



Arbitration CAS ad hoc Division (OG Vancouver) 10/003 Virgin Islands Olympic Committee (VIOC) v. International Olympic Committee (IOC), award of 12 February 2010

Panel: Mr David Grace QC (Australia), President, Mr Chi Liu (China), Mr José-Juan Pintó (Spain)

Skeleton

Reallocation of unused quota position

Interpretation of the qualification system

The International Federation's Qualification System is a legal document. It contains the provisions concerning the requirements that must be fulfilled in order to allow athletes to compete at the XXI Winter Olympic Games, Vancouver 2010. General rules of interpretation must be applied. The ordinary meaning of the words used must be considered in the context of the document under consideration, the document being considered as a whole. A proper interpretation of the provisions that deal with the reallocation of unused quota positions clearly differentiates between the Men's and Women's competitions. The qualification system reveals the clear intention of the IF that each quota for the Men and Women's competitions be filled separately and that the quotas be not bundled together. In other words, the qualification system provides for a maximum number of competitors for each event, there can be no transfer of an unallocated quota position from one event to another and no provision allows for the increase of the number of athletes in a given event.

The Applicant is the Virgin Islands Olympic Committee. The Respondent is the International Olympic Committee (IOC). It opposes the Applicant's application.

The Applicant challenges the decision of the IOC, the Respondent, given on 3 February 2010, to refuse to re-allocate a men's skeleton quota position to the Applicant to allow an additional women's skeleton competitor to participate in the XXI Olympic Winter Games Vancouver 2010. On 27 January 2010 the Applicant formally petitioned the FIBT to reallocate the unused men's quota position to it for the women's competition. The Applicant's petition relied on the FIBT Qualification System for the XXI Olympic Winter Games Vancouver 2010 issued in November 2008 and a precedent established at the XX Olympic Winter Games Torino 2006 where a men's unfilled quota position was transferred to a woman in the sport of luge. The Applicant's petition was forwarded by the FIBT to the IOC, who, by its determination dated 3 February 2010, refused the Applicant the relief it sought. The Applicant seeks to have skeleton athlete Ms Alexa Putnam represent it in the women's skeleton competition in the XXI Olympic Winter Games, Vancouver 2010.

The Qualification System for the XXI Winter Olympic Games, Vancouver 2010 issued by the FIBT for skeleton refers to two events: Men's skeleton competition and Women's skeleton competition. There is a total of 50 athletes specified, comprising 30 men and 20 women.

The Applicant's claim is based on the simple fact that as only 28 positions out of a possible 30 positions have been filled in the Men's skeleton competition, the Women's competition should have its number of positions increased to 21 positions. If that occurred, as Ms Putnam is the next (and only) ranked eligible competitor, the Applicant should fill the vacant position.

The FIBT's Qualification System for XXI Winter Olympic Games, Vancouver 2010, is set out in a document (the "Qualification System") established in collaboration by the FIBT and the International Olympic Committee (IOC). It was issued in November 2008. Chapter 4.1 of the FIBT International Rules Bobsleigh 2008 states, in relevant part, as follows:

"Olympic Winter Games

The criteria for the right to participate in the Olympic Winter Games are determined by the I.O.C. The qualification rules are determined by the I.O.C. in collaboration with the F.I.B.T. The qualification rules are communicated directly by the I.O.C. to all National Olympic Committees".

The relevant parts of the Qualification System for skeleton are set out as follows:

EVENTS

Men's Skeleton Competition

Women's Skeleton Competition

ATHLETE / NOC QUOTA

ATHLETES QUOTA *50 athletes*
30 Men including host nation
20 Women including host nation

...

QUALIFICATION SYSTEM

GENERAL PRINCIPLES

Participation on the Olympic Winter Games is guaranteed for the best athletes. Representation of the host country and non-represented continents is also guaranteed, provided that athletes are ranked among the top 60 men or top 45 women in the FIBT Ranking.

The FIBT recognises five continents: Africa, America, Asia, Europe and Oceania.

The qualification process takes place via participation in the Federation's competition activity. Qualification is achieved by the athlete's results. They gain a qualification slot for their NOC.

The athlete quota is attributed to the NOC. They can choose with which athletes they wish to fill the places provided that the said athletes have taken part and were ranked, in the 2008/2009 and/or 2009/2010 competition seasons, in at least five international FIBT competitions on three different tracks.

SYSTEM IN DETAIL FOR WOMEN'S SKELETON

The participation in the Olympic Winter Games is limited to:

- 2 NOCs with 3 athletes
- 4 NOCs with 2 athletes
- 6 NOCs with 1 athlete

The chosen athletes must be ranked among the top 45 athletes of the 2009/10 FIBT ranking of the 2009/10 season during the qualification period.

REALLOCATION OF UNUSED QUOTA POSITIONS

Places earned and not taken up are reallocated until all 30 places (Men) or 20 places (Women) are filled, in the following order of priority:

- *The highest ranked NOC(s) of non represented continents.*
- *If the number of non represented continents surpasses the number of places available for reallocation, only the highest ranked athlete in the FIBT ranking will enable his/her NOC to send an athlete to fill a reallocation position.*
- *In cases of equal points, the following decision criteria will be applied:*
 - a) *First, the highest single points result obtained;*
 - b) *Next, the highest single points obtained during the previous race.*

After this, if there are places still available for reallocation, only NOCs which do not already have a qualified athlete by the end of the qualification period will be considered.

** Among the potential candidates for reallocation, only the highest ranked athlete in the FIBT ranking will enable his/her NOC to send an athlete to fill a reallocation position, provided that the athletes concerned have taken part and were ranked in at least five international FIBT competitions on three different tracks, during the 2008/2009 and/or 2009/2010 competition seasons, and ranked among the top 60 men or top 45 women in the FIBT Ranking List.*

On 11 February 2010 the Applicant filed its application with the Court of Arbitration ad hoc Division (CAS).

The hearing took place on 12 February 2010 at the CAS Hearing Room, Renaissance Hotel, Vancouver, Canada.

LAW

Jurisdiction and applicable law

1. These proceedings are governed by the CAS Arbitration Rules for the Olympic Games (the “CAS ad hoc Rules”) enacted by the International Council of Arbitration for Sport (ICAS) on 14 October 2003. 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 location of the seat of the CAS ad hoc Division in Lausanne, Switzerland, pursuant to art. 7 of the CAS ad hoc Rules.
2. The jurisdiction of the CAS ad hoc Division arises out of Rule 59 of the Olympic Charter. Furthermore, none of the Parties or the Interested Party disputed the CAS jurisdiction in their submissions at the hearing.
3. 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”*.
4. 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”*.

Merits

5. The Panel has carefully considered the submissions of the parties and the documents submitted by them. The Qualification System is a legal document. It contains the provisions concerning the requirements that must be fulfilled in order to allow athletes to compete at the XXI Winter Olympic Games, Vancouver 2010. General rules of interpretation must be applied. The ordinary meaning of the words used must be considered in the context of the document under consideration, the document being considered as a whole.
6. The principal question to be determined is whether the Qualification System allows the transfer of any unused quota positions in the Men’s Competition to the Women’s competition. The words of the document must be given the closest scrutiny.
7. The starting point is the fact that there are two competitions in skeleton, men’s and women’s. This was accepted by all parties. Furthermore, although the document specifies an athlete’s quota of 50 athletes, this provision is clearly qualified in the document. Firstly, the quota of 50 athletes is divided into 30 men and 20 women. Secondly, when describing the qualification system in detail for either men’s or women’s skeleton, clear words were used limiting the number of athletes in relation to Women’s skeleton: *“The participation in the Winter Olympic Games is limited to”* (see above).

8. This provision clearly indicates by simple calculation that the limit of athletes for women's skeleton is 20, provided that each of those athletes is ranked among the top 45 athletes in the 2009/2010 FIBT ranking list.
9. The reallocation provisions (see above), in our opinion, clearly differentiates between the men's and women's competitions. The words used "*places earned and not taken up are reallocated until all 30 places (Men) or 20 places (women) are filled...*" clearly indicate that there can be no transfer of unallocated quota positions in one event to another. If that had been the intention of the Respondent, the provision would have read as follows: "*places earned and not taken up are reallocated until all 50 places are filled*".
10. The Panel is of the opinion that the Qualification System introduced for the XXI Olympic Winter Games, Vancouver 2010 reveals the clear intention that each quota for the Men's and Women's competitions be filled separately and that the quotas cannot be bundled together. The Applicant's submission that there was no express provision preventing the transfer of the unused quotas from Men's to Women's competition does not affect our conclusion. Our role is to interpret the Qualification System document and in our opinion the interpretation is clear, as explained above.
11. There is no basis upon which reliance can be maintained on the suggested "precedent" that occurred at the XX Winter Olympic Games, Torino 2006, in the sport of luge. Firstly, the rules under consideration for those Games were different to those considered by this Panel. Secondly, the Panel cannot legislate on behalf of the Respondent. As stated above, if the Respondent wishes to change the Qualification System to accommodate the request of the Applicant, it has full jurisdiction to do so. The Panel cannot compel the Respondent to amend its rules.
12. The Panel is of the further opinion that there could be no legitimate expectation on the part of the Applicant that it would be allocated an additional quota position in the Women's competition. The communications between the Applicant and FIBT simply revealed compliance with the request of the Applicant to support the Applicant's request to the Respondent. Nothing more is revealed in the evidence produced to the hearing, and, as such, falls well short of creating a basis for a sustainable claim of legitimate expectation.
13. There is force in the Respondent's submission that the qualification system ought not be interpreted in a way that permits arbitrary transfer of unused quota positions from one competition to another.
14. It was within the province and jurisdiction of the Respondent to accede to the request of the Applicant communicated through FIBT to amend the Qualification System to allow for the transfer of unused quota positions from the Men's competition to the Women's competition. It declined to do so as was its entitlement.

The ad hoc Division of the Court of Arbitration for Sport rules:

1. The application filed by the Virgin Islands Olympic Committee on 11 February 2010 is dismissed.
2. All other prayers for relief are denied.