

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

N°: SDRCC 08-0078

MAY 16, 2008

CLEOPAS NCUBE
(CLAIMANT)

AND

CANADIAN AMATEUR WRESTLING
ASSOCIATION (CAWA)
(RESPONDENT)

AND

HASLAN GARCIA
(POTENTIALLY AFFECTED PARTIES)

ARBITRATOR: **JAMES E. DOYLE**

REPRESENTATIVES:

FOR THE CLAIMANT CLEOPAS NCUBE – **MORDEN C. LAZARUS (COUNSEL)**

- **EDWIN MONZON (COUNSEL)**

FOR THE RESPONDENT **CAWA** – **GREG MATHIEU (EXECUTIVE DIRECTOR)**

FOR (POTENTIALLY AFFECTED PARTY) **HASLAN GARCIA - PETER LAWLESS (COUNSEL)**

REASONS

Introduction

A pre-hearing telephone conference was held in the afternoon of May 13, 2008. Due to the urgency of timing issues arising in the appeal, it was agreed by all parties that the hearing would be conducted by telephone conference that evening. In addition to the above-noted representatives, also present during the

telephone conference hearing were Cleopas Ncube and his coach, Victor Zilberman, David McKay (Head Wrestling Coach, Team Canada) and Mike Jones, (coach of Haislan Garcia).

During the hearing, Cleopas Ncube, Victor Zilberman and David McKay provided sworn evidence and were cross-examined. Certain documentary evidence was produced and referred to by representatives of the parties.

By Award dated May 14th, 2008, I provided my “short decision” that the wrestle-off proceed in Edmonton, Alberta on May 17, 2008 in accordance with the CAWA letter dated May 1, 2008. The following are my reasons for this decision.

Background

Garcia and Ncube met in a best 2 out of 3 match final at the Olympic Trials (66 kg freestyle weight class) in Toronto in early December, 2007.

Ncube was injured during the second match and was unable to continue wrestling in the finals. This resulted in Garcia being named winner of the Olympic Trials competition.

Subsequently, Ncube appealed to CAWA for relief citing an illegal and intentional act by Garcia as the cause of his injury and requesting the disqualification of Garcia and alternatively, requesting a wrestle-off with Garcia.

On February 20, 2008, the Executive Committee of CAWA ordered a single match wrestle-off between Ncube and Garcia.

This decision gave rise to two appeals to the SDRCC. Garcia appealed the CAWA decision to have a wrestle-off. Ncube appealed that Garcia should be disqualified and Ncube named winner. Both appealed the format of the wrestle-off as a single match.

These appeals were heard by me on April 8, 2008. In a decision dated April 11, 2008, I rejected the appeal seeking Garcia's disqualification and I upheld the CAWA Executive Committee decision for a wrestle-off without any variation of the format. Written reasons were provided April 23, 2008.

It should be noted that during the April 8th, 2008 hearing, I was not asked to determine the date and location of the wrestle-off. I was not advised of any issue between the parties concerning possible future dates or locations.

CAWA arranged for the wrestle-off to proceed May 17th, 2008 in Edmonton, Alberta. This was communicated to the wrestlers and their representatives by CAWA by letter dated May 1, 2008. Ncube appealed to the SDRCC to vary the date and location and this matter came back before me on consent of the parties.

In a pre-hearing conference call on the afternoon of May 13, 2008, the parties confirmed the waiver of the internal processes of CAWA and agreed to proceed

with the arbitration hearing that evening by conference call commencing at 6:30 p.m.

Underlying Issue

This Appeal involves the question of the appropriate balance between the interests of all parties. Due to the injury, it is in the best interests of Ncube to delay the wrestle-off as long as possible in order that he have greater recovery time thereby enhancing his chance of winning the wrestle-off. CAWA wishes the wrestle-off to proceed on May 17, 2008 in order to fit in with its preparation plan for its athletes to maximize their chances of success at the Beijing Olympics. Garcia wishes to have a resolution in order that he may know whether he will be going to the Olympics and if so, to optimally prepare for same.

Ncube's Medical Status

Pursuant to the CAWA Executive Committee Decision dated February 20th, 2008, CAWA referred Mr. Ncube to Dr. Scott Delaney at the McGill University Department of Athletics. In a report dated May 8th, 2008, Dr. Delaney notes that Ncube would benefit from an additional 4 – 6 week period of rehabilitation and anti-inflammatory medication. He expresses the opinion, however, that Mr. Ncube is fit to wrestle at the present time.

It was Ncube's submission during the hearing that the wrestle-off should be delayed until at least mid-June. It was argued on his behalf that there was a

greater risk of re-injury if he competed on May 17th as compared to waiting until mid-June.

CAWA Position

CAWA head coach, McKay testified that a later date for the wrestle-off would prevent the chosen athlete's participation in a particular programme which he has developed for the entire wrestling team. This involves travel to various locations in Europe and the Middle East in late May/early June to compete in appropriate matches including some before a large number of spectators. This late May/early June programme is to be followed by a period of recovery and additional specific training geared to "peaking" for the Olympic Games scheduled for mid-August. Coach McKay was both adamant and persuasive in expressing his opinion that following this programme of competition and training was integral to maximizing the opportunity for success of the team in Beijing. He emphasized the importance of following a determined "timeline" and that "getting behind schedule" would severely compromise the chances of success at the Olympics.

There was no suggestion on behalf of Ncube that Coach McKay was biased towards one wrestler or another in determining the programme nor was there any allegation of bad faith involved. The only suggestion by Ncube was that Coach McKay was wrong (actually "too inflexible") in failing to allow for individual preparation programmes for particular athletes.

Analysis

It must be recognized that this is not simply a difference of opinion between Ncube and CAWA's Coach McKay with respect to a proper preparation programme for Ncube. McKay has developed a particular preparation programme which he believes will maximize chances of success in Beijing. In varying that preparation programme in order to permit Ncube to participate in a wrestle-off in mid-June, the decision, in effect, would prevent Garcia from participating in the preparation programme.

CAWA and Coach McKay also have interests beyond the two wrestlers involved in this dispute. They are charged with maximizing the success of the entire wrestling team. Success at the Olympics will determine funding for CAWA over the next 4 years. Additional funding will benefit all wrestlers under CAWA's jurisdiction. I find that these are legitimate aspects to be considered by CAWA and Coach McKay.

Coach McKay acknowledged that it would be possible to schedule a wrestle-off near the end of June in order to meet an administrative time deadline of June 30th to name Canada's participant in the Olympic Games. He pointed out, however, that there is a significant difference between simply naming a participant and preparing a competitor for maximum success in Beijing. Coach McKay's competition and training programme is geared towards achieving the latter.

Victor Zilberman gave evidence which sought to minimize the importance and likely effectiveness of Coach McKay's preparation plan. Zilberman expressed the view that there is no difference in preparing for the Olympics than for any other wrestling competition. In cross-examination, he acknowledged the concept of "peaking" for particular events but failed to adequately explain why Coach McKay's programme was inappropriate or misguided. It must be noted that, as Ncube's coach, Mr. Zilberman cannot be viewed as an impartial and independent expert.

In the end, the question which arises is how far must CAWA and Coach McKay go in accommodating Ncube's recovery from the injury? To what extent must other considerations be set aside in order to ensure that the wrestle-off be held at a time and place which maximizes Ncube's performance level?

Viewed another way, the question is whether CAWA's Executive Committee decision dated February 20, 2008 was effectively that, regardless of other considerations, Ncube must be afforded a wrestle-off on a date when he has reached maximum medical recovery (provided it occurs before June 30th) or whether the Executive Committee decision is to the effect that Coach McKay schedule a wrestle-off for a time which attempts to accommodate Ncube's medical recovery but which does not unduly undermine preparation for maximum success at the Olympics.

In my opinion, the latter is the impact and intention of the decision of the Executive Committee and in my opinion, that is an appropriate ruling by the Executive Committee.

Ncube has been determined to be fit to wrestle at the present time and the benefit of a delay of one month would simply improve his chances of success at the wrestle-off. Weighing that benefit to Ncube against the goals of a particular programme, it is difficult to say that Coach McKay and CAWA have acted inappropriately or been influenced by inappropriate considerations in coming to the conclusion that the wrestle-off should proceed on May 17, 2008.

Under the Executive Committee decision, the timing of the wrestle-off was left for determination by Coach McKay. As provided, he has consulted with the CAWA Vice-President Technical and with the two coaches. It is not required that both coaches agree or approve the date. Coach McKay is required to make his decision in good faith, meaning in these circumstances, for reasons that he believes are legitimate in balancing the interests of all concerned --- the competitive aspirations of the athletes and the goals of CAWA to maximize the success in Beijing. I believe that Coach McKay has made his decision in good faith and adequately balanced these considerations.

It should be noted that it is not my role to determine whether Coach McKay has a good and effective programme or whether he is too inflexible. I am not a

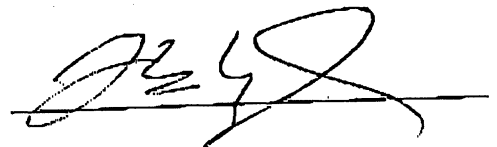
wrestling coach or expert and therefore, do not believe that it is my role to substitute my views for those of Coach McKay. Further, to the extent that an arbitrator might be called upon to enter into a review of technical aspects of a sport in considering decisions of a coach, it would be imperative for the adverse party to lead clear, cogent and independent evidence in support of another position.

As far as location is concerned, Edmonton is "neutral" territory in that neither wrestler comes from Alberta. I see no basis to disturb CAWA's decision regarding location.

Accordingly, the appeal of the claimant Ncube is dismissed. The wrestle-off will proceed in Edmonton, Alberta on May 17, 2008 in accordance with the CAWA letter dated May 1, 2008.

If any of the parties wish to advance a claim for costs, the SDRCC should be advised no later than May 23, 2008. If a claim for costs is made, I will receive submissions in a format to be determined.

Dated at Toronto, May 16, 2008



James E. Doyle

Arbitrator