

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

March 29, 2012

No: SDRCC 11-0160 (INTERPRETATION)

IN THE MATTER OF AN ARBITRATION BETWEEN

CONNOR TARAS
(CLAIMANT)

AND

CANOE KAYAK CANADA (CKC)
(RESPONDENT)

AND

RHYS HILL
(AFFECTED PARTY)

AND

ETIENNE MORNEAU
(AFFECTED PARTY)

REPRESENTATIVE FOR THE APPLICANT:

JONATHON BARNETT

REPRESENTATIVES FOR THE RESPONDENT:

LORRAINE LAFRENIÈRE
CHRIS HELYAR

REPRESENTATIVE FOR THE AFFECTED
PARTY CONNOR TARAS:

WENDY BURNHAM

ARBITRATOR:

LARRY BANACK

INTERPRETATION OF AWARD DATED DECEMBER 12, 2011

(HEARING BY WAY OF CONFERENCE CALL ON MARCH 27, 2012)

INTRODUCTION

1. On December 12, 2011, I released my decision (“Carding Decision”) concerning the “carding” of athletes under the rules of CanoeKayak Canada (“CKC”).
2. At issue in the Carding Decision, was whether CKC had correctly applied the CKC Sprint Racing Discipline 2011-2012 Athlete Assistance Policy (“Carding Policy”) criteria in nominating Rhys Hill (“Mr. Hill”) and not nominating Connor Taras (“Mr. Taras”).
3. A request for an interpretation of my Carding Decision was made by Mr. Hill.

BACKGROUND

4. The hearing in the Carding Decision was held on November 30, 2011.
5. Following completion of the hearing the parties made written submissions and responded to a procedural Order made on December 1, 2011, which included among others, the following question:

3. If I conclude there is a point tie between two athletes, is there a sufficient evidentiary record for me as Arbitrator to now determine which athlete recorded the best performance in relation to the Performance Indicators as provided in sections 7 and 8 of the 2011-2012 Athlete Assistance Program (AAP) Policy published May 1, 2011?

a) If yes, what do I examine to conclude which athlete recorded the best performance?

b) If no, to whom should the determination of which athlete recorded the best performance be referred?

6. In response to that question, the CKC stated as follows:

...In the 2nd case if we include Mark de Jon in the ranking process, Morneau is ranked 1st (due to his 1st place at Trials 2) and Hill and Taras are tied with both athletes recording 2nd place finishes. To further determine who ranks higher, section 7, Combined Trials Ranking, bullet 7 directs us to identify which athlete performs the best performance in relation to the performance indicator.

In this 2nd scenario, as arbitrator no you would not have the information to make a correctly informed decision of which of the two athletes performances are better. This would need to be referred to the High Performance Committee (HPC) of CanoeKayak Canada as per Section 3 of the CKC AAP Policy. The High Performance Director, Barney Wainwright, and the discipline Head Coach, in this case Mr. Fred Jobin, would make a recommendation to the HPC who would then determine if they approve the nomination.

(Emphasis added)

7. Section 3 of the CKC Carding Policy provides as follows:

3. AUTHORITY FOR CARDING DECISIONS

CKC does not make decisions to grant carding to athletes, but rather submits a list of nominations for carding that Sport Canada ultimately approves. Sport Canada approves nominations in accordance with the AAP policies and published National Sport Organisation's carding criteria.

On or about the 7th of October 2011, the Discipline Head Coach and the HPD will recommend to the High Performance Committee (HPC) those athletes that should be nominated for a Sport Canada AAP Card, based upon the criteria contained within this document and the AAP policies. To be nominated for carding, an athlete must meet both the Specific Criteria set out in Section 7 and the Additional Criteria set out in Section 8. The approval of all nominations to Sport Canada for cards is the sole responsibility of the HPC. All nominations will then be reviewed and independently approved by Sport Canada. It should be noted that if some Development Carding nominations are dependent upon Performance Times at the Pan Am Games, those nominations will be delayed until after the Pan Am Games (final competition day is the 29th October).

(Emphasis added)

8. Subsequent to the Carding Decision, I have been informed that the CKC interpreted my award to mean that the CKC High Performance Committee ("CKC HPC") was to review the performance of Mr. Hill and Mr. Taras without having to start the entire nomination process by first hearing from the Discipline Head Coach and the High Performance Director. The CKC HPC released its decision nominating Mr. Taras.
9. Mr. Hill appealed the decision within CKC's internal process for appeals and Andre Gallant was agreed to by all the parties as the adjudicator. A conference call was held with Mr. Gallant on February 22, 2012 and a decision released on February 29, 2012 ("Gallant Decision").
10. On behalf of Mr. Hill, Ms. Burnett emailed me on March 12, 2012 requesting that I provide an interpretation of the concluding paragraph of my Carding Decision. I replied advising that the matter be referred to a Resolution Facilitator.
11. The paragraph at issue stated:
 97. Accordingly, the appeal is allowed. The nomination for a card to either Mr. Hill or Mr. Taras shall be referred to CKC HPC for determination in accordance with the Carding Policy and section 7, bullet point 7, which provides that the determination will be based on "the athlete who records the best performance in relation to the Performance Indicator (see section 8)."
12. A hearing to provide an interpretation of the paragraph was held before me on March 27, 2012.

JURISDICTION

13. Section 6.23 of the SDRCC Canadian Sport Dispute Resolution Code (“SDRCC Code”) provides that after consulting with a Resolution Facilitator, a party that believes an award is unclear has the ability to apply for an interpretation of the award.
14. Following consultation with a Resolution Facilitator, the matter accordingly came before me by telephone conference. Those listed on the cover page attached participated.

ISSUE

15. The only issue before me is an interpretation of Paragraph 97. Specifically, Mr. Hill requests that I advise whether the Carding Decision required the CKC to complete the nomination process as provided under section 3 of the CKC Carding Policy by requiring the Discipline Head Coach and the High Performance Director to recommend to the High Performance Committee those athletes that should be nominated for a Sport Canada AAP Card.

POSITION OF THE PARTIES

CKC

16. Mr. Helyar advised that following the Carding Decision CKC did not go back to the Discipline Head Coach and the High Performance Director for recommendations but that the performance times of Mr. Taras and Mr. Hill were examined and after considering the weather conditions, the HPC made a decision to nominate Mr. Taras.
17. Mr. Helyar advised that the then High Performance Director, Barney Wainwright, participated in the reconsideration but is no longer with the CKC.
18. Mr. Helyar also provided me information regarding the Gallant Decision and the conference call with the Resolution Facilitator.
19. Mr. Helyar and Ms. Lafrenière advised that the deadline to appeal the Gallant Decision is Friday March 30, 2012, but that the CKC would provide an indulgence to Mr. Hill, if I needed as section 6.23 of the SDRCC Code, which provides with seven days following submissions to rule on the application.
20. Ms. Lafrenière questioned whether I had the jurisdiction to provide an interpretation given the Gallant Decision and requested that if I do have the jurisdiction, that the interpretation be binding and final so the matters in this dispute are put to rest.

RHYS HILL

21. Mr. Hill’s representative, Ms. Burnham submitted that CKC has incorrectly interpreted paragraph 97 of the Carding Decision as providing direction to go directly to the High

Performance Committee (“HPC”) without first having athletes nominated by the High Performance Director (“HPD”) and the Discipline Head Coach.

22. In accordance with section 6.23 of the SDRCC Code, Ms. Burnham requested an interpretation of paragraph 97, submitting that the CKC misinterpreted the paragraph of my decision.
23. Ms. Burnham stressed that the only issue before me is the interpretation of paragraph 97 and whether the HPC was required to receive a recommendation by the High Performance Director (“HPD”) and the Discipline Head Coach before reviewing the athletes’ performances.
24. Submissions were also made by Ms. Burnham regarding the correctness of the Gallant Decision and the discussion with the Resolution Facilitator.

CONNOR TARAS

25. On behalf of Mr. Taras, Jonathon Barnett questioned whether I had jurisdiction to provide an interpretation following the Gallant Decision arguing Mr. Hill is seeking a further avenue of appeal.

ETIENNE MORNEAU

26. Mr. Morneau was present for the commencement of the conference call, but at some point disconnected and therefore did not provide any submissions.

DISCUSSION

27. I have been provided with a copy of the Gallant Decision. I do not find it to be of any assistance in the interpretation request before me and I disregard it for this purpose. The Gallant Decision was as a result of an internal appeal by Mr. Hill of the HPC’s decision to nominate Mr. Taras following my Carding Decision. The Gallant Decision was not an appeal of my Carding Decision. I conclude that I have jurisdiction to provide an interpretation of paragraph 97 of my Carding Decision pursuant to section 6.23 of the SDRCC Code.
28. Further, the discussion held with the Resolution Facilitator was made without prejudice and is therefore also not of assistance to me in the interpretation request before me.
29. Paragraph 97 of the Carding Decision clearly stated that “...the nomination for a card to either Mr. Hill or Mr. Taras shall be referred to CKC HPC for determination in accordance with the Carding Policy...(Emphasis added)”

30. Section 3 of the CKC Carding Policy provides as follows:

...On or about the 7th of October 2011, the Discipline Head Coach and the HPD will recommend to the High Performance Committee (HPC) those athletes that should be nominated for a Sport Canada AAP Card, based upon the criteria contained within this document and the AAP policies...

(Emphasis added)

31. There is no provision under the CKC Carding Policy or otherwise that allows for an abbreviated nomination procedure as undertaken following my Carding Decision. As a result, simply reviewing the performance of athletes at the HPC level and providing a nomination was not consistent with the direction provided by paragraph 97 of the Carding Decision.

DECISION

32. Paragraph 97 of the Carding Decision is to be interpreted as requiring the Discipline Head Coach and the High Performance Director to recommend to the High Performance Committee those athletes that should be nominated for a Sport Canada AAP Card, as provided in section 3 of the CKC Carding Policy.

COSTS

33. No award of costs shall be made unless any party makes written submission filed with the SDRCC, within 7 days of the release of this Interpretation.

Dated at Toronto, Ontario March 29, 2012.



Larry Banack,
ARBITRATOR