

SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)  
CENTRE DE REGLEMENT DES DIFFERENDS SPORTIFS DU CANADA (CRDSC)

No: SDRCC 17-0331

Between:

Olivia Mew  
(Claimant)

and

Sail Canada  
(Respondent)

and

Justin Barnes  
Gabriel Verrier-Paquette  
Coralie Vittecoq  
(Affected Parties)

DECISION ON ADDITIONAL AFFECTED PARTIES

Before:

Arbitrator: John H. Welbourn

Party Representatives:

For the Claimant: Lucy Wu

For the Respondent: Don Adams  
Ken Dool  
Todd Irving

For Coralie Vittecoq: Cyrille Vittecoq

For Justin Barnes: No appearance and no submission

For Gabriel Verrier-Paquette: No appearance and no submission

Background:

I was appointed arbitrator of this dispute by the SDRCC on August 10, 2017. A preliminary conference call was convened on August 18, 2017. During the call, the Claimant raised the issue of additional affected parties. The parties could not agree on other athletes who might be Affected Parties and I requested written submissions on the point. Those submissions have been received and considered.

The Claimant's appeal arises from the Respondent's decision not to nominate her to Sport Canada for the Athlete Assistance Program for the 2017-18 carding year. She appealed that decision through the Respondent's internal appeal process. The hearing panel denied her appeal and the Claimant then initiated this appeal to the SDRCC under the Canadian Sport Dispute Resolution Code (the "Code").

The basis of the Claimant's appeal is that the Respondent failed to correctly apply its published 2017-2018 Canadian Sailing Team Sport Canada Carding Criteria (the "Criteria") in selecting the athletes nominated to Sport Canada for 2017-18 carding and assistance funding. In her internal appeal the Claimant also alleged bias in the Respondent's decision not to nominate her.

The Affected Parties named are athletes the Claimant and Respondent agree may be impacted if the Claimant is successful in this appeal. Only Ms. Vittecoq has appeared. Justin Barnes and Gabriel Verrier-Paquette have not responded.

Although not in agreement, the Claimant and Respondent have each identified other individuals who may also be affected by this appeal. This decision determines those athletes who are also to be joined as Affected Parties.

Argument:

The Claimant submits that Pat Wilson, Arie Moffat, Georgia Lewin-Lafrance, Ryan Wood and Andrew Wood were not eligible under the Criteria and should not have been nominated to Sport Canada for carding. If this appeal succeeds and any of these athletes are declared ineligible then the Claimant would become eligible for nomination for carding.

Ms. Vittecoq received the Respondent's final nomination for 2017-18 carding. The Claimant does not suggest that Ms. Vittecoq was not eligible. Rather, if the Criteria were applied correctly the Claimant's eligibility was superior to that of Ms. Vittecoq and the Claimant, not Ms. Vittecoq, should have received the final nomination. Therefore, if 2 of the 5 athletes named above are declared ineligible, Ms Vittecoq would retain her carding status and the Claimant will achieve that level.

Ms. Vittecoq agrees with the Claimant's submission that the above-named athletes were not eligible under the Criteria for carding.

The Respondent contends that this appeal should be restricted to the question of whether the Claimant met the Criteria and should have been nominated for carding. However, if the Claimant is successful or if bias is found, the Respondent states the effect may be to elevate the Claimant's ranking over that of 5 additional athletes. Those are Ryan Anderson, Fillah Karim, Noah Collinson, Liam Bruce and Max Flinn. The Respondent also states that Alex Heinzemann should also be named as an Affected Party although no reason is given.

Finding:

The Criteria specify in detail the categories of cards available, the tiers within each category, and the standard of achievement required for each tier and category of card. From the materials it is clear however that an athlete can be nominated for 1 card only, although having qualified in more than 1 category or tier.

The issue is whether the Claimant met the Criteria and should have been nominated for carding. However the basis and the result of such a decision have to be considered as well.

The submissions identify 11 athletes who might be affected if the Claimant succeeds in her appeal. Section 1.1(a) of the Code defines "Affected Party" to be:

a Person who may be adversely affected by a decision of the (SDRCC), such as losing a previously granted status or privilege, and:

- (i) who is accepted by the Parties as an Affected Party; or
- (ii) who is accepted or named by the Panel as an Affected Party.

Pat Wilson, Arie Moffat, Georgia Lewin-Lafrance, Ryan Wood and Andrew Wood are carded. Each would be adversely affected by losing the benefits of carding, including funding, if found to be ineligible under the Criteria. Each of them is an "Affected Person" in addition to those 3 athletes already agreed and named.

None of Ryan Anderson, Fillah Karim, Noah Collinson, Liam Bruce or Max Flinn are carded. None would suffer any loss of tangible status or privilege already held if a decision in this appeal resulted in the Claimant being elevated over their rankings.

From the Claimant's submission, it appears that Alex Heinzemann is carded and teamed with Justin Barnes (an agreed Affected Party) in the 49er Class. If that is correct a decision in this appeal that adversely affects Justin Barnes may also adversely impact Mr. Heinzemann. On that basis, it is prudent and preferable to include Mr. Heinzemann as an "Affected Party" at this point in the appeal process.

Decision:

Each of the following athletes is also an Affected Person entitled to participate in this appeal as provided in the Code, namely:

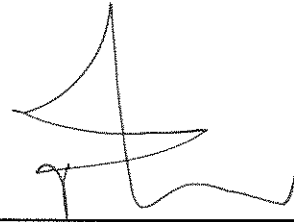
1. Pat Wilson

2. Arie Moffat
3. Georgia Lewin-Lafrance
4. Ryan Wood
5. Andrew Wood
6. Alex Heinzemann.

Conclusion:

I do not have any conflict of interest with any party or representative in this matter.

Signed at Calgary, Alberta on September 12, 2017.

A handwritten signature in black ink, appearing to be 'John H. Welbourn', written over a horizontal line.

John H. Welbourn, Arbitrator