

TEAM SELECTION DISPUTE PREVENTION

ATHLETES FORUM 2007, WHITEHORSE

Workshop Summary

Introduction

- The Sport Dispute Resolution Centre of Canada (SDRCC) offers dispute resolution services in the form of resolution facilitation, mediation and arbitration to National Sport Organizations (NSOs) and their members;
- SDRCC offers speedy services, which is a necessity in sport when the participation of an athlete to a competition, or the result of the competition, is at stake. Over the past 24 months, SDRCC has significantly reduced the time required to resolve disputes: in 2006-2007, 47% of cases were resolved within 15 days and only 6% extended beyond 90 days;
- Aside from doping cases, team selection accounts for the majority of the disputes brought forward to SDRCC. In 50% of non-doping cases, the claimant is an athlete.

Team Selection from the Athlete Representative's Perspective

- Observation: Very few athletes in the room are or were consulted by their NSO, as athlete representatives, in the development or validation of team selection policies;
- Athlete representatives can play two key roles in the prevention of team selection disputes:
 - Representing the views, needs and rights of all athletes in their sport when they are consulted in the team selection policy development process;
 - Communicating to all athletes in their sport the decisions that affect them, directly or indirectly, including the adoption of team selection policies.
- Generally there are 4 steps to the team selection policy development (these steps are detailed in the SDRCC Selection Criteria for Amateur Sport - Guidelines and Tips brochure distributed at the Forum):
 - Background and Research: Research relevant information like minimum IF criteria, MSO criteria, or organizing committee criteria (that is the bare minimum required to be a member of the team) as well as important deadlines to consider. This phase is usually handled by the high performance staff;
 - Development: It is important to recognize and trust the coaching staff's competency and qualifications in selecting the best team possible. The challenge at this stage is to get what they have in their heads onto paper, so that it makes sense to the athletes who will try to make the team. Athlete representatives may very well be involved at this stage, especially when they are members of the high performance committee.
 - Validation: Once a draft policy is completed, it is essential to test it. It can be done by using performance results from previous years and looking at what would have happened if such policy was in effect then. Would it really yield the best team possible? Most importantly, athlete representatives should ensure that athletes in their sport are consulted: to reduce the risk of disputes, the selection criteria and process need be clearly laid out and understandable from an athlete's perspective.

- Communication and Implementation: This is where many disputes emerge. Athletes did not know, did not understand, were not told (or did not read). NSOs changed the criteria half way through and did not communicate the changes, or simply ignored or misapplied the selection criteria published. The athlete representatives' role is important - not in taking the burden to communicate it instead of their NSO, but in ensuring that the NSO has a thorough distribution and communication strategy around the team selection process.

Lessons from Case Studies

- The vast majority of the cases that brought the SDRCC disputes analysed during the workshop were caused by deficiencies in the communication or the implementation of the policy.
- It is possible that team selection in certain sports involve a certain degree of subjectivity. What is important is to ensure that selection decisions are justifiable from a performance standpoint and that athletes are not excluded from teams on the basis of criteria which are irrelevant to performance or simply discriminatory.
- In most cases where the appeal was rejected, the athletes failed to understand the selection criteria or simply failed to meet the criteria and were hoping for an exception to be made.
- Appendix A summarizes the lessons learned from the SDRCC cases during the first small group discussions (appeals granted).
- Appendix B summarizes the lessons learned from the SDRCC cases during the second small group discussions (appeals denied).

Next Steps

- If applicable, has your NSO completed and communicated its team selection policy for Beijing 2008? Ideally, athletes should know the team selection policy sufficiently in advance of the start of the qualification period so that their training regime can be adapted to enable them to peak at qualifying events. It makes no sense for them (and for their personal coaches) to find this out at the last minute. The timing would be perfect to start thinking about Vancouver 2010 or about the New Delhi 2010 Commonwealth Games!
- If athletes have not been involved in team selection policy development in your NSO so far, are there ways in which you can try to convince your NSO board that this consultation is important to ensure that athletes understand the criteria?
- How much have you extended your circle of influence during the Forum? How can you now use these new assets to make positive change happen in your NSO?
- How are you going to work between meetings to influence change in your NSO?
- Never hesitate to contact the SDRCC, AthletesCan, or Sport Solution if you ever need help preventing or resolving disputes!

APPENDIX A

LESSONS LEARNED FROM CASES STUDIES - APPEALS GRANTED

An NSO is accountable for communicating selection criteria to its athletes. This is particularly important in cases where the criteria change in advance of a major competition. The selection process may be considered unfair when an additional criterion is introduced at the last minute and without the involvement and knowledge of the athletes and/or other affected parties. It is therefore important for an NSO to be vigilant and consistent in the implementation of the team selection process.

Some form of subjectivity is permissible when selecting a team for a major event. Team selection in team sports can involve intangible factors like cohesion and chemistry; therefore, discretion and subjectivity are not necessarily inappropriate. Nonetheless, the selection process must not be so subjective as to make it difficult for the athletes to understand the factors being evaluated.

In some cases, the reason why an athlete cannot participate at an event (e.g. doping suspension, injury, etc.) must be taken into account if it becomes necessary to replace that athlete on the team.

Allegations of “bias” are serious and there must be objective facts supporting such allegations other than references to personal relationships. For example, the fact that a number of athletes selected for a national team are from the same university does not necessarily indicate bias.

An arbitrator will not overrule the conclusions of an expert selection committee unless the conclusions are deemed unreasonable. An arbitrator may refer an issue back to the expert committee when there is evidence that the selection process was incomplete.

In selection cases, the arbitrator may set aside the selection committee’s decision only if the process is conducted unfairly or the decision made arbitrarily, in bad faith, or in a discriminatory way.

If the arbitrator concludes that the selection process was flawed, then there is no requirement to rule on the selection decision that was reached through that flawed process. He/she may order a review of the process instead of rendering an irreversible decision.

In cases where an arbitrator concludes there has been an error in the application of the selection criteria, he/she may correctly apply the criteria and overturn the original selections. A selection committee may act in good faith, yet still arrive at a conclusion that is considered flawed or unreasonable.

An arbitrator has the authority to review a decision rendered by an internal committee in cases where the committee has failed to follow, or misinterpreted, its own policies and procedures. An arbitrator also has the authority to render the decision which he/she thinks ought to have been made in the first place if he/she deems it appropriate given the circumstances of the case.

APPENDIX B

LESSONS LEARNED FROM CASES STUDIES - APPEALS DENIED

It is not the arbitrator's role to rewrite a selection agreement duly negotiated and signed by the national sport federation and the multi-sport organization. When the parties decide to be bound by a third party's criteria, then they are also bound by any subsequent modification to that criterion, unless stated otherwise in the agreement.

In selection cases, it is not the arbitrator's role to agree or disagree with the committee's decisions. Rather, it is to determine whether the decisions were made fairly and without bias. Time limits, the shared responsibilities of parties involved, and the potential for error in the selection process are all factors to be considered by an arbitrator when rendering a decision.

Selection criteria must be clearly defined. NSOs may consider a range of factors when defining selection criteria including future potential, a variety of performances, and unique development opportunities. To succeed in certain appeals, the claimant must establish that the selection criteria were unreasonable.

When selection criteria are established and applied reasonably by a competent body, the arbitrator will not substitute his/her opinion for that of the experts. The existence of discretionary power does not necessarily mean that it must be used in every circumstance. An organization may choose to review some of its previous cases to determine when the use of discretion is most appropriate.

When there is a discretionary component to the selection process, the arbitrator must determine if it was used fairly and without bias or bad faith. Such a decision is not arbitrary, even if another decision could have been rendered by another authorized individual.

When selecting athletes for a team sport, it is reasonable to consider "team chemistry" as well as individual skills. Therefore, it is also reasonable that there would be subjectivity in the assessment by members of the selection committee.

When a selection committee must choose between two equally capable athletes, leadership and experience are two criteria that can be considered as part of the overall assessment. An allegation of bias or bad faith carries with it a high standard of proof because of the seriousness of the allegation.

An athlete seeking to compete at a major international competition like the Olympics or Paralympics must bear the responsibility for understanding how the selection criteria are to be applied:

- Bad luck is not sufficient reason to exempt an athlete from established selection criteria. An injury is not necessarily an "unforeseen circumstance" that would allow a selection committee to make an exception to the rules.
- Injury may not be identified in the selection criteria as a discretionary factor in deciding team selection, in which case it may have only limited impact on appeal.
- One victory does not necessarily guarantee selection to a national team.
- A doping infraction cannot be considered a "reasonable technical circumstance" under the selection criteria. Such an interpretation undermines the criteria as well as the Canadian Anti-Doping Program.

A claimant whose appeal has been denied can be ordered to contribute financially towards the legal costs of others involved in the dispute.