

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

NO: SDRCC 17-0335

JOSHUA FRAZER
(Claimant)

AND

BOXING CANADA
(Respondent)

AND

EDER CLERVOIX
(Affected party)

DECISION ON JURISDICTION

Appointment of a Jurisdictional Arbitrator

1. Joshua Frazer appeals to the SDRCC against the decision of Boxing Canada to deny his appeal of Boxing Canada's decision to not grant him carding on the basis of his decision to not relocate to Montreal to participate in their centralized training program.
2. At the outset Boxing Canada raises the issue of the SDRCC's jurisdiction to hear Mr. Frazer's appeal on the merits.
3. As a result of this challenge to jurisdiction and in advance of a panel being appointed, the SDRCC, with the consent of the parties, has appointed me as a Jurisdictional Arbitrator pursuant to s. 6.10 of the Code to render a decision on the jurisdiction of the SDRCC to hear the within appeal on its merits.
4. Section 6.10 of the Code provides for this as follows:

6.10 Jurisdictional Arbitrator

- (a) Where no Panel has yet been appointed to deal with a Sports-Related Dispute, and an issue arises between the Parties which they cannot resolve, the SDRCC may appoint a Jurisdictional Arbitrator from the rotating list of Arbitrators, having regard to the location of the Parties, the preferred language of the Parties and the existing time limitations.
 - (b) The Jurisdictional Arbitrator shall have all the necessary powers to decide any issue in dispute between the Parties which would have otherwise been argued before the Panel had it been constituted. Notwithstanding the foregoing, the Jurisdictional Arbitrator shall not render a decision on the main substantive issue in dispute between the Parties.
5. When faced with a question of jurisdiction as is raised in this case it is not appropriate to make any findings on issues related to the merits of the matter. Rather, the narrow question before the Jurisdictional Arbitrator is whether or not the matter should be permitted

to be heard on its merits. Even a matter that would be bound to fail on the merits must be heard if there is jurisdiction.

6. The parties requested that the question of jurisdiction be resolved by way of submissions in writing and, after reviewing their respective submissions, I have concluded that I can render a decision on jurisdiction and that, in all the circumstances, it would be fair to do so without conducting a further oral hearing.

Background

7. In brief, this matter arises as a result of the decision by Boxing Canada to centralize its training program in Montreal and as a result require all of its carded athletes, in order to remain eligible for and to receive carding funds to relocate to Montreal in order to train in that centralized location.
8. The decision by Boxing Canada to make relocating to Montreal a requirement in order to be eligible for carding was communicated to the athletes in September 2016. The Claimant was also personally advised of this on April 30, 2017 after the conclusion of the National championships.
9. On May 30, 2017 the Claimant provided Boxing Canada with an executed copy of his Athlete Agreement which specifies the need to relocate to the National Training Centre in Montreal by July 1, 2017
10. On July 10, 2017 Boxing Canada again communicated with the Claimant seeking to confirm that he was in fact relocating to Montreal so as to meet the conditions under which he was to receive carding. In the course of this telephone call the Claimant confirmed to Boxing Canada that he was not going to relocate to Montreal.
11. Later on July 10, 2017 Boxing Canada wrote to the Claimant to confirm that as a result of his decision to not relocate that he would not be eligible for carding funds. This letter also advised him that there was an appeal procedure that he could follow if he chose to challenge the decision.
12. Boxing Canada's Appeal policy specifies that any appeal must be filed within 10 days of learning of the decision they wish to contest:

TIMING OF APPEAL

5. Any member who wishes to appeal a decision will have 10 days from the date on which they received notice of the decision, to submit written notice of their intention to appeal, along with detailed reasons for the appeal, to the President of Boxing Canada.

13. The Claimant did not file his appeal within the specified 10 day limitation.
14. Boxing Canada's Appeal Policy further provides for an extension of the 10 day limitation period as follows:
 6. Anyone member wishing to initiate an appeal beyond 10-day period must provide a written request stating reasons for an exemption to the requirement of Section 4 the decision to allow, or not allow an appeal outside the 10 day period will be at the sole discretion of the President.
15. The Claimant did not make a request for an exemption to the 10 day limitation period.

16.The Claimant filed his appeal of the decision to rescind his carding on August 18, 2017 almost a month after the time for filing such an appeal had expired.

17.Boxing Canada denied the Claimant's appeal on the basis of it being filed out of time. The Claimant was notified of this decision through his counsel on August 22, 2017.

18.The Claimant filed the within Request on September 5, 2017

Respondent's Position on Jurisdiction

19.Boxing Canada says that the SDRCC does not have jurisdiction to hear this Request for three reasons:

- A. That the matter does not fall within the parameters of disputes countenanced under s. 2.1 of the Code;
- B. That the matter does not raise adequate procedural grounds; and
- C. That the matter is out of time.

Claimant's Position on Jurisdiction

20.Unsurprisingly the Claimant takes a different position on the question of jurisdiction to that advanced by Boxing Canada.

21.In particular the Claimant says that Article 21 of Boxing Canada's Appeal Policy specifically countenances the SDRCC having jurisdiction in a case such as this and refers to the decision of Arbitrator McLaren in the matter of Park v. Canadian Amateur Boxing Association, SDRCC 10-0122.

Discussion

22.The Code articulates the SDRCC's jurisdiction in Section 2.1:

2.1 Administration

(a) The SDRCC administers this Code to resolve Sports-Related Disputes.

(b) Subject to Subsection 2.1(c) hereof, this Code applies to a Sports-Related Dispute where the SDRCC has jurisdiction to resolve the dispute. This Code will therefore apply to any Sports-Related Dispute:

(i) in relation to which a Mediation, Arbitration or Med/Arb agreement exists between the Parties to bring the dispute to the SDRCC;

(ii) that the Parties are required to resolve through the SDRCC; or

(iii) that the Parties and the SDRCC agree to have resolved using this Code.

(c) This Code shall not apply to any dispute that a Panel determines, in its discretion, is not appropriate to bring before the SDRCC or to a dispute where the Panel determines that the SDRCC does not have jurisdiction to deal with the dispute.

23.The terms "Sports Related Dispute" is defined in the Code as follows:

(mm) "Sports-Related Dispute" « Différend sportif » means a dispute affecting participation of a Person in a sport program or a sport organization. Such disputes may include (but are not limited to) those related to:

(i) team selection;

(ii) a decision made by a NSO board of directors, a committee thereof or an individual delegated with authority to make a decision on behalf of a NSO or its board of directors, which affects any Member of a NSO;

- (iii) any dispute affecting participation of a Person in a sport program or a sport organization, for which an agreement to conduct an SDRCC Mediation, Arbitration or Med/Arb or use the services of the Resolution Facilitator of the SDRCC has been entered into by the Parties; and
- (iv) any dispute arising out of the application of the Anti-Doping Program

24. I also note the provision of s. 3.1 of the Code that specifies when the SDRCC processes are available.

3.1 Availability of Dispute Resolution Processes

(a) The dispute resolution processes of Resolution Facilitation, Mediation, Arbitration or Med/Arb under this Code are available to any Person in connection with the resolution of a Sports-Related Dispute, subject to Subsections 3.1(b), 3.1(c) and 3.1(d) below.

(b) Unless otherwise agreed or set out herein, and if the dispute involves a NSO, where a Person applies to the SDRCC for the resolution of a Sports-Related Dispute, the Person must first have exhausted any internal dispute resolution procedures provided by the rules of the applicable NSO. For the avoidance of doubt, a NSO internal dispute resolution procedure is deemed exhausted when:

- (i) The NSO has rejected the right of the Person to an internal appeal;
- (ii) The NSO or its internal appeal panel has rendered a final decision; or
- (iii) The NSO has failed to apply its internal appeal policy within reasonable time limits.

25. While Boxing Canada, in its submission, argues that this matter is one to which the Code does not apply I reject that submission.

26. This dispute revolves around carding eligibility and as such it is unquestionably a "Sports Related Dispute" as that term is used in the Code.

27. In addition, s.3.1(b)(i) of the Code is directly applicable to this matter as Boxing Canada has very clearly rejected the Claimant's right to an internal appeal. Once again it is important to note that my findings do not in any way assess the merits of the reasons why Boxing Canada rejected the Claimant's internal appeal as the jurisdictional question before me is to be answered based on whether or not an internal appeal was permitted or not, regardless of merit.

28. I also accept the Claimant's submission that the Boxing Canada Appeal Policy does allow for a matter to be appealed to the SDRCC once the internal appeals process of Boxing Canada is exhausted.

29. Second, Boxing Canada argues that the Claimant has failed to raise sufficient procedural grounds in this Request. They point to the Boxing Canada Policy that specifies the requirement that appeals be made on procedural grounds. I find that as a Jurisdictional Arbitrator I cannot render a decision on the sufficiency of any procedural grounds raised by the Claimant as to do so would overstep the limited role of the Jurisdictional Arbitrator. I find that if I was to attempt to render a decision on this point I would, of necessity, have to consider the merits of the positions of each party thereby violating s. 6.10(b) of the Code.

30. Lastly, I must address the position advanced by Boxing Canada regarding time limits. The time limit prescribed for the filing of an appeal to the SDRCC is set out at s. 3.5 of the Code. That section reads as follows:

3.5 Time Limits

(a) All days are included in the calculation of time limits hereunder, including weekends and holidays.

(b) In the absence of a time limit set by agreement or by statute, regulations or other applicable rules of a NSO, the time limit to file a Request shall be thirty (30) days following the later of:

(i) the date on which the Claimant becomes aware of the existence of the dispute;

(ii) the date on which the Claimant becomes aware of the decision being appealed; and

(iii) the date on which the last step in attempting to resolve the dispute occurred, as determined by the SDRCC. The SDRCC may, in its discretion, refer this issue to a Panel.

(c) Other than the time limit set out in Subsection 3.5(b) hereof, all time limits will have expired if the communication by a Party is not received before four (4) p.m., Eastern Time.

(d) Subject to the rules of the Anti-Doping Program applicable hereunder, upon application on justified grounds, the SDRCC may extend or reduce the time limits. The SDRCC may, in its discretion, refer this issue to be decided by a Panel

31.Boxing Canada's argument is that the appeal below was rejected as it was clearly filed out of time and as a result the SDRCC does not have jurisdiction. With respect I find this is not the correct approach. While an arbitrator making a decision on the merits of this matter may well find that the Request fails as the below appeal was filed out of time I cannot do so. The only jurisdictional question I am empowered to address is as to whether or not this Request was filed within 30 days of Boxing Canada's decision to reject the Appeal.

32.The within Request was filed on September 5, 2017. The Request is itself the appeal of a decision of Boxing Canada's Appeal panel rendered on or about August 22, 2017. Accordingly this Request is filed within the 30 day limitation for filing set out in the Code.

Decision

33.For the reasons set out above it is my decision to accept jurisdiction over the Request submitted by the Claimant and remit the matter to the SDRCC for the appointment of an Arbitrator to hear the matter on the merits.

Costs

34.In his Response the Claimant seeks the costs of this jurisdictional hearing.

35.I have found the matter ought to be heard by an Arbitrator on the merits I also find it appropriate that the question of costs, including as they relate to the jurisdictional hearing, should be dealt with after the hearing on the merits.

Signed in Toronto, this 28th day of September, 2017.



Peter R.Lawless, Arbitrator