

IMPORTANT NOTE: *This version is a translation of the original French version.*

SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)

CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)

File No.: SDRCC 21-0487

NICHOLAS PATRICK RIVEST

Claimant

And

KARATE CANADA

Respondent

And

MOHAMMAD REZA NIKBAKHSH

Affected Party

M^e Robert Néron, LL.B., LL.M., C.Arb.
Arbitrator

Appearing:

For the Claimant: Stéphane Rivest

For the Respondent: Olivier Pineau and M^e Adam Klevinas

For the Affected Party: *Pro se*

Preliminary Decision

At the pre-hearing conference, the Respondent Karate Canada (KC) raised a preliminary issue regarding the identification of parties potentially affected by this appeal.

Indeed, according to KC, there are more parties potentially affected by this appeal filed by the Claimant. Thus, in order to address this preliminary issue, the Tribunal requested written submissions from the parties.

The Respondent's Position

Considering the remedy sought by the Claimant, KC believes that there are more potentially affected parties. Indeed, since the Claimant's argument for this remedy is that the amendments to the Internal Nomination Procedure for the World Karate Federation's (WKF) Olympic Qualification Tournament are unreasonable, this implies that the use of the WKF's Tokyo 2020 Olympic Standings for the selection of this team is not reasonable.

However, in the interest of consistency and fairness, the Respondent argues that if the use of this criterion is not considered reasonable for selection to a particular Olympic category at this stage of team selection, it would clearly mean that it would not be reasonable for athletes in other categories either.

According to KC, in developing, adopting and implementing its various national team selection criteria, it at all times prioritizes the need to use and implement criteria that are fair to individual athletes, and to fairly use the same criteria for all athletes in its pool for the purpose of selecting any given team for a given event.

In light of its commitment to this priority, KC asserts that if the Claimant's appeal were to be granted, it would mean that the very use of the Olympic Standings, modified or not, *per se*, would be invalidated. This would further call into question the selection of athletes in the other three Olympic categories within this same Tier 2 Selection process, or even in the Tier 1 Selection process, which was also based on the use of the Olympic Standings.

According to KC, it would be unreasonable to expect it to apply an entirely different selection criterion in one category and not in others, at the same phase of the athlete selection process for each team.

Thus, the consequences of the solution sought by the Claimant are very broad, as such an outcome would mean that Karate Canada's domestic ranking would have to take precedence over the Olympic Standing System for the selection of athletes to the team in question.

If this were the case, other athletes in the national team pool, who would be more favoured by the use of such a domestic ranking, would most certainly have motives to appeal the decision to use the Olympic Standings for selection in their own Olympic categories, which could have the effect of significantly altering the prioritized list of athletes to be selected for this tournament.

In summary, since the use of Olympic Standings has been the governing principle employed by KC for selection in both phases of the selection process, if the use of such ranking were to be waived

on the basis that its use is unreasonable, it would mean that the "pool" of potentially affected parties would potentially extend well beyond the one individual identified to date, namely Mohammad Reza Nikbakhsh.

In closing, KC sets forth in its submissions the other categories with the names of persons who could potentially be affected if the Claimant's appeal is granted. In order to address this preliminary issue, it is not necessary for the Tribunal to present all of these categories or to name all of the persons who could potentially be affected by this appeal. The Tribunal does, however, take note of KC's contentions in this regard.

The Claimant's Position

According to the Claimant, the Olympic Karate Tournament is based on eight separate categories, while the regular circuit of WKF and KC is based on twelve categories. In addition, KC has established the Internal Nomination Procedure with specific criteria. However, the Tier 1 Selection process has been established from the very beginning and is applicable to all categories, both combined and non-combined, and is based on the Olympic Standings for athletes in the world's TOP 50.

According to the Claimant, this process is known and has been accepted by all athletes since the very beginning and has not been changed since the beginning of the Olympic ranking process. Furthermore, as of March 10, 2020, KC has already confirmed the selection of athletes in the men's and women's -61kg and +61kg kata categories, and no athlete has challenged these selections nor could invoke a change in this selection criterion one year later.

Contrary to KC's assertion, the Claimant's present appeal has no impact on the categories for which athletes were already nominated on March 10, 2020 by KC, and which were not appealed.

According to the *Canadian Sport Dispute Resolution Code*¹ (Code) in Article 1, Section 1.1 (jj), the definition of:

"Affected Party" « Partie affectée » means a Person who may be tangibly and adversely affected by an award of a Panel of the Ordinary Tribunal, such as being removed from a team or losing funding, and who is either accepted by the Parties or named by the Panel as an Affected Party.

Moreover, in SRDCC 14-0221 *Lau v. Taekwondo Canada*, Arbitrator Welbourn states that the arbitrator limits the definition of Affected Parties to those athletes who stand to lose their place on the team if the Claimant is successful on appeal.

In this case, the Claimant argues that since the requested decision would only affect the men's -75kg category, only Mr. Nikbakhsh is an Affected Party.

¹ Effective January 1, 2021.

Respondent's Reply

In summary, KC agrees with the Claimant that the Tier 1 Selection process was legitimate and unappealable. On the other hand, KC contends that it is incorrect to state that the Claimant's appeal has no impact on the categories for which athletes were already nominated on March 10, 2020, as only those athletes nominated under the Tier 1 Selection process are those at the top of their prioritization in the four categories. In addition, the selection of potential alternates was, according to the original internal nomination procedure, meant to take place at the domestic qualification tournament, which had to be cancelled.

Therefore, KC has used the WKF Olympic Standings as of February 1, 2021 for the identification of the 2nd, 3rd and 4th priority athletes, in accordance with the amended version of the Internal Nomination Procedure of January 17, 2021.

However, KC argues that if it were to use its domestic ranking to determine the identity and respective priority of the 2nd, 3rd, and 4th priority athletes in these categories, we would see significant changes in the list of potential alternates and their respective priority order.

ANALYSIS

At the outset, it is important to emphasize that the purpose of dealing with the preliminary question is not to analyze the selection criteria in the various categories and the new Internal Nomination Procedure under appeal. This issue will be dealt with on its merits at the arbitration hearing.

The purpose of this preliminary determination is to determine which parties are affected by this appeal, in order to allow them to be a party to the appeal and to give them the opportunity to put forth their position.

In this case, the Code is unequivocal. It states that an Affected Party is a party who may be tangibly and adversely affected by an award of the Tribunal. There is no doubt that Mr. Nikbakhsh is an Affected Party, considering that the requested decision affects the men's -75kg category.

On the other hand, it must be noted that the Respondent is referring to athletes who could potentially be affected by the decision, either in terms of the order of priority for alternates in the various categories, for example, if the Tribunal finds that the amendments to the Internal Nomination Procedure for the WKF Olympic Qualifying Tournament team are unreasonable and overturns them, causing KC to revisit the selection of other athletes in the other categories.

We understand KC's position that the criteria must be applied fairly across all categories. However, KC argues that if the selection criteria in one category are overturned by the Tribunal, then KC must review the entire ranking of the other categories.

That said, we have two versions here. Either the Respondent's version that the ranking of other categories should be reviewed and reconsidered, or the Claimant's version that as of March 10, 2020, KC has already confirmed the selection of athletes in the men's and women's -61kg and +61kg kata categories and no athlete has challenged these selections nor could invoke a change in this

selection criterion a year later. We appreciate the clarification provided by KC in its response to the Claimant's submissions.

However, this reveals the possible impact of an affirmative determination of the Claimant's appeal that the decision could have on the other classes as speculative at best. In addition, KC refers to athletes who may be potentially impacted in the other categories by a decision in this category.

Yet, the subsection of the Code mentioned above defines an Affected Party as a person who may be tangibly and adversely affected by a decision of the Tribunal. It must therefore be concluded that in this case there is only one athlete who can be tangibly and adversely affected by a decision of the Tribunal in favour of the Claimant, namely Mr. Nikbakhsh.

In addition, it is also important to emphasize that this appeal only pertains to the selection within the men's -75kg kumite category for participation in the Olympic Qualification Tournament.

In other words, the purpose of this appeal involves the Claimant's selection, that he no longer ranks first in his category because of the application of new selection criteria. It would be inappropriate to conclude that the purpose of this appeal involves all of KC's categories, which is not the case. Indeed, this is not an appeal of the application of new selection criteria for all categories, but only for the Claimant's category.

It should be noted that KC adduced Arbitrator Dumoulin's decision in *Boulanger v. Canada Snowboard (CS)*² to support its argument that if all athletes in different categories could potentially be prejudiced by the Tribunal's decision, they should have the opportunity to defend themselves against such prejudice.

We do not agree with such an interpretation. As stated in the Code, it is only those athletes who may be tangibly and adversely affected by a decision who are Affected Parties, and these are those who are in the same category as the Claimant.

In addition, it is important to limit the scope of this appeal to what is sought in the request filed according to subsection 6.1 of the Code, i.e. in the document initiating a proceeding of the Tribunal.

In closing, we are dealing with the application of selection criteria in a single category, and it is important for the Tribunal to hold to the purpose of this appeal without exceeding its scope.

Decision

For all these reasons, the Tribunal concludes that the person tangibly and adversely affected by this decision is solely Mr. Nikbakhsh.

OTTAWA, on March 1st, 2021

M^e Robert Néron
Arbitrator

² SDRCC 20-0462