



Arbitration CAS ad hoc Division (OG Beijing) 22/005 Irish Bobsleigh & Skeleton Association (IBSA) v. International Bobsleigh & Skeleton Federation (IBSF) & International Olympic Committee (IOC), award of 4 February 2022 (operative part of 1 February 2022)

Panel: Mr Jeffrey Benz (USA), President; Mr Alain Zahlan de Cayetti (France); Mr Xianyue Bai (China)

Skeleton

Reallocation of unused quota places

Discrimination

Estoppel

Autonomy of associations and role of a CAS panel

1. Under Swiss law, direct discrimination involves intentional conduct directed at expressly discriminating against some protected class of individual. Indirect discrimination involves intentional conduct directed at discriminating against some protected class of individual but uses some criteria other than their protected class status to do so. Under Swiss law there is no legal concept of disparate impact or unintentional discrimination as a basis to change a decision otherwise lawfully taken.
2. A member of an international federation is estopped from raising issues about a qualification system approved two years ago and that it could have raised at that time or at least while it was, and its athletes were, participating in the international federation's approved qualification system for two years. Waiting to see the outcome of the qualification system and its effects on its own interests are not a sound basis for attacking the qualification system, particularly where there is no assertion or evidence that the international federation failed to apply the approved qualification system as written.
3. International Federations are free to adopt the appropriate legislative and other decision-making procedures as they see fit, consistent with principles of good governance. A CAS panel is not in the position to make policy for any international federation or the IOC.

1. PARTIES

- 1.1 The Applicant is IBSA, which is the national association and the governing body for the sports of bobsleigh and skeleton in Ireland, recognised as such by the IBSF.

- 1.2 The First Respondent is IBSF, which is the international sports federation (“IF”) governing the sports of bobsleigh and skeleton, recognised as such by the IOC.
- 1.3 The Second Respondent is the IOC, which is the organisation responsible for the Olympic movement, having its headquarters in Lausanne, Switzerland. One of the primary responsibilities of the IOC is to organise, plan, oversee and sanction the summer and winter Olympic Games, fulfilling the mission, role and responsibilities assigned to it.
- 1.4 The Interested Party is the OFI, which is the National Olympic Committee for Ireland, recognised as such by the IOC. (Collectively, the Applicant, IBSA, IBSF, and IOC shall be referred to as the “Parties” and individually as “Party”).

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 based on the submissions of the Applicant and the Respondents, and on the amicus curiae brief submitted by the OFI. Additional facts may be set out, where relevant, in the legal considerations of the present Award.
- 2.2 In December 2019, the IOC approved the “*Qualification System For XXIV Olympic Winter Games, Beijing 2022 – Skeleton*” (the “Skeleton Qualification System”) which, compared to the one previously in force (i.e. “*Qualification System For The XXIII Olympic Winter Games PyeongChang 2018 – Skeleton*”), contained certain major changes, in particular, the distribution of the 50 quota places equally between male and female athletes.
- 2.3 On 15 September 2020, the IBSF issued the “*Exception to the IBSF International Bobsleigh Rules [and] IBSF International Skeleton Rules*”, pursuant to which and “[g]iven the extraordinary situation worldwide due to the COVID-19 pandemic” the IBSF decided, in particular, that “*Quotas for the 2021/22 season will be based on the IBSF Ranking system 2019/20*”.
- 2.4 On 6 September 2021, the Qualification System was made public and provided, in particular, for the following:
 - Under the heading “Total Quota” in Section B1, the Skeleton Qualification System assigned 25 places to each gender;
 - Under the heading “*Maximum Number of Athletes per NOC*”, section B.2 provided that the 50 Skeleton quotas will be allocated as follows:

Men

- 2 NOCs with 3 athletes
- 6 NOCs with 2 athletes

7 NOCs with 1 athlete

Women

2 NOCs with 3 athletes

4 NOCs with 2 athletes

11 NOCs with 1 athlete.

- Paragraph F. “*Reallocation of Unused Quota Places*” section on “*Reallocation of Unused IF Quota Places*” provided:

“*General rules:*

1. *Exceeding the total amount of quota places for men is not allowed under any circumstances.*
2. *Exceeding the total amount of quota places for women events is not allowed under any circumstances.*
3. *Reallocation of unused quota places:*
 - a) *Unfilled men’s quota places cannot be reallocated to fill any women’s quota place*
 - b) *Unfilled women’s quota places cannot be reallocated to fill any men’s quota place.*

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”.

- 2.5 On 17 January 2022, the IBSF published the “*IBSF Ranking Men’s Skeleton (2021/2022) OWG Qualification System*” containing the ranking of the maximum number of quotas, as per the relevant provisions of the Qualification System. In particular, the section titled “*NOCs considered for reallocation*” of the said published ranking contained the following list:

“ROU 409
IRL 385
ISR 363
JPN 321
FRA 316
DEN 280”.

- 2.6 On 22 January 2022, the Applicant filed an Appeal before the IBSF Appeals Tribunal and IOC. In its Appeal the Applicant requested, in particular, for the following:

“1. Add four additional quota places to Men’s skeleton to ensure equal opportunity across genders for NOCs with 1 athlete to participate in the 2022 Olympic Winter Game. [...].

2. *If Request for Relief 1 cannot be granted, then unused Men's Bobsleigh quota places shall be reallocated to Men's Skeleton [...]*".

- 2.7 It is confirmed by the IOC and remains undisputed, that it *"did not address [the Applicant's] request to have "unused" places from the men's bobsleigh reallocated to men's skeleton"*.
- 2.8 On 23 January 2022, the IBSF published the final allocation of 25 quota places for men's skeleton and which did not include a quota place for the OFI's athlete (the "Decision").

3. THE CAS PROCEEDINGS

- 3.1 On 29 January 2022 at 09h41 (Beijing time), the Applicant filed the Application with the CAS Ad Hoc Division against the Respondents and identifying the OFI as an Interested Party, with respect to the Decision.
- 3.2 On 29 January 2022 at 11h21 (Beijing time), the CAS Ad Hoc Division notified the Application to the Respondents and to the OFI as Interested Party.
- 3.3 On 29 January 2022 at 13h37(Beijing time), the CAS Ad Hoc Division notified the Parties and the Interested Party of the composition of the Arbitral Tribunal (the "Panel") as follows:
- Mr Jeffrey G. Benz, United States of America, President;
 - Mr Alain Zahlan de Cayetti, France, Arbitrator; and
 - Mr Xianyue Bai, P.R. China, Arbitrator.
- 3.4 On 29 January 2022 at 14h14 (Beijing time), the CAS Ad Hoc Division invited the Respondents and the OFI as Interested Party to submit their reply and *amicus curiae* brief respectively, if they so wish, by 30 January 2022 at 15h00 (Beijing time), which was later on, upon request of the Respondents, extended until 31 January 2022 at 06h00 (Beijing time). The Respondents and the Interested Party timely filed their Replies and Amicus Curiae Brief, respectively.
- 3.5 On 30 January 2022, the CAS Ad Hoc Division notified the Parties and the Interested Party that a 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, on 31 January 2022 at 12h00 (Beijing time).
- 3.6 On 31 January 2022, at 12h00 noon (Beijing time), the Panel convened the hearing, virtually, on the application. 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: Mr Jared Firestone, Mr Maximilian Goldman (Counsels), Mr Simon Linscheid (President)

For the IBSF: Mr Stephan Netzle, Ms Mirjam Koller (Counsels), Ms Heike Groesswang (Secretary General)

For the IOC: Mr Antonio Rigozzi (Counsel)

For the OFI: Mr Peter Sherrard (CEO), Ms Nancy Chillingworth (Chef de Mission)

The Parties and the Interested Party had full opportunity to present their case. At the end of the hearing, the Parties and Interested Party confirmed that their right to be heard had been fully respected.

4. SUMMARY OF THE PARTIES' SUBMISSIONS

A. Applicant's submissions

4.1 The Applicant's submissions were as follows:

"The December 2019 rule changes to the Skeleton Qualification System unfairly prejudiced several NOCs, particularly smaller nations which feature only one male athlete.

Appellant's single male athlete was uniquely harmed by a September 2019 rule change which determined which NOC would have World Cup places in the 2021/2022 season, based on a season which had already occurred.

Reasonable accommodation of four (4) additional quota placements to Men's skeleton at the 2022 Olympic Games. This solution would rectify the harm created by the Qualification System changes by creating an equal opportunity for athletes from single sled nations to qualify sleds in the Men's field as their female counterparts have in the Women's field.

Alternatively, if such relief can not be granted, we ask that these four additional quota placements be made available for reallocation of unused quota placements from Men's bobsleigh, following precedent set by this ad hoc Court in a 2010 case.

We are asking this Court make a decision based on the merits of the case presented, and order the IBSF to request of the IOC and any other necessary parties the quota places needed to provide sufficient relief to the Appellant. Or for the IBSF to be able to reallocate these places from unused quota places in Men's Bobsled, as per precedent set by this Court in the 2010 case involving the FIBT".

B. IBSF Submissions

4.2 The IBSF Submissions were as follows:

“In the first place, the Applicant requests the Respondents to add four more quota places to the Men’s Skeleton Competition at the Olympic Winter Games Beijing 2022 because the Qualification System for the Olympic Winter Games Beijing 2022 (“QS OWG 2022”), which was introduced in December 2019, led to an increase of the quota for female and a reduction of the quota for men compared to the Qualification System for the Olympic Winter Games Pyeongchang 2018. In particular, this new system provided less quota places for NOCs with 1 eligible male athlete, namely 7, while there are 11 quota places for NOCs with one eligible female athlete. This change should now be compensated by adding four more quota places.

What the Applicant is actually requesting from this Panel is a change of the QS OWG 2022 as decided by the IBSF and approved by the IOC in December 2019.

The IBSF submits that

a. such a retroactive amendment of the QS OWG 2022 is simply impossible considering the fact that the Sport Entries deadline of 24 January 2022 (Section G of the QS OWG 2022) has passed and that all decisions under the QS OWG 2022 have already become valid and enforceable and been communicated to the NOCs and the athletes, and

b. the Applicant is estopped from requesting a change of the QS OWG 2022 after it did not challenge it, when it was introduced in December 2019, i.e. more than two years ago. Any deadline for a legal challenge has passed since long, whether such challenge was to be submitted to the CAS or to an ordinary court having jurisdiction over the IBSF.

It is simply not acceptable for the Applicant to operate under the QS OWG 2022 and ask for an amendment only after it turned out that its Skeleton athlete did not make the cut, neither directly nor by way of reallocation of Unused Quota Places.

If the late introduction of four more quota places to the QS OWG 2022 is not considered a change of the QS OWG 2022, granting four more Quota Places for male athletes would increase the total number of male athletes competing at the male skeleton competition to 29. Section F says as a General Rule: “Exceeding the total amount of quote places for men is not allowed under any circumstances”. The IBSF is bound by its own rules.

Regarding the Applicant’s alternative request, namely to reallocate “unused Men’s Bobsleigh Quota Places” to Men’s Skeleton, the IBSF is not in a position to grant this request without violating its own rules either. Firstly, such a reallocation across IBSF disciplines would again increase the number of male competitors beyond the Quota Number of 25, which is not permitted under Section F of the QS OWG 2022 (“Exceeding the total amount of quote places for men is not allowed under any circum-stances”). Secondly, the QS OWG 2022 Bobsleigh prohibit reallocation of Unused Quota Places in a (bobsleigh) event (e.g. 2-man) to another (bobsleigh) event (e.g. 4- man). It goes without saying that this applies also to the reallocation of Quota Places from one discipline (bobsleigh) to another discipline (skeleton). Third, bobsleigh for male athletes is a team sport. The relevant quota refers to crews. Such quota cannot be “transferred”.

C. IOC Submissions

4.3 The IOC's submissions were as follows:

“The Applicant’s case finds no support in the Skeleton QS nor the Bobsled QS. Nor does the Applicant offer any other valid justification for this panel to grant any of the relief requested. Therefore, the Applicant’s case must be dismissed.

In support of its main request for relief to “add four (4) additional quota places to ensure equal opportunity across genders for NOCs with 1 athlete” to participate in the Olympic Games, the Applicant contends that the Skeleton QS applied to NOCs with one athlete are “arbitrary and have a disparate impact against [m]ale athletes from [e]merging [n]ations”.

First, this argument pertains to the Skeleton QS itself, which was approved in December 2019. If the Applicant, as a member of the IBSF, found fault with the number of quota places assigned to NOCs with one athlete for men (7 places) and for women (11 places), the opportunity to challenge this would have been at the time they came into force. Neither the Applicant (nor any other person or entitled to do so under the IBSF Statutes) initiated such challenge therefore the Skeleton QS is final and binding. The same reasoning applies to the Applicant’s arguments about the “specific negative effect” of the 15 September 2020 amendment.

Second, even if the Applicant were not estopped from bringing such arguments, the substance of its arguments is misconceived. The Applicant’s argues that the current distribution of quota places in Section B.1 of the Skeleton QS “results in a disparate impact negatively affecting NOCs with 1 male athlete”. Even if this were the case, which is contested, the solution cannot be to arbitrarily grant four extra quota places to male skeleton athletes.

Moreover, the Applicant’s contention is difficult if not impossible to square with the notion of “gender discrimination” (on which it bases its case). Indeed, granting the Applicant’s request would result in a situation where there would be a total of 29 men and only 25 women competing in the skeleton discipline.

Furthermore, it is the case that under the Skeleton QS as a third priority, for men, quota positions are allocated to the next 7 NOCs with the best ranked athlete, whereas for women quota positions are allocated to the next 11 NOCs with the best ranked athlete. This is not gender discrimination since the overall number of quotas within the discipline remains the same. Nor can it be discrimination by national origin as there is no evidence that the different distribution among NOCs was not based on reasonable sport criteria and was meant to discriminate based on nationality. For the avoidance of doubt, it must be emphasized that the Olympic Charter does not require that qualification systems avoid a “disparate impact against Male athletes from Emerging Nations” nor against “NOCs with one male athlete” as wrongly claimed by the Applicant.

Finally, if granted, the Applicant’s first request for relief would circumvent the principle set out in Section F of the Skeleton QS that “[e]xceeding the total amount of quota places for men is not allowed under any circumstances”.

The Applicant's second request for relief is equally unfounded. As an alternative request, the Applicant asks this Tribunal to reallocate the "unused" men's bobsleigh quota places to men's skeleton.

This request does not have any basis in the Skeleton QS. To the contrary, it directly contradicts Section F of the Skeleton QS that unequivocally states that "[e]xceeding the total amount of quota places for men is not allowed under any circumstances".

The Request is also at odds with the principle in Section F.3 of the Bobsleigh QS that "[u]nused quota places in a [bobsleigh] event cannot be reallocated to another [bobsleigh] event". It would be entirely counterintuitive not to allow cross-event reallocation and then to allow the exact same reallocation on a cross-discipline basis....

The IFs are free to determine how they allocate their quota provided it is done in accordance with the applicable regulations....

As a final matter, the IOC must point out that requests about the way in which the IBSF should adopt and apply any (future) qualification systems concerns future Olympics and are thus outside the scope of the dispute before this Ad Hoc Division Panel".

D. OFI Submissions

4.4 OFI's submissions were as follows:

"The Olympic Federation of Ireland (NOC IRL) makes this submission to the Ad hoc Division of CAS – Games of the XXXIV Olympiad in Beijing as Amicus Curiae in the matter of Brendan Doyle (Skeleton) and the above referenced application by the Irish Bobsleigh and Skeleton Association.

- 1) Brendan Doyle is an exemplary ambassador, not just for his own sport, but for Olympic Sport in general. He is an IOC winter scholarship athlete, for which we are very grateful. Although he receives some small additional supports from our NOC, he is largely self-funded. Besides making significant personal sacrifices in this regard he is also reliant on the support of others. We know that such matters cannot be considered by your Tribunal so we shall not dwell on them other than to state that in addition to the grounds for appeal, which we consider legitimate, he is a fine young man who we are proud to support.*
- 2) Instead, we make this submission on the grounds that we see merit in the legal and sporting arguments made by the applicant, his National Federation, the IBSA. These are set out in full by the applicant so we shall not add to them.*
- 3) We maintain that the applicant was demonstrably affected by the changes made to the qualification criteria, some of which were made during the qualification period. These changes have been most harmful to small nations and in particular small nations like ours with a single male athlete.*
- 4) Despite the immensely short time frames and need for urgency at this juncture, we can confirm to the tribunal that Mr Doyle has completed all necessary checks and tests to enter China with immediate effect and is currently ready, kit in hand, to travel at a moment's notice".*

5. JURISDICTION

5.1 Rule 61.2 of the *Olympic Charter* provides:

“Any dispute arising on the occasion of, or in conjunction 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, adopted 14 October 2003 and amended 8 July 2021, (“the CAS Ad Hoc Rules”) provides in relevant part that:

“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 her/him 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 On 22 January 2022, the Applicant filed an appeal to the IBSF Appeals Tribunal (the “Petition”). The Petition contains two requests for relief which are identical to two of the three requests for relief contained in the Application herein.

5.4 Article 18.2 of the IBSF Statutes (August 2019) provides that: *“In the first instance, a Dispute shall be referred to the IBSF Appeals Tribunal for hearing and determination ...”.*

5.5 Article 18.3 further provides *“Decisions of the IBSF Appeals Tribunal ... may only be challenged by way of appeal to the Court of Arbitration for Sport in Lausanne, Switzerland (CAS) ...”.*

5.6 Even though the above-referenced Petition was still pending, to the extent no written decision had been delivered up before the hearing on the Application, in its written submissions and on the record at the hearing the IBSF waived the requirement under Article 1 of the CAS Ad Hoc Rules for the Applicant to have exhausted all the internal remedies available pursuant to the IBSF statutes.

5.7 The IOC also accepted at the hearing to waive any exhaustion requirement, in spite of the fact that the IOC states in its written submission to the Panel that *“the Applicant’s application to this Court (i.e. CAS Ad Hoc Division) is premature”.* This waiver was made with the express proviso that this decision by the IOC in this case is a one-time decision that could not and should not bind the IOC as a precedent in the future.

5.8 The jurisdiction of the CAS Ad Hoc Division was therefore not contested and accepted by the Parties.

5.9 Having reviewed the issue, the Panel finds that it has jurisdiction over the Application.

6. APPLICABLE LAW

6.1 Under Article 17 of the *CAS Arbitration Rules for the Olympic Games*, 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 As established in CAS jurisprudence, the interpretation of statutes and of similar instruments shall be governed by Swiss law (cf. e.g. CAS 2001/A/354 & CAS 2001/A/355 para. 7 et seq.; CAS 2008/A/1502; CAS OG 12/002).

7. ANALYSIS

7.1 The Applicant urges two legal bases for their requests for relief: 1) That the Skeleton Qualification System as it pertains to NOCs earning 1 quota placement are arbitrary and have a disparate impact against male athletes from emerging nations with only one athlete, and 2) in the past, when IBSF quota placements go unused and no eligible athletes remain to use them, these places have been reallocated to other disciplines under the IBSF’s jurisdiction.

7.2 On the former point, the Applicant relies upon Fundamental Principle 4 of the *Olympic Charter* providing that:

“The practice of sport is a human right. Every individual must have the possibility of practicing sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play”.

7.3 The Applicant also relies on Fundamental Principle 6 of the *Olympic Charter* providing that:

“The enjoyment of the rights and freedoms set forth in this Olympic Charter shall be secured without discrimination of any kind, such as race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status”.

7.4 On the latter point, the Applicant relies upon the case of CAS OG 10/001, which involved the FIBT, the predecessor or prior named organization to the IBSF. This case is cited by Applicant for the proposition that it permits moving unused quota placements from one discipline of the IBSF to athletes in other disciplines governed by the IBSF who are eligible to participate but were not offered a placement.

- 7.5 Under Swiss law, direct discrimination involves intentional conduct directed at expressly discriminating against some protected class of individual. Under Swiss law, indirect discrimination involves intentional conduct directed at discriminating against some protected class of individual but uses some criteria other than their protected class status to do so. Representations were made and not rebutted that under Swiss law there is no legal concept of disparate impact or unintentional discrimination as a basis to change a decision otherwise lawfully taken.
- 7.6 On the issue of alleged discrimination, the Panel finds that there was no evidence of discrimination in any sense, whether it was direct discrimination or indirect discrimination.
- 7.7 It appears that the issues raised by the Applicant, namely that the effect of the efforts of the IBSF to ensure gender equality when considering all of its disciplines at the Olympic Winter Games has caused a negative impact on male athletes from countries with one male skeleton athlete, appears to be a matter of policy to be taken up by the IBSF in its usual legislative process. This is not a legal basis upon which to ground a discrimination claim. There was no evidence that all male athletes were not treated equally under the published and approved criteria or that anyone set out to discriminate against male athletes from countries with one male athlete.
- 7.8 In addition, the Panel finds compelling that the IBSF approved the Skeleton Qualification System in 2019 and there were no complaints from the Applicant until after one its athletes failed to qualify. The Applicant, as a member federation of the IBSF, is estopped from raising issues now about the Skeleton Qualification System it could have raised two years ago or at least while it was, and its athletes were, participating in the IBSF approved Qualification System for two years. Waiting to see the outcome of an Olympic Games Qualification System and its effects on your own interests are not a sound basis for attacking the Qualification System, particularly where as here is there no assertion or evidence that the IBSF failed to apply the approved Skeleton Qualification System as written.
- 7.9 On the issue of reliance on the case of CAS OG 10/001, the Panel finds that case to be inapposite and inapplicable under the current Skeleton Qualification System.
- 7.10 As a preliminary matter, that case does not by itself form a basis for determining that the Skeleton Qualification System violated some basic legal principle. That case merely provides a possible basis for the relief claims in this case. The threshold issue of finding a legal violation must be met before relief can be granted. As we discussed above, that threshold was never crossed.
- 7.11 In addition, in the case of CAS OG 10/001, the panel was presented with a question of ambiguity in the qualification process in 2010 and apparently felt that it was appropriate to request the re-allocation of spots based on that ambiguity and the underlying facts. As a result, that panel recommended the creation of additional spots. Here, there is no such ambiguity alleged. In the matter at hand, the Qualification System was approved in 2019, and amended

in 2020, without objection from any IBSF member federation or athlete (specifically not from the Applicant), and there was no allegation of ambiguity in the document itself. Only after qualifying had concluded under the Skeleton Qualification System, and the precursor to this Application was filed to assert a challenge before the IBSF, was there any complaint from an IBSF member federation with an athlete who had failed to qualify under the Skeleton Qualification System.

- 7.12 Putting all of that aside, the Skeleton Qualification System here has specific language in it prohibiting exceeding quotas. There is no evidence that such language was present in the relevant qualification standards at issues in the case of CAS OG 10/001.
- 7.13 Furthermore, the case of CAS OG 10/001 was specifically not followed in the case of CAS OG 20/005, so the weight of CAS OG 10/001, or at least the remedies it provides, as a precedent or line of precedence or influence is dubious.
- 7.14 Put simply, if granted, the Applicant's first request for relief, to allocate an additional 4 spots to the men, would circumvent the principle set out in Section F of the Skeleton Qualifying System that "[e]xceeding the total amount of quota places for men is not allowed under any circumstances".
- 7.15 In addition, the Applicant's second request for relief, seeking to have this Panel reallocate "unused" men's bobsleigh quota places to men's skeleton, has no basis in the Skeleton Qualifying System. To the contrary, it directly contradicts Section F of the Skeleton Qualifying System which unequivocally states at paragraph 11 that "[e]xceeding the total amount of quota places for men is not allowed under any circumstances". This request is also at odds with Section F.3 of the equivalent of the Skeleton Qualifying System that applies to Bobsleigh stating that "[u]nused quota places in a [bobsleigh] event cannot be reallocated to another [bobsleigh] event". It would strain any reasonable interpretation of these standards to exclude cross-event reallocation but to permit the same reallocation on a cross-discipline basis.
- 7.16 The next relief requested by the Applicant, to "order the IBSF to request of the IOC and any other necessary parties the quota places needed to provide sufficient relief to the Appellant", if granted, would render the notion of quota place, whether per event, per discipline, or in general, irrelevant and redundant, and would undercut the important, and expert, policy decisions made by the IBSF (and the IOC) in determining and approving the Skeleton Qualification System and setting its quota limits. This Panel is in no position to second guess these policy decisions.
- 7.17 The final relief requested by the Applicant, that the IOC and IBSF should adopt selection criteria at the commencement of each quadrennium (which presumably would be immediately after the closing ceremonies of the 2022 Olympic Winter Games) is outside the scope of this dispute and the jurisdiction of the Panel. International Federations are free to adopt the appropriate legislative and other decision-making procedures as they see fit, consistent with principles of good governance. It is not for this Panel to legislate in an arbitration award any of these procedures.

- 7.18 In essence, all of the relief requested by the Applicant is in the nature of requesting this Panel to put itself into a role of policymaking for Skeleton. If the IBSF is persuaded that these things are appropriate for decision by it, then, as the IF for the sport, it is exclusively capable and competent to take up these matters. This Panel is not in the position to make policy for any international federation or the IOC and that appears to be what it has been asked to do.
- 7.19 While it is a difficult situation for an athlete to miss qualifying for an Olympic Games after years, or a lifetime, of dedication to a sport, the Olympic Games represent the highest possible achievement athletically in most sports. Qualifying to compete in the Olympic Games is not an easy task and it requires meeting the published and approved selection criteria. Sympathy is no reason for overlooking unambiguous and properly adopted rules as written or for ignoring qualifying criteria to which all athletes in a sport are subject.

8. COSTS

- 8.1 According to Article 22 para. 1 of the CAS Ad Hoc Rules, the services of the CAS ad hoc Division “*are free of charge*”.
- 8.2 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*”.
- 8.3 None of the Parties seek costs. Accordingly, each Party shall bear its own costs.

DECISION

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

1. The CAS Ad Hoc Division decides that the Application filed by Irish Bobsleigh & Skeleton Association is dismissed.
2. Each party shall bear its own costs.