

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

No.: SDRCC 07-0061

IN THE MATTER OF AN ARBITRATION

BETWEEN: Yuri Movshovich (Claimant)

AND

Shooting Federation of Canada (Respondent)

AND

Wayne Salhany (affected athlete)

ARBITRATOR: Ross C. Dumoulin

APPEARANCES:

For the Claimant: Yuri Movshovich

For the Respondent: Rachel Corbett

For the affected athlete: Wayne Salhany

ARBITRATION AWARD

July 6, 2007

This is an arbitration award rendered pursuant to paragraph 6.22 (a) of the Canadian Sport Dispute Resolution Code (May 2007). I was appointed as arbitrator by the Sport Dispute Resolution Centre of Canada (SDRCC) on June 25, 2007 to hear and determine the present matter. This case is an appeal from a decision rendered on or about June 15, 2007 by the Executive Committee of the Shooting Federation of Canada pertaining to the men's shooting team to be sent to the 2007 Pan American Games to be held in R o de Janeiro, Brazil from July 20 to 22, 2007. A request dated June 23, 2007 was filed with the SDRCC under section 3.4 of the Code by Mr. Yuri Movshovich, the Claimant, for the resolution of the dispute. An application for intervention dated June 24, 2007 was filed with the SDRCC under section 6.14 of the Code by Mr. Wayne Salhany as an affected third party who wishes to participate in these proceedings. From the time I was appointed, Mr. Salhany did, in fact, participate in the proceedings, including the preliminary meeting by conference call and the in-person arbitration hearing.

A preliminary meeting was held by conference call with the parties pursuant to paragraph 6.10 (b) of the Code at 7:30 a.m. June 26, 2007, the day after I was appointed. An in-person arbitration hearing was held by conference call later that day from 6 p.m. to just after midnight. A decision on this matter was required by midnight the next day, June 27th, because on the morning of June 28th, the Canadian Olympic Committee (COC) would have a last opportunity to submit changes to the event entry by name to the Pan American Games Organizing Committee in R o De Janeiro, although any such change would be at the discretion of the said Organizing Committee since the deadline for submitting names was June 22, 2007. On June 26, 2007, the COC stated in writing to the SDRCC for communication to the parties that if the decision of the arbitrator in this matter resulted in amendments to the shooting entries for the Pan American Games (PAG), the COC would make its best efforts to implement that decision. The COC pointed out that with the entry and registration deadline passed, it does not have the authority, and is therefore not in a position, to require the PAG Organizing Committee to accept any changes to its entries after June 22nd. On the evening of June 27th, I rendered my decision without reasons in the matter and conveyed it to the SDRCC. What follows is a summary of the relevant facts of the case, the submissions of the parties and the said

decision with reasons.

THE FACTS

In July 2006, the Canadian National Pistol Championships were held in Edmonton, Alberta. The results of the Men's 50 m Pistol National Team Trials were as follows:

1. Deepinder Singh: total score of 1154.2
2. John Rochon: total score of 1143.9
3. Wayne Salhany: total score of 1143
4. Scott Illingworth: total score of 1132.8
5. Yuri Movshovich: total score of 1131.3

Ms. Susan Verdier of the Shooting Federation of Canada (SFC) produced a document entitled "Shooting Federation of Canada Internal Team Nomination Procedures Selection Criteria Principles Río De Janeiro 2007". The SFC drafted the document and submitted it to the Canadian Olympic Committee (COC) on August 18, 2006. It was approved by the COC by October 11, 2006, which was the date that the said document was given to the SFC team Managers and Head Coaches who in turn had the responsibility to circulate it to the athletes. However, both Mr. Movshovich and Mr. Salhany indicated at the arbitration hearing that they had never seen the document. Ms. Verdier testified that the team Managers and Head Coaches would have based their selection criteria on the criteria contained in the document. It reads in part as follows:

Qualification Period - The Río de Janeiro 2007 Selection Criteria (the "Criteria") as established by the Shooting Federation of Canada (the "SFC") High-Performance Committee (the "HPC") includes a qualification period from August 1, 2006 to June 18, 2007, inclusive.

Appeals - In the event that an Athlete is not satisfied with the Criteria an Appeal may be made by the Athlete, within 14 days of the release of the Criteria, to the SFC Executive Committee (the "Executive") for consideration and determination thereof.

. . .

Decision Making Authority - the SFC Executive has charged the HPC with making the final internal nomination decisions subject to its ratification.

The Criteria - The Games selection trials for each of the disciplines shall be held at a World Cup or equivalent international competition (the "Venues"), which may be held independently for each of the disciplines at different Venues during the period from August 1, 2006 to June 15, 2007 (the "Games selection trials").

On March 18, 2007, Mr. Patrick Haynes, the Interim Head Coach for the Canadian National Pistol Team, wrote in part as follows to the team members:

Below are the guidelines being used to name pistol athletes to Canada's 2007 Pan American Games Team. The goal is to provide a document which guides the Head Coach in naming the team members, as well as detail to the athletes what the rationale is.

. . .

Guidelines

The Canadian National Pistol Team has been allocated six athlete positions for competition at the 2007 Pan American Games in Brazil. The General Criteria is as follows:

- . . .
- Only event scores for which the athlete has qualified for, as per the 2006 Canadian National Team Trials, will be considered during the Team Selection process.
 - The events for which the athletes have qualified for are listed as follows (in descending order):

. . .

Men's 50 m 2006 NTT

Deepinder Singh
John Rochon
Wayne Salhany
Scott Illingworth
Yuri Movshovich

The words “the 2006 Canadian National Team Trials” in the above document is a reference to the Canadian National Pistol Championships held in Edmonton, Alberta in July 2006. The five names of athletes in the March 18, 2007 document reflect the above-mentioned results in order in the 50 m Pistol National Team Trials in Edmonton.

Around this time, Mr. John Rochon, a member of the Canadian National Shooting Team, retired.

On March 23, 2007, five days after his communication of March 18th, Coach Haynes sent an e-mail to the members of the Canadian National Shooting Team which reads in part as follows:

In a previous email (Subject: RE: Pan-American Selection Criteria Sunday Mar. 18th, Dated: Mon 3/19/2007 12:04 AM), and attached document (CNPT-Communication-2007-03-18-pan-am-sel1.pdf) contained a list of athletes shooting at the 2007 USA World Cup who are qualified to compete for team selection for the 2007 Pan American Games. That document’s list of athletes was incorrect. This email shall take precedence over that communication.

The correct list of athletes able to compete for positions on the 2007 Canadian National Pan American Pistol Team are as follows:

. . .

Men’s 50 m pistol

Deepinder Singh
Wayne Salhany
Scott Illingworth

In April 2007, the shooting World Cup was held in Fort Benning, USA. In the elimination round, in the men’s 50 m pistol event, the results were as follows for three Canadian

athletes:

- Deepinder Singh: total score of 534
- Yuri Movshovich: total score of 532
- Wayne Salhany: total score of 528

However, because Coach Haynes had reduced the field of eligible male athletes in the 50 m pistol event from five to three, thus eliminating Yuri Movshovich from consideration for a position on the 50 m pistol team for the 2007 PAG, his score was not considered by the SFC and he wasn't chosen to be a part of that team. This was confirmed in an undated document entitled "2007 PAN AMERICAN GAMES SFC TEAM SELECTION & NOMINATION" which was released by the SFC on or about June 15, 2007. This document, which also outlines the history of the matter, reads in part as follows:

Pan American Games Nomination Responsibility

The Canadian Olympic Committee has approved the "Shooting Federation of Canada International Team Nomination Procedures, Selection Criteria Principles Río De Janeiro 2007" document detailing the international selection process to which the Federation must adhere ...

The Chair of the HPC hereby requests that the Executive Committee confirms and ratifies the athletes who will be nominated to the 2007 Río de Janeiro Pan American Games and the events in which they will compete.

... the Chair of the HPC has been approached with additional issues surrounding the selection of pistol athletes to the Games.

As the Canadian Olympic Committee deadline for finalized "short list" athletes and support staff nominations is Monday, June 18th, it is critical that these new issues are addressed and resolved no later than Friday so that the appropriate paperwork can be filed on behalf of SFC athletes and team members.

Backgrounder

Following the June 4, 2007 Executive Committee majority decision in the appeal launched by Wayne Salhany, the Chair of the HPC was

approached by coach, Patrick Haynes, with further correspondence regarding the pistol event(s) in which Mr. Salhany would be entered to shoot at the Games.

. . .

Men's Pistol Team Selection

In the initial document forwarded to the National Pistol Team dated March 18, 2007 ... Patrick Haynes stated ...

On March 23rd by email correspondence, Patrick retracted the published list and issued a corrected list of eligible athletes as follows:

Men's 50 m Pistol

. . .

Deepinder Singh
Wayne Salhany
Scott Illingworth

. . .

Following the Pan American Games Selection Trials conducted at the Fort Benning World Cup competition, Patrick Haynes listed the initial Pan Am men's pistol team nominations as follows:

. . .

Men - 50 m Free
1 Deepinder Singh
2 Yuri Movshovich

. . .

Wayne Salhany appealed the decision to exclude him from nomination to the Pan American Games Pistol Team.

Further to the majority decision of the Executive Committee to overturn the ruling of the High-Performance Committee, and to additional correspondence received by JP Huot from Patrick Haynes detailing selection, Mr. Haynes indicated that he was willing to nominate Mr. Salhany as a substitute for Steve Maly in the 10m Air Pistol event only.

Revised Men's Pistol Team as nominated by Patrick Haynes:

Men - 50 m Free
1 Deepinder Singh
2 Yuri Movshovich

Although a formal appeal has not been launched, Mr. Salhany has contested the decision to nominate him for air pistol only on the basis that, regardless of the scores achieved during the Fort Benning selection competition, Yuri Movshovich was not eligible for consideration in the 50m Free Pistol event whereas Wayne Salhany was eligible for consideration.

Men's Pistol Team Nomination Proposal

By virtue of the aforementioned details and in keeping with the SFC's efforts to maintain as fair and equitable a process as possible in the selection of athletes and teams to major Games, the VPHP [Vice President High Performance - J.P. Huot] requests consideration of the following athlete nominations to the 2007 Pan American Games Men's Pistol Team:

. . .

Men - 50 m Free

- 1 Deepinder Singh
- 2 Wayne Salhany

. . .

Pending the Executive Committee's approval and support of the aforementioned proposal, the VPHP requests the entertainment of the motion on page 4 of this document.

[Page 4 of document]

MOTION

That the individuals and designated events as listed below are ratified and put forward to the Canadian Olympic Committee for nomination to the 2007 Río de Janeiro Pan American Games team.

MOVED: JP Huot SECONDED: Ed Martin CARRIED

. . .

PISTOL TEAM

Men - 50 m Free

- Deepinder Singh
- Wayne Salhany

The decision of the Executive Committee of the SFC reflected in the above document to remove Mr. Movshovich's name and to name Mr. Salhany to compete in the men's 50 m Pistol

event at the 2007 PAG was communicated to Mr. Movshovich on the evening of June 15, 2007. Under cross-examination by Mr. Movshovich, and then by Mr. Salhany, Ms. Verdier of the SFC testified that the decision of the Executive Committee was based upon the list of athletes submitted by Coach Haynes in his e-mail of March 23, 2007. The Executive Committee accepted the criteria and selection process proposed by the Coach in his two e-mails of March 2007. This is because coaches are given the liberty to develop the criteria or to change the list of athletes. It was within Coach Haynes' jurisdiction to issue an amended list of athletes. However, no evidence was called to explain why, in March of 2007, Coach Haynes reduced the field of eligible male athletes for the 2007 PAG in the 50 m pistol event from five to three.

No further evidence was called at the arbitration hearing pertaining to the reasons behind the decision of the Executive Committee made on or about June 15, 2007.

On June 21, 2007, Mr. Movshovich lodged an appeal against the said decision which was denied on the same day by the Executive Committee of the SFC. No evidence was presented at arbitration as to the reasons behind the denial of Mr. Movshovich's appeal.

THE POSITIONS OF THE PARTIES

The Shooting Federation of Canada:

At the arbitration hearing, Ms. Rachel Corbett indicated, on behalf of the SFC, that it was conceding that errors were made. The criteria changed. Key personnel is no longer in place. Over the last 24 hours, a legal analysis was made and the position taken by the SFC at arbitration was that the claim filed by Mr. Movshovich should be upheld.

It was submitted, however, that the intentions of the SFC were good.

Ms. Corbett argued that the SFC Selection Criteria Principles document which was

approved by the COC constitutes a binding contract between the SFC and the COC which cannot be unilaterally changed. The following caselaw was submitted support of the SFC's position:

- Badminton Canada v. Canadian Olympic Association (July 12, 2000) (unreported) (McLaren);
- Pascale Blais v. WTF Tae Kwon Do Association of Canada (May 9, 2003) ADR: 03-0016 (Pound);
- Shooting Federation of Canada v. Canadian Olympic Committee (May 3, 2004) ADR: 04-0029 (Sanderson);
- Dominique Vallée v. Canadian Yachting Association and Canadian Olympic Committee (July 9, 2004) SDRCC: 04-0002 (Drymer);
- Badminton Canada v. Canadian Olympic Committee (July 26, 2004) (unreported) (McLaren).

The revision to the men's 50 m pistol team contained in the March 23, 2007 e-mail from Coach Haynes was not approved by the COC and was a unilateral change sought to be made by the SFC.

Secondly, the new conditions for athlete eligibility expressed in the e-mails of March 18 and 23 2007 by Coach Haynes were not approved by the Executive Committee or the High-Performance Committee of the SFC.

Thirdly, in his e-mail of March 18, 2007, Coach Haynes, in outlining the selection criteria, relates back retroactively to an event that is outside the qualifying period of August 1, 2006 to June 18, 2007 mentioned in the SFC Selection Criteria Principles document.

Fourthly, when the athletes were competing in the said event which is outside the qualifying, they would not have known of the criteria of having to place in the top three to go to the 2007 Pan American Games and this is unreasonable. Ms. Corbett submitted that all four of the above flaws are fatal.

The results of the World Cup held in Fort Benning in April 2007 should have been considered. Mr. Salhany was the second athlete selected for the man's 50 m pistol team because Mr. Movshovich was not eligible. However, Mr. Movshovich cannot be excluded. It was not a fair process. The changes to the criteria were a "moving target".

The Claimant:

Mr. Movshovich poses the following question: if the SFC Selection Criteria Principles document was available to the Executive Committee of the SFC in making its decision on or about June 15, 2007, then why didn't it use it as a reference? Mr. Movshovich expressed surprise that the said document was not circulated to the athletes, although he is happy that it exists.

The Claimant didn't realize the details and implications of Mr. Salhany's appeals until they affected him. He suggested that what is needed is better participation of the athletes in the process.

In his Request under section 3.4 of the Canadian Sports Dispute Resolution Code, Mr. Movshovich asks that he be reinstated to shoot in the men's 50 m pistol event at the 2007 Pan American Games.

Mr. Wayne Salhany (affected party):

Mr. Salhany submitted that it was unfair that he was not informed of the SFC's position to support Mr. Movshovich's claim until the evening of the arbitration hearing. He was therefore not prepared to deal with it.

Mr. Salhany acknowledged that the process and the selection criteria in this case are "a mess". The entire process needs cleaning up. It is not acceptable to retroactively change the

criteria.

However, Mr. Salhany argued that if the National Team Trials are not relevant, then no one is eligible for consideration for the 2007 PAG. An athlete must make the national team in order to be eligible.

The criteria were published by Coach Haynes and Mr. Salhany, as an athlete, followed them in good faith and now, he is being hijacked by the SFC who won't stand by their own criteria. This is despicable.

Reply of the Shooting Federation of Canada:

Ms. Corbett submitted in reply that the SFC did not have the time to advise the parties of its position before the arbitration hearing.

DECISION

The decision being challenged in this case was rendered on or about June 15, 2007 by the Executive Committee of the Shooting Federation of Canada. It pertains to the selection of the men's 50 m pistol team to be sent to the 2007 Pan American Games (PAG) to be held in Río de Janeiro, Brazil, from July 20 to 22, 2007.

A document entitled "Shooting Federation of Canada Internal Team Nomination Procedures Selection Criteria Principles Río De Janeiro 2007" contains the selection criteria established by the SFC for the team to be sent to the 2007 PAG. It was approved by the Canadian Olympic Committee (COC). It is not disputed that the SFC has the authority to set the selection criteria for shooting competitions, subject to the approval of the COC. Once the COC approved

the criteria contained in the above-mentioned SFC Selection Criteria document, they became binding on the athletes vying for positions on the shooting team to be selected for the 2007 PAG. It is unfortunate that Messrs. Movshovich and Salhany were not aware of the contents of the said document. Nevertheless, the Interim Head Coach was required to base his selection of athletes on the criteria contained in the document.

The SFC Selection Criteria document makes it clear in its opening paragraph that the selection criteria established by SFC included a qualification period of August 1, 2006 to June 18, 2007. However, in his e-mail of March 18, 2007, Interim Head Coach Patrick Haynes notified the members of the National Pistol Team that one of the criterion was that “Only event scores for which the athlete has qualified for, as per the 2006 Canadian National Team Trials will be considered during the Team Selection process.” This was a reference to the Canadian National Pistol Championships held in Edmonton, Alberta in July 2006. As well, the five athletes named in the March 18th e-mail reflect the results in descending order in the men’s 50 m Pistol National Team Trials in Edmonton in July 2006. By basing his selection of eligible athletes on a competition that was outside the qualifying period specified in the SFC Selection Criteria document, Coach Haynes was in violation of the selection criteria established by the SFC and approved by the COC. However, as Mr. Salhany pointed out in his submissions, if the National Team Trials are not relevant, then no one is eligible for consideration for the 2007 PAG. This is at least true for the purposes of the present arbitration. Moreover, the five names of athletes who competed in Edmonton are the only names produced in evidence at the arbitration hearing with respect to the men’s 50 m pistol team. As arbitrator of this dispute, I have no other names to consider. The issue raised by the Claimant’s request is whether Mr. Movshovich or Mr. Salhany should be the second athlete on the men’s 50 m pistol team after Deepinder Singh.

To be clear, the list of five athletes, and the subsequent amendment to the list, resulting in a new list of three athletes, were not the final selection of athletes to go to the 2007 PAG. Rather, these lists contained the names of athletes who were eligible to be considered for inclusion on the 2007 PAG team. The nomination of the final men’s 50 m pistol team for the 2007 PAG was based

upon the results achieved by the eligible athletes at the PAG Selection Trials conducted at the World Cup competition held at Fort Benning in April of 2007.

Five days after Coach Haynes issued the initial list of five eligible athletes “shooting at the 2007 USA World Cup [at Fort Benning] who are qualified to compete for team selection for the 2007 Pan American Games”, he amended the list by simply removing the names John Rochon and Yuri Movshovich. The evidence showed that Mr. Rochon retired around that time. The shortened list meant that although Mr. Movshovich, the Claimant, would be competing at the World Cup in Fort Benning, he would not be considered for inclusion on the men’s 50 m pistol team for the 2007 PAG, no matter what score he obtained at the World Cup.

The SFC document entitled” 2007 PAN AMERICAN GAMES SFC TEAM SELECTION & NOMINATION” states that, following the Pan American Games Selection Trials conducted at the Fort Benning World Cup competition, in which Mr. Movshovich obtained a score that was superior to that of Mr. Salhany in the elimination round, Coach Haynes selected Mr. Movshovich instead of Mr. Salhany for the men’s 50 m pistol team for the 2007 PAG. This was yet another change in direction implemented by the Interim Head Coach. The said 2007 Team Selection document goes on to reveal that a motion was carried to put forward to the COC the names of Deepinder Singh and Wayne Salhany for nomination to the men’s 50 m pistol team for the 2007 PAG in spite of Coach Haynes’ latest selection of Mr. Movshovich. This decision by the SFC was upheld by the Executive Committee of the SFC on June 21, 2007 when it denied Mr. Movshovich’s appeal.

Coach Haynes did not testify at the arbitration hearing. Neither he, nor anyone else from the SFC, furnished any explanation for the removal of Mr. Movshovich’s name from the list of eligible athletes. In fact, no evidence at all was presented, whether through witnesses or in document form, on the rationale for removing his name. Nor was any evidence presented with respect to the rationale for the ultimate decision of the Executive Committee of the SFC to apparently abide by Coach Haynes’ removal of the Claimant from the list of eligible athletes and

select Mr. Salhany instead of Mr. Movshovich for the men's 50 m pistol team for the 2007 PAG. Ms. Verdier simply testified that the Executive Committee accepted what Coach Haynes proposed in his two e-mails of March 2007. However, this does not provide a rationale.

I must therefore find that the SFC has failed to satisfy its onus of proof specified in article 6.8 of the Canadian Sport Dispute Resolution Code which states as follows:

Where an athlete is involved in a proceeding as a Claimant in a team selection dispute, the onus of proof will be placed on the Respondent.

In fact, certain elements of the evidence suggest that the decision to remove the Claimant's name from consideration for the men's 50 m pistol team for the 2007 PAG was not only unsubstantiated but, in fact, wrong. Firstly, at the PAG Selection Trials conducted at the Fort Benning World Cup competition, the Claimant finished second in the elimination round with a score of 532, which was superior to the score of 528 obtained by Mr. Salhany.


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It follows that if the Claimant's name had not been removed from the list of eligible athletes, he would have been selected for the 2007 PAG men's 50 m pistol team instead of Mr. Salhany. Secondly, as the 2007 Team Selection document confirms, following the World Cup competition at Fort Benning, "Patrick Haynes listed the initial Pan Am men's pistol team nominations as follows: ... 1 Deepinder Singh 2 Yuri Movshovich". So, Coach Haynes apparently ignored his shortened list of athletes and chose Mr. Movshovich as one of the two athletes nominated for the men's 50 m pistol team at the 2007 PAG. This reversal was, in all likelihood, based upon the fact that the Claimant had achieved a superior score to that of Mr. Salhany at Fort Benning. It suggests that the Coach realized he'd made a mistake by removing Mr. Movshovich's name from consideration and tried to correct it.

In summary, the SFC failed to satisfy its onus of establishing a justification for the removal of Mr. Movshovich from the men's 50 m pistol team for the 2007 PAG. Moreover, the score achieved by the Claimant at the PAG Selection Trials in Fort Benning was superior to that of Mr. Salhany and this would seem to have prompted Coach Haynes to place the Claimant on the team. This evidence puts the SFC's decision into question. Therefore, its decision cannot stand. Mr. Movshovich should have been selected instead of Mr. Salhany.

Accordingly, the Shooting Federation of Canada's decision to remove the Claimant from the men's 50 m pistol team for the 2007 PAG and replace him with Mr. Salhany is rescinded. Pursuant to the power granted to me under paragraph 6.18 (i) of the Canadian Sport Dispute Resolution Code, it is hereby ordered that the Claimant replace Mr. Salhany on the said team.

Dated at Ottawa this 6th day of July, 2007.


Ross C. Dumoulin
Arbitrator