



Arbitration CAS ad hoc Division (OG PyeongChang) 18/001 Virgin Islands Olympic Committee (VIOC) v. International Olympic Committee (IOC), award of 2 February 2018

Panel: Mrs Carol Roberts (Canada), President; Prof. Martin Schimke (Germany); Mr Bernhard Welten (Switzerland)

Skeleton

Allocation of an additional quota place

Principle of universal representation and right to participate

Discretion of the IOC regarding the setting up of a “tripartite commission”

Basis for the allocation of an additional quota place

1. **Although the principle of universal representation is a fundamental principle of the Olympic Games, this principle does not give every country the right to participate.**
2. **The IOC has full discretion with respect to decide whether it should or should not have a “tripartite commission” on the occasion of the winter Olympic Games, as it does for the summer Olympic Games.**
3. **An alleged common practice to allocate spots to countries with less than eight athletes in individual sports or disciplines at the last two editions of the Olympic Games cannot serve as a basis to allocate an additional quota place.**

1 PARTIES

- 1.1 The Applicant is the Virgin Islands Olympic Committee (hereinafter: the “VIOC”).
- 1.2 The Respondent is the International Olympic Committee (hereinafter: the “IOC”), the organisation responsible for the Olympic Movement, having its headquarters in Lausanne, Switzerland. One of its primary responsibilities is to organise, plan, oversee and sanction the summer and winter Olympic Games, fulfilling the mission, role and responsibilities assigned by the Olympic Charter.
- 1.3 The Interested Party is the International Bobsleigh and Skeleton Federation (hereinafter: the “IBSF”), the organisation responsible for the sports of bobsleigh and skeleton, having its headquarters in Lausanne, Switzerland.

2 FACTS

- 2.1 The elements set out below are a summary of the relevant facts as established by the Panel based on the submissions of the parties. Additional facts may be set out, where relevant, in the legal considerations of the present award.
- 2.2 Ms. Kathryn Tannenbaum is a female skeleton athlete from the Virgin Islands. Although Ms. Tannenbaum met the minimum qualification criteria for the XXIII Olympic Winter Games in Pyeongchang (hereinafter: “OWG 2018”), due to the restricted number of quota positions available in women’s skeleton, the Virgin Islands was not allocated a place by the IBSF.
- 2.3 The IBSF issued an Olympic Qualification System in application of article 40 of the Olympic Charter. In total, 20 quota places were allocated to women’s skeleton. These places were to be allocated according to the Allocation Rules. The quota places were allocated on the basis of the IBSF Ranking List. The first six quotas were allocated to Germany and Canada (3 quotas each), eight places were allocated to Russia, Great Britain, the United States of America and the Netherlands (two quotas each). Two further quotas were allocated to Austria and Latvia, one quota place was allocated to the host country (Host Country Rule) and two quota places were allocated to Nigeria and Australia (Continental Representation). The remaining quota places were allocated according to the “Reallocation of unused IF quota places” policy to the NOC of the next highest ranked athlete in the IBSF Ranking list, which was Belgium. Following confirmation of the allocation of the quota places, the Netherlands returned one quota place, which was reallocated to Switzerland according to the “Reallocation of unused IF quota places” policy. Following the suspension of the Russian NOC, its two quota places were reallocated to Japan and Romania. The Virgin Islands was seventh in the reallocation of unused quota places list (*i.e.* four spots after Romania).
- 2.4 On 9 January 2018, the Applicant filed with the Respondent a request for consideration for Ms. Tannenbaum to participate in the OWG 2018.
- 2.5 On 30 January 2018, the Sports Director of the IOC, Mr. Kit McConnell, wrote to the President of the VIOC, Mr. Angel L. Morales, as follows:
- “As I believe the International Bobsleigh and Skeleton Federation has confirmed to Ms Tannenbaum, there are no universality or Tripartite Commission places in any of the sports in the programme of the Olympic Winter Games, including the discipline of skeleton. Therefore, while noting the outstanding performances she has achieved this season, and the support provided through her scholarship, we understand she has not met the specified qualification standards for skeleton and thus we are unfortunately not in a position to offer her a qualification place for these Olympic Winter Games”.*

3 CAS PROCEEDINGS

- 3.1 On 1 February 2018 at 10.00 am (time of Pyeongchang), the Applicant filed an Application with the CAS Ad Hoc Division against the Respondent with respect to the Decision.

- 3.2 On the same day, at 2.00 pm (time of Pyeongchang), the CAS Ad Hoc Division notified the Application to the Respondent and the Interested Party at their proper addresses in Pyeongchang.
- 3.3 On 1 February 2018 at 3.15 pm (time of Pyeongchang), the CAS Ad Hoc Division notified the Parties of composition of the Panel:
- Ms. Carol Roberts, as President
 - Prof. Dr. Martin Schimke, as arbitrator
 - Mr. Bernhard Welten, as arbitrator
- 3.4 Prof. Dr. Martin Schimke indicated in his Arbitrator's Acceptance and Statement of Independence that he is independent of each Parties and intend to remain so; however, he wished to call the parties' attention to the following circumstances which might be of such a nature as to compromise his independence in the eyes of any of the Parties: "*A partner in the London Bird & Bird office is (usually) representing the IBSF. In no way, am/was I involved in such cases*".
- 3.5 On 1 February 2018 at 3.15 pm (time of Pyeongchang), the Panel directed the Respondent to provide a reply to the Applicant's application, the Interested Party an *amicus curiae*, if any, and informed the Parties that a hearing was to be held on 2 February 2018 at 9.00 am (time of Pyeongchang).
- 3.6 On 1 February 2018 at 7.00 pm (time of Pyeongchang), the Interested Party filed an *amicus curiae* brief.
- 3.7 On 1 February 2018 at 9.00 pm (time of Pyeongchang), the Respondent indicated it will shortly send its Reply and requested, *ex abundanti cautela*, an extension of one hour to its request to file its Reply.
- 3.8 On 1 February 2018 at 9.20 pm (time of Pyeongchang), the Respondent filed its Reply to the Applicant's application.
- 3.9 On 2 February 2018 at 9.00 am (time of Pyeongchang), the hearing took place at the offices of the CAS Ad Hoc Division. The Panel was joined by Mr. William Sternheimer, Deputy Secretary General of the CAS, Ms. Andrea Zimmermann, Counsel to the CAS, and following persons also attended the hearing: for the Applicant, by telephone, Mr. Ansen Sligar. The Respondent indicated it would not attend the hearing, but that it remained at the Panel's disposal should any clarifications be required. The IBSF could not attend the hearing in person but indicated it would be available in case of questions from the Panel.
- 3.10 There were no objections to the constitution of the Panel or to the Parties' rights to be heard and treated equally in these proceedings. In particular, at the hearing, the Applicant expressly confirmed it had no objection with respect to the appointment of Prof. Dr. Martin Schimke.

4 PARTIES' SUBMISSIONS

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

A. Applicant's Requests for Relief

4.2 The Applicant's request for relief is as follows:

"The allowance of the Virgin Islands Olympic Committee to participate in the 2018 Olympic Winter Games by sending their one qualified athlete and associated delegation".

B. Respondent's Requests for Relief

4.3 The Respondent requests that the Application be rejected.

5 JURISDICTION AND ADMISSIBILITY

5.1 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".

5.2 In view of the above, the Panel considers that the CAS Ad Hoc Division has jurisdiction to hear the present matter. The jurisdiction of the CAS Ad Hoc Division was not contested in the written submissions and was expressly confirmed by all Parties at the hearing.

5.3 Article 1 of the CAS Arbitration Rules for the Olympic Games (hereinafter: 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".

- 5.4 The IOC's letter notifying the Applicant is dated 30 January 2018.
- 5.5 In view of the above, the Panel considers that the application filed by the Applicant is admissible. The admissibility of such application was not contested.

6 APPLICABLE LAW

- 6.1 Under Article 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 DISCUSSION

A. Legal framework

- 7.1 These proceedings are governed by the CAS Ad Hoc Rules enacted by the International Council of Arbitration for Sport (hereinafter: the "ICAS") on 14 October 2003. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 (hereinafter: the "PIL Act"). The PIL Act applies to this arbitration as a result of the express choice of law contained in Article 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 Article 7 of the CAS Ad Hoc Rules.
- 7.2 According to Article 16 of the CAS Ad Hoc Rules, the Panel has "*full power to establish the facts on which the application is based*".

B. Merits

- 7.3 The Applicant seeks to be granted an additional quota place in order to qualify Ms. Tannenbaum in the women's skeleton even at the OWG 2018. In support of this request, the Applicant seeks that the Panel apply the principle of universality. The Applicant also appeals the refusal by the IOC to allow the Applicant to participate in the OWG 2018 via a tripartite agreement between it, the IBSF and the IOC. Such an agreement does not intend to replace an existing quota but to provide an additional Olympic place.
- 7.4 The Applicant considers that the principle of universal representation is a fundamental principle of the Olympic Games which must be upheld both for the summer and winter Games. According to the Applicant, a tripartite agreement can take place at any time and is not limited to the occasions when there is a pre-existing tripartite commission. Such commission was for instance established on the occasion of the 2016 Olympic Games in Rio de Janeiro in order to manage the allocation procedure for additional or further invitation places offering the opportunity to NOCs which have traditionally sent small delegations to the Olympic Games to be represented at the next edition of the Games.

- 7.5 The Applicant relies in support of its argument to the tripartite agreement made *“between the IOC, Paris and Los Angeles for the awarding of the 2024 and 2028 Olympic Games”*.
- 7.6 Furthermore, the Applicant refers to cases where an additional place was allocated to an Olympic discipline without the involvement of an official and pre-existing IOC tripartite commission (CAS OG 04/001 and CAS OG 10/001 items 20 and 21).
- 7.7 The Applicant indicates that when an IOC “tripartite commission” does exist, it is common practice to allocate sports to countries with less than eight athletes in individual sports or disciplines at the last two editions of the Olympic Games. The Virgin Islands had one athlete represented in the 2014 Olympic Winter Games and zero athletes in the 2010 Olympic Winter Games. It had less than eight athletes in each of the last two editions of the summer Olympic Games.
- 7.8 The Panel first notes that the Applicant does not contest the allocation of quotas made by the IBSF on 14 January 2018 and therefore finds that the present matter can be differentiated from the case CAS OG 10/001 where there had been a clear issue of interpretation of the qualification system and its application to the allocation and/or re-allocation of places in the women’s bob event. The panel decided not to replace one team by another and to allocate an additional quota place. The same issue arose in the matter CAS OG 04/001 where there had been an issue of the allocation of quota places by the Fédération Equestre Internationale.
- 7.9 The Applicant has the burden to prove that a tripartite agreement had to be concluded between the IOC, the Applicant and the IBSF. The fact that the Applicant refers to the existence of an agreement made *“between the IOC, Paris and Los Angeles for the awarding of the 2024 and 2028 Olympic Games”*, without the involvement of a “tripartite commission”, is irrelevant for deciding the present matter which directly concerns the allocation of quota places at an edition of the Olympic Games. The Applicant has not met its burden to prove that such a tripartite agreement should have been concluded and it is the Panel’s opinion that the IOC has full discretion in this respect. The Panel therefore does not need to enter into a discussion on whether the IOC should or should not have a “tripartite commission” on the occasion of the winter Olympic Games, as it does for the summer Olympic Games.
- 7.10 The Panel also concludes that the alleged common practice to allocate spots to countries with less than eight athletes in individual sports or disciplines at the last two editions of the Olympic Games cannot serve as a basis to allocate an additional quota place to the Applicant.
- 7.11 The Panel acknowledges the principle of universal representation in the Olympic Games. However, the Panel concludes that this principle does not give every country the right to participate.
- 7.12 Furthermore, the Applicant puts forward that the Virgin Islands recently underwent two devastating category five hurricanes making their representation at the Olympic Games even more significant.

- 7.13 The Panel has great sympathy for the Virgin Islands following the terrible natural disasters it suffered recently. Unfortunately, that situation is not relevant to a consideration of the universality principle, the granting of quota spots or the right to participate.
- 7.14 Finally, the Applicant reminds that Ms. Tannenbaum has met all IBSF qualification criteria and was, at the end of the qualification period, in higher world standing than other athletes selected to participate in the Olympic Games in women's skeleton.
- 7.15 While noting the outstanding sporting performances Ms. Tannenbaum has achieved this season, in view of the fact that the Panel finds that the Applicant cannot benefit from a quota place, such argument cannot be taken into consideration in the context of the present matter. Even though Ms. Tannenbaum may have had a higher world standing than some of the other athletes selected to participate in the OWG 2018, such fact does not have any influence in the present case and the Panel finds that the quota system was properly applied by the IBSF.

8 CONCLUSION

- 8.1 In view of the above considerations, the Applicant's application filed on 1 February 2018 shall be dismissed.

DECISION

The ad hoc Division of the Court of Arbitration for Sport renders the following decision:

The application filed by the Virgin Islands Olympic Committee on 1 February 2018 is dismissed.