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

NO: SDRCC 24-0745

JAMES PICCOLI

(Claimant)

AND

CYCLING CANADA CYCLISME

(Respondent)

Before

Aaron Ogletree
(Arbitrator)

PROCEDURAL HISTORY

1. On August 24, 2024, the SDRCC appointed me from its rotating list of med-arb neutrals to facilitate and/or make a determination on the Claimant's appeal of Cycling Canada's (hereinafter the 'Respondent') decision that Mr. James Piccoli (hereinafter the 'Claimant') needed to provide evidence of performance readiness to participate in the Grands Prix Cyclistes de Québec et Montréal (hereinafter the 'GPCQM') after his performance in the 2023 Tour of Hainan.

2. The appeal was classified as urgent because the GPCQM was set to be held on September 13-15, 2024.

3. On August 26, 2024, a preliminary meeting was held in which the Claimant requested that Mr. Adam Klevinas (hereinafter the 'Respondent's Counsel') be removed as the Respondent's Counsel.

4. The parties agreed when the mediation session would be held.

5. The parties agreed to a timetable for submissions of the Claimant's Application to remove the Respondent's Counsel.

6. On August 26 and 27, 2024, the Claimant filed his submissions on the Claimant's Application to remove the Respondent's Counsel.

7. On August 27, 2024, the Respondent filed its submissions regarding the Claimant's Application to remove the Respondent's Counsel.

8. On August 29, 2024, a mediation session was held concerning this matter.

9. On September 9, 2024, the Arbitrator invited the Claimant to provide written clarification on the remaining issues he sought to arbitrate.

10. On September 11, 2024, the Arbitrator issued a short decision denying the Claimant's Application to remove the Respondent's Counsel.

11. On September 25, 2024, the Arbitrator issued a decision with reasons denying the Claimant's Application to remove the Respondent's Counsel.

12. On October 11, 2024, the Claimant provided written clarification on the remaining issues on which he seeks arbitration.

13. On October 15, 2024, the second preliminary meeting was held in which the Claimant clarified that the remaining issue is whether or not the Respondent deviated from policy with regards to its application of the performance readiness clause to him. The

Respondent requested to submit a motion to dismiss the Claimant's appeal. The parties agreed to a timetable for submissions for the Respondent's Motion to Dismiss.

14. On October 31, 2024, the Respondent filed its Motion to Dismiss.

15. On November 11, 2024, the Claimant filed his Response to [the] Motion to Dismiss.

16. On November 18, 2024, the Respondent filed its rebuttal to the Claimant's Response to [the] Motion to Dismiss.

BACKGROUND

17. The Claimant participated in the 2023 Tour of Hainan and his result satisfied the selection criteria for him to participate in the GPQCM.

18. On May 1, 2024, the Respondent updated its General Selection Policy.

19. On August 7, 2024, the Respondent's High Performance Director, Mr. Kris Westwood, wrote to the Claimant regarding the upcoming selection date for the 2024 GPQCM. In this email, Mr. Westwood acknowledged that the Claimant had satisfied the selection criteria to participate in the GPQCM. The Respondent sought further evidence of the Claimant's race readiness citing Section 6 of the Policy.

20. On August 9, 2024, the Claimant provided Mr. Westwood with a Strava file from a recent workout as proof of satisfying the competitive readiness requirement.

21. On August 13, 2024, Mr. Westwood responded to the Claimant, indicating that the Strava file was not sufficient for meeting the competitive readiness requirement, and he requested that the Claimant provide documentation of his condition that approaches the actual workload of the GPQCM, with a supporting power file.

22. On August 20, 2024, the Claimant filed an appeal requesting to be named to the Respondent's 2024 GPQCM team without an "asterisk or room for exclusion" and "to receive acknowledgment from the SDRCC of family and age discrimination, and history of non-compliance and bad-faith dealings with [him] and the SDRCC."

23. The Claimant provided the Respondent with more information. The Respondent concluded that this information satisfied the competitive readiness requirement that the Respondent imposed against him and allowed him to compete in the GPQCM.

24. The Claimant competed in both GPQCM races on September 13 and 15, 2024.

ARGUMENTS

Claimant's Position:

25. The issue for arbitration is whether or not the Respondent deviated from its usual policy regarding its application of the performance readiness clause to the Claimant. This issue is uncontested.

26. The Respondent deviated clearly and absolutely from the performance readiness clause in this case.

27. Regardless of whether or not the Claimant attended the race has no bearing on whether the Respondent deviated from policy. Given the time-sensitive nature of the arbitration the Claimant was left with no choice but to comply with their misapplication of policy if the Claimant was to participate in the race. The issue being arbitrated here is whether or not the Respondent deviated from policy, which they have acknowledged to be the case.

28. The Respondent's argument that arbitration of a clear deviation in policy is a waste of SDRCC resources is absolutely contrary to the SDRCC's very own Mission Statement.

29. The Respondent is arguing that because the Claimant has provided evidence of prohibited behaviours, the SDRCC does not have jurisdiction to arbitrate the application of a policy in a National Sport Organization ("NSO")'s selection decision.

30. The evidence of prohibited behaviours is provided as context as to why the actions of the Respondent may have been abusive. This evidence is of no influence on the facts of the present arbitration which are that the Respondent deviated from its published policy in its application of the performance readiness clause. The Arbitrator may opt to take the evidence of prohibited behaviour into consideration and/or include it in his decision or not. It is the Respondent's position that this is not the appropriate avenue for considering this kind of evidence. The Arbitrator will decide whether or not to take it into consideration. The Respondent's argument that because this evidence has been provided, a policy-related arbitration must be dismissed makes no sense. This is very clearly "throwing the baby out with the bathwater".

31. Any claims or evidence or reference to any events made in or as part of mediation has no consequence for this arbitration pursuant to Section 4.6 of the Canadian Sport Dispute Resolution Code ('SDRCC Code'). Any reference to or evidence provided from the mediation by the Respondent is a breach of confidentiality and the SDRCC Code.

32. The Claimant's goal with this arbitration is to protect future generations of cyclists from the policy abuses that the Claimant had to endure from the Respondent. Here, the Respondent has deviated from policy and the Claimant is requesting that the arbitration

proceed so that there may be applicable jurisprudence available for the next cyclist to whom the Respondent might misapply this clause to.

33. The Claimant will present that evidence before the appropriate audience, if the Arbitrator should decide that this is not the appropriate avenue for providing evidence of prohibited behaviours.

Respondent's Position:

34. The Claimant says that the issue for arbitration is whether or not the Respondent deviated from Section 6 of the General Selection Policy (hereinafter 'Policy') when it required him to satisfy performance readiness conditions. The Claimant also says that this issue is uncontested.

35. The Respondent's deviation from Section 6 of the Policy is no longer in dispute. The Claimant even admits in his submissions that the Respondent has acknowledged that it deviated from Section 6 of the Policy.

36. The only issue in the present appeal is undisputed and it has been resolved. As such, the present appeal is devoid of any issues or facts to arbitrate.

37. The Respondent acknowledged that the information that it sought from the Claimant on August 13, 2024 (i.e., that he provide a workout that showed "at least 5,000 KJ of work over less than 5.5 hours by two weeks prior to the Quebec race (by Aug.30)") went beyond the scope of Section 6 of the Policy, and that, pursuant to Section 6, the Respondent was only permitted to request that the Claimant demonstrate that he was at the level of performance that he had achieved when he qualified for the GPQCM, with his race result at the 2023 Tour of Hainan.

38. The Respondent agrees that its August 13, 2024 request to the Claimant was a deviation from Section 6 of the Policy, and that it withdrew this request, and accepted the information provided by the Claimant on August 9, 2024 and August 29, 2024, after which the Respondent considered that the Claimant had demonstrated that he was at the level of performance that he achieved when he qualified for the GPQCM in 2023.

39. The Respondent acknowledged that its initial application of Section 6 of the Policy was too broad, and it agreed that the Claimant only had to demonstrate that he was performing at the level he was at when he satisfied the objective criteria to race the GPQCM.

40. The Respondent submits that the Claimant's request that the Arbitrator declare that the Respondent's first application of Clause 6 and "race readiness" check, and the subsequent cooperation and file supplied by the Claimant was sufficient, conformed

with Clause 6, and fulfilled all criteria necessary for selection to and participation in the race no longer has any relevance, nor does it constitute a valid object of an appeal, for which it would be an inefficient and ill-advised use of the Parties' and SDRCC's resources to pursue.

41. The Claimant indicates that his evidence of prohibited behaviours is provided as context as to why the Respondent's actions may have been abusive and that this evidence bears no influence on the facts of the present arbitration, which the Claimant restates is whether the Respondent deviated from Section 6 of the Policy. He also says that the Arbitrator may consider whether or not to take the alleged evidence of prohibited behaviour into consideration or include it in his decision.

42. There is no need for the Arbitrator to issue a ruling on an issue that has been resolved, much less consider evidence that was only provided "as context", which does not even constitute evidence, and for which there is a specific and appropriate forum to decide on whether a participant has breached the Universal Code of Conduct to Prevent and Address Maltreatment in Sport ("UCCMS").

43. The Respondent denies that it has breached confidentiality with regard to Section 4.6 of the SDRCC Code by referring to the outcome of the mediation in the present proceedings.

44. Section 4.6(b) of the Code reads as follows:

> The RF/Mediator, the Parties, their representatives and advisors, the experts, and any other Person present during the Resolution Facilitation or Mediation session shall not disclose to any third party any information or document given to them during the Resolution Facilitation or Mediation, unless required by law to do so or with the consent of all Parties.

45. By referring to the outcome of the August 29, 2024 mediation held between the parties within the context of its Motion to Dismiss, the Respondent did not disclose to any third party any information or document given to them during the Resolution Facilitation or Mediation.

46. Instead, the Respondent referred to the outcome of the mediation to the parties and Arbitrator only, and for the purpose of demonstrating that the object of the Claimant's appeal had been resolved, which, in any event, the Arbitrator was already aware.

47. It should also be noted that the Respondent filed its Motion to Dismiss to avoid having to litigate issues that have already been resolved, and to avoid expending its finite resources on ongoing litigation.

48. It appears from the Claimant's submissions that his objective is to make a public example of the Respondent based on his history with the organization.

49. The Respondent is not trying to hide anything by seeking to have the Claimant's appeal dismissed. Instead, the Respondent is seeking to ensure that its and the SDRCC's finite resources are expended on issues that properly belong in the present forum.

50. If the Claimant wishes to maintain his allegations of Prohibited Behaviour or other breaches of the Respondent's policies, there are appropriate and mandatory forums where such allegations can be made, and which ensure transparency of the outcome. However, those forums do not include the SDRCC for team selection matters that have already been resolved.

51. Matters related to discrimination, reprisal and other Prohibited Behaviours fall under the Respondent's Code of Conduct and Ethics, for which specific processes – through the Respondent's Complaints and Discipline Policy or the Office of the Sport Integrity Commissioner ('OSIC'), as applicable – exist to address any allegations of such conduct.

52. With respect to reporting allegations to the OSIC, the Respondent notes that Mr. Westwood, and all other Respondent staff, are UCCMS Participants, the Claimant's allegations involve Prohibited Behaviour which includes, at minimum, discrimination under the UCCMS – see Section 5.8, but may also include reprisal, depending on the full extent of the Claimant's allegations, and the Claimant indicated clearly in his August 18, 2024 email and October 10, 2024 clarifications that he would be filing a complaint before the OSIC.

53. The OSIC is the mandatory forum for any allegations of Prohibited Behaviour against a UCCMS participant pursuant to the Complaints and Discipline Policy, to which the Claimant was bound to comply with pursuant to his athlete agreement. Since the Claimant has already indicated that he would be filing a complaint against Mr. Westwood before the OSIC and may have already filed such a complaint, it would be an inefficient use of the Parties' and the SDRCC's resources, and inappropriate for the present Tribunal to hear and render a decision regarding the Claimant's allegations of Prohibited Behaviour.

54. If the Claimant's allegations are not heard by the OSIC because the OSIC is not the appropriate jurisdiction, either because the allegations are not breaches of the UCCMS or because the individual(s) that are alleged to have committed the breaches are not UCCMS participants, Section 6.2.1 of the Complaints and Discipline Policy outlines the process for addressing alleged breaches of the Respondent's policies (i.e., the Code of Conduct and Ethics). This process involves reporting the alleged breach(es) to the Respondent's Independent Third Party, after which the report is screened by the Independent Third Party and, if admitted, governed by specific procedural rules, depending on the process that the Independent Third Party determines appropriate.

55. The SDRCC is not the appropriate forum to hear a complaint involving alleged breaches of the Respondent's Code of Conduct and Ethics pursuant to the Complaints and Discipline Policy. The SDRCC's jurisdiction would only be triggered after a matter has gone through the Complaints and Discipline Policy, and then through the Appeal Policy.

56. To the extent that the Claimant raised a Memorandum of Understanding ('MoU') and 2023 Consent Order related to a previous SDRCC matter as part of his arguments to support his allegations of discrimination, reprisal or Prohibited Behaviour, or the Respondent's non-compliance with these agreements, the Respondent notes that, as it relates to the MoU, the Claimant has already instituted proceedings against the Respondent before the Small Claims Division of the Court of Québec. The Court heard the matter on October 16, 2024 and its decision is pending.

57. The Claimant should not be permitted to litigate the same issues in multiple forums. In the case of the MoU, the Claimant has already triggered proceedings to attempt to enforce the MoU and to seek damages against the Respondent, and since the Consent Order provides a specific dispute resolution mechanism, neither matter would be properly addressed before the present Tribunal and must therefore be dismissed.

58. The Respondent notes that, pursuant to Subsection 5.14(b) of the SDRCC Code, a party seeking costs may only do so seven days after the final award or decision on the merits is rendered. The Claimant's request for costs is therefore premature.

59. The Respondent may take on an eventual costs request made by the Claimant, but to its knowledge, the Claimant is unrepresented in the present matter, and has therefore not incurred any legal expenses. As such, the only costs that the Claimant is likely to have borne would be the SDRCC filing fee of $500.

60. Without prejudice to any position that the Respondent may take on an eventual costs request made by the Claimant, the Respondent denies that its deviation from the Policy was abusive.

ISSUE

61. The issue is whether the Respondent's Motion to Dismiss the Claimant's appeal should be granted, because it is undisputed that the Respondent deviated in its application of the performance readiness clause in Section 6 of the Policy to the Claimant and the Claimant was named to the Respondent's 2024 GPQCM team and participated in the 2024 GPQCM.

RELEVANT CASE LAW

62. The standard for determining whether the Respondent's Motion to Dismiss should be granted is the summary judgment test defined as follows in the Canadian Supreme Court decision *Hryniak v. Mauldin*, 2014 SCC 7 (CanLII), [2014] 1 SCR 87, at para. 49:

> There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious, and less expensive means to achieve a just result.

RELEVANT PROVISIONS

63. Section 6 of the Respondent's Appeals Policy governs Performance Readiness and Injuries. It states that:

> 6. PERFORMANCE READINESS AND INJURIES
> All selections made using these criteria are subject to an assessment of the athlete's performance readiness.
> "Performance readiness" is defined as the ability of the athlete to achieve equal or superior performance(s) at the scheduled event, as compared to the performance(s) the athlete achieved in qualifying. The final recommendation on competitive readiness will be made by the relevant coach to the DHPS, using all available information at his/her disposal including performance results and progress over the selection period, the suitability of the training and competition plan, fitness and other indicators, submitted medical documentation, consultation with the athlete's personal coach, and any other relevant performance related information.
> Once selected, athletes who do not maintain performance readiness due to lack of fitness, injury, or illness may be removed from the team at any time per Clause 7 below.
> Athletes are required to immediately report any injury, illness, or change in training that could affect their ability to compete at their highest level. Notification must be sent to the relevant coach and to the Director of High Performance Services.

64. Section 4.6 of the SDRCC Code governs the Confidentiality of Mediation. It states that:

> 4.6 Confidentiality of Resolution Facilitation and Mediation
> (a) The meetings between the Parties and the RF/Mediator shall be confidential and without prejudice.
> (b) The RF/Mediator, the Parties, their representatives and advisors, the experts, and any other Person present during the Resolution Facilitation or Mediation session shall not disclose to any third party any information or document given to them during the Resolution Facilitation or Mediation, unless required by law to do so or with the consent of all Parties.
> (c) The RF/Mediator shall not be called as a witness, and the Parties undertake to not compel the RF/Mediator to divulge records, reports or other documents, or to testify in regard to the Resolution Facilitation, in any arbitral or judicial proceedings, including proceedings before the SDRCC, unless required by law to do so.

> (d) The RF/Mediator shall not produce a report of the discussions between the Parties. All written and oral statements and settlement discussions made in the course of Resolution Facilitation or Mediation shall be confidential and will be treated as having been made without prejudice. Such statements can only be disclosed with the consent of all Parties.
> (e) When a Mediation process concerning an alleged violation of the UCCMS leads to a settlement reached by all Parties and approved by the DSO, any sanction agreed upon that in some way restricts a Party's eligibility to participate in sport shall be immediately recorded in the Abuse-Free Sport sanctions registry maintained by the OSIC.

65. Section 5.14 of the SDRCC Code governs the awarding of costs. It states that:

> 5.14 Costs
> (a) Except for the costs outlined in Section 3.8 and Subsection 3.7(e), and unless expressly stated otherwise in this Code, each Party shall be responsible for its own expenses and those of its witnesses.
> (b) Where applicable, Parties seeking costs in an Arbitration shall inform the Panel and the other Parties no more than seven (7) days after the final award or decision on merits being rendered.
> (c) A reasoned decision on costs shall be communicated to the Parties within ten (10) days of the closing of cost submissions.
> (d) The Panel does not have jurisdiction to award damages, compensatory, punitive or otherwise, to any Party.

ANALYSIS

66. It is undisputed that: a) the only issue for arbitration is whether or not the Respondent deviated from policy with regards to its application of the performance readiness clause; b) both Parties agree that the Respondent deviated from Section 6 of the General Selection Policy when the Respondent requested additional evidence of the Claimant's competitive readiness; and c) the Claimant competed in both GPQCM races on September 13 and 15, 2024.

67. There is no genuine issue requiring arbitration in this case. The facts for the only issue in this case are uncontested. The Claimant even achieved his first goal and requested solution, which was to be selected to the Respondent's GPQCM team, and he participated in both 2024 GPQCM events without asterisk or room for exclusion. He no longer expressed an interest in his second goal and requested solution.

68. The Claimant argues that the arbitration should proceed because the Respondent has deviated from policy and so there may be jurisprudence for the next cyclist to whom the Respondent should choose to misapply this clause. In doing so, the Claimant's goal with this arbitration is to protect future generations of cyclists from the abuses of policy that the Claimant had to endure from the Respondent. This is different from what the Claimant described in his Appeal as the solutions that he was looking for from the SDRCC and conclusion sought which were 1) "to be named to the team for GPCQCM, with no asterisk or room for exclusion" and 2) "to receive acknowledgement from the

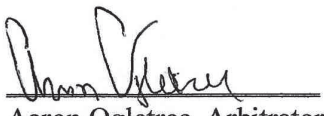
SDRCC of family and age discrimination, and history of non-compliance and bad-faith dealings with [him] and the SDRCC".

69. It is not necessary to conduct an arbitration to reach a fair and just decision on the merits. The issue and facts have already been decided by the parties. In essence, the only thing that would be accomplished by arbitration in this matter is confirmation of an uncontested issue and facts through jurisprudence. As a result, there is no genuine issue requiring arbitration for a fair and just determination in this matter.

CONCLUSION

70. The Respondent's Motion to Dismiss in this matter is granted.

Signed in Detroit, this 3rd of December, 2024.



Aaron Ogletree, Arbitrator