



**Arbitration CAS ad hoc Division (OG London) 12/011 Russian Olympic Committee (ROC)
v. International Sailing Federation (ISF), award of 11 August 2012**

Panel: Mr Graeme Mew (Canada), Sole Arbitrator

Sailing

CAS jurisdiction

Failure to exhaust the internal remedies prior to the appeal

Pursuant to Article 1 of the CAS Arbitration Rules for the Olympic Games, if the applicant has not exhausted the internal remedies available to him or her prior to applying to the CAS, the jurisdiction of the CAS ad hoc Division is not engaged.

The Russian Olympic Committee (ROC or the “*Applicant*”) is the National Olympic Committee of Russia.

The International Sailing Federation (ISAF or the “*Respondent*”) is the International Federation for sailing.

The Spanish Olympic Committee (SOC or the “*Interested Party*”) is the National Olympic Committee of Spain.

On 10 August 2012, the semi-final stage of the Elliott 6m class of the Olympic women’s match racing sailing competitions took place between the Russian and Spanish teams (the “*Event*”). After three races, the score was 2-1 in favour of the Spanish team.

In its application, the ROC states that ISAF “*suddenly*” decided to terminate further races (two further races had been scheduled) due to weather conditions (lack of wind). The Spanish team was declared the winner of the semi-final.

ISAF indicates on its part that, at 5.29 pm on 10 August 2012, the International Technical Officials responsible for conducting the competition terminated the semi-finals in accordance with the rules governing the event. At the time the scores in the two semi-finals were (in semi-final 1) Australia 2 points, Finland 1 point; and (in semi-final 2), Spain 2 points, Russia 1 point. Australia and Spain were therefore declared the winners of their respective semi-finals.

Following the termination of the semi-final races and the declaration of the winners, no request for review or other redress was filed with the jury office of ISAF at the event.

An application was filed on 11 August 2012 at 8 am with the CAS ad hoc Division, along with 6 exhibits. The Applicant requests that the ISAF's decision of 10 August 2012 to cancel races 4 and 5 of the Event, to declare the Spanish team as the winner be declared null and void, and that ISAF be obliged to conduct the fourth and, if needed, the fifth race of the Event on 11 August 2012. Together with its application, the ROC filed an application for a stay of the ISAF's decision of 10 August 2012.

The CAS Court Office communicated the application to the Respondent and to the Interested Party granting them until 10 am, 11 August 2012, to file if they so wished, an answer, including any evidence and witness statements, to the application.

The Sole Arbitrator decided, due to the urgency of the case, not to hold any hearing and to render the operative part of his award by 11 am, 11 August 2012, i.e. before the bronze and gold medals finals of the competition. Therefore, it was impractical to separately consider the Applicant's request for interim measures.

Following the information from ISAF that the bronze and gold medals finals of the competition were in fact to start midday, 11 August 2012, the Sole Arbitrator decided to grant the Respondent and the Interested Party until 10.45, 11 August 2012, to file if they wished so, an answer. Furthermore, the parties were informed that the operative part of the award would be rendered by 11.45 am on 11 August 2012.

At 10.45 am on 11 August 2012, the Respondent filed its answer to the application, together with two exhibits.

At 11.20 am on 11 August 2012, the Applicant filed comments to the Respondent's answer.

The parties were requested not to provide any additional comments in the absence of any express authorization to do so.

At 11.40 am on 11 August 2012, the operative part of the award was notified, with reasons to follow.

An answer was received by the Interested Party at 11.50 am on 11 August 2012 (after the operative part of the award has been released).

None of the parties have objected to the appointment of the Sole Arbitrator.

The following short summaries of the parties' positions are only roughly illustrative and do not purport to detail all of the submissions made by the parties. However, the Sole Arbitrator has thoroughly considered all of the evidence and arguments submitted by the parties, even if there is no specific or detailed reference to that evidence or those arguments in this award.

The Applicant's submissions

Under Article 13.2.2 of the London 2012 Olympic Sailing Competition Notice of Race, “*the winner of all knockout rounds will be the first to score three points*”. Furthermore, Article 33.2.4 of the Sailing Instructions of the London 2012 Olympic Sailing Competitions provides that:

“33.2.4. Stage 4: Semi-finals

33.2.4.1. The four teams will sail a knock-out series.

[...]

33.2.4.3. The winner of each pair will be the first team to score at least three points. The winners qualify for the gold medal match and the losers qualify for the bronze medal match (Stage 5)”.

In accordance with Article 33.4.2 of the Sailing Instructions of the London 2012 Olympic Sailing Competitions, the Race Committee may terminate any later stage of the Match Racing competitions considering criteria which should have been published before the first day of racing. In this respect, on 28 July 2012, ISAF published a Notice for Competitors (“*Item 13*”) in which the criteria for termination of stages have been determined as follows:

“STAGE 2 QUARTER FINALS

The latest attention signal for a flight will be 1730 on 9 August.

If the round robin is not completed by 1330 on 9 August, this stage will be eliminated.

STAGE 3 SAIL OFFS

The latest attention signal for a flight will be 1730 on 9 August.

If this stage starts after 1330 on 9 August the winner of each pair will be the first team to score at least 2 points. However, if the stage starts after 1600 9 August, the winner of each pair will be the first team to score at least 1 point.

If the round robin and/or the quarter finals are not completed by 1600 on 9 August, this stage will be eliminated.

STAGE 4 SEMI FINALS

The latest attention signal for a flight will be 1730 on 10 August.

If the round robin is not completed by 1330 on 10 August, this stage will be eliminated.

STAGE 5 GOLD AND BRONZE MEDALS

The latest attention signal for a flight will be 1730 on 12 August”.

Because Article 33.2.4 of the Sailing Instructions of the London 2012 Olympic Sailing Competitions, provided that the ISAF does not specify, for semi-finals, that a winner could win with less than three points, the semi-final should not have been terminated and racing between Russia and Spain should have continued in order to determine the first team to reach three points.

Given the urgency of this matter, the exhaustion of the internal remedies, if any, would have made the appeal to the CAS ineffective. Therefore, the Applicant decided to directly refer this dispute to the CAS Ad Hoc Division.

The decision to terminate further stages of the competitions was not a field of play decision but has an organizational and technical character and refers to the main principles of Olympic sailing competitions.

The Respondent's submissions

The Applicant failed to exhaust all internal remedies available to it to dispute the field of play decisions of the duly-appointed International Technical Officials.

Following the daily Team Leaders meeting of 10 August 2012 held at 9 am, the Principal Race Officer reminded all teams that the semi-finals would conclude at 5.30 pm as required by the rules governing the competition and expressly provided for in Item 13. Immediately after the meeting, Russia submitted a request for information concerning the potential termination of the semi-finals at 5.30 pm.

The Respondent replied the following at 11.57 am: *"The semi-finals have started, therefore they cannot be eliminated but will be terminated according to Official Communication item 13 published 28/7/2012"*.

Russia could have filed a Request for Redress pursuant to Article 62.1(a) of the Racing Rules within two hours from the receipt of the answer to its request for information.

Russia had until 7.30 pm on 10 August 2012, i.e. two hours after the termination of the race, to protest against such decision. The jury office remained open until after 7.30 pm in the event that Russia had wished to file a protest or request other relief.

Furthermore, the decision to terminate the semi-finals is a field of play decision taken by the International Officials responsible for the conduct of the competition. The Applicant has failed to allege that such decision was either arbitrary or capricious and, therefore, the field of play decision is not subject to reversal.

The semi-finals were terminated in accordance with the criteria published on 28 July 2012 mentioned above. As required by Article C10.5 of the Racing Rules of Sailing, the teams leading at the termination of the semi-finals were declared the winners of those competitions.

The Interested Party's submissions

Although received after the operative part of the award had been released, it is noted that the Interested Party adopted essentially the same position as the Respondent regarding the Applicant's failure to exhaust the internal remedies available to it.

LAW

Jurisdiction

1. Article 61.2 of the Olympic Charter provides as follows:
“61 Dispute Resolution
[...]
2. 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 (CAS), in accordance with the Code of Sports-Related Arbitration”.
2. Article 1 of the CAS Arbitration Rules for the Olympic Games (the “Ad Hoc Rules”) provides as follows:
“Article 1. Application of the Present Rules and Jurisdiction of the Court of Arbitration for Sport (CAS)
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 61 of the Olympic Charter, insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games.
In the case of a request for arbitration against a decision pronounced by the IOC, an NOC, an International Federation or an Organising Committee for the Olympic Games, the claimant must, before filing such request, have exhausted all the internal remedies available to him/her pursuant to the statutes or regulations of the sports body concerned, unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective”.
3. The rules concerning the semi-finals were clear. Article 33.2.4 provided that the semi-finals would consist of a knock-out series between two sets of two teams with the winners being the first team to score at least three points in each contest.
4. Five “flights” (a series of individual matches) had been scheduled for the semi-finals on 10 August 2012. In this case, there were two matches in each flight (Spain v. Russia and Finland v. Australia). Racing would conclude as soon as the first team had scored at least three points.
5. However, pursuant to Article 33.4.2, the Race Committee was empowered to terminate any later stage (which term would include the semi-finals) in accordance with criteria that would be published before the first day of racing.
6. In accordance with Article 33.4.2, the Respondent published a Notice to Competitors (“Item 13”) on 28 July 2012 which provided that in the semi-finals, “[t]he latest attention signal for a flight will be 1730 on 10 August”.
7. The semi-finals were terminated in accordance with Item 13 at 5.29 pm on 10 August 2012. At that time, the teams with the highest number of points, namely Australia and Spain, were declared to be the winners.

8. Contrary to the submission made by the Applicant, the Racing Rules of Sailing expressly address the eventuality that occurred in these terms: “[i]n a knock-out series the sailing instructions shall state the minimum number of points required to win a series between two competitors. When a knock-out series is terminated, it shall be decided in favour of the competitor with the higher score”.
9. Although, pursuant to Article 62 of the ISAF Racing Rules for Sailing, the Applicant was required to seek further redress following the termination of the semi-final by filing a request at the ISAF jury office within two hours. It did not do so (the jury office in fact remained open until after 7.30 pm on 10 August 2012).
10. There is no apparent reason for the Applicant not to have exhausted its internal remedies prior to applying to the CAS. Accordingly, pursuant to Article 1 of the Ad Hoc Rules, the jurisdiction of the Sole Arbitrator is not engaged.
11. In any event, the Sole Arbitrator considers that no evidence has been adduced and no suggestion has been made that the decision to terminate the semi-final or that the implementation of the applicable rules has been undertaken by ISAF or its officials in an arbitrary or capricious manner.

Conclusion

12. The application filed by the ROC on 11 August 2012 is dismissed due to the lack of jurisdiction of the CAS.

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

1. The application filed by the Russian Olympic Committee on 11 August 2012 is dismissed.