

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

DECEMBER 14TH, 2016

N°: SDRCC 16-0310

NICK GOPLEN
(CLAIMANT)

AND

SPEED SKATING CANADA (SSC)
(RESPONDENT)

AND

MADDISON PEARMAN
BRADEN CLOUTHIER
(AFFECTED PARTIES)

AND

DAN CARRUTHERS
(INTERVENOR)

Arbitrator : Patrice Brunet

DECISION ON REQUEST FOR INTERPRETATION

I. INTRODUCTION

1. This is further to a request made by the Claimant, Mr. Nick Goplen, for an interpretation of the award I rendered pursuant to article 6.23 of the *Canadian Sport Dispute Resolution Code* (“the Code”).
2. On October 9th, 2016, I rendered a Partial Order with respect to the application of the age factor by SSC when considering the NextGen Program carding criteria.

3. On November 2nd, 2016, I rendered a final and binding decision on the merits (“Final Award”), pursuant to article 6.21 of the Code.
4. On November 8th, 2016, the SDRCC received a request for interpretation from the Claimant.
5. Further to the required resolution facilitation session, in which I did not participate, the Claimant filed an updated request for an interpretation of the Final Award on December 6th, 2016.

II. THE APPLICABLE LAW

The Canadian Sport Dispute Resolution Code

6. Article 6.23 of the Code states the following:

6.23 Interpretation of an Award

(a) If a Party believes the award is unclear, incomplete, or ambiguous or its components are contradictory or contrary to the reasons, or it contains clerical mistakes or a miscalculation of figures, such Party may request the assistance of the RF in understanding the award. While the explanation of the RF is not binding, access to the RF is intended to assist Parties to understand decisions of the Panel.

(b) After consulting with the RF, the Party may apply to the Panel for the interpretation of an award.

(c) When an application for interpretation is filed, the Panel shall review whether there are grounds for interpretation. The Panel shall rule on the application within seven (7) days following the submission of the application to the Panel.

III. POSITION OF THE PARTIES

Position of the Claimant

7. The Claimant refers to paragraphs 87, 88 and 89 of my decision submitting that the use of two different terms to describe the Respondent’s program (NextGen Program and NextGen Team) is not a "proper reflection of the evidence at the hearing."

8. He also submits that my decision with reasons is contrary to my Partial Order "with respect to the selection of the NextGen Program." Additionally, he mentions that he wants to obtain clarity and completeness regarding the inconsistency between the Partial Order and the Final Award.
9. Furthermore, he states that the use of the term "own statistics", in paragraph 58 of the Final Award, is confusing to readers because it implies that he used external statistics instead of the ones provided by the Respondent. He claims that he did not generate his own statistics and that it is a mistake and an appropriate ground for an interpretation.
10. Referring to paragraph 52 of the Final Award (although the correct paragraph number is 51), the Claimant submits that a mistake and a miscalculation of the figures were made in the analysis of the rankings for his world record percentage and improvement progression.
11. The Final Award mentions that the Claimant ranks 27th out of 45 assessed athletes regarding the performance as a percentage of world record and ranks 25th out of 45 assessed athletes as improvement progression as a percentage of world record. According to the Claimant, his rankings should have read 25th out of 45 for world record percentage and 20th out of 45 for improvement percentage.

Position of the Respondent

12. The Respondent did not file any submission for an interpretation of my award.

Position of the Affected Parties and Intervenor

13. None of these Parties filed written submissions for an interpretation of my award.

IV. DISCUSSION

14. A request for interpretation may only be made within the scope of article 6.23 of the Code.
15. The reasons an award can be reviewed by the arbitrator are limited to awards, or excerpts thereof, that are unclear, incomplete or ambiguous, or when components of the decision are contradictory or contrary to the reasons, or when a clerical mistake or miscalculation of figures is found in the decision.

16. While the Claimant argues that his ranking may have been mischaracterized in my award, I gave precedence to the Respondent's ranking calculations and as a result, there are no clerical mistakes or miscalculations to correct.
17. Perhaps the Claimant believes that there is an inconsistency between the Partial Order and the Final Award. In adversarial proceedings, there are always two sides of the coin, and alas, usually only one side prevails. It is the very function of the decision-maker to choose one side over the other, which may not always be convincing to one of the parties.
18. If the alleged inconsistency does not contradict or is not contrary to the reasons, there is no basis for review under article 6.23.
19. The alleged mistake and miscalculation of the figures would have no impact on the reasons and conclusion, even if I were to review them. The purpose of article 6.23 is to correct obvious mistakes, not to request that the arbitrator take a second look at his decision.
20. Article 6.23 is not designed to invite Parties to raise new facts or arguments, nor to request a review of the decision based on interpretative or factual errors presumably made by the arbitrator.
21. This was illustrated in *Rolland v. Swimming Canada* (ADR 02-0011), rendered under the previous Arbitration Code when the SDRCC was known as ADRsportRED. The equivalent of today's article 6.23 was included in the provisions of RA-22.
22. In *Rolland*, Swimming Canada filed a request for interpretation and sought to bring new facts to the attention of Arbitrator Clément. Ultimately, Arbitrator Clément denied the request since he was *functus officio*.
23. The common-law rule of *functus officio* prohibits a decision-maker from changing his decision once it has been rendered.
24. In other words, reinterpreting facts or changing a decision is not a process that is envisioned by either legal principles or the Code, aside from the narrow options articulated in article 6.23(a).
25. As mentioned by Arbitrator Clément in *Rolland*: "it is not stipulated [in the Code] that an arbitrator can modify his or her decision." He also added that "[i]f the award was not final, the arbitration that took place would lose all its value."

26. The arguments submitted by the Claimant seek to make me reconsider my decision on the merits, rather than obtain a correction or clarification of the decision.
27. None of the Claimant's arguments raise any issue regarding the application or implementation of my decision. Instead, the Claimant seeks to review the factual analysis.
28. The principles discussed in *Rolland* are applicable in the present case. I am *functus officio* and my decision rendered on November 2nd, 2016 stands.

V. **CONCLUSION**

29. For all the above-mentioned reasons, the request for interpretation is dismissed.

Signed in Montreal, on December 14th, 2016

A handwritten signature in black ink, appearing to be 'Patrice Brunet', with a horizontal line extending to the right.

Patrice Brunet, Arbitrator