

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

N°: SDRCC 19-0411

**BHAVINDU ADHIHETTY
(CLAIMANT)**

AND

**CRICKET CANADA
(RESPONDENT)**

Tribunal: Patrice Brunet (Sole Arbitrator)

Appearances:

For the Claimant: Indula Adhihetty

For the Respondent: Ingleton Liburd

DECISION

I. INTRODUCTION

1. This concerns a request by the Claimant to challenge the Respondent's selection decision not to include him in the group of 30 players for the draft of the GT20 Canada 2019, a cricket tournament.
2. This arbitration was conducted under extraordinary time constraints since the GT20 Canada 2019 was set to begin on July 25th, 2019.
3. On July 22nd, 2019, I accepted the appointment to act as Arbitrator in the present proceedings, under section 6.8 of the *Canadian Sport Dispute Resolution Code* (SDRCC Code). On the same date, during the preliminary conference call, there were no objections raised by any of the parties to my nomination as arbitrator in this case.
4. On July 24th, 2019, a conference call was held between the undersigned Arbitrator, the parties and the Sport Dispute Resolution Centre of Canada representatives to conduct the hearing.
5. I rendered my short decision on the same date.

II. FACTS

6. On June 25th, 2019, the Claimant addressed the SDRCC to challenge the Respondent's selection decision not to include him in the group of 30 players for the draft of the GT20 Canada 2019, a cricket tournament. The Claimant requested that the Respondent (i) take immediate action to include the Claimant to one of the GT20 Canada 2019 teams where he could play and receive the contracted payments given to other Canadian players who played

- in the GT20 Canada 2019; (ii) pay the Claimant CAD \$ 2,000 as an arbitration fee and for other related expenses and; (iii) not harass or penalize the Claimant directly or indirectly in the future for challenging the Respondent's selection.
7. The GT20 Canada 2019 is an annual cricket tournament co-organized by Cricket Canada and Bombay Sports Company Limited ("Bombay"), a private corporation, with a T20 format. This year's edition was taking place in Brampton, Canada from July 25th, 2019 to August 11th, 2019.
 8. The GT20 Canada 2019 is a professional cricket league that gathers players from all over the world and provides the youngsters with an opportunity to play with the best cricketers in the world.
 9. The sport of cricket offers different game formats which include T20, 50 Overs Cricket and Test Cricket. For the purpose of the comprehension of the present case, the main difference is the duration of the game. The T20 format is a shorter format than 50 Overs Cricket and Test Cricket.
 10. This year, six franchise teams participated in the GT20 Canada 2019. Each team was formed following a draft that took place on June 20th, 2019. Bombay sets the draft rules which included different categories.
 11. The teams are privately owned. Each team has around seventeen to twenty-two players.
 12. The Claimant had registered for the draft on May 16th, 2019. Over 1,000 players from all over the world registered for the draft.
 13. At the request of Bombay, the Respondent selected 30 Canadian players: 18 for category A and 12 for category B, and submitted the list to Bombay for the draft (the List). As stated in the Respondent's statement, players selected by the Respondent "were the ones identified who can help Canada in the T20

format of the game” and also the players who are likely to be involved in the *2018-19 ICC T20 World Cup Americas Qualifier* (ICC T20 Qualifier) in August and October.

14. The Claimant was not selected among the List of the Respondent to be included in the GT20 Canada 2019 player draft. Nevertheless, the Claimant could still be drafted by a team through the open draft. Ultimately, and unfortunately, the Claimant was not drafted by any team.

15. On July 24th, 2019, I rendered my short decision whereby I dismissed the Claimant's request to reverse the Respondent's decision not to have been included in the List, and concluded that the Respondent having followed the appropriate selection procedure, I had no reason to review its decision.

III. THE PARTIES

The Claimant

16. **Bhavindu Adhietty** is a 19-year-old Canadian cricketer who has been selected on the Canadian team over the last 3 years. He was the captain of the *ICC Americas under-19 championships*. Both parties have recognized that the Claimant is a highly competent player who is already identified as one of the promising stars of his sport.

The Respondent

17. **Cricket Canada** is the national sport organization representing players, coaches and officials nationwide and overseeing programs for men's and women's cricket. Among other things, they have the responsibility to select the Cricket Canadian National Team.

IV. JURISDICTION

18. The SDRCC was created by Federal Bill C-12, on March 19th, 2003¹.

19. Under this Act, the SDRCC has exclusive jurisdiction to provide to the sports community, among others, a national alternative dispute resolution service for sport disputes.

20. On June 24th, 2019, the Claimant filed a request to appeal the Respondent's selection decision to the SDRCC. As a preliminary matter, a jurisdictional issue was raised, on which arbitrator Robert Décary promptly confirmed the jurisdiction of the SDRCC by way of an award rendered on July 10th, 2019.

V. POSITIONS OF THE PARTIES

21. This section summarizes the submissions of the parties. Although this is not a detailed record, I carefully examined all submissions presented by the parties.

Position of the Claimant

22. The Claimant seeks to challenge the Respondent's selection decision not to include him in the group of 30 players for the draft of the GT20 Canada 2019.

23. The Claimant requests that the Respondent (i) take immediate action to include the Claimant to one of the GT20 Canada 2019 teams where he can play and receive the contracted payments given to other Canadian players who play in the GT20 Canada 2019; (ii) pay the Claimant CAD \$ 2,000 as an arbitration fee and for other related expenses and; (iii) not harass or penalize the Claimant directly or indirectly in the future for challenging the Respondent's selection.

¹ *Physical Activity and Sport Act*, S.C. 2003, c.2.

24. The Claimant considers that he should have been selected on the List of the Respondent under the “A” category, which would have resulted in him being drafted by at least one team. All players who were on the List ended up being drafted.
25. The Claimant considers that he should have been selected by the Respondent considering his record and his previous multiple selections with the Cricket Canadian National Team.
26. Because he was not selected, he was not drafted. Therefore, the Claimant forfeited the compensation that comes with participation in the GT20 Canada 2019 (USD \$7,500). During the hearing, he also requested a monetary compensation if participation to GT20 Canada 2019 is not possible.

Position of the Respondent

27. Over 1,000 players registered for the draft. Even if the Claimant was not identified on the List, he was nevertheless eligible to be drafted by any team through the open draft.
28. The statistics and performance provided by the Claimant were for the 50 Overs Cricket format. He has never represented Canada in T20 and has generally been identified as a 50 Overs cricket player. According to Cricket Canada, the Claimant has not quite yet reached the adequate level to be included in the List, specifically for the T20 format.
29. Among the different selection criteria taken into account, the Respondent identified players who performed best in the T20 format and who can help Canada for the ICC T20 Qualifier in August and October.

30. The GT20 Canada 2019 is a league privately run by Bombay, that sets the draft rules. The Respondent only supplies the List, as requested by Bombay. In the end, the teams are free to draft the players they want. The Respondent has no influence over the team selections during the draft.

VI. APPLICABLE LAW

Physical Activity and Sport Act²

Mission

10 (1) *The mission of the Centre is to provide to the sport community*
(a) a national alternative dispute resolution service for sport disputes;
and
(b) expertise and assistance regarding alternative dispute resolution.

Interpretation

(2) For the purposes of subsection (1), a sport dispute includes disputes among sport organizations and disputes between a sport organization and persons affiliated with it, including its members.

SDRCC Code

6.7 Onus of Proof in Team Selection and Carding Disputes

If an athlete is involved in a proceeding as a Claimant in a team selection or carding dispute, the onus will be placed on the Respondent to demonstrate that the criteria were appropriately established and that the selection or carding decision was made in accordance with such criteria. Once that has been established, the onus of proof shall shift to the Claimant to demonstrate that

² *Supra* note 1.

the Claimant should have been selected or nominated to carding in accordance with the approved criteria. Each onus shall be determined on a balance of probabilities.

[Emphasis added]

6.17 Scope of Panel's Review

(a) The Panel shall have full power to review the facts and apply the law. In particular, the Panel may substitute its decision for:

- (i) the decision that gave rise to the dispute; or*
- (ii) in case of Doping Disputes, [...].*

(b) For the avoidance of doubt, the Panel shall have the full power to conduct a procedure de novo where:

- (i) the NSO did not conduct its internal appeal process or denied the Person a right of appeal without having heard the case on its merits; or*
- (ii) if the case is deemed urgent, the Panel determines that errors in the NSO internal appeal process occurred such that the internal appeal policy was not followed or there was a breach of natural justice.*

6.22 Costs

(a) Except for the costs outlined in Subsection 3.9(e) and Section 3.10 hereof and subject to Subsection 6.22(c) hereof, each Party shall be responsible for its own expenses and that of its witnesses.

(b) Parties wishing to seek costs in an Arbitration shall inform the Panel and the other Parties no more than seven (7) days after the award being rendered.

(c) The Panel shall determine whether there is to be any award of costs and the extent of any such award. When making its determination, the Panel shall

take into account the outcome of the proceedings, the conduct of the Parties and their respective financial resources, intent, settlement offers and each Party's willingness in attempting to resolve the dispute prior to or during Arbitration. Success in an Arbitration does not mean that the Party is entitled to be awarded costs.

(d) The filing fee retained by the SDRCC can be taken into account by a Panel if any costs are awarded.

(e) The decisions on costs shall be communicated to the Parties within seven (7) days of the last submission pertaining to costs.

(f) The Panel does not have jurisdiction to award damages, compensatory, punitive or otherwise, to any Party.

[Emphasis added]

Cricket Canada - Player Selection Policy (Selection Policy)

5. Selection Process

[...]

5.3: Selection: The Selection Committee, taking into consideration recommendations from the HPM [High Performance Manager], selects the National Squad.

The National Team is to be made up of players who will maximize Canada's chances of winning each game within each tournament or tour. Only players selected in the National Squad (excluding the Development List) would be eligible for National Team selection.

[Emphasis added]

6. Player Selection Criteria

6.1: The selectors will consider the following when selecting players for Canada national squads/teams:

- *Performances (past and present) be it in club competition, national championships or international tours or tournaments*
- *Physical fitness*
- *Player must accept the tour participation agreement*
- *All players selected must meet the ICC eligibility criteria for ICC events*
- *Contribution to the team environment, including general attitude and behavior*

VII. DISCUSSION

31. Pursuant to section 6.7 of the SDRCC Code, the Respondent has the onus to demonstrate that the criteria were appropriately established and that the selection was made in accordance with such criteria.

32. Under the Selection Policy, a number of selectors are mandated to decide on the composition of the team. The Respondent demonstrated that the selectors applied the selection process appropriately. Among other factors, they applied the selection criteria under article 6.1 of the Selection Policy and considered players' competence in the T20 format in order to finalize the list for the ICC Qualifier.

33. While I reviewed the facts, I need to express that the Respondent's Selection Policy could benefit from enhanced clarification. While it is clear that the Selection Policy applies to the Cricket Canadian National Team's selection³, applying the same criteria to the selection process of the List, for different purposes, may have led to a lack of clarity for outside stakeholders. Also, I find

³ Article 1.1 Cricket Canada, Player Selection Policy, Document # CC-P0L-014.

that the Selection Policy may provide too wide a discretionary power to the selectors.

34. When drafting a Selection Policy, Cricket Canada must strike an appropriate balance between the ability to exercise its discretion, and the setting of objective criteria to establish reasonable expectations. Too much discretion will leave the policy vulnerable to review. In this case, I find the policy quite discretionary, however I have not pursued my analysis to review the selectors' decision under the policy, since a review of Cricket Canada's decision in favor of the Claimant would have been meaningless in effect, for the reasons set in my short decision.

35. *Lex Sportiva* recognizes wide discretion to the National Sport Organisation (NSO) in the establishment and application of its selection criteria. An arbitrator will only intervene in specific cases where the principles of equity and procedural fairness have not been respected, and more specifically where the selection process was "exercised arbitrarily, in a discriminatory fashion or in bad faith."⁴

36. In the present case, I have not found that the facts justify my intervention to review the Respondent's selection process. The Respondent's selection criteria are deemed acceptable and the selectors accomplished their mandate properly. While the selection criteria could benefit from enhanced objective criteria, I find that they were appropriately established and the selection was made in accordance with such criteria.

37. I nevertheless maintain reservations about the Selection Policy. Its purpose is to offer predictable and clear guidelines to stakeholders so that they may prepare themselves appropriately and adjust their decisions during the season to maximize their chances of selection.

⁴ SDRCC 12-0182 *Veloce v. Cycling Canada Cyclisme*; Stephen L. Drymer, Arbitrator.

38. I understand that the selectors used the Selection Policy to constitute the T20 list for the purpose of the draft, concentrating their analysis on the T20 format of the game. This is not specifically considered in the Selection Policy. Actually, I had the impression that the prime purpose of the Selection Policy was to name the National Team, not to constitute a list for the purpose of a T20 drafting exercise. In managing stakeholders' expectations in the future, Cricket Canada should consider altering its Selection Policy to reflect the evolution of its mandate, if it is to recommend certain players for the purpose of a draft.
39. Also, as it is presently worded, the Selection Policy gives considerable latitude and discretion to the selectors. By adding elements of objective criteria, the Respondent would benefit from added transparency, provide clearer guidelines to the selectors, and minimize the potential of conflict and arbitration review.
40. Despite my recommendations, I find that the Selection Policy was appropriate in the circumstances and applied correctly. Consequently, the onus of proof shifts to the Claimant who needed to demonstrate that he should have been selected on the List in accordance with the criteria.
41. The Claimant presented several interesting statistics that could have justified his inclusion on the List. However, I trust that the selectors have considered those statistics in their decision and find no reason to review their analysis. They are the experts in their sport.
42. Furthermore, the List provided by the Respondent was only a recommendation for the draft. The teams were free to draft any player on the draft list, including the Claimant.
43. While I recognize that the players identified on the List had an enhanced opportunity to be drafted by one of the teams, as demonstrated by the fact that they were all drafted, this did not deprive other players, such as the Claimant, to be selected through the open draft.

44. Also, my authority as an arbitrator is limited to Cricket Canada and the Claimant. The remedies sought by the Claimant, which included being added as a drafting option for the teams, was impractical, just hours away from the tournament, as I had no authority over the teams. The GT20 Canada 2019 is a privately run tournament and I could not force a team to select the Claimant nor force a redraft.

45. Even if I considered reviewing the Respondent's decision to include the Claimant on the List, it would have had no effect on the outcome of his participation in the tournament, since the draft period was closed.

46. Regarding the Claimant's request to order the Respondent to pay the Claimant 2000\$ towards the arbitration fee and for other related expenses, section 6.22 of the SDRCC Code does not allow compensatory or punitive damages to be awarded. Therefore, the request is denied.

47. Finally, regarding the Claimant's request that the Respondent not harass or penalize the Claimant directly or indirectly in the future for challenging the Respondent's selection, I have noted that Parties have acted courteously and diligently towards each other during the arbitration. I trust they will continue to act in a similar fashion, and find no reason to make such an order.

VIII. CONCLUSION

48. In light of the Respondent's representations, I find that the Selection Policy was appropriate, and correctly applied. I found no reason to interfere in the process.

49. I also believe that the selectors made a fair selection. While he seems to be an excellent cricket player, the Claimant did not convince me that I should review Cricket Canada's decision not to include him on the List.

50. Considering that the Claimant remained eligible for the open draft and that Cricket Canada acted fairly, the request for financial compensation is denied. Even so, section 6.22 of the SDRCC Code does not allow for punitive or compensatory damages to be awarded.

The Claimant's requests are dismissed.

I retain jurisdiction and reserve the right to hear any dispute relating to the interpretation or application of the present decision.

Signed in Montreal, this 8th day of August 2019.



Patrice Brunet, Arbitrator