

SDRCC/CRDSC 16-0302
Ordinary Tribunal

KAREN PAVICIC

Claimant

v.

EQUINE CANADA

Respondent

and

MEGAN LANE

Affected Party

before

Richard W. Pound, Q.C.

(Sole Arbitrator)

Appearances:

Lisa Lazarus for Equine Canada

Ali Buchanan for the Claimant

Background

Equestrian sports, within the Olympic context, are governed by an international sports federation, la Fédération Equestre Internationale (FEI). Equine Canada is the national federation in Canada recognized by the FEI. As part of its responsibility, in addition to ensuring that the FEI rules are properly applied in Canada, Equine Canada nominates riders and combinations of riders and horses to the Canadian Olympic Committee for inclusion (in the present case) on the Canadian Olympic team that will compete in the Olympic Games to be held in Rio de Janeiro, Brazil, in August 2016.

The Claimant is an experienced Canadian competitor in the equestrian discipline of dressage. She competed for a position in the dressage event in Rio de Janeiro. Canada did not qualify for the team event in the discipline, but is entitled to enter two riders (and an alternate) in the individual event. The Claimant was selected as the alternate, but believes she should have been the second member of the Canadian team. There is no dispute regarding the first member. The Affected Party is the athlete nominated by Equine Canada as the second rider.

The Claimant has appealed to the Sport Dispute Resolution Centre of Canada (SDRCC) against the selection decision of Equine Canada. Equine Canada has agreed to that process without insisting that the Claimant exhaust her internal rights before proceeding to the SDRCC.

The matter has been dealt with on an urgent basis, since entries must be made in respect of the Games not later than the morning of 18 July 2016. A preliminary meeting occurred by telephone on 15 July 2016 to arrange for a hearing and to determine the elements of the hearing, also to be held by telephone, on 16 July 2016, in the event that the resolution facilitation process required by the Canadian Sport Dispute Resolution Code (Code) did not result in a resolution of the complaint. That process did not result in a settlement, so the hearing proceeded. Due to the urgency of the matter, I undertook to render an Order, with reasons to follow, not later than 12:00 noon EDT on 17 July 2016. That Order, dismissing the complaint, was posted on the SDRCC Case Management Portal at or about 10:30EDT on 17 July 2016. This is the reasoned decision.

Selection Decision

Since this is a selection dispute, pursuant to Article 6.7 of the Code, Equine Canada has the initial burden to demonstrate that the (selection) criteria were appropriately established and that the selection decision was made in accordance with the criteria.

There is no issue regarding the adoption and communication of the selection criteria established by Equine Canada. These were, insofar as dressage is concerned, finalized and circulated in October 2015. The Claimant does not dispute this, nor the content of the selection criteria. The applicable provision in the criteria is section 5.3.I, which reads:

5.3 Nomination of Individuals: The following nomination procedure will be used to nominate up to two rider/horse combinations if Canada does not qualify a team for the OG [Olympic Games] as per the FEI Qualification Process, [...]

I. Rider/horse combinations earning the "Recognized Standard" [...] will be nominated to represent Canada at the OG. In the event that more than two rider/horse combinations achieve the "Recognized Standard" [...] only the top two combinations will be nominated in descending rank order. [...]

On the official FEI dressage ranking list, the Claimant is ranked 89th, with 1,682 points. The Affected Party is ranked 87th, with 1,688 points.

Equine Canada says that it followed the selection criteria when it nominated the Affected Party as the second athlete and nominated the Claimant as the alternate. It says it has discharged the onus contained in the Code and that the burden now shifts to the Claimant to demonstrate why she should have been nominated. I agree.

Claimant's Position

The Claimant does not dispute what appears in the FEI dressage ranking list. Her position is that the results of a final qualification competition, in which she did not compete (she lives in British Columbia and the competition was in Ontario), was affected by bias on the part of one of the FEI-qualified judges.

Prior to that competition, the Claimant was ranked ahead of the Affected Party. She says that exaggerated marks were given to the Affected Party by the judge whose conduct is impugned, which had the effect of moving the Affected Party higher than her in the FEI standings, thereby precluding her nomination as the second rider.

She asserts that the impugned judge could not, therefore, as a result of her unethical conduct, be regarded as an impartial and unbiased decider. The marks given in the qualification competition had the effect of moving the Affected Party ahead of the Claimant by less than five one-hundredths of one per cent. The Claimant refers to the CODEX for FEI Dressage Judges, at paragraph 2:

A judge must avoid any actual or perceived conflict of interest. A judge must have a neutral, independent and fair position towards riders, owners, trainers, organizers and other officials and integrate well into a team. Financial and/or personal interest must never influence or be perceived to influence his/her way of judging.

The Claimant filed certain statements made by judges and others to support her claims of bias and unethical conduct on the part of the impugned judge. She also stated that she is in the process of filing a protest with the FEI in respect of her view that the impugned judge did not act in compliance with the Codex for FEI Dressage Judges in respect of the expected conduct of FEI officials.

I note for the record that the allegations are as yet unproven. I make no findings regarding the allegations. They are, however, very serious and clearly call for further investigation on the part of the FEI. The FEI has been supplied with the allegations and has commenced its own inquiry regarding the conduct of the impugned judge. As it happens, the impugned judge is Canadian. During the hearing, Equine Canada assured both the parties and me that it would cooperate in all respects with the FEI inquiry. It is obvious that the credibility of the discipline is adversely affected by claims of this nature and that it is in everyone's best interests that the matter be resolved as quickly as possible.

FEI Actions

Because of the urgency of the Olympic selection process for Rio de Janeiro, the FEI Dressage Committee has already examined the scoring of the qualification event and, after some four hours of discussion, analysis of the scoring, and a review of the reports and the facts, unanimously recommended that the competition results shall stand, as there were insufficient grounds for either annulling or changing the results.

The FEI will nevertheless proceed with a further review of the conduct of the impugned judge and will, on the basis of such enquiries, determine what appropriate measures, if any, may be required in the circumstances.

Disposition of the Appeal

In the context of the present proceedings, the question is what can be done to deal with the Claimant's request to be selected for the dressage event in Rio de Janeiro?

The answer is that nothing can be done.

Equine Canada has duly adopted and disseminated the applicable selection procedure, with which the Claimant has no complaint. The results of the qualification events have produced an official ranking on the part of the FEI that shows the Affected Party ahead of the Claimant. The FEI has been requested to review the outcome of the final competition, and to determine whether the results of that competition (which had the effect of moving the Affected Party ahead of the Claimant in the standings) should be annulled or changed. The FEI has determined that the results should stand. Equine Canada has proceeded to name the Olympic competitors and the alternate in accordance with its selection policy. Equine Canada is not in a position to alter or ignore the results of the competition. It has discharged the onus upon it to justify the selection decisions. Indeed, it could not have acted otherwise without violating the policy.

An Arbitrator appointed by the SDRCC has no jurisdiction to override a decision taken in these circumstances by an international federation with respect to a matter that falls within the competence of that international federation.

If, in the particular context, the impugned judge acted improperly in some respect, it is for the FEI to determine what the consequences should be. The competition in question was a competition sanctioned by the FEI and the officials at the competition acted in their capacities as FEI officials, not as officials appointed by Equine Canada.

The Claimant has indicated that she may seek further recourse through the Court of Arbitration for Sport (CAS), and particularly the *ad hoc* division of CAS, that will be in place in Rio de Janeiro beginning some ten days prior to the Opening Ceremony of the Olympic Games.

The CAS *ad hoc* division has jurisdiction with respect to team selection disputes and may be disposed to hear an appeal that involves an international federation. Such an avenue may be open to the Claimant (on which I express no opinion, but suggest that she consider obtaining legal advice prior to deciding what course of action to pursue) and it will be for her to decide whether or not to avail herself of that possibility.

The Affected Party was content to express full confidence in the FEI and Equine Canada.

In the circumstances, therefore, I am obliged to dismiss the Claimant's appeal in this matter.

MONTREAL, 19 July 2016

A handwritten signature in black ink, appearing to read 'Richard W. Pound', with a long horizontal flourish extending to the right.

Richard W. Pound, Q.C.
Sole Arbitrator