

SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)
CENTRE DE RÉGLEMENT DES DIFFÉRENDS SPORTIF DU CANADA (CRDSC)

December 22, 2020

No: SDRCC 20-0476

IOANNIS NARLIDIS
(Claimant)

AND

WRESTLING CANADA LUTTE
(Respondent)

Before: J.J. MCINTYRE (Sole Arbitrator)

Claimant: IOANNIS NARLIDIS

Representative for the Respondent: LÚCÁS Ó'CEALLACHÁÍN

REASONS FOR DECISION

1. This is a team selection dispute. At issue is the decision made by Wrestling Canada Lutte ("WCL") on October 19, 2020 not to send any athletes competing in the Greco-Roman style to a wrestling competition event taking place in Belgrade, Serbia during the week of December 12 - 18, 2020 (the "Event")
2. On December 7, 2020 the matter came on for hearing and I rendered, acting under strict time constraints pursuant to the January 1, 2015 Canadian Sport Dispute Resolution Code (the "SDRCC Code") a short decision dismissing the Claimant's appeal with more fulsome reasons to follow. These are those reasons.
3. The necessity for a quick decision was due to WCL being notified by the international sports federation for amateur wrestling, United World Wrestling ("UWW") that any changes to athlete registration, names and weight categories for the Event had to take place three days before the start of competition. For the Greco-Roman event, the deadline was December 8 at 23:59 hours (Swiss time). This translated to any changes in registration being due by December 8, at 17:59 hours EST.
4. The Claimant filed his request to arbitrate this dispute on December 4, 2020. I was appointed by the SDRCC to hear the dispute on December 4, 2020 and a

preliminary meeting with the parties took place on that day. WCL initially objected to the SDRCC hearing the dispute as their internal appeal process had not taken place.

5. WCL's internal process did take place over the weekend with a hearing conducted on December 6, 2020 by the Honourable Hugh Fraser, as sole arbitrator. He rendered his decision on that day, denying the Claimant's appeal on the basis that the Claimant had failed to demonstrate on a balance of probabilities that WCL had made an error as described in the 'Grounds for Appeal' Section of WCL's appeal policy. Those grounds include WCL: (a) making a decision for which it did not have authority or jurisdiction; (b) failing to follow its own procedures; (c) making a decision influenced by bias; (d) failing to consider relevant information or taking into account irrelevant information; and (e) making a decision that was grossly unreasonable.
6. On the morning of December 7, the request to arbitrate in this case was amended to appeal both the internal decision and the original decision communicated on October 19, 2020. The parties augmented their document filings with their oral testimony in the hearing.
7. Neither party was represented by counsel at the hearing. The Claimant represented himself. The respondent WCL was represented by its High Performance Director ("HPD"), Lúcas Ó'Ceallacháin.
8. As a consequence of the global COVID-19 pandemic, international competition opportunities for all wrestlers in 2020 has been limited. The Tokyo Olympics were postponed. Following on that postponement the Event was put forward by UWW as a competition for the sport. Initially, the plan was for the Event to be a Senior World Championship, but due to decisions taken by some strong international teams not to compete, it was transformed on November 11, 2020 into an Individual World Cup.
9. The Claimant is a self-funded athlete competing in the Greco-Roman style of wrestling in the 87 kg weight class and was the winner of that class in the Canadian championships held in December 2019.
10. The Claimant believed that competing in the Event would help him "solidify his strengths in order to compete at the Olympic Games in 2021." The Claimant was ready and willing to go to Belgrade and considered it an important step in his Olympic path. No one doubts the sincerity of the athlete in his belief or his dedication to his sport and his willingness to do whatever it takes to ensure his success on the international stage and help him to achieve his goal of representing this country in the Olympics.
11. Following an athlete/coach call WCL held on October 19, 2020 the HPD sent out an email to athletes, including the Claimant confirming that the WCL would not be sanctioning the participation in Greco-Roman of any athletes in what was then the upcoming 2020 Senior World Championships in Serbia. The email states

that, in making the decision, WCL considered past results in Greco-Roman, recent results in the Pan Am Championships and Qualification tournaments, competition readiness and the DTE ("daily training environment") for the majority of athletes. The priority for the event was a return to competition opportunities for Women's Wrestling and Freestyle athletes who have demonstrated results and evidence of past performances.

12. In early November, the Claimant signaled in an email his intention to appeal the decision by WCL not to send any Greco-Roman athletes to the Event. The HPD on behalf of WCL responded on November 5, 2020 that the UWW will be making a decision after November 5 as to whether the 2020 Senior World Championships would be going ahead. Given the situation with the Pandemic especially in Europe there was a strong possibility the championship would not go ahead. The email further stated:

In order to save time and unnecessary effort for all parties, we would suggest awaiting the outcome of this decision before proceeding with a formal complaint via the WCL Complaints Process of the SDRCC....I am happy to speak to you and your coach about your YTP and potential other opportunities to help you best prepare for the final Olympic Qualification tournament in Bulgaria on the 30th April, 2021[1]. The 2020 Senior World Championships were a late addition to the international calendar and WCL took the decision to prioritise participation for those athletes best prepared to be able to compete at this level at short notice given their extensive experience and results to date.

13. On November 11, the Claimant was informed in an email by the HPD that UWW had cancelled the 2020 Senior World Championships. The date and competition format for the new event were not yet confirmed. Additional information was requested and based on that further information, the WCL would review its decision whether to compete or not.
14. Unfortunately, there was a failure to communicate after November 11, 2020 with the Claimant that WCL had decided to send two athletes, one female wrestler and one freestyle wrestler to the transformed Individual World Cup. The Claimant only found out this had happened on checking the international web site.
15. The evidence is that the Senior Team Selection Criteria 2020-2021 ("Selection Criteria") were published in a document dated February 2020. The document was apparently recently amended to account for the postponement of the Olympics. Those changes are not material to this dispute.
16. The Selection Criteria state:

1 - INTRODUCTION

The purpose of this document is to set out the selection process and criteria that will be used by Wrestling Canada Lutte (WCL) to

select or nominate athletes to 2020-2021 Senior events ...as well as any other domestic or international training/competitive opportunities that will be part of the U23 and Senior Team programs.

This document will be in effect from the start of the 2020 Senior Canadian Wrestling Championships to the start of the 2021 Senior Canadian Wrestling Championships.

The High Performance Director (HPD) is responsible for the development and implementation of a selection process that is fair and equitable for all candidates....

The selection criteria and process outlined in this document was drafted and prepared by the HPD in consultation with the Head Coach and the oversight of the High Performance Advisory Committee (HPAC). The HPAC is composed of athlete and coach representatives. Final approval of the policy is by WCL's Board of Directors.

2 - DECISION MAKING AUTHORITY

The High Performance Coordinator (HPC) will assist the HPD in ensuring the process outlined in this document is properly followed when making any selection decisions.

Performance-based decisions on selection include:

- Reviewing current domestic and international results;
- Yearly Training Plan (YTP);
- International Performance Index (IPI);
- Previous Competition Experience;
- Assessing the suitability of the level of the competition;
- Gold medal profile (GMP);
- **If no suitable participants are found, the HPD reserves the right to not select or fill a team spot.**

The final decision-making authority for selection remains with the HPD.

...

8 - GRECO-ROMAN

NOTE: Application deadline for intent to participate in international events is after the 2020 Senior Canadian Championships, by April 5th, 2020.

Athletes who wish to participate in an international Greco-Roman event must follow the procedure outlined below as well as meet the criteria described hereunder. **It should be noted that nomination to participate in an international Greco-Roman event is subject to approval of the HPD.** Athletes intending to compete in Greco-Roman must have a suitably qualified coach with Greco-Roman experience....

Criteria:

- Top ranked athlete in an Olympic Weight category in the Greco-Roman style at the 2020 Senior Canadian Championships.

Process:

- Athletes and their coaches must apply to the HPD. Applications must include the following:
 - Training history pertinent to Greco-Roman;
 - Greco-Roman competition history and results;
 - 2020-2021 Training plans and YTP pertinent to Greco-Roman submitted as part of the event application process.

(My emphasis)

17. One of the complaints of the Claimant is the unequal treatment afforded his sport compared with the other disciplines of wrestling. The unequal treatment is set out in the Selection Criteria themselves. Clearly, the Process required of Greco-Roman athletes focuses on their training, competition history and results as key elements for selection to an international event. The HPD then had to approve the participation of any Greco-Roman athlete at such an event.
18. The HPD stated, in the WCL filing and his testimony that in considering whether to send any athletes to the Event, he met with the HPAC and coaching staff. A performance-based decision was taken not to compete in Greco-Roman at the Event (as it then was) and to prioritize the event for those athletes best equipped to cope with the training demands in their daily training environment, with a proven track record of performance and international experience. WCL also took the decision to restrict the size of the group traveling for health and safety concerns due to the pandemic. When the Event was transformed into an Individual World Cup, the decision not to send any athletes in Greco-Roman was not reconsidered.
19. It might seem that the Claimant was faced with a 'Catch-22' in that in order to be considered for international competition he had to show results in international competitions. However, in dealing with the Claimant's domestic and international results, the evidence is that there was a gap of almost six years in the Claimant's participation in Greco-Roman international events between 2014 and 2020. The Claimant believed that his participation in other disciplines and other sports during that time period ought to have been taken into consideration in the

decision as to whether he was competition ready. Those factors are outside the parameters set for a performance-based decision.

20. The evidence before me is that Greco-Roman is currently not considered to be a medal potential sport for Canada given the lack of development of the discipline in Canada. There is a lack of depth of both competitors and competitions. There are severely limited training opportunities for Greco-Roman athletes even in non-COVID times. Training opportunities were further curtailed for the Claimant by provincial restrictions on the sport due to COVID. WCL was unable to provide either an International Performance Index or Gold Medal Profile for any athletes in the Greco-Roman style due to the lack of international results. The HPD testified that no one in WCL participating in Greco-Roman was considered to be at a world level.
21. The HPD testified that he consulted with the five staff coaches and next generation coaches prior to making the decision not to send any Greco-Roman athletes to the Event. The decision was however his.
22. Ultimately this dispute really comes down to the subjective belief by the Claimant that he was ready, willing and able to participate in the Event, at his own cost, and the HPD believing that none of WCL's Greco-Roman athletes were competition ready or at a level that justified their participation at the Event. The HPD under the Selection Policy had the authority and discretion to make the decision as to who would represent Canada at the Event including the discretion not to fill a team spot. He made his decision after considering the performance-based criteria set out in the Selection Policy.
23. The HPD also testified that while he did not consider the Claimant as suitable for the Event, he was willing to work with the Claimant to identify what he considered appropriate international competition events for the Claimant. In that regard, the Claimant has already been approved for an event taking place in Italy in January 2021, and in Cuba in April, 2021.
24. In *Richer v. The Canadian Cerebral Palsy Sports Association (including Boccia Canada)*, SDRCC 15-0265, Arbitrator Pound made the following comments regarding selection criteria (at page 11):

Selection criteria need to contain some reasonable flexibility, but at the same time, cannot be entirely arbitrary. Certain sports lend themselves to somewhat easier team selection choice, where objective criteria such as times, point scores, weights and distances can be used. Others can be more or less self-selections, such as eligibility based on the results of qualification tournaments. The more difficult choices occur when there may be some element of judgment required regarding performance standards or a need to produce a team that will function most effectively in competition. The default position in such cases, absent reviewable error or

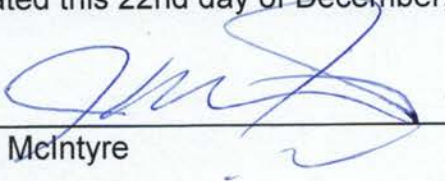
proof of bias, is that those responsible for selection decisions are generally the most knowledgeable and experienced persons available, who attempt in good faith to produce the best possible outcomes in the particular circumstances.

25. The Selection Criteria were developed by the sport experts, the HPD in conjunction with the Head Coach, the HPAC and the Board of Directors. In establishing the performance-based criteria, the WCL was exercising its natural authority and obligation to set standards and selection criteria.
26. In *Prediger v. Bobsleigh Canada Skeleton* SDRCC 15-0284/5 at para. 132 Arbitrator Brunet stated that such selection standards are reviewable only if they are patently unfair, arbitrary or discriminatory. I agree. Other than the vague assertion that competition in other disciplines and sports should be considered, there is no challenge in this case that the performance-based criteria are inadequate or inherently unreasonable. How much weight should be given to each factor is up to the HPD. I find there is nothing unreasonable about the performance-based standard adopted by WCL and it is beyond my scope to review or attempt to re-write them.
27. While the hearing of this appeal focused properly on the original decision that was made, the appeal is also of the decision of the arbitrator on the internal process. The full reasons, due to the time constraints of this appeal, of the internal arbitrator were not available to us at the time of hearing. The Claimant was unable to point to any error on the part of the internal arbitrator in the internal appeal. The onus was on the Claimant to establish on a balance of probabilities any of the specified grounds for an appeal. The internal arbitrator found that the Claimant had failed to meet that burden. I agree with the internal arbitrator.
28. Consequently, as I was not persuaded by the written or oral evidence in the hearing that there was any failure by the WCL to follow its selection policy, nor that there was anything unreasonable about the choice by the HPD not to send any Greco-Roman athletes to the Event, I dismissed the Claimant's appeals.
29. The only party that addressed the issue of costs during the hearing was the Claimant. Should I have granted his appeal, he would have been faced with increased costs of attending the Event at such short notice. The general principle relating to costs in SDRCC disputes is set out in s. 6.22(a) of the SDRCC Code that "... each Party shall be responsible for its own expenses and that of its witnesses." Subsection (c) provides as follows:

(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 Arbitration. Success in an arbitration does not mean that the Party is entitled to be awarded costs.

30. WCL was in large measure responsible for the failure to communicate their decision as to which athletes they were sending to the transformed Event and put off the Claimant from advancing his appeal of the decision by WCL not to send Greco-Roman athletes to Serbia. In the circumstances of this dispute, based on the factors set out in s.6.22(c), and the fact that my decision on merits will not require the Claimant to make any last minute expenditures to attend the Event, I have concluded there is no reason to depart from the general principle. Each party shall bear its own costs in this appeal.

Dated this 22nd day of December, 2020 at Vancouver.

A handwritten signature in blue ink, appearing to read 'JJ McIntyre', is written over a horizontal line.

JJ McIntyre