



**Arbitration CAS ad hoc Division (OG Nagano) 98/001 Puerto Rico Ski Federation & David Quinn Steele, Jr v. International Olympic Committee (IOC), award of 9 February 1998**

Panel: Mr Jacques Baumgartner (Switzerland), President; Prof. Richard McLaren (Canada); Prof. Akira Kotera (Japan)

*Skiing (alpine skiing)*

*Validity of the participation and qualification criteria for the Olympic Games with respect to skiing*

*Standing of an athlete skier to file an application*

*Standing of the national federation to file an application*

- 1. If his/her challenge is not as an athlete in connection with the Olympic Games but merely as a member of the public with an interest in skiing and particularly so at the Nagano Winter Olympic Games and FIS operation of its events, a skier, even belonging to the Olympic Movement as a person with FIS points, has no standing to assert before the CAS ad hoc Division that he/she has a dispute arising in connection with the Olympic Games. Without that standing the CAS ad hoc Division has no jurisdiction to deal with his/her arbitration request under Article 74 of the Olympic Charter.**
- 2. If a national federation does not have the recognition of its National Olympic Committee, and therefore its existence and validity is not established, it has no standing to appear before the CAS ad hoc Division and pursue the request for arbitration.**

On February 3, 1998 the Office of the Court of Arbitration for Sport situated in Nagano, Japan received a request for arbitration from David Q. Steele, Jr. on his own behalf; and purportedly from the Puerto Rico Ski Federation signed on its behalf by Mr. Steele as Secretary-General. The request for relief was against the IOC. It alleged that the IOC document “XVIII Olympic Winter Games Nagano 1998: Participation and qualification criteria” dated November, 1996 with respect to its skiing criteria violated the Olympic Charter Rules 54, 56 and 57 and related bye-laws. It was submitted that as a consequence the criteria were void and improperly precluded Mr. Steele's participation in the XVIII Olympic Winter Games in Nagano. A request to grant “injunctive relief” against the IOC was made.

On February 5, 1998 the IOC filed its answer in accordance with R39 of the Code of Sports-related Arbitration.

On the same day under R37 of the Code the Deputy President of the Ordinary Arbitration Division Mr. Frans Meulemans issued an “Order” (Ref. CAS 98/187). That order ruled *in camera*:

1. Declares that the CAS has jurisdiction *in casu*.

2. Dismiss the request for interim measures filed by Puerto Rico Ski Federation and Mr. Steele.
3. Declares that the present order is pronounced without costs.

On February 7, 1998, opening day of the Games, Puerto Rico Ski Federation and David Steele submitted a request for “Injunctive Relief and Monetary Damages” similar in substance to the previous request but seeking in addition damages against the IOC for living expenses, at the rate of SFR 100 per day, until time of accredited access to the Olympic Village was granted. At the time of this further request the ordinary arbitration procedure was still pending.

On the same day at 20:40 the President of the ad hoc Division, Gabrielle Kaufmann-Kohler issued a Procedural order ruling on an application for preliminary relief. That order based on the facts and legal arguments known to that point dismissed the application for preliminary relief. This action was taken by the President under Article 14 of the CAS Rules for the Resolution of Disputes Arising During the Olympic Games (the “CAS ad hoc Rules”).

The present panel of arbitrators was duly and properly constituted under the CAS ad hoc Rules by the President. A hearing was scheduled and held commencing at 17:00 at the Kokusai 21 Hotel, Room Rindou (4th Floor), Nagano.

At the outset of the hearing the various representatives of the parties agreed that the panel had been properly constituted and had no objections regarding its composition and constitution. They further agreed to consent to the closure of the ordinary procedure and consented to the resolution of the dispute under the CAS ad hoc Rules.

At the hearing each party was given the opportunity to submit evidence and make argument on the matters in dispute.

Mr. Steele submitted an unsigned copy of the purported by-laws of the Puerto Rico Ski Federation and a photo copy excerpt of a document listing the mailing address of the federation on a page containing mailing addresses of other federations. He stated that he was the Secretary-General but offered no further proof of that statement. Mr. Marc Hodler, President of the Federation Internationale de Ski confirmed that there was an organization to which FIS did mail information and correspondence in Puerto Rico.

Mr. Hector Cardona, President of the NOC Puerto Rico (COPUR) and Mr. Luis Vazquez, Chef de mission both stated that they did not recognize the Puerto Rico Ski Federation as the official winter sports body. They testified that the body which they recognize was the Puerto Rico Winter Sport Federation which is apparently an umbrella body under which there could be various sections one of which could be a section for skiing. It would be recommendations from that body which the COPUR might put forth to the IOC as athletes whose credentials should be recognized for the Winter Games.

The Chef de mission stated that the COPUR had indeed entered a Puerto Rican athlete for skiing. They had refused to enter Mr. Steele. On the testimony of Mr. Hodler it was learned that Mr. Steele would not be under the cut off FIS points for qualification of 140 as he had 142. In any event, Mr.

Hodler explained that given the criteria for entry into the Winter Games Mr. Steele could not be entered because Puerto Rico would only be entitled to have one male athlete in skiing and COPUR had named and qualified a different athlete than Mr. Steele.

## LAW

### Legal Framework

1. These proceedings are governed by the Rules for the Resolution of Disputes Arising During the XVIII Olympic Winter Games in Nagano (the “ad hoc Rules”) of CAS enacted by the International Council of Arbitration for Sport (ICAS) on 9 April 1997. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 (“PIL Act”). The PIL Act applies to this arbitration because the seat of the ad hoc Division and of its panels of Arbitrators is established at Lausanne, Switzerland, pursuant to Art. 7 of the ad hoc Rules.
2. The jurisdiction of the ad hoc Division arises out of Article 74 of the Olympic Charter.
3. Under Article 17 of the ad hoc Rules, the Panel must decide a 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*”.
4. According to Article 16 of the ad hoc Rules, the Panel has “*full power to review the facts on which the application is based*”.

### Merits of the Application

#### A. *Jurisdiction as to Mr. Steele*

5. Mr. Steele is not an accredited athlete at the Winter Olympic Games. At the hearing it became apparent that Mr. Steele recognized that he was ineligible to race in the downhill race at Nagano or any other Alpine skiing event at the Games. He stated that he was primarily interested in having the validity or invalidity of the IOC “Participation and qualification criteria” determined by this panel. Therefore, the application by Mr. Steele in his personal capacity is not as an accredited athlete to the Winter Games.
6. Mr. Steele asserts that he belongs to the Olympic Movement as it is defined in Chapter 1 Article 3. He belongs to an organization which COPUR does not recognize. As a person with FIS points he is within the Olympic Movement as described in Chapter 1 Article 3 of the Olympic Charter. However, his challenge is not as an athlete in connection with the Olympic Games but

merely as a member of the public with an interest in skiing and particularly so at the Nagano Winter Olympic Games and FIS operation of its events. Therefore, he has no standing to assert before this panel that he has a dispute arising in connection with the Olympic Games. Without that standing this panel has no jurisdiction to deal with his arbitration request under Article 74 of the Olympic Charter. The Panel, of course, has under Article 74 the power to determine the scope of its jurisdiction.

*B. Jurisdiction over Puerto Rico Ski Federation*

7. Mr. Steele also purports to bring the request for arbitration as the Secretary-General of the Puerto Rico Ski Federation. As was evident from the testimony at the hearing this body does not have the recognition of COPUR as a national federation. It was not established that such an organization is a valid subsisting entity. It was not established that Mr. Steele has the authority to act on behalf of this entity if its legal existence were found to be valid. Therefore, it is found that Mr. Steele has not established the basis for his legal capacity to act for the applicant organization; and, indeed, the existence and validity of such an organization is not established. Therefore, it is found that the Puerto Rico Ski Federation has no standing to appear before this panel and pursue the request for arbitration. Without such legal standing there is no party before this Court which requires that this panel examine whether it has the jurisdiction under Article 74 to determine the merits of the case which was attempted to be placed before it by the Puerto Rico Ski Federation.

**On the basis of the foregoing facts and legal aspects, the ad hoc Division of the Court of Arbitration for Sport renders the following decision:**

1. Beyond making this jurisdictional order, this panel is without jurisdiction pursuant to Article 74 of the Olympic Charter to deal with Mr. Steele's request for arbitration in his personal capacity;
2. The Puerto Rico Ski Federation has not established its legal existence before this panel; nor has its alleged Secretary-General, Mr. Steele, satisfied this panel that he has the authority to act for this organization if it in fact has legal existence. This association is not entitled to pursue a request for arbitration and the panel has no jurisdiction under Article 74 of the Olympic Charter to deal further with this matter;
3. In accordance with Article 22 of the ad hoc Rules there is no order as to costs.