



Arbitration CAS 2008/A/1599 USA Badminton (USAB) & United States Olympic Committee (USOC) v. Badminton World Federation (BWF), award of 23 July 2008

Panel: Prof. Michael Geistlinger (Austria), President; Mr Hans Nater (Switzerland); Mr Bernhard Welten (Switzerland).

Badminton

Olympic Qualification System

Interpretation of the BWF Olympic Qualifying Regulations and continental representation

Counting system of the Qualifying Regulations

- 1. In each event there shall be at least one pair from each of the five BWF Continental Confederations. The allocation of pairs, besides the host nation, is subject to the Rule regarding the continental representation.**
- 2. It is the task of the international federations to find a solution – together with their member federations – with regard to the counting system when drafting the Qualifying Regulations for Olympic Games in agreement with the IOC.**

The Appellants are USA Badminton (“USAB”), which is the national federation governing the sport of badminton in the United States of America (USA), and the United States Olympic Committee (“USOC”), which is the national Olympic committee of the USA and responsible for entering American athletes into the Olympic Games.

The Respondent is the Badminton World Federation (BWF), which is the international federation which governs and administers the sport of badminton worldwide.

There is no dispute with regard to the parties to the proceedings.

On 10 May 2008, the Secretary General of the BWF sent to the BWF’s members the invitations for the qualifiers for the Beijing 2008 Olympic Games for Stage One. The e-mail reads as follows:

“Dear Member Associations

It is with pleasure that I attach the invitations for the qualifiers for the Beijing 2008 Olympic Games for Stage One. On behalf of the BWF, I would like to congratulate the players who have qualified for this most prestigious sporting event.

(...)

There are a number of stages or rounds until the full quota of athletes is achieved. Please see the BWF website for more information on Olympic Games Qualification Regulations and below for the stages in the process.

Member Associations should note that any extra places created by doubles players who have qualified in two doubles disciplines will be allocated to next qualified men's and women's singles players".

The e-mail includes the timeline of the Olympic Qualifying Regulations for Beijing 2008 which provide for:

30 April	Olympic Qualification Period ends.
1 May	BWF ranking list to be used to determine the qualification.
2-9 May	BWF determines the list of qualified player/pairs.
10 May	BWF notifies Member Associations of qualified players/pairs. The names of "next qualified"/"reserves" will be announced along with the qualifiers.
31 May	Member Associations/NOCs confirm to BWF on their selection of qualified players/pairs.
11 June	Reallocation of places where a NOC has not confirmed the entry of a player/pair qualified in the list of 1 May.
15 June	BWF notifies Member Associations of further qualified players/pairs.
29 June	Reallocation of places where an NOC has not confirmed the entry of a player/pair qualified in the list of 11 June.
April – July	The Tripartite Commission confirms, in writing, the allocation of Invitation places to the NOC's.
23 July	Deadline for BOCOG to receive entry forms submitted by NOC's Olympic Games.

(...)

The list attached to the above e-mail dates from 1 May 2008 and mentions for the Men's Doubles for USA, Bach Howard, and Malaythong Bob (rank: 21; Olympic ranking: 14), assigned to the Pan America continent. For the Women's Doubles the list enumerates Lee Eva and Mangkalakiri Mesinee (World ranking: 35; Olympic ranking: 14), assigned to the Pan America continent. Finally, the list assigns for the Mixed Doubles Bach Howard and Lee Eva (World ranking: 21; Olympic ranking: 14) to represent the continent of Pan America.

The Olympic Qualifying Regulations for Beijing 2008 for the sport of Badminton determine 16 pairs each for the Men's Doubles, the Women's Doubles and the Mixed Doubles as number of qualification pairs (clause 3.1).

Clause 3.3 of these Regulations describes the qualification system in detail. It provides for a qualification system based on three ranking groups in the BWF ranking list dated 1 May 2008, and on a host nation, continental representation and tripartite commission invitation rule.

By e-mail of 22 May 2008, the BWF Events Manager informed USAB that based on the continental representation rule of clause 3.3.9 Olympic Qualifying Regulations for Beijing 2008 the United States are allowed to send only two pairs from the three pairs listed according to above. BWF states in this e-mail that whichever athletes USAB chooses not to send will fall to the next highest ranked pair in the Pan Am zone.

On 30 May 2008, the BWF reminded USAB that the closing date to confirm its players for the Olympic Games 2008 was 31 May 2008.

On 31 May 2008, USAB, having involved its Legal Committee, informed BWF that two of its three teams have qualified under the world ranking rule and only one under the continental representation rule. Thus, according to the opinion of USAB all three pairs are considered qualified to participate in the Beijing 2008 Games.

On 3 June 2008, BWF responded that it has a different view on how to interpret the words “in turn” in clause 3.3.4. BWF stated that clause 3.3.4 Olympic Qualifying Regulations “*will only trigger in the event there is a vacancy with regard to ... pairs 1 to 4 (clause 3.3.2) and 5 to 16 (clause 3.3.3)*”. BWF points at the systematic and logical relationship between clauses 3.3.4 and 3.3.9 and at the drafting history. BWF submitted that “*USAB does not have players in the 1st – 16th ranking, then the avenue for qualification is through clause 3.3.9*”. BWF finds that USAB has qualified three pairs under rule 3.3.8. Read together with rule 3.3.9, this means that “*USAB has to choose which 2 of the 3 teams qualified under 3.3.8 will be sent to the Beijing Olympics*” and asks USAB to confirm the two pairs no later than the following day.

On the same day, USAB e-mailed a letter to BWF and argued that the BWF had informed USAB of the restrictions with regard to the initial five invitations only by e-mail on 22 May 2008. USAB queries if there was a change, or attempt to change, the application or interpretation of the regulations since the initial invitation. Further to that USAB submitted that “*the regulations require the application of the selection process to be done “in turn”. The term “in turn” is redundant throughout clauses 3.3.2 to 3.3.4 and that the restrictive provisions of 3.3.9 do not simultaneously apply to the “in turn” selection under 3.3.2-3.3.4*”. USAB argues that at least its “*men’s doubles team qualified under the “in turn” selection processes of 3.3.2-3.3.4*”. The role of clause 3.3.9 is limited to provide for a safety net to insure participation by the Continental Confederations and “*not a vellum to be laid over the entire selection process ab initio, to be applied simultaneously with the “in turn” requirements of 3.3.2-3.3.4*”. Thus, according to USAB, no valid objection exists to have the women’s double and the mixed doubles participate at the Games. Under reservation of all its rights USAB in accordance with USOC gives priority to the participation of the Men’s and Women’s Doubles.

Still on the same day, i.e. 3 June 2008, BWF advised USAB, to have the vacancy for the Mixed Doubles pair extended to the next highest ranked pair in the Pan Am zone.

On 11 June 2008, USAB submitted an appeal under article 33.6.6 BWF Constitution to the BWF Appeals Committee arguing on the same grounds referred to under para 2.10 above.

On 28 June 2008, the BWF Appeals Committee ruled as follows:

*1. **USAB Appeal 1** – The Committee determines that BWF properly placed the regulations before Members at an AGM at which USAB was in attendance. USAB were in the position of being able to be better informed on this issue than most other Member Associations. There is no requirement for specific notice to be given of the need to make a decision. The Regulations are not mute.*

*2. **USAB Appeal 2** – The Committee understands the argument about “in turn” but determines that rule 3.3.1 requires the full framework of invitations to be considered.*

The number of available places is variable subject to the filling of other positions as per the requirement of 3.3.1 “including the requirements of Regulations 3.3.5 to 3.3.14”.

*3. **USAB Appeal 3** – As per the above*

*4. **USAB Appeal 4** – The conclusion is that 3 USAB pairs have qualified under clause 3.3.8.*

*4. **USAB Appeal 5** – The USOC support for USAB is noted.*

The Appeals committee finds that as 3 pairs have qualified under 3.3.8 and the provisions of 3.3.9 has to be applied”.

The decision of the BWF Appeals Committee was sent to USAB on 1 July 2008.

LAW

CAS Jurisdiction

1. None of the parties disputes the jurisdiction of the CAS in the present case. The Panel holds that the requirements set forth in articles 33.6.6. – 33.6.8. BWF Constitution have been met. These provisions read as follows:

“33.6.6. A Council appointed Appeals Committee will be in the first instance point for any appeal against decisions of the Federation other than decisions of a General Meeting and of the Doping Hearing Panel and that it shall operate in accord with the Procedural Rules (Clause 34)

33.6.7. The CAS in Lausanne, as the only competent judicial authority external to the Federation, to the exclusion of any ordinary court of law, any civil judicial authority of any country and any other arbitration body;

33.6.8. the final and without appeal status of the decisions made by the CAS”.

2. BWF By-Law 3 “Judicial Procedures” provides in article 6.4 that the general procedure of the Appeal Committee shall follow that of a Disciplinary Committee. Neither the BWF Constitution, nor By-Law 3 provide for a time limit to appeal to CAS. Thus, article R49 of the Code of Sports-related Arbitration applies with regard to such time limit. The decision being appealed was the final decision within the applicable regulations of the BWF, which was sent

to USAB on 1 July 2008. The appeal to CAS against this decision was lodged on 11 July 2008, and thus, well within the 21 days time frame according to article R49 of the Code.

3. Both parties agreed on an expedited procedure based on article R44.4 of the Code with the view to guarantee that the CAS will communicate the operative part of the decision to the parties on 23 July 2008, the date when according to the BWF Qualifying Regulations, the qualification process was supposed to be achieved. The parties agreed that no hearing shall take place.

The Applicable Law

4. Pursuant to article R58 of the Code, the Panel shall decide the dispute according to the applicable rules and regulations. The applicable rules and regulations in the present case are the BWF Olympic Qualifying Regulations for Beijing 2008, and the BWF Constitution and By-laws. Since the parties did not choose any applicable national law, the law of Malaysia as the law of the country in which the BWF is domiciled shall be applied subsidiarily.

The Merits

5. The parties disagree on how to interpret and consequently apply the BWF Olympic Qualifying Regulations for Beijing 2008, in particular whether to construct these Regulations narrowly or whether to interpret them having regard to its provisions in their entirety.
6. The relevant clauses of the qualification system read as follows:

“BWF ranking list, 1 May 2008

3.3.1 The BWF ranking list of 1 May 2008 will be used to allocate qualifying places until a total of 38 places in each singles event and 16 places (pairs) in each doubles event are allocated, including the requirements of Regulations 3.3.5 to 3.3.14.

Players/pairs ranked 1 to 4

3.3.2 Players/pairs ranked 1 to 4 in the BWF ranking list for each event will be taken in turn and will qualify unless a total of three players/pairs from any one NOC would thereby be exceeded in that event.

Attribution of qualification

An NOC may have more than three players/pairs ranked 1 to 4 in the BWF ranking list for a particular event. In such a case the NOC has the right to disregard ranking order of those players/pairs when determining its entries, and select from any of the players/pairs ranked 1 to 4 in filling its three qualification places for the respective event. In the event of the withdrawal of a player/pair entered by that NOC, the NOC will be invited to replace the player/pair by another player/pair ranked 1 to 4.

Players/pairs ranked 5 to 16

3.3.3 Players/pairs ranked 5 to 16 in the BWF ranking list for each event will be taken in turn and will qualify unless a total of two players/pairs from any one NOC would thereby be exceeded in that event.

Attribution of qualification

An NOC may have more than two players/pairs ranked 1 to 16 in the BWF ranking list for a particular event. In such a case the NOC has the right to disregard ranking order when determining its entries and select from any of the players/pairs ranked 1 to 16 in filling its two qualification places for the respective event, provided each player/pair eventually selected would have qualified under Regulations 3.3.1 to 3.3.3.

Players/pairs ranked 17 and lower

3.3.4 Players/pairs ranked 17 and lower in the BWF ranking list for each event will be taken in turn and will qualify unless a total of one player/pair from any one NOC would thereby be exceeded in that event.

Host NOC

3.3.5 The host NOC (China) shall be entitled to have exactly two players in total in the Olympic competition, but more than two players are permitted if all the players have qualified under regulations 3.3.1 to 3.3.4.

3.3.6 If Regulation 3.3.5 is not satisfied under regulations 3.3.1 to 3.3.4, then the entitlement of two players shall be completed by the qualification of an additional player or players from the BWF ranking list(s) nominated by the Badminton Association of the People's Republic of China.

3.3.7 The Player(s) qualifying for the host NOC will be the highest-ranked player(s)/pair in the nominated BWF ranking list(s) of 1 May 2008, or if there is no Chinese NOC player/pair in the nominated BWF ranking list, the winning player/pair in that event in the China National Championships most recently concluded prior to 1 May 2008.

Continental representation

3.3.8 In each event there shall be at least one player/pair from each of the five BWF Continental Confederations.

3.3.9 If, for a particular Continental Confederation, there is no player/pair qualified in an event under regulations 3.3.2 to 3.3.4, the player/pair selected for the continental representation shall be the appropriate highest-ranked player/pair in the BWF ranking list of 1 May 2008. No more than two players/pairs from any one NOC can qualify through this system.

3.3.10 If there is no Continental Confederation player/pair in the BWF ranking list of 1 May 2008 in a particular event, then the player/pair selected for continental representation shall be the winner(s) of the respective Continental Championships most recently concluded prior to 1 May 2008.

Tripartite Commission (IOC – Association of NOCs (ANOC) – BWF) invitation places

3.3.11 Two places in men's singles and two places in women's singles shall be used by the IOC Tripartite Commission to allocate invitation places, in accordance with the general process of Tripartite Commission invitations.

3.3.12 NOCs must apply for these invitation places prior to the deadline of 30 June 2006. The Tripartite Commission will by 31 August 2006 establish which invitation requests meet the identified general criteria of NOC delegation size and technical standard, and provisionally allocate places to one male and one female player. The final allocation of invitation places will be done on 1 May 2008.

3.3.13 To be eligible to compete in the Beijing 2008 Olympic Games, the players filling invitation places must be ranked in the top 100 in the BWF ranking list of 1 May 2008. Should these places not be allocated

due to the technical level of the players, they will be added to the places allocated through the BWF ranking list of 1 May 2008.

3.3.14 A player filling an invitation place will be regarded as satisfying the minimum continental representation in that event”.

7. The BWF informed USAB in two steps about the athletes entitled to represent USAB at the badminton competitions at the 2008 Beijing Olympic Games.
8. By e-mail of 10 May 2008, the BWF provided all its member federations, including USAB, with the status of the BWF ranking list of 1 May 2008 (clause 3.3.1 Olympic Qualifying Regulations for Beijing 2008). The e-mail together with a link to the BWF website referred to in the e-mail made clear that there are a number of qualifying stages. The e-mail extended invitation only to stage one of the qualification process. Further to the world ranking status, the e-mail indicated the number of representatives per member federation of the Olympic family, the continental representation factor and their Olympic ranking. The USAB team Bach/Malaythong, USA 1, was listed as first continental team for Pan America with a corresponding remark on the list.
9. By e-mail of 22 May 2008, the BWF – referring to clause 3.3.9 of the Olympic Qualifying Regulations for Beijing 2008 – requested USAB to determine which two out of three pairs shall be selected for participation. Thus, the e-mail of 22 May 2008 did neither change the contents of the e-mail of 10 May 2008 nor did it amend the Olympic Qualifying Regulations for Beijing 2008. It just opened the next step of the qualification process.
10. The parties agree that two of the three USAB pairs (Women’s Doubles: Eva Lee, Mesinee Mangkalakiri and Mixed Doubles: Howard Bach, Eva Lee) have qualified per clause 3.3.9. The US Women’s Doubles held the 36th place on the BWF World Ranking as of 1 May 2008 and received pair number 14 out of 16 on the Olympic ranking list based on the fact that it was the best placed pair of the Pan Am continent. The US Mixed Doubles achieved the 21st rank on the BWF World Ranking as of 1 May 2008 and were assigned pair number 14 out of 16 on the Olympic ranking list, also because it was the best placed pair of the Pan Am continent.
11. The parties also did not dispute the BWF’s application of the host nation rule (clauses 3.3.5 – 3.3.7 Olympic Qualifying Regulations for Beijing 2008) and agree that the tripartite commission rule is not applicable for pairs (clauses 3.3.11 – 3.3.14 Olympic Qualifying Regulations for Beijing 2008).
12. The parties disagree, however, on whether the Men’s Doubles qualified according to clause 3.3.4 or according to clauses 3.3.8 to 3.3.10 Olympic Qualifying Regulations for Beijing 2008. The US Men’s Doubles (Howard Bach, Bob Malaythong) was ranked 21st on the BWF World Ranking as of 1 May 2008 and received number 14 out of 16 on the BWF Olympic Ranking list counting for the Pan Am continent in the BWF’s view.
13. The CAS Panel holds that the wording of clause 3.3.8 Olympic Qualifying Regulations for Beijing 2008 leaves no doubt that the continental representation rule is to be given priority. In each event there shall be at least one pair from each of the five BWF Continental

Confederations. The allocation of pairs under clauses 3.3.2 to 3.3.4, besides the host nation, is subject to the Rule regarding the continental representation.

14. Thus, it does not matter, whether the system of counting the numbers of pairs under clause 3.3.4, proposed by USAB/USOC or by BWF is applied. USAB/USOC submit that the following pairs qualified by applying clauses 3.3.2 to 3.3.4:

Rank	Name 1	Name 2	Nationality	Place
1	Kido	Setiawan	Indonesia 1	1
2	Fu	Cai	China 1	2
3	Jung	Lee	Korea 1	3
4	Choong	Lee	Malaysia 1	4
5	Koo	Tan	Malaysia 2	5
7	Hadiyanto	Chandra	Indonesia 2	6
8	Paaske	Rasmussen	Denmark 1	7
9	Guo	Xie	China 2	8
10	Lee	Hwang	Korea 2	9
11	Sakamoto	Ikeda	Japan 1	10
12	Eriksen	Lundgaard	Denmark 2	11
		Hansen		
14	Ohtsuka	Masuda	Japan 2	12
16	Njoto	Wiramata	Hong Kong 1	13
18	Logosz	Mateusiak	Poland 1	14
19	Hopp	Kindervater	Germany 1	15
21	Bach	Malaythong	USA 1	16

15. The BWF submits that the ranking of the Men's Doubles is to be done as follows:

Rank	Name 1	Name2	Nationality	Place	
1	Kido	Setiawan	Indonesia 1	1	Asia
2	Fu	Cai	China 1	2	
3	Jung	Lee	Korea 1	3	
4	Choong	Lee	Malaysia 1	4	
5	Koo	Tan	Malaysia 2	5	
7	Hadiyanto	Chandra	Indonesia 2	6	
8	Paaske	Rasmussen	Denmark 1	7	Europe
9	Guo	Xie	China 2	8	
10	Lee	Hwang	Korea 2	9	
11	Sakamoto	Ikeda	Japan 1	10	
12	Eriksen	Lundgaard	Denmark 2	11	
		Hansen			
14	Ohtsuka	Masuda	Japan 2	12	
16	Njoto	Wiramata	Hong Kong 1	13	
21	Bach	Malaythong	USA 1	14	Pan Am

42	Warfe	Smith	Australia 1	15	Oceania
55	Dednam	Dednam	RSA	16	Africa

16. Both systems, seen from the perspective of the US pair, lead to the same result in view of the continental representation rule which is to be given priority: The US pair 1 Bach/Malaythong represents the continent of Pan Am being the best placed team from this continent.
17. The counting system proposed by USAB/USOC would lead to exactly the same final result as calculated by the BWF: The US team Bach/Malaythong being the Olympic team no. 16 based on article 3.3.4 of the BWF Qualifying Regulations would drop out based on article 3.3.8 of the BWF Qualifying Regulations being applied for the Australian team 1 Warfe/Smith and the South African team Dednam/Dednam. It is only thanks to the priority of article 3.3.8 that the US team Bach/Malaythong is qualified. USAB/USOC did not apply all articles of the BWF Qualifying Regulations when pretending that their team Bach/Malaythong qualified under article 3.3.4 of the said regulations.
18. Since the continental representation rule enjoys priority and it does not matter in which order the articles are applied (article 3.3.8 first in accordance to BWF or in order of the numeration in accordance to USAB/USOC), the US pair is qualified based on clause 3.3.8 and not based on 3.3.4 Olympic Qualifying Regulations for Beijing 2008.
19. There is no dispute between the parties, that, if the qualification emanates from the continental qualification system, no more than two pairs from any one NOC qualify through this system (clause 3.3.9 last sentence Olympic Qualifying Regulations for Beijing 2008).
20. Based on its findings, the CAS Panel does not see a necessity to comment on the question how to interpret the words “in turn” in clauses 3.3.2 to 3.3.4 Olympic Qualifying Regulations for Beijing 2008 and leaves it to the BWF and its member federations to find a solution to this issue and with regard to the counting system when drafting the Qualifying Regulations for London 2012 in agreement with the IOC.
21. As a consequence, the appeal of USAB/USOC of 11 July 2008 against the decision of the BWF Appeals Committee dated 28 June 2008 has to be dismissed.

The Court of Arbitration for Sport rules:

1. The Appeal filed by USA Badminton and US Olympic Committee on 11 July 2008 against the decision of the BWF Appeals Committee dated 28 June 2008 is admissible.
2. This Appeal is dismissed.
3. USA Badminton & US Olympic Committee shall participate with their representatives confirmed by the BWF in the Men's Doubles and in the Women's Doubles in badminton at the 2008 Beijing Olympic Games.
4. All other prayers for relief are dismissed.

(...).