

SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)

NOVEMBER 23, 2016

N°: SDRCC 16-0309

DAN CARRUTHERS
(CLAIMANT)

AND

SPEED SKATING CANADA (SSC)
(RESPONDENT)

AND

BRADEN CLOUTHIER
(AFFECTED PARTY)

Arbitrator: Patrice Brunet

Representatives:

For the Claimant: Dan Carruthers
Dr. Emir Crowne, counsel

For the Respondent: Ian Moss
Brian Rahill

For the Affected Party: None

DECISION ON COSTS (AMENDED)

I. INTRODUCTION

1. This is further to a request made by the Claimant, Mr. Dan Carruthers, to award him costs in the present arbitration. It is adjudicated pursuant to section 6.22 of the *Canadian Sport Dispute Resolution Code* (“the Code”).
2. This case pertains to a dispute between the Claimant and the Respondent, Speed Skating Canada, regarding its decisions not to name Mr. Dan Carruthers to the 2016-2017 NextGen Program and not to award him a Development Card under Sport Canada’s Athlete Assistance Program (the “AAP”).
3. On November 2nd, 2016, I rendered a final and binding decision on the merits of the case, pursuant to section 6.21 of the Code.
4. Considering that in his written submissions, dated October 12th, 2016, the Claimant’s counsel reserved his right to seek costs, I stated the following in my decision:

Within seven (7) days of the date of this decision, the Claimant may file submissions to the Tribunal regarding costs under section 6.22 of the Code. If he does so, the Respondent will then have seven (7) days to file a reply.
5. On November 9th, 2016, the Claimant and his legal counsel filed written submissions on costs.
6. On November 16th, 2016, the Respondent filed its written submissions on costs.
7. Mr. Braden Clouthier had elected not to participate in the proceedings and therefore did not file written submissions on costs.

POSITIONS OF THE PARTIES

Position of Mr. Dan Carruthers

8. The Claimant refers to the decision *Hyacinthe v. Athletics Canada* (SDRCC 06-0047) stating that the outcome of the proceedings was favorable to him.
9. He also submits that the position taken by the Respondent to nominate him for AAP support but not naming him to the NextGen Program was an attempt to "artificially bifurcate team selection and funding, and (effectively) frustrate [his] success".
10. He attributes no malice to the Respondent. However, he claims that the Respondent's conduct after the Partial Order, rendered on October 9th, 2016, was not ideal.
11. The Claimant refers to some precedents of the SDRCC in which improperly drafted and applied selection criteria had been accepted by the arbitrators as factors in assessing conduct.
12. He also claims that this case involves a breach of human rights law since age is a protected ground. He is a twenty-four (24) year-old University student with limited means.
13. He claims that even if the Respondent was not acting in bad faith, a federation should not be absolved of liability when it adopts a discriminatory policy. Also, the term "intent" should include not only the term "bad faith" but also policies and decisions that violate the law, particularly human rights law.
14. The Claimant has not addressed the factors of the settlement offers and attempts to resolve the dispute, as he claims it is a neutral factor.
15. Furthermore, he also explains that it is important that the Respondent bears responsibility for a poorly drafted selection policy, which is in the Claimant's view,

a violation to the federation's agreement with Sport Canada and human rights law, and for continuing to defend those criteria despite another ruling against them in *Christ v. Speed Skating Canada*, SDRCC 16-0298 ("*Christ*").

16. Finally, the Claimant details his incurred costs, pursuant to his fee arrangement with his counsel, estimated at \$5,020.00, as follows:

Fees (CDN)

Preliminary Call (1 hour): \$500 x 1	= \$500.00
Resolution Facilitation (1.5 hours): \$500 x 1.5	= \$750.00
Written Submissions & Correspondence (2.5 hours): \$500 x 2.5	= \$1,250.00
Hearing Preparation and Hearing (3 hours): \$500 x 3	= \$1,500.00
Sub-total	= \$4,000.00
HST on Fees (13%)	= \$520.00
<u>Total Professional Services Fees</u>	= \$4,520.00

Disbursements

Filing Fee	= \$500.00
<u>Total Disbursements</u>	= \$500.00
Total (Professional Services Fees + Disbursements)	= \$5,020.00

Position of Speed Skating Canada

17. The Respondent believes that the costs requested by the Claimant's counsel are almost exclusively related to his own expectations of reimbursement for the professional services he provided to his client.

18. Referring to Arbitrator Palamar's review in the case *Christ*, the Respondent submits that the Claimant's request for costs is entirely in relation to the solicitor and client relationship.

19. The Respondent claims that I have not identified any evidence during the

- proceedings that its representatives acted unreasonably or unprofessionally in their interactions with the Claimant.
20. They also submit that I did not deem the criteria discriminatory or in breach of human rights law in the Procedural Order.
 21. Furthermore, the Respondent refers again to Arbitrator Palamar's *Christ* decision and claims that "it is surprising [...] that the claim is, once again, for the same hourly amount that was already considered "inappropriate" by Palamar [...]."
 22. The Respondent then explains that they have incurred significant costs for these proceedings and that they have not hired external legal counsel, since they wish to provide as much financial support to the athletes as possible and avoid diverting funds to outside legal counsel.
 23. Considering that the Respondent believes that its representatives "have managed [their] conduct on this matter in a professional and respectful way throughout the process", it claims that there is no proof of deliberate discrimination or disrespect towards the Claimant.
 24. The Respondent submits that each party should bear its own costs.
 25. Finally, the Respondent maintains its position that the request for costs should be denied. However, it is willing to pay the SDRCC filing fee if the Claimant can prove that he did pay this fee himself.

II. THE APPLICABLE LAW

The Canadian Sport Dispute Resolution Code

26. Section 6.22 of the Code states the following:

6.22 Costs

- (a) *Except for the costs outline in Subsection 3.9 (e) and Section 3.10 hereof and subject to Subsection 6.22 (c) hereof, each Party shall be responsible for its own expenses and that of its witnesses.*
- (b) *Parties wishing to seek costs in an Arbitration shall inform the Panel and the other Parties no more than seven (7) days after the award being rendered.*
- (c) *The Panel shall determine whether there is to be any award of costs and the extent of any such award. When making its determination, the Panel shall take into account the outcome of the proceedings, the conduct of the Parties and their respective financial resources, intent, settlement offers and each Party's willingness in attempting to resolve the dispute prior to or during the Arbitration. Success in an Arbitration does not mean that the Party is entitled to be awarded costs.*
- (d) *The filing fee retained by the SDRCC can be taken into account by a Panel if any costs are awarded.*
- (e) *The decision on costs shall be communicated to the Parties within seven (7) days of the last submission pertaining to costs.*
- (f) *The Panel does not have jurisdiction to award damages, compensatory, punitive or otherwise, to any Party.*

III. DECISION

27. In order to determine whether there is to be any award of costs and, if so, to which extent, I need to take into account the factors enumerated in Section 6.22 (c) of the Code.

28. The first factor to consider is the *outcome of the proceedings*. In the present matter, I ordered that the Claimant be appointed to the 2016-2017 NextGen Program.

29. However, as outlined in Section 6.22 (c), success in an Arbitration does not necessarily mean that the Party is entitled to be awarded costs. There are other factors to take into account.

30. The second factor to consider is the *conduct of the Parties*. If a Party attempts to avoid proceedings, this may justify an award for costs.

31. In instance, I am of the same opinion as the Claimant that I find no malice in the Respondent's conduct throughout the proceedings. The Respondent may have made a mistake in not providing enough clarity within its criteria regarding age in the selection process but there is no evidence of discrimination or disrespect towards the Claimant throughout the SDRCC procedures.
32. While I have found that the age factor contained in the criteria was too vague to merit application, it fell short of being labeled discriminatory as understood under human rights law.
33. The third factor to consider pursuant to Section 6.22 (c) of the Code is the *financial resources of the Parties*.
34. The Claimant submitted that he is a University student with limited financial means. However, I am unable to determine the Claimant's financial means since no documents were provided in support of his written submissions. While it may be lore that most university students have limited financial means, some athletes may not have those financial constraints and they should be prepared to explain their financial situation, in order to meet the requirement contained in Section 6.22 (c).
35. The Respondent has not provided information on his financial resources either, so I have not been able to conduct my analysis on this factor for both Parties.
36. The next factor to consider is the *intent of the Parties*. I found no evidence that the Respondent acted in bad faith, nor do I believe that the Respondent acted unreasonably or unprofessionally in their actions.
37. Although the Respondent could have drafted its policies differently, I cannot agree with the Claimant that the Respondent adopted a discriminatory policy. It was vague to a point where I considered the age factor as inapplicable, but not to a point where discrimination was at issue.

38. The fifth factor to take into account is the possible *settlement offers* that could have been made between the Parties during the process. This factor is irrelevant in this instance considering that no settlement offers have been part of the record.
39. The sixth and final factor to take into account is *each Party's willingness in attempting to resolve the dispute prior to or during the Arbitration.*
40. Since the Claimant submitted that it was a neutral factor, I have not considered it.

IV. CONCLUSION

41. Having carefully considered the facts and the factors of Section 6.22 (c) of the Code, I order that:
- a. Each Party bear its own costs regarding professional fees.
 - b. SSC pay the **\$500** filing fee for the SDRCC appeal to Mr. Carruthers.

All costs must be paid within 30 days from the date of this order.

42. I retain jurisdiction and reserve the right to hear any dispute relating to the interpretation or application of the present decision.

Signed in Montreal, this 23rd day of November 2016,



Patrice Brunet, Arbitrator