Games even if he/she was not entered by his/her NOC.
31. The Panel rejects this argument. The text of the first sentence of Rule 49(1) of the Charter is unambiguous: it is within the NOCs' exclusive authority to enter competitors in the Olympic Games. This principle is confirmed inter alia in Rule 31(3) of the Charter ("The NOCs have the exclusive power for the representation of their respective countries at the Olympic Games and ...") and in Bye-Law 8.1 to Rules 31 and 32 of the Charter ("... They [the NOCs] decide upon the entry of competitors proposed by their respective national federations").

32. Therefore, the Panel has to interpret the second sentence of Rule 49(1). More particularly, the Panel must address the question whether this provision gives the IOC Executive Board, and thus this Panel, the right to enter a competitor in the Games even though there is no Entry Form submitted by an NOC for this competitor either because the competitor's nomination by the national federation was not accepted by the NOC or because – as is the case here – the NOC decided not to send any delegation to the Games.
33. The Panel is of the opinion that neither the IOC Executive Board nor this Panel has this right. The provision in question clearly gives the IOC Executive Board “the right of final acceptance of entries”; this presupposes that there is an “entry” before the IOC Executive Board. Pursuant to the first sentence of Rule 49(1), the NOCs have exclusive authority to enter competitors in the Games. In the Panel’s view, there is no room for any other interpretation. According to its own rules, the IOC does not have the discretion which the Applicant wants to confer upon it, i.e. to overrule the NOC and to enter a competitor on an individual basis. By the same reasoning, this Panel does not have this authority.
34. It has been suggested that this reading of Rule 49 leaves the competitors without an effective remedy against NOC selection decisions which may run counter to the Charter to which the NOCs are bound (see Bye-Law 2, Rules 31 and 32 of the Charter: “The statutes of each NOC shall, at all times, be in accordance with the Olympic Charter and refer expressly to the latter”).
35. The Panel is not prepared to adopt this argument. As is well known, there is ample case law in the jurisdiction of many countries with respect to whether or not a competitor has an enforceable right to have his/her NOC enter him/her in the Olympic Games. The national courts of a given country or other designated competent authority constitute the appropriate forum to rule on this question. There has been a significant number of cases where competitors have in fact succeeded in their national fora with such requests.

The ad hoc Division rules:

The application filed by Ms. Gaia Bassani-Antivari is denied.