

ADR: 03 - 0016
Ordinary Division

PASCALE BLAIS

Claimant

v.

WTF TAEKWONDO ASSOCIATION OF CANADA

Respondent

before

Richard W. Pound, Q.C.
(sole arbitrator)

Present:

Pascale Blais (Claimant)

Martin Montes (coach and representative of Claimant)

Mireille Harnois (Taekwondo Quebec, representative of Claimant)

Gen. Robert K. Martineau, Vice-president Sport, representative of Respondent)

David Silverman (TKD Canada) representative of Respondent

(Observer) Odette Lagacé (Court Office, ARDSportRED)

This is a dispute between the Claimant and the Respondent relating to team selection. The Claimant seeks to enter the 2003 Olympic Weight Division National Team Selection Event (the "Selection Event"). The Respondent takes the position that she is not eligible to do so, having failed to meet one of the essential criteria for such entry, namely that she have completed at least one round in the 2003 Canadian National Championships (the "Nationals"), held earlier this year. If the Claimant is unable to enter the Selection Event, it appears to follow that she cannot be selected either for the 2003 Pan American Games or for the 2004 Olympic Games in Athens.

Prior to submission of this dispute to the present Alternative Dispute Resolution procedure, the parties observed the internal appeal process established pursuant to the applicable internal rules of the Respondent. The Claimant's appeal was denied, thus exhausting the administrative recourses available to the Claimant. No issue was raised before me as to any defect in the internal appeal process, other than disagreement with the substance of the decision. The parties have no objection to the selection of me as an arbitrator and I have filed the requisite Declaration of Independence with the Court Office.

The parties submitted all relevant documents to the Court Office, which has, in turn, forwarded them to me prior to the hearing of the matter. In order to be sure that all parties would have every opportunity to speak to the facts and to submit argument, I requested the Court Office to convoke the parties to participate in a conference call commencing at 2:00 p.m. (EDT) on May 9, 2003. There is some urgency involved and I was asked to advise the Court Office of my decision not later than 5:45 p.m. (EDT) the same day.

At the commencement of the hearing, I requested and obtained confirmation of the following preliminary matters:

1. that the Claimant was satisfied to be represented in this matter by Martin Montes and Mireille Harnois, notwithstanding that neither is an advocate;
2. that the representatives of the Respondent are properly authorized to represent the Respondent in this matter, notwithstanding that neither is an advocate;
3. that no witnesses would be called by either party;
4. that there were no documents other than those provided to me by the Court Office that had any bearing on the outcome of the matter;
5. that neither party required the services of an interpreter for purposes of the hearing; and
6. that there were no "affected persons."

As to the matter of affected persons, the Respondent, acting from an abundance of caution, suggested that I might consider the four other athletes already registered in the competition to be affected persons, since, were the Claimant to participate in the Selection Event, their eventual results might be adversely affected. I have concluded that such competitors are not affected persons insofar as their rights to participate in the event may be concerned, since there was no pre-set limit as to the number of

competitors able to participate in the event and no quota that might be invoked to prevent otherwise qualified athletes from participating.

The facts are undisputed. The Claimant was entered as a competitor in the 2003 Nationals. Taekwondo is a sport that has weight categories. Competitors competing in a particular weight category are subject to a weigh-in requirement, a process applicable to all competitors. The rules of each competition may vary as to the timing and duration of the weigh-in period, but, at the Nationals in 2003, it was a one-hour period, from 7:00 to 8:00. The rules permit a competitor who presents himself or herself for weighing-in, and who is found to be over the limit, to try a second time, within the time limit established for the official weigh-in, and to replace the first weight with the second weight for purposes of the competition. This is typically done by inducing loss of fluids, such as by taking saunas or by other means.

The Claimant duly presented herself for weigh-in at 7:18 and was found to be some 50 grams over the weight limit for the category in which she was registered to compete. She retired to the sauna for the purpose of losing the extra weight, but did not present herself until 8:05, after the weigh-in period was finished. The officials refused to weigh her and she was excluded from the competition, since her only official weight showed her as overweight for the category. I assume, without deciding, that had she been accepted for weigh-in at 8:05, she would have "made" the weight, but there is no evidence before me to that effect. In any event, the Claimant in this proceeding takes no issue with the weigh-in procedures at the Nationals (Montes-Silverman e-mail May 5, 2003)

From this unfortunate series of events, flow serious consequences. Some are financial; others relate to eligibility for participation in the 2003 Pan American Games and in the 2004 Olympic Games. The financial consequences flow from the fact that the Claimant will lose her status as a "carded" athlete and thus her access to funding provided by Sport Canada, the federal funding agency for the Athlete Assistance Programme. The documents before me indicate that the Claimant acknowledges the loss of funding and does not dispute the effects of her non-participation in the Nationals on her status as a "carded" athlete. This is not at issue in these proceedings.

More important to the Claimant than funding is her right to participate in the series of competitions and other preparations leading to selection for the Pan American and Olympic Games. In order to be selected for either or both teams, it is essential that she first participate in the Selection Event. This is an additional step developed by the Respondent, since the Olympic and Pan American Games programmes do not accept the full eight weight categories that apply to national, world and other championships in the sport. Only four weight categories are used in the Olympic and Pan American Games, a compromise reached by the international federation as part of the conditions under which the sport would be added to the programmes of the Games. Each national

federation, of which the Respondent is one, must, therefore, select from its eight regular weight categories, athletes who will participate in the Games in the accepted Olympic weight divisions. If the Claimant is to be part of either team, she must participate in the Selection Event.

Selection for Canadian Pan American and Olympic Games teams depends not only on the decisions of national federations (and, in some cases, international federations), but also on the agreement of the national Olympic committee ("NOC") recognized as such by the International Olympic Committee. In the case of Canada, the NOC is the Canadian Olympic Committee ("COC"). A series of negotiations is typically entered into between the national federations and the COC as to what selection criteria will be used to pick the Pan American and Olympic teams from each sport. The final decision is one taken by the COC, subject, in appropriate cases, to arbitration of the same genre as the present proceeding.

Team selection criteria for both Games have been negotiated and established by the Respondent and the COC. They are part of the documentation before me in this matter. There are both diagrammatic and written materials. The diagram material is described as "Draft Taekwondo Canada 2004 Olympics Roadmap" and there are two versions, one dated 12 August 2002 and another dated 11 January 2003. There is also a document entitled "Selection Methods for Greece Olympics - 2004" prepared by Master Simon Chung, a document that includes the procedures for the 2003 Pan American Games selection, selection to participate in a world or regional Olympic qualifying tournament and final selection of Canadian representative(s) for the 2004 Olympics. It is not perfectly clear from Master Chung's document that participation in the Nationals is an absolute requirement for selection to the teams, but the weighting of the points in the document makes it clear that it would be virtually impossible to be selected without points from the Nationals.

Schedule "B" to the agreement between the Respondent and the COC is much clearer and provides that in order to attend qualifying events of the Respondent and, in particular the Selection Event, athletes must compete in the 2003 Nationals (section 2.2.1). In Appendix 1 to the same document, the competition methodology is identified. Stage 1 refers to the 2003 Nationals. The gold and silver medallists in the Nationals would be invited to the Selection Event. In Stage 2, reference is made to participation eligibility, including the medallists just referred to as well as 2002-2003 carded athletes (of which the Claimant is one), but, conditional upon such carded athlete competing in at least one match at the 2003 Nationals. Schedule "D" is entitled "Athlete Acknowledgment and Acceptance" in relation to the selection criteria. Section 1 reads:

I have read, understood and accept the selection criteria established by the Canadian Olympic Committee (the "COC") and by the NSF (attached hereto as Schedule 'A', Schedule 'B' and Schedule 'C'. In the event of any

inconsistency or conflict between Schedule 'A' and Schedule 'B' and/or Schedule 'C', the terms of Schedule 'A' prevail) to be applied to the selection of athletes and teams to the Olympic Team in the sport of TAEKWONDO; and ...

This was signed by the Claimant, under some duress, on the eve of the Nationals, since it was intimated to her that she could not be considered for carding unless she signed. By this time, as well, the Respondent had concluded its negotiations with the COC and Schedule "B" was in effect, dated April 9, 2003.

More importantly, however, the Respondent had, by e-mail, advised, *inter alia*, the Claimant of the applicable rules for carding criteria on March 17, 2003 and of the Pan American Games selection criteria on March 27, 2003. The latter were also sent to the Claimant's coach, Martin Montes the same day. In these documents, it was clear that, in order to be eligible to be invited to the Selection Event, there was an obligation to complete at least one round in the 2003 Nationals (section 5.2), an obligation that was repeated in respect of 2002 carded athletes who did not finish first or second at the 2003 Nationals (section 5.3).

This was, admittedly, not much time prior to the Nationals, but the Claimant had already entered the event, for which the entries had to be submitted by March 3, 2003. She entered the Finn class, which I understand to be 37 kg. or less. She could have entered a higher weight, perhaps, had she known of the Games selection criteria prior to March 3, 2003, especially the requirement that she win at least one round at the Nationals as a condition precedent to being invited to the next stage of the selection process. The evidence before me leaves me with some doubt as to whether there was general knowledge of the importance of the Nationals prior to March 3, 2003. The matter was discussed at a January meeting of the Respondent's Board and a resolution, the text of which was contained on a PowerPoint or other slide, referring to this condition, was adopted. The draft minutes of that meeting have not yet been approved, since no subsequent Board meeting has been held.

I have concluded, however, that both the Claimant and her coach were aware of the importance of completing at least one round at the 2003 Nationals. Having chosen the category in which she was to participate, as is the case with every athlete competing in a sport that has weight categories, it was her responsibility to make the weight. She failed to do so.

The consequences are heavy, indeed, and may well have been unintended, since the selection process for the Olympic weight categories has, apparently, been a matter of some difficulty for the Respondent in the past. It is not, however, within the scope of the powers of an arbitrator to re-write or to re-design a selection process that has been developed by experts within the sport (including its coaches), approved by its

constituent authorities and validated by the COC for purposes of team selection. I have found no evidence whatsoever that would suggest any ulterior motive behind the selection criteria that have been adopted by the Respondent. Indeed, the Respondent feels itself to be obliged, with considerable regret, to apply its rules with respect to the Claimant.

I conclude, with similar regret, that the rules have been properly applied and that I must dismiss the Claimant's appeal.

I cannot do so without adding the observation that the Respondent might usefully consider a possible revision of its selection criteria (subject to negotiation with the COC), which criteria seem to pre-determine the ambit of its selection of athletes for a period of almost 18 months, based on performance in the 2003 Nationals. While it may, as a practical matter, be too late to do much about the 2003 Pan American Games this August, in the interests of fielding the best team possible for the Olympic Games a year later, a sober second look might be in the best interests of all concerned, especially given the transitional nature of many of the current provisions.

Montreal, May 9, 2003

Richard W. Pound, Q.C.
Arbitrator