



CAS at the London Olympic Games

by Richard H. McLaren, SDRCC Arbitrator

with the assistance of Garrett Harper, research assistant, JD candidate Western Law



London 2012 was the 5th Summer Olympic Games at which the Court of Arbitration for Sport (“CAS”) of Lausanne, Switzerland set up its division of Ad Hoc Arbitrators (“ADH”) to be resident at the Olympic Games. The

ADH since its introduction at the Centennial Games in Atlanta, Georgia in 1996 has been at every successive Summer and Winter Olympic Games to be an onsite independent and impartial adjudication body providing 24-hour resolution of disputes for use by anyone associated with the Games.

Athletes at London 2012 showcased an array of spectacular sporting events and the Games were widely proclaimed by all as very successful. The ADH contributed to that success by its resolution of disputes. There were 11 matters adjudicated, two more than the number of resolutions at the 2008 Summer Games in Beijing. This article provides an overview of all cases and elaborates on a select few. Wherever possible, they are identified by their case number for those interested in reading the full award on the CAS website.

Pre-Games

The ADH was seized of 3 cases before the Games

Opening Ceremonies. In 2 of these 3 cases, in equestrian (CAS OG 12/03) and canoe kayak (CAS OG 12/04), the ADH found that it could not order a remedy because the disputes origins were before the 10 days before the opening ceremonies commencement of ADH jurisdiction. The third case, in the sport of boxing (CAS OG 12/02), ADH jurisdiction was not found because the applicant failed to comply with the time limit required by the internal rules of the sport. The ADH did say in *obiter dicta* if they had jurisdiction the applicant would not have been successful on the merits.

During the Games

Field of Play

With the Games under way, the first of two cases on sporting results arose when a photo finish in women’s triathlon resulted in an appeal by the ultimately Swedish second place finisher (CAS OG 12/10). The rule in question was the definition of finishing the competition where the athlete’s body between the neck and the sternum must be the part of the body that crosses the finish line. With one athlete leaning backwards it was possible to distinguish between what otherwise looked like a dead heat. While the athlete maintained that

(continued on page 2)

In this edition :

Avoiding Carding Appeals: Preventive Measures for Administrators	3
2013 SDRCC Arbitrator and Mediator Conference & New Publication for Athletes	4



CAS at the London Olympics (continued)

the referee had engaged in a rule violation, the ADH invoked its now very familiar “field of play” doctrine to leave the results to stand as the referee had determined them. That decision followed a long established line of both CAS and ADH cases on the doctrine.

A variation on the application of the doctrine arose when the Russian NOC, on behalf of one of its sailing entrants, attempted to challenge the sailing IF’s decision (CAS OG 12/11). The race committee, after initial weather related postponement of a semifinal race, ultimately canceled the race and in so doing disadvantaged Russian athletes who were eliminated. The ADH declined to interfere in the race committee decision leaving the results as declared by it. The case illus-

trates the speed with which the ADH can act. The application was made at 8:30 a.m. on the Saturday of the last weekend of the Games. A decision was required by noon to run the sailing race. One was delivered at 11:45 a.m.

Selection

One of the selection disputes involved a French Pentathlete and the French federation (CAS OG 12/08) challenging their IF in its decision to initially appoint the French athlete to fill a vacancy and then changed and appointed an Irish competitor. The ADH rejected the dispute indicating that the IF had properly selected the Irish competitor.

(continued on page 4)

Corruption in Sport

Aside from doping, a more insidious form of corruption exists in match fixing, gambling and deliberate attempts to use less than best efforts in competition. None of these activities in London 2012 resulted in a case before the ADH but did make their presence felt in other forms.

The failure of athletes to use their best efforts and to play to lose occurred on two occasions: one that was coined “Shuttle Gate” in badminton and the other in women’s football (soccer). In Shuttle Gate badminton teams in round robin matches were competing to determine placement in the upcoming knock out round. Four teams were found by the IF in badminton to have thrown their games in an effort to gain more favorable matchups in the knockout rounds - be it for success or preservation of medal chances for a country (as was the case with the team from China who wanted to avoid playing the other team from China in the knockout round until the final match). The IF used its rules to eliminate what were in effect the four best teams in the tournament from the Games. That decision resulted in the Canadian women’s pair’s team advancing despite having lost all its round robin matches.

In contrast to this action by badminton the soccer IF, FIFA elected to take no action against the Japanese women’s soccer team who admitted to playing for a tie so as to not

have to travel to Glasgow, Scotland to play their next match that would have occurred had they won. In a match against a heavily under matched opponent South Africa, Japan scored no goals with the match concluding in a 0-0 draw. Upon being questioned by the media the Japanese coach, Norio Sasaki, admitted that he had ordered his players to play to a strategic tie. FIFA differentiated this case from that seen in Shuttle Gate for two primary reasons. First, FIFA argued that it was impossible to prove that the players had indeed followed the coach’s orders and lowered the skill of their play to achieve a strategic tie. Second, FIFA argued that unlike badminton, the fans had not noticed that the Japanese team had altered their play and thus did not tarnish the reputation of the sport in the way that the badminton incident did. The IOC later supported the decision followed by FIFA that no discipline would be levied on the Japanese women’s soccer team.

Corruption in the form of gambling and match fixing was also a major concern. The circumstances were ripe for it because Britain has very well developed legal gambling providers and the British Broadcasting Corporation was to broadcast every hour of all Olympic competition at the London Games. The IOC made arrangements with all parties to share information to try and ensure that the Games were not affected by this form of corruption. To date of writing nothing of any significance has been released in this subject area. Time may reveal more about this subject. ■



Avoiding Carding Appeals: Preventive Measures for Administrators

by Meredith MacGregor & Michael Tolmie, Sport Solution Managers

As we enter the post-Olympic carding cycle, NSOs are assessing the last 12 months and looking towards Rio 2016 as they apply their carding criteria. With many athletes vying for a finite number of cards, there are often appeals of carding decisions. Through the appeal process, the strength and clarity of the selection criteria is tested.

Appeals often take place where athletes are surprised by the decision. Many of these appeals can be avoided when all parties are aware, in advance, of the criteria and exactly how the decisions will be made. While appeals are a natural part of any decision-making process, it is ideal to minimize their frequency. Appeals can be time consuming and can put strain on the athlete-NSO relationship as well as relationships among affected athletes. This article will highlight some of the preventative measures that you, as sports administrators, can take to help ensure a smooth carding process.

Publish your criteria early and make it accessible.

The earlier the criteria are published and the more readily accessible they are, the greater the likelihood of avoiding conflicts. Some actions that one can take include:

- Posting them on your website;
- Emailing athletes as soon as they are available;
- Posting a link of the criteria on Twitter or other social media outlets;
- Providing contact information of an NSO representative who is available for questions and issues related to the criteria.

By having athletes read the criteria, any potential problems with the criteria will come to light early. A change in the criteria at this stage is much easier than handling multiple appeals at the end of the season.

Encourage upward communication

The Athlete Representative is an important source of communication but should not be the only method of upward communication. Open meetings at national team events are a great way to hear and directly ad-

dress contentious issues or criteria that may be unclear. Furthermore, online forums may allow less vocal athletes to have their opinions heard. By sparking a discourse instead of simply publishing the criteria you allow athletes and coaches to be a part of the process. When individuals feel as though their opinions have truly been heard they will be more likely to support the policy. As a result, the risk of appeals may be reduced.

Sometimes policy decisions are simply unpopular. This does not mean that they are bad decisions but it means there must be an extra focus on explaining the rationale behind these decisions.

Draft clear, effective policies.

Effective policies are those that avoid uncertainty and are easy for athletes to understand. Uncertainty often arises when the language used is ambiguous, general, inconsistent, redundant or vague. [Click here](#) for further information on effective policy writing.

NSOs cannot open the lines of communication without athletes, coaches and other stakeholders doing their part. The most important thing that athletes can do is to **read all policies** to ensure that they are familiar with the process. It may seem simple but every year there are athletes who are left off teams or denied funding simply because they were unaware of an essential element of the criteria. Furthermore, if athletes have an issue with the criteria they must discuss the issue with coaches, athlete reps and contacts within the sport.

By increasing the communication between sport administrators and athletes throughout the process, we believe there will be significantly less animosity and confusion. This will let everyone focus their energy on the sport they love! ■

Sport Solution is a legal clinic designed to provide high performance athletes with support for their sport-related legal issues. It was created in 1996 and is managed by three University of Western Ontario law students. One of the main mandates of the clinic is to help foster communication between NSO and athletes. Sport Solution works to ensure that athletes are aware of their right to appeal and to help them through the process.

Notable Dates:

- **November 9-11 2012:** The SDRCC will be present with a kiosk at the Sport Leadership Conference (Montreal, QC).



2013 SDRCC Arbitrator and Mediator Conference

The next conference will be held in Halifax, Nova Scotia, on May 2-4, 2013. The SDRCC is proud to partner with the ADR Atlantic Institute to deliver the public portion of the conference on May 3, 2013. The intent is to deliver an exciting program and to provide a unique professional development and networking opportunity to ADR professionals based in Atlantic Canada. Check our website soon for conference program and registration information. ■

New Publication for Athletes



The SDRCC is pleased to announce the publication of an Athlete's Rights and Responsibilities brochure in collaboration with AthletesCAN. Click the image or visit the Publications section of the SDRCC website to consult it online. ■

(continued from page 2) There was an unusual selection case in which the CAS had ordered a South African equestrian rider to be on the South African team (CAS OG 12/01). The national federation had ignored the ruling by CAS and a case for enforcement was brought to the ADH. The ADH again ordered the national federation and the NOC to place the rider on the team.

Another unusual set of circumstances arose when a Spanish 3000m steeplechase competitor chosen to the Spanish Olympic Team was later removed for alleged conversations with a trainer about doping methods (CAS OG 12/06). The Spanish Athletics Federation removed him from the team. He applied to the ADH and was reinserted onto the team because of insufficient evidence to support the Spanish decision and thus violated their selection rules.

Doping

No Olympic Games occurs without some doping related issues arising. Three cases were submitted to the ADH for a ruling, two of which related to infractions having taken place before the Games CAS OG 12/05 and CAS OG 12/09) and another in which the ADH exercised its discretion to merely reprimand the athlete (CAS OG 12/07).

There were eleven doping infractions acted upon during the Games by the IOC Executive Board through the

reports to it by the IOC Disciplinary Commission, none of which were appealed to CAS. One decision of the executive board involved the stripping Belarusian shot putter Nadzeya Ostapchuk of her Gold Medal. The absence of an ADH appeal is likely because the IOC has jurisdiction to merely exclude the athlete from the Olympic Village and the Games by removing their accreditation and eliminating their event result. The IF for the sport discipline of the athlete involved has the jurisdiction to deal with any anti-doping rule violation sanction in accordance with its rules and typically does so after the Games where the usual suspensions are determined. Therefore, it is rare to see a doping case at the ADH in all of its full dimensions since the WADA Code came into effect at the Athens Olympic Summer Games in 2004.

Conclusion

The active role of the ADH can be appreciated by the foregoing review of their decisions. The presence of the ADH to resolve disputes has become a part of the institutional framework of the Olympic Games. Aside from adjudicating disputes its presence causes other matters to be resolved by the parties rather than proceed to the ADH. Therefore, it has both an active dispute resolution role and a prophylactic role in encouraging disputants to resolve their differences. ■



Patrimoine canadien Canadian Heritage

1080 Beaver Hall, Suite 950, Montréal, Québec, H2Z 1S8

Tél: (514) 866-1245 Fax: (514) 866-1246
1-866-733-7767 1-877-733-1246

www.sdrcc.ca

The Sport Dispute Resolution Centre of Canada thanks Sport Canada for its generous financial contribution.