

SPORT DISPUTE RESOLUTION CENTRE OF CANADA

No. SDRCC 24-0698

ALEKSAS VALADKA

Claimant

and

ALPINE CANADA

Respondent

before

Richard W. Pound, K.C.

Arbitrator

Appearances:

Aleksas Valadka, Claimant

Tim Zarski representing the Claimant

Jeff Thompson for the Respondent

DECISION WITH REASONS

1. This is a team selection matter in alpine skiing, in which the Claimant (Aleksas Valadka) challenges the decision of Alpine Canada not to include him on the Canadian team that will compete in the 2014 FIS Alpine World Junior Ski Championships (the Championships) to be held beginning on 28 January 2024 in Haute-Savoie, France.
2. Given the time factors at play, this matter was treated as urgent.
3. I was selected as Arbitrator from the rotating list of arbitrators maintained by the Sport Dispute Resolution Centre of Canada (SDRCC). No party has challenged such appointment.
4. Because of the time constraints involved, the regular process of Resolution Facilitation was waived with the consent of the parties.
5. The request for arbitration was filed on 13 January 2024. The Respondent filed a Reply the same day and a preliminary meeting with the parties was also held on the same day.
6. The question of possible Affected Parties was also raised. This is somewhat complicated, since, at the time of the preliminary hearing and the hearing on 15 January 2024, the names of the athletes selected by Alpine Canada had not yet been made public. In the course of the preliminary meeting, however, it appeared that were the Claimant to be successful in this proceeding, there would be no outcome that would result in an athlete already named to the team being removed. This was reiterated during the hearing on the merits of the appeal. Accordingly, no Affected Party has been identified as such.
7. Pursuant to Article 6.10 of the Canadian Sport Dispute Resolution Code, Alpine Canada assumed the burden of establishing that the (selection) criteria were appropriately established and that the decision was made in accordance with such criteria. Once that has been established, the onus shall be on the Claimant to demonstrate that the Claimant should have been selected in accordance with the approved criteria. In each case the onus shall be determined on a balance of probabilities.
8. Alpine Canada published the nomination and selection process criteria for the Championships on 1 November 2023, following proposals made by the Selection Committee and approved by the CEO and the Alpine Canada Board of Directors. No issue was taken with respect to the selection criteria, or the applicable elements thereof and I am satisfied that the selection criteria were properly constituted.
9. The various selection criteria included achievement requirements that differed in some respects based on the birth year of the athletes involved. The Claimant was born in 2003 and is, accordingly, in his final year as a Junior competitor. The selection standard he was required to meet pursuant to section 6.1.1 of the selection criteria was a Junior World Rank

in the top 15, whereas younger Juniors needed only to finish in the top 30 of the World Ranking by Age . The Claimant's ranking was not in the top 15 of the Junior World Ranking. That is sufficient to determine the outcome of this proceeding.

10. There were no intervening personal factors that otherwise affected the Alpine Canada selection decisions. No issue of bias was raised. Both parties conducted the hearing of the appeal in a cooperative and respectful manner. Both acknowledged that they had been afforded the opportunity to say whatever they considered appropriate in the circumstances.
11. Unfortunately for the Claimant, it would have been necessary to revise the selection criteria in order for him to prevail. That is, however, not something within the power of an arbitrator to do. The selection criteria were clear on their face and were not challenged. In addition, the selection criteria provided that Alpine Canada was not required to fill the maximum quotas available in respect of the Championships and I do not find any reason in this case justifying that I compel Alpine Canada to exercise its discretion in a particular manner, such as to utilize an available quota position.
12. I do have a suggestion for Alpine Canada that might alleviate the confusion surrounding selection decisions that involve non-selection of athletes. Where the selection process is not formally completed until very close to the commencement of an event (as is the case for the Championships), athletes who are not selected should be notified as soon as the non-selection decision has been made, so that they know and can decide whether or not to appeal against the decision. Alpine Canada is familiar with its sport and can easily devise a mechanism to accomplish that objective.
13. I thank the parties for their flexibility and assistance in this matter.

The Claimant's appeal is dismissed.

MONTREAL, this 17th day of January 2024.



Richard W. Pound, K.C.
Arbitrator