



**Arbitration CAS ad hoc Division (OG Beijing) 22/003 Megan Henry v. International Bobsleigh & Skeleton Federation (IBSF), award of 1 February 2022**

Panel: The Hon. Annabelle Bennett AC SC (Australia), President; Mrs Maria Gwynn (Paraguay); Mr Xianyue Bai (China)

*Skeleton*

*Reallocation of unused quota positions*

*Powers of the CAS panel*

**A CAS panel applies the rules which an international federation has adopted and which reflects a balance of several policy considerations. In the absence of special circumstances, the CAS panel should not and cannot merely substitute its policy judgment on such matters.**

**1 PARTIES**

- 1.1 The Applicant, Ms. Megan Henry, is a US athlete for the sport of Skeleton.
- 1.2 The Respondent is the International Bobsleigh & Skeleton Federation (IBSF).
- 1.3 The first Interested Party, the International Olympic Committee (IOC), is the guardian of the Olympic Games and the leader of the Olympic Movement.
- 1.4 The second Interested Party, US Olympic and Paralympic Committee (US NOC), serves as both the National Olympic Committee and National Paralympic Committee for the United States. The US NOC is focused on protecting, supporting and empowering America's athletes, and is responsible for fielding U.S. teams for the Olympic, Paralympic, Youth Olympic, Pan American and Parapan American Games, and serving as the steward of the Olympic and Paralympic movements in the U.S.
- 1.5 The third Interested Party is the USA Bobsled and Skeleton Federation (USA Bobsled/Skeleton).
- 1.6 The fourth Interested Party, the Virgin Islands Olympic Committee (VI NOC), is the National Olympic Committee representing the United States Virgin Islands.
- 1.7 The fifth Interested Party, Ms. Katie Tannenbaum, is an athlete for the sport of Skeleton, from the U.S. Virgin Islands.

## 2 FACTS

- 2.1 The elements set out below are a summary of the main relevant facts as established by the Panel by way of a chronology on the basis of the submissions of the Parties. Additional facts may be set out, where relevant, in the legal consideration of the present award.
- 2.2 On 16 January 2022, the IBSF published the maximum number of athletes, or quota, per National Olympic Committee (NOC) contemplated in the Olympic Games Qualification System (the Qualification System) for the Skeleton event.
- 2.3 On 17 January 2022, the IBSF released its rankings in Women's Skeleton for the Qualification System.
- 2.4 On 18 and 19 January 2022, the French NOC and Swedish NOC declined the quota place earned, resulting in the allocation of 24 out of 25 available quotas.
- 2.5 On 23 January 2022, the IBSF requested the IOC to approve an adjustment of the International Federation eligibility requirement that chosen athletes for the Women's Skeleton event must be ranked among the "top 45" women to the "top 55" women.
- 2.6 On 24 January 2022, the IOC approved the above-mentioned proposed adjustment.
- 2.7 The Qualification System for XXIV Winter Olympic Games, Beijing 2022 (the Beijing Games), was issued on 24 January 2022, pursuant to chapter 4.1 International Skeleton Rules 2019. The Qualification System amended the criteria from the previous Qualification System issued in 2020, by expanding eligibility from the top 45 to the top 55 women of the IBSF Ranking and by reducing the number of races in which athletes were required to rank during the ranking period.
- 2.8 On 24 January 2022, the IBSF published the Women Skeleton quotas. On the same day, the IBSF reallocated the quota declined by France and Sweden to the United States Virgin Island NOC, as its athlete, Ms. Tannenbaum, was ranked 49.
- 2.9 On 24 January 2022, the Applicant petitioned the IBSF Appeals Tribunal to select the Applicant for the open quota spot allocated for the Women's Skeleton event for the Beijing Games, that had been reallocated to Ms Tannenbaum.
- 2.10 The IBSF Appeals Tribunal issued a decision dated 25 January 2022 ("the Challenged Decision"), denying the petition submitted by the athlete, Ms. Megan Henry.
- 2.11 None of the facts were disputed by any of the parties at the hearing.

### 3 THE CAS PROCEEDINGS

- 3.1 On 28 January 2022 at 08h30 (time of Beijing), the Applicant filed an application with the Court of Arbitration for Sport (CAS) Ad Hoc Division against the IBSF with respect to the Challenged Decision.
- 3.2 On 28 January 2022 at 10h58 (time of Beijing), the CAS Ad Hoc Division notified the Application to the Respondent and the interested Parties.
- 3.3 On 28 January 2022 at 12h57 (time of Beijing), the CAS Ad Hoc Division notified the Parties of the composition of the Arbitral Tribunal (the “Panel”) as follows:
- The Hon. Dr Annabelle Bennett (Australia), President
  - Dr Maria A. Gwynn (Paraguay), as arbitrator
  - Mr Xianyue Bai (China), as arbitrator
- 3.4 In accordance with the Procedural Orders and Summons to appear issued by the Panel on 28 January 2022 at 14h55 (time of Beijing), the Respondent and the Interested Parties were invited to file their Reply and Amicus Curiae Brief respectively by 29 January 2022 at 18h30 (time of Beijing). Furthermore, the CAS Ad Hoc Division notified the Parties that a videoconference hearing would be conducted at the CAS Ad Hoc Division offices at the Beijing Continental Grand Hotel in Chaoyang District, Beijing, with remote access permitted, commencing on 30 January 2022 at 12h00 noon (time of Beijing).
- 3.5 Upon request of the Respondent and the IOC, the Panel extended their time limit to respectively file the Reply and the Amicus Curiae Brief until 29 January 2021 at 22h30 (time of Beijing).
- 3.6 The IBSF filed its Reply on 29 January 2022 at 22h11 (Beijing time) within the time limit requested by the Panel. Furthermore, the IOC filed its Amicus Curiae Brief on 29 January 2022 at 00h21 (time of Beijing) after requesting for a short extension.
- 3.7 On 30 June 2022, at 12:00 noon (Beijing time), the hearing took place by video-conference. The Panel was assisted at the hearing by Mr Antonio de Quesada, Head of Arbitration of the CAS. In addition, the hearing was attended by the following persons:
- For the Applicant: Ms Megan Henry (the Applicant herself), Ms Antigone Tzakis and Ms Carla Varriale-Barker (Counsel)
- For the IBSF: Mr Stephan Netzle (Counsel), Ms Heike Groesswang (General Secretary)
- For the Interested Parties: Mr Antonio Rigozzi (Counsel for the IOC), Mr Ansen Sligar (Vice President of the VI NOC) Ms Marina Leonard (Counsel for the VI NOC), Mr Yuri Gaspar (President of the Virgin Islands Winter Sports Federation), Mr Aron McGuire (CEO USA

Bobsled/Skeleton), Curt Tomasevicz (Director USA Bobsled/Skeleton) and Ms Sara Pflipsen (Counsel for the US NOC)

- 3.8 The Applicant, the Respondent and the Interested Parties had full opportunity to present their cases. At the end of the hearing, the Applicant, the Respondent and the Interested Parties confirmed that their right to be heard had been fully respected.

#### **4 THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF**

- 4.1 All submissions and arguments, both written and oral, have been considered by the Panel. The Parties' submissions and arguments shall be referred to in the sections below as necessary to explain the Panel's reasoning.

##### **A. Applicant**

###### ***a) The Applicant's Submissions***

- 4.2 The Applicant's submissions may be summarized, in essence, as follows:

4.3 *"The International Bobsleigh & Skeleton Federation (the IBSF) Appeals Tribunal erred in denying the Petition of Megan Henry seeking that the IBSF be bound by its March 20, 2020, qualification system and for an interim stay pending the outcome of the Petition".*

4.4 The amended criteria for the Qualification System were enacted after the deadline for which the IBSF was to reallocate all of the unused quota places. As a consequence, Ms Katie Tannenbaum of the US Virgin Island, who is ranked 49th on the IBSF Ranking List was given the possibility to compete but it deprived the Applicant (ranked 15th on the IBSF Ranking List) of the opportunity to compete in the Women's Skeleton event at the Beijing Games.

4.5 The IBSF must be required to adhere to the eligibility requirements set forth in the unamended Qualification System, dated 20 March 2020.

4.6 The change in the Qualification System is unfair to, and prejudicial to, the Applicant.

4.7 There is a precedent in section D of the International Luge Federation's qualification system criteria for selecting the next best ranked athlete for the quota place.

###### ***b) Applicant's Requests for Relief***

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

*"It is respectfully requested that the January 25, 2022 decision by the Appeals Tribunal be reversed, and award Megan Henry a competitive spot in the Women's Skeleton event. It is also requested that there is an interim stay of the January 25, 2022 Appeals Tribunal decision and January 24 2022 IBSF decision allocating the last remaining quota place to the United States Virgin Island is granted pending the outcome of this arbitration".*

## **B. Respondent**

### **a) The Respondent's Submissions**

- 4.9 The Respondent's submissions may be summarized in essence as follows:
- 4.10 An unused quota place shall be reallocated to the NOC with the next best ranked athlete on the respective IBSF Ranking List, which NOC did not earn a quota place (Section D.1.2 of the Qualification System (men) and D.1.3 (women))
- 4.11 The US NOC was entitled to two quota places on the application of Section D.1.3.2 of the Qualification System for the Olympic Winter Games Beijing 2022 and used them for Katie Uhlaender and Kelly Curtis. According to Section F of the Qualification System, the US NOC no longer qualified for reallocation of an Unused Quota Place. That was acknowledged in the letter of USA Bobsled/Skeleton to the CAS dated 27 January 2022.
- 4.12 The amendment of the Qualification System by the IBSF and acknowledged by the IOC had no influence on the eligibility of the Applicant: She was not eligible for any Unused Quota Place before the amendment, and she was not eligible thereafter, as the IBSF Appeals Tribunal correctly held, since her NOC had already used its two quota places and was not entitled to a third.

### **b) Respondent's Requests for Relief**

- 4.13 The Respondent's request for relief is as follows:
1. To dismiss the Application in its entirety to the extent that it is admissible;
  2. To order the Applicant to pay a fair contribution towards the Respondent's legal costs to be determined by the Panel.

## **C. Interested Parties Submissions**

- 4.14 The Panel has received a submission from the VI NOC, which contends, in summary, that:
- The Athlete has no standing as she is not an affected athlete;
  - The US has already received its two quota places;
  - Any reallocation of any unused quota places to an NOC that had already received its Olympic quota is specifically prohibited by the IBSF Qualification System;
  - The provision for reallocation to a NOC which did not earn a quota place remains the same in the 2020 Qualification System and the Qualification System as amended in January 2022.

4.15 The Panel has received a submission from USA Bobsled/Skeleton, which contends, in summary, that

- The Athletes were subject to the top 45 women of the IBSF ranking, including the host nation, when the IBSF ranking list was published on January 16 2022.
- The unused quota was granted to the US Virgin Island athlete, ranked 49 on the IBSF Ranking List and not to Megan Henry, who is ranked 15.
- Megan Henry is entitled to request consideration for reallocation based on her eligibility pursuant to the Qualification System;
- To expand terms to encompass an ineligible athlete is unfair to numerous athletes ranked in the top 45; extending the spot to nations which did not meet the criteria simply because Megan Henry is from the USA is discriminatory and discounted qualification based on rank and performance.
- Megan Henry should be granted an additional quota spot for the Women's Skeleton Event for the Beijing Olympics.

4.16 The Panel has received a submission from the IOC, which contends, in summary, that:

- The Applicant's case is based on a fundamental misunderstanding of the Qualification System in particular of Sections D.1.3. and F.
- The IBSF does not select athletes but attributes quotas to NOCs.
- The Applicant's request ignores Section B.2. of the Qualification System and would result in the US NOC having 3 athletes while its maximum quota is 2.
- The Applicant did not have standing to challenge the IBSF decision; an athlete cannot bring an action the only effect of which would be to deprive another athlete from participating in the Olympic Games.
- Even assuming that the Applicant had standing, which is contested, under the IBSF March 20, 2020 qualification system, the Applicant would still not benefit from the quota place because the US NOC already attributed its maximum 2 quotas to its two best ranked athletes.
- The fact that Ms Tannenbaum will participate in the Olympic Games despite being ranked lower than the Applicant is the intended result of an explicit rule in the Qualification System.
- The allegation that there is a compelling safety reason for choosing an athlete within the top 45 ranking should be rejected. There is no evidence that the reallocation of the last quota place to US Virgin Islands Olympic Committee would raise safety issues.

## 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 Article 1 of the CAS Arbitration Rules for the Olympic Games (hereinafter referred to as 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”.*

5.3 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.

5.4 The Applicant appeals against the Challenged Decision, which reads in the relevant part as follows:

*“The IBSF Appeals Tribunal has met concerning the Petition of Megan Henry v IBSF. The Appeals Tribunal has determined that further argument would not be of assistance, and therefore issues this Order in an expedited manner in light of the time constraints. The Petition is denied.*

*Specifically, the applicable rules unambiguously allocate quota sports to NOCs and not to individual athletes. Although the quota spots are determined based on individual athlete ranking, the operative language states: “If there are quota places still available for reallocation, it will be reallocated to the NOC with the next best ranked athlete on the respective IBSF Ranking List which did not earn a quota place in D.1.2. and D.1.3.*

*Because USA earned quota sports under D.1.3. it was expressly excluded from reallocation that is, it was not eligible for reallocation as an NOC that had no quota sport under D.1.3. The athlete’s reading (to the effect that the spot gets reallocated to a specific athlete who did not qualify) is not consistent with the express language of the rule”.*

- 5.5 The Challenged Decision was rendered on 25 January 2022.
- 5.6 The IBSF Appeals Tribunal Code, in its article X states: *“Appeals from Decisions of the Tribunal. Any decision of the Tribunal (except a decision of the Tribunal acting as Appeal Body under Section IV.C above) may be appealed to the Court for Sport (CAS) under the CAS Code of Sports-Related Arbitration within twenty-one calendar days of the issuance of the Order, except that the Tribunal may, where circumstances require, shorten or extend the time for appeal by written Order on the application of any party. In no event shall that time for appeal be shortened to fewer than five business days from the date that the Order is transmitted to the parties. CAS shall have exclusive jurisdiction over appeals from decisions of the Tribunal, and no other arbitration, court, or legal body under any jurisdiction shall have the authority to hear appeals”*.
- 5.7 In view of the above, the Panel considers that the Application filed by the Applicant is admissible. The admissibility of the Application was expressly confirmed by all Parties at the hearing. The IBSF and the IOC each challenged the standing of the Applicant but as a matter of substance rather than as a preliminary objection.

## 6 APPLICABLE LAW

- 6.1 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”*.
- 6.2 The Panel notes that the *“applicable regulations”* in this case are set out in the Qualification System issued on 24 January 2022, pursuant to chapter 4.1 International Skeleton Rules 2019.

## 7 DISCUSSION

### A. Legal framework

- 7.1 These proceedings are governed by the Ad Hoc Rules enacted by the International Council of Arbitration for Sport (“ICAS”) on 14 October 2003 (amended on 8 July 2021). They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 (“PILA”). The PILA applies to this arbitration as a result of the express choice of law contained in art. 17 of the 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 art. 7 of the CAS Ad Hoc Rules.
- 7.2 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”*.



## 8 MERITS

### A. The Qualification System

8.1 The Qualification System for the Beijing Games provides for the maximum number of Athletes per NOC. For women, the US NOC is one of 4 NOCs with a maximum of 2 athletes for the event. That quota has been, and remains, filled.

8.2 The Qualification System also provides for the allocation of quota places to the NOCs and for the reallocation of unused quota places. Notably, and importantly in the present case, the allocation is not to an athlete but to the NOC. This is provided for at Section B.3 of the Qualification System:

*“The quota place/s is/are allocated to the NOC. The selection of athletes for its allocated quota places is at the discretion of the NOC subject to the eligibility requirements”.*

8.3 Reallocation is also provided for in Section F of the Qualification System:

*“If there are quota places still available for reallocation, it will be reallocated to the NOC with the next best ranked athlete on the respective IBSF Ranking List which did not earn a quota place in D.1.2 and D.1.3”.*

8.4 Again, the reallocation is not to an athlete but to a NOC which did not earn a quota place and which has the next best ranked athlete. Section F also provides that exceeding the total amount of quota places is not allowed under any circumstances.

8.5 The selection of the athletes for its allocated quota places is at the discretion of the NOC, subject to the eligibility requirements set out in Section C. Athlete eligibility criteria are set out by reference to the Federation Ranking List (the chosen athletes must be ranked among, for women, the top 55 women of the Federation Ranking List of the 2021/2022 season by 16 January 2022) and by reference to races in which the athlete has competed.

8.6 It is not in dispute that the Applicant has fulfilled the eligibility criteria with respect to rankings and races completed. She is ranked at number 15. Ms Tannenbaum, from the US Virgin Islands, has fulfilled the eligibility criteria as they now stand after the top number of women from whom choice can be made was extended from 45 to 55.

8.7 The Qualification Pathway is set out in the Qualification System, including the allocation of quotas and the reallocation of unused quota places. This provides that if there is a quota place available for reallocation, it will be reallocated **to the NOC** with the next best ranked athlete on the IBSF Ranking List, **which NOC did not earn a quota place previously**.

8.8 The Qualification System also sets out the Qualification Timeline. The IBSF was to inform the NOCs/NFs of their allocated quota places on 17 January 2022 and the deadline for the NOC that wanted to be considered for reallocation places to inform the IBSF of their request in writing was 19 January 2022. Reallocation of all unused quota places was 20-23 January 2022, with NOCs to confirm within 24 hours. 24 January 2022 was the Beijing Olympics 2022 Sport Entries deadline.

8.9 On 24 January 2022, USA Bobsled/Skeleton wrote a “to whom it may concern” letter, noting that there was a women’s skeleton quota spot that had been declined and was unfilled for the Beijing Games. The request was that the Applicant be allocated that declined spot, as the next ranked athlete from the 2021/2022 IBSF Women’ Skeleton Ranking not currently already registered to compete at the Beijing Games. That request was declined.

## **B. The Applicant’s contentions**

8.10 In essence, the Applicant’s contentions are:

- The relevant qualification system was the 2020 Qualification System;
- Section C.3 of the 2020 Qualification System provided that the chosen athletes must be ranked among the top 45 women of the IBSF Ranking list for the 2021/2022 season;
- Under the Qualification System, the IBSF was to reallocate all unused quota places between 20 and 23 January, 2022.
- By not selecting the Applicant and instead selecting a previously ineligible player for the open quota spot for the Women’s Skeleton Event, the IBSF did not adhere to the criteria in the 2020 Qualification System;
- The amendment of 24 January 2022 to allow the inclusion of the top 55 women was made after the IBSF released its rankings in the Women’s Skeleton event on 17 January 2022, and after the deadline for which the IBSF was to reallocated all unused places. This gave it retrospective effect.
- On 24 January 2022, after the deadline for which IBSF was to reallocate all unused quota places, the IOC so amended the criteria and allocated the unused spot to Ms Tannenbaum of the US Virgin Islands, who was ranked 49th on the IBSF Ranking List and was ineligible under the 2020 Qualification System.
- Under the 2020 Qualification System, the Applicant, as the next best ranked athlete, should have been selected.
- The amendment of 24 January was arbitrary and prejudicial to the Applicant. It was also contrary to the principle that it is performance and ranking of the athlete that determines the ability to compete and not the nation which the athlete represents.
- If there was no eligible person for the reallocated spot within the 45 top ranked women, the unused spot should have been allocated to the next ranked woman, namely the Applicant.
- If the Qualification System required amendment because it did not provide for the situation where there was no eligible athlete from an eligible NOC, the better amendment would have been to allocate to the next ranked athlete.

- 8.11 The Athlete also relied upon “precedent” in the International Luge Federation’s qualification system criteria for selecting the next best ranked athlete for the quota place. The Panel will not consider this claimed precedent further, as it is not relevant to the consideration at hand, where the Skeleton Qualification System applies.
- 8.12 Ms Henry, the Applicant, also gave evidence of her interest in, and the effect on her of, the amendment. Her qualifications and success resulted in her ranking at number 15 and she gave evidence of the impact of the late amendment in, as she saw it, retroactively increasing the number of eligible women for the reallocation, as well as what she sees as the unfairness in that amendment in circumstances where the criteria and eligibility should be directed to the next ranked athlete, as in the comparable Luge event.

### **C. Consideration**

- 8.13 The Applicant did not, in her submissions to the Panel, press the assertion of what amounted to a denial of natural justice by the IBSF Appeals Tribunal. In any event, any issues with regard to due process in that tribunal are cured by this hearing before the Panel, which is conducted de novo.
- 8.14 The Panel has had the benefit of detailed submissions on the operation of the Qualification System, both before and after the 2022 amendments. These submissions, in effect, draw attention to the wording of the allocation, and reallocation, of quota positions in the Qualification System, and the way in which it applies, both before and after amendment.
- 8.15 It is not for the Panel to engage with the reasons behind the Qualification System and whether or not there could be a better system. The Panel looks to the provisions of the Qualification System, which are clear. The allocation provision is in Section B.3, the “additional IF requirements” concerning athlete eligibility are in Section C.3, the “qualification pathway” is set out in Section D and Section F governs the reallocation of unused quota places. The amendment in question was to section C.3; there was no amendment of Section F.
- 8.16 The US NOC is one of the NOCs with two athletes allocated, which filled the number of places allocated to the US NOC. When a place became available for reallocation, it could not be allocated to the US NOC for two reasons. The first is that the NOC already had an allocation quota and so was not eligible for any reallocation. The second is that, if the Applicant were the subject of reallocation, the US would have an impermissible three athletes, thus exceeding its allowed quota, in breach of the Qualification System Section B. As was noted by the IBSF Tribunal in the Challenged Decision: *“because USA earned quota spots under D.1.3, it was expressly excluded from reallocation –that is, it was not eligible for reallocation as an NOC that had no quota spot under D.1.3”*. Section F of the Qualification System provides, inter alia, that, with respect to the reallocation of unused IF quota places, exceeding the total amount of quota places is not allowed under any circumstances.
- 8.17 The application of the Qualification System to a NOC with an existing allocation was unaltered by the amendments made in January 2022. The quota place and the reallocation quota place are each to the NOC. The selection of athletes for the quota places so allocated is at the discretion

of the NOC, subject to the eligibility requirements of Section C and the Qualification Pathway of Section D. The amendment of 24 January 2022 was made to Section C.3, to provide that the chosen athletes for reallocation must be ranked among the top 55 Women of the Ranking List. This affected the reallocation criteria from a NOC with no allocated quota and an eligible athlete in the top 45 of the Ranking List to a NOC with no allocated quota and an eligible athlete in the top 55 of the Ranking List.

- 8.18 In neither case was the Applicant eligible for that reallocated position. That follows from the express language of the Qualification System. There is simply no provision in the Qualification System to deal with the circumstance that there is no NOC that qualifies for reallocation. As the IBSF explained at the hearing, it would not have been allocated to the amendment and the extension to 55 women, if there was still no NOC that qualified for reallocation. The Applicant's contention that, in the absence of an eligible NOC with a ranked athlete in the top 45 women, the reallocation should go to her as the next highest ranked athlete.
- 8.19 The Applicant claimed that the Qualification System should have resulted in a reallocation to her. In support thereof, in addition to the provisions of the Qualification System, she cites the principles set out in the Olympic Charter, including the commitment to athletes, women in sport, the qualification of athletes, the absence of discrimination and athlete safety concerns, in support of her submission as to the primacy of an athlete's ranking. The IBSF and the IOC contend that the Applicant does not have standing. However, it is not necessary for the Panel to decide questions of standing because the Panel has made the determination that the Applicant cannot benefit from the last available quota place; she cannot obtain the remedies that she seeks.
- 8.20 The Panel applies the Qualification System, which the IBSF – a representative body - has adopted and it reflects a balance of several policy considerations. In the absence of special circumstances, not found here by the Panel, the Panel should not and cannot merely substitute its policy judgment on such matters. As such, it does not have the jurisdiction to bring about the changes to that system that the Applicant would need to obtain a place. It is not for the Panel to make provision for a situation as to which the Qualification System is silent, or to substitute its or the Applicant's provisions in place thereof. It is not necessary for the Panel to consider the effect of the timing or reason for the January 2022 amendment, or whether the Applicant has standing to challenge it, as the Panel has determined that it does not affect the outcome of this case. Nor is it for the Panel to address other matters that have been raised, such as an asserted link between eligibility rankings and safety concerns (unsupported by evidence), or perceived unfairness to a ranked athlete arising from the IBSF's and IOC's reasons behind the allocation/reallocation criteria of the Qualification System.

## 9 COSTS

- 9.1 According to Article 22 para. 1 of the CAS Ad Hoc Rules, the services of the CAS ad hoc Division "*are free of charge*".

- 9.2 According to Article 22 para. 2 of the CAS Ad Hoc Rules, parties to CAS ad hoc proceedings “shall pay their own costs of legal representation, experts, witnesses and interpreters”.
- 9.3 None of the parties seek costs. Accordingly, there is no order as to costs and each party shall bear her or its own.

## 10 CONCLUSION

- 10.1 The Panel admires Ms Henry’s achievements and efforts and understands her desire to participate in the Beijing Games but, at the same time, recognizes that each International Federation establishes its sport’s rules for participation in the Olympic Games, including qualification criteria, in accordance with the Olympic Charter, and approved by the IOC. (Olympic Charter, Bylaw to Rule 40 (1)).
- 10.2 The application of the Qualification System means that the Applicant cannot be named to the unfilled quota position for the Skeleton Event.
- 10.3 In view of the above considerations, the Applicant’s application filed on 28 January 2022 shall be dismissed. The Panel declines to reverse the decision of the IBSF Appeals Tribunal or to order a stay of the challenged decision, or of the IBSF decision of 24 January 2022, to allocate the last remaining quota place to the VI NOC and, therefore, to Ms Tannenbaum. As a consequence, the decision of the IBSF Appeals Tribunal on 25 January 2022 stands.

## DECISION

**The Ad Hoc Division of the Court of Arbitration for Sport renders the following decision:**

The application filed by Ms Megan Henry on 28 January 2022 is dismissed.