SPORT DISPUTE RESOLUTION CENTRE OF CANADA
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA

No.: SDRCC 14-0247

IN THE MATTER OF AN ARBITRATION

BETWEEN: London Runner Distance Club (Claimant)

AND

Athletics Canada (Respondent)

ARBITRATOR: Ross C. Dumoulin

REPRESENTATIVES:

For the Claimant: Steve Weiler, Coach and Race Director
Steve Boyd, Representative

For the Respondent: Peter Lawless
Counsel

DECISION
February 5, 2015

This is an arbitration decision rendered pursuant to paragraph 6.21(a) of the Canadian Sport Dispute Resolution Code (2015) (the "Code"). I was selected by the parties pursuant to paragraph 6.8(b)(i) of the Code and appointed as arbitrator by the Sport Dispute Resolution Centre of Canada (SDRCC) to hear and determine the present matter. My appointment was confirmed by the SDRCC on January 8, 2015 pursuant to paragraph 6.9 of the Code.

The case pertains to a dispute between Mr. Steve Weiler on behalf of the London Runner Distance Club (the "Claimant") and Athletics Canada (the "Respondent"). The dispute concerns the Claimant's Request to overturn a decision by the "Designated Official" appointed by Athletics Canada under its internal Appeals Rules not to allow its appeal of the Athletic Canada Competitions Committee's bid decision regarding the 2015 Canadian 10,000m Championship. The Request also asks for an order that a new panel, approved by both parties, re-evaluate the three bids for the Championship.

On January 16, 2015, a hearing was held relating to the preliminary issue of whether or not there were any affected parties before my decision on the Designated Official's ruling. On January 19, 2015, this Panel rendered a decision on that preliminary issue to the effect that there were no affected parties at that stage of the proceedings. Therefore, no affected parties were identified for participation in the hearing pertaining to the Designated Official's ruling.

Before the said hearing, the parties were given an opportunity to file on the Case Management Portal (CMP) documents, written submissions and replies which also elicited the facts of the case. They did so in thorough fashion.

On January 30, 2015, a hearing by conference call pertaining to the Designated Official's ruling was held pursuant to section 3.12 of the Code. The Panel informed the parties that the facts contained in their previously filed submissions would be considered as accurate unless contradicted by the other party. The parties were then given the opportunity to present further submissions, or to elaborate upon or emphasize aspects of the submissions they had previously filed. During the course of the hearing, additional facts were adduced and/or clarified and aspects of their respective positions were further elaborated.

THE FACTS

On October 24, 2014, Athletics Canada posted a bid document on its website which reads in part as follows:

> Friday, October 24, 2014
>
> Athletics Canada is currently accepting letters of interest from communities and/or events interested in hosting the Canadian 10,000-metres Championships. The event will serve as the Canadian Championships for male and female athletes in junior and senior categories as well as

serve as the 10,000-metres selection trials for the 2015 Pan American Junior Championships.

Interested parties need to provide a letter of intent, as well as a support letter from their respective provincial branch, no later than November 8, 2014. Athletics Canada's Competitions Committee will make selection of the host site in close consultation with the National Team Committee. Letters of intent must be sent to [e-mail address redacted].

The letter of intent needs to include:

- Date and location
- Host organizing committee hosting experience
- Promotional plan
- Athlete hosting plan (proposed accommodations)

Elements considered:

- Existing competitive 10000-metres race
- Experience of host organizing committee
- Weather and geography
- Race / event held before June 13, 2015

Athletics Canada will make an announcement of the successful site by November 28, 2014 to allow ample time for athletes and coaches to finalize their 2015 training and competition plan.

Also on October 24, 2014, Mr. Steve Weiler, Coach and Race Director for the London Runner Distance Club, sent the following e-mail to Competitions Committee member Mathieu Gentes:

Hi Mathieu,

I'd like some feedback regarding how close AC believes the Canadian 10,000m can be to the Payton Jordan and Canadian 10k road champs, to help establish a tentative date for our bid. I'm thinking the weekend

> of May 9th-10th makes the most sense, but would appreciate your input.

The date of the Payton Jordan Invitational – a high performance meet in California with a strong 10,000m – is set for Saturday May 2, 2015. The date of the Canadian 10k Road Championships is Saturday, May 23, 2015. The May 9-10, 2015 weekend dates proposed by the Claimant were meant to give athletes a weekend off from both racing and travel in between the Canadian 10,000m and Canadian 10k Championships.

On October 28, 2014 Mr. Gentes e-mailed Mr. Weiler as follows in response:

> Hi Steve,
>
> Spoke with Scott MacDonald, he would recommend staying away from the Payton Jordan for sure, May 9/10 (he thinks) can definitely work. That date might be a little harder on the juniors, that was his feedback.
>
> (The above-noted two e-mails were included in Mr. Weiler's appeal.)

On November 19, 2014, Mr. Gentes communicated Athletics Canada's decision to Mr. Weiler by an e-mail which reads as follows:

> Hi Steve,
>
> I'm contacting you today to let you know that the Competitions Committee has reviewed the three letters of intent received (London,

Guelph, Laval) and has made a decision on a host for the 2015 Canadian Jr/Sr 10000m Championships.

All three applications were heavily discussed and the Committee discussed heavily that all three groups would do a good job of putting the event on.

However I regret to inform you that London was not selected.

The Guelph application was selected based on the following points:

- More attractive for high performance athletes because Guelph is part of the 2015 National Track League
- Favorable date, the committee discussed that the London date was a little too early in the season, especially in the case of junior athletes
- Guelph already has an international component to their event, thus in a better position to attract top end competitors from other countries to provide a good competitive opportunity for Canadians
- The Guelph proposal offers a small stipend, meals and accommodations to any athlete who has run under the Pan Am Games standard

The awarding of the event is for 2015 only, Athletics Canada highly encourages you to apply again for future editions.

The Competitions Committee requests that the above information be kept private until Athletics Canada makes an official announcement on the awarding of the event.

Sincerely,

Mat

Subsequently, Mr. Weiler, on behalf of the London Runner Distance Club, filed an appeal of the above-noted decision by Athletics Canada's Competitions Committee pursuant to the internal Appeals Rules of the said NSO.

The Appeals Rules read in part as follows:

140 APPEALS

140.01 Purpose

The purpose of this rule is to enable disputes with members and participants to be dealt with fairly, expeditiously and affordably, within Athletics Canada without recourse to external legal procedures...

140.02 Definitions

These terms will have these meanings in this rule:

. . .

4. *Designated official* - refers to the person designated by Athletics Canada to administer this rule and its procedures.

140.03 Scope of Appeal

a. Any Member of Athletics Canada who is affected by a decision of the Board of Directors, of any Committee of the Board of Directors, or of any body or individual who has been delegated authority to make decisions on behalf of the Board of Directors, will have the right to appeal that decision, provided there are sufficient grounds for the appeal as set out in section 5 of this rule...

140.04 Timing of Appeal

a. Members who wish to appeal a decision will have 15 days from the date on which they received notice of the decision, to submit in writing notice of their intention to appeal to the Chief Executive Officer of Athletics Canada, along with a cheque in the amount of $250 payable to Athletics Canada. This cheque will be returned if the appeal is successful.

b. The notice will contain the... grounds for the appeal, a summary of the evidence that supports these grounds, and the remedy or remedies requested. Upon receiving this notice, the Chief Executive Officer will refer this request to the Designated Official who will administer the appeal process.

140.05 Grounds for Appeal

Not every decision may be appealed. Decisions may only be appealed, and appeals may only be heard, on procedural grounds. Procedural grounds are strictly limited to the Respondent:

1. ...
2. Failing to follow procedures as laid out in the bylaws or approved policies of Athletics Canada.
3. ...
4. ...
5. Making a decision that is grossly unreasonable or unfair.

140.06 Screening of Appeal

a. Within 7 days of receiving the notice and grounds of an appeal, the Designated Official will determine whether there are appropriate grounds for the appeal to proceed as set out in section 5.

b. If the appeal is denied on the basis of insufficient grounds, the Appellant will be notified of this decision in writing, giving reasons. This decision is at the sole discretion of the Designated Official, and may not be appealed.

140.07 Appeals Panel

If the Designated Official is satisfied that there are sufficient grounds for an appeal, within 14 days of the Chief Executive Officer having received the original notice of appeal the Designated Official will establish an Appeals Panel (hereafter referred to as the "Panel") as follows:

a. The Panel will be comprised of three individuals, drawn from a pool of qualified nominees submitted by Member Branches, will have no significant relationship with the affected parties, will have had no involvement with the decision being appealed, and will be free from any other actual or perceived bias or conflict.

. . .

The notice of appeal filed pursuant to Rule 140.04 b. by Mr. Weiler on behalf of the London Runner Distance Club with respect to the bidding decision by Athletics Canada's Competitions Committee reads in part as follows:

To whom it may concern at Athletics Canada, as well as 'outside adjudicator' Rachel Corbett, this is an appeal of the 2015 Canadian 10,000m Championship bid decision by the Competitions Committee, which I believe was made in complete disregard of the bid specifications as published by Athletics Canada (see Appendix A). Instead, the reasoning for the decision, as provided by the representative of the committee (see Appendix C), was based on tertiary items that had no basis in the 'elements considered' portion of the bid document.

On Friday, October 24th, Athletics Canada (AC) released a document seeking bids for the 2015 Canadian 10,000m Championships. The AC document listed exactly 4 points of selection criteria, as follows:

"Elements considered:

- Existing competitive 10000-metres race
- Experience of host organizing committee
- Weather and geography
- Race/event held before June 13, 2015"

1) Existing Competitive 10,000-meters race

Three groups submitted bids for this event, from London, Guelph, and Laval, respectively. The bids from London and Laval were from groups responsible for hosting existing competitive 10,000m races. The Guelph bid does not include an existing competitive 10,000-meters race, a factor that should either remove this bid from consideration or at the very least put them at a significant disadvantage relative to the other two bids.

The annual London 10,000m started in 2006...

. . .

...this element of criteria was disregarded in awarding the Championships to Guelph and this point alone warrants a reversal of the decision.

2) Experience of host organizing committee

All 3 bids were sent by groups with experience hosting events, as noted by the Competitions Committee who stated that "the Committee discussed heavily that all three groups would do a good job of putting the event on."

Two of the bids were sent by groups with specific experience hosting a Championship 10,000m event: the London bid stated that their group had hosted the 2006-2014 Ontario 10,000m Championships, marking 9 consecutive years of hosting the 10,000m Championships for the largest province in Canada. The Laval bid was also from a group that has

hosted recent provincial 10,000m Championships, thus giving them specific experience to this event. The Guelph group that bid, however, does not have experience hosting a 10,000m event; while experienced in other areas – as are the other 2 groups – this once again should place their bid at a disadvantage.

. . .

2) Weather and Geography

In the third of four 'Elements Considered' set out by Athletics Canada, we see a category where the Guelph and London bids cannot possibly have any significant advantage over each other. Located approximately 80 minutes apart, these 2 cities experience similar weather and have similar geographical advantages...

. . .

3) Race/event held before June 13, 2015

The fourth item is a very simple element of the criteria, to which all 3 bids abided. There is no further specification anywhere in the Athletics Canada document about the date, except that it should be held before June 13, 2015. Since no further details were given, all three bids were equal in this regard and no single bid could be more favourable based on their date.

Having looked at the specific criteria set out by Athletics Canada upon which the Canadian 10,000m bids were supposed to be considered, we will now look at the reasons provided to the London bidders as to why their bid lost to the Guelph bid, as outlined in an email from Mathieu Gentes to Steve Weiler on November 19, 2014 (**see Appendix C**). As you will see, these reasons are not based on the 4 Elements Considered as listed in the Athletics Canada document, nor are they consistent with a fair selection process that would have placed all bidding parties on a level playing field. Gentes wrote... [see e-mail of November 19, 2014 cited earlier]

1) Guelph Bid was More Attractive Because it is part of the 2015 National Track League

The first rationalization presented by the Competitions Committee was that the Guelph bid was "more attractive for high performance athletes because Guelph is part of the 2015 National Track League." This justification has no basis in the Elements Considered as published by Athletics Canada on October 24th...

It is important to note that, since the founding of this league, no NTL meet has ever included a competitive 10,000m race and as such there is no specific 10,000m history or tradition associated with the National Track League from which to build on for this specific, stand-alone Championship.

. . .

2) Favourable Date and Communications with AC Requesting Input on the Date

The second item listed in favour of the Guelph decision was: "Favorable date, the committee discussed that the London date was a little too early in the season, especially in the case of Junior athletes." This justification is not consistent with the Elements Considered as published by Athletics Canada on October 24th, which only required that the "Race/event (be) held before June 13, 2015."

On October 24, 2014, Steve Weiler emailed Competitions Committee member Mathieu Gentes the following...[see e-mail of October 24, 2014 cited earlier]

On October 28, 2014 Mathieu Gentes responded...

"Hi Steve,

Spoke with Scott MacDonald, he would recommend staying away from the Payton Jordan for sure, May 9 / 10 (he thinks) can definitely

work. That date might be a little harder on the juniors, that was his feedback."

As Scott MacDonald was also a member of the Competitions Committee at this time, this exchange shows that two members of the AC Competitions Committee were aware that a potential bidding group for the Canadian 10,000m Championship had requested feedback on an appropriate date. The official feedback from AC was, overall, favourable towards a May 9th or 10th date. This inquiry also gave these two members of the Competitions Committee an opportunity to expand on any possible scheduling criteria beyond the published "Race / event held before June 13, 2015" and they did not do so.

If there were any specific date restrictions related to the involvement of Junior athletes at the 2015 Canadian 10,000m Championships, they should have been specifically outlined in the original bid criteria (they were not) or they should have been presented to the London group when feedback was requested regarding a May 9th or 10th date.

. . .

3) Guelph Meet Has Pre-Existing International Component

The third point presented in favour of the Guelph bid was that "Guelph already has an international component to their event, thus in a better position to attract top end competitors from other countries to provide a good competitive opportunity for Canadians." The original AC document does not include any criteria for pre-existing international competition in events other than the 10,000m, meaning that once again this justification has no basis in the Elements Considered and is another example of the Competition Committee changing the bid criteria after the bids have been submitted.

. . .

4) Guelph Proposal offers Stipend, etc.

The fourth and final point in favour of the Guelph bid was that "The Guelph proposal offers a small stipend, meals, and accommodations to any athlete who has run under the Pan Am Games standard." Once again, this rationale has no basis in the Elements Considered in the original AC bid document and should not have been a consideration since the bid in question did not meet all of the published criteria.

. . .

In conclusion, the decision of the Competitions Committee was not made in accordance with the Athletics Canada 10,000m Championships bid criteria made available on October 24th. The winning bid did not meet the bid criteria and the AC Competitions Committee based their decision on elements that were not part of the original set of criteria... And finally, the date of the event – an incredibly straight-forward aspect of the bid criteria – was somehow used to favour one bid over others, with absolutely no basis in the AC document upon which to do so.

We ask that this decision be reversed and that a second evaluation of the three bids be carried out by an independent party with no direct association or vested interest with any of the groups involved.

Steve Weiler
London Runner Distance Club

On December 4, 2014, Ms. Rachel Corbett, the Designated Official referred to in the above-noted rules, communicated her decision to Mr. Weiler as to whether or not there were, in her view, appropriate grounds for the appeal to proceed pursuant to rule 140.06 a. Her ruling reads as follows:

To the parties,

I have reviewed the appeal submitted by London in relation to the decision of the Competitions Committee to award the 2105 National 10,000 m championship to Guelph. I have also reviewed the call for proposals posted on the Athletics Canada website.

My role is to review appeals to determine if they are brought on proper grounds and thus may proceed. The appeal policy (Rule 140) states that grounds for appeals are strictly limited to procedural grounds, including acting without jurisdiction, failing to follow proper procedures, making a decision influenced by bias, exercising discretion for an improper purpose or making a decision that is grossly unfair or unreasonable.

If one or more of the above errors is alleged and there is information offered to support the allegation then the appeal should be allowed and should go before an appeal panel for a hearing and decision.

In this case, London argues that the criteria against which bids would be evaluated are limited to the four criteria stated in the call for proposals, namely "existing competitive 10,000 m race, experience of the host organizing committee, weather and geography, and race/event held before June 13". London then argues that the reasons given for the choice of Guelph are unrelated to these criteria. London also claims that there is an inherent bias in favour of Guelph because it is now part of the National Track League (NTL), an AC-sponsored and partly AC-funded competition series.

I disagree that the only criteria to be used in the evaluation are the four elements outlined above. The fact that the bidder's application to host this event is to also include "promotional plan" and "athlete hosting plan (proposed accommodations)" indicates that these aspects are also to be considered. Furthermore the mandate of the Competitions Committee is to "develop, coordinate and evaluate a National Competitions Program designed to promote Canadian development and high performance athletics", thus indicating that the decisions of the Committee are to generally be aligned with strategic goals for athletics

development and high performance. The Guelph proposal prevailed in large part due to its attractiveness to athletes (promotional plan) and its offer of stipends to athletes (athlete hosting plan).

The narrow wording of the call for proposals is unfortunate in this case, but it would be short-sighted of any bidder to expect that their bid would be evaluated only on the "four elements" when they are asked to provide a detailed bid that provides other information to be evaluated.

I am also concerned about the allegation that the Committee is in a conflict of interest or is otherwise biased due to Guelph being part of the NTL. Carried to its logical conclusion, if such a claim were successful it would mean that no NTL event could ever be awarded a hosting opportunity in a competitive process, because to do so would reflect bias on the part of Athletics Canada.

London also states that Guelph should not be eligible to bid for this event as it does not have an existing competitive 10,000m race. I disagree that this is an eligibility requirement. As per the call for proposals, it is one element to be considered among several and there is no suggestion that the Competitions Committee did not consider it. It is very likely that they did consider it, but decided that it was not a determining factor in their final decision.

It is my ruling that this appeal may not proceed. This decision may not be appealed under Rule 140, although should either of the parties wish, my ruling may be reviewed by the Sport Dispute Resolution Centre of Canada, under its rules.

Sincerely,

Rachel Corbett

In its Request to the SDRCC for the arbitration of the dispute at hand, dated December 18, 2014, the Claimant cites the denial of its request to appeal the bidding decision by the Competitions Committee of Athletics Canada.

The Request also states in its description of the dispute that Athletics Canada plans to change the process by which they will award future Canadian Championships and goes on to say:

> We request the SDRCC review the entire matter, including the original bid decision, which we believe should be re-evaluated by a new committee.

In describing the solution sought, the Claimant in its Request states the following:

> We would like the SDRCC to overturn the denial of our appeal by Rachel Corbett and require that a new panel - approved by both the Claimant and Respondent – re-evaluate all three bids for the 2015 Canadian 10,000 m Championships.
>
> … we believe that the re-evaluation of these bids should be an open process such that interested parties may attend the session, similar to the manner in which the Athletics Canada CEO has intimated to us that the restructured championship selection process will adopt.

The positions of the parties:

The Claimant:

Mr. Weiler stated in writing, on behalf of the London Runner Distance Club, that he is in agreement with the preliminary decision issued by this Panel on January 19, 2015 wherein it determined that the Athletics Canada Appeals

procedure was deemed exhausted at this point. He relied upon Rule 140.06 b. of the Appeals Rules which highlights that the denial of an appeal by the Designated Official exhausts the internal appeals process of Athletics Canada, as it "may not be appealed" any further.

The Claimant pointed out in his written submissions that the SDRCC is currently tasked only with determining whether the Designated Official was in error, while the decision of the Competitions Committee is not in question.

In seeking to determine the merits of the appeal, the Designated Official was given the information which the current Claimant had available at the time, including the alleged reasoning of the Competitions Committee as presented to the Claimant.

Mr. Weiler submitted that the decision by the Designated Official repeatedly displayed a narrow interpretation and sometimes a clear misunderstanding of the argument presented in the original appeal. She incorrectly interpreted the key elements of the bid criteria, which included four items that the letter of intent needed to include:

- date and location
- host organizing committee hosting experience
- promotional plan
- athlete hosting plan (proposed accommodations)

The four key elements of the bid criteria were:

- existing competitive 10,000-metres race
- experience of host organizing committee
- weather and geography
- race/event held before June 13, 2015

The Claimant emphasized that some items were specifically included in both of the above lists: the date, location/geography and the experience of the host organizing committee. He argued that this could only lead to one of two conclusions: the only elements to be considered in the bid decision were the four elements considered on the second list; or the repetition of some elements indicate that the four elements considered are more important to the bid selection process -- otherwise, there was absolutely no need to repeat them on the second list -- while items included in the first list but not repeated on the second one are of lower priority.

Mr. Weiler submitted that the Designated Official made an error in adopting a third interpretation, i.e., that all of the above elements were either of equal merit, or that the four items listed as "Elements considered" were somehow of lesser importance. This runs counter to the true intent of the document.

The Claimant argued that the Designated Official grossly oversimplified the key point that the Competitions Committee listed inclusion of Guelph in the

2015 National Track League (NTL) as a reason for winning the bid. This reason was seriously flawed, as the NTL has absolutely no history in the 10,000m event. This element offers little or no value to the unique and specific bid selection decision, especially when being compared with events that have successfully hosted provincial 10,000m Championships year after year.

It was further submitted that, although the Designated Official cited the mandate of the Competitions Committee, she did not take this mandate into consideration with respect to the previously selected dates of the 2015 Canadian 10K (May 23) and Half Marathon Championships (May 31) relative to the May 30 Guelph date.

Mr. Weiler advanced the position that the limited analysis of the Designated Official was not a fair application of the Competitions Committee mandate as it did not consider all of the elements of the London bid, just those already cited by Athletics Canada as being in Guelph's favour.

The Designated Official referred to the point raised by London that Guelph does not have an existing competitive 10,000m race. She observed that it was very likely that they did consider this element, but decided it was not a determining factor in their final decision. Mr. Weiler argued that there is no proof that the Competitions Committee considered the said element and it was unreasonable for the Designated Official to find that it had without any proof. This amounted to pure speculation in the absence of a written record of the Competitions Committee's decision-making rationale. It appears to be a

desire on her part to give the benefit of the doubt to the Competitions Committee. London felt that the said element was a particularly important part of the bid criteria and it clearly stated its opinion on this topic on the first page of its appeal.

The Claimant observed that the Designated Official did not appear to appreciate the potential scope for bias when she suggested that Athletics Canada or its Competitions Committee should be free to introduce new bid criteria or, arbitrarily and after the fact, assign different weights to existing bid criteria. She failed to fairly read and understand the appeal on a number of occasions to the extent that she failed to grasp of the key points being argued.

Mr. Weiler submitted that the appeal was warranted and that the matter should have been sent to the Appeals Panel. There is sufficient reason to do so under several of the grounds of appeal and the Designated Official erred in her decision on this matter.

At the hearing, Mr. Weiler clarified that, as a remedy, he is seeking to have this Panel return the present matter to an Athletics Canada Appeals Panel pursuant to Rule 140.07.

The Respondent:

Mr. Lawless, on behalf of Athletics Canada, pointed out in his written submissions that the decision under review before the SDRCC is the decision of the Designated Official to refuse to send the Claimant's application for an internal appeal against a decision of the Athletics Canada Competitions Committee to an Appeals Panel.

Counsel maintained that this Panel made a flawed determination in one paragraph of its preliminary decision of January 19, 2015 by making a final decision in the absence of any submissions and erred in its factual conclusions. Counsel points out that this Panel erred in finding that it was the Competitions Committee that rejected the right of the Claimant to an internal appeal. It was, in fact, the Designated Official who rejected the right of the Claimant to an internal appeal.

It was argued that the Athletics Canada (AC) internal appeal process cannot be exhausted in the absence of a final decision by the AC Appeals Panel, an SDRCC Panel's review of a Designated Official's decision where the SDRCC Panel upholds the decision-maker's refusal to send an application for an internal appeal to the AC Appeals Panel, or the time-limit for filing an application to either of the above has expired.

With respect to the merits of the appeal of the Designated Official's decision, Mr. Lawless submitted that the Claimant must show, on a balance of

probabilities that, in exercising her discretion under Rule 140.06, the Designated Official reached a decision she could not have reached fairly. The Claimant has not discharged this burden.

Counsel further argued that in reviewing the decision of the Designated Official, it is not correct at law that this Panel determine what decision it would or might have made at first instance. The correct approach is to review the ruling by the Designated Official to determine if, on the facts before the Designated Official, the decision that was reached was one (perhaps among several) that she could have reasonably reached.

The case of *Palmer v. Athletics Canada, SDRCC 08-0080 (Pound)* was cited in support of AC's position on the type of proceeding this is and in the standard of review that ought to be applied. In that decision, arbitrator Pound stated the following in the context "of applications for funding via the AAP":

> ...the role of arbitrators in the SDRCC-Code process is not to substitute their personal decisions for those taken by the responsible authorities. The latter are accorded a certain degree of deference based on their expert or specialized knowledge and experience. Carding decisions, as in this case, should not generally be taken by arbitrators who, normally, do not have the specific experience required for the purpose.

Arbitrator Pound went on to say that the standard of review in such matters is one of "reasonableness", one that for purposes of judicial review, is whether the impugned decision can stand up to a "somewhat probing

examination". The arbitrator then referred to the Supreme Court of Canada decision in *David Dunsmuir v. Her Majesty the Queen in Right of the Province of New Brunswick*. In that decision, at paragraph 47, the Court stated that in judicial review, the standard of reasonableness is concerned with "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law."

Mr. Lawless submitted that the burden is on the Claimant to show that the Designated Officials decision was unreasonable as that term is meant at law and, unless he is able to do so, he cannot be successful in the present matter.

This Panel is in review of the decision-maker properly empowered to make a discretionary decision. In any discretionary decision-making process, there may be several possible, even conflicting decisions that could be taken. A discretionary decision-maker is permitted to make the "wrong" decision -- the key is that all decisions must be made fairly, in accordance with principles of natural justice and must be supported by the evidence before the decision-maker.

Counsel for AC argued that in the present case, the Designated Official did exactly what she was supposed to do. In particular, and as explained in her decision, she evaluated the application for an internal appeal filed by the Claimant against the permitted grounds for such an appeal as set out in the AC Appeals Policy. She then spoke to each complaint by the Claimant and to

each of the possible permitted grounds. The Designated Official further made findings and provided reasons for her determination on each point.

It was the position of Athletics Canada that the Claimant failed to proffer any evidence of unreasonableness on the part of the Designated Official and failed to meet his burden of proof. The latter properly exercised her discretion in refusing to accept the Claimant's application for an internal appeal.

As a result, AC says the within appeal must be dismissed with costs payable to AC.

If, however, this Panel finds that the Designated Official ought to have accepted the Claimant's application for an appeal and sent it to the AC Appeals Panel, this Panel ought to send the Claimant's appeal to the AC Appeals Panel for a determination on the merits of the appeal. If this were to happen, and standing in the place of the Designated Official, it is appropriate that this Panel send the matter to the AC Appeals Panel with direction as to any affected parties who ought to be before the latter panel. It was submitted that the correct affected parties to that matter are the other bidders for the 2015 10,000m Championship and this Panel was asked to so direct that they be offered an opportunity to be heard before the AC Appeals Panel.

DECISION

This dispute concerns the Claimant's Request to overturn a decision by the "Designated Official" appointed by Athletics Canada under its internal Appeals Rules not to allow its appeal of the Athletic Canada Competitions Committee's bid decision regarding the 2015 Canadian 10,000m Championship.

Rule 140.05 specifies that decisions may only be appealed on five strictly limited procedural grounds, one of which is the decision-maker making a decision that is "grossly unreasonable or unfair".

Rule 140.06 a. describes the mandate of the Designated Official. It is to "determine whether there are appropriate grounds for the appeal to proceed as set out in section 5", which is a reference to Rule 140.05's list of the procedural grounds on which appeals may be heard. This mandate does not entail the holding of a hearing. Rather, it is a consideration of whether or not the appellant (the Claimant before this Panel) has offered information that would support one or more of the five procedural grounds of appeal listed in Rule 140.05. The Designated Official expressed her role correctly in her decision where she stated:

> If one or more of the above errors [the five procedural grounds of appeal listed in Rule 140.05] is alleged and there is information offered to support the allegation then the appeal should be allowed and should go before the appeal panel for a hearing and decision.

The case of *Palmer v. Athletics Canada, SDRCC 08-0080 (Pound)* was cited by Mr. Lawless in support of AC's position on the standard of review that ought to be applied in the present case. In that decision, arbitrator Pound stated the following in the context "of applications for funding via the AAP":

> ...the role of arbitrators in the SDRCC-Code process is not to substitute their personal decisions for those taken by the responsible authorities. The latter are accorded a certain degree of deference based on their expert or specialized knowledge and experience. Carding decisions, as in this case, should not generally be taken by arbitrators who, normally, do not have the specific experience required for the purpose.

Arbitrator Pound went on to say that the standard of review in such matters is one of "reasonableness", one that for purposes of judicial review, is whether the impugned decision can stand up to a "somewhat probing examination".

In my view, the decision that confronts this Panel is not of the same nature as carding decisions to which arbitrator Pound referred in the above-noted case. In the present matter, I am asked to review a decision (rendered by the Designated Official) that examined whether specified procedural grounds of appeal were alleged and whether there was information offered to support those allegations. This is not the type of inquiry that requires specialized knowledge, as does a carding case. In fact, my function is very much akin to the initial steps an arbitrator would take in any case, i.e., determining the existence of allegations and the information offered to

support them. The extra step in this case is then to review the decision of the person who made these determinations and decide whether to uphold or to rescind that decision.

I do not need any specialized knowledge to perform the above-noted function beyond the standard knowledge of an arbitrator which I have acquired over the last 23 years. I have all the information I need before me, i.e. the Designated Official's decision and all the information that she had at her disposal when she made her ruling. Hence, I will consider both the reasonableness and the correctness of her decision.

This Panel has examined the evidence presented by the parties and the AC Appeals Rules. This examination leads me to find that, in his notice of appeal submitted pursuant to Rule 140.04, which is essentially his appeal, the Claimant did allege one or more of the five procedural grounds of appeal listed in Rule 140.05 b. and did offer ample information to support one of those grounds. In my judgment, the Designated Official was therefore in error and came to an unreasonable conclusion where she ruled that the appeal may not proceed.

On October 24, 2014, Athletics Canada (AC) released a document seeking bids for the hosting of the 2015 Canadian 10,000m Championships. The document listed four points that it would consider, under the title of "Elements considered".

The first of the "Elements considered" was "Existing competitive 10,000-metres race". The Claimant outlined in his appeal that of the three groups that submitted bids, the bids from London and Laval were from groups responsible for hosting existing 10,000m races, whereas the Guelph bid did not include an existing 10,000m race. The Claimant pointed out in his appeal that London had hosted an annual 10,000m race since 2006. Mr. Weiler alleged in his appeal that this element of the criteria was disregarded in the awarding of the Championships to Guelph.

The e-mail of November 19, 2014 from a Competitions Committee member giving reasons for the Committee's decision, which the Claimant attached to his appeal, made no mention of the above-noted element. In my judgment, the statements made in the Claimant's appeal pertaining to this element provides information to support an allegation that the Competitions Committee made a decision that was grossly unreasonable or unfair, which is one of the procedural grounds of appeal listed in Rule 140.05. The Designated Official should have recognized this. Instead, she stated in her decision that "It is very likely that they did consider it, but decided that it was not a determining factor in their final decision." This is pure speculation. There is no factual basis for such a conclusion. This element was not mentioned in the reasons given by the Competitions Committee for its decision and there was no evidence that the Committee considered it as a factor. This leads me to find that the Designated Official was unreasonable in the manner in which she dealt with this allegation and information.

The second of the "Elements considered" was "Experience of host organizing committee". The Claimant outlined in his appeal and that the London and Laval bids were sent by groups with specific experience hosting a Championship 10,000m event, whereas the Guelph group did not have such experience. Mr. Weiler alleged in his appeal that this should place the Guelph bid at a disadvantage.

The e-mail of November 19, 2014 from the Competitions Committee member giving reasons for the Committee's decision again made no mention of the above-noted element. The statements made in the Claimant's appeal pertaining to this element provides further information to support an allegation that the Competitions Committee made a decision that was grossly unreasonable or unfair. In her decision, the Designated Official failed to say that the reasons for the Competitions Committee's decision made no mention of this element. This leads me to find that the Designated Official acted unreasonably in this respect.

The fourth of the "Elements considered" was "Race/event held before June 13, 2015". The Claimant stated in his appeal that all three bids abided by this requirement. There was no further specification in the AC bid document regarding the date. Mr. Weiler alleged that since no further details were given, all three bids were equal in this regard and no single bid could be more favorable based on their date.

In its e-mail of November 19, 2014 to Mr. Weiler, the member of the Competitions Committee outlined the reasons why the Guelph application was selected. One of these was "Favorable date" and it was added that the London date (May 9/10, 2015) was "a little too early in the season, especially in the case of junior athletes". The Claimant alleged that this was not consistent with the "Elements considered" published by AC which only required that the race be held before June 13, 2015. He also reproduced in his appeal the October 28, 2014 response to his inquiry from a member of the Competitions Committee. The response stated that the member had spoken with another member of the Committee (Scott MacDonald) who had said that he thought the dates proposed by the London group "can definitely work" and that the date "might be a little harder on the juniors".

Mr. Weiler made the following points in his appeal:

> As Scott MacDonald was also a member of the Competitions Committee at this time, this exchange shows that two members of the AC Competitions Committee were aware that a potential bidding group for the Canadian 10,000m Championship had requested feedback on an appropriate date. The official feedback from AC was, overall, favourable towards a May 9th or 10th date. This inquiry also gave these two members of the Competitions Committee an opportunity to expand on any possible scheduling criteria beyond the published "Race/event held before June 13, 2015" and they did not do so.
>
> If there were any specific date restrictions related to the involvement of Junior athletes at the 2015 Canadian 10,000m Championships, they should have been specifically outlined in the original bid criteria (they were not) or they should have been presented to the London group when feedback was requested regarding a May 9th or 10th date.

This Panel assesses the above-noted points made by the Claimant to constitute an alleged procedural ground for appeal, i.e., that of gross unfairness on the part of the decision-maker, supported by very strong information.

Firstly, in its published criteria, Athletics Canada specified only that the race be held before June 13, 2015. Then, before the London group had submitted its bid, a member of the Competitions Committee informed Mr. Weiler in writing that the dates he had proposed could "definitely work", subject to a possible reservation. As Mr. Weiler argued in his appeal, the official feedback from AC was, overall, favourable towards a May 9th or 10th date. His inquiry also gave two members of the Competitions Committee an opportunity to expand on any possible scheduling criterion beyond the published criterion of "before June 13, 2015" and they did not do so. It appears that Mr. Weiler and his London group were led down the garden path.

The Designated Official was provided with all of the above-noted information and it is this Panel's finding that she acted unreasonably in not considering it a sufficient ground for an appeal. It is not merely a question of this Panel's disagreement with the Designated Official on this point. It is that she made no mention of it in her decision and thereby acted unreasonably.

In its e-mail of November 19, 2014 to Mr. Weiler, two other reasons given by the member of the Competitions Committee for selecting the Guelph application were as follows:

- More attractive for high-performance athletes because Guelph is part of the 2015 National Track League

- Guelph already has an international component to their event, thus in a better position to attract top end competitors from other countries to provide a good competitive opportunity for Canadians

Mr. Weiler pointed out in his appeal that these factors were not among the four "Elements considered" published by Athletics Canada on October 24, 2014. He specified that the original AC document did not include any criteria for pre-existing international competition in events other than the 10,000m. Indeed, an examination of the October 24, 2014 AC document seeking bids makes no mention of these two criteria.

In her decision, the Designated Official did not find that the two above-noted reasons given by the member of the Competitions Committee were not mentioned in the AC document seeking bids. Instead, she stated that the "Guelph proposal prevailed in large part due to its attractiveness to athletes (promotional plan)", as if to say that the attractiveness to athletes is part of a promotional plan. A "Promotional plan" is mentioned in the AC document as one of the elements that needed to be included in the bidders' letters of intent.

In my view, the attractiveness to athletes mentioned in the two reasons given is in the nature of a pre-existing condition, whereas a promotional plan is what the bidding groups would do to promote the event. It is not at all

clear, or accurate, to say that the attractiveness to athletes is part of a promotional plan. Rather, the reasons stated that the attractiveness to athletes comes from Guelph being part of the 2015 NTL and already having an international component to their event. The appeal filed by Mr. Weiler offered information showing that the reasons given by the member of the Competitions Committee were not among the factors outlined in the AC bid document. I judge this to be information supporting gross unfairness, which is one of the listed grounds of appeal under Rules 140.05. The present Panel finds that by failing to acknowledge and consider this information, the Designated Official acted unreasonably.

On pages 19 and 20 of its preliminary decision dated January 19, 2015, this Panel dealt with the question of what options the parties would have for a resolution of the present dispute if it overturned the Designated Official's ruling. As this Panel did then, I refer to paragraph 3.1 of the 2015 Code, entitled "Availability of Dispute Resolution Processes", which reads in part as follows:

> (a) The dispute resolution processes of Facilitation, Mediation, Arbitration or Med/Arb under this Code are available to any Person in connection with the resolution of a Sports-Related Dispute...
>
> (b) Unless otherwise agreed or set out herein, and if the dispute involves a NSO, where a Person applies to the SDRCC for the resolution of a Sports-Related Dispute, the Person must first have exhausted any internal dispute resolution procedures provided by the rules of the applicable NSO. For the avoidance of doubt, a NSO internal dispute resolution procedure is deemed exhausted when:

> (i) The NSO has rejected the right of the Person to an internal appeal;

In the case at hand, the NSO, by its Designated Official, has rejected the right of the Claimant to an internal appeal before its Appeals Panel. The internal dispute resolution procedure of Athletics Canada is therefore deemed exhausted. It follows that the Claimant has the right under the *Code* to pursue a resolution of the dispute at hand before the present Panel which is properly seized of the entire matter by virtue of the wording of the Claimant's Request as quoted earlier in this decision.

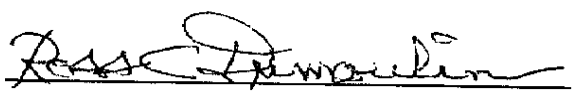
In its preliminary decision, this Panel gave Mr. Lawless an opportunity to argue the above-noted point during the January 30, 2015 hearing because it was not raised by the Claimant at the preliminary hearing. This Panel's decision was not "final" because it left the door open to further submissions. Mr. Lawless then took advantage of this by correctly pointing out in his written submissions filed in advance of the hearing that this Panel mistakenly referred to the Competitions Committee as the body having rejected the right of the Claimant to an internal appeal, when, in fact, it was the Designated Official. Earlier in its preliminary decision, at pages 1, 2, 7, 16, 17 and 18, this Panel repeatedly stated or referred to the fact that that it was the Designated Official who rejected the right of the Claimant to an internal appeal. It was simply an error of inattention (one that should have been avoided) on this Panel's part to say it was the Competitions Committee.

In any event, the principle remains the same. This Panel is bound by the Canadian Sport Dispute Resolution Code (2015). The internal dispute resolution procedure of Athletics Canada is deemed to have been exhausted at the point in time when the Designated Official unilaterally appointed by Athletics Canada rejected the right of the Claimant to an internal appeal, a decision that Rule 140.06 b. specifies, "may not be appealed" internally.

As it turns out, the above-noted finding will not come into play. The representatives of both parties have indicated that they would like the merits of the appeal of the Competitions Committee to be heard internally by an Appeals Panel pursuant to Rules 140.07 to 140.14 of the AC Appeals Rules. Hence, this Panel directs that the Claimant's appeal be heard in accordance with the said Rules. Rule 140.09 a. 4. speaks to the addition of affected parties, therefore, this Panel will not pronounce itself on that issue beyond what it has ruled in its preliminary decision of January 19, 2015.

For all of the foregoing reasons, this Panel hereby rescinds the decision of the Designated Official and orders that the Claimant's appeal of the Competition Committee's bid decision proceed in accordance with the Athletics Canada internal Appeals Rules as outlined above.

Dated at Ottawa this 5th day of February, 2015.



Ross C. Dumoulin
Arbitrator