

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

NO: SDRCC 21-0499

ZACHARY CLAY
FÉLIX DOLCI
WILLIAM EMARD
CORY PATERSON
KENJI TAMANE
JESSICA DOWLING
ROSE WOO
SOPHIE MAROIS
AUDREY ROUSSEAU
LAURIE DENOMMÉE
JÉRÉMY CHARTIER
KATHERINE UCHIDA
(Claimants)

AND

GYMNASTICS CANADA GYMNASTIQUE
(Respondent)

DECISION

Attendees at hearing:

For the Claimants: Adrian Balan
Patrick Beauchamp
Richard Ikeda
Sarah Rainey
Michel Charron
Jacinthe Émard
François Lefebvre
Frank Kistler
Stefka Moutafchieva

For the Respondent: Ian Moss
Karen Cockburn
Teresa Orr
Amanda Tambakopoulos
Ed Van Hoof

1. The Claimants brought this dispute regarding Gymnastics Canada's decision to not enter athletes or teams into the 2021 Senior and Junior Pan American Championships due to the ongoing COVID-19 global pandemic. I was appointed as Med-Arb Neutral to this matter. This matter was heard via videoconference on May 5, 2021, and a Short Decision was issued on May 6, 2021.

2. The Claimants have requested that Gymnastics Canada's decision be overturned and that the athletes be permitted to compete at their respective Pan American Championships. For the reasons set out below, these requests are denied.
3. This is a novel decision rendered during a unique period in modern history. The global COVID-19 pandemic is still ongoing and has presented a number of challenges to sport. It is with this backdrop that this matter was considered and this decision rendered.

The Parties

Claimants

4. The Claimants are a group of high performance athletes and coaches who compete at the national level on behalf of Canada and wish to be eligible for the 2021 Tokyo Summer Olympics.

Respondent

5. Gymnastics Canada ("GymCan") is a not-for-profit organization and Canada's National Sport Organization ("NSO") for gymnastics in the disciplines of acrobatics, aerobics, men's and women's artistic, rhythmic and trampoline.

Facts

6. The facts in this matter are not in dispute.
7. The 2021 Pan American Championships are scheduled to take part in June 2021. The 2021 Senior Artistic Gymnastics Championships, Senior Rhythmic Gymnastics Championships and Senior and Junior Trampoline and Tumbling Gymnastics Championships are scheduled for June 4-6 and June 11-13 in Rio de Janeiro, Brazil. The 2021 Junior Artistic Gymnastics Championships are scheduled to take part from June 18-20 in Guadalajara, Mexico, and the 2021 Junior Rhythmic Gymnastics Championships are scheduled for June 25-27 in Guatemala City, Guatemala.
8. The Pan American Championships were originally scheduled to take place in the USA in 2020, however, due to COVID-19, the Championships were postponed and ultimately relocated to Brazil. It is the last opportunity for athletes to win a spot to compete at the Tokyo Olympics.
9. In early 2021, GymCan, with the help of an external legal firm, developed a risk assessment tool to determine the level of risk associated with international travel. GymCan used this tool to consider the risk associated with sending its athletes to compete at the 2021 Pan American Championships in Brazil, Guatemala and Mexico. It was determined that risk associated with travelling to compete and to those individuals travelling with the team, was found to be extremely high in the case of the Senior Championships in Brazil and "high risk" and "not advisable" in the case of the Junior Championships being held in Mexico and Guatemala. Major contributing factors to this determination were COVID and the fact that "little to no information" was available from the Pan American Gymnastics Union (PAGU) regarding the Local Organizing Committee COVID protocols.
10. As a result, GymCan made the recommendation not to compete at the 2021 Pan American Championships in both the Senior and Junior categories. This recommendation was first brought to the Board of Directors on April 5, 2021, which supported the recommendation,

and was then brought before to the GymCan Athlete Commission on April 11. The Athlete Commission supported the recommendation.

11. On April 14, athletes directly impacted by the decision not to compete in the 2021 Pan American Championships and their coaches were contacted by the staff technical leads for their respective disciplines to provide further details of the rationale for the decision and to answer any question. That same day, a Zoom call was held with all athletes/coaches from all disciplines with a PowerPoint presentation to show the rationale.
12. On April 16, the decision was appealed.

Submissions

Claimants' Submissions

13. The Claimants submit that while they understand the rationale for GymCan's decision not to send athletes to the 2021 Pan American Championships, they ask that I overturn GymCan's decision.
14. In the alternative, the athletes submit that they are aware of and accept the risks of COVID posed by international travel and competition. They ask that they be permitted to participate in the Pan American Championships independent of GymCan's decision not to compete.
15. The Claimants submit that participation and success at the 2021 Pan American Championships provides Canada with an opportunity to send more athletes to the 2021 Olympic Games in Tokyo.

Respondent's Submissions

16. The Respondent submits that its decision not to compete in the 2021 Junior and Senior Pan American Championships should not be overturned. The Respondent takes the position that it has the authority to make a unilateral decision not to send athletes or representative teams to the Pan American Championships. It asserts this right as the national governing body for the sport as recognized by the Fédération Internationale de Gymnastique ("FIG") as well as under its Internal Nomination Procedure ("INP"). In support of this position, the Respondent has submitted the information leading to its decision as well as information in respect of the internal processes it followed in taking its recommendation not to compete to a decision.
17. The Respondent further submits that along with the authority to make the decision, it also has a responsibility to make decisions that are in the best interest of the health and welfare of all members based upon the input and advice of its key stakeholders and relevant technical experts in the community.
18. The Respondent notes that a decision on this matter will potentially set a precedent by either clarifying or determining the scope of authority that can be exercised by the national governing body with respect to competition entry of representative teams or athletes representing Canada in international competitions.

Issues

19. The following issues have been raised in this matter:

- A. Should Gymnastics Canada's decision not to compete in the 2021 Pan American Championships be overturned?
- B. If not, should athletes be permitted to participate in the 2021 Pan American Championships independent of their national sport organization?

Reasons

- A. *Should Gymnastics Canada's decision not to compete in the 2021 Pan American Championships be overturned?*
20. The Claimants have asked that GymCan's decision not to compete in the 2021 Pan American Championships be overturned. The Claimants have not articulated a reason for me to overturn GymCan's decision, other than it is not fair and deprives them of achieving their Olympic dream.
21. Based on the positions of the Claimants, there is no dispute about the risk assessment tool and the conclusions made from it and there is no dispute regarding the internal processes followed by GymCan in coming to the decision not to compete. Any of these would have been grounds for me to consider overturning GymCan's decision. Instead, during the hearing, attendees for the Claimants acknowledged that they understand GymCan's rationale for deciding not to compete at the 2021 Pan American Championships and raised no issues with the administrative processes. They also acknowledged that the decision was made with good intentions and with the sole purpose of protecting athletes.
22. The dispute at hand is not with *how* GymCan decided not to compete, but is about the outcome not to compete. The position of the Claimants is that this decision is unfair to the athletes and coaches who have trained hard their whole lives in hopes of making Canada's Olympic Team. I recognize the effort required of athletes performing at the high performance level and the discipline it takes and the tireless passion and enthusiasm high performance athletes bring to their training on a daily basis. However, I also recognize the difficult decisions NSOs are in the position of having to make. The decision not to compete at the 2021 Pan American Championships is one of those decisions.
23. The decision not to compete at the Championships was made by GymCan reluctantly and with the best interest of the athletes in mind. It is unfortunate that the decision had to be made and that it will impact the Olympic aspirations of some very remarkable athletes and coaches, but it was a decision that had to be made in an extraordinary time under extraordinary circumstances. COVID-19 has impacted the world of sport and forced many organizations into making decisions about competition many likely wish they never had to make. I appreciate that the staff at GymCan was thrust into this difficult position and made the best recommendation they could on the incomplete information they were given by PAGU. It is GymCan's right and responsibility to determine where to compete, as it is with any other NSO, so long as NSOs are acting fairly and in accordance with the relevant policies and procedures. They have the right to decide which competitions to take part in. These decisions may invariably result in the disadvantage of one athlete over another, but without evidence of the NSO acting unfairly, the decision will stand.
24. In this matter, GymCan made the decision not to compete for safety reasons. The fairness of the decision has been unchallenged. I find the steps outlined by GymCan in how this decision was made is unimpeachable. And, while it was a difficult decision, GymCan should be commended for the manner in which they have put protecting the safety of their athletes, coaches, members of Team Canada, their families and all Canadians above all else.

25. Because no allegations of bias or inappropriateness with the manner in which GymCan arrived at the decision not to compete have been raised, I have been provided with no basis to overturn this decision.

B. Should athletes be permitted to participate in the 2021 Pan American Championships independent of their national sport organization?

26. During the hearing, the Claimants sought to be permitted to participate in the Pan American Championships independent of their NSO. The arguments put forward by the Claimants were, in essence, that they were aware of the risks associated with participation, but that they are choosing to accept that risk and compete regardless. The Claimants argue that risk is a natural part of competition, as they risk bodily injury every day of practice or competition.

27. The Claimants did not make submissions or produce any evidence showing that they could be entered independent of their NSO. As a result, I accept the Respondent's evidence that PAGU will only accept entries from the recognized national governing body for gymnastics of each participating country and that it will not recognize individual entries.

28. Given this, I have no jurisdiction over this question. As I have already upheld GymCan's decision not to compete at the 2021 Pan American Championships, I cannot order GymCan to send the athletes. Likewise, I lack the jurisdiction over PAGU to force them to accept the athletes independent of their NSO.

Order

29. The Claimants' request that Gymnastics Canada's decision not to compete at the 2021 Pan American Championships be overturned is denied. So too is the Claimants' request that they be permitted to compete at the 2021 Pan American Championships.

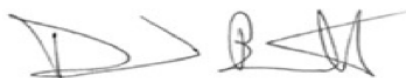
30. I find that no basis to overturn the decision has been argued.

31. I find that I have no jurisdiction over whether the athletes can compete at the 2021 Pan American Championships independent of their NSO.

32. The Claimants thoughtfully presented their position and did a good job in self-representing without the assistance of legal counsel. I am saddened that their life long ambitions are being thwarted by COVID. I recognize that it may feel particularly unfair to the high performance athletes to have lost a year of major competitions, like the Pan American Championships, unfortunately, this is the reality that all of society is facing.

33. The hearing itself was also notable for the collegiality displayed between the parties and I would like to commend all involved for the manner in which they conducted themselves. I would also like to recognize Sandra Traynor, the Interpreter, for her excellent assistance in this matter.

Signed in Ottawa, this 20th day of May, 2021.



David Bennett, Arbitrator