

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

N°: SDRCC 20-0455

Lisa Fergusson
(Claimant)

and

Equestrian Canada Équestre
(Respondent)

INTERIM DECISION ON SCOPE OF REVIEW

Submissions

On behalf of the Claimant: Carlos Sayao, Julia Miller

On behalf of the Respondent: Michelle Kropp

1. On June 11, 2020, I was appointed under Section 6.9 of the Canadian Sport Dispute Resolution Code (the “Code”) to hear Lisa Fergusson’s request for arbitration (the “appeal”) of Equestrian Canada Équestre’s (“EC”) decision to nominate her for a development card rather than a senior card.
2. Ms. Fergusson is an Eventing equestrian athlete. She received a partial senior card for the 2019 year.
3. EC is the national governing body for equestrian sport and industry in Canada. It is recognized by Sport Canada and the Fédération Equestre Internationale (FEI) as the national governing body for equestrian sport and recreation in Canada.
4. The Athlete Assistance Program (“AAP”) is a Sport Canada grant program that provides financial assistance to Canadian high-performance athletes. Athletes receiving AAP are referred to as carded athletes.
5. Ms. Fergusson challenged EC’s decision before an internal appeal tribunal of EC which denied her appeal. Ms. Fergusson filed a further appeal to SDRCC.
6. During a July 2, 2020 conference call, the parties sought a ruling on the scope of the appeal. I determined that the hearing would proceed as a hearing *de novo* and informed the parties that I would issue a short decision confirming my decision.
7. These are my reasons for that decision. As I did not have the benefit of full submissions of the parties on this issue, this decision is based on my own reflections of the AAP, the *Code* and other Tribunal decisions.
8. Section 6.17 of the *Code* provides:

The Panel shall have full power to review the facts and apply the law. In particular, the Panel may substitute its decision for:

- (i) the decision that gave rise to the dispute [...]
...and may substitute such measures and grant such remedies or relief that the Panel deems just and equitable in the circumstances.

9. The decision that gave rise to the dispute, in this case, is the recommendation of the HPAG to nominate Ms. Fergusson for a development card rather than a senior card, not the decision of the internal appeal panel to uphold the HPAG's decision.
10. In *CBSA v. Richard* (SDRCC 17-0319), Arbitrator Brunet considered the effect of Section 6.17 on three different scenarios involving challenges to carding decisions - challenges to the technical aspects of the decision, challenges to the legal foundation for the decision, and challenges of internal appeal panel decisions. He concluded that, in each of the circumstances, Section 6.17 provided arbitrators with an unrestricted scope of review.
11. In arriving at his conclusion, Arbitrator Brunet noted that it would be illogical for the Tribunal to restrict any appeal of an internal appeal decision "to that of a judicial review, without the benefit of a full knowledge of the facts and law." (para 20)
12. To do otherwise, he suggested, would afford a high degree of deference to the internal appeal body.
13. Arbitrator Brunet found that national sport organizations (NSO's) were private, not-for-profit companies rather than public administrative tribunals and that they:

...[had] no particular legal status under administrative law which would enable them to attribute a quasi-judicial character to their internal review panels' decisions. (para. 23)
14. Although the NSO has the responsibility of developing AAP-compliant carding criteria, funding is conditional on the NSO establishing selection rules and procedures that include avenues for appealing decisions. These appeal procedures must include access to independent dispute resolution through SDRCC. (AAP Policies Section 2.2)
15. Paragraph 9.1 of EC's carding nomination criteria provides:

Appeals of EC's AAP nomination/re-nomination decision or of EC's recommendation to withdraw carding may be pursued only through the EC's review process, which includes an application to the Sport Dispute Resolution Centre of Canada (SDRCC).
16. In my view, an NSO cannot restrict or confine the power of SDRCC to subject an NSO's carding recommendation to a robust and probing examination, either by creating an internal appeal process or a review process, to which any degree of deference is owed.
17. The appeal will proceed as a review of the HPAG decision.

Dated: July 14, 2020 in Vancouver, British Columbia



Carol Roberts
Arbitrator