



Arbitration CAS ad hoc Division (OG Rio) 16/008 Jason Morgan v. Jamaican Athletic Administrative Association (JAAA), award of 5 August 2016

Panel: Justice Catherine Anne Davani (Papua New Guinea), President; Mrs Andrea Carska-Sheppard (Czech Republic); Mrs Margarita Echeverria (Costa Rica)

Athletics

Selection for the Olympic Games

Validity of the notification of a decision

Admissibility of the application with regard to the time when the dispute arose

1. **In the absence of any evidence that advice to athletes of representation must be made directly to the athlete, the notification to the athlete's acting representative that he or she was not selected to represent his/her country is valid.**
2. **A dispute regarding selection for the Olympic Games arises at the time when the athlete or his/her representative is informed of the decision of the National Association not to include the athlete in the Olympic Team. If the information is received more than ten days prior to the Opening Ceremony, the dispute does not fall within the time frame stipulated in Article 1 of the CAS ad hoc Rules and the application is inadmissible.**

1. FACTS

- 1.1 This summary represents basic relevant facts to this case as submitted by the Parties and International Association of Athletics Federations ("IAAF").
- 1.2 The Applicant Mr. Jason Morgan is a Jamaican National and an accomplished self-coached discus thrower who has been representing Jamaica since he was seventeen years old.
- 1.3 His notable career highlights in Men's Discus Throw events include but are not limited to 2nd place in Pan American Games in 2007, 3rd place in Central American and Caribbean Championships in 2009, 1st place in Central American and Caribbean Games in 2010, 1st place in Central American and Caribbean Championships in 2010, 3rd place in Commonwealth Games in 2014 and 3rd place in IAAF Continental Cup.
- 1.4 On June 6, 2015, the Applicant threw the qualifying distance for Olympic Selection. The published IAAF World Rankings List for the Olympic Games Qualifications for the Men's Discus Throw event included the names of two Jamaican athletes, Mr. Jason Morgan and Mr. Frederick Dacres, both of whom had achieved the required entry standard of 65.00 metres.

- 1.5 While Mr. Morgan achieved the Olympic qualifying distance in June 2015, he did not finish in the top three of the JAAA national championships. If he had achieved both of those elements, he would have been automatically selected for the Olympic team. The Respondent decided not to include the Applicant in its list for the 2016 Olympic Games.
- 1.6 The Applicant was not personally informed of the decision to exclude him from the Jamaican Olympic team. Instead, on July 21, 2016, his legal counsel Dr. Emir Crown, received advice to that effect from Mr. Lincoln Eatmon, Partner at Dunn Cox. The materials before this Panel do not say whether Mr. Eatmon was acting as the JAAA's or JOA's legal representative when he sent that email. This email was copied to Fortis Warren, Garth Gayle and ludsteph@yahoo.com. It reads as follows:

Dear Dr. Crowne,

We acknowledge receipt of your email of July 21, 2016.

We wish to advise that our instructions are that the date for final entries for Athletics to be submitted was July 18, 2016. As your client was not one of the athletes selected his name was not submitted as an entrant. The membership of the team would therefore be final.

Regards,

*Lincoln A.C. Eatmon/Partner
DunnCox*

- 1.7 The Applicant is aggrieved by the decision not to include him on the Jamaican Olympic Team. He competed in the Olympic Trials held on 2 July 2016. There were two available spots for the Olympic Team. The Applicant finished fourth. The athletes who finished second and third had not achieved the Olympic Qualifying Standard. The athlete who finished first and the Applicant had achieved that Standard. The Applicant believes that he should have been granted the second spot on the Olympic Team because of these results and because of the hard work he has put into preparations for the Olympics inclusive of his strong track record including winning medals, breaking records and meeting Olympic qualification distances, that he should be named on the Jamaican Olympic Team in the Men's Discus Throw event without displacing another athlete.
- 1.8 In accordance with the brief filed by the IAAF, the deadline for entries for the XXXI Olympiad in Rio de Janeiro 2016 is now closed and the quota of thirty two athletes for the Men's Discus Throw event has been filled.

2 THE CAS PROCEEDINGS

- 2.1 The CAS ad hoc Division received the Application and one exhibit on August 1, 2016.
- 2.2 The same day, in accordance with Article 11 of the CAS arbitration Rules ("The CAS Ad Hoc Rules"), the President of the CAS ad hoc division constituted the Panel of Arbitrators as

follows: Justice Catherine Anne Davani, President, Ms Andrea Carska-Sheppard and Ms Margarita Echeverría, arbitrators. The Panel issued the Procedural Directions requesting that the Respondent submit its Response to the Application and the interested parties to submit their amicus curia briefs by August 2, 2016 at noon (Rio de Janeiro time). Furthermore, the same day, the President of the CAS ad hoc Division extended the 24-hour time limit to render the award until 3 August 2016.

- 2.3 Additionally, the CAS also invited the parties to advise whether they wished to have a hearing, bearing in mind also that in accordance with Article 15(c) of the CAS Ad Hoc Rules, if the Panel considers that it is sufficiently well informed, it may decide not to hold a hearing and will immediately render an award.
- 2.4 On August 2, 2016 one of the interested parties, the IAAF, filed its submission as requested. The Respondent did not file a Reply within time provided by the Panel but on August 3, 2016, informed the CAS that it had inadvertently provided the wrong e-mail address, which did not belong to the Respondent but was the Jamaican Olympic Association's e-mail address. The Respondent sought the extension as it did not receive previous communications.
- 2.5 On August 3, 2016 the CAS resubmitted all the documents to the Respondent and issued a Procedural Order requesting a reply by August 4, 2016 at 15:00 (Rio de Janeiro time). Thereafter, on August 4, 2016 the Respondent's legal representatives Morgan Sports Law filed a reply along with the exhibits.
- 2.6 In its reply of 4 August 2016, the Respondent submitted that it did not consider it necessary to hold the hearing. In any event, the CAS had already informed the parties on August 3, 2016 that the Panel had considered itself sufficiently well informed and had decided not hold a hearing in accordance with Article 15 of the CAS Ad Hoc Rules, notwithstanding the fact that the Applicant had initially requested a hearing because as far as the Panel is concern, it would not serve any purpose as he would basically be repeating the same submissions.

3 THE PARTIES' SUBMISSIONS

- 3.1 The Parties' submissions and arguments will be referred to in the sections below if and when necessary, even though all such submissions and arguments have been considered.

a. Applicant's Request for Relief

- 3.2 The Applicant's request for relief is as follows:

The Respondent abused its discretion as comparative to other members of the Jamaica's Olympic Team, he was unfairly excluded. The Applicant seeks to be named to the Jamaican Olympic team in the Men's Discus Throw Event.

b. Respondent's Request for Relief

3.3 The Respondent requests the following relief:

1. *To dismiss the case on the basis that the CAS does not have the jurisdiction to resolve this dispute in accordance to the CAS Ad Hoc Rules.*
2. *To dismiss the Application on the merits on the bases that the Respondent exercised its discretion fairly and reasonably.*

4 JURISDICTION AND ADMISSIBILITY

4.1 The Applicant did not make any submissions in relation to jurisdiction and admissibility. The Respondent submitted that pursuant to Articles 1 and 2 of the CAS ad hoc Rules, the CAS Ad hoc Division in this case will only have jurisdiction to determine the current dispute if the dispute arose on or after 25 July 2016, i.e. within the ten days preceding the opening ceremony on 5 August 2016, or thereafter.

4.2 The Respondent submits the following timeline: on July 11, 2016, the Jamaican Olympic team, which did not include Mr Morgan, was announced. On July 12, 2016, Mr Morgan's counsel sent the following email to the JAAA, acknowledging the non-selection of Mr Morgan, and proposing to escalate the dispute to CAS. By July 22, 2016, the JAAA confirmed that the Applicant could not be admitted to the team as the deadline had passed.

4.3 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".

4.1 In view of the above, the Panel finds that the CAS Ad Hoc Division has jurisdiction to hear the present matter.

4.2 In addition to the above provision, Article 1 of the CAS 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".

- 4.3 The Panel notes the Applicant's submission that he wished to be personally informed of the decision not to be included in Jamaica's Olympic Team. Instead he was only "notified" by letter from the Respondent's Attorney-at-law. We understand the Applicant's expectations, more particularly from an athlete who has devoted many years of his sports career representing his country. However, in the absence of evidence from him or the JAAA, that advice to athletes of representation must be made directly to the athlete, we fail to see why we should make such a ruling. We also note that, based on evidence before us, the relationship between the Applicant and Respondent was one where he had authorised Dr. Eric Crowne of Crowne Sports Law, to represent him in this matter, such having been done on 12 July 2016. This letter of authority is in evidence before us. Hence the Applicant's submissions that he should be personally informed of the decision not to represent Jamaica, no longer holds because at the time Dr. Crowne received the decision dated July 21 2016, he was acting as the Applicant's legal representative.
- 4.4 The Opening Ceremony of the Olympic Games in Rio de Janeiro is scheduled for August 5, 2016. The Applicant's legal representatives were informed of the challenged decision on July 21, 2016 which is more than ten days prior to the Opening Ceremony. As such, in accordance with Article 1 of the Ad Hoc Rules, this Panel having assumed jurisdiction finds that although the Application was filed within time, the dispute in question arose well before the time frame stipulated in Article 1 of the Ad Hoc Rules and that, therefore, it is inadmissible. We note in furtherance thereof that the quota of thirty athletes for the Male Discus Throw has been filled.
- 4.5 There is also no evidence on the file which would demonstrate to the Panel that the Applicant has exhausted internal remedies, which may be available to him by his JAAA, and which are typically the pre-requisites to bringing a dispute to CAS (see Article 1 of the CAS ad-hoc rules).
- 4.6 In addition, we note CAS jurisprudence with respect to the discretion of National Olympic Committees to select or not select athletes or to fill the quota allocation for the Olympic Games.

5 CONCLUSION

- 5.1 In view of the above reasons, the Applicant's application filed on August 1, 2016 is ruled inadmissible.

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

The application filed by Mr. Jason Morgan on August 1, 2016 is inadmissible.