

CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)

SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)

N° : SDRCC 10-0115

JOCELYN ADDISON

(CLAIMANT)

AND

TAEKWONDO CANADA

(RESPONDENT)

AND

FRANÇOIS COULOMBE-FORTIER

(POTENTIAL AFFECTED PARTY)

AWARD

I INTRODUCTION

1. This arbitration concerns the “carding” of athletes under the rules applicable to Taekwondo Canada (“**TC**”) and its members. It is not the first such dispute to be referred to the Sport Dispute Resolution Centre of Canada (“**SDRCC**”) concerning this National Sport Organization (“**NSO**”) and its members, and it is regrettable that once again an arbitrator is required to determine the allocation of cards among Canadian taekwondo athletes.
2. No arbitrator chooses to be in this position. The responsibility to establish clear and valid carding criteria that reflect the nature, values and objectives of the sport in question (as well as of Canadian sport generally) lies primarily with the relevant NSO, as does the responsibility to ensure that those criteria are applied fairly and in accordance with the applicable regulatory framework. NSOs possess experience and knowledge that arbitrators do not. Decisions regarding carding are intended, wherever possible, to be made by knowledgeable members of the relevant NSO according to rules developed within the sport community. Only where necessary do arbitrators intervene to alter decisions that, as the

Claimant argues here, are based on deficiencies in the interpretation or application of the relevant carding criteria. This is one such case.

II FACTUAL AND PROCEDURAL BACKGROUND

3. In late 2009 (the exact date was not established) TC decided upon a list of taekwondo athletes to be recommended to Sport Canada for financial assistance (“**carding**”) pursuant to the Athlete Assistance Program Carding Nomination Criteria for the January 1, 2010 – December 31, 2010 Cycle (the “**2010 Criteria**”) established by TC and Sport Canada (the “**Decision**”). That list was submitted to Sport Canada by Mr. Gérard Lauzière, at the time the High Performance Director of TC, at a meeting with Sport Canada on 21 December 2009. The Claimant, Mr. Jocelyn Addison, was not among the athletes recommended for carding.
4. Mr. Addison appealed the Decision to TC. On 2 February 2010 the National Program Director of TC, Mr. Jonathan Dagostino, wrote Mr. Addison to inform him that “the Sanctions Committee has decided that, given the circumstances, the best course of action would be to appeal directly to the SDRCC”. Why TC chose not to conduct an internal appeal, or the circumstances which led it to inform Mr. Addison that he should instead appeal the Decision directly to the SDRCC, were not explained during the arbitration. In any event, Mr. Addison appealed the Decision to the SDRCC as he was told to do.
5. On 4 February 2010, Mr. Addison filed a Request in accordance with paragraph 3.4 of the Canadian Sport Dispute Resolution Code (the “**Code**”). TC’s Answer to the Claimant’s Request was filed on 12 February 2010. Having been duly notified of the dispute and of its potential impact on him, Mr. Coulombe-Fortier filed an Intervention in accordance with article 6.14 of the Code on 17 February 2010.
6. None of the parties were represented by counsel in these proceedings. Mr. Addison represented himself. Mr. Coulombe-Fortier was represented by his father, Mr. Michel Fortier. Taekwondo Canada was initially represented by Mr. Lauzière, who filed TC’s 12 February 2010 Answer; Mr. Lauzière was eventually replaced as TC’s representative by Mr. Pierre Lachance.
7. On 25 February 2010, the SDRCC convened a preliminary administrative conference call in accordance with article 3.8 of the Code. As indicated in the notes of that call prepared by the SDRCC, the parties were informed that the undersigned arbitrator, who had previously been advised by the SDRCC of his nomination by the parties, accepted his nomination. My statement of independence pursuant to article 3.2 of the Code was signed and returned to the SDRCC later that same day.
8. On 23 March 2010, a preliminary conference call with the parties was convened and presided by the undersigned. Although the parties had been unable to conclude a settlement

of the dispute during the resolution facilitation process mandated under the Code, Mr. Lachance (who by that time had replaced Mr. Lauzière as TC's representative in these proceedings) stated that he had recently obtained additional information on the basis of which a settlement might still be possible. The parties were invited to pursue their discussions concerning a potential settlement on the understanding that in principle an agreement acceptable to all concerned would be preferable to a decision imposed on them by an arbitrator.

9. In accordance with the procedural timetable established during the 23 March 2010 preliminary call, the parties filed additional materials during the period between 23 March and 1 April 2010.
10. As previously agreed, a hearing was held by conference call on 1 April 2010. In attendance were Mr. Addison, Mr. Lachance (for TC) and Mr. Fortier (for Mr. Coulombe-Fortier). None of the parties presented any witnesses. That hearing consisted entirely of submissions by the parties, including references to the documents previously filed, as well as questions by the arbitrator.
11. In the course of the 1 April 2010 hearing, Mr. Addison referred to a series of e-mails between and among various officials of Taekwondo Canada and its member athletes, including Mr. Addison. Those e-mails, which had not been filed by any party, according to Mr. Addison illustrated the circumstances surrounding TC's Decision which, he claimed, demonstrated the validity of his appeal. Mr. Addison was ordered immediately to transmit the e-mails in question to the other parties and the arbitrator by e-mail, in order for it to be determined whether they should be admitted as evidence in the proceedings.
12. After having received and read the e-mails in question, Mr. Fortier objected to their being filed as evidence at that late stage of the arbitration. Mr. Lachance expressed no views in this regard. After further discussion, the following was ordered:
 - The e-mails were admitted as being clearly material to the issues to be decided in the arbitration;
 - The hearing was suspended until 8 April 2010 in order to allow the other parties (TC and Mr. Coulombe-Fortier) to review this new evidence and, if they wished, to file their own evidence and secure the participation of witnesses concerning the matters addressed in the e-mails.
13. Between 1 April and 8 April 2010, Mr. Fortier filed several additional documents. TC filed no new materials but, as it had been encouraged to do, secured the participation of two important witnesses, as explained below.

14. The hearing reconvened on 8 April. This second hearing session consisted primarily of the hearing of two key witnesses involved in the exchange of e-mails that had been filed by Mr. Addison on 1 April 2010: Master Su Hwan Chung, Secretary General of Taekwondo Canada and a member of the NSO's Executive Committee; and Mr. Lauzière, the former High Performance Director of TC. TC presented its two witnesses, who were examined at length by the other parties and the arbitrator. The parties and their representatives also responded to questions from the arbitrator. Finally, each of the parties had a full opportunity to complete the presentation of its case begun on 1 April 2010, and to present closing arguments.

III THE POSITIONS OF THE PARTIES

15. As indicated, the object of this appeal is the Decision taken by Taekwondo Canada – specifically, by its High Performance Director, Mr. Lauzière – by which TC recommended to Sport Canada a list of athletes for carding in 2010, which list did not include Mr. Addison. Mr. Addison claims that he should have been recommended for carding, and he asks that I so order.
16. In brief, the positions of the parties are as follows.

Mr. Addison's Position

17. Mr. Addison claims that TC's Decision is based on an incorrect and improper interpretation of the 2010 Criteria. In particular, he asserts that the Decision violates paragraph 4(e) of the 2010 Criteria, which reads: "*Only one athlete from the same Olympic weight class can be carded at the Senior level.*"
18. Mr. Addison argues that: in violation of paragraph 4(e), two taekwondo athletes in the under 80kg Olympic weight division were selected by TC for carding; that in accordance with the 2010 Criteria the second of those cards, which was granted to Mr. Coulombe-Fortier, should instead have been granted to the highest ranking athlete in a different Olympic weight division; and that the highest ranking athlete in a different Olympic weight division eligible for carding is himself (Mr. Addison), in the under 58kg division.
19. Mr. Addison further argues that the "only one athlete from the same Olympic weight class" rule makes sense given that only one athlete in any given weight division may compete for Canada at the Olympic Games, and that the purpose of the rule is to provide the widest possible opportunity for eligible Canadian taekwondo athletes to receive financial assistance.
20. Mr. Addison also claims that the process by which TC's Decision was reached was unfair and violated his rights as a member of the NSO as well as the "guiding principles" set out in paragraph 1.2 of the 2010 Criteria. In particular, he claims that the Decision was improperly

made in consultation with the coaches of some – but not all – of the athletes affected by the Decision, including Mr. Coulombe-Fortier’s coach.

Taekwondo Canada’s position

21. Notwithstanding the contradictory evidence presented by its own witnesses (this evidence is discussed further below), TC’s position is that the 2010 Criteria, including paragraph 4(e), were correctly interpreted and applied by TC. In particular, the NSO argues that the 2010 Criteria make a distinction between cards and “levels” of cards; that there are various “levels” of Senior cards; that the reference in paragraph 4(e) to “Senior level” demonstrates that paragraph 4(e) only applies to “SR” cards; and that although two athletes in the under 80kg weight class were in fact carded, they did not receive the same “level” of Senior card – Mr. Coulombe-Fortier received an “SR” card while the other, higher ranking, athlete in the same weight class received an “SR1” card.
22. Taekwondo Canada also argues that the process by which the Decision was made was proper and in accordance with the applicable rules.
23. It is noted that TC’s position is expressed in its Answer, which was prepared by Mr. Lauzière. The NSO’s representative at the hearing, Mr. Lachance, had little if anything to add in this regard during the hearing itself.

Mr. Coulombe-Fortier’s position

24. Mr. Coulombe-Fortier concurs with the position of TC. He submits that there is no reason to modify the Decision, which was based on a proper interpretation and application of the 2010 Criteria. According to his representative, Mr. Fortier (his father), the aim of the 2010 Criteria is not to distribute financial support equally but to reward performance and increase the Canada’s chances to win Olympic medals.

IV DISCUSSION

The 2010 Criteria

25. For ease of reference the main provisions of the 2010 Criteria that were referred to during the arbitration are set out below.

1. INTRODUCTION

1.1 Purpose of the Carding Program – To identify and support Canadian athletes performing at or having the greatest potential to achieve top 8 results at Olympic Games and World championships.

1.2 Guiding Principles – The 2010 carding criteria is intended to allow fair and equitable treatment for all athletes, while ensuring that the system and criteria will be as objective and transparent as possible.

(...)

1.4 Nomination Process – Taekwondo Canada’s athlete nominations determined by Taekwondo Canada’s High Performance Director based upon the criteria presented in these guidelines and presented to Sport Canada for carding consideration. All nominations are subject to approval by Sport Canada.

(...)

3. OVERVIEW OF CARDING SYSTEM

3.1 System Overview

Card Category	Card Title	Card Description	Criteria
SENIOR CARD	SR1	1 st year of a two year card, based on achieving international performance.	Top 8 at the 2009 World Championships and ranked #1 in their Olympic Weight Class on Taekwondo Canada Overall Rankings published on the December 1, 2009
	SR2	2 nd year of a two year card, based on achieving international performance	Athletes who had a SR1 card in the 2009 cycle and have maintained their carding status in accordance with Paragraph 3.3, Paragraph 6 and the Athlete/Taekwondo Canada Carding Agreement.

(...)

4. SELECTION PROCEDURE

- Six Senior Cards (SR1, SR2, SR & C1) will be distributed in the following priority.
 - a) Athletes eligible for SR1 Cards

- b) Athletes eligible for SR2 Cards
- c) Athletes carded the previous year at the SR2 level and that meet the Injury Carding Criteria;
- d) If any cards remain, SR/C1 cards will be given out according to the Taekwondo Canada Overall Rankings. The highest ranked female not yet carded, then the highest ranked male not yet carded and so on until all six cards are distributed.
- e) Only one athlete from the same Olympic weight class can be carded at the Senior level.

(...)

- The Taekwondo Canada Overall Rankings released on December 1, 2009 will be used to determine carding priority. Please see the “Taekwondo Canada Athlete Ranking System” for more details on how athletes receive ranking points.

(...)

The decision-making process

26. Of particular concern in this case is the process by which the NSO proceeded to decide which athletes were to be recommended for carding. The evidence is unequivocal that up until the time he compiled the list of athletes recommended for carding, Mr. Lauzière did not know in which Olympic weight division the athletes intended to compete. The reason for this is that, contrary to its habitual practice, TC had not held its annual competition, known colloquially within the sport as the “carding games”, at which athletes are required to declare their Olympic weight division for the cycle to come. Nor had the athletes been otherwise requested to declare their Olympic weight divisions before the 2010 carding list was prepared.
27. Mr. Lauzière, TC’s High Performance Director at the time, testified that because he lacked this information he consulted certain coaches with a view to determining the Olympic weight divisions of the athletes potentially eligible for carding. Mr. Lauzière stated that in his view these consultations were not inappropriate and were in any case required given the unusual circumstances – he needed to determine the Olympic weight division for each athlete for carding purposes before submitting the list of recommended athletes to Sport Canada.
28. Master Chung, the Secretary General of the NSO, testified that he vehemently disagrees with Mr. Lauzière’s view of the matter. In several e-mails addressed to Mr. Lauzière and copied to many others in January 2010, Master Chung stressed his serious concern “regarding how the carded athletes have been chosen”. He questioned in particular how

athletes could have been recommended for carding when they had never been asked to declare their Olympic weight divisions and had not in fact made such declarations. For example, on 25 January 2010, Master Chung wrote to Mr. Lauzière:

Did you update the Olympic Weight Classes on Taekwondo Canada's Overall Rankings, published on December 1, 2009 yet? I have not seen it. In the ranking points on the Taekwondo Canada website, no Olympic Weight Divisions are declared yet for the athletes – did you declare the athletes' Olympic weight division yourself? Did you ask the athletes? ... If you have not asked, and the athletes did not declare themselves, how can you decide on their Olympic Weight Divisions and recommend them to Sport Canada?

Can you see the problem of submitting your nominations to Sport Canada ... when no Olympic Weight Divisions have been declared by Taekwondo athletes?

You mentioned that you obtained information from coaches prior to your nominations because you are new to Taekwondo Canada. Can you see the conflict of interest? Whether these coaches gave you feed back from their heart? You have put them in a position of conflict of interest because their athletes are on the list. (...)

29. Master Chung reiterated these concerns during the hearing and stated specifically, in response to a question from the arbitrator, that he considered that the process by which Mr. Lauzière decided which athletes to recommend for carding was unfair for these reasons. Master Chung emphasized that, notwithstanding Mr. Lauzière's description of his conversations with certain coaches (as well as certain documentary evidence submitted by Mr. Coulombe-Fortier to the effect that those coaches were not involved in the ultimate decision regarding which athletes should be carded), as far as TC is concerned it remains unclear who exactly Mr. Lauzière actually spoke to. Master Chung also stressed that, in any event, the fact that not all athletes' coaches were consulted is in his view highly problematic from the perspective of the fair and equitable treatment of all athletes. According to Master Chung this problem, in addition to the substantive problem that the athletes had not themselves declared their Olympic weight divisions, means that "in my [ie, in Master Chung's] personal opinion, the carding decision was not made properly."
30. It is impossible to ignore the testimony of TC's Secretary General in this regard. And in any case, I concur with the views expressed by Master Chung. Irrespective of the proper interpretation of paragraph 4(e) of the 2010 Criteria (this question is discussed in detail below), the fact that TC purported to recommend certain athletes for carding in the absence of declarations by the athletes as to their respective Olympic weight divisions, and that it did so in part on the basis of information from certain coaches whose own athletes were eligible for carding, undermines the validity of the Decision. The manner in which the

Decision was made was neither fair and equitable to all athletes nor as objective and transparent as possible – the “guiding principles” of the 2010 Criteria and their application.

31. I hasten to add that the integrity of the relevant actors is not in question here. I do not doubt that Mr. Lauzière acted in good faith as he thought best, as did the coaches whom he consulted. The fact remains, though – as both Master Chung and Mr. Lauzière testified – that in order to establish the list of athletes to be recommended for carding, it was necessary to know each athlete’s Olympic weight division; that TC did not follow its normal practice of having athletes declare their Olympic weight divisions; and that TC instead went ahead and determined those weight divisions itself, based in part on information provided by certain coaches whose own athletes were potentially eligible for carding.

Paragraph 4(e) of the 2010 Criteria

32. I turn now to the question of the interpretation of the 2010 Criteria, in particular paragraph 4(e).
33. Unfortunately, TC was unable to offer any evidence concerning the origins, object or purpose of paragraph 4(e), or any submissions concerning its proper interpretation other than those set out in writing in its 12 February 2010 Answer. It was left to the arbitrator to weigh the parties’ claims against the plain words of the provision and to consider the evolution of the rule as appears from the various documents filed by the parties.
34. It seems that the “only x athletes from the same Olympic weight class can be carded” rule appeared for the first time in the TC-Sport Canada Carding Nomination Criteria for the 2009 carding cycle. Paragraph 4 of the 2009 carding criteria reads in part as follows:

4. SELECTION PROCEDURE

- 8 Senior Cards (SR1, SR2, SR & C1) will be distributed in the following priority (...):
 - a) Athletes eligible for SR1 Cards
 - b) Athletes eligible for SR2 Cards
 - c) Athletes carded the previous year at the SR2 level and that meet the Injury Carding Criteria;
 - d) If any cards remain, SR/C1 cards will be given out according to the Taekwondo Canada Overall Rankings. The highest ranked female not yet carded, then the highest ranked male not yet carded and so on until all six cards are distributed. Only two athletes from the same Olympic weight class can be carded.

(Underlining added)

35. The comparable provisions of the 2010 Criteria are:

4. SELECTION PROCEDURE

- Six Senior Cards (SR1, SR2, SR & C1) will be distributed in the following priority.
 - a) Athletes eligible for SR1 Cards
 - b) Athletes eligible for SR2 Cards
 - c) Athletes carded the previous year at the SR2 level and that meet the Injury Carding Criteria;
 - d) If any cards remain, SR/C1 cards will be given out according to the Taekwondo Canada Overall Rankings. The highest ranked female not yet carded, then the highest ranked male not yet carded and so on until all six cards are distributed.
 - e) Only one athlete from the same Olympic weight class can be carded at the Senior level.

36. A comparison of the 2009 document and the 2010 Criteria shows that, in 2009, the rule that “only two athletes from the same Olympic weight class can be carded” was very clearly restricted to SR/C1 cards. In the 2010 Criteria, however, the rule is amended, the wording is revised and the rule itself becomes a stand-alone provision that is one of five rules (*a* to *e*) applicable to the selection procedure for the six Senior cards that are available.

37. When asked about the evolution of this rule, Mr. Lachance was unable to provide any explanation. He offered what he called the “speculation” that the change from the 2009 document was merely the result of a clerical error – an “*erreur de frappe*” – by a secretary who mistakenly hit the “Return” (*Entrée*) button on her keyboard and in doing so inadvertently created a new sub-paragraph (e) in paragraph 4.

38. This hypothesis is rejected. As mentioned, the wording of the rule contained in paragraph 4(e) of the 2010 Criteria – “Only one athlete from the same Olympic weight class can be carded at the Senior level” – is not the same as the wording of the last sentence of paragraph 4(d) of the 2009 document. On its face, it is clear that the rule was intentionally amended when the 2010 Criteria were established. Further, it would be inappropriate to purport to interpret the criteria applicable in this case on the basis of mere speculation, or to assume that these criteria are the result of clerical errors. Paragraph 4(e) says what it says, and its interpretation is crucial to the determination of Mr. Addison’s appeal of the TC Decision.

39. As mentioned, both TC in its written Answer (prepared by Mr. Lauzière, it is recalled) and Mr. Coulombe-Fortier throughout his written and oral submissions argue that the 2010 Criteria make a clear distinction between “cards” and so-called “levels” of cards, and that

the words “Senior level” in paragraph 4(e) demonstrate that paragraph 4(e) applies only to “SR” cards – which they assert are the only “Senior level” cards – and not to “Senior cards” more generally.

40. During the hearing, Mr. Lauzière stated that this is his understanding of the meaning of paragraph 4(e). However, Mr. Lauzière also acknowledged, and this emerges clearly from the series of e-mails filed by Mr. Addison on 1 April 2010, that he considered the 2010 Criteria, in particular the selection procedure set out in paragraph 4, to be “confusing”. As Mr. Lauzière wrote to Master Chung and others 21 January 2010:

The criteria document is confusing, but we took the best decision possible, the appeal process is there for this reason, to make sure the criteria are well interpreted. If we picked Jocelyn [Addison] we would have an appeal from François [Coulombe-Fortier]. This is, in part, why we are reviewing the carding criteria for [the] new year, to make it more clear and to choose the athletes that deserve to be carded.

41. When asked which elements of the selection procedure he found particularly confusing, Mr. Lauzière replied “especially 4(e)”.
42. Mr. Lauzière also testified that carding criteria “are supposed to be written clearly”, but that because he found the 2010 Criteria confusing he consulted with members of TC’s High Performance Management Group as to their meaning.
43. With the greatest respect – and again, Mr. Lauzière’s good faith is not called into question here – the evidence suggests that at the time the Decision was made, the TC official responsible for recommending athletes for carding in accordance with paragraph 1.4 (Nomination Process) and paragraph 4 (Selection Procedure) of the 2010 Criteria was himself uncertain as to the meaning of the relevant criteria and of his ability to understand and apply those criteria fairly.
44. Mr. Lauzière testified that, in his opinion, ideally there should be no limit whatsoever on the number of cards available to be granted at any so-called “level”, and that the only criterion for carding should be performance as measured by TC’s Overall Rankings. In his view, paragraph 4(e) suggests that TC might have considered that a restriction on the number of cards at the SR/C1 level was justifiable, but that it is unlikely that the intent of the NSO was to restrict the number of higher-level SR1 and SR2 cards.
45. Here too, the Secretary General of the NSO disagreed. Master Chung testified that his own view is that paragraph 4(e) is intended to apply to all Senior cards as described in paragraphs 3 and 4 of the 2010 Criteria. When asked specifically what he believes the words “Senior level” in paragraph 4(e) are intended to mean, he answered: “All Senior cards. SR1, SR2 and SR/C1”.

46. Master Chung also stated that, in his view, the probable purpose of restricting the number of cards granted at any so-called “level”, not only SR/C1 cards, was to encourage a wider distribution of cards. In fact, both Master Chung and Mr. Lauzière explained that it is not unusual for an NSO to vary its carding criteria from time to time throughout the course of a 4-year (Olympic) cycle, depending on its priorities at any given point in that cycle. This includes varying the criteria so that they are tied more or less closely to the assessment of an athlete’s Olympic medal potential. By way of example, Master Chung pointed to the TC-Sport Canada Carding Nomination Criteria for the 2011 cycle, in which the “only x athletes from the same Olympic weight class can be carded” rule is abolished altogether and the focus of the selection procedure is truly performance at the international level.
47. Having considered all of the evidence presented by the parties as well as the arguments presented by Mr. Addison and Mr. Coulombe-Fortier during the two hearing sessions (Mr. Lachance offered no argument other than his “speculation” as to the origin of paragraph 4(e)), and after reading and re-reading the relevant provisions of the 2010 Criteria, I find that paragraph 4(e) has the meaning that is advocated by Mr. Addison, that is, *only one athlete in any Olympic weight division can be granted a Senior card (SR1, SR2, SR/C1)*. This means that only one athlete in any Olympic weight division may be recommended by TC for a Senior card (SR1, SR2, SR/C1).
48. I find that this is what the plain wording of paragraph 4(e) says. I also find that such an interpretation is supported by the fact that the rule was modified from its 2009 version. Whereas for the 2009 carding cycle the “only x athletes from the same Olympic weight class can be carded” rule applied explicitly and exclusively to SR/C1 cards, the rule was amended for the 2010 carding cycle and became a stand-alone provision applicable to the selection procedure for all Senior cards (SR1, SR2, SR/C1). I find that to interpret paragraph 4(e) as proposed by TC and Mr. Coulombe-Fortier, as apparently was done in making the Decision, is contrary to both the plain meaning of the rule and its evolution from 2009 to 2010. Such an interpretation, while perhaps sensible from the point of view of certain insiders or decision-makers who may advocate ranking or performance as the sole criterion for financial assistance, would also run counter to the guiding principle of “transparency” as set out in paragraph 1.2 of the 2010 Criteria, since it is an interpretation at odds with the words of the provision. I am disappointed, as I believe both athletes involved in these proceedings have a right to be, that TC was unable or unwilling to offer any clear evidence or submissions concerning key elements of its own carding criteria. However I am comforted by the patently sincere, forthright and credible evidence presented by Master Chung, which supports my findings.
49. Prior to the close of evidentiary phase of the hearing process on 8 April 2010, I reminded the parties that among the potential recourses open to me was the possibility of remanding the issue to TC for determination. I asked the Secretary General of TC whether he had any

views regarding the appropriateness or feasibility of such a course of action. Master Chung stated that in his view, requiring TC to consider the matter again and render a new decision would not work and would not be desirable. He stated that TC would face the same impediment to making a fair decision, today, as it did when it made the Decision in question, namely, that the athletes were never asked to declare their Olympic weight divisions.

50. There is a further reason why I do not consider it appropriate in this case to refer the matter back to the NSO in question. Even if there existed no issue concerning Olympic weight divisions, and even if the fairness of the decision-making process were guaranteed, it would still be necessary to determine the meaning of paragraph 4(e) of the 2010 Criteria. I consider that it would be inappropriate to refer that question back to TC, after all of the parties agreed that the issue should be determined by the SDRCC and the jurisdiction of the SDRCC was never questioned.
51. I also consider that it would be inappropriate, and entirely unnecessary, for me to refer the issue back to Taekwondo Canada for determination on the basis of my own decision concerning the meaning of paragraph 4(e). The reason is simple: the parties are in agreement that the determination of the meaning of paragraph 4(e) resolves the entire dispute. If paragraph 4(e) means what Mr. Addison says it means, then he must be recommended by TC for carding for the 2010 cycle. If on the contrary paragraph 4(e) means what TC and Mr. Coulombe-Fortier say it means, then the Decision stands. In other words, once the meaning of paragraph 4(e) is determined, there is nothing further to be decided.
52. As explained above, I have found that paragraph 4(e) of the 2010 Criteria means what Mr. Addison says it means. I have moreover found that there were serious deficiencies in the process by which TC made the Decision concerning the athletes to be recommended for carding for the 2010 cycle, including as regards the determination of the athletes' Olympic weight divisions and the interpretation of the carding criteria themselves, "especially 4(e)". Taekwondo Canada should have, and it is hereby ordered to, recommend Mr. Jocelyn Addison for carding for the cycle 1 January 2010 to 31 December 2010

Costs

53. No party made any submissions or request in respect of the costs associated with these proceedings. Accordingly, I make no award as to costs.

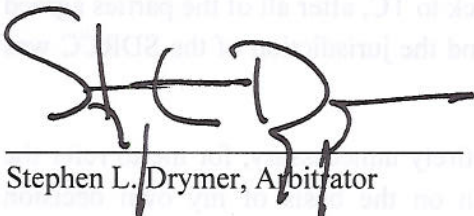
V DECISION¹

For all of the foregoing reasons:


The request filed by the Claimant is granted;

Taekwondo Canada shall recommend Mr. Jocelyn Addison for carding for the cycle 1 January 2010 to 31 December 2010.

Montreal, 20 April 2010



Stephen L. Drymer, Arbitrator



¹ In accordance with article 6.21(b) of the Code, this Decision was issued and communicated to the parties on 14 April 2010.